TENTATIVE
AGENDA

FAYETTEVILLE CITY COUNCIL MEETING
DECEMBER 15, 1998

A meeting of the Fayetteville City Council will be held on December 15, 1998 at 6:30 p.m. in the City Administration Building, 113 West Mountain Street, Room 219, Fayetteville, Arkansas.

The following items will be considered:

I. CONSENT AGENDA

A. **APPROVAL OF MINUTES:** Approval of minutes from December 1, 1998 meeting.

II. OLD BUSINESS

A. **PROPERTY ACQUISITION:** Discussion of purchase options for property located between Washington County road #648 and #649, south of Highway 16 West and north of Highway 62, for the possible location of a second waste water treatment facility. Properties to be acquired from James McClelland, Jr., H.M. and Norma Lee Shipp, Broyles Farm Inc., and Calvin and Wanda Sue Hammond.

B. **OFF-STREET PARKING LOT DESIGN:** An ordinance revising the UDO, Off-Street Parking Lot Design requirements, in reference to landscaping. The ordinance was tabled on the third reading.

C. **OVERLAY DISTRICT:** An ordinance revising the Overlay District provision of the zoning ordinance to eliminate sections contained within the Commercial Design Standards. The ordinance was left on the second reading as amended.

D. **EMINENT DOMAIN:** An ordinance authorizing the City Attorney to seek possession of property owned by Jill R. Jacoway located at the southeast corner of Old Missouri Road and Zion Road by the power of eminent domain, in association with the required right-of-way and easements for the Old Missouri/Zion Road intersection Improvement. The ordinance was left on the second reading.

E. **1999 BUDGET:** A resolution adopting the 1999 City of Fayetteville Annual Budget and Work Program.

F. **RZ 98-19:** An ordinance approving rezoning request, RZ 98-19, submitted by Tom Terminella for property located north of Township East extension. The request is to rezone 45.87 acres from A-1, Agricultural, to R-1, Low Density Residential. The ordinance was left on second reading.

III. NEW BUSINESS

A. **DICKSON STREET ENHANCEMENT:** A resolution authorizing the Mayor and City Clerk to enter into an agreement with the Benham Group for planning and engineering services relative to the Dickson Street Enhancement Project. The amount of the contract is $346,748.04 and approval of a budget adjustment.

B. **COMMUNITY ACCESS TELEVISION:** A resolution accepting a contract with the Community Access Television for public access television services.

Only items presented by the City Council or City Staff may be discussed during the meeting. If you have an item you wish to discuss, please contact your alderman to have it presented at the next City Council Agenda Session. For further assistance, please contact Heather Woodruff, City Clerk, at 575-8323.

A MEETING OF THE FAYETTEVILLE CITY COUNCIL
December 1, 1998

A meeting of the Fayetteville City Council was held on December 1, 1998, at 6:30 p.m. in the City Administration Building, 113 West Mountain Street, Room 219, Fayetteville, Arkansas.

PRESENT: Mayor Fred Hanna, Alderman Williams, Alderman Daniel, Alderman Young, Alderman Trumbo, Alderman Pettus, Alderman Russell, City Attorney Jerry Rose, City Clerk/Treasurer Heather Woodruff, Staff, Press, Audience

ABSENT: Alderman Schaper

Mayor Hanna called the meeting to order. First item of business was to appoint a new alderman to fill an unexpired term, Robert Reynolds, to be sworn in by Judge Moore.

Alderman Williams moved to elect to appoint Mr Reynolds to his ward. Alderman Pettus seconded the motion. Upon roll call, the motion carried with a vote of 6-0-0.

<u>**CONSENT AGENDA:**</u>

MINUTES: Approval of minutes from November 17, 1998 meeting.

RADIO MAINTENANCE: A resolution awarding the radio maintenance contract of the Motorola 800 MHZ Smartnet Trunking System to Motorola, Inc.

RESOLUTION 156-98 AS RECORDED IN THE CITY CLERK'S OFFICE

SPAY/NEUTER PROGRAM: A resolution approving a cost share agreement with the Humane Society of the Ozarks to implement a Low Income Spay/Neuter Program. Alderman Trumbo asked Lib Horn of Animal Services for clarification as to whether the city would spay/neuter all drop-offs at the animal shelter or only pets that are adopted by the city. Ms. Horn stated that the city is mandated by state law to assure that every animal adopted from the shelter is spayed/neutered. The Humane Society handles the low income portion of the program; they will determine eligibility, notify Animal Services and pay for this part of the program. The Melissa Henderson Trust Voucher Program is a Humane Society program giving a reduced fee for all participating veterinarians. Some of the veterinarians that Alderman Trumbo spoke with weren't clear about the Melissa Henderson Trust or other programs. It was proposed to have a luncheon for veterinarians with the Animal Shelter staff and Humane Society director to clarify the voucher program, and that the only city program is the adoption program.

