FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

FINAL AGENDA
CITY COUNCIL
SEPTEMBER 19, 2000

A meeting of the Fayetteville City Council will be held on September 19, 2000 at 6:30 p.m. in Room 219 of the City Administration Building, Fayetteville, Arkansas.

NOMINATING COMMITTEE REPORT

A. CONSENT AGENDA

1. **APPROVAL OF THE MINUTES:** Approval of the minutes from the August 15, 2000 City Council meeting.

2. **BOND DEALER SERVICES:** A resolution approving a contract with the Bank of America Securities for variable rate demand bond dealer services and authorize the Mayor and City Clerk to execute the contracts. Budget adjustment authorization is also requested to implement contracts.

3. **EXECUTIVE SQUARE:** A resolution approving an encroachment into city right-of-way for the purpose of constructing a balcony on the north wall of #1 West Mountain Street for Executive Square Inc.

B. OLD BUSINESS

1. **CAMPBELL-BELL BUILDING PARKING LEASE:** A resolution approving a one-year lease agreement with Campbell-Bell Building LLC, for two parking spaces in the parking lot west of the Campbell-Bell Building.

2. **TED BELDEN PARKING LEASE:** A resolution approving a one-year lease agreement with Ted Belden (Campbell-Bell Building) for one parking space in the parking lot west of the Campbell-Bell Building.

3. **GAIL AND JERRY MOORE PARKING LEASE:** A resolution approving a one-year lease with Gail and Jerry Moore (Campbell-Bell Building) for two parking spaces west of the Campbell-Bell Building.

113 WEST MOUNTAIN 72701 501 521-7700
FAX 501 575-8257

C. NEW BUSINESS

1. **VA 00-7:** An ordinance approving vacation request VA 00-7 as submitted by John Phillips for property located at 25 East Rock Street. The property is zoned C-4, Downtown Commercial, and contains approximately 0.37 acres. The request is to vacate a portion of a ten foot wide alley located west of Lot 2, Block 42, Original Town Plat.

2. **RZ 00-21.00:** An ordinance approving rezoning request RZ 00-21.00 as submitted by Read Hudson on behalf of Tyson for property located at the southeast corner of Highway 16 and Happy Hollow Road. The property is zoned C-2, Thoroughfare Commercial and C-1, Neighborhood Commercial and contains approximately 11.50 acres. The request is to rezone to I-2, General Industrial.

3. **CITY ADMINISTRATION ROOM POLICY:** A resolution approving a new policy for reserving rooms in the City Administration Building.

4. **CABLE BOARD DUTIES:** An ordinance amending Section 33.210, Cable Board, Duties, Subsection (c) of the Code of Fayetteville to provide that all guidelines and regulations shall be subject to City Council approval.

5. **TELECOMMUNICATION SERVICES:** An ordinance providing for the management and preservation of the city's rights-of-way and public places with respect to telecommunications services; providing for terms and conditions under which telecommunications providers and lessees may occupy the city's rights-of-way and public places; providing for compensation to the city on a competitively neutral and nondiscriminatory basis; crating an offense and providing penalties.

Meeting of SEPTEMBER 19, 2000

	ROLL			HD H. NOMINATING	
AUSTIN	✓			✓	
DAVIS	✓			✓	
TRUMBO	✓			✓	
DANIEL	✓			✓	
SANTOS	✓			✓	
YOUNG	✓			✓	
RUSSELL	✓				
REYNOLDS	✓			✓	
HANNA	✓				

CONSENT.	BD RR.				
AUSTIN	✓				
DAVIS	✓				
TRUMBO	✓				
DANIEL	✓				
SANTOS	✓				
YOUNG	✓				
RUSSELL	✓				
REYNOLDS	✓				
HANNA					

Meeting of SEPTEMBER 19, 2000

	# BP Campbell				
AUSTIN	✓				
DAVIS	✓				
TRUMBO	✓				
DANIEL	X				
SANTOS	✓				
YOUNG	X				
RUSSELL	X				
REYNOLDS	✓				
HANNA					
	5-3				

	# RR Belden				
AUSTIN	✓				
DAVIS	✓				
TRUMBO	✓				
DANIEL	X				
SANTOS	✓				
YOUNG	X				
RUSSELL	X				
REYNOLDS	✓				
HANNA					
	5-3				

Meeting of SEPTEMBER 19, 2000

	# 28. motion				
AUSTIN	✓				
DAVIS	✓				
TRUMBO	✓				
DANIEL	X				
SANTOS	✓				
YOUNG	X				
RUSSELL	X				
REYNOLDS	✓				
HANNA					
	5-3-0				

VA 00-7	# HD. 2ND	BD 3RD RR	PASS.		
AUSTIN	✓	✓	✓		
DAVIS	✓	✓	✓		
TRUMBO	✓	✓	✓		
DANIEL	✓	✓	✓		
SANTOS	✓	✓	✓		
YOUNG	✓	✓	✓		
RUSSELL	✓	✓	✓		
REYNOLDS	✓	✓	✓		
HANNA					
			8-0		

Meeting of SEPTEMBER 19, 2000

RZ 00-21	H. 2ND BD	BD HD. 3RD	PASS		
AUSTIN	✓	✓	✓		
DAVIS	✓	✓	✓		
TRUMBO	✓	✓	✓		
DANIEL	✓	✓	✓		
SANTOS	✓	✓	✓		
YOUNG	✓	✓	✓		
RUSSELL	✓	✓	✓		
REYNOLDS	✓	✓	✓		
HANNA					
			8-0.		

Room	KR RR table.				
AUSTIN	✓				
DAVIS	✓				
TRUMBO	✓				
DANIEL	Passed for vote.				
SANTOS	✓				
YOUNG	✓				
RUSSELL	✓				
REYNOLDS	✓				
HANNA					
	TABLED				

Meeting of SEPTEMBER 19, 2000

RA to table.

	CABLE				
AUSTIN	✓				
DAVIS	✓				
TRUMBO	✓				
DANIEL	✓				
SANTOS	✓				
YOUNG	✓				
RUSSELL	✓				
REYNOLDS	✓				
HANNA					
	8-0.				

TELECOM.					
AUSTIN					
DAVIS					
TRUMBO	TABLED				
DANIEL					
SANTOS					
YOUNG					
RUSSELL					
REYNOLDS					
HANNA					

ADJOURNED 10:55

Meeting of SEPTEMBER 19, 2000

AUSTIN					
DAVIS					
TRUMBO					
DANIEL					
SANTOS					
YOUNG					
RUSSELL					
REYNOLDS					
HANNA					

AUSTIN					
DAVIS					
TRUMBO					
DANIEL					
SANTOS					
YOUNG					
RUSSELL					
REYNOLDS					
HANNA					

CITY COUNCIL
FINAL AGENDA
SEPTEMBER 19, 2000

ATTACHED:

1. **BOND DEALER SERVICES:** Remove information for Item A.2 in your Tentative Agenda and replace with the attached copies.

2. **ROOM POLICY:** Information for Item C.3.

3. **TELECOMMUNICATION SERVICES:** Additional information for Item C.5. Remove the draft ordinance from the packet you received at agenda session and replace with the attached ordinance.

AGENDA SESSION:

1. **CABLE BOARD DUTIES:** Number this C. 4. Page 1. under New Business.

2. **EXECUTIVE SQUARE:** Number this item A. 3. under Consent Agenda. Revisions to the design will be provided on Tuesday.

3. **TELECOMMUNICATION SERVICES:** Remove draft ordinance from the packet presented at Agenda Session and replace with the attached ordinance.

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

FINAL AGENDA
CITY COUNCIL
SEPTEMBER 19, 2000

A meeting of the Fayetteville City Council will be held on September 19, 2000 at 6:30 p.m. in Room 219 of the City Administration Building, Fayetteville, Arkansas.

NOMINATING COMMITTEE REPORT MIKE HILL. / P&R.

A. CONSENT AGENDA

PASS

1. ✓**APPROVAL OF THE MINUTES:** Approval of the minutes from the August 15, 2000 City Council meeting.

127-00

2. ✓**BOND DEALER SERVICES:** A resolution approving a contract with the Bank of America Securities for variable rate demand bond dealer services and authorize the Mayor and City Clerk to execute the contracts. Budget adjustment authorization is also requested to implement contracts.

127-00

3. ✓**EXECUTIVE SQUARE:** A resolution approving an encroachment into city right-of-way for the purpose of constructing a balcony on the north wall of #1 West Mountain Street for Executive Square Inc.

B. OLD BUSINESS

PASS 129-00

1. **CAMPBELL-BELL BUILDING PARKING LEASE:** A resolution approving a one-year lease agreement with Campbell-Bell Building LLC, for two parking spaces in the parking lot west of the Campbell-Bell Building.

PASS 130-00

2. **TED BELDEN PARKING LEASE:** A resolution approving a one-year lease agreement with Ted Belden (Campbell-Bell Building) for one parking space in the parking lot west of the Campbell-Bell Building.

PASS 131-00

3. **GAIL AND JERRY MOORE PARKING LEASE:** A resolution approving a one-year lease with Gail and Jerry Moore (Campbell-Bell Building) for two parking spaces west of the Campbell-Bell Building.

113 WEST MOUNTAIN 72701 501 521-7700
FAX 501 575-8257

C. NEW BUSINESS

PASS 4271-A

1. **VA 00-7:** An ordinance approving vacation request VA 00-7 as submitted by John Phillips for property located at 25 East Rock Street. The property is zoned C-4, Downtown Commercial, and contains approximately 0.37 acres. The request is to vacate a portion of a ten foot wide alley located west of Lot 2, Block 42, Original Town Plat.

PASS 4272

2. **RZ 00-21.00:** An ordinance approving rezoning request RZ 00-21.00 as submitted by Read Hudson on behalf of Tyson for property located at the southeast corner of Highway 16 and Happy Hollow Road. The property is zoned C-2, Thoroughfare Commercial and C-1, Neighborhood Commercial and contains approximately 11.50 acres. The request is to rezone to I-2, General Industrial.

TABLED

3. **CITY ADMINISTRATION ROOM POLICY:** A resolution approving a new policy for reserving rooms in the City Administration Building.

TABLED Cable info. policies REMOVE FROM AGENDA NEXT mtg.

4. **CABLE BOARD DUTIES:** An ordinance amending Section 33.210, Cable Board, Duties, Subsection (c) of the Code of Fayetteville to provide that all guidelines and regulations shall be subject to City Council approval.

5. **TELECOMMUNICATION SERVICES:** An ordinance providing for the management and preservation of the city's rights-of-way and public places with respect to telecommunications services; providing for terms and conditions under which telecommunications providers and lessees may occupy the city's rights-of-way and public places; providing for compensation to the city on a competitively neutral and nondiscriminatory basis; crating an offense and providing penalties.

Meeting adjourned 10:55.

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

FINAL AGENDA
CITY COUNCIL
SEPTEMBER 19, 2000

A meeting of the Fayetteville City Council will be held on September 19, 2000 at 6:30 p.m. in Room 219 of the City Administration Building, Fayetteville, Arkansas.

NOMINATING COMMITTEE REPORT

A. CONSENT AGENDA

1. **APPROVAL OF THE MINUTES:** Approval of the minutes from the August 15, 2000 City Council meeting.

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113 WEST MOUNTAIN 72701 501 521-7700
FAX 501 575-8257

C. NEW BUSINESS

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2. **RZ 00-21.00:** An ordinance approving rezoning request RZ 00-21.00 as submitted by Read Hudson on behalf of Tyson for property located at the southeast corner of Highway 16 and Happy Hollow Road. The property is zoned C-2, Thoroughfare Commercial and C-1, Neighborhood Commercial and contains approximately 11.50 acres. The request is to rezone to I-2, General Industrial.

3. **CITY ADMINISTRATION ROOM POLICY:** A resolution approving a new policy for reserving rooms in the City Administration Building.

4. **CABLE BOARD DUTIES:** An ordinance amending Section 33.210, Cable Board, Duties, Subsection (c) of the Code of Fayetteville to provide that all guidelines and regulations shall be subject to City Council approval.

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MINUTES OF A MEETING
OF THE
FAYETTEVILLE CITY COUNCIL
AUGUST 1, 2000

A meeting of the Fayetteville City Council was held on August 1, 2000 at 6:30 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

PRESENT: Aldermen Reynold, Austin, Davis, Trumbo, Daniel, Santos, Young, and Russell, City Attorney Jerry Rose, City Clerk Heather Woodruff, Staff, Press and Audience.

ABSENT: Mayor Hanna

CONSENT AGENDA

APPROVAL OF THE MINUTES: Approval of the minutes from the July 5, 2000 meeting.

STEPHENS: A resolution approving a letter agreement with Stephens Inc. for Stephens Inc to provide financial advisory services on the wastewater treatment plant expansion project financing. The rate per hour is $225.00 and is restricted to certain identified individuals. The authorization requested is not to exceed $22,500 and will be paid from the project budget. Approval of a budget adjustment is also requested.

RESOLUTION 104-00 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

WASTEWATER TREATMENT PLANT EXPANSION: A resolution authorizing the Mayor or his representative to proceed in seeking proposals for variable rate demand bond obligations for use in providing interim financing for the wastewater treatment plant expansion.

RESOLUTION 105-00 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

BID 00-52: A resolution accepting the lowest qualified bidder for the purchase of two tractor backhoe loaders. Bid 00-52, Item #1. The vendor for this purchase will be E. A. Martin Machinery.

RESOLUTION 106-00 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

BID 00-53: A resolution accepting the lowest qualified bidder for the purchase of one tri-axle diesel powered dump truck. Bid 00-53, Items #3 and #4. The vendor for this purchase will be Sterling Trucks of Arkansas.

RESOLUTION 107-00 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

BID 00-54: A resolution awarding Bid 00-54 to Ameri-Kan, Inc. in the amount of $11,747 for the initial purchase of solid waste containers and approval of future purchases as needed for inventory at the attached per unit prices. These containers are sold/leased to commercial businesses for use in our commercial container and commercial recycling programs.

RESOLUTION 108-00 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

BID 00-56: A resolution accepting the qualified bidder for the purchase of one tractor, one mower conditioner, two tedders, and one rotary mower with the trade of fourteen various used items which were declared surplus or are being replaced by the items purchased. The vendor for this item will be Williams Tractor.

RESOLUTION 109-00 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

BALL AND MOURTON: A request to grant an easement over 25 feet of land near Razorback Road for the purposes of ingress and egress for a parking lot.

RESOLUTION 110-00 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

Alderman Davis moved to approve the consent agenda. Alderman Daniel seconded the motion. Upon roll call the motion carried unanimously.

OLD BUSINESS

RZ 00-19.00: An ordinance approving rezoning request RZ 00-19.00, submitted by the Community Development Division on behalf of the City of Fayetteville for property located west of Deane Solomon Road, north of Moore Lane and south of West Salem Road. The property is zoned I-1, Heavy Commercial/Light Industrial and contains approximately 2.715 acres. The request is to rezone to R-2, Medium Density Residential. The ordinance was left on the first reading at the July 18, 2000 meeting.

Mr. Rose read the ordinance.

Alderman Daniel stated this group had been looking for a home for along time. She thought this was a good location for the Sage House and Children's House.

There was no public comment.

Alderman Austin moved to suspend the rules and go to the third and final reading. Alderman Russell seconded the motion. Upon roll call the motion carried unanimously.

Mr. Rose read the ordinance.

Vice Mayor Trumbo called for the vote. Upon roll call the ordinance passed unanimously.

ORDINANCE 4262 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

AD 00-18.00: An ordinance for AD 00-18.00, administrative amendment to Chapter 166 "Development" of the Unified Development Ordinance, Section 166.04 (A)(8) "Suburban Subdivision-Public Sanitary Sewer Not Accessible" to allow lots smaller than 1-½ acres that are on a septic system. The ordinance was left on the first reading at the July 18, 2000 meeting.

Mr. Rose read the ordinance.

Mr. Conklin, Planning Director, explained last May there had been a decision made to have the cities review all lot splits and subdivision before the County. In the past, Washington County Planning Board and County Planner would review the subdivisions and lot splits. The city would require the county's approval before we would process their lot splits and subdivision. That process had changed. Now the City of Fayetteville would be receiving the request for lot splits and subdivisions. In the past Washington County would approve lot splits less than one-half acres, subject to a permit being issued by the Department of Health for an septic system. Since the change, the city had an ordinance that required the lots to be a minimum of one and a half acres in their planning area. In 1992, they amended the ordinance for subdivisions and lot splits inside the city limits that were on septic systems, with a permit from the Arkansas Department of Health, less than an acre and a half. What he was trying to do was continue what the county had been approving. He felt uncomfortable with approving a lot less than an acre and a half. He wanted to make sure that they had the permit from the health department. What the ordinance change would require was that in order to do a lot split or a subdivision which created a lot less than an acre and half was that they were going to have to go out and physically hire someone to do a perk test. The cost was three to four hundred dollars. They would have to have a permit from the State of Arkansas approving the septic system for that lot. He was asking for a permit up front. This match what they currently required inside city limits for lots not on their sewer systems. It was going to cost land owners more money. In the past they did not require the actual permit from the State Department of Health. Now they were going to require it for anything less than an acre and a half. He had looked at what we required for lots inside city limits and continued it to the growth area. He did not want to create a more stringent standard for outside city limits. He was trying to make sure they did not create lots which could not have a septic system. Currently, inside city limits if they were not able to hook onto the sewer system the same standard would apply. They needed a permit from the Department of Health prior to the lot being created. In the past the approval had been contingent upon a permit from the State Department of Health. He was asking that before they submitted an application to the city for a lot split or a subdivision, he wanted the permit in hand proving that it will work. He wanted to

make sure that they did not create lots that they could not build on.

Alderman Young stated he wanted to make it clear that it was going to be the city's policy that they had to have the permit for a septic system, when they came to the city for approval from the Planning Commission.

Mr. Conklin replied that was correct for anything less than one acre and a half. It was going to cost land owners money if they chose to subdivide their land in to lots less than an acre and a half. What he was trying to do was match what they currently did inside city limits. They needed to make sure the system would work on that land.

Alderman Daniel asked if there was any alternative if they were denied a permit.

Mr. Conklin replied if they denied the permit, it typically meant they would have to have a larger lot size or another type of system to handle their sewage. They would have to have something that would work before they submitted it to the Planning Office.

Alderman Santos moved to suspend the rules and move to the third and final reading. Alderman Austin seconded the motion.

Mr. Rick Johnson, Arkansas State Health Department, stated the Health Department had regulated the septic systems since 1977. They did not have an acreage size requirement. They required that the site must be suitable and they must have room for an alternate system in order for them to issue the permit. The subdivision was a little different, if someone took three or more lots in any part for sale, they would look at each individual lot. They were now using a system called Soil Morphology. They would look at a pit, the profile of the soil on every lot in the subdivision then they would issue the approval of the subdivision based on the soil morphology. If they soil was not acceptable for a septic system then they would not approve it. All septic systems within Washington County must come before the Health Department for approval. There were no exemptions.

Alderman Trumbo asked if this raised development standards.

Mr. Johnson replied it had raised standards. He thought they had a good system in the State of Arkansas, probably one of the best in the nation.

Alderman Reynolds asked how far the lateral fields had to be from their neighbor.

Mr. Johnson replied the usual amount was ten feet. They had to keep any part of the system ten feet from property lines, ten feet from the building. They were also setbacks from wells that they would have to adhere to. They tried to catch sites that were not suitable before

development.

Ms. Colleen Gaston, 3270 Rom Orchard Road, stated she was concerned about the change in the ordinance. It may tend to encourage development in the growth area. Her concern was the water quality for both the White River and the Illinois River water shed. She was not sure that the Health Department would take into account the accumulative affect. If they were encouraging more dense development in the growth area and increasing the septic systems, that there might be some negative accumulative affect. She asked them to think about it in terms of Urban Planning and if this was promoting sprawl. She asked for some discussion to whether it did promote that. She thought the exemption within the city limits to allow less than an acre and a half made sense because there were very few area within the city limits that were not accessible by sewer system. It was her understanding that no sewer was available in the growth area and would not be for some time. When those areas were brought into the city did they want the responsibility for the problems.

Alderman Daniel stated they were receiving more requests for lot splits.

Mr. Conklin stated he was relying on the Arkansas Department of Health insure that the systems were going to work. In order to serve these areas with a sewer system when they were annexed, they would need the density to extend sewer. He had looked at the density and he was relying on the State to make sure the systems were going to work on less than an acre and a half. This was something that has been occurring for many years. In the past he had to react to these lots. He was very uncomfortable granting any type of variance without the permit from the Department of Health. He was not going to recommend anymore lots less than an acre and a half without that proof. Which was a change in how Washington County had been handling lot splits. He was trying to make sure that they were protecting their ground water by making sure the Health Department was permitting these.

Alderman Santos stated this was more of an anti-sprawl measure. Larger lots were what made them think of creating sprawl. Creating smaller lots were less tasking on the infrastructure. If there was no individual affect there would be no accumulative affect. They were better getting a scientific analysis on whether a system would work on a lot or assuming that it would work.

Ms. Gaston stated there were know problems with septic systems. There were no guarantee that once they were permitted that they would be maintained and ran properly. So when they increased the number of systems they had in an area there was a probability that some of them would not be maintained properly.

Alderman Santos stated he did not believe there would be an accumulative affect if there was no individual affect. This was a much better guarantee than the existing system.

Mr. Conklin explained he had met with Washington County staff and discussed planning procedures within the city, because it had impacted the cities. Before he would receive a paper from the county stating lots were created subject to septic system approval from the Department of Health. That made him uncomfortable. He did not want to make the standard more restrictive than what they required inside the city limits for septic system. The two standards would match. He wanted to make sure they did not end up with lots in the planning area which could not have a septic system. He had reacted to parcels that were three-quarter of an acre. A lot of the lot splits he had seen had an existing house in which the extra acreage was split off to sell. That was one reason why they required existing septic systems on the plat. Before he was having to react to a lot split request where he had no idea where the existing septic system was located or the alternate leach field was. He was trying to be proactive and to make sure things would work in the future.

Alderman Daniel agreed with Ms. Gaston in the belief that it encouraged urban sprawl and it would also impact traffic and other aspects of our city.

Mr. Conklin replied urban sprawl could be better addressed with zoning. Density or amount of acreage was not dependant of the septic system. There was not a magic number. If they were worried about density in the county, it was more of a zoning issue. Under State law if the County wanted to regulate density, they could. The city did not have the authority to regulate density in the county. He was not recommended that they regulate density by the minimum size for a septic system.

Alderman Trumbo stated they had not been able to regulate density in subdivisions and development that were contiguous to the city limits. What they had done in the past was annex the land to up the standards of the development to their city ordinances which were more strict than the counties.

Mr. Conklin stated that was correct and that he encouraged developers to annex into the city had hook onto their sewer.

Alderman Russell asked how often they did that, and compared to the number that did not annex into the city.

Mr. Conklin replied if the sewer was available, typically they would bring the subdivision into the city limits. They could have more lots. Their yield on the number of lots could be increased because they were not on a septic system.

Ms. Gaston stated she thought it was good to require the permit up front, but she did not think they were accurate in their ability to regulate growth in the in the growth area.

Alderman Trumbo stated he did not believe the city could regulate density in the county.

Alderman Santos stated the State planning could not allow them to do anything like zoning in the county. That was the topic of their American Planning Association conference this year. It was really a State Legislature issue and not a City Council issue.

Vice Mayor Trumbo called for the vote. Upon roll call the motion carried unanimously.

Mr. Rose read the ordinance.

Vice Mayor Trumbo asked shall the ordinance pass. Upon roll call the ordinance passed unanimously.

ORDINANCE 4263 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

PLANNING COMMISSION APPEAL: An appeal of a Planning Commission decision which denied rezoning request RZ 00-20.00 for property located at 2116 E. Joyce Street. The request is to rezone the property from A-1 to R-O. The ordinance was left on the first reading at the July 18, 2000 meeting.

Mr. Rose read the ordinance.

Alderman Davis asked Dr. Israel if he had looked at Ms. Hesse's letter and if he had any problems with the letter she wrote to the council.

Dr. Israel stated he had just received the letter tonight. There were some things he would have trouble with. His plan was to use the tree canopy on the north side of the property to meet the city's ordinance on tree canopy. He did not believe they should be asked to provide more than twenty percent trees since the property was not covered by more than twenty percent trees now.

Alderman Russell asked Dr. Israel if it was his understanding that Ms. Hesse was requiring him to do more than twenty percent.

Dr. Israel thought the letter was a little ambiguous. It stated the trees on the northern boundaries shall be left untouched. He did not know if she was talking about the fifty feet, but on the western side there was probably two hundred feet deep in trees. He was not sure what the requirement was from her letter. He had met on site with Ms. Hesse, Mr. Gabriel and an engineer from the Benham Group. They had come to the conclusion that they was the best site to leave the trees. The trees in front was not significant and that the best place to leave the trees would be in the back. Because they did not know what the requirement of grading and permitting would and the large scale development, he thought that would be the best place to

work out what trees would be left and not left. It was their plan to met the city requirement with the trees at the back of the property.

Alderman Davis stated Ms. Hesse's recommended twenty percent tree preservation was required in the R-O zoning to be located on the northern boundary.

Dr. Israel added the letter also stated that the current boundary would not be disturbed, although the width of the tree preservation area was not discussed. A fifty foot buffer currently exist. He would like to specify that the "tree preservation area was to be left undisturbed and utility and drainage easements be outside that area." He was not sure that was required by ordinance.

Alderman Russell asked if the northern fifty feet more than twenty percent of the property.

Dr. Israel replied no, but the tree canopy on the western half of the property was one hundred fifty feet deep. When the letter stated, "the current tree area would be left undisturbed." He was not sure he understood what she was talking about. It was their intension to leave the northern fifty feet buffer. The other issue he was confused about was that the Army Corp of Engineers had declared it a wet land. But it was not a declared wet land area. Either the owner was misinformed or he was misinformed. The Corp of Engineers had stated that was not a wet land area. They had walked over it and reviewed it and had not classify it as a wet land area. They called it a USA Waterway. It meant the stream only was protected and not outside the stream. There was a need for them to leave the northwest corner in place. That was where most of the drainage went into the creek. They would want to leave that in place.

Alderman Santos stated from reading the letter it was his understanding that Ms. Hesse was asking him to leave the northern fifty feet as a buffer. Was that okay with him.

Dr. Israel state he wanted to leave it there, but he was not sure that she would speak for the Planning Commission.

Alderman Russell stated the Planning Commission had the power to recommend something different from what she recommended. The way that he took the letter was that she was letting them know up front what her recommendation to them was going to be.

Mr. Conklin stated that was how he read the letter. Typically when they received a site plan for large scale development, she would review it and make a recommendation. She had gone in prior to the rezoning and made a recommendation of fifty feet. The Planning Commission, when everything else is considered, there may be something different that would come out. There was guarantee until the Planning Commission voted to approve. What they saw before them was a recommendation from the Landscape Administration putting Dr. Israel on notice that she would be looking for a tree preservation area on the north boundary line of twenty percent.

Alderman Russell stated it was rare that when Ms. Hesse and the developer agreed on an area for tree preservation that the Planning Commission would want to do something different. They always could, but it was rare.

Alderman Trumbo stated he like the way this had developed. Ms. Hesse had expressed during the rezoning that this was what she was going to recommend at this particular point. Right now they were just considering the rezoning to R-O, then if there was a problem with the tree preservation plan between the developer and Ms. Hesse then it could return to this council.

Dr. Israel stated in their mind it was the best place to leave it. They wanted to preserve the back fifty feet, if that was what it was, if it met the city's requirement and did not contradict the grading and drainage systems.

Alderman Trumbo asked the reasoning behind the Planning Commission denying the rezoning.

Mr. Conklin explained the Planning Commission had adopted by-laws. In those by-laws they required finding to be made. On of those finds had to be if the zoning was needed or justified at this time. They looked at existing R-O areas and felt that there was adequate area. There had been some discussion on amending the applicant's request. Their concern had been in regards to drainage and where the water was going back towards the wetland. There were a couple of issues, but they did not have enough votes to carry it to the Council.

Alderman Reynolds stated he believed if the Planning Commission had the information that they had in hand the last two meetings they would not have denied this.

Alderman Santos stated Mr. Israel was still not willing to cede that fifty foot buffer.

Alderman Young stated the Planning Commission had not have the information on the drainage. The applicant had not been there. The only thing they could do was deny it. He thought they would have approved it, if they had the information.

Dr. Israel stated he was also developing a six acre tract on the same street. He believed the area would be rapidly developing.

Mr. Greg Galbraith, Ozark Regional Land Trust, stated Dr. Hudson had part of the property declared a wet land. There was no question that any disturbance to the back side of the property would impact the drainage and their plans for the property. It was his understanding that Dr. Israel and Ms. Hesse were in agreement with protecting the tree a minimum of fifty feet along the entire north border of the property. That would satisfy them. Therefore they would support and recommend that the Council go ahead and approve the zoning.

Alderman Daniel moved to suspend the rules and move to the third and final reading. Alderman Reynolds seconded the motion. Upon roll call the motion unanimously.

Mr. Rose read the ordinance.

Vice Mayor Trumbo asked shall the ordinance pass. Upon roll call the ordinance passed unanimously.

ORDINANCE 4264 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

NEW BUSINESS

AD 00-22: A resolution amending the City's Master Street Plan by eliminating a collector street between Prairie Ave. and W. Sixth Street within the property at 404 W. Sixth Street, at the northeast corner of S. School Ave. and W. Sixth Street and reclassifying Prairie Street west of West Ave. and Government Ave. between Prairie Ave. and W. Sixth Street as collector streets.

Alderman Trumbo stated he thought they needed to work with these developer's to enhance an eye sore that they had on the south part of town. He thought they should help these investors.

Alderman Daniel agreed adding that it would help the area.

Alderman Reynolds stated they had done a great job. He would fully support it.

Alderman Austin noted there had been four neighbors that spoke for it at Planning Commission.

Alderman Trumbo stated it could only enhance the value of the surrounding property owners.

Alderman Davis thought it might help encourage other development in the area.

Alderman Santos stated they would be eliminating the street when they revised the Master Street Plan.

Alderman Santos moved to approve the resolution. Alderman Reynolds seconded the motion.

Alderman Davis stated normally they required the developer to put in a road.

Mr. Conklin stated the original agreement was to dedicate seventy feet of right-of-way and typically they could build half of the street along with a sidewalk.

Alderman Davis asked who would be responsible for building that portion of the multi-use trail through there.

Mr. Conklin stated they had agreed to dedicate the area and build the trail.

Upon roll call the motion carried unanimously.

RESOLUTION 111-00 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

AD 00-23: A resolution amending the City's Master Street Plan by accepting a lesser dedication of right-of-way along W. Sixth Street just west of S. School Ave. only where the footprint of an existing structure encroaches into the required Master Street Plan right-of-way.

There was no public comment.

Alderman Santos moved to approve the resolution. Alderman Daniel seconded the motion. Upon roll call the motion carried unanimously.

RESOLUTION 112-00 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

AD 00-26: An ordinance adopting the Flood Hazard Study, Phase II, provided by the US Army Corps of Engineering for use in managing flood plains within the City of Fayetteville as supplement to the previously adopted Flood Damage Prevention Code (Chapter 153) of the UDO, adopted by Ordinance 4011, January 7, 1997.

Mr. Rose read the ordinance.

Alderman Austin moved to suspend the rules and move to the second reading. Alderman Davis seconded the motion. Upon roll call the motion carried unanimously.

Alderman Davis explained flood rates for insurances were set up by the government, so all carriers would have the same rate.

Alderman Russell moved to suspend the rules and move the third and final reading. Alderman Austin seconded the motion.

In response to questions from Alderman Daniel, Mr. Conklin stated they were looking at the tributaries for Town Branch, Cato Springs Branch. He was receiving this data in pieces. They were focusing on different water sheds and basins. As they received it they would sent it to FEMA to incorporate into a flood insurance map. They were currently waiting on additional information. At this time he was wanting to adopt what the Corp had put together and to use it

for flood plain management purposes. They had approximately sixty percent of the city in /digital format. They used this every day for building permits. It has been a great benefit to the city and their GIS system. Town Branch had been approved. The only map he had given them tonight was the tributaries they were adopting the new study for.

Upon roll call the motion carried unanimously.

Vice Mayor Trumbo asked shall the ordinance pass. Upon roll call the ordinance passed unanimously.

ORDINANCE 4265 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

MULTI-USE TRAIL: Discussion regarding the possible purchase of abandoned railroad property.

ITEM WAS REMOVED FROM THE AGENDA.

PARKING LEASES: A resolution granting the Mayor or his representative authority to lease parking spaces at the Fayetteville Municipal Parking Deck or on other City owned or operated parking facilities, including Airport hangar leases, under the terms as agreed between the parties and in conformity with applicable ordinances. The lease amount is not to exceed $20,000 total.

ROLLBACK: A resolution approving a settlement of litigation regarding the rollback of ad valorem taxes for the years 1994 through 1999.

COLE, RAYWID & BRAVERMAN, L.L.P.

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September 14, 2000

BY FEDERAL EXPRESS

Heather Woodruff
City Clerk
113 W. Mountain
Fayetteville, Arkansas 72701

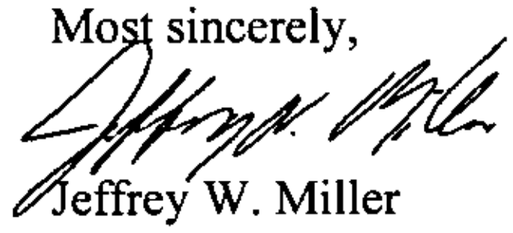
Re: Comments Of Adelphia Business Solutions Of Arkansas, L.L.C. Regarding The Proposed Telecommunications Ordinance

Dear Ms. Woodruff:

It was a pleasure speaking with you on Wednesday regarding Adelphia Business Solutions' ("ABS") plans to submit comments on Fayetteville's proposed telecommunications ordinance which is scheduled to go to a first reading on Monday September 19, 2000. As we discussed, I have enclosed a copy of the comment letter which I submitted to Jerry Rose. Please see that each of the City Council members receive a copy before the meeting.

Should you have any questions please do not hesitate to contact me. Thank you for your time and assistance.

Most sincerely,



Jeffrey W. Miller

cc: Jim Stinson, Esq.
Mary Margaret Johnson

122975-1

COLE, RAYWID & BRAVERMAN, L.L.P.

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September 14, 2000

BY FEDERAL EXPRESS

Mr. Jerry E. Rose
City Attorney
113 West Mountain
Fayetteville, AR 72701

Re: Comments Of Adelphia Business Solutions Of Arkansas, L.L.C. Regarding The Proposed Telecommunications Ordinance

Dear Mr. Rose:

Thank you for sending an updated copy of Fayetteville's Draft Telecommunications Ordinance ("draft"). After reviewing the draft, it is apparent that a number of our earlier concerns were not addressed in the changes made to the first draft. Accordingly, the following comments reiterate those concerns in greater detail as well as address new issues raised by the modifications to the draft, and in particular, the revised fee Section. ABS requests that these comments be submitted to the City Council and hopes that they will assist the City in developing a final ordinance which is in accord with the Federal Telecommunications Act of 1996 ("1996 Act").

Fees

Section 10.1(a) changed the fee basis for telecommunications companies providing service to residents and/or businesses in the City, to 4% of access line billing within the corporate limits of the City. However, the draft fails to define "access line billing," and therefore, it is unclear what the fee basis actually encompasses. Thus, ABS requests that the City amend the ordinance to include a definition of access line billing. Additionally, given the exceptionally broad definition of gross revenues contained in the draft, we are concerned that the City will attempt to similarly define access line billing. With this in mind we offer the following

analysis of the 1996 Act as it pertains to a City's right to be compensated for the use of the public rights-of-way.

Federal law permits municipalities to manage the public rights-of-way and to exact fair and reasonable compensation for the "use" of the public rights-of-way. 47 U.S.C.§ 253(c). Federal courts have interpreted Section 253 of the 1996 Act to require that fees be reasonably related to the costs to the city of the "use" of the rights-of-way by telecommunications companies. *See Peco Energy Co. v. Township of Haverford*, 1999 U.S. Dist. LEXIS 19409, *22(D. Pa. 1999). *AT&T Communications of the Southwest, Inc. v. City of Dallas*, 8 F. Supp. 2d 582, 591 (N.D. Tex. 1998). Thus, to be valid under Section 253 of the 1996 Act, fees must bear some reasonable relation to the cost to the City of the use of its public rights-of-way.

A number of federal courts have held that fees based on gross revenues bear little relation to the actual costs to the City and thus violate the 1996 Act. In *City of Dallas*, the court held that the City's requirement that a telecommunications company pay a franchise fee of 4% of local gross revenue from "*all* of its activities in Dallas contradicts the requirements of the [1996 Act]," and "violates § 253(a) of the act as an economic barrier to entry." 8 F.Supp. 2d at 593. Moreover, in *Peco*, the court struck down a fee based on 5% of gross revenues noting that "[r]evenue based fees cannot, by definition, be based on pure compensation for the use of the rights-of-way." *Peco*, 1999 U.S. Dist. LEXIS 19409 at *19.

Although the fee basis in the draft ordinance is 4% of access line billing and not gross revenues, it could be equally as problematic and unlawful depending on the definition the City adopts. For example, the City may determine that access line billing includes all charges relating to a particular access line including, local and long distance charges, customer service and late charges, and equipment rentals and sales. The list of charges that could be included is nearly infinite. As the *Peco* and *Dallas* courts determined, fees charged by the City must be reasonably related to the City's costs and that revenue based fees – which access line billing is most certainly a derivation of – cannot be based on pure compensation for the costs of the use of the rights-of-way. The reason is that revenue based fees will fluctuate whereas the costs to the City of managing the rights of way will remain relatively constant, and as such, it is difficult to establish a reasonable relation between the fee charged and the costs incurred.

Finally, in addition to the franchise fee, the draft requires ABS to pay an application fee of an unspecified amount as well as to reimburse the city for any costs related to processing the application that were not covered by the fee. The application fee should be set so as to cover the reasonable expenses incurred by the City in reviewing the application, and the City should not have the unfettered discretion to later impose additional charges related to the application. In fact, as noted above, unless the City can show that such fees are related to the management or use of the rights-of-way, they are unlawful. Indeed, similar provisions have been found unlawful. *See Peco*, 1999 U.S. Dist. LEXIS 19409, *22 ("It is not at all clear, from reading the Ordinance, that the fees do in fact relate to use of the public rights-of-way. Also, it is highly unlikely that four separate fees are all related to the use of the rights-of-way.")

ABS does not dispute that cities have the right to be compensated for their expenses. However, it is clear that pursuant to the 1996 Act, those fees must bear a reasonable relation to the City's costs. Accordingly, ABS requests that the City develop a compensation scheme that more directly reflects the costs to the City arising from the management and use of its public rights-of-way.

In-Kind Grants

Section 15 authorizes the City to require the provider to make certain "payments, in-kind contributions, provision of capacity" for the use by the "City, educational institutions or other public entities, or to undertake other activities or make available other facilities" for the benefit of the City. To begin with, this Section is vague and overly broad. Exactly what types of in-kind contributions is the City envisioning? Fiber? Conduit? Equipment? And how much fiber, conduit or equipment are we talking about? Moreover, if payments are required, what are they for, how will they be calculated, and how large will they be? Finally what are the "other activities" and "other facilities" which ABS would be required to make available for the benefit of the City? Essentially, this section gives the City absolute discretion to demand any payment or provision of service and/or facilities which it deems to be in the public interest. Not only is this Section unreasonable, it is unlawful as well.

This provision, requiring a franchisee to provide services and facilities to the City and other public, educational and governmental ("PEG") institutions, appears to be taken from a *cable television franchise* which often contain requirements for PEG facilities. Under the Cable Act, Cities are permitted to require ***cable operators*** to provide such PEG facilities. However, there is no parallel authority for a city to demand such facilities from a telecommunications provider.

Additionally and as noted above, under federal law the City is only entitled to compensation which is reasonably related to the costs to the City of the management and use of its public rights-of-way. The application and franchise fees have already compensated the City for the management and the "use" of the public rights-of-way. Thus, the provision of additional payments or in-kind contributions above and beyond the franchise and application fees is unrelated to the City's costs, and as such, constitutes an impermissible form of compensation. At least one federal court has agreed, ruling that requiring in-kind contributions exceeds a City's authority under the 1996 Act. *City of Dallas*, 8 F. Supp. 2d at 593 ("Many of Dallas's franchise requirements such as . . . the dedication of ducts and fiber optic strands to the City's exclusive use – like many of the pieces of information requested in the form franchise ordinance, are totally unrelated to the use of the City's rights-of-way, and are thus beyond the scope of the City's authority").

Finally, Section 10.2 raises legal concerns as well. That section provides that if a franchisee is required to make payments or provide in-kind contributions in the public interest pursuant to Section 15, the City may provide a credit against the fee based on the "percentage of

gross revenues it would otherwise require." Since the draft provides a number of different fee bases, the question arises as to whether a provider, like ABS, paying a fee based on line access billing would likewise receive a City credit for public interest contributions?

Under the 1996 Act, local governments may require "fair and reasonable compensation for the use of their public rights-of-way," but only if the compensation is required on "a *competitively neutral and nondiscriminatory basis*." 47 U.S.C. § 253 (c)(emphasis added). Thus, the 1996 Act requires that if one provider receive a credit from the City for public interest contributions, then all providers must be granted the same credit. As noted above, ABS believes that the city cannot require public interest payment and in-kind contributions; however, if it chooses to leave this provision in, then it must amend Section 10.2 to allow all providers to receive credit for their public interest payments or contributions.

Information Requirements

The information requested in the application is redundant and exceeds the City's authority under federal law. Federal law provides that absent a specific state delegation of authority, local governments are prohibited by the 1996 Act from exercising any regulatory powers over telecommunications providers beyond managing the public rights-of-way and requiring fair and reasonable compensation. *City of Dallas*, 8 F.Supp.2d at 591.

The FCC has considered the issue of local regulation and expressed concern that "some localities appear to be reaching beyond traditional rights-of-way matters and seeking to impose a *redundant "third tier"* of telecommunications regulation which aspires to govern the relationships among telecommunications providers, or the rates, terms and conditions under which telecommunications service is offered to the public." *In re of TCI, Cablevision of Oakland County, Inc.,* 12 F.C.C.R. 21396, 21441 ¶ 103 (1997). The FCC went on to state that any attempt by local authorities to impose such legislation will be "met with close scrutiny" given that such local provisions are redundant to federal and state regulations and likely to impede competition and impose unnecessary delays. *Id.* at 21442.

Section four of the draft requires the applicant to provide evidence in a form satisfactory to the City that the applicant has the financial, legal and technical qualifications to provide service. In awarding ABS its CPCN, the Arkansas Public Service Commission has determined that ABS possesses the financial, technical, and legal qualifications to provide telecommunications within the state of Arkansas, and individual cities within Arkansas cannot reconsider that decision. *BellSouth Telecommunications, Inc. v. Town of Palm Beach*, 1999 U.S. Dist. LEXIS 16904 *6-7; *Coral Springs*, 42 F.Supp.2d. at 1308; *City of Dallas,* 8 F.Supp. 2d at 591-594.

Such information requests are precisely the type of "third-tier" regulation that the FCC was concerned about. In granting a franchise the City has no power to review the financial, technical or legal qualifications of a provider. As such, requiring ABS to provide such

information is unlawful and serves no purpose other than to impose an unnecessary burden and delay upon the franchise process. Accordingly, ABS requests that this provision be removed.

Criteria for Granting Franchises

Like the application requirements, the criteria for granting franchises set forth in Section 4.3 exceed the City's authority. For example, the City cannot deny a provider the right to construct and operate its facilities based on legal, financial and technical qualifications. *BellSouth Telecommunications, Inc. v. Town of Palm Beach*, 1999 U.S. Dist. LEXIS 16904, at *6-7; *BellSouth Telecommunications, Inc. v. City of Coral Springs*, 42 F. Supp. 2d 1304, 1308. Similarly, the City cannot deny a provider based on the service it will provide. *Id.* Indeed, the provision ultimately provides the City with unfettered discretion to grant or deny a franchise, which has specifically been held unlawful under Section 253. *Peco* 1999 U.S. Dist. Lexis 19409, *19 (E.D. Pa. 1999).

Penalties

Section 19 provides for both criminal and civil penalties for violations of the ordinance. As the provision is currently written, it is possible for a provider to be subject to both criminal and civil fines for the same offense. ABS believes that this is excessive. Moreover, ABS believes that criminal sanctions are inappropriate for violations of a telecommunications rights-of-way ordinance. Under industry practice, violations of health and safety provisions of rights-of-way ordinances are generally subject to civil penalties only. As such, ABS requests that Section 19.1 be removed.

Additionally, Section 19.2 provides for a civil penalty of $500 per day per violation. ABS objects to this arbitrary figure, and suggests that the proper measure of any fines should be the actual value of the damages resulting from the breach as opposed to daily cumulative assessments.

Finally, ABS requests that Section 18.5 be amended to indicate that if the City council imposes penalties or declares a forfeiture of the franchise, the franchisee shall be given the opportunity to full judicial review prior to the imposition of penalties or the initiation of forfeiture proceedings.

Waiver Provision

As indicated in the preceding sections, numerous provisions contained in the draft ordinance violate federal law and – if adopted in current form – would severely infringe upon ABS' rights. Thus ABS must, at the very least, be afforded the right to seek redress for injuries sustained as a result of those provisions. To require that ABS give up that right is unreasonable and we therefore request the deletion of Section 20.2.

ABS looks forward to bringing advanced telecommunications services to Fayetteville, and to developing a mutually beneficial agreement with the City. I hope these comments have been helpful. Please do not hesitate to contact me if you have any questions or if I can be of any help. Thank you for your consideration.

Most sincerely,

Jeffrey W. Miller

cc: Heather Woodruff
Jim Stinson, Esq.
Mary Margaret Johnson

STAFF REVIEW FORM

XX AGENDA REQUEST
____ CONTRACT REVIEW
____ GRANT REVIEW

[illegible] the Fayetteville City Council meeting of September 19, 2000

FROM:

Stephen Davis — Name
Budget & Research — Division
Admin Services — Department

ACTION REQUIRED: Approval of contracts with Bank of America and Banc of America Securities for variable rate demand bond dealer services and authorize the Mayor and City Clerk to execute the contracts. Budget adjustment authorization is also requested to implement the contracts.

COST TO CITY:

$50,000.00 estimated

Cost of this Request	Category/Project Budget	Category/Project Name
Account Number	Funds Used To Date	Program Name
Project Number	Remaining Balance	Fund

BUDGET REVIEW: ____ Budgeted Item ____ Budget Adjustment Attached

Budget Manager — Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW: **GRANTING AGENCY:**

Accounting Manager — Date 9-13-00 — Internal Auditor — Date 9/8/00
City Attorney — Date 9-11-00 — ADA Coordinator — Date
Purchasing Officer — Date 9/11/00 — Grant Coordinator — Date

STAFF RECOMMENDATION: Staff recommends approval of the contracts.

Division Head — Date 9-7-00
Department Director — Date
Administrative Services Director — Date 9/11/00
Mayor — Date

Cross Reference

New Item: **Yes** **No**

Prev Ord/Res #:

Orig Contract Date:

Orig Contract Number:

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

DEPARTMENTAL CORRESPONDENCE

TO: Mayor Fred Hanna and City Council

THRU: John Maguire, Administrative Services Director

FROM: Stephen Davis, Budget Manager

DATE: September 5, 2000

SUBJECT: **Wastewater Treatment Plant Expansion Project - Financing**

Staff requests City Council approve contracts with Bank of America (BOA) and Banc of America Securities to provide variable rate demand bond dealer services in conjunction with the City's Wastewater Treatment Plant Expansion Project. The contracts call for BOA to issue ten million dollars ($10 million) of variable rate demand bonds on behalf of the City. The funds will be used to reimburse the Water & Sewer Fund for expenditures paid from the Water & Sewer operating and capital budgets.

The contracts are for BOA to provide variable rate demand bond services with the bonds coming due in two years. At the end of the two years, the City may renew the contract with BOA or issue revenue bonds.

In addition to approving the contracts with BOA, bond counsel is preparing an ordinance. City Council will be requested to approve the bond ordinance that authorizes the borrowing of funds at the October 3, 2000 City Council meeting.

Background

In late1995, the City commissioned a comprehensive sewer system study. The study produced an in-depth facilities plan that recommended additional wastewater treatment plant capacity. The most economic expansion option was to construct a second plant in the Illinois River watershed and upgrade the existing Paul Noland Wastewater Treatment Plant. The City has subsequently purchased land and equipment and entered into preliminary engineering contracts. In October 1999, City Council passed Resolution 126-99 which states, in part, the intent of the City to reimburse certain expenditures pertaining to the planning, designing, financing, acquiring, constructing, and equipping of a wastewater treatment project with the proceeds of an issue or issues of tax-exempt bonds.

Earlier this year, a selection committee was established to select a consultant for a development impact fee study. Last week the selection committee met and voted to initiate contract negotiations

with Duncan and Associates. Contract negotiations are currently underway and the contract should be available for City Council review and approval at the second meeting in October 2000.

Current Conditions

The land has been purchased for the proposed wastewater treatment plant in the Illinois River watershed. Preliminary engineering contracts have been entered into between the City and various engineering firms. The chlorine sterilization equipment at the Paul Noland Wastewater Treatment Plant has been replaced with an ultra violet sterilization system. Several public meetings have been conducted with the public, press, consulting engineers, and City staff.

Work on the project financing has included selection and contracting with legal counsel (Kutak Rock), financial advisory services (Stephens, Inc.), selection of a development impact fee consultant (Duncan and Associates), and selection of a variable rate demand bond dealer (Bank of America).

The variable rate demand bond dealer services are intended to reimburse the City for expenditures made from the Water & Sewer capital and operations budgets over the past few years before the time limit for reimbursement expires. The City continues to work on developing a long term financing plan for the majority of the project costs. Currently, the most viable long term financing option available to the City is participation in the State of Arkansas, Department of Environmental Quality Revolving Loan Fund (ADEQ-RLF). The ADEQ-RLF offers the City approximately $80 million with a level interest rate of 3.75% for up to twenty years.

Requested Action

Approval of the contracts with Bank of America (BOA) and Banc of America Securities is to provide variable rate demand bond dealer services in conjunction with the City's Wastewater Treatment Plant Expansion Project.

Cost of This Request

The cost of this request will be paid from the proceeds of the issue and is estimated to be $50,000. The annual fees of $30,000 will be paid from the Water & Sewer operating budgets.

attachments:
Resolution 126-99
Request for Proposal #00-16 Variable Rate Demand Bond Dealer Services

Bank of America

Bank of America
Commercial Banking
AR3-376-01-06
One East Center
Fayetteville, AR 72701

Tel 501.872.4478
501.872.4016
Fax 501.872.4355

PROPOSAL LETTER

September 5, 2000

John Maguire
Administrative Services Director
City of Fayetteville
113 West Mountain
Fayetteville, Arkansas 72701

Dear John,

We have previously discussed, Bank of America, N.A. is interested in discussing extending a liquidity facility to the City of Fayetteville. Enclosed is a term sheet outlining the provisions of a liquidity facility which Bank of America could possibly make. This letter and the attached term sheet do not constitute a commitment on the part of Bank of America to make the proposed liquidity facility and are intended as an outline only and do not purport to summarize all of the terms, conditions, covenants, representations, warranties and other provisions which would be contained in definitive legal documentation for the proposed transaction. Any proposal by Bank of America to actually provide a facility would be subject to the negotiation, to the satisfaction of Bank of America and its counsel, of all of the open issues outlined in the term sheet as well as internal credit approval at Bank of America.

If you find the proposed terms and conditions generally acceptable, kindly indicate your interest in pursuing this transaction by signing the enclosed copy of this letter and returning it to me. At such time as I receive the signed copy of this letter from you, we will commence negotiations for the proposed transaction and will discuss with you the due diligence and other investigations which Bank of America, its counsel and agents, would have to undertake in order for Bank of America to issue a commitment.

I certainly appreciate the opportunity to discuss potential financing opportunities with you and look forward to your response to my letter. Hopefully, our continued discussions will result in the further establishment of our mutually beneficial relationship between the City of Fayetteville and Bank of America. Please give me a call to discuss this proposal. I look forward to hearing from you.

TERMS AND CONDITIONS

BORROWER: City of Fayetteville

PURPOSE: Finance costs of development of the City of Fayetteville Water and Sewer expansion through the use of a Bank of America Variable Rate Demand Bond Program

AMOUNT OF LIQUIDITY FACILITY: $10,000,000.00 plus 35 days of interest

FACILITY FEE: 20 Basis points (.20%) paid quarterly in arrears

BANK BOND INTEREST RATE : 30 day LIBOR + 50 basis points on liquidity draws with a duration of thirty days or less : or 30 day LIBOR + 100 basis points on liquidity draws in excess of 30 days

Interest would be payable upon successful remarketing of the bonds or quarterly in the event the duration exceeds 90 days with balance due at maturity.

MATURITY: Two year from date of closing

COLLATERAL: Special obligation of the City secured by a pledge of the net revenues of the water and sewer system on subordinate basis with existing Water & Sewer bonds.

FINANCING DOCUMENTS:
The financing shall be made under and governed by definitive financing documents to be executed and delivered by the Borrower to the Bank and containing the terms set forth in this commitment and such other terms, conditions, representations, warranties and covenants as are usual and customary in lending transactions such as the financing, which documents may include one or more promissory notes, loan agreements, security agreements, guaranties, mortgages, pledge agreements, letter of credit applications/agreements, liquidity maintenance agreements, assignments, financing statements and such other documents, instruments, guarantees, , certificates and agreements executed and/or delivered by the City, (collectively, the "Financing Documents").

CONDITIONS TO CLOSING:
At the time of the closing, all official actions of the City of Fayetteville relating to the adoption of the Ordinance authorizing the issuance of the debt shall be in full force and effect and there

shall have been taken all such actions as, in the opinion of appropriate legal counsel, shall be necessary or appropriate in connection with the issuance of the debt and with the transactions contemplated hereby.

The Bank shall have received, duly executed, all financing documents and any other documents and instruments necessary or advisable in connection with the financing, all of which shall be in form and substance satisfactory to the Bank and its counsel.

CLOSING COSTS AND EXPENSES:
Expenses: The Borrower shall pay all costs and expenses incurred by the Bank in connection with the Bank's review, due diligence and closing of the financing, including attorneys' fees (to include outside counsel fees and all allocated costs of Bank's in-house counsel if permitted by applicable law) incurred by the Bank in connection with the negotiation and preparation of the financing Documents, whether or not the financing actually closes not to exceed $10,000.00.

AMENDMENT AND WAIVER:
No alteration, modification, amendment or waiver of any terms and conditions of this proposal, or of any of the documents required by or delivered to the Bank under this commitment, shall be effective or enforceable against the Bank unless set forth in a writing signed by the Bank.

GOVERNING LAW:
This commitment and the financing shall be governed by and construed in accordance with the laws of the State of Arkansas

INTEGRATION:
The terms set forth above represent the entire understanding between the Borrower and the Bank with respect to the subject matter of this commitment, and this commitment supersedes any prior and contemporaneous agreements, commitments, discussions and understandings, oral or written, with respect to the subject matter of this proposal. Included within this understanding between Borrower and the Bank is the letter of September 12, 2000 to Borrower from Jim Neiderle, Managing Director of Banc of America Securities.

DISCUSSION PURPOSES ONLY:
This proposal letter with terms and conditions is for discussion purposes only and does not constitute a commitment on the part of Bank of America to execute a financing and is intended as an outline and does not purport to summarize all the terms, conditions, and covenants, representations, warranties and other provisions which would be contained in definitive legal documents.

Sincerely,

Larry A. Manry
Senior Vice President

Accepted and agreed to this
___ day of _____, 2000.

By:_____
City of Fayetteville

Banc of America Securities

James R. Niederle
Managing Director

Bank of America

5433 Westheimer
Houston, TX 77056
Tel 713-993-1644
Fax 713-993-1655

September 12, 2000

Mr. John Maguire
Administrative Services Director
City of Fayetteville
113 West Mountain
Fayetteville, AK 72701

Re: $10 Million Variable Rate Demand Notes ("VRDN") for Water & Sewer Improvements

Dear John:

The purpose of this engagement letter is to describe the services to be performed as the underwriter for the above cited transaction. We understand that tax-exempt revenue bonds as weekly variable rate demand bonds are to be issued for the purposes of funding the costs of construction for upgrades to the City's Water & Sewer System.

SCOPE OF ENGAGEMENT

In this engagement, Banc of America Securities LLC ("BAS") will perform the following duties:

1. Assist the financing team in developing a financing structure that delivers the most effective total interest rate and financing costs to the City.

2. Direct the sale of the securities to the most appropriate buyers to assure the City of the lowest possible total interest rates consistent with the type of security being offered.

3. Assist in arranging for a liquidity facility with a rating of A1+/P-1or better.

4. Attend all required meetings of the City and the bond closing.

5. Direct the preparation, printing and distribution of the Preliminary and Final Official Statements.

6. Conduct a full due diligence investigation of the City and all bond documentation.

7. Arrange for the closing and funding of the issue.

8. Perform such other duties and tasks as mutually agreed and necessary to complete the financing.

9. Arrange for the closing and funding of the issue.

10. Perform such other duties and tasks as mutually agreed and necessary to complete the financing.

BAS' underwriting fee for the above-referenced services will not exceed .20% of the par amount of the bonds issued. The City will pay all costs of issuance including, but not limited to, bond and underwriter's counsels, trustee, rating agency fees, printing, and closing costs. BAS' underwriting fee will be payable at closing upon the funding and delivery of the bonds. Underwriter's counsel fee will not exceed $10,000. The amount of the fee will be stated in the Bond Purchase Agreement, a binding contract between the City and BAS, which is signed and executed at the actual time of the sale of bonds.

Upon execution of this engagement letter, BAS will participate in retaining the required financing participants, subject to approval of the City, and proceed with the financing as rapidly as possible. This agreement will remain in force for a period of one year unless terminated or extended in writing upon 30 days notice by either the City or BAS.

At closing BAS will provide a separate Remarketing Agreement to be executed by the City and BAS to remarket the variable rate demand bonds for a fee of 1/10% of the par amount outstanding paid quarterly in arrears.

Should you have any questions regarding the above, please feel free to give me a call. If in agreement with the terms as stated, please sign and return the original to me and keep a copy for your files.

Very truly yours,

Jim Niederle

Jim Niederle
Managing Director

ACCEPTED BY:

_____

Accepted this ____ day of September, 2000.

DRAFT

CITY OF FAYETTEVILLE, ARKANSAS
COMMERCIAL PAPER ISSUE
Preliminary Schedule of Events

September 2000						
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

October 2000						
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

November 2000						
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

2000 Date	Event	Responsible Parties
September 12	Agenda Meeting with City to retain Underwriter	City/ Stephens
September 15	Distribute first draft of financing documents and Preliminary Official Statement (POS)	Kutak Rock
September 18	Publish Notice of Public Hearing	Kutak Rock/ City
September 19	City Council Meeting to approve Bank of America as Underwriter	City/ Stephens
September 22	Comments due on first draft of financing documents and POS	All Parties
September 26	Distribute second draft of financing documents and POS	Kutak Rock
September 29	Comments due on second draft of financing documents and POS	All Parties
October 2	Send information to Standard and Poor's	Bank of America/ Stephens
October 2	Distribute final draft of financing documents and POS	All Parties
October 3	Public Hearing and Approval of Authorizing Ordinance	City/ Stephens/ Kutak Rock
October 6	Publish Authorizing Ordinance	City/ Kutak Rock
October 17	Obtain Rating from Standard and Poor's	Bank of America/ Stephens
October 18	Finalize financing documents and POS	Kutak Rock
October 24	Send POS to printer	Bank of America
October 26	Distribute POS to investors	Bank of America
November 6	Review Market and Pricing with City and Stephens	Bank of America
November 7	Offer issue	Bank of America
November 8	Close issue	All Parties

09/05/00

RESOLUTION NO. 126-99

MICROFILMED

A RESOLUTION EXPRESSING THE INTENT OF THE CITY OF FAYETTEVILLE, ARKANSAS, TO REIMBURSE CERTAIN EXPENDITURES OF THE CITY PERTAINING TO THE PLANNING, DESIGNING, FINANCING, ACQUIRING, CONSTRUCTING, AND EQUIPPING OF A WASTEWATER TREATMENT PROJECT WITH THE PROCEEDS OF AN ISSUE OR ISSUES OF TAX-EXEMPT BONDS TO BE ISSUED BY THE CITY; AND STATING OTHER MATTERS PERTAINING THERETO.

WHEREAS, the City of Fayetteville, Arkansas, (the "City") intends to (i) construct a new wastewater treatment plant in the western portion of the City, (ii) renovate its existing wastewater treatment plant, and (iii) make associated modifications to its wastewater collection system (the "Project") to serve the growing needs of the residents of the City; and

WHEREAS, the City presently intends to finance a portion of the costs of planning, designing, acquiring, constructing, and equipping the Project through the issuance of one or more series of tax-exempt bonds of the City (the "Bonds"); and

WHEREAS, the City has determined the need to expend its funds to pay certain costs of the Project prior to the issuance of the Bonds, and

WHEREAS, in order to utilize the proceeds of tax-exempt bonds to reimburse original expenditures made by the City with respect to the Project, it is necessary under the Internal Revenue Code of 1986, as amended (the "Code") and the U.S. Treasury Regulation Section 1.150-2 that the City make a present declaration of its official intent to make such reimbursement.

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

Section 1. That the City intends to issue its Bonds in one or more series in aggregate principal amount not to exceed $25 million under the constitution and laws of the State of Arkansas to finance a portion of the costs of planning, designing, acquiring, constructing, and equipping the Project.

Section 2. That the City intends to utilize a portion of the proceeds of the Bonds to reimburse itself for certain expenditures made by the City prior to the issuance of the Bonds with respect to the planning, designing, acquiring, constructing, and equipping of the Project.

Section 3. That the City intends this resolution to be its declaration of "official intent" under the Code and U.S. Treasury Regulation Section 1.150-2 to reimburse certain original expenditures with respect to the Project.

PASSED AND APPROVED this 5th day of October, 1999.

APPROVED:

By: Fred Hanna

Fred Hanna, Mayor

ATTEST:

By: Theresa L Johnson-Deputy

Heather Woodruff, City Clerk

CITY OF FAYETTEVILLE, ARKANSAS

RFP # 00-16

REQUEST FOR PROPOSALS
FOR
VARIABLE RATE DEMAND BOND DEALER SERVICES
August 4, 2000

113 WEST MOUNTAIN STREET
FAYETTEVILLE, ARKANSAS 72701

REQUEST FOR PROPOSALS
GENERAL REQUIREMENTS FOR PROPOSING

NOTICE TO THOSE SUBMITTING

Information provided in these specifications is to be used only for purposes stated. It is further expected that each proposer will read these specifications with care.

The City of Fayetteville (hereinafter referred to as the "City") believes that the data contained in these specifications are sufficient for preparation of proposals. The information is believed to be accurate and is based on the latest available information, but is not to be considered in any way as a warranty. Therefore, the proposer, in submitting a proposal, assumes the risk of any inaccuracies in the information provided herein, which might result from failure to provide any other information which might have been available.

SUBMISSION OF PROPOSALS AND QUESTIONS

Please submit your proposal to Peggy Vice at the address listed below:

Peggy Vice
Purchasing Manager
City of Fayetteville
113 West Mountain Street
Fayetteville, AR 72701

Nine (9) copies of each proposal must be received in the Purchasing Office at Room 306, 113 West Mountain Street, Fayetteville, Arkansas, by 3:00 p.m. on August 21, 2000.

All proposals will become the property of the City. All proposals shall remain firm and subject to acceptance for 90 days after opening.

PROPOSALS NOT CONSIDERED

All proposals received after the time specified shall not be considered.
Where proposals are mailed, the proposer assumes all risk for nondelivery by the U. S. Post Office to the designated office by the deadline established. Only those proposals considered responsive to the Request for Proposal will be eligible for consideration in the selection process.

REJECTION OF PROPOSAL

The City reserves the right to reject any and all proposals received in response to this RFP if determined to be in the best interest of the City.

The City may not award a contract solely on the basis of this Request for Proposals, and does not intend to pay for information solicited or obtained. The information obtained will be used to determine suitability of the proposal.

Nonacceptance of any proposal does not convey criticism nor imply deficiency of that proposal. Nonacceptance of any proposal will mean that another proposal was deemed more advantageous to the City.

AMENDMENTS

The City may require changes in the Scope of Services to be performed hereunder. Such changes which are mutually agreed upon by and between the City and the firm, shall be incorporated by amendment to the contract.

INSURANCE

Please provide, as part of your response to the Request for Proposal, evidence of insurance showing type and amount of coverage for workers compensation, general liability, completed operations, professional liability, errors and omissions insurance.

INDEPENDENCE

The firm should provide certification that it is independent of the City of Fayetteville, the City's elected officials and the City's employees as part of the proposal.

APPLICABLE LAWS AND VENUE

The contract shall be made subject to all applicable Federal and Arkansas State Laws, the Charter and Ordinances of the City of Fayetteville, as amended, and all applicable rules and regulations promulgated by all local, state and national boards, bureaus and agencies. The contract shall be enforceable in Fayetteville, Arkansas, and if any legal action is necessary by either party with respect to the enforcement of any or all terms and conditions herein, exclusive venue for same shall lie in Fayetteville, Arkansas. The contract shall be governed and construed in accordance with the laws and Court Decisions of the State of Arkansas.

CITY OF FAYETTEVILLE
SPECIFIC REQUIREMENTS FOR PROPOSAL

I SUMMARY STATEMENT

The City is seeking proposals from firms qualified to issue and underwrite, as necessary, variable rate demand bonds on behalf of the City in amounts up to $30 million. The variable rate demand bond dealer services are to begin as soon as practical after City Council approval. The proposers shall list their fees for management of the variable rate demand bond issuance in basis points with a rate for demand bonds issued and outstanding and a separate rate for standby amounts committed and not issued.

The demand bond issuance commitment shall be for a period of not less than five (5) years.

Any questions and correspondence may be directed in writing to John Maguire, Administrative Services Director, at 113 West Mountain Street, Fayetteville, Arkansas 72701 or by calling (501) 575-8330.

Nine (9) copies of the proposal should be submitted as directed in the General Requirements section of this RFP. Proposals should be limited to twenty-five (25) pages with a separate appendix that lists references and/or examples of similar work.

II BACKGROUND

The City is planning an expansion of our waste water treatment plant and sewer collection system. The project is expected to cost between $67 and $80 million. The majority of the project cost is expected to be funded through a State of Arkansas loan pool.

III SCOPE OF SERVICES

The City requests proposals for Variable Rate Demand Bond Dealer Services. The City expects to utilize variable rate demand bonds to provide interim financing for the project in principal amounts not to exceed $30 million. The City expects an initial draw down of $10 million. The proposer must be able to issue and underwrite, if necessary, the City's variable rate demand bonds. Any commitment shall be for a period of not less than five (5) years.

The demand bonds will be supported by the net revenues of the City's Water & Sewer system and will be subordinated to the City's existing Water & Sewer bonds. The City's present long term debt for the water & sewer system is rated by S&P at "A" and Moody's "A-1". It is expected that demand bonds rating will be, at minimum, from S&P, A-2.

V FIRM REQUIREMENTS AND GUARANTEES

The Firm shall:

Provide management services required to issue and underwrite as necessary up to $30 million of variable rate demand bonds.

List the rate charged, in basis points, for variable rate demand bonds issued and outstanding.

List the rate charged, in basis points, for variable rate demand bonds committed and not issued.

Submit Appendix A "PROPOSER GUARANTEES" executed by the appropriate firm o. firms' form of business dictates.

Submit Appendix B "PROPOSER WARRANTIES" executed by the appropriate firm official as the firms' form of business dictates.

V QUALIFICATIONS

Firms responding to this request for proposal should include the following data in their proposals:

Demonstrated capital strength to commit its capital and underwrite the City's variable rate demand bond program if necessary.

Proposed plan for issuing and managing the City's variable rate demand bond program to meet the liquidity requirements of the planned project.

Resumes of the professional and key staff to be utilized in performing the services requested.

Company history and experience:
Provide a general description of the firm and its history and experience in providing similar services to comparable clients. Include in your proposal a list of at least six major clients that may be contacted for references.

VI SELECTION METHODOLOGY

Proposals will be reviewed by a committee that may consist of representatives of citizens, City Council and City staff which will make a recommendation for selection to City Council. Selection will be made pursuant to the City's professional selection policy with relevant factors as follows:

(1) Qualifications in relation to the specific project to be performed:	20 %
(2) Experience, competence and capacity for performance:	20%
(3) Proposed method of doing work:	20%
(4) Past performance:	20%
(5) Price:	20%

VII TECHNICAL REQUIREMENTS

1. Proposals are due no later than August 21, 2000 at 3 p.m.

2. Proposals should be sent to: Peggy Vice, Purchasing Manager, 113 West Mountain, Fayetteville, Ar. 72701

3. Nine (9) copies of the proposals should be provided. Please mark one copy as original.

4. Proposals should be labeled "Variable Rate Demand Bond Dealer Services" on the outside of the envelope.

CURRENT STATUS

The waste water treatment plant expansion project is currently in the initial design phase. The City has invested approximately $8 million in engineering studies, land purchases, equipment purchases and has entered into preliminary engineering design contracts for collection system improvements and waste water treatment plant improvements. The expenses paid to date and contracts entered into for this project are as follows:

Work Phase	Amount
Engineering Studies	863,906
Land Purchases	3,221,959
Equipment Purchases (UV System)	1,045,816
Engineering Contracts	2,403,279
Total	7,534,960

APPENDIX A

PROPOSER GUARANTEES

The proposer certifies it can and will provide and make available, at a minimum, all services set forth in Section III, "Scope of Service."

Signature of Official:_____

Name (typed):_____

Title:_____

Firm:_____

Date:_____

APPENDIX B

PROPOSER WARRANTIES

A. **Proposer warrants** that it is willing and able to comply with State of Arkansas laws with respect to foreign (non-state of Arkansas) corporations.

B. **Proposer warrants** that it is willing and able to obtain an errors and omissions insurance policy providing a prudent amount of coverage for the willful or negligent acts, or omissions of any officers, employees or agents thereof.

C. **Proposer warrants** that it will not delegate or subcontract its responsibilities under an agreement without the express prior written permission of the City of Fayetteville.

D. **Proposer warrants** that all information provided by it in connection with this proposal is true and accurate.

Signature of Official:_____
Name (typed):_____

Title:_____

Firm:_____

Date:_____

DRAFT POLICY FOR USE OF THE FAYETTEVILLE CITY ADMINISTRATION BUILDING

9/12/2000

The City of Fayetteville seeks to encourage education, community development, and discussion of public issues by making rooms 111, 219, and 326/327 of the City Administration Building available on a limited basis for these purposes.

1. Two types of events shall qualify for the use of rooms 111, 219, and 326/327:

   a. Fayetteville-based groups registered with the Internal Revenue Service under section 501(c)(3) may use these rooms for events to advance their purposes as stated with the IRS.

   b. Other Fayetteville citizens and Fayetteville-based groups may use the rooms for public meetings to discuss issues involving city government.

2. During regular business hours, use of these rooms shall be free of charge. Outside regular business hours, the rooms shall be available for an hourly fee to be set by the City Clerk in consultation with the Facilities Superintendent. The purpose of the fee is to cover the city's costs in paying staff to lock or unlock the building and room, etc. The amount of the fee should reflect this purpose.

3. Those who qualify for the use of these rooms under paragraph 1 shall be entitled to use the room of their choice by reserving such room with the City Clerk, subject to the limitations in paragraphs 4 through 13.

4. Those applying for use of a room shall provide the City Clerk with their name, contact telephone number, an estimated number of people planned to attend the event, and a brief statement concerning the purpose of the proposed use.

5. Meetings of city committees and city staff shall have precedence in room scheduling. Committee chairs and those who call staff meetings shall notify the City Clerk as soon as reasonably possible when they believe they will be needing room 111, 219, or 326/327 for a committee or staff meeting.

6. The number of people, cars, and noise involved in the planned use must not interfere with regular city usage of the building or the reasonable expectations of the surrounding area.

7. Light refreshments may be served, but must require no facilities for preparation, cooling or cleanup. No alcoholic beverages are allowed.

8. Room reservations may be accepted up to one year in advance outside of business hours, and up to one month in advance during business hours

9. The City Clerk reserves the right to require a reasonable deposit for the use of a room in order to cover possible damage to the room or other city property. If a fee or deposit is required, it must be paid to the City Clerk's office at least two weeks in advance to secure the reservation.

10. In case city committees or city staff need access to a meeting room on short notice, the City Clerk shall ensure that at least one of the meeting rooms remains open during business hours for this purpose. The City Clerk may also exercise reasonable discretion in changing the room for an outside meeting in order to accommodate the needs of city staff and city committees, and in setting limits on the time for which a room may be used.

11. Pieces of furniture in the meeting rooms, if moved, must be returned to their original positions at the conclusion of the event. Users of the rooms may not move or remove any materials on the walls without prior permission from the City Clerk.

12. The rooms must be left clean and orderly. The person signing for the use of a room shall be responsible for paying for any repairs or cleaning required as a result of the use of the room.

13. Materials belonging to users of the rooms may not be stored in the building between meetings.

14. The City of Fayetteville, by granting permission for the use of its meeting rooms, does not necessarily endorse the beliefs, methods, or goals of the users of the rooms. The City Clerk may deny a room request based on the availability of space or staff, or because the person or group applying for the room reservation does not qualify for use under section 1. However, the City Clerk may not deny a request based on the anticipated viewpoints to be expressed during the use of the room.

MEMORANDUM

FROM: Kyle Russell, Alderman
TO: Jerry Rose, City Attorney
DATE: September 12, 2000
SUBJECT: Revised policy on the use of City Hall; First Amendment issues

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I have done some interesting research on the use of public facilities. I don't think it's exactly an all or nothing proposition, as you and I both originally thought. As you probably know, there are three types of fora for First Amendment purposes. First, there is the traditional public forum. This category includes streets, parks, and sidewalks. City Hall obviously does not fit into this category. Incidentally, government can impose reasonable time, place, and manner restrictions on speech in a traditional public forum, but content-based restrictions get strict scrutiny from the courts, and viewpoint-based restrictions are generally not allowed.

Second, there is the limited-purpose public forum. This is a public place that does not fit into the traditional public forum category, but which the government has declared to be a public forum for limited purposes. There are cases, for instance, in which the government has made schools and publicly owned meeting rooms available for public use. Usually, the entity administering the policy limits the purposes for which the buildings can be used in some way, i.e., "for educational and cultural purposes," "for civic and political forums that are non-restrictive and open to the public," etc. You get the idea.

There is case law stating that the government entity operating the building in question must take some affirmative act in order to declare the building a limited-purpose public forum. I understand that we have no written policy currently in place for the use of City Hall. But I am not clear on whether we have, in effect, implicitly declared City Hall to be a limited-purpose public forum by making it available to First Night, We've Had Enough, etc.

In a limited-purpose public forum, the government may limit the content of expression in the facility, i.e., we may prohibit political rallies, religious services, etc., but generally may not restrict the use of the facility based on the viewpoint of the users. For instance, if we say that we're going to allow rallies or other political events, we can't exclude Republicans or Communists. If we say we're going to allow religious groups in, we can't exclude Baptists while including Presbyterians, Jews, etc.

The third type of forum is the nonpublic forum, which is basically a place that doesn't fit into either of the first two categories. In a nonpublic forum, the only limit on government restriction of expression is that the restriction must be reasonable. As I see it, then, we have two options with regard to the use of City Hall (and the library, too, for that matter).

Option 1: We can declare these buildings, or parts thereof, to be limited-purpose public fora, and set forth the procedures for use, and the purposes for which they may be used. This means that we could say they can only be used for "artistic or cultural presentations," for example. This would allow First Night to use the buildings for performances on New Year's Eve. But then if the

Klan wanted to stage an "artistic presentation" to "promote white culture," or if someone wanted to give a performance of "gangsta rap" to "increase awareness of the urban culture," I think we would have to allow it unless it met the Supreme Court's definition of obscenity. I won't go there.

In my draft policy, I have tried to restrict this type of use by requiring that the applicant be registered with the IRS as a 501(c)(3) organization in order to qualify for this type of use. This prohibits advocacy groups such as the Klan, the NAACP, or any political candidate or party from using the building, unless it is for a public meeting regarding city business.

Option 2: Simply declare that City Hall is a nonpublic forum, and that its use is hereby restricted to city staff, city committees, and governmental meetings. If my policy, or something similar to it, is not adopted, I believe this would be the only course of action that keeps us within the Constitution. In other words, I think the worst thing for us to do here is nothing, because then we are inviting a challenge.

As I'm sure you know, it is a big no-no to give elected officials *unfettered* discretion over citizens' use of facilities. That's basically what we're doing now by asking citizens or groups to go through an alderman and then the City Clerk, and by not providing the aldermen or the City Clerk with any guidance as to who should and should not qualify for use of the facilities. This is why it has been my policy to attempt to make a reservation for anyone who asks me, for whatever reason. Under the current circumstances, with no policy in place, I think we would be asking for a court challenge to do it any other way.

Finally, you asked me whether it would violate the Establishment Clause to allow religious groups to use the facilities. The answer is no. My research clearly indicates that if the government extends benefits, i.e. tax exemptions, the use of meeting rooms, to religious groups on the same terms and conditions as other nonprofit groups, then these benefits are considered by the Supreme Court to be "incidental," and not in violation of the Establishment Clause. However, it appears that we *could* prohibit religious services or religious instruction in the buildings without violating the Free Exercise clause. There is a 2nd Circuit case from 1997 holding that this type of restriction is within the government's power to set content-based restrictions on the use of a limited purpose public forum.

I firmly believe that the policy I have set forth comports with the U.S. Constitution. I have copies of the cases on which my research is based, and I will get them to you if you so desire. I'm sorry I have not had time to do traditional citations in this memo. Additionally, I have not researched any state law that might apply. I trust that if you disagree with my assessment of the constitutionality of my policy, or if you see any more logistical problems or state-law problems with the latest version of the policy, you will contact me at 444-6408.

Meanwhile, please prepare a resolution for Tuesday's council meeting adopting the latest version of my policy and referring to it if necessary. Thanks very much for your help with this issue

cc: Heather Woodruff, City Clerk

ADMINISTRATIVE POLICIES & PROCEDURES MANUAL		SUBJECT: CITY CLERK Scheduling Conference Rooms/ Training Room/Equipment	
NUMBER CC-4	REVISIONS 1	EFFECTIVE DATE: June 12, 1990	PAGE 1 of 2
SUPERSEDES CC-4 (dated 6-5-89)	APPROVED BY: Scott C. Linebaugh, City Manager		

CC-4.0 **PURPOSE:**

The purpose of this directive is to establish a centralized method of scheduling meetings in the City Administration Building located at 113 West Mountain, or Interim City Hall located at 115 Church Avenue.

CC-4.1 **POLICY:**

The City Manager has established a policy that the use of conference rooms in the City Administration Building, and the "training room" in Interim City Hall be scheduled through the City Clerk's Office.

CC-4.2 **PROCEDURES:**

A. Permitted Uses of Conference Rooms/Training Room/Equipment

Conference rooms in the City Administration Building may be used by City Staff, City Board, and any citizens boards, committees and commissions which are appointed by the City Board of Directors. Other groups may be permitted the use of these rooms with the permission of the City Manager.

The training room in the Interim City Hall Building may be used by City Staff and the City Board of Directors. Other groups may be permitted the use of this room with the permission of the City Manager.

Conference Room 313 (City Manager's Conference room) may not be used for general meetings. But if this conference room is needed for an emergency meeting, an arrangement shall be made through the City Manager's Office.

Equipment such as VCR's, televisions, slide projectors, or overhead projectors are available for use by City Staff, Board of Directors, citizens boards, and committees and commissions which are appointed by the City Board of Directors. Other groups may be permitted the use of this equipment with the permission of the City Manager.

cky

ORDINANCE NO. _____

AN ORDINANCE PROVIDING FOR THE MANAGEMENT AND PRESERVATION OF THE CITY'S RIGHTS-OF-WAY AND PUBLIC PLACES WITH RESPECT TO TELECOMMUNICATIONS SERVICES; PROVIDING FOR TERMS AND CONDITIONS UNDER WHICH TELECOMMUNICATIONS PROVIDERS AND LESSEES MAY OCCUPY THE CITY'S RIGHTS-OF-WAY AND PUBLIC PLACES; PROVIDING FOR COMPENSATION TO THE CITY ON A COMPETITIVELY NEUTRAL AND NON-DISCRIMINATORY BASIS; CREATING AN OFFENSE AND PROVIDING PENALTIES.

WHEREAS, the provisions of telecommunications services has become an essential part of modern life that can significantly enhance the quality of life for the City's residents, businesses and institutions; and

WHEREAS, the City's rights-of-way and public places are valuable assets to the City and its residents, businesses and institutions; and

WHEREAS, the City has invested and will continue to invest substantial public monies in the acquisition, construction and maintenance of public rights-of-way and public places; and

WHEREAS, grant of permission to a private entity to use public rights-of-way and public places is a valuable property right that eliminates the necessity for the private entity to invest substantial capital; and

WHEREAS, the City is entitled to fair and reasonable compensation from a telecommunications provider who utilizes the City's public rights-of-way and public places for the delivery of its services; and

WHEREAS, the United States Congress has recently adopted the Telecommunications Act of 1996 (the "Act"), which substantially amended the telecommunications law of the United States; and

WHEREAS, Section 253(a) of the Act provides that no local regulation or legal requirement may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service; and

WHEREAS, Section 253(c) of the Act provides that nothing in the Act affects the authority of a State or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed; and

WHEREAS, it is in the best interests of the City and its residents, businesses and institutions, to establish rules and regulations that encourage the provision of telecommunications services, encourage telecommunications competition, treat telecommunications providers on a competitively neutral and nondiscriminatory basis, preserve and protect the City's rights-of-way and public places, secure fair and reasonable compensation for the private use of the City's rights-of-way and public places, and take such other necessary steps to responsibly protect the public health, safety and welfare;

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

Section 1. TITLE. This Ordinance shall be known as "The City of Fayetteville Telecommunications Ordinance".

Section 2. DEFINITIONS. As used in this Ordinance, the following terms shall have the meanings set out:

2.1. "Applicant" means a telecommunications provider or telecommunications lessee that applies for a franchise or license pursuant to this Ordinance.

2.2. "Franchise fee" means compensation paid to the City by the telecommunications provider or lessee in exchange for the use of the City's streets to deliver telecommunications services inside or outside the geographic limits of the City.

2.3. "Gross revenues" means all revenue regardless of the source, received directly or indirectly, including in-kind services or goods, by a telecommunications provider or lessee from or in connection with the retail delivery of telecommunications services in the City, including long-distance service, 0 and including revenue derived from the sale or lease at retail of equipment and/or facilities provided by a telecommunications provider or lessee; provided, however, that "gross revenues" shall not include any taxes on services which are imposed directly on any customer of a telecommunications provider or lessee by the United States, the State of Arkansas, the City, the School Board, or any other governmental unit and which are collect on behalf of such governmental unit. "Gross revenues" does not include wholesale revenues derived from the sale or lease of capacity, bundled or unbundled elements of a telecommunications system, or telecommunications services to a telecommunications lessee.

2.4. "Person" means any individual, resident, citizen, business, firm, corporation, partnership, governmental agency, or institution.

2.5. "Streets" means all streets, roads, highways, alleys, rights-of-way, utility easements, public property, public ways and air space over such streets, roads, highways,

alleys, rights-of-way, utility easements, public property and public ways located within the geographic limits of the City.

2.6. "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing (e.g., data, video and voice), without change in the form or content of the information set and received.

2.7. "Telecommunications facilities" or "facilities" means all conduits, manholes, poles, antennas, transceivers, wires, cable (including fiber optic cable) and appurtenances owned or utilized by a telecommunications provider or telecommunications lessee and located in, under or over the streets, utility easements, public property, and public ways of the City and utilized in the provision of telecommunications services, including digital or analog, voice, data, and video imaging and other enhanced telecommunications services.

2.8. "Telecommunications lessee" or "lessee" means any person, firm, corporation, partnership, or other business entity, including "resellers," that provides telecommunications services within the geographic boundaries of the City, including long-distance services that originate or terminate in the City, by utilizing, purchasing or leasing a telecommunications facility of a telecommunications provider or any element thereof, whether through purchase, lease, contract, interconnection agreement, or other business arrangement; provided that a person that owns its own telecommunications facilities in the City and utilizes, purchases or leases telecommunications facilities or elements thereof of other telecommunications providers in the City shall be classified as a telecommunications provider under the terms of this Ordinance.

2.9. "Telecommunications provider" or "provider" means any person, firm, corporation, partnership or other business entity, other than the City, that provides telecommunications services within or without the geographic boundaries of the City by utilizing its own telecommunications facilities to provide telecommunications services.

2.10. "Telecommunications services" or "services" means any service delivering telecommunications by a telecommunications provider or lessee whether within or without the geographic boundaries of the City that the provider or lessee is authorized to provide under federal, state and local law, except that these terms do not include "cable service" as defined in the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992, 47 U.S.C.§ 521 et seq., and the Telecommunications Act of 1996.

2.11. "Transmission line" means a telecommunications facility that is used solely for the purpose of transmitting signals from one point outside the City to another point outside the City and does not include a line for the purpose of delivering telecommunications services to any person in the City.

Section 3. REQUIREMENT OF CITY'S CONSENT.

3.1. Every telecommunications provider and telecommunications lessee that utilizes a telecommunications facility must obtain a franchise or license from the City in accordance with this Ordinance in order to provide telecommunications services within or without the geographic limits of the City. Prior to providing any telecommunications service or utilizing any telecommunications facility, the provider or lessee must provide a written acceptance of the terms and conditions of this Ordinance and enter into a franchise agreement or license agreement.

Section 4. APPLICATION PROCESS.

4.1. Any telecommunications provider or lessee seeking to provide telecommunications service (the "Applicant") shall complete a brief application form approved by the Department of Public Works. Such application form shall briefly described the general nature of the service to be provided, the type of construction or use of facilities required, the name, address and telephone number of the person or entity seeking to provide the service, and the name, address and telephone number of an authorized representative of the person or entity.

4.2. The Applicant shall also provide evidence in a form satisfactory to the City that it has the financial, legal and technical qualifications necessary to provide the service for which it seeks a franchise or license.

4.3. In considering whether to grant a franchise or license or impose terms and conditions on the grant of a franchise or license, the City may consider, without limitation, the following factors:

a) the Applicant's financial ability to pay the compensation and fees required by this Ordinance;

b) the Applicant's ability to construct and operate the telecommunications facilities it seeks to utilize;

c) the Applicant's compliance with the terms and conditions of federal, state and local law including applicant's compliance in other jurisdictions in which it operates;

d) the capacity of the Streets to accommodate the Applicant's proposed facilities;

e) the damage or disruption, if any, of public or private facilities, improvements, or landscaping if a franchise or license is granted;

f) the public interest in minimizing the cost and disruption of construction in, on, under and above the streets;

g) the effect of public health, safety or welfare if a franchise or license is granted;

h) the availability of alternate routes and/or locations for the proposed facilities;

i) whether the imposition of certain terms and conditions or the failure to grant the requested franchise or license would prohibit or have the effect of prohibiting the ability of the Applicant to provide any interstate or intrastate telecommunications services; and

j) any other factor relating to whether the grant of a franchise or license impinges on the City's rights to manage its streets.

4.4. An Applicant for a telecommunications franchise or license shall submit with its Application a fee in the amount of $150.00 in partial compensation to the City for processing the Application.

4.5. If the City approves the Application, the provider or lessee shall reimburse the City for any reasonable costs and expenses, including attorney's fees, incurred by the City, which are not already covered by the Application fee required in Section 4.4 of this Ordinance, to review and evaluate the Application and prepare and negotiate a franchise agreement or license agreement with the provider or lessee, and including the costs of any publication of an ordinance as provided in Section 5.

4.6. All Applications and/or amendments to franchise agreements shall be submitted to the City of Fayetteville Telecommunications Board for their advice, if any, prior to City approval.

Section 5. FRANCHISE OR LICENSE AGREEMENT.

5.1. As a condition of the grant of a franchise or license, the provider or lessee shall enter into a franchise agreement or a license agreement with the City. A telecommunications provider shall enter into a franchise agreement. A telecommunications lessee shall enter into a license agreement.

5.2. The franchise agreement or license agreement shall contain such additional terms and conditions as are not in conflict with the terms of this Ordinance as may be necessary and appropriate for the particular circumstances of the provider or lessee and its delivery of telecommunications services.

5.3. The franchise agreement or license agreement shall be adopted as an ordinance by the City prior to the initiation of any construction or the deliver of any service.

5.4. A franchise agreement may be amended from time to time upon agreement of the City and the provider or lessee.

5.5. A license agreement may be revoked or repealed by the City at any time unless otherwise provided by its terms.

5.6. The telecommunications provider or lessee shall pay to the City or on behalf of the City the cost of any publication required by law.

Section 6. CONSTRUCTION AND MAINTENANCE.

6.1. Application. Prior to the beginning construction of any telecommunications facility, the Applicant shall apply to the Department of Public Works of the City for permission to carry out construction activities in the City's streets, and shall comply with all requirements of that department or any other ordinance or code applicable hereto.

6.2. Construction Plan. Prior to beginning construction, the Applicant shall submit a plan describing the proposed construction. The plan shall specify:

a) the design of any telecommunications facilities to be constructed or utilized;

b) a map showing the precise location of any telecommunications facility to be constructed or utilized and any appurtenant facilities such as poles, attachments, guy wires, and the like;

c) a description of any agreements that have been reached or are necessary with other telecommunications providers or providers of other utility services regarding use of existing facilities;

d) the timetable for completion of construction, including any phases of construction;

e) the total estimated cost of construction of the telecommunications facilities; and

f) such other information as will provide the City with pertinent information relating to the construction of the telecommunications facilities, including any pertinent information requested by the City.

6.3. Prior Authority. Prior to beginning construction, the Applicant shall have received all necessary regulatory authority to construct a telecommunications facility or provide telecommunications service from the Arkansas Public Utilities Commission, the Federal Communications Commission, or other appropriate state or federal agency. Evidence that it has received such regulatory authority shall be filed with the City.

6.4. Standards of Construction. The method of construction, workmanship used, and materials utilized in the construction shall conform to all applicable federal, state and local statutes, rules, regulations and ordinances. All work shall be performed in a safe, thorough, and reliable manner using materials of good and durable quality so as not to create a hazard or dangerous condition on the streets. If, at any time, it is determined by the City or any other agency or authority of competent jurisdiction that any telecommunications facility presents a danger to the public health, safety or welfare, then the telecommunications provider or lessee shall, at its own cost and expense, promptly correct all such conditions.

6.5. Maintenance and Repair. Any telecommunications facility constructed or utilized pursuant to a franchise or license shall be maintained and repaired in accordance with the standards and under the terms and conditions set out in the preceding paragraph and such other terms and conditions as shall appear in this Ordinance or the franchise agreement or license agreement.

6.6. Minimal Disruption. Construction, maintenance and repair of the telecommunications facilities shall be conducted in such a manner as to minimize any interference with or disruption of the City's streets, traffic, residences, businesses and institutions. The provider shall be obligated to use trenchless technology in appropriate circumstances.

6.7. Restoration. Any disturbance of the City's streets shall be repaired and restored by the telecommunications provider or lessee at its expense and to a condition as good as that prevailing before the work causing such disturbance was commenced.

6.8. Location of Facilities. Poles and other facilities shall be located to the extent feasible in such a way as to minimize their effect on the visual landscape and on other aesthetic considerations and so as to minimize inconvenience.

6.9. Burial of Transmission Lines. A telecommunications provider shall place its transmission line or other facilities underground in certain areas designed by the City Council, but only if existing providers maintaining line or facilities in the same areas have or will be required by the City to place their lines or facilities underground.

6.10. Co-location; Sharing of Pole Space. To the maximum extent feasible, a telecommunications provider constructing a new transmission line or other facility, or

expanding an existing line or facility, shall utilize facilities. The owner of any existing facility shall to the extent permitted by law and consistent with any pole attachment regulations of the Public Service Commission, the Federal Communications Commission or other appropriate agency, permit the telecommunications provider to utilize its pole.

6.11. Movement of Facilities. A telecommunications provider shall be required to temporarily disconnect or relocate any of its facilities at its own expense when required by the City by reason of traffic conditions; public safety; or the construction, installation or repair of any public road, highway, building, park or other public project. The provider shall cooperate with any other public utility authorized by the City to provide utility service utilizing the City's streets.

6.12. Tree Trimming. A telecommunications provide is authorized to trim trees in the City's streets and private easements to the extent necessary to properly maintain its transmission line or other facility, but prior to trimming any tree, it shall provide 24 hours' notice to the City. The City, at its option, may choose to supervise such trim treeing. Upon conclusion of the tree trimming, the provider shall immediately clean up and remove all debris.

6.13. Curb Cuts. No provider shall make paving cuts or curb cuts without the written consent of the Director of the Department of Public Works.

Section 7. PERFORMANCE BOND.

7.1. Prior to the provision of service, the provider shall post a performance bond, satisfactory to the City, in the City's favor to ensure faithful performance of the terms and provisions of the franchise agreement and any planned construction as designated in the construction plan the provider has filed with the City pursuant to §6.2. The bond shall be equivalent to ten (10%) percent of the total cost of the construction as provided in the construction plan, or $100,000, whichever is greater.

7.2. In the event the provider fails to comply with this Ordinance or the franchise agreement, or to complete the construction in a safe, timely, and competent manner, after notice and a reasonable opportunity to cure, the City may recover, jointly and severally from the principal and surety of the bond, any damages or loss suffered by the City as a result, including the full amount of any compensation, indemnification, or cost of removal or abandonment of any property of the provider, plus a reasonable allowance for attorneys' fees, up to the full amount of the bond.

7.3. The City in its sole discretion may waive this requirement of a bond upon good cause shown to the Director of the Department of Public Works.

Section 8. TERM OF FRANCHISE FOR PROVIDERS.

8.1. Unless otherwise specified in a franchise agreement, a telecommunications franchise shall be for a term of 10 years, provided that the City may grant a franchise up to 20 years for good cause shown.

Section 9. TERM OF LICENSE FOR LESSEES OR RESELLERS.

9.1. Unless otherwise specified in a license, a telecommunications license shall be for a term of five (5) years, provided that the City may grant a license for a longer period of time upon good cause shown.

Section 10. FEES.

10.1. Amount. In consideration of the City's grant of authority to utilize the City's streets for the provision or lease of telecommunications services outside or inside the geographic limits of the City for other good and valuable consideration, the telecommunications provider or lessee shall pay a franchise fee or license fee to the City in the following amounts:

a) A telecommunications provider who provides service to residents, businesses or institutions in the City shall pay an amount equal to four percent (4%) of access line billing within the corporate limits of the City during the preceeding year. Payments shall be in equal quarterly installments on or before the last day of March, June, September and December of each year;

b) A telecommunications provider who provides service solely to persons outside the geographic boundaries of the City by utilizing a transmission line shall pay the City a reasonable annual fee based upon an installation fee and charge per linear foot of transmission line that traverses the City or based upon such other method as the City deems appropriate. Such a fee may be paid in a lump sum in advance, or in a combination of a lump sum plus annual payment as the City deems fit;

c) A telecommunications lessee who delivers telecommunications services within or without the geographic boundaries of the City shall pay the City four percent (4%) of its annual gross revenues derived from the delivery of telecommunications service within the City, including long-distance service originating in the City or terminating in the City.

10.2. Public Interest Obligations. If, as a condition of the grant of a franchise or a license, the City requires the telecommunications provider or lessee to meet certain conditions or requirements in the public interest as provided in Section 15 of this Ordinance,

the City may provide a credit against the fee based upon the percentage of gross revenues it would otherwise require in compensation so that the total compensation paid to the City is no more than the equivalent of four percent (4%) of gross revenues.

10.3. Time of Payment. All fees due and owing shall be paid on a biannual basis on or before July 15 of each year for the first six (6) months of the calendar year and on or before January 15 of each year for the second six (6) months of the preceding calendar year.

10.4. Late Payment. In the event that any payment is not actually received by the City on or before the date due under this Ordinance, interest thereon shall accrue from such date until received at the rate of ten percent (10%) per annum.

10.5. Calculation of Payments. All payments made to the City shall be accompanied by a statement certified as true by an appropriate employee of the provider or lessee explaining the basis of the calculation on which the payment was made.

10.6. Payments. Payments shall be made by certified check to the City of Fayetteville, c/o City Treasurer, 113 West Mountain, Room 309, Fayetteville, Arkansas 72701 or by wire transfer to an account of the City designated in writing by the City Treasurer.

10.7. Public Disclosure. The payment of any fee under this Section 10 shall be publicly disclosed.

10.8. Audit. Upon reasonable notice, the City shall have the right to inspect and copy the telecommunications providers or lessee's books and records that are reasonably necessary for the City to determine compliance with this Section 10. A telecommunications provider or lessee shall maintain sufficient financial records governing its operation in the City to allow the determination of gross revenues and to otherwise document accurate payment of fees. To the extent permitted under the Arkansas Freedom of Information Act, the City shall maintain the confidentiality of such records.

10.9. Fees not a Tax. The fees provided in this Section 10 are not taxes and are separate from, and in addition to, any and all federal, state, local and city taxes as may be levied, imposed or due from a telecommunications provider or lessee, its customers or subscribers, or on account of the lease, sale, delivery or transmission of telecommunications services; provided that no fee imposed by this section shall be imposed in violation of state or federal law.

Section 11. INDEMNIFICATION.

11.1. As a condition of the grant of a franchise or license, the telecommunications provider shall agree to indemnify, defend and hold harmless the City, its officers, boards,

commissions, agents and employees (collectively the "Indemnified Parties") from and against any and all lawsuits, claims, causes of action, actions, liabilities, demands, damages, judgments, settlements, disability, losses, expenses (including attorneys' fees and disbursements of counsel) and costs of any nature that any of the Indemnified Parties may at any time suffer, sustain or incur arising out of, based upon or in any way connected with the provider's or lessee's operations, the exercise of the franchise or license herein granted or the breach by the provider or lessee of its obligations under this Ordinance and the franchise agreement or license and/or based upon or in any way connected with the activities of the provider or lessee, or their subcontractors, employees and agents. The provider or lessee shall be solely responsible for and shall indemnify, defend and hold the Indemnified Parties harmless from and against any and all matters relative to payment of the providers or lessee's employees, including compliance with Social Security and withholding requirements.

11.2. The indemnification obligations of the provider or lessee set forth in this Ordinance are not limited in any way by the amount or type of damages or compensation payable by or for the provider or lessee under Worker's Compensation, disability or other employee benefit acts, acceptance of insurance certificates required under any franchise agreement or license, if any, or the terms, applicability or limitations of any insurance held by the provider or lessee.

11.3. The City does not, and shall not, waive any rights against the provider or lessee which it may have by reason of the indemnification provided for in this Ordinance because of the acceptance by the City, or the deposit with the City by provider or lessee, of any of the insurance policies described in this Ordinance.

11.4. The indemnification of the City by a provider or lessee provided for in this Ordinance shall apply to all damages and claims for damages of any kind suffered by reason of any of the provider's or lessee's operations referred to in this Ordinance regardless of whether or not such insurance policies shall have been determined to be applicable to any such damages or claims for damages.

11.5. A provider or lessee shall not be required to indemnify the City for negligence or misconduct on the part the City or its officials, boards, commissions, agents, or employees, provided that the provider or lessee shall be responsible for its proportionate share of any damages or claims resulting from any negligent act or omission.

Section 12. INSURANCE.

12.1. As a condition of the grant of any franchise under this Ordinance, the provider shall, at its sole expense, take out and maintain during the term of the franchise public liability insurance with a company licensed to do business in the State of Arkansas with a rating by A.M. Best & Co. of not less than "A" that shall protect the provider, the City and

their officials, officers, directors, employees and agents from claims which may arise from operations under the franchise, whether such operations be by the provider or a lessee, or its officials, officers, directors, employees and agents or any subcontractors of the provider or a lessee. This liability insurance shall include, but shall not be limited to, protection against claims rising from bodily and personal injury and damage to property, resulting from provider's or lessee's vehicles, products and operations. The amount of insurance for single limit coverage applying to bodily and personal injury and property damage shall not be less than Two Million Dollars ($2,000,000.00). The following endorsements shall be attached to the liability policy:

a) The policy shall provide coverage on an "occurrence" basis;

b) the policy shall cover personal injury as well as bodily injury;

c) The policy shall cover blanket contractual liability subject to the standard universal exclusions of contractual liability included in the carrier's standard endorsement as to bodily injuries, personal injuries and property damage;

d) Broad form property damage liability shall be afforded;

e) The City shall be named as an additional insured on the policy;

f) An endorsement shall be provided which states that the coverage is primary insurance and that no other insurance maintained by the City will be called upon to contribute to a loss under this coverage.

g) Standard form of cross-liability shall be afforded; and

h) An endorsement stating that the policy shall not be cancelled without thirty (30) days notice of such cancellation given to the City.

12.2. In any franchise granted pursuant to this Ordinance, the City shall reserve the right to adjust the insurance limit coverage requirements of the franchise no more often than once every three (3) years. Any such adjustment by the City will be no greater than the increase in the Arkansas Consumer Price Index (all consumers) for such three (3) year period.

12.3. Provider or lessee shall submit to City documentation of the required insurance, including a certificate of insurance signed by the insurance agent and companies name, as well as all properly executed endorsements.

12.4. The City may adjust the provisions of this Section 12 for good cause shown.

Section 13. RENEWAL.

13.1. A telecommunications provider or lessee that seeks to renew its franchise or license granted by the City pursuant to this Ordinance shall submit an application of renewal to the City no less that 180 days before expiration of its franchise or license. The Applicant shall provide such necessary information to show that it meets the requirements for renewal set out in this Section 13.2.