RESOLUTION 157-98 AS RECORDED IN THE CITY CLERK'S OFFICE

Alderman Trumbo moved to approve the consent agenda. Alderman Daniel seconded the motion. Upon roll call, the motion carried with a vote of 7-0-0.

OLD BUSINESS

PROPERTY ACQUISITION: Discussion of purchase options for property located between Washington County roads #648 and #649, south of Highway 16 West and north of Highway 62, for the possible location of a second waste water treatment facility. Properties to be acquired from James McClelland Jr., H.M. and Norma Lee Ship, Broyles Farm Inc., and Calvin and Wanda Sue Hammond.

Mayor Hanna noted that some of the parties have been out of town so that they haven't been able to get an agreement about the options; he suggested that they table the issue for another two weeks. Charles Venable agreed. Alderman Williams agreed with the mayor, expressing concern over spending $270,000 of city money that won't be returned or credited to the purchase price. Mayor Hanna asked that staff have answers by next Tuesday's agenda session, noting that members of the public had come to this meeting prepared to hear and discuss the issue. Alderman Pettus asked if a motion was needed; it was determined this was only a discussion.

Alderman Young asked to discuss if we bought the land earlier than a year if the money could apply to the purchase.

Mayor Hanna stated they would try and have some definite answers by next Tuesday.

NO ACTION

OFF-STREET PARKING LOT DESIGN: Mayor Hanna introduced an ordinance revising the UDO, Off-Street Parking Lot Design requirements, in reference to landscaping.

Mr. Rose read the ordinance for the third and final time.

Alderman Williams stated the proposed ordinance had been to the Ordinance Review Committee and the Planning Commission. He felt this proposal was a great improvement over the existing ordinance.

Alderman Daniel moved to approve the ordinance.

Ms. Fran Alexander, an area resident, stated the Tree and Landscape Committee had not discussed the revisions to the ordinance. She thought the committee should be allowed time to review the changes. She stressed the need to have trees in parking lots to reduce the heat in parking lots. She thought the spacing of the trees needed to be discussed. She added the committee was scheduled to meet this Thursday.

Ms. Kim Hesse., Landscape Administer, stated she had sent the proposed revisions to the committee members. She reiterated the committee as a whole had not discussed the revisions.

Ms. Candy Clark, Tree and Landscape Committee, stated the committee had some definitive comments on the revisions. They were wanting time to discuss the ordinance. She asked them to postpone a decision on the ordinance until they had time to present a recommendation.

Alderman Pettus thought it was a reasonable request.

Alderman Daniel's motion died for lack of a second.

Alderman Williams moved to table the ordinance until the next meeting. Alderman Young seconded the motion. The motion carried unanimously, 7-0-0.

OVERLAY DISTRICT: Mayor Hanna introduced an ordinance revising the Overlay District provisions of the zoning ordinance to eliminate sections contained within the Commercial Design Standards.

Mr. Rose read the ordinance for the second time.

Alderman Williams stated this revision had also come from the Ordinance Review Committee. With the help of the Planning Department, they were trying to remove conflicts between the city-wide ordinances and the Overlay District ordinance.

Alderman Daniel thought the proposed ordinance was a good improvement.

Alderman Williams suggested leaving the ordinance on the second reading so it could be reviewed with the landscaping ordinance at their next meeting.

NEW BUSINESS

EMINENT DOMAIN: Mayor Hanna introduced an ordinance authorizing the City Attorney to seek possession of property owned by Jill R. Jacoway located at the southeast corner of Old Missouri Road and Zion Road by the power of eminent domain, in association with the required right-of-way and easements for the Old Missouri/Zion Intersection Improvement.

Mr. Rose read the ordinance for the first time.

Alderman Pettus asked if there had been any discussion with Ms. Jacoway since the Agenda

Session.

Mr. Venable stated he was not aware of any new information.

Alderman Reynolds asked if every avenue had been exhausted.