13.2. In considering whether to grant a renewal request, the City shall consider whether the telecommunications provider or licensee:

a) if applicable, continues to have the financial, legal and technical ability to provide telecommunications services to the City's residents, businesses and institutions;

b) has complied with the terms of this Ordinance and its franchise or license agreement;

c) has promptly cured any violation of this Ordinance or breach of its franchise or license agreement;

d) has fully and promptly paid any franchise fees or other compensation required by the City and any taxes imposed by the State or the City;

e) agrees to meet any special needs or interests determined by the City and to be imposed by the City in a competitively neutral and nondiscriminatory way; and

f) has cooperated with the City in carrying out the terms and conditions of this Ordinance and the franchise or license agreement and has provided such pertinent information as the City has requested throughout the term of the agreement.

The City shall also consider any other matter that is relevant to the renewal of the franchise or license.

13.3. The City reserves the right to refuse to renew any franchise for any reason, provided that the City shall comply with Section 253 of the Telecommunications Act of 1996.

13.4. If it chooses not to renew the franchise or license, the City shall state its reasons in writing and provide the telecommunications provider or lessee with a copy.

Section 14. REMOVAL.

14.1. Within thirty (30) days following written notice from the City, any telecommunications provider or other person that owns, controls or maintains any unauthorized telecommunications facility or related appurtenances on, in, under or above the streets shall, at its own expense, remove such facilities and appurtenances from the streets.

14.2. A telecommunications facility is unauthorized if the franchise or license of the applicable telecommunications provider or lessee has expired or has never been obtained, if the facility has been abandoned, or if the construction of the facility was not in compliance with this Ordinance and the franchise or license agreement.

Section 15. PUBLIC INTEREST OBLIGATIONS.

15.1. As a condition of granting a franchise or license under this Ordinance, the City may require a provider or lessee to make certain payments, in-kind contributions, provision of capacity for utilization by the City, educational institutions or other public entities, or to undertake other activities or make available other facilities for the purpose of enhancing the health, safety, welfare or safety of the City and its residents, businesses and institutions.

15.2. If the City requires any provider or lessee to comply with the conditions of this Section 15.1., the City shall disclose such conditions publicly.

Section 16. TRANSFER; TRANSFER OF CONTROL.

16.1. Any person granted a franchise or license pursuant to this Ordinance ("Grantee") shall not sell, transfer, lease, assign, sublet or dispose of, in whole or in part, either by forced or by involuntary sale, or by ordinary sale, consolidation, merger or otherwise, a franchise or license or any of the rights or privileges granted thereunder without the prior consent of the City Council, which consent shall not be unreasonably withheld or delayed. The consent of the City shall not be required when a franchise or license is transferred between wholly-owned subsidiaries of grantee's parent corporation.

16.2. A Grantee who seeks to take any of the actions specified in this Section 16.1., shall notify the City at least 150 days in advance of such anticipated action. In addition to providing notice of the proposed action, Grantee and the proposed transferee, lessee, assignee, subletee, purchaser, or other entity ("Transferee") shall also provide the following information at the time of such notice:

a) complete information setting forth the nature, terms and condition of the proposed transaction; and

b) information evidencing the Transferee's legal, technical and financial qualifications.

Within 20 days of a request by the City, the Grantee and Transferee shall also provide such other information pertinent to the proposed transaction as may be required by the City.

16.3. Within 90 days of receiving all the information it has requested, the City shall take action on the proposed transaction. If the City disapproves the proposed transaction, it shall state its reasons in a resolution of the City Council. If the City approves the proposed transaction, but with conditions, it shall likewise state the conditions in a resolution of the City Council.

16.4. Any transaction or transactions resulting in a change of ten percent (10%) or more of the ownership or control of the Grantee or of a franchise or license shall be deemed to be a transaction requiring the approval of the City Council and compliance with all the terms of this Section 16.

16.5. Failure to obtain the approval of the City Council as required by this Section 16 may be deemed a forfeiture of the applicable franchise or license by the City Council.

Section 17. EXISTING TELECOMMUNICATIONS PROVIDERS.

17.1. A telecommunications provider delivering service within or without the geographic limits of the City as of the effective date of this Ordinance who previously has been awarded a franchise or license may continue to operate according to the terms of the franchise or license it has been awarded; provided, however, that if any such franchise or license provides by its terms that the award is revocable at will at the City's direction, the City may choose to revoke such franchise or license. In such a case, the telecommunications provider promptly shall comply with the terms of this Ordinance.

17.2. Any telecommunications provider or lessee who as of the effective date of this Ordinance is delivering service without a franchise or license shall submit an application pursuant to Section 4.of this Ordinance with 90 days of the effective date. The provider or lessee shall also submit a written statement indicating that it accepts the terms and conditions of this Ordinance while its application is pending and that it shall pay all appropriate fees retroactive to the effective date.

Section 18. FORFEITURE.

18.1. If, in the City's judgment, a telecommunications provider or lessee is or may be in violation or breach of any term or condition of this Ordinance or franchise or license agreement pursuant hereto, the City shall notify the provider or lessee of the suspected violation or breach. Upon notification, the provider or lessee shall supply to the City within

30 days all information and documentation the City requests with respect to the suspected violation or breach and shall make such statement to the City as it wishes in an effort to explain to mitigate the violation or breach.

18.2. If the City is not satisfied with the information, documentation and explanation of the provider or lessee, it may make a finding of a breach or violation and notify the provider or lessee of such finding. Thereafter, the provider or lessee shall have a reasonable period of time (the "Cure Period") as determined by the City to take such steps as are necessary to cure the violation or breach.

18.3. If, at the conclusion of the Cure Period, the City determines that there remains a breach or violation of this Ordinance or franchise or license agreement pursuant hereto, the City shall schedule a hearing before the City Council or a duly authorized committee or representative of the Council for the purpose of making a final determination as to whether a violation or breach exists. At the hearing, the provider or lessee, representatives of the City, and the public may present evidence relevant to the alleged violation or breach.

18.4. At the conclusion of the hearing, or within 14 days thereafter, the City Council shall take such steps as it deems appropriate, including one or more of the following:

a) pursuing any of the remedies available to it as provided in Section 19 of this Ordinance;

b) ordering the provider or lessee to take such steps as are necessary to cure the violation or breach on pain of forfeiture;

c) declaring a forfeiture of the franchise or violation of the terms of the license and ordering the provider to take such steps as are necessary to remove its telecommunications facilities from the City's streets, or ordering the licensee to cease doing business in the City.

18.5. If the provider or lessee is dissatisfied with the decision of the City, it may seek relief in Washington County Circuit Court.

Section 19. ENFORCEMENT; PENALTIES.

19.1. A violation of any provision of this Ordinance relating to the health or safety of citizens of the City shall be a misdemeanor, subject to a fine of not more than $500 for each offense and punishable by not more than 12 months in jail. If the provider or lessee is a corporation and is convicted of a misdemeanor, it shall be subject to a fine as provided in §10.99 of the City of Fayetteville, Arkansas Code of Ordinances.

19.2. A violation of any provision of this Ordinance shall be a separate and distinct offense and shall subject the offender to a civil penalty in the amount of $500 for each day the violation continues. The City may recover such penalty in a civil action in a court of competent jurisdiction if the offender does not pay the penalty within twenty (20) days of the time the offender has been cited for the violation.

19.3. The City may seek injunctive relief or abatement orders in a court of competent jurisdiction to enforce the provisions of this Ordinance.

19.4. The City may pursue any of the remedies in Sections 18 or 19 of this Ordinance separately or in conjunction with one another.

Section 20. GENERAL PROVISIONS.

20.1. Captions. The captions to sections throughout this Ordinance are intended solely to facilitate reading and shall not affect the meaning or interpretation of this Ordinance.

20.2. No recourse against the City. Without limiting such immunities as the City or any other person may have under applicable law, a telecommunications provider or lessee awarded a franchise or license under this Ordinance shall have no recourse whatsoever against the City or its officials, members, boards, commissions, agents or employees for any loss, cost, expense, liability or damage arising out of any action undertaken or not undertaken pursuant to any provision or requirement of this Ordinance or because of the enforcement of this Ordinance or the City's exercise of its authority pursuant to this Ordinance, or other applicable law, unless such recourse is expressly authorized by statute, this ordinance or other ordinance.

20.3. Force Majeure. In the event a telecommunications providers or lessee's performance of any terms, conditions, obligations or requirements of this Ordinance is prevented or impaired due to any cause beyond its reasonable control, such inability to perform shall be deemed to be excused for the period of such inability and no penalties or sanctions shall be imposed as a result thereof, provided that the provider or lessee has notified the City in writing within ten (10) days of its discovery of the occurrence of such an event. Such causes beyond the provider's or lessee's reasonable control shall include, but shall not be limited to, acts of God, civil emergencies and labor unrest or strikes.

20.4. Non-waiver of remedies. The failure of the City to take any action to enforce any violation or breach of this Ordinance shall be deemed a waiver of its right to subsequently enforce any identical or similar violation or breach.

20.5. Severability. If any portion of this Ordinance is declared invalid by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such

portion shall be deemed a separate, distinct, and independent portion, and such declaration shall not affect the validity of the remaining portions hereof, which remaining portions shall continue in force and effect.

20.6. Notices and Filings. All notices required by this Ordinance to be provided to the City shall be provided in writing to the Fayetteville City Clerk. All filings shall be made with the City Clerk unless otherwise provided in this Ordinance.

PASSED AND APPROVED this _____ day of the _____, 2000.

APPROVED:

By:_____
Fred Hanna, Mayor

ATTEST:

By:_____
Heather Woodruff, City Clerk

draft

Fayetteville Youth Center
915 California Drive
Fayetteville, Arkansas 72701 • Phone 442-9242

DATE: August 30, 2000

TO: Mayor Hanna and Members of the City Council

FROM: John Benberg, Executive Director

IN RE: Parks & Recreation Board nomination

Please accept this memo and application to follow as our nomination of Mike Hill to replace O.E. Luttrell as one of our organizational representatives on the Parks & Recreation Advisory Board (PRAB). We want to openly thank O.E. for his many years of dedicated service and wish him the very best of health and happiness in the future.

If there are any questions or additional information required about our nominee, feel free to contact me.

APPLICATION FORM

for appointment to City Boards, Commissions, and Committees

NAME: Michael E. Hill / Jean Soc. Sec.# 431-94-6785
(if married, please give spouse's first name)

2739 Boardwalk Ct
Resident Street Address

Length of residency in Fayetteville 5 1/2 YRS

Fayetteville AR 72701
City State Zip Code

How did you find out about opening(s)? Fayetteville Youth Center Board

Same
Mailing Address Zip Code

References: Name: Tom Stockland
Address: P.O. Box 1223 Fayetteville, AR 72702
Phone: W: 521-7130

Telephone number: Home: (501) 521-5875

Business: Same

Name: Jeff Koenig
Address: P.O. Box 907 Fayetteville, AR 72702
Phone: W: 521-2223

OCCUPATION/EMPLOYER NAME:

Self-Employed

Office Use only:

Choice of Committee:

Fayetteville Parks + Recreation Board
No Preference on committee

1. What are your qualifications for serving on this committee, including education and expertise in the subject matter?

BSBA U of A 1974, Certified Public Accountant, Past President Woodland Booster Club, President - Woodland Soccer Association, Member Parks + Rec Soccer Advisory Board, Vice-President and Board Member Fayetteville Youth Center / Boys + Girls Club

2. Why would you like to be considered for appointment to this committee?

Since arriving in Fayetteville in 1995, I have been actively involved in the schools and recreational activities of my children. This interest led to the joining of the Fayetteville Youth Center board of directors. My interest at the FYC is to improve the quality of programs and facilities for the citizens of Fayetteville. This same interest and concern can be expanded by serving on the Fayetteville Parks + Recreation Board.

Please fill out application COMPLETELY and return to: Heather Woodruff or Theresa Johnson, City Clerk's Office, 113 W. Mountain Street, Fayetteville. If you have any questions, call 575-8323.

APPLICATION FORM

for appointment to City Boards, Commissions, and Committees

NAME: Michael E. Hill / Jean Soc. Sec.# 431-94-6785
(if married, please give spouse's first name)

2739 Boardwalk ct
Resident Street Address

Length of residency in Fayetteville 5½yrs

How did you find out about opening(s)?
Fayetteville Youth Center Board

Fayetteville AR 72701
City State Zip Code

Same
Mailing Address Zip Code

References: Name: Tom Stockland
Address: P.o. Box 1723 Fay.AR
Phone: 521-7130

Telephone number: Home: (501) 521-5875

Business: same

Name: Jeff Koenig
Address: P.O. Box 907 Fay. AR
Phone: 521-2823

OCCUPATION/EMPLOYER NAME:

Self-Employed

Office Use only:

Terminate:
Appointed:
Term Expires:
Replaced:

Choice of Committee:
Fayetteville Parks and Recreation Board

1. What are your qualifications for serving on this committee, including education and expertise in the subject matter?

BSBA U of A 1974, Certified Public Accountant, P ST President Woodland Booster club, President-Woodland Soccer Assosciation, Member Parks and Rec soccer advisory Board, vice President and Board member Fayetteville Youth Center/Boys and Girls Club

2. Why would you like to be considered for appointment to this committee?

Since arriving in Fayetteville in 1995, I have been actively involved in the schools and recreational activities of my children. This interest led to the joining of the Fayetteville Youth center board of directors. My interest at FYC is to improve the quality of programs and facilities for the citizens.

Please fill out application COMPLETELY and return to: Heather Woodruff or Theresa Johnson, City Clerk's Office, 113 W. Mountain Street, Fayetteville. If you have any questions, call 575-8323.

STAFF REVIEW FORM

XX AGENDA REQUEST
____ CONTRACT REVIEW
____ GRANT REVIEW

[redacted] the Fayetteville City Council meeting of September 19, 2000

FROM:

Stephen Davis	Budget & Research	Admin Services
Name	Division	Department

ACTION REQUIRED: Approval of contracts with Bank of America and Banc of America Securities for variable rate demand bond dealer services and authorize the Mayor and City Clerk to execute the contracts. Budget adjustment authorization is also requested to implement the contracts.

COST TO CITY:

$50,000.00 estimated		
Cost of this Request	Category/Project Budget	Category/Project Name
Account Number	Funds Used To Date	Program Name
Project Number	Remaining Balance	Fund

BUDGET REVIEW: ____ Budgeted Item ____ Budget Adjustment Attached

Budget Manager — Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW: **GRANTING AGENCY:**

Marilyn J. Cramer	9-13-00	Darrey Smith	9/8/00
Accounting Manager	Date	Internal Auditor	Date
	9-11-00		
City Attorney	Date	ADA Coordinator	Date
Vice	9/11/00		
Purchasing Officer	Date	Grant Coordinator	Date

STAFF RECOMMENDATION: Staff recommends approval of the contracts.

	9-7-00	
Division Head	Date	Cross Reference
		New Item: **Yes** **No**
Department Director	Date	
	9/11/00	Prev Ord/Res #:
Administrative Services Director	Date	
		Orig Contract Date:
Mayor	Date	Orig Contract Number:

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

DEPARTMENTAL CORRESPONDENCE

TO: Mayor Fred Hanna and City Council

THRU: John Maguire, Administrative Services Director

FROM: Stephen Davis, Budget Manager

DATE: September 5, 2000

SUBJECT: **Wastewater Treatment Plant Expansion Project - Financing**

Staff requests City Council approve contracts with Bank of America (BOA) and Banc of America Securities to provide variable rate demand bond dealer services in conjunction with the City's Wastewater Treatment Plant Expansion Project. The contracts call for BOA to issue ten million dollars ($10 million) of variable rate demand bonds on behalf of the City. The funds will be used to reimburse the Water & Sewer Fund for expenditures paid from the Water & Sewer operating and capital budgets.

The contracts are for BOA to provide variable rate demand bond services with the bonds coming due in two years. At the end of the two years, the City may renew the contract with BOA or issue revenue bonds.

In addition to approving the contracts with BOA, bond counsel is preparing an ordinance. City Council will be requested to approve the bond ordinance that authorizes the borrowing of funds at the October 3, 2000 City Council meeting.

Background

In late 1995, the City commissioned a comprehensive sewer system study. The study produced an in-depth facilities plan that recommended additional wastewater treatment plant capacity. The most economic expansion option was to construct a second plant in the Illinois River watershed and upgrade the existing Paul Noland Wastewater Treatment Plant. The City has subsequently purchased land and equipment and entered into preliminary engineering contracts. In October 1999, City Council passed Resolution 126-99 which states, in part, the intent of the City to reimburse certain expenditures pertaining to the planning, designing, financing, acquiring, constructing, and equipping of a wastewater treatment project with the proceeds of an issue or issues of tax-exempt bonds.

Earlier this year, a selection committee was established to select a consultant for a development impact fee study. Last week the selection committee met and voted to initiate contract negotiations

with Duncan and Associates. Contract negotiations are currently underway and the contract should be available for City Council review and approval at the second meeting in October 2000.

Current Conditions

The land has been purchased for the proposed wastewater treatment plant in the Illinois River watershed. Preliminary engineering contracts have been entered into between the City and various engineering firms. The chlorine sterilization equipment at the Paul Noland Wastewater Treatment Plant has been replaced with an ultra violet sterilization system. Several public meetings have been conducted with the public, press, consulting engineers, and City staff.

Work on the project financing has included selection and contracting with legal counsel (Kutak Rock), financial advisory services (Stephens, Inc.), selection of a development impact fee consultant (Duncan and Associates), and selection of a variable rate demand bond dealer (Bank of America).

The variable rate demand bond dealer services are intended to reimburse the City for expenditures made from the Water & Sewer capital and operations budgets over the past few years before the time limit for reimbursement expires. The City continues to work on developing a long term financing plan for the majority of the project costs. Currently, the most viable long term financing option available to the City is participation in the State of Arkansas, Department of Environmental Quality Revolving Loan Fund (ADEQ-RLF). The ADEQ-RLF offers the City approximately $80 million with a level interest rate of 3.75% for up to twenty years.

Requested Action

Approval of the contracts with Bank of America (BOA) and Banc of America Securities is to provide variable rate demand bond dealer services in conjunction with the City's Wastewater Treatment Plant Expansion Project.

Cost of This Request

The cost of this request will be paid from the proceeds of the issue and is estimated to be $50,000. The annual fees of $30,000 will be paid from the Water & Sewer operating budgets.

attachments:
Resolution 126-99
Request for Proposal #00-16 Variable Rate Demand Bond Dealer Services

Bank of America

Bank of America
Commercial Banking
AR3-376-01-06
One East Center
Fayetteville, AR 72701

Tel 501.872.4478
501.872.4016
Fax 501.872.4355

PROPOSAL LETTER

September 5, 2000

John Maguire
Administrative Services Director
City of Fayetteville
113 West Mountain
Fayetteville, Arkansas 72701

Dear John,

We have previously discussed, Bank of America, N.A. is interested in discussing extending a liquidity facility to the City of Fayetteville. Enclosed is a term sheet outlining the provisions of a liquidity facility which Bank of America could possibly make. This letter and the attached term sheet do not constitute a commitment on the part of Bank of America to make the proposed liquidity facility and are intended as an outline only and do not purport to summarize all of the terms, conditions, covenants, representations, warranties and other provisions which would be contained in definitive legal documentation for the proposed transaction. Any proposal by Bank of America to actually provide a facility would be subject to the negotiation, to the satisfaction of Bank of America and its counsel, of all of the open issues outlined in the term sheet as well as internal credit approval at Bank of America.

If you find the proposed terms and conditions generally acceptable, kindly indicate your interest in pursuing this transaction by signing the enclosed copy of this letter and returning it to me. At such time as I receive the signed copy of this letter from you, we will commence negotiations for the proposed transaction and will discuss with you the due diligence and other investigations which Bank of America, its counsel and agents, would have to undertake in order for Bank of America to issue a commitment.

I certainly appreciate the opportunity to discuss potential financing opportunities with you and look forward to your response to my letter. Hopefully, our continued discussions will result in the further establishment of our mutually beneficial relationship between the City of Fayetteville and Bank of America. Please give me a call to discuss this proposal. I look forward to hearing from you.

TERMS AND CONDITIONS

BORROWER: City of Fayetteville

PURPOSE: Finance costs of development of the City of Fayetteville Water and Sewer expansion through the use of a Bank of America Variable Rate Demand Bond Program

AMOUNT OF LIQUIDITY FACILITY: $10,000,000.00 plus 35 days of interest

FACILITY FEE: 20 Basis points (.20%) paid quarterly in arrears

BANK BOND INTEREST RATE : 30 day LIBOR + 50 basis points on liquidity draws with a duration of thirty days or less : or 30 day LIBOR + 100 basis points on liquidity draws in excess of 30 days

Interest would be payable upon successful remarketing of the bonds or quarterly in the event the duration exceeds 90 days with balance due at maturity.

MATURITY: Two year from date of closing

COLLATERAL: Special obligation of the City secured by a pledge of the net revenues of the water and sewer system on subordinate basis with existing Water & Sewer bonds.

FINANCING DOCUMENTS:
The financing shall be made under and governed by definitive financing documents to be executed and delivered by the Borrower to the Bank and containing the terms set forth in this commitment and such other terms, conditions, representations, warranties and covenants as are usual and customary in lending transactions such as the financing, which documents may include one or more promissory notes, loan agreements, security agreements, guaranties, mortgages, pledge agreements, letter of credit applications/agreements, liquidity maintenance agreements, assignments, financing statements and such other documents, instruments, guarantees, , certificates and agreements executed and/or delivered by the City, (collectively, the "Financing Documents").

CONDITIONS TO CLOSING:
At the time of the closing, all official actions of the City of Fayetteville relating to the adoption of the Ordinance authorizing the issuance of the debt shall be in full force and effect and there

shall have been taken all such actions as, in the opinion of appropriate legal counsel, shall be necessary or appropriate in connection with the issuance of the debt and with the transactions contemplated hereby.

The Bank shall have received, duly executed, all financing documents and any other documents and instruments necessary or advisable in connection with the financing, all of which shall be in form and substance satisfactory to the Bank and its counsel.

CLOSING COSTS AND EXPENSES:
Expenses: The Borrower shall pay all costs and expenses incurred by the Bank in connection with the Bank's review, due diligence and closing of the financing, including attorneys' fees (to include outside counsel fees and all allocated costs of Bank's in-house counsel if permitted by applicable law) incurred by the Bank in connection with the negotiation and preparation of the financing Documents, whether or not the financing actually closes not to exceed $10,000.00.

AMENDMENT AND WAIVER:
No alteration, modification, amendment or waiver of any terms and conditions of this proposal, or of any of the documents required by or delivered to the Bank under this commitment, shall be effective or enforceable against the Bank unless set forth in a writing signed by the Bank.

GOVERNING LAW:
This commitment and the financing shall be governed by and construed in accordance with the laws of the State of Arkansas

INTEGRATION:
The terms set forth above represent the entire understanding between the Borrower and the Bank with respect to the subject matter of this commitment, and this commitment supersedes any prior and contemporaneous agreements, commitments, discussions and understandings, oral or written, with respect to the subject matter of this proposal. Included within this understanding between Borrower and the Bank is the letter of September 12, 2000 to Borrower from Jim Neiderle, Managing Director of Banc of America Securities.

DISCUSSION PURPOSES ONLY:
This proposal letter with terms and conditions is for discussion purposes only and does not constitute a commitment on the part of Bank of America to execute a financing and is intended as an outline and does not purport to summarize all the terms, conditions, and covenants, representations, warranties and other provisions which would be contained in definitive legal documents.

Sincerely,

Larry A. Manry
Senior Vice President

Accepted and agreed to this
___ day of _____, 2000.

By:_____
City of Fayetteville

Bank of America.

Banc of America Securities

James R. Niederle
Managing Director

5433 Westheimer
Houston, TX 77056
Tel 713-993-1644
Fax 713-993-1655

September 12, 2000

Mr. John Maguire
Administrative Services Director
City of Fayetteville
113 West Mountain
Fayetteville, AK 72701

Re: $10 Million Variable Rate Demand Notes ("VRDN") for Water & Sewer Improvements

Dear John:

The purpose of this engagement letter is to describe the services to be performed as the underwriter for the above cited transaction. We understand that tax-exempt revenue bonds as weekly variable rate demand bonds are to be issued for the purposes of funding the costs of construction for upgrades to the City's Water & Sewer System.

SCOPE OF ENGAGEMENT

In this engagement, Banc of America Securities LLC ("BAS") will perform the following duties:

1. Assist the financing team in developing a financing structure that delivers the most effective total interest rate and financing costs to the City.
2. Direct the sale of the securities to the most appropriate buyers to assure the City of the lowest possible total interest rates consistent with the type of security being offered.
3. Assist in arranging for a liquidity facility with a rating of A1+/P-1or better.
4. Attend all required meetings of the City and the bond closing.
5. Direct the preparation, printing and distribution of the Preliminary and Final Official Statements.
6. Conduct a full due diligence investigation of the City and all bond documentation.
7. Arrange for the closing and funding of the issue.
8. Perform such other duties and tasks as mutually agreed and necessary to complete the financing.
9. Arrange for the closing and funding of the issue.
10. Perform such other duties and tasks as mutually agreed and necessary to complete the financing.

BAS' underwriting fee for the above-referenced services will not exceed .20% of the par amount of the bonds issued. The City will pay all costs of issuance including, but not limited to, bond and underwriter's counsels, trustee, rating agency fees, printing, and closing costs. BAS' underwriting fee will be payable at closing upon the funding and delivery of the bonds. Underwriter's counsel fee will not exceed $10,000. The amount of the fee will be stated in the Bond Purchase Agreement, a binding contract between the City and BAS, which is signed and executed at the actual time of the sale of bonds.

Upon execution of this engagement letter, BAS will participate in retaining the required financing participants, subject to approval of the City, and proceed with the financing as rapidly as possible. This agreement will remain in force for a period of one year unless terminated or extended in writing upon 30 days notice by either the City or BAS.

At closing BAS will provide a separate Remarketing Agreement to be executed by the City and BAS to remarket the variable rate demand bonds for a fee of 1/10% of the par amount outstanding paid quarterly in arrears.

Should you have any questions regarding the above, please feel free to give me a call. If in agreement with the terms as stated, please sign and return the original to me and keep a copy for your files.

Very truly yours,

Jim Niederle

Jim Niederle
Managing Director

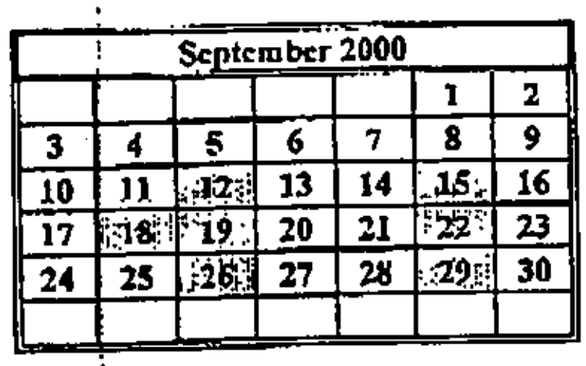
ACCEPTED BY:

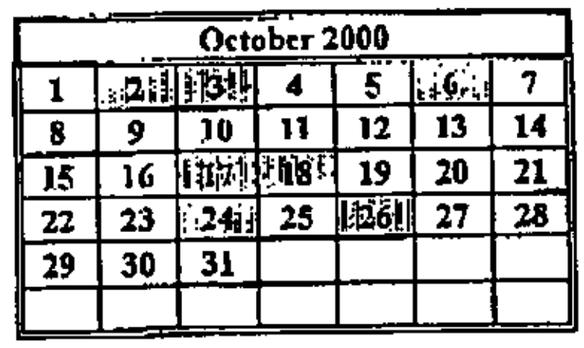
_____

Accepted this ____ day of September, 2000.

DRAFT

CITY OF FAYETTEVILLE, ARKANSAS
COMMERCIAL PAPER ISSUE
Preliminary Schedule of Events





2000 Date	Event	Responsible Parties
September 12	Agenda Meeting with City to retain Underwriter	City/ Stephens
September 15	Distribute first draft of financing documents and Preliminary Official Statement (POS)	Kutak Rock
September 18	Publish Notice of Public Hearing	Kutak Rock/ City
September 19	City Council Meeting to approve Bank of America as Underwriter	City/ Stephens
September 22	Comments due on first draft of financing documents and POS	All Parties
September 26	Distribute second draft of financing documents and POS	Kutak Rock
September 29	Comments due on second draft of financing documents and POS	All Parties
October 2	Send information to Standard and Poor's	Bank of America/ Stephens
October 2	Distribute final draft of financing documents and POS	All Parties
October 3	Public Hearing and Approval of Authorizing Ordinance	City/ Stephens/ Kutak Rock
October 6	Publish Authorizing Ordinance	City/ Kutak Rock
October 17	Obtain Rating from Standard and Poor's	Bank of America/ Stephens
October 18	Finalize financing documents and POS	Kutak Rock
October 24	Send POS to printer	Bank of America
October 26	Distribute POS to investors	Bank of America
November 6	Review Market and Pricing with City and Stephens	Bank of America
November 7	Offer issue	Bank of America
November 8	Close issue	All Parties

09/05/00

RESOLUTION NO. 126-99

MICROFILMED

A RESOLUTION EXPRESSING THE INTENT OF THE CITY OF FAYETTEVILLE, ARKANSAS, TO REIMBURSE CERTAIN EXPENDITURES OF THE CITY PERTAINING TO THE PLANNING, DESIGNING, FINANCING, ACQUIRING, CONSTRUCTING, AND EQUIPPING OF A WASTEWATER TREATMENT PROJECT WITH THE PROCEEDS OF AN ISSUE OR ISSUES OF TAX-EXEMPT BONDS TO BE ISSUED BY THE CITY; AND STATING OTHER MATTERS PERTAINING THERETO.

WHEREAS, the City of Fayetteville, Arkansas, (the "City") intends to (i) construct a new wastewater treatment plant in the western portion of the City, (ii) renovate its existing wastewater treatment plant, and (iii) make associated modifications to its wastewater collection system (the "Project") to serve the growing needs of the residents of the City; and

WHEREAS, the City presently intends to finance a portion of the costs of planning, designing, acquiring, constructing, and equipping the Project through the issuance of one or more series of tax-exempt bonds of the City (the "Bonds"); and

WHEREAS, the City has determined the need to expend its funds to pay certain costs of the Project prior to the issuance of the Bonds, and

WHEREAS, in order to utilize the proceeds of tax-exempt bonds to reimburse original expenditures made by the City with respect to the Project, it is necessary under the Internal Revenue Code of 1986, as amended (the "Code") and the U.S. Treasury Regulation Section 1.150-2 that the City make a present declaration of its official intent to make such reimbursement.

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

Section 1. That the City intends to issue its Bonds in one or more series in aggregate principal amount not to exceed $25 million under the constitution and laws of the State of Arkansas to finance a portion of the costs of planning, designing, acquiring, constructing, and equipping the Project.

Section 2. That the City intends to utilize a portion of the proceeds of the Bonds to reimburse itself for certain expenditures made by the City prior to the issuance of the Bonds with respect to the planning, designing, acquiring, constructing, and equipping of the Project.

Section 3. That the City intends this resolution to be its declaration of "official intent" under the Code and U.S. Treasury Regulation Section 1.150-2 to reimburse certain original expenditures with respect to the Project.

PASSED AND APPROVED this 5th day of October, 1999.

APPROVED:

By: Fred Hanna

Fred Hanna, Mayor

ATTEST:

By: Theresa S. Johnson - Deputy

Heather Woodruff, City Clerk

CITY OF FAYETTEVILLE, ARKANSAS

RFP # 00-16

REQUEST FOR PROPOSALS
FOR
VARIABLE RATE DEMAND BOND DEALER SERVICES
August 4, 2000

113 WEST MOUNTAIN STREET
FAYETTEVILLE, ARKANSAS 72701

REQUEST FOR PROPOSALS
GENERAL REQUIREMENTS FOR PROPOSING

NOTICE TO THOSE SUBMITTING

Information provided in these specifications is to be used only for purposes stated. It is further expected that each proposer will read these specifications with care.

The City of Fayetteville (hereinafter referred to as the "City") believes that the data contained in these specifications are sufficient for preparation of proposals. The information is believed to be accurate and is based on the latest available information, but is not to be considered in any way as a warranty. Therefore, the proposer, in submitting a proposal, assumes the risk of any inaccuracies in the information provided herein, which might result from failure to provide any other information which might have been available.

SUBMISSION OF PROPOSALS AND QUESTIONS

Please submit your proposal to Peggy Vice at the address listed below:

Peggy Vice
Purchasing Manager
City of Fayetteville
113 West Mountain Street
Fayetteville, AR 72701

Nine (9) copies of each proposal must be received in the Purchasing Office at Room 306, 113 West Mountain Street, Fayetteville, Arkansas, by 3:00 p.m. on August 21, 2000.

All proposals will become the property of the City. All proposals shall remain firm and subject to acceptance for 90 days after opening.

PROPOSALS NOT CONSIDERED

All proposals received after the time specified shall not be considered.
Where proposals are mailed, the proposer assumes all risk for nondelivery by the U. S. Post Office to the designated office by the deadline established. Only those proposals considered responsive to the Request for Proposal will be eligible for consideration in the selection process.

REJECTION OF PROPOSAL

The City reserves the right to reject any and all proposals received in response to this RFP if determined to be in the best interest of the City.

The City may not award a contract solely on the basis of this Request for Proposals, and does not intend to pay for information solicited or obtained. The information obtained will be used to determine suitability of the proposal.

Nonacceptance of any proposal does not convey criticism nor imply deficiency of that proposal. Nonacceptance of any proposal will mean that another proposal was deemed more advantageous to the City.

AMENDMENTS

The City may require changes in the Scope of Services to be performed hereunder. Such changes which are mutually agreed upon by and between the City and the firm, shall be incorporated by amendment to the contract.

INSURANCE

Please provide, as part of your response to the Request for Proposal, evidence of insurance showing type and amount of coverage for workers compensation, general liability, completed operations, professional liability, errors and omissions insurance.

INDEPENDENCE

The firm should provide certification that it is independent of the City of Fayetteville, the City's elected officials and the City's employees as part of the proposal.

APPLICABLE LAWS AND VENUE

The contract shall be made subject to all applicable Federal and Arkansas State Laws, the Charter and Ordinances of the City of Fayetteville, as amended, and all applicable rules and regulations promulgated by all local, state and national boards, bureaus and agencies. The contract shall be enforceable in Fayetteville, Arkansas, and if any legal action is necessary by either party with respect to the enforcement of any or all terms and conditions herein, exclusive venue for same shall lie in Fayetteville, Arkansas. The contract shall be governed and construed in accordance with the laws and Court Decisions of the State of Arkansas.

CITY OF FAYETTEVILLE
SPECIFIC REQUIREMENTS FOR PROPOSAL

I SUMMARY STATEMENT

The City is seeking proposals from firms qualified to issue and underwrite, as necessary, variable rate demand bonds on behalf of the City in amounts up to $30 million. The variable rate demand bond dealer services are to begin as soon as practical after City Council approval. The proposers shall list their fees for management of the variable rate demand bond issuance in basis points with a rate for demand bonds issued and outstanding and a separate rate for standby amounts committed and not issued.

The demand bond issuance commitment shall be for a period of not less than five (5) years.

Any questions and correspondence may be directed in writing to John Maguire, Administrative Services Director, at 113 West Mountain Street, Fayetteville, Arkansas 72701 or by calling (501) 575-8330.

Nine (9) copies of the proposal should be submitted as directed in the General Requirements section of this RFP. Proposals should be limited to twenty-five (25) pages with a separate appendix that lists references and/or examples of similar work.

II BACKGROUND

The City is planning an expansion of our waste water treatment plant and sewer collection system. The project is expected to cost between $67 and $80 million. The majority of the project cost is expected to be funded through a State of Arkansas loan pool.

III SCOPE OF SERVICES

The City requests proposals for Variable Rate Demand Bond Dealer Services. The City expects to utilize variable rate demand bonds to provide interim financing for the project in principal amounts not to exceed $30 million. The City expects an initial draw down of $10 million. The proposer must be able to issue and underwrite, if necessary, the City's variable rate demand bonds. Any commitment shall be for a period of not less than five (5) years.

The demand bonds will be supported by the net revenues of the City's Water & Sewer system and will be subordinated to the City's existing Water & Sewer bonds. The City's present long term debt for the water & sewer system is rated by S&P at "A" and Moody's "A-1". It is expected that demand bonds rating will be, at minimum, from S&P, A-2.

V FIRM REQUIREMENTS AND GUARANTEES

The Firm shall:

Provide management services required to issue and underwrite as necessary up to $30 million of variable rate demand bonds.

List the rate charged, in basis points, for variable rate demand bonds issued and outstanding.

List the rate charged, in basis points, for variable rate demand bonds committed and not issued.

Submit Appendix A "PROPOSER GUARANTEES" executed by the appropriate firm o. firms' form of business dictates.

Submit Appendix B "PROPOSER WARRANTIES" executed by the appropriate firm official as the firms' form of business dictates.

V QUALIFICATIONS

Firms responding to this request for proposal should include the following data in their proposals:

Demonstrated capital strength to commit its capital and underwrite the City's variable rate demand bond program if necessary.

Proposed plan for issuing and managing the City's variable rate demand bond program to meet the liquidity requirements of the planned project.

Resumes of the professional and key staff to be utilized in performing the services requested.

Company history and experience:
Provide a general description of the firm and its history and experience in providing similar services to comparable clients. Include in your proposal a list of at least six major clients that may be contacted for references.

VI SELECTION METHODOLOGY

Proposals will be reviewed by a committee that may consist of representatives of citizens, City Council and City staff which will make a recommendation for selection to City Council. Selection will be made pursuant to the City's professional selection policy with relevant factors as follows:

(1) Qualifications in relation to the specific project to be performed:	20 %
(2) Experience, competence and capacity for performance:	20%
(3) Proposed method of doing work:	20%
(4) Past performance:	20%
(5) Price:	20%

VII TECHNICAL REQUIREMENTS

1. Proposals are due no later than August 21, 2000 at 3 p.m.

2. Proposals should be sent to: Peggy Vice, Purchasing Manager, 113 West Mountain, Fayetteville, Ar. 72701

3. Nine (9) copies of the proposals should be provided. Please mark one copy as original.

4. Proposals should be labeled "Variable Rate Demand Bond Dealer Services" on the outside of the envelope.

CURRENT STATUS

The waste water treatment plant expansion project is currently in the initial design phase. The City has invested approximately $8 million in engineering studies, land purchases, equipment purchases and has entered into preliminary engineering design contracts for collection system improvements and waste water treatment plant improvements. The expenses paid to date and contracts entered into for this project are as follows:

Work Phase	Amount
Engineering Studies	863,906
Land Purchases	3,221,959
Equipment Purchases (UV System)	1,045,816
Engineering Contracts	2,403,279
Total	7,534,960

APPENDIX A

PROPOSER GUARANTEES

The proposer certifies it can and will provide and make available, at a minimum, all services set forth in Section III, "Scope of Service."

Signature of Official:_____

Name (typed):_____

Title:_____

Firm:_____

Date:_____

APPENDIX B

PROPOSER WARRANTIES

A. **Proposer warrants** that it is willing and able to comply with State of Arkansas laws with respect to foreign (non-state of Arkansas) corporations.

B. **Proposer warrants** that it is willing and able to obtain an errors and omissions insurance policy providing a prudent amount of coverage for the willful or negligent acts, or omissions of any officers, employees or agents thereof.

C. **Proposer warrants** that it will not delegate or subcontract its responsibilities under an agreement without the express prior written permission of the City of Fayetteville.

D. **Proposer warrants** that all information provided by it in connection with this proposal is true and accurate.

Signature of Official:_____
Name (typed):_____

Title:_____

Firm:_____

Date:_____

STAFF REVIEW FORM

XX AGENDA REQUEST
____ CONTRACT REVIEW
____ GRANT REVIEW

For the Fayetteville City Council meeting of September 19, 2000

FROM:

Stephen Davis (Name) | Budget & Research (Division) | Admin Services (Department)

ACTION REQUIRED: Approval of contracts with Bank of America and Banc of America Securities for variable rate demand bond dealer services and authorize the Mayor and City Clerk to execute the contracts. Budget adjustment authorization is also requested to implement the contracts.

COST TO CITY:

$50,000.00 estimated

Cost of this Request | Category/Project Budget | Category/Project Name

Account Number | Funds Used To Date | Program Name

Project Number | Remaining Balance | Fund

BUDGET REVIEW: ____ Budgeted Item ____ Budget Adjustment Attached

Budget Manager | Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW: **GRANTING AGENCY:**_____

Accounting Manager | Date | Internal Auditor | Date

City Attorney | Date | ADA Coordinator | Date

Purchasing Officer | Date | Grant Coordinator | Date

STAFF RECOMMENDATION: Staff recommends approval of the contracts.

Division Head | 9-7-00 Date

Department Director | Date

Administrative Services Director | Date

Mayor | Date

Cross Reference

New Item: **Yes** **No**

Prev Ord/Res #:_____

Orig Contract Date:_____

Orig Contract Number:_____

STAFF REVIEW FORM - Page 2

Description Variable Rate Demand Bonds Meeting Date Sept 19, 2000

Comments:
Budget Manager

Reference Comments:

Accounting Manager

City Attorney

Purchasing Officer

ADA Coordinator

Internal Auditor

Grants Coordinator

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

DEPARTMENTAL CORRESPONDENCE

TO: Mayor Fred Hanna and City Council

THRU: John Maguire, Administrative Services Director

FROM: Stephen Davis, Budget Manager

DATE: September 5, 2000

SUBJECT: **Wastewater Treatment Plant Expansion Project - Financing**

Staff requests City Council approve contracts with Bank of America (BOA) and Banc of America Securities to provide variable rate demand bond dealer services in conjunction with the City's Wastewater Treatment Plant Expansion Project. The contracts call for BOA to issue ten million dollars ($10 million) of variable rate demand bonds on behalf of the City. The funds will be used to reimburse the Water & Sewer Fund for expenditures paid from the Water & Sewer operating and capital budgets.

The contracts are for BOA to provide variable rate demand bond services with the bonds coming due in two years. At the end of the two years, the City may renew the contract with BOA or issue revenue bonds.

In addition to approving the contracts with BOA, bond counsel is preparing an ordinance. City Council will be requested to approve the bond ordinance that authorizes the borrowing of funds at the October 3, 2000 City Council meeting.

Background

In late1995, the City commissioned a comprehensive sewer system study. The study produced an in-depth facilities plan that recommended additional wastewater treatment plant capacity. The most economic expansion option was to construct a second plant in the Illinois River watershed and upgrade the existing Paul Noland Wastewater Treatment Plant. The City has subsequently purchased land and equipment and entered into preliminary engineering contracts. In October 1999, City Council passed Resolution 126-99 which states, in part, the intent of the City to reimburse certain expenditures pertaining to the planning, designing, financing, acquiring, constructing, and equipping of a wastewater treatment project with the proceeds of an issue or issues of tax-exempt bonds.

Earlier this year, a selection committee was established to select a consultant for a development impact fee study. Last week the selection committee met and voted to initiate contract negotiations

with Duncan and Associates. Contract negotiations are currently underway and the contract should be available for City Council review and approval at the second meeting in October 2000.

Current Conditions

The land has been purchased for the proposed wastewater treatment plant in the Illinois River watershed. Preliminary engineering contracts have been entered into between the City and various engineering firms. The chlorine sterilization equipment at the Paul Noland Wastewater Treatment Plant has been replaced with an ultra violet sterilization system. Several public meetings have been conducted with the public, press, consulting engineers, and City staff.

Work on the project financing has included selection and contracting with legal counsel (Kutak Rock), financial advisory services (Stephens, Inc.), selection of a development impact fee consultant (Duncan and Associates), and selection of a variable rate demand bond dealer (Bank of America).

The variable rate demand bond dealer services are intended to reimburse the City for expenditures made from the Water & Sewer capital and operations budgets over the past few years before the time limit for reimbursement expires. The City continues to work on developing a long term financing plan for the majority of the project costs. Currently, the most viable long term financing option available to the City is participation in the State of Arkansas, Department of Environmental Quality Revolving Loan Fund (ADEQ-RLF). The ADEQ-RLF offers the City approximately $80 million with a level interest rate of 3.75% for up to twenty years.

Requested Action

Approval of the contracts with Bank of America (BOA) and Banc of America Securities is to provide variable rate demand bond dealer services in conjunction with the City's Wastewater Treatment Plant Expansion Project.

Cost of This Request

The cost of this request will be paid from the proceeds of the issue and is estimated to be $50,000. The annual fees of $30,000 will be paid from the Water & Sewer operating budgets.

attachments:
Resolution 126-99
Request for Proposal #00-16 Variable Rate Demand Bond Dealer Services

Bank of America

Bank of America
Commercial Banking
AR3-376-01-06
One East Center
Fayetteville, AR 72701

Tel 501.872.4478
501.872.4016
Fax 501.872.4355

PROPOSAL LETTER

September 5, 2000

John Maguire
Administrative Services Director
City of Fayetteville
113 West Mountain
Fayetteville, Arkansas 72701

Dear John,

We have previously discussed, Bank of America, N.A. is interested in discussing extending a liquidity facility to the City of Fayetteville. Enclosed is a term sheet outlining the provisions of a liquidity facility which Bank of America could possibly make. This letter and the attached term sheet do not constitute a commitment on the part of Bank of America to make the proposed liquidity facility and are intended as an outline only and do not purport to summarize all of the terms, conditions, covenants, representations, warranties and other provisions which would be contained in definitive legal documentation for the proposed transaction. Any proposal by Bank of America to actually provide a facility would be subject to the negotiation, to the satisfaction of Bank of America and its counsel, of all of the open issues outlined in the term sheet as well as internal credit approval at Bank of America.

If you find the proposed terms and conditions generally acceptable, kindly indicate your interest in pursuing this transaction by signing the enclosed copy of this letter and returning it to me. At such time as I receive the signed copy of this letter from you, we will commence negotiations for the proposed transaction and will discuss with you the due diligence and other investigations which Bank of America, its counsel and agents, would have to undertake in order for Bank of America to issue a commitment.

I certainly appreciate the opportunity to discuss potential financing opportunities with you and look forward to your response to my letter. Hopefully, our continued discussions will result in the further establishment of our mutually beneficial relationship between the City of Fayetteville and Bank of America. Please give me a call to discuss this proposal. I look forward to hearing from you.

Sincerely,

Larry A. Manry
Senior Vice President

Accepted and agreed to this
___ day of _____, 2000.

By:_____
City of Fayetteville

TERMS AND CONDITIONS

BORROWER: City of Fayetteville
Water and Sewer Department

PURPOSE: Finance costs of development of the City of Fayetteville Water and Sewer expansion through the use of a Bank of America Variable Rate Demand Bond Program

AMOUNT OF LIQUIDITY FACILITY: $10,000,000.00 plus 35 days of interest

FACILITY FEE: 20 Basis points (.20%) paid quarterly in arrears

BANK BOND INTEREST RATE : 30 day LIBOR + 50 basis points on liquidity draws with a duration of thirty days or less : or
30 day LIBOR + 100 basis points on liquidity draws in excess of 30 days

Interest would be payable upon successful remarketing of the bonds or quarterly in the event the duration exceeds 90 days with balance due at maturity.

MATURITY: Two year from date of closing

COLLATERAL: Special obligation of the City secured by a pledge of the net revenues of the water and sewer system on subordinate basis with existing Water & Sewer bonds.

FINANCING DOCUMENTS:
The financing shall be made under and governed by definitive financing documents to be executed and delivered by the Borrower to the Bank and containing the terms set forth in this commitment and such other terms, conditions, representations, warranties and covenants as are usual and customary in lending transactions such as the financing, which documents may include one or more promissory notes, loan agreements, security agreements, guaranties, mortgages, pledge agreements, letter of credit applications/agreements, liquidity maintenance agreements, assignments, financing statements and such other documents, instruments, guarantees, , certificates and agreements executed and/or delivered by the City, (collectively, the "Financing Documents").

CONDITIONS TO CLOSING:
At the time of the closing, all official actions of the City of Fayetteville relating to the adoption of the Resolution authorizing the issuance of the debt shall be in full force and effect and there

shall have been taken all such actions as, in the opinion of appropriate legal counsel, shall be necessary or appropriate in connection with the issuance of the debt and with the transactions contemplated hereby.

The Bank shall have received, duly executed, all financing documents and any other documents and instruments necessary or advisable in connection with the financing, all of which shall be in form and substance satisfactory to the Bank and its counsel.

CLOSING COSTS AND EXPENSES:
Expenses: The Borrower shall pay all costs and expenses incurred by the Bank in connection with the Bank's review, due diligence and closing of the financing, including attorneys' fees (to include outside counsel fees and all allocated costs of Bank's in-house counsel if permitted by applicable law) incurred by the Bank in connection with the negotiation and preparation of the financing Documents, whether or not the financing actually closes.

AMENDMENT AND WAIVER:
No alteration, modification, amendment or waiver of any terms and conditions of this proposal, or of any of the documents required by or delivered to the Bank under this commitment, shall be effective or enforceable against the Bank unless set forth in a writing signed by the Bank.

GOVERNING LAW:
This commitment and the financing shall be governed by and construed in accordance with the laws of the State of Arkansas

INTEGRATION:
The terms set forth above represent the entire understanding between the Borrower and the Bank with respect to the subject matter of this commitment, and this commitment supersedes any prior and contemporaneous agreements, commitments, discussions and understandings, oral or written, with respect to the subject matter of this proposal.

DISCUSSION PURPOSES ONLY:
This proposal letter with terms and conditions is for discussion purposes only and does not constitute a commitment on the part of Bank of America to execute a financing and is intended as an outline and does not purport to summarize all the terms, conditions, and covenants, representations, warranties and other provisions which would be contained in definitive legal documents.

September 7, 2000

Mr. John Maguire
Administrative Services Director
City of Fayetteville
113 West Mountain
Fayetteville, AK 72701

Re: $10 Million Variable Rate Demand Notes ("VRDN") for Water & Sewer Improvements

Dear John:

The purpose of this engagement letter is to describe the services to be performed as the underwriter for the above cited transaction. We understand that tax-exempt revenue bonds as weekly variable rate demand bonds are to be issued for the purposes of funding the costs of construction for upgrades to the City's Water & Sewer System.

SCOPE OF ENGAGEMENT

In this engagement, Banc of America Securities LLC ("BAS") will perform the following duties:

1. Assist the financing team in developing a financing structure that delivers the most effective total interest rate and financing costs to the City.

2. Direct the sale of the securities to the most appropriate buyers to assure the City of the lowest possible total interest rates consistent with the type of security being offered.

3. Assist in arranging for a liquidity facility with a rating of A1+/P-1or better.

4. Attend all required meetings of the City and the bond closing.

5. Direct the preparation, printing and distribution of the Preliminary and Final Official Statements.

6. Conduct a full due diligence investigation of the City and all bond documentation.

7. Arrange for the closing and funding of the issue.

8. Perform such other duties and tasks as mutually agreed and necessary to complete the financing.

BAS' underwriting fee for the above-referenced services will not exceed .20% of the par amount of the bonds issued. The City will pay all costs of issuance including, but not limited to, bond and underwriter's counsels, trustee, rating agency fees, printing, and closing costs. BAS' underwriting fee will be payable at closing upon the funding and delivery of the bonds. The amount of the fee will be stated in the Bond Purchase Agreement, a binding contract between the City and BAS, which is signed and executed at the actual time of the sale of bonds.

Upon execution of this engagement letter, BAS will participate in retaining the required financing participants, subject to approval of the City, and proceed with the financing as rapidly as possible. This agreement will remain in force for a period of one year unless terminated or extended in writing upon 30 days notice by either the City or BAS.

At closing BAS will provide a separate Remarketing Agreement to be executed by the City and BAS to remarket the variable rate demand bonds for an annual fee of 1/10% of the par amount outstanding.

Should you have any questions regarding the above, please feel free to give me a call. If in agreement with the terms as stated, please sign and return the original to me and keep a copy for your files.

Very truly yours,

Jim Niederle

Jim Niederle
Managing Director

ACCEPTED BY:

_____

Accepted this ____ day of September, 2000.

CITY OF FAYETTEVILLE, ARKANSAS
COMMERCIAL PAPER ISSUE
Preliminary Schedule of Events

September 2000						
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

October 2000						
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

November 2000						
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

2000 Date	Event	Responsible Parties
September 12	Agenda Meeting with City to retain Underwriter	City/ Stephens
September 15	Distribute first draft of financing documents and Preliminary Official Statement (POS)	Kutak Rock
September 18	Publish Notice of Public Hearing	Kutak Rock/ City
September 19	City Council Meeting to approve Bank of America as Underwriter	City/ Stephens
September 22	Comments due on first draft of financing documents and POS	All Parties
September 26	Distribute second draft of financing documents and POS	Kutak Rock
September 29	Comments due on second draft of financing documents and POS	All Parties
October 2	Send information to Standard and Poor's	Bank of America/ Stephens
October 2	Distribute final draft of financing documents and POS	All Parties
October 3	Public Hearing and Approval of Authorizing Ordinance	City/ Stephens/ Kutak Rock
October 6	Publish Authorizing Ordinance	City/ Kutak Rock
October 17	Obtain Rating from Standard and Poor's	Bank of America/ Stephens
October 18	Finalize financing documents and POS	Kutak Rock
October 24	Send POS to printer	Bank of America
October 26	Distribute POS to investors	Bank of America
November 6	Review Market and Pricing with City and Stephens	Bank of America
November 7	Offer issue	Bank of America
November 8	Close issue	All Parties

09/05/00

RESOLUTION NO. 126-99

MICROFILMED

A RESOLUTION EXPRESSING THE INTENT OF THE CITY OF FAYETTEVILLE, ARKANSAS, TO REIMBURSE CERTAIN EXPENDITURES OF THE CITY PERTAINING TO THE PLANNING, DESIGNING, FINANCING, ACQUIRING, CONSTRUCTING, AND EQUIPPING OF A WASTEWATER TREATMENT PROJECT WITH THE PROCEEDS OF AN ISSUE OR ISSUES OF TAX-EXEMPT BONDS TO BE ISSUED BY THE CITY; AND STATING OTHER MATTERS PERTAINING THERETO.

WHEREAS, the City of Fayetteville, Arkansas, (the "City") intends to (i) construct a new wastewater treatment plant in the western portion of the City, (ii) renovate its existing wastewater treatment plant, and (iii) make associated modifications to its wastewater collection system (the "Project") to serve the growing needs of the residents of the City; and

WHEREAS, the City presently intends to finance a portion of the costs of planning, designing, acquiring, constructing, and equipping the Project through the issuance of one or more series of tax-exempt bonds of the City (the "Bonds"); and

WHEREAS, the City has determined the need to expend its funds to pay certain costs of the Project prior to the issuance of the Bonds, and

WHEREAS, in order to utilize the proceeds of tax-exempt bonds to reimburse original expenditures made by the City with respect to the Project, it is necessary under the Internal Revenue Code of 1986, as amended (the "Code") and the U.S. Treasury Regulation Section 1.150-2 that the City make a present declaration of its official intent to make such reimbursement.

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

Section 1. That the City intends to issue its Bonds in one or more series in aggregate principal amount not to exceed $25 million under the constitution and laws of the State of Arkansas to finance a portion of the costs of planning, designing, acquiring, constructing, and equipping the Project.

Section 2. That the City intends to utilize a portion of the proceeds of the Bonds to reimburse itself for certain expenditures made by the City prior to the issuance of the Bonds with respect to the planning, designing, acquiring, constructing, and equipping of the Project.

Section 3. That the City intends this resolution to be its declaration of "official intent" under the Code and U.S. Treasury Regulation Section 1.150-2 to reimburse certain original expenditures with respect to the Project.

PASSED AND APPROVED this 5th day of October, 1999.

APPROVED:

By: Fred Hanna

Fred Hanna, Mayor

ATTEST:

By: Theresa L Johnson-Deputy

Heather Woodruff, City Clerk

CITY OF FAYETTEVILLE, ARKANSAS

RFP # 00-16

REQUEST FOR PROPOSALS
FOR
VARIABLE RATE DEMAND BOND DEALER SERVICES
August 4, 2000

113 WEST MOUNTAIN STREET
FAYETTEVILLE, ARKANSAS 72701

NOTICE TO THOSE SUBMITTING

Information provided in these specifications is to be used only for purposes stated. It is further expected that each proposer will read these specifications with care.

The City of Fayetteville (hereinafter referred to as the "City") believes that the data contained in these specifications are sufficient for preparation of proposals. The information is believed to be accurate and is based on the latest available information, but is not to be considered in any way as a warranty. Therefore, the proposer, in submitting a proposal, assumes the risk of any inaccuracies in the information provided herein, which might result from failure to provide any other information which might have been available.

SUBMISSION OF PROPOSALS AND QUESTIONS

Please submit your proposal to Peggy Vice at the address listed below:

Peggy Vice
Purchasing Manager
City of Fayetteville
113 West Mountain Street
Fayetteville, AR 72701

Nine (9) copies of each proposal must be received in the Purchasing Office at Room 306, 113 West Mountain Street, Fayetteville, Arkansas, by 3:00 p.m. on August 21, 2000.

All proposals will become the property of the City. All proposals shall remain firm and subject to acceptance for 90 days after opening.

PROPOSALS NOT CONSIDERED

All proposals received after the time specified shall not be considered.
Where proposals are mailed, the proposer assumes all risk for nondelivery by the U. S. Post Office to the designated office by the deadline established. Only those proposals considered responsive to the Request for Proposal will be eligible for consideration in the selection process.

REJECTION OF PROPOSAL

The City reserves the right to reject any and all proposals received in response to this RFP if determined to be in the best interest of the City.

The City may not award a contract solely on the basis of this Request for Proposals, and does not intend to pay for information solicited or obtained. The information obtained will be used to determine suitability of the proposal.

Nonacceptance of any proposal does not convey criticism nor imply deficiency of that proposal. Nonacceptance of any proposal will mean that another proposal was deemed more advantageous to the City.

AMENDMENTS

The City may require changes in the Scope of Services to be performed hereunder. Such changes which are mutually agreed upon by and between the City and the firm, shall be incorporated by amendment to the contract.

INSURANCE

Please provide, as part of your response to the Request for Proposal, evidence of insurance showing type and amount of coverage for workers compensation, general liability, completed operations, professional liability, errors and omissions insurance.

INDEPENDENCE

The firm should provide certification that it is independent of the City of Fayetteville, the City's elected officials and the City's employees as part of the proposal.

APPLICABLE LAWS AND VENUE

The contract shall be made subject to all applicable Federal and Arkansas State Laws, the Charter and Ordinances of the City of Fayetteville, as amended, and all applicable rules and regulations promulgated by all local, state and national boards, bureaus and agencies. The contract shall be enforceable in Fayetteville, Arkansas, and if any legal action is necessary by either party with respect to the enforcement of any or all terms and conditions herein, exclusive venue for same shall lie in Fayetteville, Arkansas. The contract shall be governed and construed in accordance with the laws and Court Decisions of the State of Arkansas.

CITY OF FAYETTEVILLE
SPECIFIC REQUIREMENTS FOR PROPOSAL

I SUMMARY STATEMENT

The City is seeking proposals from firms qualified to issue and underwrite, as necessary, variable rate demand bonds on behalf of the City in amounts up to $30 million. The variable rate demand bond dealer services are to begin as soon as practical after City Council approval. The proposers shall list their fees for management of the variable rate demand bond issuance in basis points with a rate for demand bonds issued and outstanding and a separate rate for standby amounts committed and not issued.

The demand bond issuance commitment shall be for a period of not less than five (5) years.

Any questions and correspondence may be directed in writing to John Maguire, Administrative Services Director, at 113 West Mountain Street, Fayetteville, Arkansas 72701 or by calling (501) 575-8330.

Nine (9) copies of the proposal should be submitted as directed in the General Requirements section of this RFP. Proposals should be limited to twenty-five (25) pages with a separate appendix that lists references and/or examples of similar work.

II BACKGROUND

The City is planning an expansion of our waste water treatment plant and sewer collection system. The project is expected to cost between $67 and $80 million. The majority of the project cost is expected to be funded through a State of Arkansas loan pool.

III SCOPE OF SERVICES

The City requests proposals for Variable Rate Demand Bond Dealer Services. The City expects to utilize variable rate demand bonds to provide interim financing for the project in principal amounts not to exceed $30 million. The City expects an initial draw down of $10 million. The proposer must be able to issue and underwrite, if necessary, the City's variable rate demand bonds. Any commitment shall be for a period of not less than five (5) years.

The demand bonds will be supported by the net revenues of the City's Water & Sewer system and will be subordinated to the City's existing Water & Sewer bonds. The City's present long term debt for the water & sewer system is rated by S&P at "A" and Moody's "A-1". It is expected that demand bonds rating will be, at minimum, from S&P, A-2.

V FIRM REQUIREMENTS AND GUARANTEES

The Firm shall:

Provide management services required to issue and underwrite as necessary up to $30 million of variable rate demand bonds.

List the rate charged, in basis points, for variable rate demand bonds issued and outstanding.

List the rate charged, in basis points, for variable rate demand bonds committed and not issued.

Submit Appendix A "PROPOSER GUARANTEES" executed by the appropriate firm official as the firms' form of business dictates.

Submit Appendix B "PROPOSER WARRANTIES" executed by the appropriate firm official as the firms' form of business dictates.

V QUALIFICATIONS

Firms responding to this request for proposal should include the following data in their proposals:

Demonstrated capital strength to commit its capital and underwrite the City's variable rate demand bond program if necessary.

Proposed plan for issuing and managing the City's variable rate demand bond program to meet the liquidity requirements of the planned project.

Resumes of the professional and key staff to be utilized in performing the services requested.

Company history and experience:
Provide a general description of the firm and its history and experience in providing similar services to comparable clients. Include in your proposal a list of at least six major clients that may be contacted for references.

VI SELECTION METHODOLOGY

Proposals will be reviewed by a committee that may consist of representatives of citizens, City Council and City staff which will make a recommendation for selection to City Council. Selection will be made pursuant to the City's professional selection policy with relevant factors as follows:

(1) Qualifications in relation to the specific project to be performed:	20 %
(2) Experience, competence and capacity for performance:	20%
(3) Proposed method of doing work:	20%
(4) Past performance:	20%
(5) Price:	20%

VII TECHNICAL REQUIREMENTS

1. Proposals are due no later than August 21, 2000 at 3 p.m.

2. Proposals should be sent to: Peggy Vice, Purchasing Manager, 113 West Mountain, Fayetteville, Ar. 72701

3. Nine (9) copies of the proposals should be provided. Please mark one copy as original.

4. Proposals should be labeled "Variable Rate Demand Bond Dealer Services" on the outside of the envelope.

CURRENT STATUS

The waste water treatment plant expansion project is currently in the initial design phase. The City has invested approximately $8 million in engineering studies, land purchases, equipment purchases and has entered into preliminary engineering design contracts for collection system improvements and waste water treatment plant improvements. The expenses paid to date and contracts entered into for this project are as follows:

Work Phase	Amount
Engineering Studies	863,906
Land Purchases	3,221,959
Equipment Purchases (UV System)	1,045,816
Engineering Contracts	2,403,279
Total	7,534,960

APPENDIX A

PROPOSER GUARANTEES

The proposer certifies it can and will provide and make available, at a minimum, all services set forth in Section III, "Scope of Service."

Signature of Official:_____

Name (typed):_____

Title:_____

Firm:_____

Date:_____

APPENDIX B

PROPOSER WARRANTIES

A. **Proposer warrants** that it is willing and able to comply with State of Arkansas laws with respect to foreign (non-state of Arkansas) corporations.

B. **Proposer warrants** that it is willing and able to obtain an errors and omissions insurance policy providing a prudent amount of coverage for the willful or negligent acts, or omissions of any officers, employees or agents thereof.

C. **Proposer warrants** that it will not delegate or subcontract its responsibilities under an agreement without the express prior written permission of the City of Fayetteville.

D. **Proposer warrants** that all information provided by it in connection with this proposal is true and accurate.

Signature of Official:_____
Name (typed):_____

Title:_____

Firm:_____

Date:_____

Nabholz Client Service
Building Integrity
P.O. Box 1624 ▪ 624 West 6th Street ▪ Fayetteville, Arkansas 72702 ▪ Ph 501-444-9311 ▪ Fax 501-444-3396 ▪ www.nabholz.com

Friday, September 08, 2000

City of Fayetteville Planning Clerk
113 West Mountain
Fayetteville, Arkansas 72701

Attn.: Heather Woodruff

Re: Balcony at #1 West Mountain

Dear Heather;

We are requesting to be added to the agenda of the City Council Meeting on September 19, 2000. We are proposing as per the drawings attached to construct a balcony on the front of #1 West Mountain for Executive Square Inc., doing business as Bradberry & Associates. The North wall of the above referenced building is sitting on the North property line according to the plans by John E Mahaffey and Associates, Inc. Consulting Engineers dated June 1980 revised on July 11, 1980.

The following is the Legal Description of said property:

All Lots Numbered Two (2) through Seven (7) in Block Thirty (30) as designated on the Original Plat of the Town of Fayetteville, being a part of the Northeast Quarter (NE1/4) of the Southeast Quarter (SE1/4) of Section 16, Township 16 North, Range 30 West, situated in Washington County, Arkansas, and being more particularly described as beginning 30.00 feet West of the Northeast Corner of said Block; thence South 155.0 Feet; thence West 184.33 Feet; thence North 155.00 Feet; thence East 184.33 Feet to the point of beginning; containing 0.656 Acres more or less.

Also Lot One (1) of Block Thirty (30) as designated on the Original Plat of the Town of Fayetteville, being a part of the Northeast Quarter (NE1/4) of the Southeast Quarter (SE1/4) of Section 16, Township 16 North, Range 30 West, situated in Washington County, Arkansas, and being more particularly described as beginning at the Northeast Corner of said Block; thence West 30.00 Feet; thence South 155.00 Feet; thence East 30.00 Feet; thence North 155.00 Feet to the point of beginning; containing 0.107 Acres more or less.

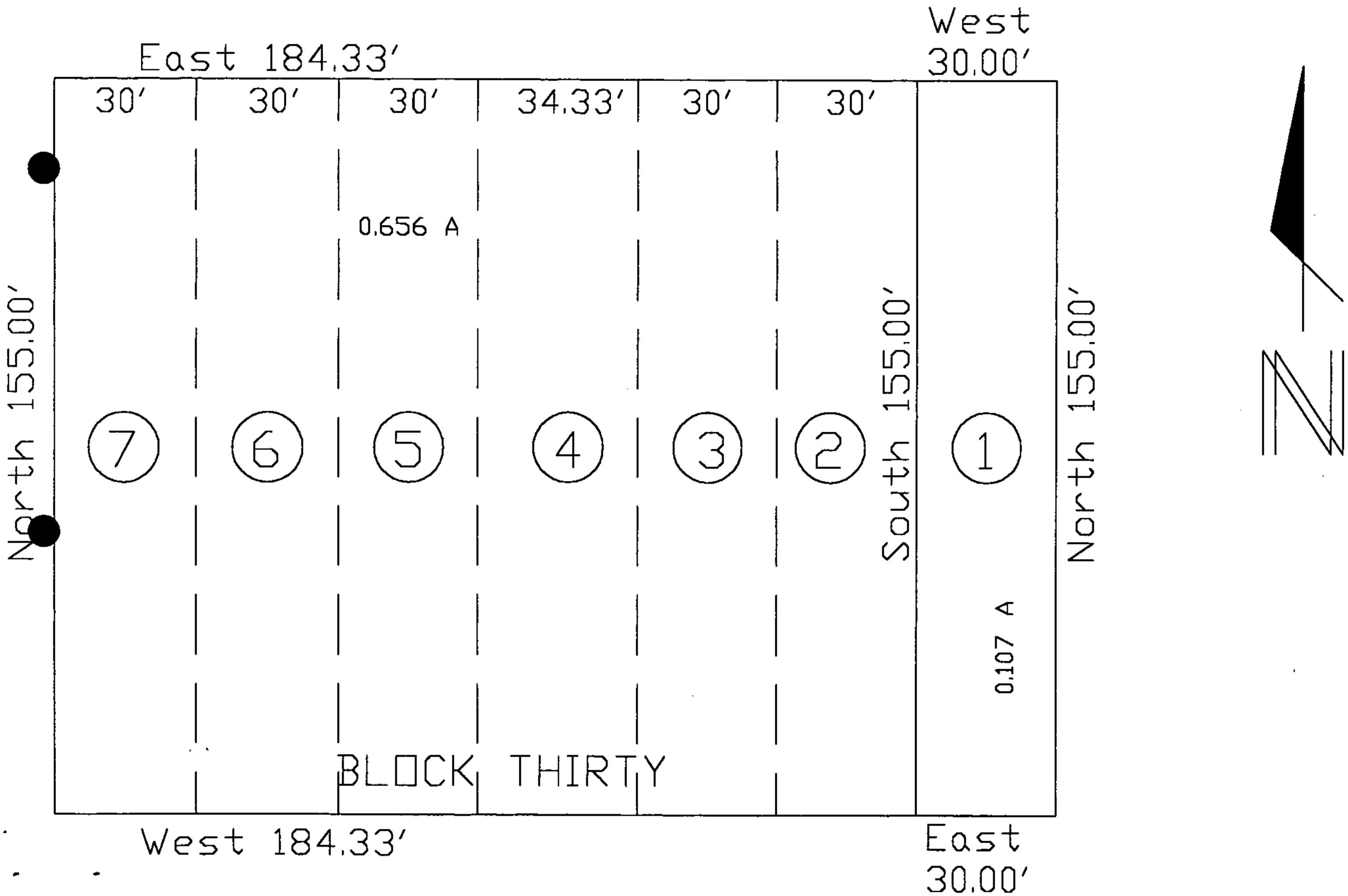
If you have any questions please call me at 444-9311.

Sincerely,

John David Oates

John David Oates
Project Manager

RECEIVED
SEP 11 2000
CITY OF FAYETTEVILLE
CITY CLERK'S OFFICE


East 184.33'
West 30.00'
30'
30'
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North 155.00'
South 155.00'
North 155.00'
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BLOCK THIRTY
West 184.33'
East 30.00'
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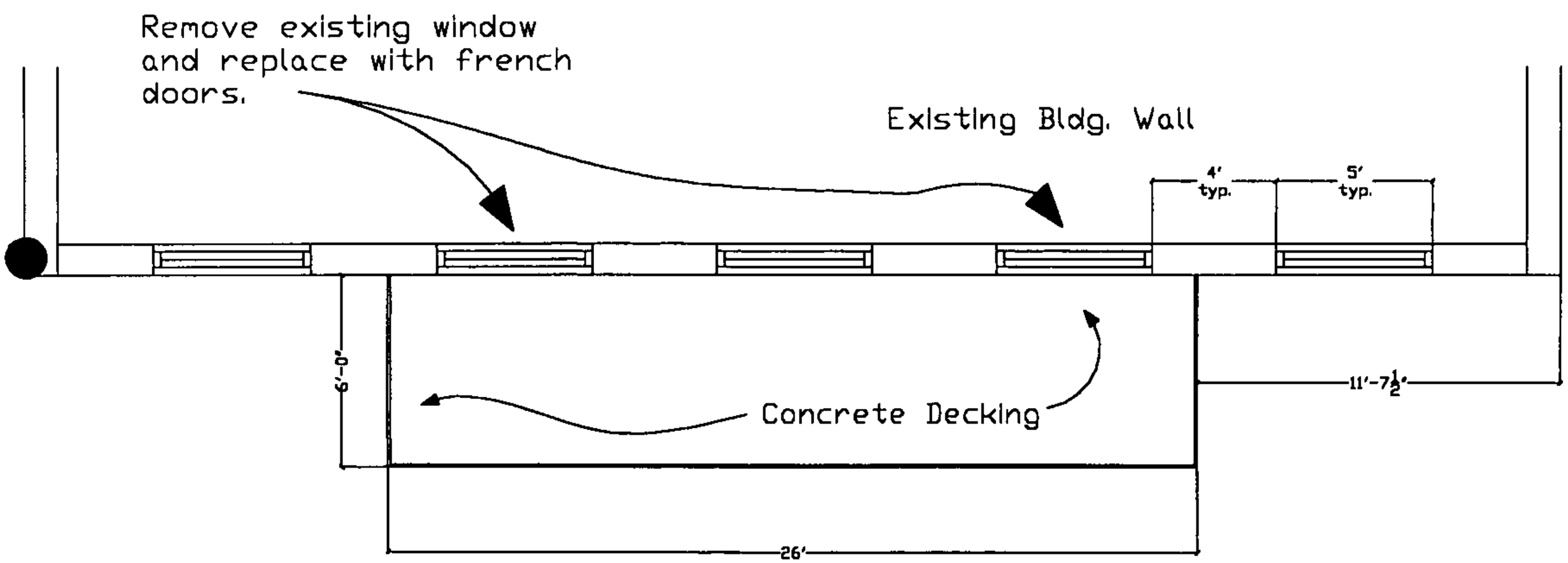
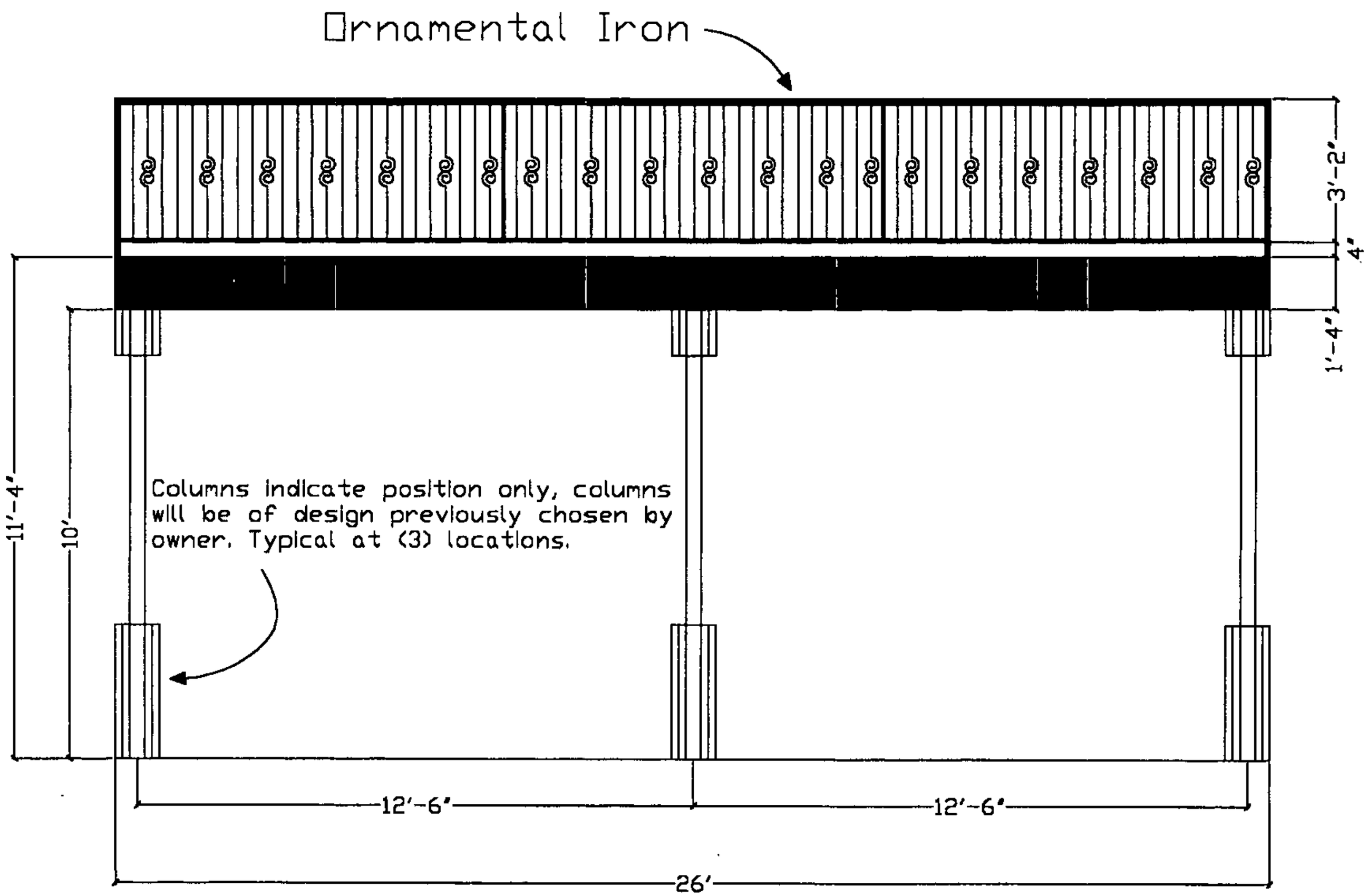
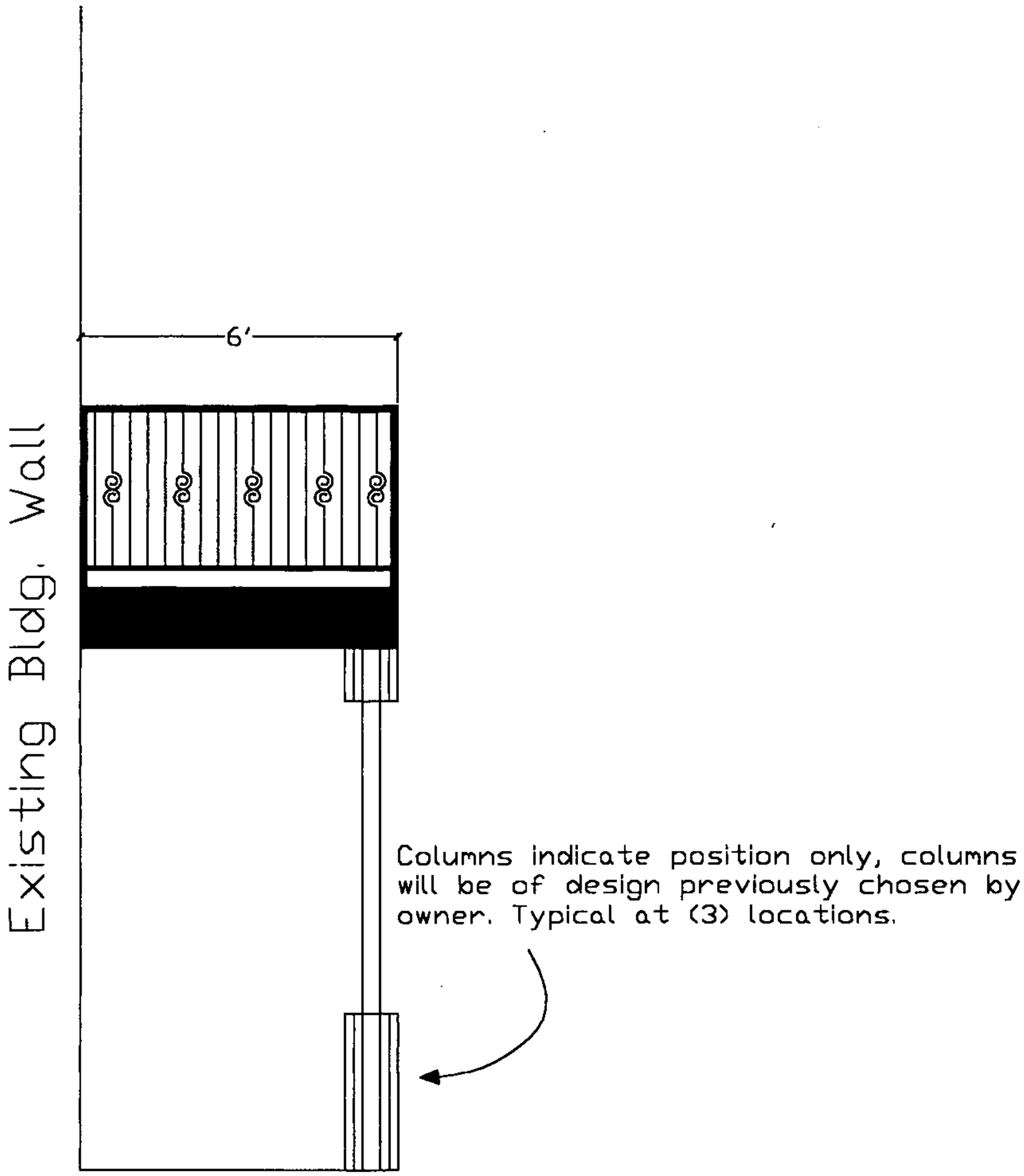


Top View of Proposed Balcony



Elevation View of Proposed Balcony



Side Elevation View
Proposed Balcony

STAFF REVIEW FORM

X AGENDA REQUEST
____ CONTRACT REVIEW
____ GRANT REVIEW

[illegible] the Fayetteville City Council meeting of September 5, 2000

FROM:

John Maguire — Name
____ — Division
Administrative — Department

ACTION REQUIRED: To approve a one year lease for (2) parking spaces for Campbell-Bell Building, LLC, Horizontal Property Regime, 201 South Block, Fayetteville, AR 72701. (Mailing address is 11 N. West Ave., Suite 201, Fayetteville, AR 72701)

COST TO CITY:

2001 900 REVENUE
2000 300 REVENUE — ~~Cost~~ REVENUE of this Request

171,200 (REVENUE) — Category/Project Budget

Category/Project Name

Account Number

151,072 — Funds Used To Date (RECEIVED)

Program Name

Project Number

20,128 — Remaining Balance

OFF Street Parking — Fund

BUDGET REVIEW: ____ Budgeted Item ____ Budget Adjustment Attached

Budget Coordinator

Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW:

GRANTING AGENCY:

Accounting Manager — Date

ADA Coordinator — Date

City Attorney — Date

Internal Auditor — Date

Purchasing Officer — Date 8-28-00

Grant Officer — Date

STAFF RECOMMENDATION: Approval of the ordinance.

Division Head — Date

Cross Reference

Department Director — Date 8/21/00

New Item: **Yes** **No**

Admin. Svcs Director — Date 8/24/00

Prev Ord/Res #:

Mayor — Date

Orig Contract Date:

LEASE

This Agreement, made and entered into this 1st day of October, 2000, by and between the City of Fayetteville, Arkansas, a Municipal Corporation, 113 W. Mountain, Fayetteville, Arkansas, hereinafter called "Lessor", and Campbell-Bell Building, LLC, 201 South Block, Fayetteville, AR 72701, hereinafter called "Lessee", Witnesseth:

1. Leased Premises. For and in consideration of the rents, covenants and agreements herein entered into and agreed upon by the Lessee as obligations to the Lessor, the Lessor lets, leases and demises unto Lessee, subject to the terms and conditions contained herein, the following described property situated in Washington County, Arkansas:

Two, (2) parking spaces, as set forth on Exhibit "A" attached hereto, located in the Fayetteville Municipal Parking Lot, west of the Campbell Bell Building between Mountain, Church, and Center Streets, a/k/a 160 West Mountain Street, Fayetteville, Arkansas.

To have and to hold said premises unto the said Lessee for and during the term herein stated, subject to the covenants, terms, conditions and liens herein contained.

2. Term. This lease shall commence on October 1, 2000 and shall extend for a term of 1 year, ending at midnight on September 30, 2001. The Lessee shall have the option to renew this lease for 4 additional 1 year terms. The option may be exercised by providing written notice to Lessor at least 30 days prior to expiration of this lease.

3. Rent. Lessee agrees to pay to Lessor as rental for the first year of this lease the sum of $50 per space per month. Thereafter, the rent shall be adjusted each year at the lease anniversary date to an amount charged for comparable lease spaces in this lot. If no comparables exist, rates will be the same as the Town Center parking deck rates. Each monthly payment is due in advance and payable on or before the fifteen of each month. A late fee shall be imposed, at the highest rate allowable by law, on all payments which are not received by Lessor within 5 business days from the due date.

4. Use. Lessee agrees to use the lease premises only for the purpose of vehicle parking for use of Campbell-Bell Building, LLC. However, it is understood that the City will not provide enforcement for restrictive parking spaces identified in this lease.

5. Lessee Improvements. Lessee may make the following improvements: Install private parking notices on meter poles. Design for all improvements shall be approved by the City. Any such improvement shall be solely at the Lessee's expense. Upon termination or expiration of this lease, such improvements shall be considered affixed to the premises and shall remain unless Lessor requires removal.

6. Assignment. Lessee shall not assign this lease or sublet the leased premises without prior written consent of the Lessor. Consent for any assignment or subletting shall only be considered at the same rates as established in Paragraph 3. above. Any such assignment or subletting shall in no way relieve Lessee from liability for the obligation imposed by this lease. Lessee may only be released from liability by a specific written release executed by Lessor.

7. Holdover. Lessee hereby agrees that upon the termination of this lease by expiration or by earlier termination for any reason whatsoever, Lessee will peaceably deliver possession of the leased premises to Lessor. In the event Lessee shall be permitted by Lessor to hold over after the expiration or termination of this lease, said holding over , in the absence of any written agreement to the contrary, shall be construed as a tenancy from calendar month to calendar month at a monthly rental equal to the rental for the last month paid under this lease, or as may be amended on the anniversary of the term set forth in Paragraph 2. above. A month-to-month tenancy arising by Lessee's holding over under this paragraph may be terminated by written notice from either party to the other party on or before the day on which any monthly rent is due with termination not becoming effective until the day on which the next following monthly rental would have otherwise become due. In the event it should become necessary for Lessor to institute any action at law to recover possession at the time of termination, whenever and however termination may occur, Lessee agrees that it will pay all costs and expenses of such action, including reasonable attorneys' fees.

8 . Termination. Lessor hereby reserves the right to terminate this Lease at anytime during the term of this Lease if it is determined by the Fayetteville City Council that the leased premises is needed for a valid public purpose. If Lessor terminates the lease prior to expiration of the term in Paragraph 2. , Lessor shall compensate Lessee on a prorated basis of the actual cost to make improvements to the premises.

9. Compliance with Laws. Lessee agrees not to violate any law, ordinance, rule or regulation of any governmental authority having jurisdiction of the leased premises.

10. Non-Waiver. It is agreed that the failure of Lessor to invoke any of the available remedies under this lease or under law in the event of one or more breaches or defaults by Lessee under the lease shall not be construed as a waiver of such provisions and conditions and shall not prevent Lessor from invoking such remedies in the event of any future breach or default.

11. Insurance. Lessee shall be solely responsible for maintaining insurance on any improvements made to the leased premises, as well as for general public liability insurance.

12. Succession. This lease agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors and assigns.

13. Severability. Each paragraph of this lease agreement is severable from all other paragraphs. In the event any court of competent jurisdiction determines that any paragraph or subparagraph is invalid or unenforceable for any reason, all remaining paragraphs and subparagraphs will remain in full force and effect.

14. Interpretation. This lease agreement shall be interpreted according to and enforced under the laws of the State of Arkansas.

15. Entire Agreement. This lease agreement contains the entire agreement of both parties hereto, and no other oral or written agreement shall be binding on the parties hereto. This lease agreement supersedes all prior agreements, contracts and understandings of any kind between the parties relating to the subject matter hereof. This agreement may be executed in all or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals on this ____ day of _____, _____.

LESSOR
City of Fayetteville, Arkansas

By:_____
Fred Hanna, Mayor

ATTEST:

By:_____
Heather Woodruff, City Clerk

LESSEE

_____

By:_____

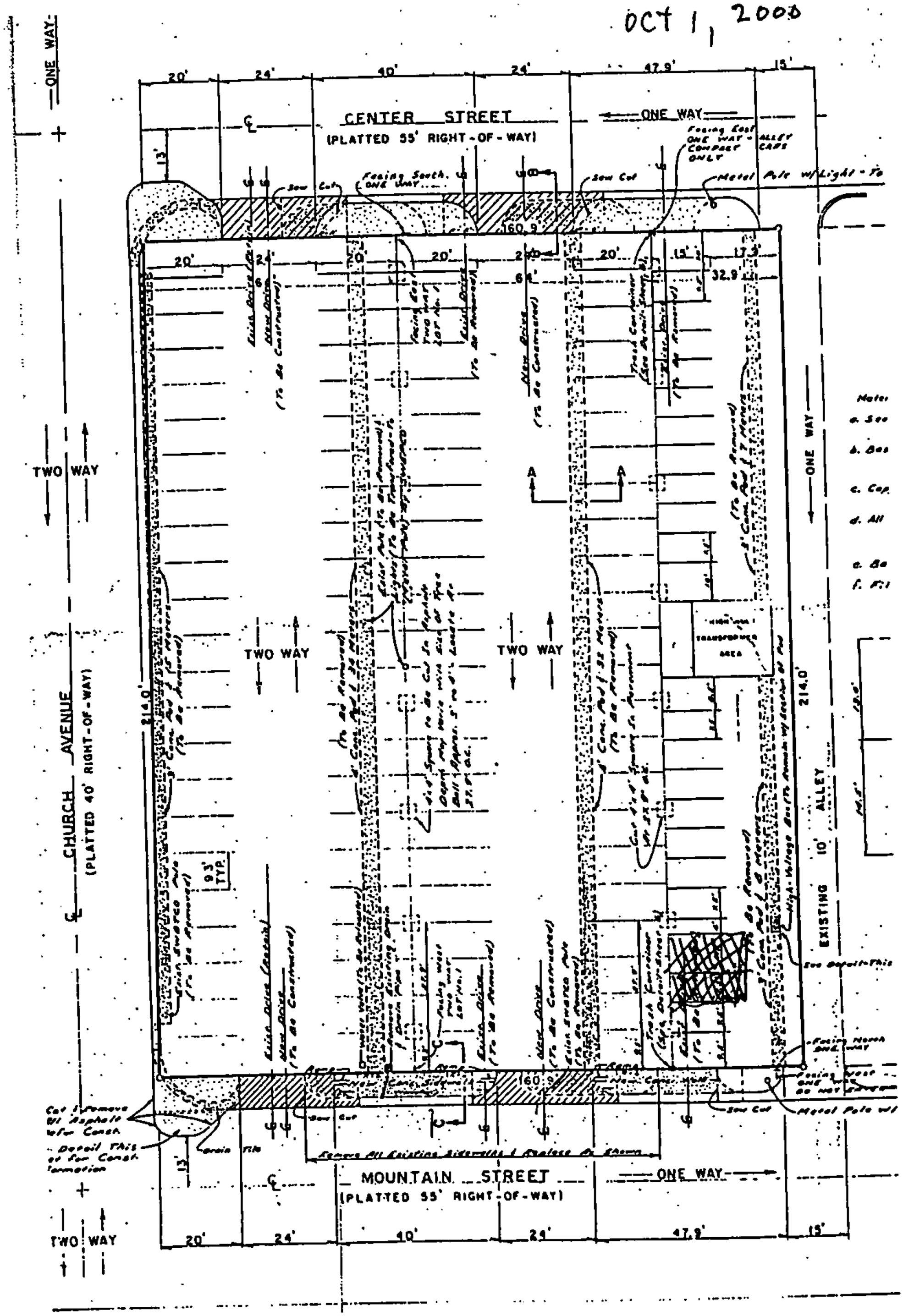
Title:_____

ATTEST:

By:_____

Title:_____

EXHIBI
CAMPBELL-BELL LLC
LEASE DATED
OCT 1, 2000



STAFF REVIEW FORM

X AGENDA REQUEST
____ CONTRACT REVIEW
____ GRANT REVIEW

r the Fayetteville City Council meeting of September 5, 2000

FROM:

John Maguire		Administration
Name	Division	Department

ACTION REQUIRED: To approve a one year lease for (1) parking space for Mr. & Mrs. Ted Belden, Unit D, Campbell-Bell Building, Horizontal Property Regime, 201 South Block, Fayetteville, AR 72701

COST TO CITY:

2001 450 - REVENUE
2000 -150 - REVENUE

Cost of this Request	Category/Project Budget: 171,200 (REVENUE)	Category/Project Name
Account Number	Funds Used To Date (RECEIVED): 151,072	Program Name
Project Number	Remaining Balance: 20,128	Fund

BUDGET REVIEW: ____ Budgeted Item ___ Budget Adjustment Attached

Budget Coordinator

Administrative Services Director

NTRACT/GRANT/LEASE REVIEW: **GRANTING AGENCY:**

Accounting Manager	Date	ADA Coordinator	Date
City Attorney	Date	Internal Auditor	Date
Purchasing Officer	Date: 8-28-00	Grant Officer	Date

STAFF RECOMMENDATION:

Division Head	Date	Cross Reference
Department Director	Date: 8/21/00	New Item: **Yes** **No**
Admin. Svcs Director	Date: 8/24/00	Prev Ord/Res #:
Mayor	Date	Orig Contract Date:

LEASE

This Agreement, made and entered into this 1st day of October, 2000, by and between the City of Fayetteville, Arkansas, a Municipal Corporation, 113 W. Mountain, Fayetteville, Arkansas, hereinafter called "Lessor", and Mr. and Mrs. Ted Belden, 201 S. Block St., Fayetteville, AR 72701, hereinafter called "Lessee", Witnesseth:

1. Leased Premises. For and in consideration of the rents, covenants and agreements herein entered into and agreed upon by the Lessee as obligations to the Lessor, the Lessor lets, leases and demises unto Lessee, subject to the terms and conditions contained herein, the following described property situated in Washington County, Arkansas:

> One , (1) parking spaces, as set forth on Exhibit "A" attached hereto, located in the Fayetteville Municipal Parking Lot, west of the Campbell Bell Building between Mountain, Church, and Center Streets, a/k/a 160 West Mountain Street, Fayetteville, Arkansas.

To have and to hold said premises unto the said Lessee for and during the term herein stated, subject to the covenants, terms, conditions and liens herein contained.

2. Term. This lease shall commence on October 1, 2000, and shall extend for a term of 1 year, ending at midnight on September 30, 2001. The Lessee shall have the option to renew this lease for 4 additional 1 year terms. The option may be exercised by providing written notice to Lessor at least 30 days prior to expiration of this lease.

3. Rent. Lessee agrees to pay to Lessor as rental for the first year of this lease the sum of $50 per space per month. Thereafter, the rent shall be adjusted each year at the lease anniversary date to an amount charged for comparable lease spaces in this lot. If no comparables exist, rates will be the same as the Town Center parking deck rates. Each monthly payment is due in advance and payable on or before the fifteen of each month. A late fee shall be imposed, at the highest rate allowable by law, on all payments which are not received by Lessor within 5 business days from the due date.

4. Use. Lessee agrees to use the lease premises only for the purpose of vehicle parking for use of Mr. and Mrs. Belden. However, it is understood that the City will not provide enforcement for restrictive parking spaces identified in this lease.

5. Lessee Improvements. Lessee may make the following improvements: Install private parking notices on meter poles. Design for all improvements shall be approved by the City. Any such improvement shall be solely at the Lessee's expense. Upon termination or expiration of this lease, such improvements shall be considered affixed to the premises and shall remain unless Lessor requires removal.

6. Assignment. Lessee shall not assign this lease or sublet the leased premises without prior written consent of the Lessor. Consent for any assignment or subletting shall only be considered at the same rates as established in Paragraph 3. above. Any such assignment or subletting shall in no way relieve Lessee from liability for the obligation imposed by this lease. Lessee may only be released from liability by a specific written release executed by Lessor.

7. Holdover. Lessee hereby agrees that upon the termination of this lease by expiration or by earlier termination for any reason whatsoever, Lessee will peaceably deliver possession of the leased premises to Lessor. In the event Lessee shall be permitted by Lessor to hold over after the expiration or termination of this lease, said holding over , in the absence of any written agreement to the contrary, shall be construed as a tenancy from calendar month to calendar month at a monthly rental equal to the rental for the last month paid under this lease, or as may be amended on the anniversary of the term set forth in Paragraph 2. above. A month-to-month tenancy arising by Lessee's holding over under this paragraph may be terminated by written notice from either party to the other party on or before the day on which any monthly rent is due with termination not becoming effective until the day on which the next following monthly rental would have otherwise become due. In the event it should become necessary for Lessor to institute any action at law to recover possession at the time of termination, whenever and however termination may occur, Lessee agrees that it will pay all costs and expenses of such action, including reasonable attorneys' fees.

8 . Termination. Lessor hereby reserves the right to terminate this Lease at anytime during the term of this Lease if it is determined by the Fayetteville City Council that the leased premises is needed for a valid public purpose. If Lessor terminates the lease prior to expiration of the term in Paragraph 2. , Lessor shall compensate Lessee on a prorated basis of the actual cost to make improvements to the premises.

9. Compliance with Laws. Lessee agrees not to violate any law, ordinance, rule or regulation of any governmental authority having jurisdiction of the leased premises.

10. Non-Waiver. It is agreed that the failure of Lessor to invoke any of the available remedies under this lease or under law in the event of one or more breaches or defaults by Lessee under the lease shall not be construed as a waiver of such provisions and conditions and shall not prevent Lessor from invoking such remedies in the event of any future breach or default.

11. Insurance. Lessee shall be solely responsible for maintaining insurance on any improvements made to the leased premises, as well as for general public liability insurance.

12. Succession. This lease agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors and assigns.

13. Severability. Each paragraph of this lease agreement is severable from all other paragraphs. In the event any court of competent jurisdiction determines that any paragraph or subparagraph is invalid or unenforceable for any reason, all remaining paragraphs and subparagraphs will remain in full force and effect.

14. Interpretation. This lease agreement shall be interpreted according to and enforced under the laws of the State of Arkansas.

15. Entire Agreement. This lease agreement contains the entire agreement of both parties hereto, and no other oral or written agreement shall be binding on the parties hereto. This lease agreement supersedes all prior agreements, contracts and understandings of any kind between the parties relating to the subject matter hereof. This agreement may be executed in all or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals on this ____ day of _____, _____.

LESSOR
City of Fayetteville, Arkansas

By:_____
Fred Hanna, Mayor

ATTEST:

By:_____
Heather Woodruff, City Clerk

LESSEE

_____

By:_____

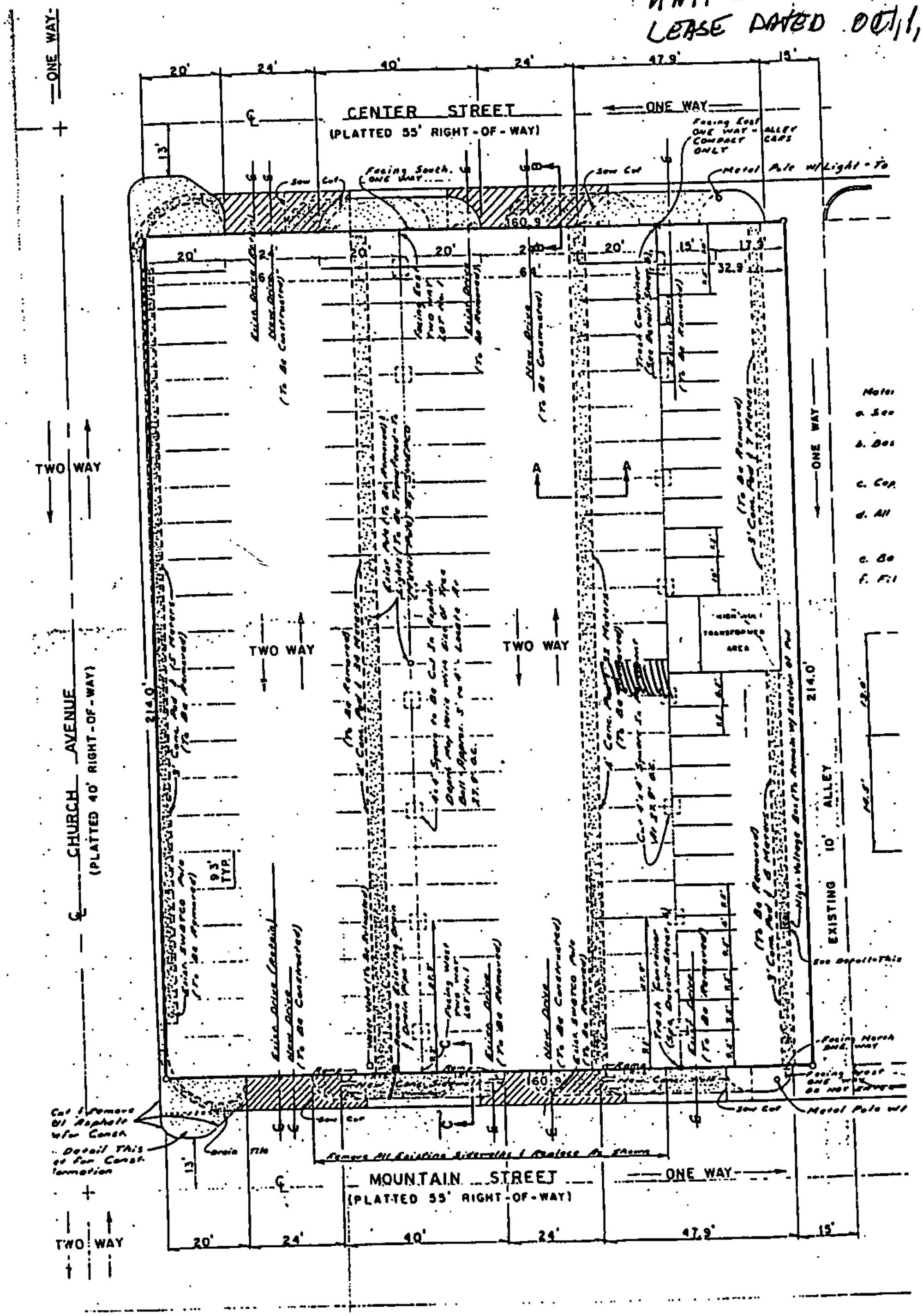
Title:_____

ATTEST:

By:_____

Title:_____

EXHIBIT
MR AND MRS
TED BELDEN
UNIT "D"
LEASE DATED OCT 1, 2000



STAFF REVIEW FORM

X AGENDA REQUEST
____ CONTRACT REVIEW
____ GRANT REVIEW

r the Fayetteville City Council meeting of September 5, 2000

FROM:

John Maguire		Administration
Name	Division	Department

ACTION REQUIRED: To approve a one year lease for 2 parking spaces for Gail and Jerry Moore, Unit C, Campbell-Bell Building, Horizontal Property Regime, 201 South Block, Fayetteville, AR 72701

COST TO CITY:

2001 900 - Revenue 2000 300 - Revenue	171,200 (Revenue)	
Cost of this Request	Category/Project Budget	Category/Project Name
	151,072	
Account Number	Funds Used To Date (Received)	Program Name
	20,128	Off Street Parking
Project Number	Remaining Balance	Fund

BUDGET REVIEW: ____ Budgeted Item ___ Budget Adjustment Attached

Budget Coordinator — Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW: **GRANTING AGENCY:**_____

Accounting Manager	Date	ADA Coordinator	Date
City Attorney	Date	Internal Auditor	Date
Purchasing Officer	8-28-00 Date	Grant Officer	Date

STAFF RECOMMENDATION:

Division Head	Date	Cross Reference
Department Director	Date 8/21/00	New Item: **Yes** **No**
Admin. Svcs Director	Date 8/24/00	Prev Ord/Res #:
Mayor	Date	Orig Contract Date:

LEASE

This Agreement, made and entered into this 1st day of October, 2000, by and between the City of Fayetteville, Arkansas, a Municipal Corporation, 113 W. Mountain, Fayetteville, Arkansas, hereinafter called "Lessor", and Gail and Jerry Moore, 201 South Block, Fayetteville, AR 72701, hereinafter called "Lessee", Witnesseth:

1. Leased Premises. For and in consideration of the rents, covenants and agreements herein entered into and agreed upon by the Lessee as obligations to the Lessor, the Lessor lets, leases and demises unto Lessee, subject to the terms and conditions contained herein, the following described property situated in Washington County, Arkansas:

> Two, (2) parking spaces, as set forth on Exhibit "A" attached hereto, located in the Fayetteville Municipal Parking Lot, west of the Campbell Bell Building between Mountain, Church, and Center Streets, a/k/a 160 West Mountain Street, Fayetteville, Arkansas.