Mr. Venable stated Ms. Jacoway was requesting things that were not possible with the purchase.

Mayor Hanna asked if Ms. Jacoway's request for a rezoning could be considered with any negotiations.

Mr. Rose stated the City was trying to purchase an easement across a piece of property. They were trying to give a fair price. A zoning decision was a separate decision, one which was made through the Planning Commission, then through the City Council by ordinance. They were two separate considerations. It would be difficult to tie the two together.

Mayor Hanna asked if there had been a request made to the Planning Department for a rezoning.

Ms. Little was not aware of any request being submitted.

Alderman Daniel stated this was a dangerous intersection and this would benefit everyone to straighten the existing angle.

Alderman Williams stated they needed to go forward with the condemnation and negotiations.

Alderman Williams moved to suspend the rules and go to the second reading. Alderman Daniel seconded the motion. The motion carried unanimously, 7-0-0.

Mr. Rose read the ordinance for the second time.

Alderman Williams asked if Ms. Jacoway had been notified that the condemnation was on the agenda.

Mr. Don Bunn, Assistant Public Works Director, stated it was their procedure to notify the owner, however, he was not positive she had received notice.

Alderman Williams requested that Ms. Jacoway be notified before the next meeting.

1999 BUDGET: Mayor Hanna introduced a resolution adopting the 1999 Annual Budget.

Mr. Kevin Crosson, Steve Davis, and Kevin Springer presented a summary of the 1999 budget highlighting the major changes.

Mr. Davis stated because of the uncertainty of the financial future of Drake Field, $865,000 of capital projects had been deleted since the approval of the 1999 to 2000 Improvement Program.

In response to questions from Alderman Pettus, Mr. Davis stated this would be the first year in a long time that the airport would have a deficit.

Alderman Daniel stated this was the first time since she had been on the council that they had to make cut backs. She expressed concern about reducing the Cable funding by approximately 50%. She stated she would not have voted the way she had on some items, had she known they would be cutting some of the programs.

Alderman Russell asked for a more detailed reason on why the funding had be cut for the Cable department.

Alderman Trumbo asked for an explanation of the prioritizing process.

Mr. Davis explained the staff would go through a process which went through the services the city had traditional provided. The Community Access Television was a relatively new service which was being provided in comparison to other traditional services. When it came time to make funding recommendations, they would look at the services which had been added that could be phased out. The Dickson Street Enhancement Project and the Walton Arts Center had started out with funding, but they had been phased out.

Alderman Trumbo noted that the city had provided funding for some projects such as the Walton Arts Center and the Transit System until they could find other sources of funding. He asked if the Community Access Television had tried to find alternate sources of funding, such as fundraising. He noted some cities allowed people to pay for community access channels on their cable bill.

Alderman Pettus asked how the money got allocated to each department.

Mr. Davis explained the city did a resource-based budget. The city lived on consumption taxes, which were sales taxes and franchise taxes. In September there was a 1.7% increase in sales taxes collection above the city's budget. Historically, they had averaged 8% growth in sales tax. People were not spending as much money, so the city's revenues would be tighter. He added because of the projected revenues from taxes, they had established target budgets for each division adjusting for inflation. This year the only adjustment for inflation was a modest increase for personnel. They did not allow any inflation for routine operating expenses. Even without increasing, the operating divisions within the general funds could not meet their basic operating requirements for 1999. Additional funding was not available to meet all the needs. They needed the money for more basic things that the city needed. They did not have the luxury to fund some of the extra items.

Mr. Richard Drake, President of the Community Access Television, stated the community access channel had shown the city in all its diversity and promoted freedom of speech. They were committed to diversity. He stated the budget cut would cripple the channel. He stressed they were a service to the city.

Mr. Rowland McKinney, Cable Board, stated the Cable Board felt the Community Access channel was important to the city. He stated the CAT had provided direction and skills to young people which allowed them to advance themselves. He asked the council to maintain the existing budget of $63,000 for 1999. He added traditional media, such as the library, were being converted to Internet and digital systems, which would be converging in the future. He felt the community access television was an extension of the library.

Mr. Bob McKinney, CAT Board, stated the original group which had started the access channel had gone to the cable provider and received funding from them. The provider had given them $170,000. Later they were taken in by the city. They had tried, diligently, in the past to raise money for the CAT channel, but attempts had been unsuccessful. They were dependent on the city for funding. He stated they had some of the best programming in the country as far as community access television went.