To have and to hold said premises unto the said Lessee for and during the term herein stated, subject to the covenants, terms, conditions and liens herein contained.

2. Term. This lease shall commence on October 1, 2000 and shall extend for a term of 1 year, ending at midnight on September 30, 2001. The Lessee shall have the option to renew this lease for 4 additional 1 year terms. The option may be exercised by providing written notice to Lessor at least 30 days prior to expiration of this lease.

3. Rent. Lessee agrees to pay to Lessor as rental for the first year of this lease the sum of $50 per space per month. Thereafter, the rent shall be adjusted each year at the lease anniversary date to an amount charged for comparable lease spaces in this lot. If no comparables exist, rates will be the same as the Town Center parking deck rates. Each monthly payment is due in advance and payable on or before the fifteen of each month. A late fee shall be imposed, at the highest rate allowable by law, on all payments which are not received by Lessor within 5 business days from the due date.

4. Use. Lessee agrees to use the lease premises only for the purpose of vehicle parking for use of Gail and Jerry Moore. However, it is understood that the City will not provide enforcement for restrictive parking spaces identified in this lease.

5. Lessee Improvements. Lessee may make the following improvements: Install private parking notices on meter poles. Design for all improvements shall be approved by the City. Any such improvement shall be solely at the Lessee's expense. Upon termination or expiration of this lease, such improvements shall be considered affixed to the premises and shall remain unless Lessor requires removal.

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8 . Termination. Lessor hereby reserves the right to terminate this Lease at anytime during the term of this Lease if it is determined by the Fayetteville City Council that the leased premises is needed for a valid public purpose. If Lessor terminates the lease prior to expiration of the term in Paragraph 2. , Lessor shall compensate Lessee on a prorated basis of the actual cost to make improvements to the premises.

9. Compliance with Laws. Lessee agrees not to violate any law, ordinance, rule or regulation of any governmental authority having jurisdiction of the leased premises.

10. Non-Waiver. It is agreed that the failure of Lessor to invoke any of the available remedies under this lease or under law in the event of one or more breaches or defaults by Lessee under the lease shall not be construed as a waiver of such provisions and conditions and shall not prevent Lessor from invoking such remedies in the event of any future breach or default.

11. Insurance. Lessee shall be solely responsible for maintaining insurance on any improvements made to the leased premises, as well as for general public liability insurance.

12. Succession. This lease agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors and assigns.

13. Severability. Each paragraph of this lease agreement is severable from all other paragraphs. In the event any court of competent jurisdiction determines that any paragraph or subparagraph is invalid or unenforceable for any reason, all remaining paragraphs and subparagraphs will remain in full force and effect.

14. Interpretation. This lease agreement shall be interpreted according to and enforced under the laws of the State of Arkansas.

15. Entire Agreement. This lease agreement contains the entire agreement of both parties hereto, and no other oral or written agreement shall be binding on the parties hereto. This lease agreement supersedes all prior agreements, contracts and understandings of any kind between the parties relating to the subject matter hereof. This agreement may be executed in all or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals on this ____ day of _____, _____.

LESSOR
City of Fayetteville, Arkansas

By:_____
Fred Hanna, Mayor

ATTEST:

By:_____
Heather Woodruff, City Clerk

LESSEE

_____

By:_____

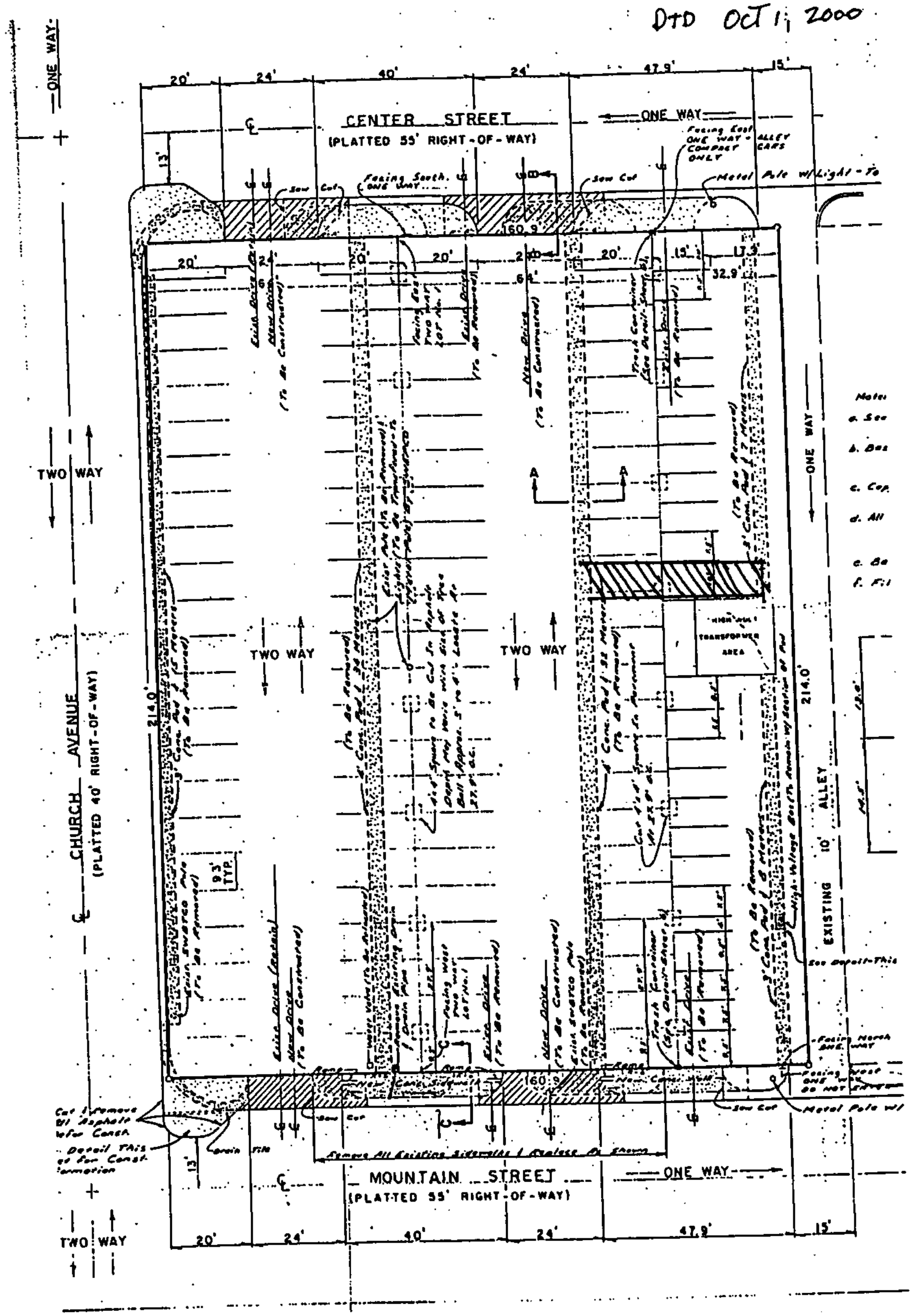
Title:_____

ATTEST:

By:_____

Title:_____

EXHIBIT
GAIL AND JERRY MOORE
UNIT "C" LEASE
DTD OCT 1, 2000



STAFF REVIEW FORM

X AGENDA REQUEST
____ CONTRACT REVIEW
____ GRANT REVIEW

[redacted] the Fayetteville City Council meeting of **September 19, 2000**

FROM:

Tim Conklin Name | **Planning** Division | **Public Works** Department

ACTION REQUIRED: To approve an ordinance for VA 00-7, submitted by John Phillips for property located at 25 East Rock Street, Lot 2, Block 42 in the City of Fayetteville. The property is zoned C-4, Downtown Commercial and contains approximately 0.37 acres. The request is to vacate only that portion of a 10' wide alley located west of Lot 2, Block 42, Original Town Plat.

COST TO CITY:

$0.00

Cost of this Request | Category/Project Budget | Category/Project Name

Account Number | Funds Used To Date | Program Name

Project Number | Remaining Balance | Fund

BUDGET REVIEW: ____ Budgeted Item ____ Budget Adjustment Attached

[redacted]et Manager | Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW: **GRANTING AGENCY:**

Accounting Manager | Date | Internal Auditor | Date

City Attorney | 9-5-00 Date | ADA Coordinator | Date

Purchasing Officer | Date

STAFF RECOMMENDATION: Staff recommended approval and Planning Commission unanimously voted 8-0-0 to recommend approval and forward the vacation to the City Council. This item was heard as a part of the consent agenda on August 28, 2000.

Division Head | 9-5-00 Date

Department Director | 9-6-00 Date

Administrative Services Director | 9/6/00 Date

M[redacted] | 9/6/00 Date

Cross Reference

New Item: **Yes**

Prev Ord/Res #:_____

Orig Contract Date:_____

Orig Contract Number:_____

ORDINANCE NO. _____

AN ORDINANCE APPROVING VA00-7.00 TO VACATE AND ABANDON A 10' PORTION OF CITY RIGHT-OF-WAY LOCATED WEST OF LOT 2, BLOCK 42, ORIGINAL TOWN PLAT IN THE CITY OF FAYETTEVILLE, AS SUBMITTED BY JOHN PHILLIPS.

WHEREAS, the City Council has the authority under A.C.A. §14-54-104 to vacate public grounds or portions thereof which are not required for corporate purposes, and

WHEREAS, the City Council has determined that the following described right-of-way is not required for corporate purposes.

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

Section 1. That the City of Fayetteville, Arkansas hereby vacates and abandons all of its rights together with the rights of the public generally, in and to the following described right-of-way:

See Exhibit "A" attached hereto and made a part hereof.

Section 2. That a copy of this Ordinance duly certified by the City Clerk shall be filed in the office of the Recorder of the County and recorded in the Deed Records of the County.

PASSED AND APPROVED this _____ day of _____, 2000.

APPROVED:

By_____
Fred Hanna, Mayor

ATTEST:

By_____
Heather Woodruff, City Clerk

EXHIBIT "A"

LEGAL DESCRIPTION FOR VA 00-7

Platted alley being a 10-foot strip of land located west of Lot 2, Block 42 in the City of Fayetteville, Washington County, Arkansas, Original Town of Fayetteville, more particularly described as follows:

Beginning at the southwest corner of said Lot 2 and running thence west 10 feet; thence north 162 feet; thence east 10 feet; thence south 162 feet to the point of beginning.

PETITION TO VACATE AN ALLEY

LOCATION: Adjacent to and West of 25 East Rock, a/k/a the Phillips Law Firm Building

TO: Fayetteville City and Planning Commission
Fayetteville City Counsel

We, the undersigned, being all of the owners of the real estate abutting the alley hereinafter sought to be abandoned and vacated, lying in Block 42 of the Original Town of Fayetteville, a municipal corporation, petition to vacate the alley which is described below:

> Platted alley being a 10-foot strip of land located west of Lot 2, Block 42 in the City of Fayetteville, Washington County, Arkansas, Original Town of Fayetteville, more particularly described as follows: Beginning at the Southwest corner of said Lot 2 and running thence West 10 feet; thence North 162 feet; thence East 10 feet; thence South 162 feet to the point of beginning.

The abutting real estate affected by said abandonment of the alley is:

> Part of Lot 2, Block 42 in the City of Fayetteville, Washington County, Arkansas (Original Town of Fayetteville) more particularly described as beginning at the SW corner of said Lot 2 and running thence North 162'; Thence East 36'; thence South 162'; thence West 36' to pob. (25 E. Rock).

> Part of Lots 3, 4 and 5 in Block 42 as shown in the original plat of the Original Town of Fayetteville, Arkansas being more particularly described as follows, to-wit: 41 ¼ feet of equal and uniform width off of the East end of said lots. (Henry Eye Clinic Parking Lot)

This alley has not been used by the City of Fayetteville for many years, if ever, and that the public interest and welfare would not be adversely affected by the abandonment of the portion of the above described alley.

The petitioners pray that the City of Fayetteville, Arkansas, abandon and vacate the above-described real estate subject, however, to the existing utility easements and sewer easements as required, and that the above-described real estate be used for their respective benefit and purpose as now approved by law.

The petitioners further pray that the above-described real estate be vested in John Randall Phillips and Donna Phillips, husband and wife.

WHEREFORE, the undersigned petitioners respectfully pray that the governing body of the City of Fayetteville, Arkansas, abandon and vacate the above-described alley, subject to said utility and sewer easements, and that title to said real estate sought to be abandoned be vested in the petitioners as provided by law, and as to that particular land, the owners be free from the easements of the public for the use of said alley.

Dated: 7 - 3, 2000.

John Randall Phillips

Donna Phillips

Consent Agenda:
Approval of minutes from the August 14, 2000 meeting.

VA 00-7.00: Vacation (Phillips, pp 523) was submitted by John Phillips for property located west of lot 2 block 42 in the City of Fayetteville. The property is zoned C-4, Downtown Commercial and contains approximately 0.37 acres.

Odom: Good evening ladies and gentlemen. Welcome to the August 28, 2000 meeting of the Planning Commission. The first items we are going to cover tonight are the approval of the minutes of the August 14, 2000 meeting and then our Consent Agenda. Items that are on the Consent Agenda will be approved without discussion and we can pull an item off the Consent Agenda should a member of the audience or a member of the Planning Commission wishes to discuss those before voting on them. The only item we have on the Consent Agenda is Vacation 00-7.00 which was submitted by John Phillips for property located west of lot 2 block 42 in the City of Fayetteville. The property is zoned C-4, Downtown Commercial and contains approximately 0.37 acres and the request is to vacate a platted alley. That item will be approved unless any member of the audience or Planning Commission wishes to pull that for discussion.

PUBLIC COMMENT

Odom: Does anyone from the audience wish to pull that for discussion?

COMMISSION DISCUSSION

Odom: Does any member of the Planning Commission wish to pull that for discussion? Would you call the roll on the Consent Agenda?

ROLL CALL:

Upon roll call Consent Agenda passes on a vote of 8-0-0.

PC Meeting of 28 Aug 00

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS
113 W. Mountain St.

Fayetteville, AR 72701

Alley vacation
Randall & Donna Phillips

TO: Fayetteville Planning Commission Members
THRU: Tim Conklin, City Planner
FROM: Ron Petrie, Staff Engineer
DATE: August 24, 2000

Project: **VA 00-07**: Alley vacation as requested by Randall & Donna Phillips for property located at 25 East Rock Street, Lot 2, Block 42, Original Town Plat of Fayetteville. The adjacent properties are zoned R-O, Residential Office. The request is to vacate only that portion of a 10' wide alley located west of Lot 2, Block 42, Original Town Plat. Please refer to the attached drawings.

The applicant has submitted the required notification forms to the utility companies and to the City. The results are as follows:

Ozarks Electric - Not applicable.
Southwestern Electric Power Company - No objections.
Arkansas Western Gas - No objections.
SW Bell - No objections.
Cox Communications - No objections.

City of Fayetteville:
Water/Sewer - No objections.
Street Department - No objections.
Solid Waste - No objections.

The applicant has also submitted the required notification forms to the one adjacent property owner. The adjacent property owner is in support of the alley vacation "as long as an equitable distribution of the strip goes to our portion...."

Staff contacted the applicant and informed them that state law provided that upon a vacation of public land each abutting owner shall receive the vacated property to the center line of the street or alley abandoned. The applicant has agreed to splitting the vacated property with the adjacent property owner.

Recommendation: Approval of alley vacation.

PLANNING COMMISSION ACTION: __yes__**Required**
_____**Approved** _____**Denied**

Date: ___/___/___

Comments:

_____
_____
_____
_____

CITY COUNCIL ACTION: ___yes___**Required**
_____**Approved** _____**Denied**

Date: ___/___/___

PHILLIPS LAW FIRM

DONNA PHILLIPS
Licensed in Arkansas, Missouri & Oklahoma
CANDY R. BURTON
Licensed in Arkansas & Florida

25 EAST ROCK
POST OFFICE BOX 4444
FAYETTEVILLE, AR 72702

Phone: (501) 571-1000
Fax: (501) 527-6568
Email: phillipslaw@lynks.com

July 3, 2000

ATTN: PLANNING COMMISSION
CITY ADMINISTRATION BUILDING
Fayetteville, AR 72701

RE: Vacation of alley on Rock Street

Dear Commission Members:

J. Randall Phillips and I own the building on 25 East Rock known as the Phillips Law Firm Building. The building currently houses a law firm and a rental apartment to the rear. We are petitioning the City to abandon the alley easement located immediately west of this building.

We need to replace our present 50-year old sewer line before it collapses. We have no other place to install a new sewer line except for cutting our paved parking lot in the front of the building.

Additionally, there is a large elm tree with branches overhanging the building. The tree is full of mistletoe and it is only a matter of foreseeable time before the tree will have to be removed.

Because the alley easement to be vacated is only 10 foot wide, we request consideration that the entire easement be granted to us for the following reasons: (1) the construction of a new sewer line; (2) we are already maintaining the property; and (3) it puts the elm tree within our control for damage control and removal; and (4) granting our request does not interfere with the Henry Eye Clinic use of their property.

Thank you all for your consideration in this matter.

Very truly yours,

J. Randall Phillips

Donna Phillips

DP/ss

May 15, 2000

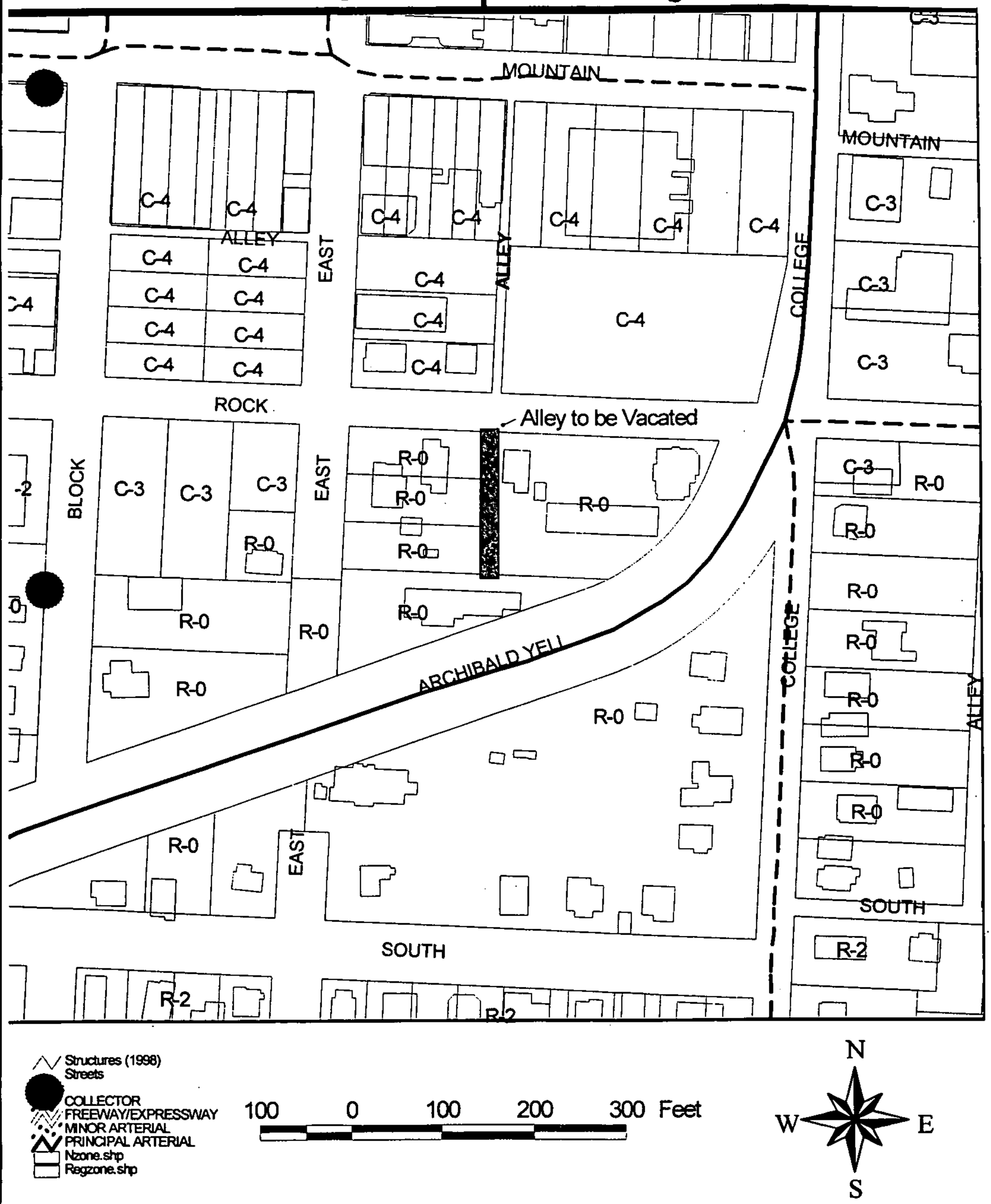
To: Planning Commission

From: Morriss and Ann Henry
Property owners of 204 S. East and Lot 1 of block 42, original town of Fayetteville

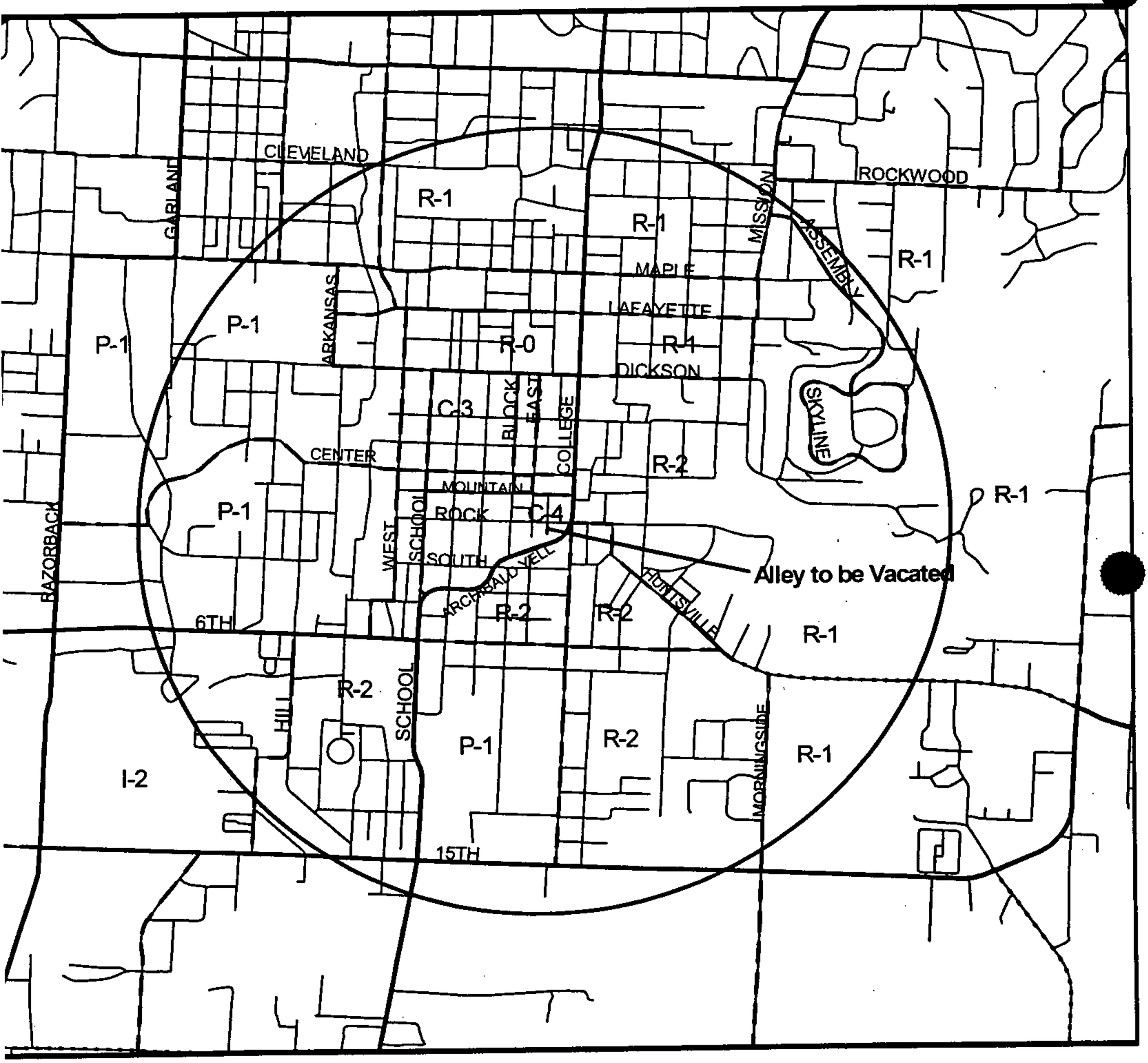
We do **not** object to the closing of the alley **as long as an equitable distribution** of the strip **goes to our portion of what appears to be labeled 02135.** 87

The owner notified us of the closing. In talking with her at the location of the property, she stated it was their intent to ask for the entire alley. We do object to their taking the entire portion.

VA00-7 Phillips - Close U



VA00-7 - Phillips - One Mile Radius



RegZone
Streets
Class
COLLECTOR
FREEWAY/EXPRESSWAY
MINOR ARTERIAL
PRINCIPAL ARTERIAL

0.3 0 0.3 0.6 Miles

N
W E
S

VA 00-7
Phillip's

Platted alley being a 10-foot strip of land located west of Lot 2, Block 42 in the City of Fayetteville, Washington County, Arkansas, Original Town of Fayetteville, more particularly described as follows: Beginning at the Southwest corner of said Lot 2 and running thence West 10 feet; thence North 162 feet; thence East 10 feet; thence South 162 feet to the point of beginning.

OK

DESCRIPTION OF PROPERTY TO BE VACATED

pp 523

In legal check

STAFF REVIEW FORM

X AGENDA REQUEST
____ CONTRACT REVIEW
____ GRANT REVIEW

the Fayetteville City Council meeting of **September 19, 2000**

FROM:

Tim Conklin Name | **Planning** Division | **Public Works** Department

ACTION REQUIRED: To approve an ordinance for RZ 00-21.00, submitted by Read Hudson on behalf of Tyson for property located at the southeast corner of Highway 16 and Happy Hollow Road. The property is zoned C ^ Thoroughfare Commercial and C-1, Neighborhood Commercial and contains approximately 11.50 acres. The requ is to rezone to I-2, General Industrial.

COST TO CITY:

$0.00

Cost of this Request | Category/Project Budget | Category/Project Name

Account Number | Funds Used To Date | Program Name

Project Number | Remaining Balance | Fund

BUDGET REVIEW: ____ Budgeted Item ____ Budget Adjustment Attached

Budget Manager | Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW: **GRANTING AGENCY:**

Accounting Manager | Date | Internal Auditor | Date

City Attorney | 9-5-00 Date | ADA Coordinator | Date

Purchasing Officer | Date

STAFF RECOMMENDATION: Staff recommended approval and on August 28, 2000, Planning Commission unanimously voted 8-0-0 to recommend approval and to forward the rezoning to the City Council.

Division Head | 9-5-00 Date

Department Director | 9-6-00 Date

Administrative Services Director | 9/6/00 Date

Mayor | 9/6/00 Date

Cross Reference

New Item: **Yes**

Prev Ord/Res #:

Orig Contract Date:

Orig Contract Number:

ORDINANCE NO. _____

AN ORDINANCE REZONING THAT PROPERTY DESCRIBED IN REZONING PETITION RZ00-21 FOR A PARCEL CONTAINING APPROXIMATELY 11.50 ACRES LOCATED AT THE SOUTHEAST CORNER OF HIGHWAY 16 AND HAPPY HOLLOW ROAD AS REQUESTED BY READ HUDSON ON BEHALF OF TYSON.

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

Section 1: That the zone classification of the following described property is hereby changed as follows:

From C-2, Thoroughfare Commercial and C-1, Neighborhood Commercial to I-2, General Industrial described in Exhibit "A" attached hereto and made a part hereof.

Section 2. That the official zoning map of the City of Fayetteville, Arkansas, is hereby amended to reflect the zoning change provided in Section 1 above.

PASSED AND APPROVED this _____ day of _____, 2000.

APPROVED:

By_____
Fred Hanna, Mayor

ATTEST:

By_____
Heather Woodruff, City Clerk

EXHIBIT "A"
City of Fayetteville, RZ00-21

A part of the Northeast Quarter (NE¼) of the Northwest quarter (NW¼) of Section Twenty Three (23), Township Sixteen (16) North, Range Thirty (30) West of the 5th P.M., Washington County, Arkansas, more particularly described as follow, To-Wit:

Beginning at a point on the East right-of-way of Highway 16 Bypass, which is 10.00 feet East and N00°25'00"E 200.00 feet from the Southwest corner of said 40 acre tract, thence N00°25'00"E along said right-of-way 738.0 feet to the South right-of-way of Huntsville Street, thence with said right-of-way N69°30'00"E 114.0 feet, S67°54'59"E 87.83 feet, S70°00'00"E 233.00 feet, S75°31'47"E 244.56 feet to the West right-of-way of Ray Street, thence with said West right-of-way S01°42'54"W 294.69 feet, S01°00'10"E 330.27 feet, thence leaving said right-of-way West 150.0 feet, thence South 179.30 feet to the South line of said 40 acre tract, thence West 257.70 feet, thence N00°25'00"E 200 feet, thence West 240.0 feet to the point of beginning. Containing 11.49 acres, more or less.

RZ 00-21.00: Rezoning (Tyson, pp 565) was submitted by Read Hudson on behalf of Tyson for property located at the southeast corner of Hwy 16 and Happy Hollow Road. The property is zoned C-2, Thoroughfare Commercial and contains approximately 11.50 acres. The request is to rezone to I-2, General Industrial.

Odom: Item number three on tonight's agenda is a rezoning request RZ 00-21.00 submitted by Read Hudson on behalf of Tyson for property located at the southeast corner of Hwy 16 and Happy Hollow Road. The property is zoned C-2, Thoroughfare Commercial and contains approximately 11.50 acres. The request is to rezone to I-2, General Industrial. Staff's recommendation is for approval of the request for rezoning based upon the findings as included as a part of this report. Staff do we have anything that you want to talk about with regard to background of this?

Conklin: With regard to this rezoning, this is a Mexican Original Tyson facility located at Happy Hollow and Huntsville Road. I did hand out a memo from the City of Fayetteville which was a memo to the file regarding how this Mexican Original operation was classified. Back in 1980 they classified it under Use Unit 15 which was a Bakery. They had a similar request with regard to Shipley's Bakery down on Dickson Street and actually had an appeal to the Planning Commission on an interpretation issue in 1976. They classified that under Use Unit 13. Today we have a facility that has requested a building permit through the Planning Division office. Tyson was aware that any expansion of this facility under C-2, would be non-conforming and that rezoning would need to be applied for. They have applied for the rezoning. It's classified under Use Unit 23 which is Heavy Industrial, Food and Allied Products. I just want to give you a little history on why we are rezoning this today. It's to make sure that we do have a Food and Allied Manufacturing use in the right Zoning District and Use Unit. The City has issued building permits over the years. The City Council actually passed an ordinance issuing act nine revenue industrial bonds on this facility. The City Planning Commission through Large Scale Developments, building permits and City Council action the City was aware what Mexican Original was doing at this location. Today I do believe that they do need to be under Use Unit 23.

Odom: Thank you staff. I would ask Mr. Hudson to please come forward at this time.

Hudson: My name is Read Hudson and I'm with Tyson Foods. I have with me today Darrell Proud. He is the Plant Manager of the facility we have been talking about. I think our application pretty well speaks for itself. We are here to answer any questions you may have with respect to the facility. What we do. What we are planning on doing and so forth.

Odom: Go ahead Commissioner Ward

Ward: This is more for Tim. Have we had any complaints about noise or smell and that kind of stuff from this particular facility?

Conklin: I haven't directly received any complaints with regard to noise or odor. Going through the files for the last twenty-five years, I am aware of a complaint with regard to odor and a complaint about noise. Just two. That's all I could find.

Ward: Okay. Thank you.

Hoffman: I have a question for Tim. Did we get a report from Mickey Jackson about the setback on the proposed flour silos?

Conklin: With regard to Mickey Jackson, he is at a conference. I was not able to get with him. I did speak with Dennis Ledbetter, the Fire Marshal for the City of Fayetteville. He gave me a copy of the State Fire Code which I have delivered to Tyson Foods with regard to minimum State standards, controlling dust in a facility that's working with flour. I believe Tyson has worked with Mickey Jackson in the past and they may have more information with regard to that facility.

Hoffman: My main concern, just to relay to you the applicant, is that you have enough setback from the silos to any residential property. I'm not sure what it is but that you would have enough room. On fifteen acres surely that would not be an issue.

Hudson: Right now we have four silos located on the west end of the property. The new silos that are going to go up to accommodate the tenant that's going to lease part of our property are basically going to go right next to those. I know that doesn't really answer your question.

Hoffman: But you are aware of the fire code and will follow it?

Hudson: Yes. Without a doubt. I knew you would raise the issue and I brought it up with Darrell and he informed me that they have worked extensively with Mickey on a variety of things. It's a partnering type thing that they worked together on hazmat training. I think we have a good enough relationship and a pretty good idea as to what we are supposed to be doing.

Hoffman: Thank you very much.

Bunch: Question for staff. Are the complaints that were filed previously there was one for noise and one for odor. When were those filed and what action, if any, was taken?

Conklin: Let me try to find that information. With regard to the noise, I just heard about that, talking with Tyson, that they have received one on noise. With regard to odor it was fifteen to twenty years ago. I don't have an exact page marked on that. It was back during the time they were discussing the large scale development. I believe it was probably around early 1980's, 1982 or 1983.

PUBLIC COMMENT

Odom: I sort of jumped off my normal track. Let me ask if there is any member of the audience that could address us on this issue?

Erf: Hi. My name is Jeff Erf, 2711 Woodcliff Road. Some questions. I seem to recall a newspaper article about the odors emanating from this plant a few years ago. I know I regularly drop my child off and pick him up at Happy Hollow School. I often smell something I describe as tortillas or something corn, some sort of corn flour. I don't know if there are any residents from that area here tonight but as I recall the article included some interviews with some of those people and they were quite upset about the odor situation out there. I haven't smelled any this year, since Happy Hollow started but I don't know if they have done something to mitigate the odor problem. I don't know if they want to admit there is an odor problem. As far as making complaints about odor and noise, is it normal procedure to go through the Planning office or is it possible they could have complained to the Mayor's office and Tim you wouldn't know about it?

Conklin: With regard to noise, typically that goes to the Police Department.

Erf: Okay. So what about odor?

Conklin: It varies. Sometimes people choose to call the Mayor, City Attorney, City Prosecutor...

Erf: It is entirely possible that people have complained about it other than previously, you just don't have anything on record in your office?

Conklin: Yes. When they asked if I had any complaints to my office, I answered that I only found one in writing back in 1983.

Erf: Okay. My concern here is that we have a situation that could be Bakery Feeds all over again. I have looked at the Tyson close-up here on the back of the packet you received and I see R-1 and C-1, C-2 surrounding this and what will eventually become, if you approve it and City Council approves it, I-2. It's going to be an island out there. You have to understand a lot of that residential development is down wind from that site. I don't live in that area but I drive through that area and I can smell Hanna's Potpourri from there and I can sometimes smell Mexican Original. I just caution you to go slow on this and get all the facts. One thing that I am curious about I-2 designation, what would be some examples of things that potentially could go in there. Could they put in another, for example, Bakery Feeds?

Conklin: That would be an odor emitting business that would require a Conditional Use.

Erf: So, it's been concluded then that was an odor emitting business. Could you put in a Hanna's Potpourri there?

Odom: Jeff, what I recommend...

Erf: I am just trying to understand what I-2 designation is.

Odom: Let's not make this personal. It's already been established that if the business is an odor emitting business, it has to come in under a Conditional Use. There are some other things that can come in by right and Tim, what I would direct you to do in answering this question is to give him the types of industries that can come in by right without a Conditional Use under I-2.

Conklin: I can tell you as Planning Director for the City of Fayetteville on an Industrial Use, I investigate, go out, do site visits, try to get a good understanding to figure out where they fall under our zoning ordinance. If it's a facility that is not producing an odor and it's heavy industrial, manufacturing, warehousing, those type of uses are use by right in I-2. I can tell you it's on a case-by-case basis. I interview people. I call other cities. I try to define exactly what's happening. With regard to the additional four silos on this site, I did contact Tyson. I did ask if they needed an Air Permit. The response was "No." They responded that it didn't produce an odor. They are storing flour in four silos. With regard to what happened over the past twenty years, they relied on City building permits, large scale development approvals and act nine industrial bonds. Which during those meetings and in those minutes they talked about manufacturing at this facility. I really don't believe they are changing what they are doing at this site however, this year and I'm the Planning Director, I believe that it's under Use Unit 23 that

requires I-2, it requires Heavy Industrial zoning for this use.

Erf: My concern is that being rezoned to I-2 opens it up for new manufacturing expansion and by right they are allowed to do certain things that they are not allowed to do. Again, it's surrounded by C-2 and R-1 and I'll leave it at that. If I can address the Chair. I'm not sure what you meant by making this personal. I mentioned Bakery Feeds, I mentioned Hanna's Potpourri. I didn't say anyone by name. I'm not sure what you meant. Could you clarify that?

Odom: You mentioned Hanna's Potpourri by name and asked specifically if Hanna's Potpourri is an odor emitting business and that's not really what's before us tonight. That's what I meant by getting personal.

Erf: I was looking for examples of types of manufacturing that could go on.

Odom: I thought your question was a good and valid question because you asked what were the uses permitted but asking to give specific examples of specific types of industries that you name, I don't think is appropriate. There is a list of the uses permitted under I-2 and if you would like I could read those. Do you have a copy of that?

Erf: Yes. I have a copy of that. But I wasn't sure, for example, what it means by manufacturing. That's kind of open.

Conklin: Jeff, I look at those Use Units and once again, I go out there and I interview the people, I do tours of the facility. I have to classify them under a Use Unit. I classify them under Use Unit 23.

Erf: Tim, I'm not saying you are not doing your job. I'm just looking at...

Conklin: I'm explaining how. You are saying manufacturing. I'm trying to explain exactly what I do on a daily basis at the Planning Division. That's the method I use.

Erf: But you understand when I ask specifically of a manufacturing plant that I'm familiar with Hanna Potpourri, the Chair tells me that I'm being personal, I can't bring it up. I'm not opposing this. I'm not supporting it. I'm just saying go with caution. I'll leave it up to your judgment to decide whether or not this is good for Fayetteville. Thank you.

Odom: Would any other member of the audience like to address us?

COMMISSION DISCUSSION

Odom: Seeing none, I will close the floor to public discussion and bring it back to the applicant and Planning Commission.

Hoover: I have a question for staff and I think it's because that I haven't done many of these I-2's since I have been here. This qualifies under I-2 but then if it emits an odor it has to have a separate Conditional Use. Is that correct?

Conklin: That's correct. If it is classified as an odor emitting business they all require a Conditional Use in Use Unit 31.

Hoover: How is one classified as an odor emitting business?

Conklin: There is a list. I can go over that list of uses that the City Council passed a few years ago. Let me just find that really quick. Manufacturing uses: chemical and allied products, food and kindred products, animal fats and oils rendering, beverages distilling, meat slaughtering and packaging, paper and allied products, rubber and plastic products, processing and sales: explosives, wholesale and warehousing: livestock, stockyards, explosive materials, apparel products: leather tanning, chemical and allied products: any process likely to emit odor or have the potential for explosion, paper and allied products: building paper and board paper, petroleum and related industries: bulk station and terminal, rubber and miscellaneous plastic products: inner tubes and tires. I can read Unit 23 since the question has come up. Manufacturing uses: fabricated metal products, primary metal industries, textile mill products, processing and sales: auto salvage, junk yards, scrap metal, refuse, repair service: tire recapping, wrecking and demolition services, apparel products: industrial leather belting, clay products, food and allied products, which is what I am classifying this under, furniture and allied products, glass products, lumber and wood products: millware, plywood, prefabricated structure wood, veneer, wooden container, paper and allied products: paperboard containers, petroleum and related industries: coal yard, lubricating oils and greases, primary metal industry: foundry, stone products, and housing for caretakers. Those are the uses under Use Unit 23.

Hoover: Okay. Tim, now I'm really confused. We are in Use Unit 23 because we are Heavy Industrial but you are saying that this is an odor emitting business or it is not?

Conklin: I am classifying this business as a food and allied product. The business that they are applying for the building permit is for flour silos. I will read you what they

submitted.

Hoover: Wait one second. I thought this was a rezoning for the entire piece of property.

Conklin: It is for the entire piece of property which was established in 1983. With regard to does it emit an odor? I'm not sure if it does or doesn't I would want to do some more research on that.

Hoover: If I drive by and I smell an odor, does that count as emitting an odor? Or, does it have to go through some process?

Conklin: Unit 31, facilities which are heavy industrial in nature but which have a potential to have adverse effects such as odor or the potential for explosions. That's what I have to determine.

Odom: Let me ask, are they going to have to come back through this process? When they put their permit in to build, is that the time that you make the determination as to whether it's an odor emitting business or do you do that during the rezoning of it?

Conklin: I really didn't consider this blending flour and packaging it into fifty pound bags as an odor emitting business which is what they applied for.

Odom: You know what, first of all, I would like to apologize to Commissioner Hoover. I sort of jumped in there. Did you have any further questions?

Hoover: No. That's helping to clarify. I'm just trying to understand how this process is working.

Conklin: What I try to do is I talk to the industry, I talk to Arkansas Department of Environment Quality and I try to determine if it is. I physically go out there and I try to see what I can smell. I did that with regard to the last Tyson facility. I try my best to classify it. This is what they will be doing with regard to this building permit. "Silos will be loaded with white/wheat flour only. The process consists of white/wheat flour blended in a ribbon blender with some minor ingredients. No water is added to this blend. The blend is mixed for two to four minutes and is then bagged in fifty pound paper bags. The final product is palletized and loaded onto trailers to delivery to the customer. There are no odors emitted. This plant does not require an air permit." Kelly Pogue was called and she is sending a memo indicating this. I did get an email from Kelly Pogue stating that the Mexican Original East does not require a permit.

Hoffman: I just had a couple of brief questions for staff. We have an existing use in place already and that has an existing legal use. That's really a separate issue than our rezoning which is only being brought about because we have an additional building permit needed for some silos. Is that correct?

Conklin: Yes. Once again, there was an interpretation made back in 1980. When we talk about "What use unit does it fall?" I can tell you City staff, we try our best to make sure we are classifying these in the right use unit. At that time they classified it under Use Unit 15, a Bakery. It's been operating under Use Unit 15 as a Bakery all these years. I would not classify the Use today as a Bakery. I would classify it as a Food and Allied Product under Use Unit 23. That is why I requested and asked and required Tyson to come before the Commission and City Council. The decision is, based on my interpretation, there can be no more expansions at a facility that the City approved, in the past, building permits and large scale development plans and then an ordinance approving industrial revenue bonds. They relied on that information. I do believe that it should be zoned I-2 based on past City actions and their future building permit and plans at this facility.

Hoffman: Okay. With that in mind then, when they do apply for another building permit, is it a Large Scale Development?

Conklin: No. Large Scale Development is only required when you have an addition of 10,000 square feet or more, over twenty-five parking spaces being added or a new curb cut. It will just be a building permit.

Odom: Commissioner Allen?

Allen: I'm still having trouble understanding the odor issue. I don't know whether that is something that has already been determined and if so, who determined it? Can you explain that to me?

Conklin: Have I determined that this is an odor emitting facility that produces adverse effects? No. I have not determined that. I looked at what they proposed to add to the facility and what they apparently do out there. I classified it under Use Unit 23.

Allen: How do we get that resolved? How do we determine?

Conklin: I'll have to make a decision. It's not going to be tonight. They need I-2 zoning even if they need a Conditional Use. You can't apply for an odor emitting

business outside of I-2 so the rezoning is required. If I determine that Tyson Mexican Original produces odors that are adverse, what I'll do is I'll go out there and see what I can smell and talk to the Tyson officials and talk to A.D.E.Q. again. I'm the Planning Director. It's my job. I'll do it. It's not just black and white. Is it producing adverse odors out there?

Odom: I think Jeff makes a valid point that how do we stop the Bakery Feeds from happening again? This is something that's already there and something that I would like to know is if, let's just say this plant didn't exist and they are wanting to build this plant, is it when they come in when they ask for the rezoning? We don't ask at the rezoning "Is it an odor emitting business?" We ask at the Large Scale Development "Is it an odor emitting business?"

Conklin: This business with regard to mixing up flour and putting it into fifty pound bags is not Tyson. It's a separate company. That's what I'm looking at. We issue something called a Certificate of Zoning Compliance through our office. I'm looking at a Building Permit, the piece of ground that they are placing this Use in, where do you classify that? Where do you classify mixing of flour? To be honest with you, I didn't look at what Tyson Mexican Original has been doing the past twenty years or so. I'm looking at this Building Permit like I do on every Building Permit and does taking flour, putting minor ingredients in it, mixing it and putting it into paper sacks going to produce an odor? That's why I asked that question. I have the email here where I asked it and the answer was "No." I'm reasonably sure that flour mixing and putting it into a paper bag is not going to produce an odor. I'm just sharing this with you to show you what road I went down to come to the point where I did with regard to "How do I issue a building permit and where does that Use fall within our code?"

Odom: Tim, correct me if I'm wrong but we don't ask whether or not it's an odor emitting business when someone is coming forward with a rezoning request. We ask that at either the next stage which is the Large Scale Development stage or the Building Permit stage.

Conklin: I ask twenty to fifty questions every day when I have an Industrial Use and yes one of my questions is "I want to know up front, does it produce an odor?" I did ask them if mixing flour and putting it into fifty pound sacks produces an odor.

Odom: What I'm asking you is that's a separate request? What we are to be considering right now deals really with the rezoning itself.

Conklin: That's correct. If it doesn't get rezoned then if I had a Building Permit for a Use

that produced an odor they couldn't be located in that area.

Odom: Right. But it would be a Conditional Use request and they would have to come forward?

Conklin: Yes.

Odom: Okay.

Conklin: I do, when I take those Building Permits, look at where the Use is occurring and whether or not it's producing an odor.

Odom: But that's at the Building Permit?

Conklin: Yes. Mr. Hudson, we had conversations on the phone with regard to what they intended to lease part of this property and what kind of use it was and that's where these questions came from and this information.

Estes: Tim, if I understand correctly, what we have before us is a rezoning request only. That is to rezone from a non-conforming Use to a conforming Use. Is that correct?

Conklin: That's correct.

Estes: It was in your investigation that you made the determination that what was appropriate for this property was Use Unit 23 which is Food and Allied Products. Is that correct?

Conklin: That's correct.

Estes: The applicant brings this rezoning request to us at your request. Is that what I understand?

Conklin: That's correct.

MOTION

Estes: Mr. Chairman, with that said, I would move that we approve RZ00-21.00.

Hoffman: I will second that.

Odom: We have a motion and a second to recommend approval to rezoning RZ00-21.00. I will remind members of the audience that our decision is for recommendation only, that this goes on to the City Council. Any further discussion?

Hoffman: Mr. Chair?

Odom: Yes.

Hoffman: I just have a further comment to make on my reason for second. Not only is this just a rezoning to bring the property into conformity, there are some surrounding industrial zonings, but it's my belief that if there were valid odor complaints and had been a history of problems over the last twenty-five years, a. we would know about it by now, b. if the new silos in some way generate or start that kind of odor problem, this does not prevent the City in any way from taking further action to mitigate any adverse odors. I see no problem with going ahead with the rezoning.

Odom: Any further discussion?

Hoover: Mr. Chair? I have one other question for Tim. I want to make sure I understand this correctly. We do the rezoning and then you will go out and determine if it's an odor producing business?

Conklin: The business that's being applied for with this Building Permit, I don't believe is an odor emitting business. We have other businesses in town that were in existence, like this one, that may produce an odor. I don't have a list of those businesses. I believe I know one, Bakery Feeds, which is now gone. With regard to the other ones, I have not gone back and done an analysis of who is in existence with an odor emitting business. What I do is I get Building Permits and I sign off on all commercial, industrial zoning compliance to make sure they are in the right Use Unit. That's what I am looking at today. I'm not sure if we can go back twenty years and make someone get a Conditional Use on something that was permitted through the City of Fayetteville and is in existence. It concerns me greatly that they relied on our Building Permits and our Large Scale Development approvals and that they have been in operation many many years prior to that ordinance that was passed regulating odor producing businesses. I would be more than happy to have the City Attorney come to the next meeting and explain any legal problems requiring someone to come back through. That question does come up once in a while. It's difficult for me to make a business come back before this body when it was approved by this body years ago and now we have a different ordinance. It's very difficult for me to do that. I don't do that.

Hoover: Thank you.

Odom: Any further discussion? Call the roll.

ROLL CALL

Upon roll call RZ00-21.00 passes on a vote of 8-0-0.

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

113 W. Mountain St.
Fayetteville, AR 72701
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PLANNING DIVISION CORRESPONDENCE

TO: File

FROM: Tim Conklin, City Planner

DATE: August 29, 2000

SUBJECT: ADEQ Clarification of Air Permit Requirements

In order to properly place an industrial use in the proper Use Unit, one of the questions that is asked of the applicant by staff and on the Certificate of Zoning Compliance is whether the use requires an Arkansas Department of Environmental Quality Air Permit. The purpose of this question is to help determine if the industry is going to have any air emissions that would classify it as an odor emitting business under Use Unit 31. This is only one of the "tests" the city uses to classify new uses.

Mr. Jay Ellis, ADEQ Air Division Inspector and Mr. Paul Osmon, Engineer were contacted to clarify whether or not the Tyson Mexican Original Plant at 1851 East Huntsville Road required an ADEQ Air Permit. Based on E-mails that were sent to me from Tyson, no air permit was required from ADEQ. Mr. Paul Osmon stated he thought that there was no air permit for the Huntsville Road Mexican Original facility and that the building permit for the proposed four flour silos would not need an air permit as long as any particulate matter that escaped into the atmosphere was below the maximum limits. With regard to complaints at this facility, Mr. Ellis stated he had one complaint a long time ago and has not had any recent complaints.

The ADEQ Air Permit that was obtained for the Mexican Original Plant on School Street last February does list the 1851 East Huntsville address; however, Mr. Osmon did confirm that the location for the permit is the South School facility.

There are currently four silos on the west side of the plant. During the site inspection no odor was detected coming from the silos. It my opinion that a flour blending facility at this location will not produce odors and that a building permit for additional silos can be issued under Use Unit 23.

FAYETTEVILLE, ARKANSAS

P. O. DRAWER F 72701 (501) 521-7700

December 15, 1980

REFERENCE MEXICAN ORIGINAL, 1851 East Huntsville Road
Zoned: C-2, Thoroughfare Commercial District

I have delayed approving the applications submitted November 13, 1980, by Mexican Original because I felt that perhaps the existing use there has grown beyond what the Planning Office originally approved. Also, because I felt that perhaps the existing use was too heavy for a commercial district and should be in an industrial district.

Previous approvals for this company at this site were for a "bakery facility" and "food service". As I understand the operation it includes the actual baking and frying of tortillas, taco shells, and chips, a wholesale-type operation, a retail outlet, and offices. Danny Couch, Plant Manager, advised me 12-12-80 that they receive their corn already cleaned, but in kernels. They soak it, then grind it before cooking the shells and chips. He said their waste is picked up by pig farmers and taken outside the City on a regular basis.

The request for permits for the storage bins for the corn is what really raised the question of use with me. Since that time I have compared their operation to others in the City and researched Planning Commission minutes and the Zoning Ordinance.

ZONING ORDINANCE: Use Unit 15 lists "bakery" under retail food.
Use Unit 23 lists "food and allied products".
There is <u>no</u> food related listing between these two, with the exception of wholesalers. There can be no question that a place such as Campbell Soup which has slaughtering and packing as part of its operation belongs in the Unit 23 (I-2 Zoning) category.

PLANNING Commission Minutes: June 28, 1976. After the Planning Office had advised Shipley Baking Company that they could not expand their plant on Dickson Street because the use was heavier than the "bakery" listed in Use Unit 15, they appealed to the Planning Commission for an interpretation. The Planning Commission ruled that their operation on Dickson Street be considered as a bakery under Use Unit 15.

CONCLUSION: The only major difference I can find in the operation of Shipley's and Mexican Original's is that Shipley's has their grain (flour) stored inside the building. The Zoning Ordinance does not really deal with how well the appearance of a particular use is, so I don't see any basis for saying they cannot install their grain tanks outdoors. Personally I still feel that both Shipley's and Mexican Original should probably be in an industrial zone; however, I cannot reverse the action of the Planning Commission on Shipley's and can see no consistency in allowing them to expand in the C-3 Zone and forcing Mexican Original to go to an industrial zone.

Bobbie Jones

5) A street light is needed at the North end of each cul de sac;

6) A street light is also needed at the South end of each cul de sac.

Mr. Bishop said that:

1) He was willing to dedicate the right-of-way rather than give an easement at this time;

2) He was willing to participate in the construction of Hacienda from the Southeast corner of Bishop Addition, Unit 2, to as far West as Villa's development, but did not wish to participate across the South end of Bishop Addition, Unit 1, and did not see any reqson to participate all the way to his West property line;

3) Requested a variance on sidewalks all the way around the cul de sacs--- he was willing to put them in half way around the cul de sac. He requested the waiver on sidewalks because he did not think people would walk around a cul de sac; he thought they would cut through the middle. He felt the portion of the collector street across the South side of Unit 1 had already been accepted by the City without any improvement; therefore, he should no longer have any responsibility to improve it. He and Chairman Power calculated that he was willing to construct approximately 260 feet of Hacienda Street.

Wade Bishop said there is no development planned to the West of Mr. Ogden's property line.
Attorney Marshall Carlisle asked that Mr. Bishop be treated like his clients, Holley-Ogden. He said they are being required to build 1,320 ft. of street plus the extension out to Highway 71.
Wade Bishop said he has had problems on other access street (Appleby Road); it is expensive to maintain. He has been trying to work out a plan to get Appleby Road improved.
David McWethy suggested a meeting between City Attorney Jim McCord, City Manager Grimes, Planning Commission representatives, Mr. Wade Bishop, and effected parties, with someone there to take notes before the Commission acts on this.
Mr. Bishop requested the Commission allow him time to consult with someone by phone.
The Commission agreed to close discussion of this matter at this point and proceed to the next item on the agenda, and resume discussion with Mr. Bishop following that.

CURTIS SHIPLEY
Consideration for a Conforming Use

Chairman Power opened discussion on the last item, which was listed on the agenda under "Other Business", Curtis Shipley, Shipley Baking Company, requested consideration of a use unit change that would make the Shipley Baking Company a conforming use in its present location (Zoned C-3, Central Commercial District).
Mr. Curtis Shipley was present to request a conforming use.
Larry Wood said that if it is classified "wholesale" and the property were rezoned C-2, the Planning Commission could grant a conditional use. A Retail "Bakery" is under Use Unit 15, which is C-1, C-2, C-3.
Mr. Shipley stated that they came to Fayetteville in 1926 and located on the Square for 4 years. In 1936 they built their principal building on Dickson and have been there for 40 years. Their situation is that they have reached a point where the plant is somewhat insufficient. They need to be in a position

to be able to add an addition in the future if necessary.
Peg Anderson said that if you simply call it a "bakery" it would be all taken care of. She said to just call it "Holsum Bakery".
Peg Anderson moved that Shipley Baking Company, located at 313 West Dickson, be considered a "bakery" and interpret this to be in Use Unit 15.
Rita Davis seconded the motion, which was approved unanimously by a vote of 7-0.

Chairman Power resumed discussion on Wade Bishop, Bishop Addition, Unit 2--Proposed final plat.

WADE BISHOP
Bishop Addition #2
Proposed Final Plat

Wade Bishop requested that this be tabled until July 12.
Bill Kisor moved that this be tabled.
Jack Ray seconded the motion to table, which was approved unanimously by a vote of 7-0.

Chairman Power recommended that Ernest Jacks and Keith Newhouse attend the meeting of the City Officers, Mr. Wade Bishop and effected parties; and to recommend to the Commission to what extent Mr. Bishop should participate in the improvement of the collector street.

The meeting was adjourned at 7:05 P. M.

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

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PLANNING DIVISION CORRESPONDENCE

TO: Fayetteville Planning Commission
FROM: Dawn T. Warrick, Associate Planner
THRU: Tim Conklin, City Planner
DATE: August 28, 2000

RZ 00-21.00: Rezoning (Tyson, pp 565) was submitted by R. Read Hudson on behalf of Tyson, Inc. for property located at the southeast corner of Hwy 16 and Happy Hollow Road. The property is zoned C-2, Thoroughfare Commercial and contains approximately 11.50 acres.. The request is to rezone to I-2, General Industrial.

RECOMMENDATION:

Staff recommends approval of the requested rezoning based on the findings included as part of this report.

PLANNING COMMISSION ACTION: **Required** **YES**
O Approved **O Denied**

Date: **August 28, 2000**

CITY COUNCIL ACTION: **Required** **Yes**
O Approved **O Denied**

First Reading Date: **September 19, 2000**

Comments:

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BACKGROUND:

According to information provided by the applicant, the Tyson Mexican Original East plant has been operating at this site since 1983. At this time, they wish to expand the facility to include silos for storage of materials used in the food processing operation conducted on-site. The silos will contain flour to be blended with other ingredients which will be used for production at other locations. (See attached letter from R. Reed Hudson, Tyson Secretary & Corporate Counsel)

The existing plant is operating in a C-2, Thoroughfare Commercial zoning district as an existing non-conforming use governed by the following section of the zoning code:

§164.07 NONCONFORMING USES AND STRUCTURES.
A. 4. *A nonconforming use of a structure, a nonconforming use of land, or a nonconforming use of a structure and land in combination shall not be extended or enlarged after passage of this chapter by the addition of other uses of a nature which would be prohibited generally in the district involved.*

In order for the applicant to extend or enlarge the existing non-conforming use, the use must be made conforming. In this situation, the applicant has chosen to request a rezoning which would make the current operation and, therefore, an expansion of the current facility or use, permitted by right.

SURROUNDING LAND USE AND ZONING

North:	Kathryn's Closet retail, C-1
	Ridgeview Baptist Church, C-1 / R-1
South:	Abilities Unlimited, C-2
East:	Washington County Head Start, C-1
	Single family homes, R-1
West:	Beard's Funeral Home, C-1
	Single & multi family residential, R-2

INFRASTRUCTURE:

Streets: This site is served by Huntsville Rd. (Hwy 16E) on the north. This street is classified as a principal arterial on the City's Master Street Plan in this location which is projected to have a total right of way width of 110' and carry between 17,600 and 20,600 vehicles per day. Happy Hollow Road is located on the west boundary of the site and is also called out on the Master Street Plan as a principal arterial. Ray Street adjoins the site to the east but it is not accessed by this development, this is a dead-end residential street which mainly serves a residential

subdivision to the east.

Water: 8" line along Huntsville Rd.
6" line along Happy Hollow Rd.
2¼" extension onto site from 2" and 6" lines along Ray Ave.

Sewer: 6" extension onto site from 12" line along Happy Hollow Rd.
8" line along Huntsville Rd.

LAND USE PLAN: General Plan 2020 designates this site Industrial. Rezoning this property to I-2, General Industrial is consistent with the land use plan and compatible with surrounding land uses in the area.

FINDINGS OF THE STAFF

1. A determination of the degree to which the proposed zoning is consistent with land use planning objectives, principles, and policies and with land use and zoning plans.

Finding: **The proposed zoning is consistent with land use planning objectives, principles, and policies and with land use and zoning plans.**

2. A determination of whether the proposed zoning is justified and/or needed at the time the rezoning is proposed.

Finding: **The proposed zoning is justified in that it is consistent with the City's General Plan 2020. The proposed zoning is needed in order for the applicant to add equipment for the food processing operation which has existed in this location since 1983.**

3. A determination as to whether the proposed zoning would create or appreciably increase traffic danger and congestion.

Finding: **No increase in employees has been contemplated by the applicant as a result of this request. The plant is currently operating, no existing traffic conditions would be modified as a result of an approved rezoning in this location. The proposed zoning would not create or appreciably increase traffic danger and congestion.**

4. A determination as to whether the proposed zoning would alter the population density and thereby undesirably increase the load on public services including schools, water, and sewer facilities.

Finding: **The proposed zoning will not alter the population density thereby undesirably increase the load on public services including schools, water and sewer facilities.**

5. If there are reasons why the proposed zoning should not be approved in view of considerations under b (1) through (4) above, a determination as to whether the proposed zoning is justified and/or necessitated by peculiar circumstances such as:

   a. It would be impractical to use the land for any of the uses permitted under its existing zoning classifications;

   b. There are extenuating circumstances which justify the rezoning even though there are reasons under b (1) through (4) above why the proposed zoning is not desirable.

Finding: **N/A**

§161.18 DISTRICT I-2 GENERAL INDUSTRIAL.

A. Purpose. The General Industrial District is designed to provide areas for manufacturing and industrial activities which may give rise to substantial environmental nuisances, which are objectionable to residential and business use.

B. Uses.

1. Uses Permitted.

Unit 1	City-Wide Uses by Right
Unit 3	Public Protection and Utility Facilities
Unit 6	Agriculture
Unit 7	Animal Husbandry
Unit 12	Offices, Studios and Related Services
Unit 18	Gas Service Stations and Drive-In Restaurants
Unit 20	Commercial Recreation, Large Sites
Unit 21	Warehousing and Wholesale
Unit 22	Manufacturing
Unit 23	Heavy Industrial
Unit 28	Center for Collecting Recyclable Materials

2. Uses Permissible on Appeal to the Planning Commission.

Unit 2	City-Wide Uses by Conditional Use Permit
Unit 31	Facilities Emitting Odors and Facilities Handling Explosives

C. Bulk and Area Regulations/Setbacks. Setback lines shall meet the following minimum requirements:

From Street R-O-W (when adjoining A or R districts)	100 ft.
From Street R-O-W (when adjoining C, I or P districts)	50 ft.
Side (when adjoining A or R districts)	50 ft.
Side (when adjoining C, I or P districts)	25 ft.
Rear (all districts)	25 ft.

D. Height Regulations. There shall be no maximum height limits in I-2 Districts, provided, however, that any building which exceeds the height of 25 feet shall be set back from any boundary line of any Resident 1 District a distance of one foot for each foot of height in excess of 25 feet.

(Code 1991, §160.040; Code 1965, App. A, Art. 5(IX); Ord. No. 1747, 6-29-89; Ord. No. 2351, 6-21-77; Ord. No. 2516, 4-3-79; Ord. No. 3971, §2, 5-21-96)

§164.07 NONCONFORMING USES AND STRUCTURES.

A. Intent.

1. Within the districts established by this chapter or amendments that may later be adopted, if there exist lots, structure, uses of land and structures, and characteristics of use which are lawful before this chapter was passed or amended, but which would be prohibited, regulated, or restricted under the terms of this chapter or future amendment, it is the intent of this chapter to permit these nonconformities to continue until they are removed, but not to encourage their survival. It is further the intent of this chapter that nonconformities shall not be enlarged upon, expanded, or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district.

2. It is not the intent of this section to prohibit the improvement of nonconforming residences by adding bath facilities or connecting to utilities as long as the bulk and area requirements of the R-3 District are met.

3. Nonconforming uses are declared by this chapter to be incompatible with permitted uses in the districts involved.

4. A nonconforming use of a structure, a nonconforming use of land, or a nonconforming use of a structure and land in combination shall not be extended or enlarged after passage of this chapter by the addition of other uses of a nature which would be prohibited generally in the district involved.

(Code 1991, §160.135; Code 1965, App. A, Art 4(1); Ord. No. 1747, 6-29-70; Ord. No. 1918, 5-15-83; Ord. No. 2126, 7-14-75)

B. Nonconforming Lots of Record.

1. In any district in which single-family dwellings are permitted, a single-family dwellings and customary accessory buildings may be erected on any single lot of record at the effective date of adoption or amendment of this chapter, notwithstanding limitations imposed by other provisions of this chapter. Such lot must be in separate ownership and not of continuous frontage with other lots in the same ownership. This provision shall apply even though such lot fails to meet the requirements for area or width, or both, that are generally applicable in the district, provided that yard dimensions and requirements other than these applying to area or width, of both, of the lot shall conform to the regulations for the district in which such lot is located. In a previously developed subdivision, platted prior to June 29, 1970, and with the approval of the subdivision committee, a new single-family dwelling or an addition or repair to an existing single-family dwelling may be constructed in all residential zones in keeping with the existing standard in the neighborhood so long as the interior side setback is no less than five feet. Variance of yard requirements shall be obtained only through action of the board of adjustment.

2. If two or more or combination of lots and portion of lots with continuous frontage in single ownership are of record at the time of passage or amendment of this chapter, and if all parts of the lots do not meet the requirements established for lot width and area, the lands involved shall be considered to be an undivided parcel for parcel the purposes of this chapter, and no portion of said parcel shall be used or sold in a manner which diminishes compliance with lot width and area requirements established by this chapter, nor shall any division of any parcel be made which creates a lot with width or area below the requirements stated in this chapter. The prohibition prescribed hereby shall not apply to a nonconforming lot on which a principal structure existed on the effective date of adoption of this chapter and which adjoins a nonconforming lot on which a principal structure existed on the effective date of the adoption of this chapter.

(Code 1991, §160.136; Code 1965, App. A, Art. 4(2); Ord. No. 1747, 6-29-70; Ord. No. 2505, 2-20-79; Ord. No. 3114, 9-3-85; Ord. No. 3124, 9-17-85)

C. Nonconforming Uses of Land (or Land with Minor Structures Only). Where at the time of passage of this chapter lawful use of land exists which would not be permitted by the regulations imposed by this chapter, and where such use involves no individual structure with a replacement cost exceeding $1,000, the use may be continued so long as it remains otherwise lawful, provided:

1. No such nonconforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this chapter.

2. No such nonconforming use shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use at the effective date of adoption or amendment of this chapter.

3. If any such nonconforming use of land ceases for any reason for a period of more than 120 days, any subsequent use of such land shall conform to the regulations in which such land is located; and

4. No additional structure not conforming to the requirements of this chapter shall be erected in connection with such nonconforming use of land.

(Code 1991, §160.137; Code 1965, App. A, Art. 4(4); Ord. No. 1747, 6-29-70)

D. Nonconforming structures. Where a lawful structure exists at the effective date of adoption or amendment of this chapter that could not be built under the terms of this chapter by reason of restriction on areas, lot coverage, height, yards, its location in the lot, or other requirements concerning the structure, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

1. No such nonconforming structure may be enlarged or altered in a way which increases its nonconformity but any structure or portion thereof may be altered to decrease its nonconformity, provided, the following structures may be enlarged or altered as hereinafter provided:

a. Nonconforming residential structures may be enlarged or altered by increasing the height of said structures.

b. Carports in residential zones may extend into the required yard setbacks if: the carport is set back at least ten feet from the street right-of-way; the carport is set back at least five feet from any interior side property line; the carport is set back at least ten feet from the rear property line; the area below the roof is open on the sides; and the carport does not materially obstruct vision.

c. In residential zones, detachable awnings which are not structurally a part of the building may be erected in any required front yard or rear yard if the awning does not project more than six feet. Detachable awnings which are not structurally a part of the building and which project no more than four feet may be erected in any required interior side yard.

d. In residential zones, porch roofs and open porches may extend into required yards by one foot on each side of the entry door to a maximum depth of six feet in required front yards and rear yards and to a maximum depth of four feet in required interior side yards.

2. Should such nonconforming structure or nonconforming portion of structure be destroyed by any means to an extent of more than 50% of its replacement cost at time of destruction, it shall not be reconstructed except in conformity with the provisions of this chapter.

3. Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.

(Code 1991, §160.138; Code 1965, App. A, Art. 4(4); Ord. No. 1747, 6-29-70; Ord. No. 3130, 10-1-85)

E. Nonconforming Uses of Structures or of Structures and Premises in Combination. If lawful use involving individual structures with a replacement cost of $1,000 or more, or of structure and premises in combination, exists at the effective date of adoption or amendment of this chapter, that would not be allowed in the district under the terms of this chapter the lawful use may be continued as long as it remains otherwise lawful, subject to the following provisions:

1. No existing structure devoted to a use not permitted by this chapter in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved or structurally altered except in changing the use of the structure to a use permitted in the district in which it is located or as required by other ordinances;

2. Any nonconforming use may be extended throughout any parts of building which were manifestly arranged or designed for such use at the time of adoption or amendment of this chapter, but no such use shall be extended to occupy any land outside such building.

3. If no structural alterations are made, any nonconforming use of a structure, or structure and premises, may as a conditional use be changed to another nonconforming use provided that the Planning Commission, either by general rule or by making findings in the specific case, shall find that the proposed use is equally appropriate or more appropriate to the district that the existing nonconforming use. In permitting such change, the Planning Commission may require appropriate conditions and safeguards in accord with the provisions of this chapter.

4. Any structure, or structure and land in combination, in or on which a nonconforming use is superseded by a permitted use, shall thereafter conform to the regulations for the district, and the nonconforming use may not thereafter be resumed;

5. When a nonconforming use of a structure, or structure and premises in combination, is discontinued or abandoned for six consecutive months or for 18 months during any three-year period (except where government action impedes access to the premises), the structure or structure and premises in combination, shall not thereafter be used except in conformity with the regulations of the district in which it is located;

6. Where nonconforming use status applies to a structure and premises in combination, removal or destruction of the structure shall eliminate the nonconforming status of the land. Destruction for the purpose of this division is defined as damage to an extent of more than 50% (or other figure) of the replacement cost of time of destruction;

7. All outdoor advertising signs (billboards) not conforming with the provisions of this chapter shall be removed within the period prescribed by §174.06.

(Code 1991, §160.139; Code 1965, App. A, Art. 4(5); Ord. No. 1747, 6-29-70; Ord. No. 1806, 7-19-71; Ord. No. 2126, 7-15-75)

F. Repairs and Maintenance.

1. On any nonconforming structure or portion of a structure containing a nonconforming use, work may be done in any period of 12 consecutive months on ordinary repairs, or on repair or replacement of non-bearing walls, fixtures, wiring, or plumbing, to an extent not exceeding 10% of the current replacement cost of the nonconforming structure or nonconforming portion of the structure as the case may be, provided that the cubic content existing when it became nonconforming shall not be increased.

2. If a nonconforming structure or portion of a structure containing a nonconforming use

becomes physically unsafe, or unlawful due to lack or repairs and maintenance, and is declared by any duly authorized official to be unsafe or unlawful by reason of physical condition, it shall not thereafter be restored, repaired, or rebuilt, except in conformity with the regulations of the district in which it is located or as required by other ordinances.

(Code 1991, §160.140; Code 1965, App. A, Art. 4(6); Ord. No. 1747, 6-29-70)

G. Conditional Use Provisions Not Nonconforming Uses. Any use which is permitted as a conditional use in a district under the terms of this chapter (other than a change through Planning Commission action from a nonconforming use to another use not generally permitted in the district) shall not be deemed a nonconforming use in such district, but shall be without further action considered a conforming use.

(Code 1991, §160.141; Code 1965, App. A, Art. 4(7); Ord. No. 1747, 6-29-70)

H. Owner-occupied Nonconforming Residences. Notwithstanding any other provision in this subchapter, any owner-occupied nonconforming residence may be enlarged, extended, constructed, reconstructed, or structurally altered to permit expansion up to 25% of the square footage of the structure as it existed on the date it became nonconforming, and customary accessory structures may be located on property where an owner-occupied nonconforming residence
is located subject to the following conditions: An owner-occupied nonconforming residence so expanded or any accessory structure so located may be enlarged, extended, constructed, reconstructed, structurally altered, or located in conformity with the bulk and area regulations, yard requirements, and building area requirements in the R-1, low density residential district.

(Code 1991, §160.42; Code 1965, App. A, Art. 5(8); Ord. No. 1747, 6-29-70; Ord. No. 1891, 12-5-72)

It's what your *family* deserves.™

RECEIVED
AUG 0 0 2000
PLANNING DIV.

August 7, 2000

Mr. Tim Conklin, City Planner
City of Fayetteville, Arkansas
113 West Mountain
Fayetteville, AR 72701

Re: ***Rezoning of Property located in Section 23, Township 16, North, Range 30.***

Dear Mr. Conklin:

We respectfully submit this request for the rezoning of the above referenced property owned by Tyson Foods, Inc. ("Tyson") located at 1851 E. Huntsville Road in Fayetteville, Arkansas.

It has been brought to our attention by the City of Fayetteville that the property should be rezoned from C-2 to I-2.

This property is located in a commercial and industrial area and is surrounded by Abilities Unlimited of Northwest Arkansas on the south side, Highway 16 along with Beard's Funeral Chapel, residential property, apartment buildings and just down the road White River Woodworks on the west side, Washington County Head Start and a residential subdivision on the east, and Highway 16 along with Kathryn's Closet Resale Shop and the Ridgeview Baptist Church on the north side of the property.

This is not a new facility and Tyson has had a food processing operation at this location since approximately 1983 and a predecessor company purchased by Tyson was conducting similar operations at the location prior to that time. The rezoning of this property should not affect the surrounding properties in relation to appearance, use, signage or traffic. This property is well landscaped and maintained, something that Tyson takes great pride in. This facility currently employs 156 employees.

Therefore, we ask that you consider our request for the rezoning of this property from C-2 to I-2.

Sincerely,

R. Read Hudson

R. Read Hudson
Secretary and Corporate Counsel

RRH/jk

L:\Jrk\jrk00\rh-mex.east.wpd
Tyson Foods, Inc. Legal Department 2210 West Oaklawn Drive Springdale, AR 72762-6999
501-290-4000 Fax: 501-290-7967 www.tyson.com

MINUTES OF A PLANNING COMMISSION MEETING

A meeting of the Planning Commission was held at 5:00 P.M., Monday, April 12, 1982, in the Board of Directors Room, City Administration Building, Fayetteville, Arkansas.

MEMBERS PRESENT: Chairman Ernest Jacks, Don Hunnicutt, David Williams, Melanie Stockdell, Windell Cullers, Julie Nash, Newton Hailey.

MEMBERS ABSENT: Morton Gitelman, Barbara Crook.

OTHERS PRESENT: Terry Spencer, Harry Gray, Bryce Davis, Donald Nickell, John Lisle, Jack Butt, Nelson Driver, Wade Bishop, Bob Brandon, Jim Powell, David McWethy, Cynthia Stewart, Bobbie Jones and others.

MINUTES

The minutes of the March 15, 1982 Planning Commission meeting were approved as mailed.

LARGE SCALE DEVELOPMENT
MEXICAN ORIGINALS
HWY. 16 BYPASS AND HUNTSVILLE RD.

The next item of business was the approval of the Large Scale Development Plan for an addition to the Mexican Original located at the Southeast corner of the intersection of Huntsville Road (Hwy. 16 East) and Happy Hollow Road (Hwy. 16 Bypass); Mexican Original Products, Inc. Owner and Developer. Property zoned C-1, Thoroughfare Commercial District.

Harry Gray and Terry Spencer were present to represent.

The Chairman opened discussion on the addition and referred to the Plat Review Committee minutes of April 1, 1982. He asked the representatives of the developer if they had any problem with the recommendation by the Fire Inspector that a fire hydrant be placed on the site.

Harry Gray stated they do not. There has been extensive fencing installed on the site for security purposes and from a safety standpoint, the hydrant is necessary.

Jacks stated that Wally Brt has indicated there is a need for another container with this addition, but there is not room for it at the location of the existing container. Gray stated there would be no problem, that he would work with Wally Brt on the location of the second container.

Jacks asked about the comment made by the Ozarks Electric representative at the Plat Review Committee meeting that there is a transformer and a vault that need to be relocated. Gray replied the building will be constructed around the vault; the transformer is outside the proposed addition.

Jacks asked if there was any problem providing the required handicapped parking spaces. Gray stated they would be furnished.

The Chairman asked if the adjoining property owners had been notified as required. Gray said they had and that Bobbie Jones had been furnished proof of notification.

Bobbie Jones stated some easements had been required by the utility companies

as well as right-of-way easements for Highway 16. She stated the right-of-way easements on the North and West sides had been executed.

Jacks asked the representatives if there were any objections to the Plat Review Committee comments. Harry Gray said no, however, he does have some problems with Clayton Powell's written comments.

Bobbie Jones stated there was concern about running a hydrant in such a way that the residential area to the East might have access to the hydrant. Gray stated he would work with the City. He said he is currently negotiating with Don Bunn, City Engineer on working out the placement of the hydrant and installing a loop in the water line to increase water pressure on the site.

Jacks referred to the written recommendations by Clayton Powell, City Street Superintendent. He stated Powell has recommended that elevated sidewalk be installed along the North line of the property where it is presently open into the highway. He suggested that drives be installed at safety zone intervals.

Terry Spencer addressed the Commission. He stated the developers have no objection to this recommendation provided that is what the City wants. He felt a greater traffic problem will be created if the curbs and sidewalks are installed as suggested by Mr. Powell. He felt a lot of traffic would be tied up on Highway 16. The open parking area is primarily for Watsons, Colliers and a few other retail establishments; the amount of traffic involved is small. The Mexican Original employees will be using the South parking lot and will not be entering from the North. He felt that traffic would be backed up waiting to turn into the restricted entrances if they are installed.

Jacks stated that asphalt from 71 used to run into the parking area at Evelyn Hills. Spencer stated that College Avenue at that point is a four lane highway with a large amount of traffic.

Don Hunnicutt stated if the Highway Department comes in and improves Huntsville Road, they will probably tear out these improvements. He said he would hate to see the money spent and then have the improvements torn up.

Windell Cullers moved the recommended improvements for Huntsville Road be waived and that the Developer comply on 16 Bypass.

Hunnicutt felt that this should be discussed with Clayton Powell and Jacks agreed. Windell Cullers withdrew his motion.

Gray stated the Developers realize that sidewalks have to be built, what they are concerned about is the elevation of the sidewalks and the installation of the recommended accesses at safety zone intervals.

Jacks referred back to Clayton Powell's comments concerning Ray Avenue. The letter states that sidewalks are installed on part of Ray Avenue on the West side. However, Mexican Original has apparently installed a chain link fence and placed posts in the sidewalk.

Spencer stated there has been quite a bit of dispute over the boundary of the property at this point. The line has been surveyed. Before the chain link fence was constructed, Mexican Original personnel asked the City if a building permit would be necessary to construct the fence and were told as long as it is constructed on Mexican Original property there would be no permit required. Spencer said the developer has no problem with installing sidewalk along Ray, it may get into their property if it is extended as it is presently laid out. He said they would have no objection to taking the sidewalk out and placing it further away from the fence. Spencer said Mexican Original was told

before they could begin construction on the additions, they would have to dedicate a 10 ft. easement all around the property. They have spent in excess of $15,000.00 on the fence and it now sits on the City property. He said they would like to know if they have to move the fence. Bobbie Jones stated this fence is partially barbed wire, the ordinance states barbed wire fences cannot be placed adjacent to a sidewalk. She did not feel the Planning Commission has the power to waive this, the City Board might.

McWethy asked who had surveyed the property line.for Mexican Original. Gray stated Neal Albright. McWethy stated that in connection with the installation of sidewalks with community development funds, there had been a survey, one of the surveys is wrong.

Jacks asked how much of an overlap exists between the sidewalk and the fence. Gray replied 6 to 8 inches. Spencer stated actually, the posts were not placed in the sidewalk, there were a couple of notches installed on the edge of the sidewalk and the posts placed there.

Jacks asked if the Developers had any problem installing sidewalk for the full length of Happy Hollow Road adjacent to this property. Spencer said no problem.

Jacks addressed Clayton Powell's comments on drainage. Apparently, the box culvert in association with 16 Bypass has been reduced on the site and concerns Mr. Powell, he asked for the engineer's comments. Gray stated he does not know the size of the mentioned box culvert. He stated he has studied the site and proposes drainage construction sufficient to handle the site.

David Williams stated it appears the Developers are willing to comply with the Plat Review Committee comments. The developers are willing to go along with whatever the City decides on the access on Huntsville Road. Jacks said he felt Traffic control was needed at Huntsville Road.

Cullers asked if it would be acceptable to the Developers if the Large Scale Development plan was approved subject to the Plat Review Committee comments and working with Clayton Powell on his comments, with a final determination made by the Planning Commission. Gray said that would be acceptable.

Windell Cullers moved the Large Scale Development Plan for Mexican Original be approved subject to Plat Review Committee comments and that Clayton Powell's comments be worked out between the Developer and the Street Superintendent.

David Williams seconded. The motion passed (6-0-1) with Don Hunnicutt abstaining.

Cullers moved that Clayton Powell's comments be tabled until the next meeting to give the developers a chance to get with the Street Superintendent and work out his recommendations. David Williams seconded. The motion passed (6-0-1) with Don Hunnicutt abstaining.

REZONING PETITION R82-6
BRYCE DAVIS
HIGHWAY 16 WEST

The next item of business was the Public Hearing on Rezoning Petition R82-6, Bryce Davis to rezone property located South of Highway 16 West and West of the 71 Bypass (3323, 3315, 3307, 3257 Wedington Drive) from C-1, Neighborhood Commercial District to C-2, Thoroughfare Commercial District.

Bryce Davis was present to represent.

file

MINUTES OF A PLANNING COMMISSION MEETING

A meeting of the Planning Commission was held at 5:00 P.M., Monday, April 26, 1982 in the Board of Directors Room, City Administration Building, Fayetteville, Arkansas.

MEMBERS PRESENT: Chairman Ernest Jacks, David Williams, Newton Hailey, Morton Gitelman, Don Hunnicutt, Barbara Crook, Melanie Stockdell, Windell Cullers.

MEMBERS ABSENT: Julie Nash.

OTHERS PRESENT: Terry Spencer, Gary Carnahan, Bobbie Jones, Cynthia Stewart, Harry Gray, Clayton Powell, and others.

MINUTES

The minutes of the April 12, 1982 Planning Commission meeting were approved as mailed.

Jacks asked the Planning Commission members to note the material they had been handed and explained that it results from the first meeting organized to consider recommended revisions to the General Plan. Some of the members present at that meeting expressed interest in what the goals and policies of the Planning Commission are. Also, included in that material is a memo from Mort Gitelman drafted when he was chairman of the Commission, in line with that request.

MEXICAN ORIGINAL STREET SUPERINTENDENT RECOMMENDATIONS

The next item of business was the consideration of Clayton Powell's recommendations for the Large Scale Development plan for Mexican Original, located at Hwy. 16 By-pass (Happy Hollow Road) and Hwy. 16 East (Huntsville Road). Tabled at the April 12, 1982 Planning Commission meeting.

Terry Spencer and Harry Gray were present to represent.

The Chairman stated contained in the agenda material is the original letter from Clayton Powell containing his recommendations for improvements to be performed with this Large Scale Development, a response from Harry Gray, the engineer for the project and notes from Bobbie Jones. Powell felt that sidewalks along Happy Hollow Road should be elevated to curb level, incorporating the required safety zones for drives, the fence on the East property line should be moved; Mr. Powell feels it is not on the property line. Sidewalk should be continued along Ray Avenue. Drainage should be studied, as Mr. Powell does not feel drainage structures proposed for the site are adequate.

Mr. Gray's letter states he will construct the sidewalk on the North side of the property adjacent to Huntsville Road. He would construct the sidewalk as required on the East side but would like to retain the fence along Ray Avenue. Gray maintains the fence adjacent to Ray Avenue is on the property line. If the fence is in fact not constructed on the property line, he proposes to replace the portion of the sidewalk that has been notched out for

the fence posts. Gray states the drainage structures for the site have been designed to carry run off from a 5-year storm. Powell wants on-site drainage to handle a 50 to 100 year run off.

The memo from Bobbie Jones outlines a meeting between Clayton Powell, Don Grimes, and herself where they discussed Clayton Powell's recommendations and the proposed improvements by the Developer. Sidewalk will be constructed on Huntsville Road, Clayton Powell is to contact a surveyor to determine where the property line is on Ray Avenue, and sidewalk is to be continued on Ray Avenue. The developer's proposal to construct sidewalk on the West side of Happy Hollow Road rather than on the East side will be accepted, and Clayton Powell is to meet with a Highway Department representative from the division of hydrology to discuss the adequacy of the on-site drainage proposed by the developer.

Bobbie Jones indicated the City Manager would like the fence relocated rather than having the sidewalk relocated where it is built on Ray Avenue.

Jacks stated the developer proposes to construct the sidewalk on the West side of Happy Hollow Road rather than on the East side and the City Manager felt that was a valid proposal.

Clayton Powell stated the sidewalk on the South side of Huntsville Road shall be constructed 5 ft. wide and 4" high.

Jacks stated the only things that have not been resolved are:

1. The accuracy of the survey on Ray Avenue.

2. The adequacy of on-site drainage proposed by the developer.

Powell stated he would be meeting with a representative of the Highway Department this week on the question of on-site drainage. He said he has not pursued the survey of the property line on Ray Avenue. Powell was of the opinion that if the Developer would relocate the fence off of Ray Avenue and tilt the barbed wire into the property that the problem would be resolved in his opinion. Bobbie Jones stated the question of the barbed wire should be addressed by the Board of Directors.

Spencer stated that if the fence needed to be moved back and the notched area replaced, he would have no problem with that.

Gray stated he would like to attend the meeting between Clayton Powell and the Highway Department representative concerning on-site drainage.

Powell stated there has been good cooperation on the developer's part and perhaps the fence would not have to be relocated if there is adequate right of way for Ray Avenue.

Jacks did not feel the Commission had any option but to table this item until the following is resolved:

1. On-site drainage.

2. Ray Avenue right-of-way.

3. The barbed wire on the fence adjacent to Ray Avenue (determination by the Board of Directors).

BOOKMARK & PLEASE NO-TEARS

David Williams asked if the question of the barbed wire could be placed on the next Board of Director's agenda. David McWethy stated it could.

Williams moved this item be tabled until the Board has made its determination; the right-of-way on Ray Avenue is resolved; and the question of on-site drainage is worked out.

Windell Cullers seconded.

The motion to table passed (7-0-1) with Hunnicutt abstaining.

APPLEBY ROAD
REFERRAL FROM CITY BOARD
QUESTION OF HARMONIZATION
WITH MASTER STREET PLAN

The next item of business was a referral from the City Board of Directors for the Planning Commission to review proposed street improvement district petition and determine if proposal will comply with the Master Street Plan (Tabled at April 12, 1982, Planning Commission Meeting).

The Chairman stated there has been a written request that this item be tabled. He stated he talked to one of the attorneys involved in this petition about the tabling.

Cynthia Stewart reported she had received a phone call from the City Attorney prior to the meeting and he had stated he had received requests from both sides that the item be tabled and the City Attorney recommends that it be tabled until the next meeting.

Windell Cullers moved that Item 3 be tabled until the next scheduled Planning Commission meeting. Morton Gitelman seconded. The motion passed (7-1) with Newton Hailey casting the "Nay" vote.

LARGE SCALE DEVELOPMENT
2100 NORTH COLLEGE AVENUE
NORTHWEST ARKANSAS GROCERY CO.

The next item on the Agenda was the approval of the Large Scale Development Plan for Northwest Arkansas Grocery Company to be located at 2100 North College Avenue (between Ken's Pizza and Popeye's Chicken); Northwest Arkansas Grocery Company, Developer. Property zoned C-2, Thoroughfare Commercial District and R-1, Low Density Residential District.

Gary Carnahan was present to represent.

The Chairman asked for a report from the Chairman of the Subdivision Committee.

Don Hunnicutt stated the Subdivision Committee recommends the approval of the Large Scale Development with the following comments:

1. The development will be subject to all Plat Review Committee comments and requests.

2. Recommend the Planning Commission consider granting a waiver of the screening requirement as requested by the developer. Screening is required on 50 ft. of the South property line and on the East property line where commercial property abuts R-1 zoned property.

MINUTES OF A BOARD OF DIRECTORS MEETING

A meeting of the Board of Directors was held on Tuesday, February 2, 1982, at 7:30 p.m. in the Board of Directors Room, City Administration Building, Fayetteville, Arkansas.

PRESENT: Directors Lancaster, Todd, Osborne, Sharp, Noland, Bumpass, and Henry; City Manager Grimes, City Attorney McCord, Assistant City Manager McWethy, and City Clerk Rowe; members of the press and audience.

ABSENT: None

CALL TO ORDER

86.1 Mayor Noland called the meeting to order and asked for a moment of respectful silence.

EMPLOYEE OF THE MONTH

86.2 Mayor Noland introduced the three Employees of the Month for January 1982. He presented Stephen Haile, Kathy Morgan, and Freeman Wood with a certificate and a check and noted the comments their supervisors had made. (Additional information on this item may be found on page "B" of the agenda of this meeting attached to these minutes.)

ACT 9 BONDS/MEXICAN ORIGINAL PRODUCTS, INC.

86.3 Mayor Noland introduced an ordinance authorizing the issuance of $2,000,000 in "Act 9" Industrial Development Revenue Bonds for Mexican Original Products, Inc. (Additional information on the bonds may be found on page "B" of the attached agenda.)

86.4 Mayor Noland declared a public hearing open.

86.5 City Attorney McCord stated that this revenue would allow Mexican Original to acquire additional equipment, and there will be no plant expansion. There will be a payment-in-lieu-of-taxes agreement because the project would be tax exempt. The bonds will be secured by a letter of credit issued by Worthen Bank to guarantee payment of the bonds, so no possibility of default. He further stated that representing Mexican Original in the audience were Terrance Spencer, President; Richard Ardemagni, Treasurer; and a representative of the Rose Law Firm, Less Balidge, and these people would answer any questions.

86.6 Mayor Noland stated that this proposed equipment expenditure would create initially 40 to 50 new jobs for the industrial community in Fayetteville.

86.7 Director Todd asked how the new equipment would lead to the 40 to 50 additional jobs.

86.8 Mr. Spencer stated that the new equipment would allow the plant to expand their production capabilities. The new equipment would also require more people to operate than the present equipment. The freezer expansion would enable the plant to freeze their product on site as opposed to leasing freezers from Welch's in Springdale and other areas of the United States.

86.9 Mayor Noland stated that he had received a call from a lady that lives on the south side of Mt. Sequoyah, and he told her that he would mention her call and request to the Board. Mr. Noland stated that the lady reported that during the day there is a cloud of smoke that hangs in the valley and the smell of the cooking products was offensive to her.

Mr. Spencer stated that there was an odor associated with this type of industry, but he had never been informed that it had been offensive. He stated that if it was offensive, Mexican Original would look into the problem. He stated that they were an FDA inspected plant and received constant supervision from the FDA. He stated that they had been approved by several offices of the federal and state government due to their FmHa loan and the size of their production. 387.1

Director Todd asked if there had been any waste water pollution problems. Mr. Spencer stated that he was not aware of any. He further stated that a study had been conducted by McClelland, and Mexican Original is in the process of installing a screen that will filter out any whole particles in the water system. 387.2

There being no further discussion, the public hearing was declared closed. 387.3

City Attorney McCord read the ordinance for the first time. Director Todd, seconded by Osborne, moved that the rules be suspended and the ordinance be placed on second reading. Upon roll call the motion passed unanimously. 387.4

City Attorney McCord read the ordinance for the second time. Director Henry, seconded by Osborne, moved that the rules be further suspended and the ordinance be placed on third and final reading. Upon roll call the motion passed unanimously, and the ordinance was read for the third time. 387.5

Mayor Noland stated that Mexican Original is one of the nation's largest producers of flour and corn tortillas, taco shells, and corn chips. In 1981 they were employing in excess of 300 people and purchased over $2,500,000 in local goods and services. Mexican Original estimated that they contributed something in the nature of $5 million to the local economy. They have sales to 39 states and Canada. 387.6

There being no further discussion, upon roll call the ordinance passed unanimously. 387.7

ORDINANCE NO. 2791 APPEARS ON PAGE _____ OF ORDINANCE & RESOLUTION BOOK _____

FIRE ORDINANCE/LANDLORD-TENANT

Mayor Noland introduced an ordinance imposing fire protection standards for the rental of residential property providing sleeping accomodations for less than 15 persons. (Additional information regarding the ad-hoc committee members and decisions may be found on page "C" of the attached agenda.) 387.8

City Attorney McCord stated that there had been some numerical changes regarding section numbers in the proposed ordinance. He also stated that the wording would be changed from "building" to "dwelling unit" where discussing the requirements for smoke detectors. Mr. McCord further stated that there was a question concerning when there was a vacancy, who would be responsible for insuring that the smoke detector is in operable order when a new tenant moves in. The owner of the dwelling unit would have that responsibility. 387.9

City Attorney McCord read the ordinance for the first time. Director Bumpass, seconded by Osborne, moved that the rules be suspended and the ordinance be placed on second reading. Upon roll call the motion passed 6 to 1, with Director Osborne voting in the minority. 387.

City Attorney McCord read the ordinance for the second time. Director Bumpass, seconded by Sharp, moved that the rules be further suspended and the ordinance be placed on third and final reading. Upon roll call the motion passed 5 to 2, with Directors Osborne and Todd voting in the minority, and the City Attorney read the ordinance for the third time.

Director Bumpass informed the Board that the committee had met five times and that the committee was made up of landlords, tenants, members of the Fire

FAYETTEVILLE, ARKANSAS

P. O. DRAWER F 72701 [501] 521-7700

July 15, 1982

Mr. Terrence Spencer, President
Mexican Original Products, Inc.
1851 E. Huntsville Road
Fayetteville, Arkansas 72701

Dear Mr. Spencer:

The application requesting a building permit for some of the expansion work at Mexican Original, 1851 E. Huntsville Road, has been received by the Office of City Planning.

We have approved the issuance of a permit for footings only on enclosing the two courtyards. An additional permit will be required to complete that phase of construction. Separate permits will also be required for (1) construction of the staging area between and south of the two freezer locations; (2) construction of the unheated mechanical equipment room. A permit may also be required for the proposed sewage screening and grease traps; but, more information would be needed on what this consists of to determine if a permit is required.

Approval by the State Board of Health must be furnished the Inspection-Planning Office before any of the above-mentioned permits can be issued and before the work on enclosing the two courtyards can proceed beyond the footing stage.

Sincerely yours,

Bobbie Jones

(Mrs.) Bobbie Jones
Planning Administrator

BJ/sd

cc: Harry Gray,
Northwest Engineers

Heckathorn Construction Co.

FAYETTEVILLE, ARKANSAS

P. O. DRAWER F 72701 [501] 521-7700

August 11, 1982

RECEIVED
AUG 17 1982
MEXICAN ORIGINAL PRODUCTS

Mr. Terrence Spencer
Mexican Original Products, Inc.
1851 East Huntsville Road
Fayetteville, Arkansas 72701

Dear Mr. Spencer:

This office has received four building permit applications for construction of:

Staging Area
Completion of warehouse space from former court yards
Sewer pre-treatment facility
and a mechanical room.

Certain improvements required by City Ordinances must be completed prior to completion of this construction work and prior to the owner occupying all these new facilities. These improvements or conditions are as follows:

1. PUBLIC SIDEWALKS: (3 Requirements)
A public sidewalk a minimum of 5 ft. in width shall be erected along Huntsville Road except for the driveway openings. Before the sidewalk is poured, but after it is formed up, call the City Street Department to inspect it. If you have any questions as to location of sidewalk, width of driveways, spacing between driveways, etc. contact the Street Department. The driveway openings should conform to the City's regulations for spacing and safety zones. Check with the Arkansas Highway Department to determine if the sidewalk may be built on Highway right-of-way. If it must be on private property, a sidewalk easement is required. A permit is required from the Arkansas Highway Department.

A public sidewalk a minimum of 4 ft. in width shall be erected along the West side of Happy Hollow Road all the way from your extreme South property line to the intersection of Happy Hollow Road and Huntsville Road. The same requirements as to permits, inspections, etc. should be followed for this sidewalk.

Repair and extend the sidewalk down the West side of Ray Avenue to extend all the way out to Huntsville Road. A permit for sidewalk construction at this location must be obtained from the City Engineer's Office. Have the Street Department inspect this after it is formed up and prior to pouring concrete to avoid having to tear out and replace any substandard sidewalk.

I have been told that Jerry Sweetser Construction Company was awarded a bid by the City to construct sidewalks on Happy Hollow Road north of Huntsville Road. They might offer you a better price if your work is contracted to be done at the same time as the City's. You may, of course, choose any contractor you wish so long as the work is done to City specifications.

2. PAVED PARKING AND DRIVEWAY AREAS:
The entire driveway, from the street pavement or roadbed, throughout the parking area, as well as the parking area, must be paved with an application of double chip and oil seal, hot mix asphalt or portland cement to provide a durable and dustless surface.

Driveway permits must be obtained from the Arkansas Highway and Transportation Department prior to constructing the driveways.

OFF-STREET PARKING:
The approved plot plan shows 319 total parking spaces on the entire "Eastgate" site. According to my calculations a minimum of 238 spaces is required. In addition to the paving, each space must be striped off and curbs, bumper guards or wheel stops must be installed to prevent vehicles from extending beyond the outer boundaries of the parking lot area. Sizes of spaces and aisle widths between spaces must be as follows:

(A) A minimum of 7 or 8 spaces must be twelve (12) ft. wide by nineteen (19) ft. deep with ramps onto sidewalks and into buildings and with above-grade signs indicating they are reserved for the handicapped.

(B) A maximum of 20% of the total spaces provided may be seven and one-half (7½) ft. wide by fifteen (15) ft. deep with signs indicating they are reserved for "compact cars only". You are not required to have any spaces in this size, it is optional.

(C) The balance of the spaces required must be 9 ft. wide by 19 ft. deep.

(D) Aisle widths between rows of parking must be 24 ft. wide.

3. PERMANENT HOUSE NUMBERS:
Unless they are already erected, permanent house numbers visible from the street must be installed.

4. AS-BUILT PLOT PLAN:
The owner must furnish an "as-built" plot plan showing the location of and distance from property lines of all improvements on the property including buildings, signs, parking, driveways, sidewalks, fences, required landscaping, and location of all utility lines (including service lines to the building). This must be labeled "As-Built Plot Plan", be dated and signed, and must be filed with the Office of City Planning upon completion of the development.

Please sign the agreement which follows, keep one copy in your files for future reference, and return the signed copy to the Office of City Planning. Upon receipt of this signed agreement the Planning Administrator will be in a position to issue the Certificate of Zoning Compliance for your project. The applications will then be forwarded to the City Building Inspection Office for their review and issuance of the requested Building Permits.

This letter is to put you on notice that no final inspections of this development will be made by the City Building and Planning Departments and no occupancy of the new structures will be permitted until the above improvements are completed in a manner acceptable to the City.

If for any reason you anticipate that you cannot meet these requirements by the time the structures are completed, please contact the Office of City Planning at least one week prior to the date that you plan to occupy the building. This will give you time to work out a solution acceptable to the City which would prevent delays that might be costly to you.

Your cooperation in this matter will be appreciated.

Sincerely yours,

Bobbie Jones

Office of City Planning
P. O. Drawer F
Fayetteville, Arkansas 72702

Phone (501) 521-7700 Ext. 356

This is to certify that I am the owner and/or the contractor of the above-mentioned development and that it is understood that all of the requirements set out in the letter above must be complied with prior to occupying the structures in question.

SIGNED: Jerome Jones Jrs. Owner

SIGNED: [illegible] Contractor

DATED: 8/20/82

DATED: 8/25/82

NORTHWEST ENGINEERS, INC.

F. ERVAN WIMBERLY, P.E.
HARRY G. GRAY, P.E.

March 26, 1982

Office of City Planning
P.O. Drawer F
Fayetteville, Arkansas 72701

Dear Bobbie:

Enclosed for review and approval are copies of the Large Scale Development Plan depicting improvements and expansions which Mexican Original Products, Inc. proposes to make at their plant here in Fayetteville.

The proposed expansions are as follows:

New Freezer Construction	6,000 Sq. Ft.
New Mechanical Room	600 Sq. Ft.
New Staging Area	4,250 Sq. Ft.
New Warehouse Area (2 Areas)	12,300 Sq. Ft.

The parking area will be improved as indicated on the plan.

There are existing utility easements in the new warehouse areas. We propose to have these easements vacated and maintenance of utilities assumed by Mexican Original Products, Inc.

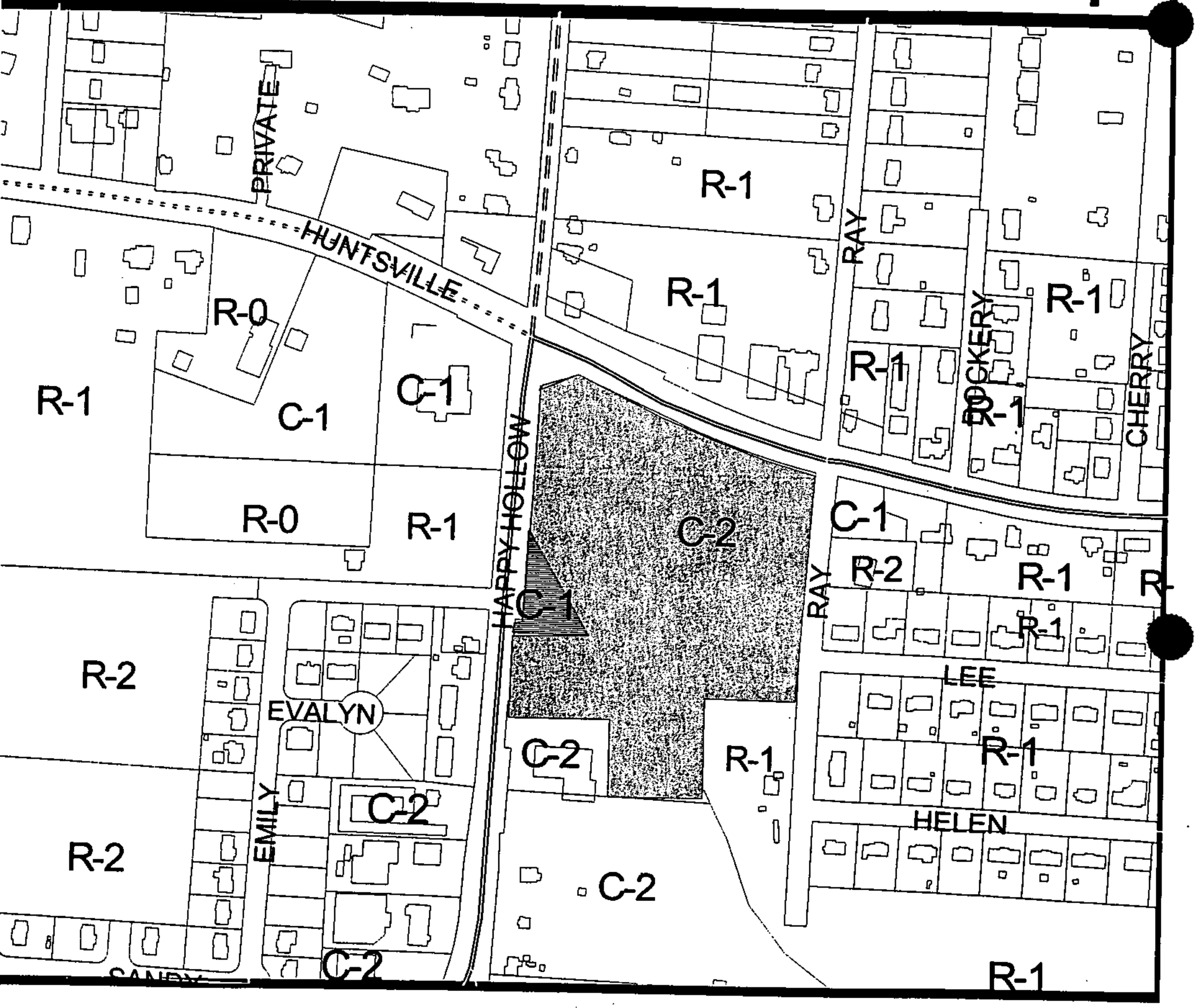
Sincerely,

Harry G. Gray, P.E.

HGG/sjh
Encl.
cc: Danny Couch
Mexican Original

505 WEST ASH ST. P. O. BOX 1173 FAYETTEVILLE, ARKANSAS 72701 (501) 443-4535

RZ00-21 - Tyson - Close Up



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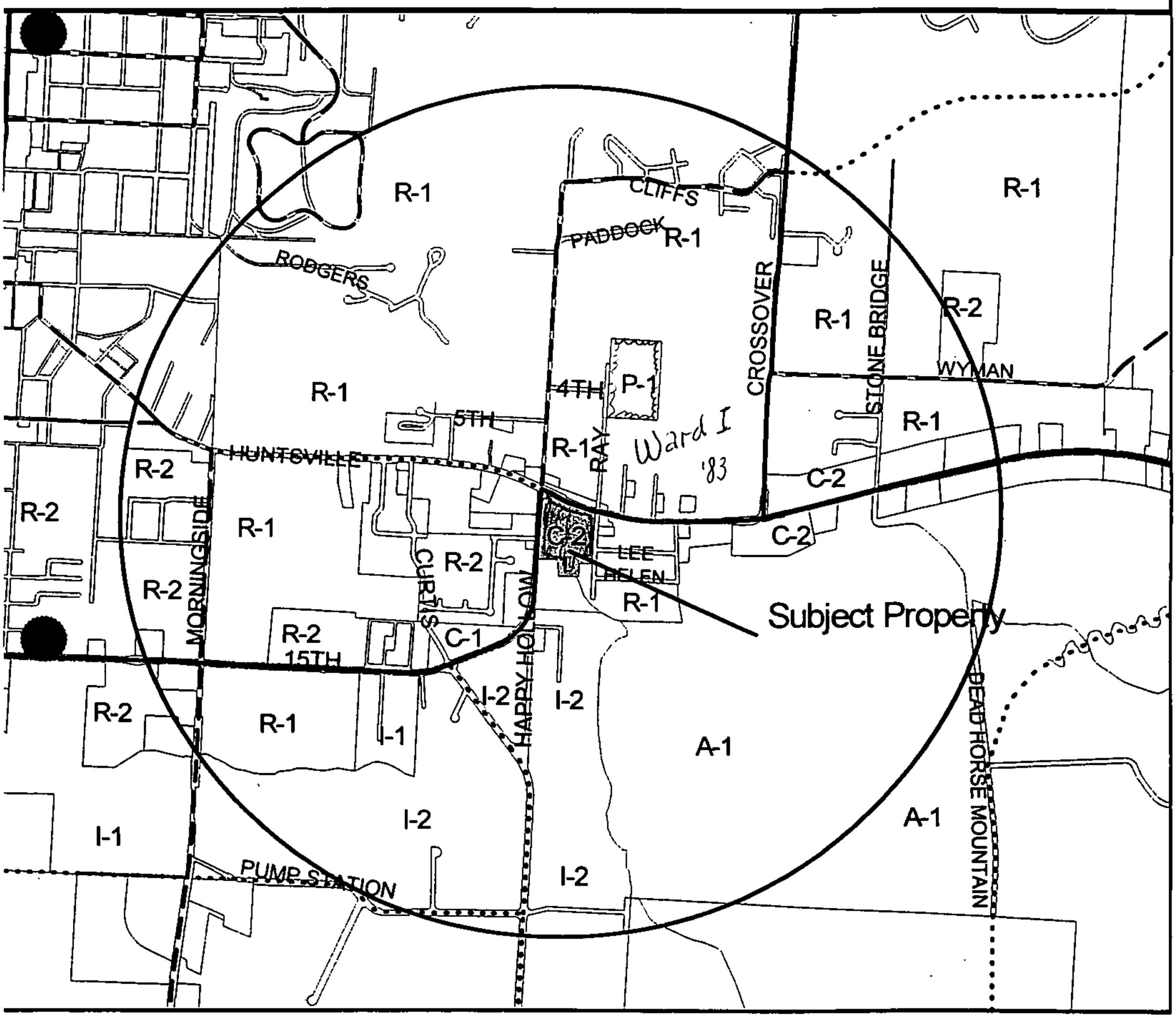

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DRAFT POLICY FOR USE OF THE FAYETTEVILLE CITY ADMINISTRATION BUILDING

9/12/2000

The City of Fayetteville seeks to encourage education, community development, and discussion of public issues by making rooms 111, 219, and 326/327 of the City Administration Building available on a limited basis for these purposes.

1. Two types of events shall qualify for the use of rooms 111, 219, and 326/327:

   a. Fayetteville-based groups registered with the Internal Revenue Service under section 501(c)(3) may use these rooms for events to advance their purposes as stated with the IRS.

   b. Other Fayetteville citizens and Fayetteville-based groups may use the rooms for public meetings to discuss issues involving city government.

2. During regular business hours, use of these rooms shall be free of charge. Outside regular business hours, the rooms shall be available for an hourly fee to be set by the City Clerk in consultation with the Facilities Superintendent. The purpose of the fee is to cover the city's costs in paying staff to lock or unlock the building and room, etc. The amount of the fee should reflect this purpose.

3. Those who qualify for the use of these rooms under paragraph 1 shall be entitled to use the room of their choice by reserving such room with the City Clerk, subject to the limitations in paragraphs 4 through 13.

4. Those applying for use of a room shall provide the City Clerk with their name, contact telephone number, an estimated number of people planned to attend the event, and a brief statement concerning the purpose of the proposed use.

5. Meetings of city committees and city staff shall have precedence in room scheduling. Committee chairs and those who call staff meetings shall notify the City Clerk as soon as reasonably possible when they believe they will be needing room 111, 219, or 326/327 for a committee or staff meeting.

6. The number of people, cars, and noise involved in the planned use must not interfere with regular city usage of the building or the reasonable expectations of the surrounding area.

7. Light refreshments may be served, but must require no facilities for preparation, cooling or cleanup. No alcoholic beverages are allowed.

8. Room reservations may be accepted up to one year in advance outside of business hours, and up to one month in advance during business hours

9. The City Clerk reserves the right to require a reasonable deposit for the use of a room in order to cover possible damage to the room or other city property. If a fee or deposit is required, it must be paid to the City Clerk's office at least two weeks in advance to secure the reservation.

10. In case city committees or city staff need access to a meeting room on short notice, the City Clerk shall ensure that at least one of the meeting rooms remains open during business hours for this purpose. The City Clerk may also exercise reasonable discretion in changing the room for an outside meeting in order to accommodate the needs of city staff and city committees, and in setting limits on the time for which a room may be used.

11. Pieces of furniture in the meeting rooms, if moved, must be returned to their original positions at the conclusion of the event. Users of the rooms may not move or remove any materials on the walls without prior permission from the City Clerk.

12. The rooms must be left clean and orderly. The person signing for the use of a room shall be responsible for paying for any repairs or cleaning required as a result of the use of the room.

13. Materials belonging to users of the rooms may not be stored in the building between meetings.

14. The City of Fayetteville, by granting permission for the use of its meeting rooms, does not necessarily endorse the beliefs, methods, or goals of the users of the rooms. The City Clerk may deny a room request based on the availability of space or staff, or because the person or group applying for the room reservation does not qualify for use under section 1. However, the City Clerk may not deny a request based on the anticipated viewpoints to be expressed during the use of the room.

MEMORANDUM

FROM: Kyle Russell, Alderman
TO: Jerry Rose, City Attorney
DATE: September 12, 2000
SUBJECT: Revised policy on the use of City Hall; First Amendment issues

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I have done some interesting research on the use of public facilities. I don't think it's exactly an all or nothing proposition, as you and I both originally thought. As you probably know, there are three types of fora for First Amendment purposes. First, there is the traditional public forum. This category includes streets, parks, and sidewalks. City Hall obviously does not fit into this category. Incidentally, government can impose reasonable time, place, and manner restrictions on speech in a traditional public forum, but content-based restrictions get strict scrutiny from the courts, and viewpoint-based restrictions are generally not allowed.

Second, there is the limited-purpose public forum. This is a public place that does not fit into the traditional public forum category, but which the government has declared to be a public forum for limited purposes. There are cases, for instance, in which the government has made schools and publicly owned meeting rooms available for public use. Usually, the entity administering the policy limits the purposes for which the buildings can be used in some way, i.e., "for educational and cultural purposes," "for civic and political forums that are non-restrictive and open to the public," etc. You get the idea.

There is case law stating that the government entity operating the building in question must take some affirmative act in order to declare the building a limited-purpose public forum. I understand that we have no written policy currently in place for the use of City Hall. But I am not clear on whether we have, in effect, implicitly declared City Hall to be a limited-purpose public forum by making it available to First Night, We've Had Enough, etc.

In a limited-purpose public forum, the government may limit the content of expression in the facility, i.e., we may prohibit political rallies, religious services, etc., but generally may not restrict the use of the facility based on the viewpoint of the users. For instance, if we say that we're going to allow rallies or other political events, we can't exclude Republicans or Communists. If we say we're going to allow religious groups in, we can't exclude Baptists while including Presbyterians, Jews, etc.

The third type of forum is the nonpublic forum, which is basically a place that doesn't fit into either of the first two categories. In a nonpublic forum, the only limit on government restriction of expression is that the restriction must be reasonable. As I see it, then, we have two options with regard to the use of City Hall (and the library, too, for that matter).

Option 1: We can declare these buildings, or parts thereof, to be limited-purpose public fora, and set forth the procedures for use, and the purposes for which they may be used. This means that we could say they can only be used for "artistic or cultural presentations," for example. This would allow First Night to use the buildings for performances on New Year's Eve. But then if the

Klan wanted to stage an "artistic presentation" to "promote white culture," or if someone wanted to give a performance of "gangsta rap" to "increase awareness of the urban culture," I think we would have to allow it unless it met the Supreme Court's definition of obscenity. I won't go there.

In my draft policy, I have tried to restrict this type of use by requiring that the applicant be registered with the IRS as a 501(c)(3) organization in order to qualify for this type of use. This prohibits advocacy groups such as the Klan, the NAACP, or any political candidate or party from using the building, unless it is for a public meeting regarding city business.

Option 2: Simply declare that City Hall is a nonpublic forum, and that its use is hereby restricted to city staff, city committees, and governmental meetings. If my policy, or something similar to it, is not adopted, I believe this would be the only course of action that keeps us within the Constitution. In other words, I think the worst thing for us to do here is nothing, because then we are inviting a challenge.

As I'm sure you know, it is a big no-no to give elected officials *unfettered* discretion over citizens' use of facilities. That's basically what we're doing now by asking citizens or groups to go through an alderman and then the City Clerk, and by not providing the aldermen or the City Clerk with any guidance as to who should and should not qualify for use of the facilities. This is why it has been my policy to attempt to make a reservation for anyone who asks me, for whatever reason. Under the current circumstances, with no policy in place, I think we would be asking for a court challenge to do it any other way.

Finally, you asked me whether it would violate the Establishment Clause to allow religious groups to use the facilities. The answer is no. My research clearly indicates that if the government extends benefits, i.e. tax exemptions, the use of meeting rooms, to religious groups on the same terms and conditions as other nonprofit groups, then these benefits are considered by the Supreme Court to be "incidental," and not in violation of the Establishment Clause. However, it appears that we *could* prohibit religious services or religious instruction in the buildings without violating the Free Exercise clause. There is a 2nd Circuit case from 1997 holding that this type of restriction is within the government's power to set content-based restrictions on the use of a limited purpose public forum.

I firmly believe that the policy I have set forth comports with the U.S. Constitution. I have copies of the cases on which my research is based, and I will get them to you if you so desire. I'm sorry I have not had time to do traditional citations in this memo. Additionally, I have not researched any state law that might apply. I trust that if you disagree with my assessment of the constitutionality of my policy, or if you see any more logistical problems or state-law problems with the latest version of the policy, you will contact me at 444-6408.

Meanwhile, please prepare a resolution for Tuesday's council meeting adopting the latest version of my policy and referring to it if necessary. Thanks very much for your help with this issue

cc: Heather Woodruff, City Clerk

ADMINISTRATIVE POLICIES & PROCEDURES MANUAL		SUBJECT: CITY CLERK Scheduling Conference Rooms/ Training Room/Equipment	
NUMBER CC-4	REVISIONS 1	EFFECTIVE DATE: June 12, 1990	PAGE 1 of 2
SUPERSEDES CC-4 (dated 6-5-89)	APPROVED BY: Scott C. Linebaugh, City Manager		

CC-4.0 **PURPOSE:**

The purpose of this directive is to establish a centralized method of scheduling meetings in the City Administration Building located at 113 West Mountain, or Interim City Hall located at 115 Church Avenue.

CC-4.1 **POLICY:**

The City Manager has established a policy that the use of conference rooms in the City Administration Building, and the "training room" in Interim City Hall be scheduled through the City Clerk's Office.

CC-4.2 **PROCEDURES:**

A. Permitted Uses of Conference Rooms/Training Room/Equipment

Conference rooms in the City Administration Building may be used by City Staff, City Board, and any citizens boards, committees and commissions which are appointed by the City Board of Directors. Other groups may be permitted the use of these rooms with the permission of the City Manager.

The training room in the Interim City Hall Building may be used by City Staff and the City Board of Directors. Other groups may be permitted the use of this room with the permission of the City Manager. Council

Conference Room 313 (City Manager's Conference room) may not be used for general meetings. But if this conference room is needed for an emergency meeting, an arrangement shall be made through the City Manager's Office.

Equipment such as VCR's, televisions, slide projectors, or overhead projectors are available for use by City Staff, Board of Directors, citizens boards, and committees and commissions which are appointed by the City Board of Directors. Other groups may be permitted the use of this equipment with the permission of the City Manager.

ORDINANCE NO._____

AN ORDINANCE AMENDING SECTION 33.210, CABLE BOARD, DUTIES, SUBSECTION (c) OF THE CODE OF FAYETTEVILLE TO PROVIDE THAT ALL GUIDELINES AND REGULATIONS SHALL BE SUBJECT TO CITY COUNCIL APPROVAL.

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

Section 1. That Section 33.210, Cable Board, Duties, subsection (c) of the Code of Fayetteville is hereby repealed and the following shall be inserted in its stead:

Cable Board

§33.210 Duties.

(c) The Board shall have authority to promulgate such guidelines and regulations, subject to City Council approval, as are necessary to carry out the duties and responsibilities set forth in this section.

PASSED AND APPROVED this 19th day of September, 2000.

APPROVED:

By:_____
Fred Hanna, Mayor

ATTEST:

By:_____
Heather Woodruff, City Clerk

ORDINANCE NO. _____

AN ORDINANCE PROVIDING FOR THE MANAGEMENT AND PRESERVATION OF THE CITY'S RIGHTS-OF-WAY AND PUBLIC PLACES WITH RESPECT TO TELECOMMUNICATIONS SERVICES; PROVIDING FOR TERMS AND CONDITIONS UNDER WHICH TELECOMMUNICATIONS PROVIDERS AND LESSEES MAY OCCUPY THE CITY'S RIGHTS-OF-WAY AND PUBLIC PLACES; PROVIDING FOR COMPENSATION TO THE CITY ON A COMPETITIVELY NEUTRAL AND NON-DISCRIMINATORY BASIS; CREATING AN OFFENSE AND PROVIDING PENALTIES.

WHEREAS, the provisions of telecommunications services has become an essential part of modern life that can significantly enhance the quality of life for the City's residents, businesses and institutions; and

WHEREAS, the City's rights-of-way and public places are valuable assets to the City and its residents, businesses and institutions; and

WHEREAS, the City has invested and will continue to invest substantial public monies in the acquisition, construction and maintenance of public rights-of-way and public places; and

WHEREAS, grant of permission to a private entity to use public rights-of-way and public places is a valuable property right that eliminates the necessity for the private entity to invest substantial capital; and

WHEREAS, the City is entitled to fair and reasonable compensation from a telecommunications provider who utilizes the City's public rights-of-way and public places for the delivery of its services; and

WHEREAS, the United States Congress has recently adopted the Telecommunications Act of 1996 (the "Act"), which substantially amended the telecommunications law of the United States; and

WHEREAS, Section 253(a) of the Act provides that no local regulation or legal requirement may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service; and

WHEREAS, Section 253(c) of the Act provides that nothing in the Act affects the authority of a State or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed; and

WHEREAS, it is in the best interests of the City and its residents, businesses and institutions, to establish rules and regulations that encourage the provision of telecommunications services, encourage telecommunications competition, treat telecommunications providers on a competitively neutral and nondiscriminatory basis, preserve and protect the City's rights-of-way and public places, secure fair and reasonable compensation for the private use of the City's rights-of-way and public places, and take such other necessary steps to responsibly protect the public health, safety and welfare;

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

Section 1. TITLE. This Ordinance shall be known as "The City of Fayetteville Telecommunications Ordinance".

Section 2. DEFINITIONS. As used in this Ordinance, the following terms shall have the meanings set out:

2.1. "Applicant" means a telecommunications provider or telecommunications lessee that applies for a franchise or license pursuant to this Ordinance.

2.2. "Franchise fee" means compensation paid to the City by the telecommunications provider or lessee in exchange for the use of the City's streets to deliver telecommunications services inside or outside the geographic limits of the City.

2.3. "Gross revenues" means all revenue regardless of the source, received directly or indirectly, including in-kind services or goods, by a telecommunications provider or lessee from or in connection with the retail delivery of telecommunications services in the City, including long-distance service, 0 and including revenue derived from the sale or lease at retail of equipment and/or facilities provided by a telecommunications provider or lessee; provided, however, that "gross revenues" shall not include any taxes on services which are imposed directly on any customer of a telecommunications provider or lessee by the United States, the State of Arkansas, the City, the School Board, or any other governmental unit and which are collect on behalf of such governmental unit. "Gross revenues" does not include wholesale revenues derived from the sale or lease of capacity, bundled or unbundled elements of a telecommunications system, or telecommunications services to a telecommunications lessee.

2.4. "Person" means any individual, resident, citizen, business, firm, corporation, partnership, governmental agency, or institution.

2.5. "Streets" means all streets, roads, highways, alleys, rights-of-way, utility easements, public property, public ways and air space over such streets, roads, highways,

alleys, rights-of-way, utility easements, public property and public ways located within the geographic limits of the City.

2.6. "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing (e.g., data, video and voice), without change in the form or content of the information set and received.

2.7. "Telecommunications facilities" or "facilities" means all conduits, manholes, poles, antennas, transceivers, wires, cable (including fiber optic cable) and appurtenances owned or utilized by a telecommunications provider or telecommunications lessee and located in, under or over the streets, utility easements, public property, and public ways of the City and utilized in the provision of telecommunications services, including digital or analog, voice, data, and video imaging and other enhanced telecommunications services.

2.8. "Telecommunications lessee" or "lessee" means any person, firm, corporation, partnership, or other business entity, including "resellers," that provides telecommunications services within the geographic boundaries of the City, including long-distance services that originate or terminate in the City, by utilizing, purchasing or leasing a telecommunications facility of a telecommunications provider or any element thereof, whether through purchase, lease, contract, interconnection agreement, or other business arrangement; provided that a person that owns its own telecommunications facilities in the City and utilizes, purchases or leases telecommunications facilities or elements thereof of other telecommunications providers in the City shall be classified as a telecommunications provider under the terms of this Ordinance.

2.9. "Telecommunications provider" or "provider" means any person, firm, corporation, partnership or other business entity, other than the City, that provides telecommunications services within or without the geographic boundaries of the City by utilizing its own telecommunications facilities to provide telecommunications services.

2.10. "Telecommunications services" or "services" means any service delivering telecommunications by a telecommunications provider or lessee whether within or without the geographic boundaries of the City that the provider or lessee is authorized to provide under federal, state and local law, except that these terms do not include "cable service" as defined in the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992, 47 U.S.C.§ 521 et seq., and the Telecommunications Act of 1996.

2.11. "Transmission line" means a telecommunications facility that is used solely for the purpose of transmitting signals from one point outside the City to another point outside the City and does not include a line for the purpose of delivering telecommunications services to any person in the City.

Section 3. REQUIREMENT OF CITY'S CONSENT.

3.1. Every telecommunications provider and telecommunications lessee that utilizes a telecommunications facility must obtain a franchise or license from the City in accordance with this Ordinance in order to provide telecommunications services within or without the geographic limits of the City. Prior to providing any telecommunications service or utilizing any telecommunications facility, the provider or lessee must provide a written acceptance of the terms and conditions of this Ordinance and enter into a franchise agreement or license agreement.

Section 4. APPLICATION PROCESS.

4.1. Any telecommunications provider or lessee seeking to provide telecommunications service (the "Applicant") shall complete a brief application form approved by the Department of Public Works. Such application form shall briefly described the general nature of the service to be provided, the type of construction or use of facilities required, the name, address and telephone number of the person or entity seeking to provide the service, and the name, address and telephone number of an authorized representative of the person or entity.

4.2. The Applicant shall also provide evidence in a form satisfactory to the City that it has the financial, legal and technical qualifications necessary to provide the service for which it seeks a franchise or license.

4.3. In considering whether to grant a franchise or license or impose terms and conditions on the grant of a franchise or license, the City may consider, without limitation, the following factors:

a) the Applicant's financial ability to pay the compensation and fees required by this Ordinance;

b) the Applicant's ability to construct and operate the telecommunications facilities it seeks to utilize;

c) the Applicant's compliance with the terms and conditions of federal, state and local law including applicant's compliance in other jurisdictions in which it operates;

d) the capacity of the Streets to accommodate the Applicant's proposed facilities;

e) the damage or disruption, if any, of public or private facilities, improvements, or landscaping if a franchise or license is granted;

f) the public interest in minimizing the cost and disruption of construction in, on, under and above the streets;

g) the effect of public health, safety or welfare if a franchise or license is granted;

h) the availability of alternate routes and/or locations for the proposed facilities;

i) whether the imposition of certain terms and conditions or the failure to grant the requested franchise or license would prohibit or have the effect of prohibiting the ability of the Applicant to provide any interstate or intrastate telecommunications services; and

j) any other factor relating to whether the grant of a franchise or license impinges on the City's rights to manage its streets.

4.4. An Applicant for a telecommunications franchise or license shall submit with its Application a fee in the amount of $150.00 in partial compensation to the City for processing the Application.

4.5. If the City approves the Application, the provider or lessee shall reimburse the City for any reasonable costs and expenses, including attorney's fees, incurred by the City, which are not already covered by the Application fee required in Section 4.4 of this Ordinance, to review and evaluate the Application and prepare and negotiate a franchise agreement or license agreement with the provider or lessee, and including the costs of any publication of an ordinance as provided in Section 5.

4.6. All Applications and/or amendments to franchise agreements shall be submitted to the City of Fayetteville Telecommunications Board for their advice, if any, prior to City approval.

Section 5. FRANCHISE OR LICENSE AGREEMENT.

5.1. As a condition of the grant of a franchise or license, the provider or lessee shall enter into a franchise agreement or a license agreement with the City. A telecommunications provider shall enter into a franchise agreement. A telecommunications lessee shall enter into a license agreement.

5.2. The franchise agreement or license agreement shall contain such additional terms and conditions as are not in conflict with the terms of this Ordinance as may be necessary and appropriate for the particular circumstances of the provider or lessee and its delivery of telecommunications services.

5.3. The franchise agreement or license agreement shall be adopted as an ordinance by the City prior to the initiation of any construction or the deliver of any service.

5.4. A franchise agreement may be amended from time to time upon agreement of the City and the provider or lessee.

5.5. A license agreement may be revoked or repealed by the City at any time unless otherwise provided by its terms.

5.6. The telecommunications provider or lessee shall pay to the City or on behalf of the City the cost of any publication required by law.

Section 6. CONSTRUCTION AND MAINTENANCE.

6.1. Application. Prior to the beginning construction of any telecommunications facility, the Applicant shall apply to the Department of Public Works of the City for permission to carry out construction activities in the City's streets, and shall comply with all requirements of that department or any other ordinance or code applicable hereto.

6.2. Construction Plan. Prior to beginning construction, the Applicant shall submit a plan describing the proposed construction. The plan shall specify:

a) the design of any telecommunications facilities to be constructed or utilized;

b) a map showing the precise location of any telecommunications facility to be constructed or utilized and any appurtenant facilities such as poles, attachments, guy wires, and the like;

c) a description of any agreements that have been reached or are necessary with other telecommunications providers or providers of other utility services regarding use of existing facilities;

d) the timetable for completion of construction, including any phases of construction;

e) the total estimated cost of construction of the telecommunications facilities; and

f) such other information as will provide the City with pertinent information relating to the construction of the telecommunications facilities, including any pertinent information requested by the City.

6.3. Prior Authority. Prior to beginning construction, the Applicant shall have received all necessary regulatory authority to construct a telecommunications facility or provide telecommunications service from the Arkansas Public Utilities Commission, the Federal Communications Commission, or other appropriate state or federal agency. Evidence that it has received such regulatory authority shall be filed with the City.

6.4. Standards of Construction. The method of construction, workmanship used, and materials utilized in the construction shall conform to all applicable federal, state and local statutes, rules, regulations and ordinances. All work shall be performed in a safe, thorough, and reliable manner using materials of good and durable quality so as not to create a hazard or dangerous condition on the streets. If, at any time, it is determined by the City or any other agency or authority of competent jurisdiction that any telecommunications facility presents a danger to the public health, safety or welfare, then the telecommunications provider or lessee shall, at its own cost and expense, promptly correct all such conditions.

6.5. Maintenance and Repair. Any telecommunications facility constructed or utilized pursuant to a franchise or license shall be maintained and repaired in accordance with the standards and under the terms and conditions set out in the preceding paragraph and such other terms and conditions as shall appear in this Ordinance or the franchise agreement or license agreement.

6.6. Minimal Disruption. Construction, maintenance and repair of the telecommunications facilities shall be conducted in such a manner as to minimize any interference with or disruption of the City's streets, traffic, residences, businesses and institutions. The provider shall be obligated to use trenchless technology in appropriate circumstances.

6.7. Restoration. Any disturbance of the City's streets shall be repaired and restored by the telecommunications provider or lessee at its expense and to a condition as good as that prevailing before the work causing such disturbance was commenced.

6.8. Location of Facilities. Poles and other facilities shall be located to the extent feasible in such a way as to minimize their effect on the visual landscape and on other aesthetic considerations and so as to minimize inconvenience.

6.9. Burial of Transmission Lines. A telecommunications provider shall place its transmission line or other facilities underground in certain areas designed by the City Council, but only if existing providers maintaining line or facilities in the same areas have or will be required by the City to place their lines or facilities underground.

6.10. Co-location; Sharing of Pole Space. To the maximum extent feasible, a telecommunications provider constructing a new transmission line or other facility, or

expanding an existing line or facility, shall utilize facilities. The owner of any existing facility shall to the extent permitted by law and consistent with any pole attachment regulations of the Public Service Commission, the Federal Communications Commission or other appropriate agency, permit the telecommunications provider to utilize its pole.

6.11. Movement of Facilities. A telecommunications provider shall be required to temporarily disconnect or relocate any of its facilities at its own expense when required by the City by reason of traffic conditions; public safety; or the construction, installation or repair of any public road, highway, building, park or other public project. The provider shall cooperate with any other public utility authorized by the City to provide utility service utilizing the City's streets.

6.12. Tree Trimming. A telecommunications provide is authorized to trim trees in the City's streets and private easements to the extent necessary to properly maintain its transmission line or other facility, but prior to trimming any tree, it shall provide 24 hours' notice to the City. The City, at its option, may choose to supervise such trim treeing. Upon conclusion of the tree trimming, the provider shall immediately clean up and remove all debris.

6.13. Curb Cuts. No provider shall make paving cuts or curb cuts without the written consent of the Director of the Department of Public Works.

Section 7. PERFORMANCE BOND.

7.1. Prior to the provision of service, the provider shall post a performance bond, satisfactory to the City, in the City's favor to ensure faithful performance of the terms and provisions of the franchise agreement and any planned construction as designated in the construction plan the provider has filed with the City pursuant to §6.2. The bond shall be equivalent to ten (10%) percent of the total cost of the construction as provided in the construction plan, or $100,000, whichever is greater.

7.2. In the event the provider fails to comply with this Ordinance or the franchise agreement, or to complete the construction in a safe, timely, and competent manner, after notice and a reasonable opportunity to cure, the City may recover, jointly and severally from the principal and surety of the bond, any damages or loss suffered by the City as a result, including the full amount of any compensation, indemnification, or cost of removal or abandonment of any property of the provider, plus a reasonable allowance for attorneys' fees, up to the full amount of the bond.

7.3. The City in its sole discretion may waive this requirement of a bond upon good cause shown to the Director of the Department of Public Works.

Section 8. TERM OF FRANCHISE FOR PROVIDERS.

8.1. Unless otherwise specified in a franchise agreement, a telecommunications franchise shall be for a term of 10 years, provided that the City may grant a franchise up to 20 years for good cause shown.

Section 9. TERM OF LICENSE FOR LESSEES OR RESELLERS.

9.1. Unless otherwise specified in a license, a telecommunications license shall be for a term of five (5) years, provided that the City may grant a license for a longer period of time upon good cause shown.

Section 10. FEES.

10.1. Amount. In consideration of the City's grant of authority to utilize the City's streets for the provision or lease of telecommunications services outside or inside the geographic limits of the City for other good and valuable consideration, the telecommunications provider or lessee shall pay a franchise fee or license fee to the City in the following amounts:

a) A telecommunications provider who provides service to residents, businesses or institutions in the City shall pay an amount equal to four percent (4%) of access line billing within the corporate limits of the City during the preceeding year. Payments shall be in equal quarterly installments on or before the last day of March, June, September and December of each year;

b) A telecommunications provider who provides service solely to persons outside the geographic boundaries of the City by utilizing a transmission line shall pay the City a reasonable annual fee based upon an installation fee and charge per linear foot of transmission line that traverses the City or based upon such other method as the City deems appropriate. Such a fee may be paid in a lump sum in advance, or in a combination of a lump sum plus annual payment as the City deems fit;

c) A telecommunications lessee who delivers telecommunications services within or without the geographic boundaries of the City shall pay the City four percent (4%) of its annual gross revenues derived from the delivery of telecommunications service within the City, including long-distance service originating in the City or terminating in the City.

10.2. Public Interest Obligations. If, as a condition of the grant of a franchise or a license, the City requires the telecommunications provider or lessee to meet certain conditions or requirements in the public interest as provided in Section 15 of this Ordinance,

the City may provide a credit against the fee based upon the percentage of gross revenues it would otherwise require in compensation so that the total compensation paid to the City is no more than the equivalent of four percent (4%) of gross revenues.

10.3. Time of Payment. All fees due and owing shall be paid on a biannual basis on or before July 15 of each year for the first six (6) months of the calendar year and on or before January 15 of each year for the second six (6) months of the preceding calendar year.

10.4. Late Payment. In the event that any payment is not actually received by the City on or before the date due under this Ordinance, interest thereon shall accrue from such date until received at the rate of ten percent (10%) per annum.

10.5. Calculation of Payments. All payments made to the City shall be accompanied by a statement certified as true by an appropriate employee of the provider or lessee explaining the basis of the calculation on which the payment was made.

10.6. Payments. Payments shall be made by certified check to the City of Fayetteville, c/o City Treasurer, 113 West Mountain, Room 309, Fayetteville, Arkansas 72701 or by wire transfer to an account of the City designated in writing by the City Treasurer.

10.7. Public Disclosure. The payment of any fee under this Section 10 shall be publicly disclosed.

10.8. Audit. Upon reasonable notice, the City shall have the right to inspect and copy the telecommunications providers or lessee's books and records that are reasonably necessary for the City to determine compliance with this Section 10. A telecommunications provider or lessee shall maintain sufficient financial records governing its operation in the City to allow the determination of gross revenues and to otherwise document accurate payment of fees. To the extent permitted under the Arkansas Freedom of Information Act, the City shall maintain the confidentiality of such records.

10.9. Fees not a Tax. The fees provided in this Section 10 are not taxes and are separate from, and in addition to, any and all federal, state, local and city taxes as may be levied, imposed or due from a telecommunications provider or lessee, its customers or subscribers, or on account of the lease, sale, delivery or transmission of telecommunications services; provided that no fee imposed by this section shall be imposed in violation of state or federal law.

Section 11. INDEMNIFICATION.

11.1. As a condition of the grant of a franchise or license, the telecommunications provider shall agree to indemnify, defend and hold harmless the City, its officers, boards,

commissions, agents and employees (collectively the "Indemnified Parties") from and against any and all lawsuits, claims, causes of action, actions, liabilities, demands, damages, judgments, settlements, disability, losses, expenses (including attorneys' fees and disbursements of counsel) and costs of any nature that any of the Indemnified Parties may at any time suffer, sustain or incur arising out of, based upon or in any way connected with the provider's or lessee's operations, the exercise of the franchise or license herein granted or the breach by the provider or lessee of its obligations under this Ordinance and the franchise agreement or license and/or based upon or in any way connected with the activities of the provider or lessee, or their subcontractors, employees and agents. The provider or lessee shall be solely responsible for and shall indemnify, defend and hold the Indemnified Parties harmless from and against any and all matters relative to payment of the providers or lessee's employees, including compliance with Social Security and withholding requirements.

11.2. The indemnification obligations of the provider or lessee set forth in this Ordinance are not limited in any way by the amount or type of damages or compensation payable by or for the provider or lessee under Worker's Compensation, disability or other employee benefit acts, acceptance of insurance certificates required under any franchise agreement or license, if any, or the terms, applicability or limitations of any insurance held by the provider or lessee.

11.3. The City does not, and shall not, waive any rights against the provider or lessee which it may have by reason of the indemnification provided for in this Ordinance because of the acceptance by the City, or the deposit with the City by provider or lessee, of any of the insurance policies described in this Ordinance.

11.4. The indemnification of the City by a provider or lessee provided for in this Ordinance shall apply to all damages and claims for damages of any kind suffered by reason of any of the provider's or lessee's operations referred to in this Ordinance regardless of whether or not such insurance policies shall have been determined to be applicable to any such damages or claims for damages.

11.5. A provider or lessee shall not be required to indemnify the City for negligence or misconduct on the part the City or its officials, boards, commissions, agents, or employees, provided that the provider or lessee shall be responsible for its proportionate share of any damages or claims resulting from any negligent act or omission.

Section 12. INSURANCE.

12.1. As a condition of the grant of any franchise under this Ordinance, the provider shall, at its sole expense, take out and maintain during the term of the franchise public liability insurance with a company licensed to do business in the State of Arkansas with a rating by A.M. Best & Co. of not less than "A" that shall protect the provider, the City and

their officials, officers, directors, employees and agents from claims which may arise from operations under the franchise, whether such operations be by the provider or a lessee, or its officials, officers, directors, employees and agents or any subcontractors of the provider or a lessee. This liability insurance shall include, but shall not be limited to, protection against claims rising from bodily and personal injury and damage to property, resulting from provider's or lessee's vehicles, products and operations. The amount of insurance for single limit coverage applying to bodily and personal injury and property damage shall not be less than Two Million Dollars ($2,000,000.00). The following endorsements shall be attached to the liability policy:

a) The policy shall provide coverage on an "occurrence" basis;

b) the policy shall cover personal injury as well as bodily injury;

c) The policy shall cover blanket contractual liability subject to the standard universal exclusions of contractual liability included in the carrier's standard endorsement as to bodily injuries, personal injuries and property damage;

d) Broad form property damage liability shall be afforded;

e) The City shall be named as an additional insured on the policy;

f) An endorsement shall be provided which states that the coverage is primary insurance and that no other insurance maintained by the City will be called upon to contribute to a loss under this coverage.

g) Standard form of cross-liability shall be afforded; and

h) An endorsement stating that the policy shall not be cancelled without thirty (30) days notice of such cancellation given to the City.

12.2. In any franchise granted pursuant to this Ordinance, the City shall reserve the right to adjust the insurance limit coverage requirements of the franchise no more often than once every three (3) years. Any such adjustment by the City will be no greater than the increase in the Arkansas Consumer Price Index (all consumers) for such three (3) year period.

12.3. Provider or lessee shall submit to City documentation of the required insurance, including a certificate of insurance signed by the insurance agent and companies name, as well as all properly executed endorsements.

12.4. The City may adjust the provisions of this Section 12 for good cause shown.

Section 13. RENEWAL.

13.1. A telecommunications provider or lessee that seeks to renew its franchise or license granted by the City pursuant to this Ordinance shall submit an application of renewal to the City no less that 180 days before expiration of its franchise or license. The Applicant shall provide such necessary information to show that it meets the requirements for renewal set out in this Section 13.2.

13.2. In considering whether to grant a renewal request, the City shall consider whether the telecommunications provider or licensee:

a) if applicable, continues to have the financial, legal and technical ability to provide telecommunications services to the City's residents, businesses and institutions;

b) has complied with the terms of this Ordinance and its franchise or license agreement;

c) has promptly cured any violation of this Ordinance or breach of its franchise or license agreement;

d) has fully and promptly paid any franchise fees or other compensation required by the City and any taxes imposed by the State or the City;

e) agrees to meet any special needs or interests determined by the City and to be imposed by the City in a competitively neutral and nondiscriminatory way; and

f) has cooperated with the City in carrying out the terms and conditions of this Ordinance and the franchise or license agreement and has provided such pertinent information as the City has requested throughout the term of the agreement.

The City shall also consider any other matter that is relevant to the renewal of the franchise or license.

13.3. The City reserves the right to refuse to renew any franchise for any reason, provided that the City shall comply with Section 253 of the Telecommunications Act of 1996.

13.4. If it chooses not to renew the franchise or license, the City shall state its reasons in writing and provide the telecommunications provider or lessee with a copy.

Section 14. REMOVAL.

14.1. Within thirty (30) days following written notice from the City, any telecommunications provider or other person that owns, controls or maintains any unauthorized telecommunications facility or related appurtenances on, in, under or above the streets shall, at its own expense, remove such facilities and appurtenances from the streets.

14.2. A telecommunications facility is unauthorized if the franchise or license of the applicable telecommunications provider or lessee has expired or has never been obtained, if the facility has been abandoned, or if the construction of the facility was not in compliance with this Ordinance and the franchise or license agreement.

Section 15. PUBLIC INTEREST OBLIGATIONS.

15.1. As a condition of granting a franchise or license under this Ordinance, the City may require a provider or lessee to make certain payments, in-kind contributions, provision of capacity for utilization by the City, educational institutions or other public entities, or to undertake other activities or make available other facilities for the purpose of enhancing the health, safety, welfare or safety of the City and its residents, businesses and institutions.

15.2. If the City requires any provider or lessee to comply with the conditions of this Section 15.1., the City shall disclose such conditions publicly.

Section 16. TRANSFER; TRANSFER OF CONTROL.

16.1. Any person granted a franchise or license pursuant to this Ordinance ("Grantee") shall not sell, transfer, lease, assign, sublet or dispose of, in whole or in part, either by forced or by involuntary sale, or by ordinary sale, consolidation, merger or otherwise, a franchise or license or any of the rights or privileges granted thereunder without the prior consent of the City Council, which consent shall not be unreasonably withheld or delayed. The consent of the City shall not be required when a franchise or license is transferred between wholly-owned subsidiaries of grantee's parent corporation.

16.2. A Grantee who seeks to take any of the actions specified in this Section 16.1., shall notify the City at least 150 days in advance of such anticipated action. In addition to providing notice of the proposed action, Grantee and the proposed transferee, lessee, assignee, subletee, purchaser, or other entity ("Transferee") shall also provide the following information at the time of such notice:

a) complete information setting forth the nature, terms and condition of the proposed transaction; and

b) information evidencing the Transferee's legal, technical and financial qualifications.

Within 20 days of a request by the City, the Grantee and Transferee shall also provide such other information pertinent to the proposed transaction as may be required by the City.

16.3. Within 90 days of receiving all the information it has requested, the City shall take action on the proposed transaction. If the City disapproves the proposed transaction, it shall state its reasons in a resolution of the City Council. If the City approves the proposed transaction, but with conditions, it shall likewise state the conditions in a resolution of the City Council.

16.4. Any transaction or transactions resulting in a change of ten percent (10%) or more of the ownership or control of the Grantee or of a franchise or license shall be deemed to be a transaction requiring the approval of the City Council and compliance with all the terms of this Section 16.

16.5. Failure to obtain the approval of the City Council as required by this Section 16 may be deemed a forfeiture of the applicable franchise or license by the City Council.

Section 17. EXISTING TELECOMMUNICATIONS PROVIDERS.

17.1. A telecommunications provider delivering service within or without the geographic limits of the City as of the effective date of this Ordinance who previously has been awarded a franchise or license may continue to operate according to the terms of the franchise or license it has been awarded; provided, however, that if any such franchise or license provides by its terms that the award is revocable at will at the City's direction, the City may choose to revoke such franchise or license. In such a case, the telecommunications provider promptly shall comply with the terms of this Ordinance.

17.2. Any telecommunications provider or lessee who as of the effective date of this Ordinance is delivering service without a franchise or license shall submit an application pursuant to Section 4.of this Ordinance with 90 days of the effective date. The provider or lessee shall also submit a written statement indicating that it accepts the terms and conditions of this Ordinance while its application is pending and that it shall pay all appropriate fees retroactive to the effective date.

Section 18. FORFEITURE.

18.1. If, in the City's judgment, a telecommunications provider or lessee is or may be in violation or breach of any term or condition of this Ordinance or franchise or license agreement pursuant hereto, the City shall notify the provider or lessee of the suspected violation or breach. Upon notification, the provider or lessee shall supply to the City within

30 days all information and documentation the City requests with respect to the suspected violation or breach and shall make such statement to the City as it wishes in an effort to explain to mitigate the violation or breach.

18.2. If the City is not satisfied with the information, documentation and explanation of the provider or lessee, it may make a finding of a breach or violation and notify the provider or lessee of such finding. Thereafter, the provider or lessee shall have a reasonable period of time (the "Cure Period") as determined by the City to take such steps as are necessary to cure the violation or breach.

18.3. If, at the conclusion of the Cure Period, the City determines that there remains a breach or violation of this Ordinance or franchise or license agreement pursuant hereto, the City shall schedule a hearing before the City Council or a duly authorized committee or representative of the Council for the purpose of making a final determination as to whether a violation or breach exists. At the hearing, the provider or lessee, representatives of the City, and the public may present evidence relevant to the alleged violation or breach.

18.4. At the conclusion of the hearing, or within 14 days thereafter, the City Council shall take such steps as it deems appropriate, including one or more of the following:

a) pursuing any of the remedies available to it as provided in Section 19 of this Ordinance;

b) ordering the provider or lessee to take such steps as are necessary to cure the violation or breach on pain of forfeiture;

c) declaring a forfeiture of the franchise or violation of the terms of the license and ordering the provider to take such steps as are necessary to remove its telecommunications facilities from the City's streets, or ordering the licensee to cease doing business in the City.

18.5. If the provider or lessee is dissatisfied with the decision of the City, it may seek relief in Washington County Circuit Court.

Section 19. ENFORCEMENT; PENALTIES.

19.1. A violation of any provision of this Ordinance relating to the health or safety of citizens of the City shall be a misdemeanor, subject to a fine of not more than $500 for each offense and punishable by not more than 12 months in jail. If the provider or lessee is a corporation and is convicted of a misdemeanor, it shall be subject to a fine as provided in §10.99 of the City of Fayetteville, Arkansas Code of Ordinances.

19.2. A violation of any provision of this Ordinance shall be a separate and distinct offense and shall subject the offender to a civil penalty in the amount of $500 for each day the violation continues. The City may recover such penalty in a civil action in a court of competent jurisdiction if the offender does not pay the penalty within twenty (20) days of the time the offender has been cited for the violation.

19.3. The City may seek injunctive relief or abatement orders in a court of competent jurisdiction to enforce the provisions of this Ordinance.

19.4. The City may pursue any of the remedies in Sections 18 or 19 of this Ordinance separately or in conjunction with one another.

Section 20. GENERAL PROVISIONS.

20.1. Captions. The captions to sections throughout this Ordinance are intended solely to facilitate reading and shall not affect the meaning or interpretation of this Ordinance.

20.2. No recourse against the City. Without limiting such immunities as the City or any other person may have under applicable law, a telecommunications provider or lessee awarded a franchise or license under this Ordinance shall have no recourse whatsoever against the City or its officials, members, boards, commissions, agents or employees for any loss, cost, expense, liability or damage arising out of any action undertaken or not undertaken pursuant to any provision or requirement of this Ordinance or because of the enforcement of this Ordinance or the City's exercise of its authority pursuant to this Ordinance, or other applicable law, unless such recourse is expressly authorized by statute, this ordinance or other ordinance.

20.3. Force Majeure. In the event a telecommunications providers or lessee's performance of any terms, conditions, obligations or requirements of this Ordinance is prevented or impaired due to any cause beyond its reasonable control, such inability to perform shall be deemed to be excused for the period of such inability and no penalties or sanctions shall be imposed as a result thereof, provided that the provider or lessee has notified the City in writing within ten (10) days of its discovery of the occurrence of such an event. Such causes beyond the provider's or lessee's reasonable control shall include, but shall not be limited to, acts of God, civil emergencies and labor unrest or strikes.

20.4. Non-waiver of remedies. The failure of the City to take any action to enforce any violation or breach of this Ordinance shall be deemed a waiver of its right to subsequently enforce any identical or similar violation or breach.

20.5. Severability. If any portion of this Ordinance is declared invalid by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such

portion shall be deemed a separate, distinct, and independent portion, and such declaration shall not affect the validity of the remaining portions hereof, which remaining portions shall continue in force and effect.

20.6. Notices and Filings. All notices required by this Ordinance to be provided to the City shall be provided in writing to the Fayetteville City Clerk. All filings shall be made with the City Clerk unless otherwise provided in this Ordinance.

PASSED AND APPROVED this _____ day of the _____, 2000.

APPROVED:

By:_____
Fred Hanna, Mayor

ATTEST:

By:_____
Heather Woodruff, City Clerk

Draft

STAFF REVIEW FORM

x AGENDA REQUEST
____ CONTRACT REVIEW
____ GRANT REVIEW

FOR: COUNCIL MEETING OF Sept. 19, 2000 **MAYOR'S APPROVAL**_____

FROM:

Jerry E. Rose	City Attorney	Legal
Name	Division	Department

ACTION REQUIRED:

Approval of an ordinance providing for the management and preservation of the City's rights-of-way and public places with respect to telecommunications services; providing for terms and conditions under which telecommunications providers and lessees may occupy the City's rights-of-way and public places; providing for compensation to the City on a competitively neutral and nondiscriminatory basis; creating an offense and providing penalties.

COST TO CITY:

0		
Cost of this Request	Category/Project Budget	Category/Project Name
Account Number	Funds Used to Date	Program Name
Project Number	Remaining Balance	Fund

BUDGET REVIEW: ____ Budgeted Item ____ Budget Adjustment Attached

Budget Coordinator — Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW: **GRANTING AGENCY:** _____

Accounting Manager	Date	Internal Auditor	Date
City Attorney	Date 9-12-00	ADA Coordinator	Date
Purchasing Officer	Date		

STAFF RECOMMENDATION:

Division Head	Date
Department Director	Date
Administrative Services Director	Date
Mayor	Date

CROSS REFERENCE

New Item: Yes No

Previous Ordinance/Resolution No.: _____

Original Contract Date: _____

ORDINANCE NO. _____

AN ORDINANCE PROVIDING FOR THE MANAGEMENT AND PRESERVATION OF THE CITY'S RIGHTS-OF-WAY AND PUBLIC PLACES WITH RESPECT TO TELECOMMUNICATIONS SERVICES; PROVIDING FOR TERMS AND CONDITIONS UNDER WHICH TELECOMMUNICATIONS PROVIDERS AND LESSEES MAY OCCUPY THE CITY'S RIGHTS-OF-WAY AND PUBLIC PLACES; PROVIDING FOR COMPENSATION TO THE CITY ON A COMPETITIVELY NEUTRAL AND NON-DISCRIMINATORY BASIS; CREATING AN OFFENSE AND PROVIDING PENALTIES.

WHEREAS, the provisions of telecommunications services has become an essential part of modern life that can significantly enhance the quality of life for the City's residents, businesses and institutions; and

WHEREAS, the City's rights-of-way and public places are valuable assets to the City and its residents, businesses and institutions; and

WHEREAS, the City has invested and will continue to invest substantial public monies in the acquisition, construction and maintenance of public rights-of-way and public places; and

WHEREAS, grant of permission to a private entity to use public rights-of-way and public places is a valuable property right that eliminates the necessity for the private entity to invest substantial capital; and

WHEREAS, the City is entitled to fair and reasonable compensation from a telecommunications provider who utilizes the City's public rights-of-way and public places for the delivery of its services; and

WHEREAS, the United States Congress has recently adopted the Telecommunications Act of 1996 (the "Act"), which substantially amended the telecommunications law of the United States; and

WHEREAS, Section 253(a) of the Act provides that no local regulation or legal requirement may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service; and

WHEREAS, Section 253(c) of the Act provides that nothing in the Act affects the authority of a State or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed; and

WHEREAS, it is in the best interests of the City and its residents, businesses and institutions, to establish rules and regulations that encourage the provision of telecommunications services, encourage telecommunications competition, treat telecommunications providers on a competitively neutral and nondiscriminatory basis, preserve and protect the City's rights-of-way and public places, secure fair and reasonable compensation for the private use of the City's rights-of-way and public places, and take such other necessary steps to responsibly protect the public health, safety and welfare;

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

Section 1. TITLE. This Ordinance shall be known as "The City of Fayetteville Telecommunications Ordinance".

Section 2. DEFINITIONS. As used in this Ordinance, the following terms shall have the meanings set out:

2.1. "Applicant" means a telecommunications provider or telecommunications lessee that applies for a franchise or license pursuant to this Ordinance.

2.2. "Franchise fee" means compensation paid to the City by the telecommunications provider or lessee in exchange for the use of the City's streets to deliver telecommunications services inside or outside the geographic limits of the City.

2.3. "Gross revenues" means all revenue regardless of the source, received directly or indirectly, including in-kind services or goods, by a telecommunications provider or lessee from or in connection with the retail delivery of telecommunications services in the City, including long-distance service, 0 and including revenue derived from the sale or lease at retail of equipment and/or facilities provided by a telecommunications provider or lessee; provided, however, that "gross revenues" shall not include any taxes on services which are imposed directly on any customer of a telecommunications provider or lessee by the United States, the State of Arkansas, the City, the School Board, or any other governmental unit and which are collect on behalf of such governmental unit. "Gross revenues" does not include wholesale revenues derived from the sale or lease of capacity, bundled or unbundled elements of a telecommunications system, or telecommunications services to a telecommunications lessee.

2.4. "Person" means any individual, resident, citizen, business, firm, corporation, partnership, governmental agency, or institution.

2.5. "Streets" means all streets, roads, highways, alleys, rights-of-way, utility easements, public property, public ways and air space over such streets, roads, highways,

alleys, rights-of-way, utility easements, public property and public ways located within the geographic limits of the City.

2.6. "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing (e.g., data, video and voice), without change in the form or content of the information set and received.

2.7. "Telecommunications facilities" or "facilities" means all conduits, manholes, poles, antennas, transceivers, wires, cable (including fiver optic cable) and appurtenances owned or utilized by a telecommunications provider or telecommunications lessee and located in, under or over the streets, utility easements, public property, and public ways of the City and utilized in the provision of telecommunications services, including digital or analog, voice, data, and video imaging and other enhanced telecommunications services.

2.8. "Telecommunications lessee" or "lessee" means any person, firm, corporation, partnership, or other business entity, including "resellers," that provides telecommunications services within the geographic boundaries of the City, including long-distance services that originate or terminate in the City, by utilizing, purchasing or leasing a telecommunications facility of a telecommunications provider or any element thereof, whether through purchase, lease, contract, interconnection agreement, or other business arrangement; provided that a person that owns its own telecommunications facilities in the City and utilizes, purchases or leases telecommunications facilities or elements thereof of other telecommunications providers in the City shall be classified as a telecommunications provider under the terms of this Ordinance.

2.9. "Telecommunications provider" or "provider" means any person, firm, corporation, partnership or other business entity, other than the City, that provides telecommunications services within or without the geographic boundaries of the City by utilizing its own telecommunications facilities to provide telecommunications services.

2.10. "Telecommunications services" or "services" means any service delivering telecommunications by a telecommunications provider or lessee whether within or without the geographic boundaries of the City that the provider or lessee is authorized to provide under federal, state and local law, except that these terms do not include "cable service" as defined in the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992, 47 U.S.C.§ 521 et seq., and the Telecommunications Act of 1996.

2.11. "Transmission line" means a telecommunications facility that is used solely for the purpose of transmitting signals from one point outside the City to another point outside the City and does not include a line for the purpose of delivering telecommunications services to any person in the City.

Section 3. REQUIREMENT OF CITY'S CONSENT.

3.1. Every telecommunications provider and telecommunications lessee that utilizes a telecommunications facility must obtain a franchise or license from the City in accordance with this Ordinance in order to provide telecommunications services within or without the geographic limits of the City. Prior to providing any telecommunications service or utilizing any telecommunications facility, the provider or lessee must provide a written acceptance of the terms and conditions of this Ordinance and enter into a franchise agreement or license agreement.

Section 4. APPLICATION PROCESS.

4.1. Any telecommunications provider or lessee seeking to provide telecommunications service (the "Applicant") shall complete a brief application form approved by the Department of Public Works. Such application form shall briefly described the general nature of the service to be provided, the type of construction or use of facilities required, the name, address and telephone number of the person or entity seeking to provide the service, and the name, address and telephone number of an authorized representative of the person or entity.

4.2. The Applicant shall also provide evidence in a form satisfactory to the City that it has the financial, legal and technical qualifications necessary to provide the service for which it seeks a franchise or license.

4.3. In considering whether to grant a franchise or license or impose terms and conditions on the grant of a franchise or license, the City may consider, without limitation, the following factors:

a) the Applicant's financial ability to pay the compensation and fees required by this Ordinance;

b) the Applicant's ability to construct and operate the telecommunications facilities it seeks to utilize;

c) the Applicant's compliance with the terms and conditions of federal, state and local law including law in other jurisdictions in which it operates;

d) the capacity of the Streets to accommodate the Applicant's proposed facilities;

e) the damage or disruption, if any, of public or private facilities, improvements, or landscaping if a franchise or license is granted;

f) the public interest in minimizing the cost and disruption of construction in, on, under and above the streets;

g) the effect of public health, safety or welfare if a franchise or license is granted;

h) the availability of alternate routes and/or locations for the proposed facilities;

i) whether the imposition of certain terms and conditions or the failure to grant the requested franchise or license would prohibit or have the effect of prohibiting the ability of the Applicant to provide any interstate or intrastate telecommunications services; and

j) any other factor relating to whether the grant of a franchise or license impinges on the City's rights to manage its streets.

4.4. An Applicant for a telecommunications franchise or license shall submit with its Application a fee in the amount of $150.00 in partial compensation to the City for processing the Application.

4.5. If the City approves the Application, the provider or lessee shall reimburse the City for any reasonable costs and expenses, including attorney's fees, incurred by the City to review and evaluate the Application and prepare and negotiate a franchise agreement or license agreement with the provider or lessee, and including the costs of any publication of an ordinance as provided in Section 5.

4.6. All Applications and/or amendments to franchise agreements shall be submitted to the City of Fayetteville Telecommunications Board for their advice, if any, prior to City approval.

Section 5. FRANCHISE OR LICENSE AGREEMENT.

5.1. As a condition of the grant of a franchise or license, the provider or lessee shall enter into a franchise agreement or a license agreement with the City. A telecommunications provider shall enter into a franchise agreement. A telecommunications lessee shall enter into a license agreement.

5.2. The franchise agreement or license agreement shall contain such additional terms and conditions as are not in conflict with the terms of this Ordinance as may be necessary and appropriate for the particular circumstances of the provider or lessee and its delivery of telecommunications services.

5.3. The franchise agreement or license agreement shall be adopted as an ordinance

by the City prior to the initiation of any construction or the deliver of any service.

5.4. A franchise agreement may be amended from time to time upon agreement of the City and the provider or lessee.

5.5. A license agreement may be revoked or repealed by the City at any time unless otherwise provided by its terms.

5.6. The telecommunications provider or lessee shall pay to the City or on behalf of the City the cost of any publication required by law.

Section 6. CONSTRUCTION AND MAINTENANCE.

6.1. Application. Prior to the beginning construction of any telecommunications facility, the Applicant shall apply to the Department of Public Works of the City for permission to carry out construction activities in the City's streets, and shall comply with all requirements of that department or any other ordinance or code applicable hereto.

6.2. Construction Plan. Prior to beginning construction, the Applicant shall submit a plan describing the proposed construction. The plan shall specify:

a) the design of any telecommunications facilities to be constructed or utilized;

b) a map showing the precise location of any telecommunications facility to be constructed or utilized and any appurtenant facilities such as poles, attachments, guy wires, and the like;

c) a description of any agreements that have been reached or are necessary with other telecommunications providers or providers of other utility services regarding use of existing facilities;

d) the timetable for completion of construction, including any phases of construction;

e) the total estimated cost of construction of the telecommunications facilities; and

f) such other information as will provide the City with pertinent information relating to the construction of the telecommunications facilities, including any pertinent information requested by the City.

6.3. Prior Authority. Prior to beginning construction, the Applicant shall have

received all necessary regulatory authority to construct a telecommunications facility or provide telecommunications service from the Arkansas Public Utilities Commission, the

Federal Communications Commission, or other appropriate state or federal agency. Evidence that it has received such regulatory authority shall be filed with the City.

6.4. Standards of Construction. The method of construction, workmanship used, and materials utilized in the construction shall conform to all applicable federal, state and local statutes, rules, regulations and ordinances. All work shall be performed in a safe, thorough, and reliable manner using materials of good and durable quality so as not to create a hazard or dangerous condition on the streets. If, at any time, it is determined by the City or any other agency or authority of competent jurisdiction that any telecommunications facility presents a danger to the public health, safety or welfare, then the telecommunications provider or lessee shall, at its own cost and expense, promptly correct all such conditions.

6.5. Maintenance and Repair. Any telecommunications facility constructed or utilized pursuant to a franchise or license shall be maintained and repaired in accordance with the standards and under the terms and conditions set out in the preceding paragraph and such other terms and conditions as shall appear in this Ordinance or the franchise agreement or license agreement.

6.6. Minimal Disruption. Construction, maintenance and repair of the telecommunications facilities shall be conducted in such a manner as to minimize any interference with or disruption of the City's streets, traffic, residences, businesses and institutions. The provider shall be obligated to use trenchless technology in appropriate circumstances.

6.7. Restoration. Any disturbance of the City's streets shall be repaired and restored by the telecommunications provider or lessee at its expense and to a condition as good as that prevailing before the work causing such disturbance was commenced.

6.8. Location of Facilities. Poles and other facilities shall be located to the extent feasible in such a way as to minimize their effect on the visual landscape and on other aesthetic considerations and so as to minimize inconvenience.

6.9. Burial of Transmission Lines. A telecommunications provider shall place its transmission line or other facilities underground in certain areas designed by the City Council, but only if existing providers maintaining line or facilities in the same areas have or will be required by the City to place their lines or facilities underground.

6.10. Co-location; Sharing of Pole Space. To the maximum extent feasible, a telecommunications provider constructing a new transmission line or other facility, or expanding an existing line or facility, shall utilize facilities. The owner of any existing

facility shall to the extent permitted by law and consistent with any pole attachment regulations of the Public Service Commission, the Federal Communications Commission or other appropriate agency, permit the telecommunications provider to utilize its pole.

6.11. Movement of Facilities. A telecommunications provider shall be required to temporarily disconnect or relocate any of its facilities at its own expense when required by the City by reason of traffic conditions; public safety; or the construction, installation or repair of any public road, highway, building, park or other public project. The provider shall cooperate with any other public utility authorized by the City to provide utility service utilizing the City's streets.

6.12. Tree Trimming. A telecommunications provide is authorized to trim trees in the City's streets and private easements to the extent necessary to properly maintain its transmission line or other facility, but prior to trimming any tree, it shall provide 24 hours' notice to the City. The City, at its option, may choose to supervise such trim treeing. Upon conclusion of the tree trimming, the provider shall immediately clean up and remove all debris.

6.13. Curb Cuts. No provider shall make paving cuts or curb cuts without the written consent of the Director of the Department of Public Works.

Section 7. PERFORMANCE BOND.

7.1. Prior to the provision of service, the provider shall post a performance bond, satisfactory to the City, in the City's favor to ensure faithful performance of the terms and provisions of the franchise agreement and any planned construction as designated in the construction plan the provider has filed with the City pursuant to §6.2. The bond shall be equivalent to ten (10%) percent of the total cost of the construction as provided in the construction plan, or $100,000, whichever is greater.

7.2. In the event the provider fails to comply with this Ordinance or the franchise agreement, or to complete the construction in a safe, timely, and competent manner, after notice and a reasonable opportunity to cure, the City may recover, jointly and severally from the principal and surety of the bond, any damages or loss suffered by the City as a result, including the full amount of any compensation, indemnification, or cost of removal or abandonment of any property of the provider, plus a reasonable allowance for attorneys' fees, up to the full amount of the bond.

7.3. The City in its sole discretion may waive this requirement of a bond upon good cause shown to the Director of the Department of Public Works.

Section 8. TERM OF FRANCHISE FOR PROVIDERS.

8.1. Unless otherwise specified in a franchise agreement, a telecommunications franchise shall be for a term of 10 years, provided that the City may grant a franchise up to 20 years for good cause shown.

Section 9. TERM OF LICENSE FOR LESSEES OR RESELLERS.

9.1. Unless otherwise specified in a license, a telecommunications license shall be for a term of five (5) years, provided that the City may grant a license for a longer period of time upon good cause shown.

Section 10. FEES.

10.1. Amount. In consideration of the City's grant of authority to utilize the City's streets for the provision or lease of telecommunications services outside or inside the geographic limits of the City for other good and valuable consideration, the telecommunications provider or lessee shall pay a franchise fee or license fee to the City in the following amounts:

a) A telecommunications provider who provides service to residents, businesses or institutions in the City shall pay four percent (4%) of [access line billing-see Southwestern Bell Ordinance #2990] its annual gross revenues derived from its provision of telecommunications service in the City, including long distance service originating in the City or terminating in the City;

b) A telecommunications provider who provides service solely to persons outside the geographic boundaries of the City by utilizing a transmission line shall pay the City a reasonable annual fee based upon an installation fee and charge per linear foot of transmission line that traverses the City or based upon such other method as the City deems appropriate. Such a fee may be paid in a lump sum in advance, or in a combination of a lump sum plus annual payment as the City deems fit;

c) A telecommunications lessee who delivers telecommunications services within or without the geographic boundaries of the City shall pay the City four percent (4%) of its annual gross revenues derived from the delivery of telecommunications service within the City, including long-distance service originating in the City or terminating in the City.

10.2. Public Interest Obligations. If, as a condition of the grant of a franchise or a license, the City requires the telecommunications provider or lessee to meet certain conditions or requirements in the public interest as provided in Section 15 of this Ordinance,

the City may provide a credit against the fee based upon the percentage of gross revenues it would otherwise require in compensation so that the total compensation paid to the City is no more than the equivalent of four percent (4%) of gross revenues.

10.3. Time of Payment. All fees due and owing shall be paid on a biannual basis on or before July 15 of each year for the first six (6) months of the calendar year and on or before January 15 of each year for the second six (6) months of the preceding calendar year.

10.4. Late Payment. In the event that any payment is not actually received by the City on or before the date due under this Ordinance, interest thereon shall accrue from such date until received at the rate of ten per cent (10%) per annum.

10.5. Calculation of Payments. All payments made to the City shall be accompanied by a statement certified as true by an appropriate employee of the provider or lessee explaining the basis of the calculation on which the payment was made.

10.6. Payments. Payments shall be made by certified check to the City of Fayetteville, c/o City Treasurer, 113 West Mountain, Room 309, Fayetteville, Arkansas 72701 or by wire transfer to an account of the City designated in writing by the City Treasurer.

10.7. Public Disclosure. The payment of any fee under this Section 10 shall be publicly disclosed.

10.8. Audit. Upon reasonable notice, the City shall have the right to inspect and copy the telecommunications providers or lessee's books and records that are reasonably necessary for the City to determine compliance with this Section 10. A telecommunications provider or lessee shall maintain sufficient financial records governing its operation in the City to allow the determination of gross revenues and to otherwise document accurate payment of fees. To the extent permitted under the Arkansas Freedom of Information Act, the City shall maintain the confidentiality of such records.

10.9. Fees not a Tax. The fees provided in this Section 10 are not taxes and are separate from, and in addition to, any and all federal, state, local and city taxes as may be levied, imposed or due from a telecommunications provider or lessee, its customers or subscribers, or on account of the lease, sale, delivery or transmission of telecommunications services; provided that no fee imposed by this section shall be imposed in violation of state or federal law.

Section 11. INDEMNIFICATION.

11.1. As a condition of the grant of a franchise or license, the telecommunications provider shall agree to indemnify, defend and hold harmless the City, its officers, boards,

commissions, agents and employees (collectively the "Indemnified Parties") from and against any and all lawsuits, claims, causes of action, actions, liabilities, demands, damages, judgments, settlements, disability, losses, expenses (including attorneys' fees and disbursements of counsel) and costs of any nature that any of the Indemnified Parties may at any time suffer, sustain or incur arising out of, based upon or in any way connected with the provider's or lessee's operations, the exercise of the franchise or license herein granted or the breach by the provider or lessee of its obligations under this Ordinance and the franchise agreement or license and/or based upon or in any way connected with the activities of the provider or lessee, or their subcontractors, employees and agents. The provider or lessee shall be solely responsible for and shall indemnify, defend and hold the Indemnified Parties harmless from and against any and all matters relative to payment of the providers or lessee's employees, including compliance with Social Security and withholding requirements.

11.2. The indemnification obligations of the provider or lessee set forth in this Ordinance are not limited in any way by the amount or type of damages or compensation payable by or for the provider or lessee under Worker's Compensation, disability or other employee benefit acts, acceptance of insurance certificates required under any franchise agreement or license, if any, or the terms, applicability or limitations of any insurance held by the provider or lessee.

11.3. The City does not, and shall not, waive any rights against the provider or lessee which it may have by reason of the indemnification provided for in this Ordinance because of the acceptance by the City, or the deposit with the City by provider or lessee, of any of the insurance policies described in this Ordinance.

11.4. The indemnification of the City by a provider or lessee provided for in this Ordinance shall apply to all damages and claims for damages of any kind suffered by reason of any of the provider's or lessee's operations referred to in this Ordinance regardless of whether or not such insurance policies shall have been determined to be applicable to any such damages or claims for damages.

11.5. A provider or lessee shall not be required to indemnify the City for negligence or misconduct on the part the City or its officials, boards, commissions, agents, or employees, provided that the provider or lessee shall be responsible for its proportionate share of any damages or claims resulting from any negligent act or omission.

Section 12. INSURANCE.

12.1. As a condition of the grant of any franchise under this Ordinance, the provider shall, at its sole expense, take out and maintain during the term of the franchise public liability insurance with a company licensed to do business in the State of Arkansas with a rating by A.M. Best & Co. of not less than "A" that shall protect the provider, the City and

their officials, officers, directors, employees and agents from claims which may arise from operations under the franchise, whether such operations be by the provider or a lessee, or its officials, officers, directors, employees and agents or any subcontractors of the provider or a lessee. This liability insurance shall include, but shall not be limited to, protection against claims rising from bodily and personal injury and damage to property, resulting from provider's or lessee's vehicles, products and operations. The amount of insurance for single limit coverage applying to bodily and personal injury and property damage shall not be less than Two Million Dollars ($2,000,000.00). The following endorsements shall be attached to the liability policy:

a) The policy shall provide coverage on an "occurrence" basis;

b) the policy shall cover personal injury as well as bodily injury;

c) The policy shall cover blanket contractual liability subject to the standard universal exclusions of contractual liability included in the carrier's standard endorsement as to bodily injuries, personal injuries and property damage;

d) Broad form property damage liability shall be afforded;

e) The City shall be named as an additional insured on the policy;

f) An endorsement shall be provided which states that the coverage is primary insurance and that no other insurance maintained by the City will be called upon to contribute to a loss under this coverage.

g) Standard form of cross-liability shall be afforded; and

h) An endorsement stating that the policy shall not be cancelled without thirty (30) days notice of such cancellation given to the City.

12.2. In any franchise granted pursuant to this Ordinance, the City shall reserve the right to adjust the insurance limit coverage requirements of the franchise no more often than once every three (3) years. Any such adjustment by the City will be no greater than the increase in the Arkansas Consumer Price Index (all consumers) for such three (3) year period.

12.3. Provider or lessee shall submit to City documentation of the required insurance, including a certificate of insurance signed by the insurance agent and companies name, as well as all properly executed endorsements.

12.4. The City may adjust the provisions of this Section 12 for good cause shown.

Section 13. RENEWAL.

13.1. A telecommunications provider or lessee that seeks to renew its franchise or license granted by the City pursuant to this Ordinance shall submit an application of renewal to the City no less that 180 days before expiration of its franchise or license. The Applicant shall provide such necessary information to show that it meets the requirements for renewal set out in this Section 13.2.

13.2. In considering whether to grant a renewal request, the City shall consider whether the telecommunications provider or licensee:

a) if applicable, continues to have the financial, legal and technical ability to provide telecommunications services to the City's residents, businesses and institutions;

b) has complied with the terms of this Ordinance and its franchise or license agreement;

c) has promptly cured any violation of this Ordinance or breach of its franchise or license agreement;

d) has fully and promptly paid any franchise fees or other compensation required by the City and any taxes imposed by the State or the City;

e) agrees to meet any special needs or interests determined by the City and to be imposed by the City in a competitively neutral and nondiscriminatory way; and

f) has cooperated with the City in carrying out the terms and conditions of this Ordinance and the franchise or license agreement and has provided such pertinent information as the City has requested throughout the term of the agreement.

The City shall also consider any other matter that is relevant to the renewal of the franchise or license.

13.3. The City reserves the right to refuse to renew any franchise for any reason, provided that the City shall comply with Section 253 of the Telecommunications Act of 1996.

13.4. If it chooses not to renew the franchise or license, the City shall state its reasons in writing and provide the telecommunications provider or lessee with a copy.

Section 14. REMOVAL.

14.1. Within thirty (30) days following written notice from the City, any telecommunications provider or other person that owns, controls or maintains any unauthorized telecommunications facility or related appurtenances on, in, under or above the streets shall, at its own expense, remove such facilities and appurtenances from the streets.

14.2. A telecommunications facility is unauthorized if the franchise or license of the applicable telecommunications provider or lessee has expired or has never been obtained, if the facility has been abandoned, or if the construction of the facility was not in compliance with this Ordinance and the franchise or license agreement.

Section 15. PUBLIC INTEREST OBLIGATIONS.

15.1. As a condition of granting a franchise or license under this Ordinance, the City may require a provider or lessee to make certain payments, in-kind contributions, provision of capacity for utilization by the City, educational institutions or other public entities, or to undertake other activities or make available other facilities for the purpose of enhancing the health, safety, welfare or safety of the City and its residents, businesses and institutions.

15.2. If the City requires any provider or lessee to comply with the conditions of this Section 15.1., the City shall disclose such conditions publicly.

Section 16. TRANSFER; TRANSFER OF CONTROL.

16.1. Any person granted a franchise or license pursuant to this Ordinance ("Grantee") shall not sell, transfer, lease, assign, sublet or dispose of, in whole or in part, either by forced or by involuntary sale, or by ordinary sale, consolidation, merger or otherwise, a franchise or license or any of the rights or privileges granted thereunder without the prior consent of the City Council, which consent shall not be unreasonably withheld or delayed.

16.2. A Grantee who seeks to take any of the actions specified in this Section 16.1., shall notify the City at least 150 days in advance of such anticipated action. In addition to providing notice of the proposed action, Grantee and the proposed transferee, lessee, assignee, subletee, purchaser, or other entity ("Transferee") shall also provide the following information at the time of such notice:

a) complete information setting forth the nature, terms and condition of the proposed transaction; and

b) information evidencing the Transferee's legal, technical and financial

qualifications.

Within 20 days of a request by the City, the Grantee and Transferee shall also provide such other information pertinent to the proposed transaction as may be required by the City.

16.3. Within 90 days of receiving all the information it has requested, the City shall take action on the proposed transaction. If the City disapproves the proposed transaction, it shall state its reasons in a resolution of the City Council. If the City approves the proposed transaction, but with conditions, it shall likewise state the conditions in a resolution of the City Council.

16.4. Any transaction or transactions resulting in a change of ten percent (10%) or more of the ownership or control of the Grantee or of a franchise or license shall be deemed to be a transaction requiring the approval of the City Council and compliance with all the terms of this Section 16.

16.5. Failure to obtain the approval of the City Council as required by this Section 16 may be deemed a forfeiture of the applicable franchise or license by the City Council.

Section 17. EXISTING TELECOMMUNICATIONS PROVIDERS.

17.1. A telecommunications provider delivering service within or without the geographic limits of the City as of the effective date of this Ordinance who previously has been awarded a franchise or license may continue to operate according to the terms of the franchise or license it has been awarded; provided, however, that if any such franchise or license provides by its terms that the award is revocable at will at the City's direction, the City may choose to revoke such franchise or license. In such a case, the telecommunications provider promptly shall comply with the terms of this Ordinance.

17.2. Any telecommunications provider or lessee who as of the effective date of this Ordinance is delivering service without a franchise or license shall submit an application pursuant to Section 4 of this Ordinance with 90 days of the effective date. The provider or lessee shall also submit a written statement indicating that it accepts the terms and conditions of this Ordinance while its application is pending and that it shall pay all appropriate fees retroactive to the effective date.

Section 18. FORFEITURE.

18.1. If, in the City's judgment, a telecommunications provider or lessee is or may be in violation or breach of any term or condition of this Ordinance or franchise or license agreement pursuant hereto, the City shall notify the provider or lessee of the suspected violation or breach. Upon notification, the provider or lessee shall supply to the City within 30 days all information and documentation the City requests with respect to the suspected

violation or breach and shall make such statement to the City as it wishes in an effort to explain to mitigate the violation or breach.

18.2. If the City is not satisfied with the information, documentation and explanation of the provider or lessee, it may make a finding of a breach or violation and notify the provider or lessee of such finding. Thereafter, the provider or lessee shall have a reasonable period of time (the "Cure Period") as determined by the City to take such steps as are necessary to cure the violation or breach.

18.3. If, at the conclusion of the Cure Period, the City determines that there remains a breach or violation of this Ordinance or franchise or license agreement pursuant hereto, the City shall schedule a hearing before the City Council or a duly authorized committee or representative of the Council for the purpose of making a final determination as to whether a violation or breach exists. At the hearing, the provider or lessee, representatives of the City, and the public may present evidence relevant to the alleged violation or breach.

18.4. At the conclusion of the hearing, or within 14 days thereafter, the City Council shall take such steps as it deems appropriate, including one or more of the following:

a) pursuing any of the remedies available to it as provided in Section 19 of this Ordinance;

b) ordering the provider or lessee to take such steps as are necessary to cure the violation or breach on pain of forfeiture;

c) declaring a forfeiture of the franchise or violation of the terms of the license and ordering the provider to take such steps as are necessary to remove its telecommunications facilities from the City's streets, or ordering the licensee to cease doing business in the City.

18.5. If the provider or lessee is dissatisfied with the decision of the City, it may seek relief in Washington County Circuit Court.

Section 19. ENFORCEMENT; PENALTIES.

19.1. A violation of any provision of this Ordinance relating to the health or safety of citizens of the City shall be a misdemeanor, subject to a fine of not more than $500 for each offense and punishable by not more than 12 months in jail. If the provider or lessee is a corporation and is convicted of a misdemeanor, it shall be subject to a fine as provided in §10.99 of the City of Fayetteville, Arkansas Code of Ordinances.

19.2. A violation of any provision of this Ordinance shall be a separate and distinct offense and shall subject the offender to a civil penalty in the amount of $500 for each day

the violation continues. The City may recover such penalty in a civil action in a court of competent jurisdiction if the offender does not pay the penalty within twenty (20) days of the time the offender has been cited for the violation.

19.3. The City may seek injunctive relief or abatement orders in a court of competent jurisdiction to enforce the provisions of this Ordinance.

19.4. The City may pursue any of the remedies in Sections 18 or 19 of this Ordinance separately or in conjunction with one another.

Section 20. GENERAL PROVISIONS.

20.1. Captions. The captions to sections throughout this Ordinance are intended solely to facilitate reading and shall not affect the meaning or interpretation of this Ordinance.

20.2. No recourse against the City. Without limiting such immunities as the City or any other person may have under applicable law, a telecommunications provider or lessee awarded a franchise or license under this Ordinance shall have no recourse whatsoever against the City or its officials, members, boards, commissions, agents or employees for any loss, cost, expense, liability or damage arising out of any action undertaken or not undertaken pursuant to any provision or requirement of this Ordinance or because of the enforcement of this Ordinance or the City's exercise of its authority pursuant to this Ordinance, or other applicable law, unless such recourse is expressly authorized by statute, this ordinance or other ordinance.

20.3. Force Majeure. In the event a telecommunications providers or lessee's performance of any terms, conditions, obligations or requirements of this Ordinance is prevented or impaired due to any cause beyond its reasonable control, such inability to perform shall be deemed to be excused for the period of such inability and no penalties or sanctions shall be imposed as a result thereof, provided that the provider or lessee has notified the City in writing within ten (10) days of its discovery of the occurrence of such an event. Such causes beyond the provider's or lessee's reasonable control shall include, but shall not be limited to, acts of God, civil emergencies and labor unrest or strikes.

20.4. Non-waiver of remedies. The failure of the City to take any action to enforce any violation or breach of this Ordinance shall be deemed a waiver of its right to subsequently enforce any identical or similar violation or breach.

20.5. Severability. If any portion of this Ordinance is declared invalid by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion, and such declaration shall not affect the validity of the remaining portions hereof, which remaining portions shall

continue in force and effect.

20.6. Notices and Filings. All notices required by this Ordinance to be provided to the City shall be provided in writing to the Fayetteville City Clerk. All filings shall be made with the City Clerk unless otherwise provided in this Ordinance.

PASSED AND APPROVED this _____ day of the _____, 2000.

APPROVED:

By:_____
Fred Hanna, Mayor

ATTEST:

By:_____
Heather Woodruff, City Clerk

Draft

COLE, RAYWID & BRAVERMAN, L.L.P.

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September 14, 2000

BY FEDERAL EXPRESS

Heather Woodruff
City Clerk
113 W. Mountain
Fayetteville, Arkansas 72701

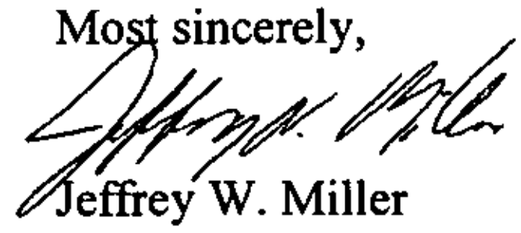
Re: Comments Of Adelphia Business Solutions Of Arkansas, L.L.C. Regarding The Proposed Telecommunications Ordinance

Dear Ms. Woodruff:

It was a pleasure speaking with you on Wednesday regarding Adelphia Business Solutions' ("ABS") plans to submit comments on Fayetteville's proposed telecommunications ordinance which is scheduled to go to a first reading on Monday September 19, 2000. As we discussed, I have enclosed a copy of the comment letter which I submitted to Jerry Rose. Please see that each of the City Council members receive a copy before the meeting.

Should you have any questions please do not hesitate to contact me. Thank you for your time and assistance.

Most sincerely,



Jeffrey W. Miller

cc: Jim Stinson, Esq.
Mary Margaret Johnson

122975-1

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September 14, 2000

BY FEDERAL EXPRESS

Mr. Jerry E. Rose
City Attorney
113 West Mountain
Fayetteville, AR 72701

Re: Comments Of Adelphia Business Solutions Of Arkansas, L.L.C. Regarding The Proposed Telecommunications Ordinance

Dear Mr. Rose:

Thank you for sending an updated copy of Fayetteville's Draft Telecommunications Ordinance ("draft"). After reviewing the draft, it is apparent that a number of our earlier concerns were not addressed in the changes made to the first draft. Accordingly, the following comments reiterate those concerns in greater detail as well as address new issues raised by the modifications to the draft, and in particular, the revised fee Section. ABS requests that these comments be submitted to the City Council and hopes that they will assist the City in developing a final ordinance which is in accord with the Federal Telecommunications Act of 1996 ("1996 Act").

Fees

Section 10.1(a) changed the fee basis for telecommunications companies providing service to residents and/or businesses in the City, to 4% of access line billing within the corporate limits of the City. However, the draft fails to define "access line billing," and therefore, it is unclear what the fee basis actually encompasses. Thus, ABS requests that the City amend the ordinance to include a definition of access line billing. Additionally, given the exceptionally broad definition of gross revenues contained in the draft, we are concerned that the City will attempt to similarly define access line billing. With this in mind we offer the following

analysis of the 1996 Act as it pertains to a City's right to be compensated for the use of the public rights-of-way.

Federal law permits municipalities to manage the public rights-of-way and to exact fair and reasonable compensation for the "use" of the public rights-of-way. 47 U.S.C.§ 253(c). Federal courts have interpreted Section 253 of the 1996 Act to require that fees be reasonably related to the costs to the city of the "use" of the rights-of-way by telecommunications companies. *See Peco Energy Co. v. Township of Haverford*, 1999 U.S. Dist. LEXIS 19409, *22(D. Pa. 1999). *AT&T Communications of the Southwest, Inc. v. City of Dallas*, 8 F. Supp. 2d 582, 591 (N.D. Tex. 1998). Thus, to be valid under Section 253 of the 1996 Act, fees must bear some reasonable relation to the cost to the City of the use of its public rights-of-way.

A number of federal courts have held that fees based on gross revenues bear little relation to the actual costs to the City and thus violate the 1996 Act. In *City of Dallas*, the court held that the City's requirement that a telecommunications company pay a franchise fee of 4% of local gross revenue from "*all* of its activities in Dallas contradicts the requirements of the [1996 Act]," and "violates § 253(a) of the act as an economic barrier to entry." 8 F.Supp. 2d at 593. Moreover, in *Peco*, the court struck down a fee based on 5% of gross revenues noting that "[r]evenue based fees cannot, by definition, be based on pure compensation for the use of the rights-of-way." *Peco*, 1999 U.S. Dist. LEXIS 19409 at *19.

Although the fee basis in the draft ordinance is 4% of access line billing and not gross revenues, it could be equally as problematic and unlawful depending on the definition the City adopts. For example, the City may determine that access line billing includes all charges relating to a particular access line including, local and long distance charges, customer service and late charges, and equipment rentals and sales. The list of charges that could be included is nearly infinite. As the *Peco* and *Dallas* courts determined, fees charged by the City must be reasonably related to the City's costs and that revenue based fees – which access line billing is most certainly a derivation of – cannot be based on pure compensation for the costs of the use of the rights-of-way. The reason is that revenue based fees will fluctuate whereas the costs to the City of managing the rights of way will remain relatively constant, and as such, it is difficult to establish a reasonable relation between the fee charged and the costs incurred.

Finally, in addition to the franchise fee, the draft requires ABS to pay an application fee of an unspecified amount as well as to reimburse the city for any costs related to processing the application that were not covered by the fee. The application fee should be set so as to cover the reasonable expenses incurred by the City in reviewing the application, and the City should not have the unfettered discretion to later impose additional charges related to the application. In fact, as noted above, unless the City can show that such fees are related to the management or use of the rights-of-way, they are unlawful. Indeed, similar provisions have been found unlawful. *See Peco*, 1999 U.S. Dist. LEXIS 19409, *22 ("It is not at all clear, from reading the Ordinance, that the fees do in fact relate to use of the public rights-of-way. Also, it is highly unlikely that four separate fees are all related to the use of the rights-of-way.")

ABS does not dispute that cities have the right to be compensated for their expenses. However, it is clear that pursuant to the 1996 Act, those fees must bear a reasonable relation to the City's costs. Accordingly, ABS requests that the City develop a compensation scheme that more directly reflects the costs to the City arising from the management and use of its public rights-of-way.

In-Kind Grants

Section 15 authorizes the City to require the provider to make certain "payments, in-kind contributions, provision of capacity" for the use by the "City, educational institutions or other public entities, or to undertake other activities or make available other facilities" for the benefit of the City. To begin with, this Section is vague and overly broad. Exactly what types of in-kind contributions is the City envisioning? Fiber? Conduit? Equipment? And how much fiber, conduit or equipment are we talking about? Moreover, if payments are required, what are they for, how will they be calculated, and how large will they be? Finally what are the "other activities" and "other facilities" which ABS would be required to make available for the benefit of the City? Essentially, this section gives the City absolute discretion to demand any payment or provision of service and/or facilities which it deems to be in the public interest. Not only is this Section unreasonable, it is unlawful as well.

This provision, requiring a franchisee to provide services and facilities to the City and other public, educational and governmental ("PEG") institutions, appears to be taken from a *cable television franchise* which often contain requirements for PEG facilities. Under the Cable Act, Cities are permitted to require ***cable operators*** to provide such PEG facilities. However, there is no parallel authority for a city to demand such facilities from a telecommunications provider.

Additionally and as noted above, under federal law the City is only entitled to compensation which is reasonably related to the costs to the City of the management and use of its public rights-of-way. The application and franchise fees have already compensated the City for the management and the "use" of the public rights-of-way. Thus, the provision of additional payments or in-kind contributions above and beyond the franchise and application fees is unrelated to the City's costs, and as such, constitutes an impermissible form of compensation. At least one federal court has agreed, ruling that requiring in-kind contributions exceeds a City's authority under the 1996 Act. *City of Dallas*, 8 F. Supp. 2d at 593 ("Many of Dallas's franchise requirements such as . . . the dedication of ducts and fiber optic strands to the City's exclusive use – like many of the pieces of information requested in the form franchise ordinance, are totally unrelated to the use of the City's rights-of-way, and are thus beyond the scope of the City's authority").

Finally, Section 10.2 raises legal concerns as well. That section provides that if a franchisee is required to make payments or provide in-kind contributions in the public interest pursuant to Section 15, the City may provide a credit against the fee based on the "percentage of

gross revenues it would otherwise require." Since the draft provides a number of different fee bases, the question arises as to whether a provider, like ABS, paying a fee based on line access billing would likewise receive a City credit for public interest contributions?

Under the 1996 Act, local governments may require "fair and reasonable compensation for the use of their public rights-of-way," but only if the compensation is required on "a *competitively neutral and nondiscriminatory basis*." 47 U.S.C. § 253 (c)(emphasis added). Thus, the 1996 Act requires that if one provider receive a credit from the City for public interest contributions, then all providers must be granted the same credit. As noted above, ABS believes that the city cannot require public interest payment and in-kind contributions; however, if it chooses to leave this provision in, then it must amend Section 10.2 to allow all providers to receive credit for their public interest payments or contributions.

Information Requirements

The information requested in the application is redundant and exceeds the City's authority under federal law. Federal law provides that absent a specific state delegation of authority, local governments are prohibited by the 1996 Act from exercising any regulatory powers over telecommunications providers beyond managing the public rights-of-way and requiring fair and reasonable compensation. *City of Dallas*, 8 F.Supp.2d at 591.

The FCC has considered the issue of local regulation and expressed concern that "some localities appear to be reaching beyond traditional rights-of-way matters and seeking to impose a *redundant "third tier"* of telecommunications regulation which aspires to govern the relationships among telecommunications providers, or the rates, terms and conditions under which telecommunications service is offered to the public." *In re of TCI, Cablevision of Oakland County, Inc.*, 12 F.C.C.R. 21396, 21441 ¶ 103 (1997). The FCC went on to state that any attempt by local authorities to impose such legislation will be "met with close scrutiny" given that such local provisions are redundant to federal and state regulations and likely to impede competition and impose unnecessary delays. *Id.* at 21442.

Section four of the draft requires the applicant to provide evidence in a form satisfactory to the City that the applicant has the financial, legal and technical qualifications to provide service. In awarding ABS its CPCN, the Arkansas Public Service Commission has determined that ABS possesses the financial, technical, and legal qualifications to provide telecommunications within the state of Arkansas, and individual cities within Arkansas cannot reconsider that decision. *BellSouth Telecommunications, Inc. v. Town of Palm Beach*, 1999 U.S. Dist. LEXIS 16904 *6-7; *Coral Springs*, 42 F.Supp.2d. at 1308; *City of Dallas,* 8 F.Supp. 2d at 591-594.

Such information requests are precisely the type of "third-tier" regulation that the FCC was concerned about. In granting a franchise the City has no power to review the financial, technical or legal qualifications of a provider. As such, requiring ABS to provide such

information is unlawful and serves no purpose other than to impose an unnecessary burden and delay upon the franchise process. Accordingly, ABS requests that this provision be removed.

Criteria for Granting Franchises

Like the application requirements, the criteria for granting franchises set forth in Section 4.3 exceed the City's authority. For example, the City cannot deny a provider the right to construct and operate its facilities based on legal, financial and technical qualifications. *BellSouth Telecommunications, Inc. v. Town of Palm Beach*, 1999 U.S. Dist. LEXIS 16904, at *6-7; *BellSouth Telecommunications, Inc. v. City of Coral Springs*, 42 F. Supp. 2d 1304, 1308. Similarly, the City cannot deny a provider based on the service it will provide. *Id.* Indeed, the provision ultimately provides the City with unfettered discretion to grant or deny a franchise, which has specifically been held unlawful under Section 253. *Peco* 1999 U.S. Dist. Lexis 19409, *19 (E.D. Pa. 1999).

Penalties

Section 19 provides for both criminal and civil penalties for violations of the ordinance. As the provision is currently written, it is possible for a provider to be subject to both criminal and civil fines for the same offense. ABS believes that this is excessive. Moreover, ABS believes that criminal sanctions are inappropriate for violations of a telecommunications rights-of-way ordinance. Under industry practice, violations of health and safety provisions of rights-of-way ordinances are generally subject to civil penalties only. As such, ABS requests that Section 19.1 be removed.

Additionally, Section 19.2 provides for a civil penalty of $500 per day per violation. ABS objects to this arbitrary figure, and suggests that the proper measure of any fines should be the actual value of the damages resulting from the breach as opposed to daily cumulative assessments.

Finally, ABS requests that Section 18.5 be amended to indicate that if the City council imposes penalties or declares a forfeiture of the franchise, the franchisee shall be given the opportunity to full judicial review prior to the imposition of penalties or the initiation of forfeiture proceedings.

Waiver Provision

As indicated in the preceding sections, numerous provisions contained in the draft ordinance violate federal law and – if adopted in current form – would severely infringe upon ABS' rights. Thus ABS must, at the very least, be afforded the right to seek redress for injuries sustained as a result of those provisions. To require that ABS give up that right is unreasonable and we therefore request the deletion of Section 20.2.

ABS looks forward to bringing advanced telecommunications services to Fayetteville, and to developing a mutually beneficial agreement with the City. I hope these comments have been helpful. Please do not hesitate to contact me if you have any questions or if I can be of any help. Thank you for your consideration.

Most sincerely,

Jeffrey W. Miller

cc: Heather Woodruff
Jim Stinson, Esq.
Mary Margaret Johnson

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01000

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FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

TENTATIVE AGENDA
CITY COUNCIL
SEPTEMBER 19, 2000

A meeting of the Fayetteville City Council will be held on September 19, 2000 at 6:30 p.m. in Room 219 of the City Administration Building, Fayetteville, Arkansas.

– **NOMINATING COMMITTEE REPORT**

A. CONSENT AGENDA

1. **APPROVAL OF THE MINUTES:** Approval of the minutes from the August 15, 2000 City Council meeting.

2. **BOND DEALER SERVICES:** A resolution approving a contract with the Bank of America Securities for variable rate demand bond dealer services and authorize the Mayor and City Clerk to execute the contracts. Budget adjustment authorization is also requested to implement contracts.

B. OLD BUSINESS

1. **CAMPBELL-BELL BUILDING PARKING LEASE:** A resolution approving a one-year lease agreement with Campbell-Bell Building LLC, for two parking spaces in the parking lot west of the Campbell Bell Building.

2. **TED BELDEN PARKING LEASE:** A resolution approving a one-year lease agreement with Ted Belden (Campbell-Bell Building) for one parking space in the parking lot west of the Campbell Bell Building.

3. **GAIL AND JERRY MOORE PARKING LEASE:** A resolution approving a one-year lease with Gail and Jerry Moore (Campbell Bell Building) for two parking spaces west of the Campbell Bell Building.

113 WEST MOUNTAIN 72701 501 521-7700
FAX 501 575-8257

C. NEW BUSINESS

1. ✓ **VA 00-7:** An ordinance approving vacation request VA 00-7 as submitted by John Phillips for property located at 25 East Rock Street. The property is zoned C-4, Downtown Commercial, and contains approximately 0.37 acres. The request is to vacate a portion of a ten foot wide alley located west of Lot 2, Block 42, Original Town Plat.

2. ✓ **RZ 00-21.00:** An ordinance approving rezoning request RZ 00-21.00 as submitted by Read Hudson on behalf of Tyson for property located at the southeast corner of Highway 16 and Happy Hollow Road. The property is zoned C-2, Thoroughfare Commercial and C-1, Neighborhood Commercial and contains approximately 11.50 acres. The request is to rezone to I-2, General Industrial.

3. ✓ **CITY ADMINISTRATION ROOM POLICY:** A resolution approving a new policy for reserving rooms in the City Administration Building.

4). CABLE BOARD -

5). Executive square - balcony. - (if * resolution put on consent)

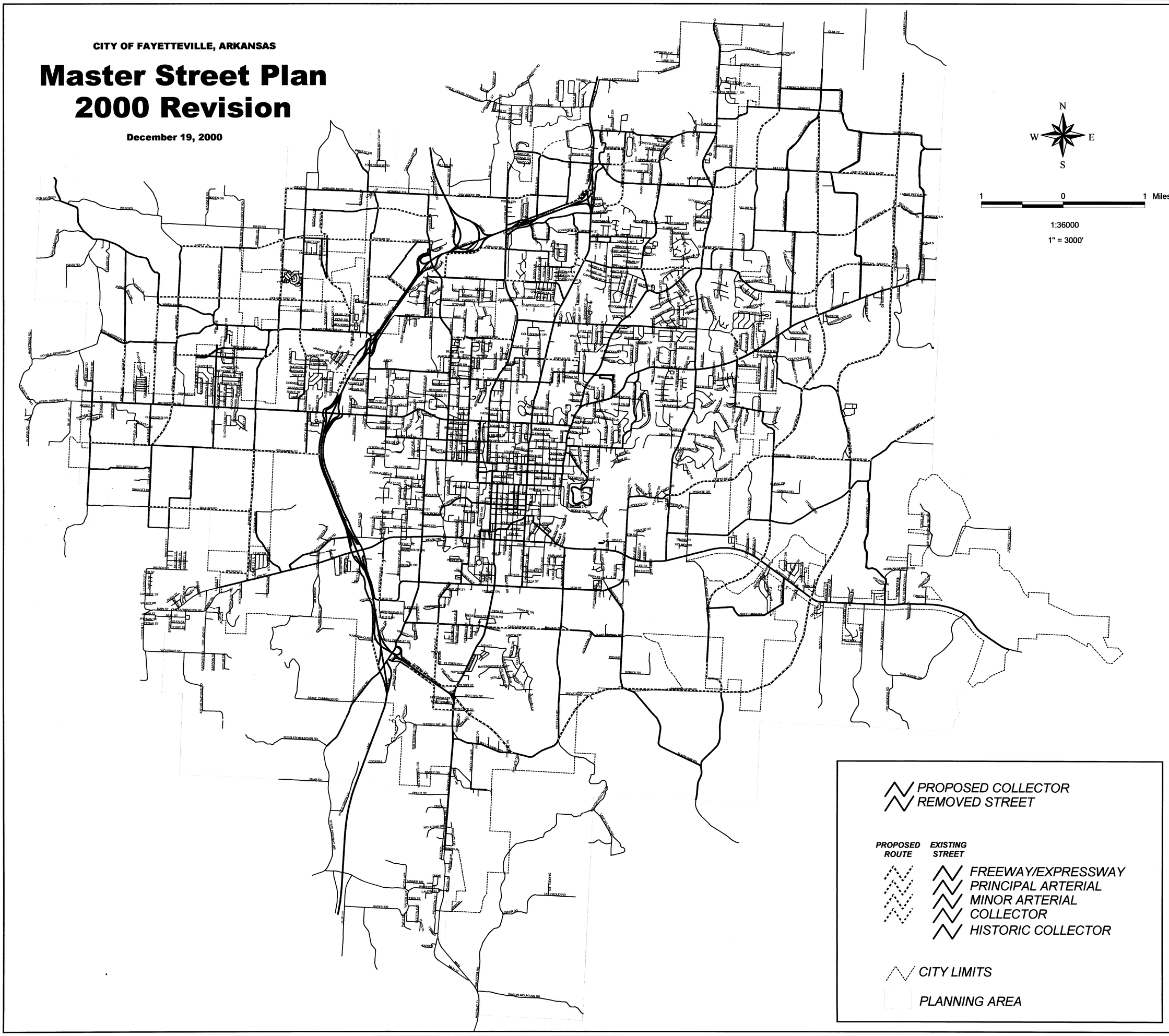
6). Telecommunication services -

* Need final ordinance for Jerry

-70-00

file with Agenda packet 12-19-00

CITY OF FAYETTEVILLE, ARKANSAS

Master Street Plan 2000 Revision

December 19, 2000