Alderman Williams stated when the franchise fee had been taken away from Community Access Channel and placed into the city fund, they had promised to fund their program at an adequate level to continue their program. The city needed to continue to uphold their promise.

Ms. Marion Orton, League of Women Voters and former Mayor, stated the League had worked with Public Access for over nineteen years. The channel was the only true public access channel. The channel helped provide an avenue for freedom of speech.

Mayor Hanna asked Ms. Orton if the League of Women Voters would help fund the Access Channel.

Ms. Orton stated the League did not have the funding to help support the program.

Mayor Hanna stated the city was in the same position. He felt some of the people who watched or used the station should help fund it.

Ms. Orton stated the CAT station was a service to the community, like the recreation program and library.

Ms. Paula Marioni, an area resident, thought the budget should be increased. She questioned the reasoning behind cutting the CAT budget by 50% and on the other hand constructing a street for a developer near the mall.

Mayor Hanna explained the developer near the mall had agreed to construct a 32-foot wide street when the property was rezoned. What the city had requested was to add two additional lanes to the bridge and street. The developer was willing to construct the two-lane road, but the city was going to provide additional funding for the additional lanes.

Ms. Marinoni requested that the city to find the money for the cable funding because they provided a valuable service for the city.

Mr. Randy Zurcher, an area resident, expressed concern about the downtown development in comparison to the mall development. He questioned the basic services of the city and their priorities. He thought the CAT program provided for some of the needs of the citizens.

Ms. Eden Tombolin, CAT Board, stated she was also a CAT Producer. She discussed some of the quality programs the program had produced. She urged the council not to cut their budget.

RZ98-19: Mayor Hanna introduced an ordinance approving a rezoning request, RZ 98-19, submitted by Tom Terminella for property located north of Township East extension. The request is to rezone 45.87 acres from A-1, Agricultural, to R-1, Residential.

Mr. Rose read the ordinance for the first time.

Mr. David Jorgensen, Jorgensen and Associates, stated he was representing Mr. Terminella. Mr. Dave Chapman, the owner, was also with him to answer questions.

Alderman Williams asked the staff if the city's sewer plant could handle the additional inflow with this development. He expressed concern about continuing to rezone land from Agricultural to R-1 density, if the city was really at capacity. Rather than doing a moratorium on sewer taps, they needed to think about not rezoning more land until they could get a handle on the sewer plant problem.

Alderman Daniels stated she was also concerned about further development. She thought it would be risky to rezone this land which would lead t o a number of sewer hookups which they would not be able to handle. They could not tell when they would get a new sewer plant.

Alderman Trumbo stated he would agree with Aldermen Williams and Daniel, however, he did not believe it would be right to do so in the middle of the development process, after the developer had gone through expensive preparations, to all of sudden stating they were not going to rezone any more property. He stated they needed to look at this project on the Planning Commission's recommendations, then look at not rezoning any more property until the problem was addressed.

Mayor Hanna stated he did not think the risk was with the city, but with the developer. The developer was aware of the problem. Anyone with land would be at risk. He noted there was a risk, however, he did not see it in the rezoning, it was in the waste water treatment plant capacity.

Alderman Young stated the Planning Commission did not know about the capacity of the plant. They had been told there was adequate capacity.

In response to concerns from Alderman Young, Mr. Venable stated the staff would be meeting with Mr. Murray Fleming. They would be making a presentation later on the plant.

Alderman Williams noted the construction of a new sewer plant would take four to six years and the city had approved a rezoning of large tracts of land.

Mr. Venable replied Ms. Little had given him the number of approved buildable lots in the city. This information would be used to determine the number which could be constructed.

Alderman Williams stated they needed to look closely at the information because if their plant did not work properly they would be fined by the EPA. They had spent millions of dollars on upgrading the existing collection system.

Mr. Crosson stated the city was approaching capacity. They had been working on the study for over three years and the staff had been telling them they were approaching capacity all the time.

Alderman Pettus stated they had been told two months ago they were okay on the sewer capacity. Now they were being told they were not okay.

Mr. Crosson stated their consultant had told them they would not be in danger of getting fines from the EPA if they were making progress towards a new sewer plant. The council had made a decision not to proceed with the plant by not acting on the purchase of the property.

Alderman Pettus replied they had made a decision to look at other options.

Alderman Trumbo stated that with their sewer rehabilitation they had a net/net no gain additional value based on the infiltration rehabilitation as compared with new sewer hookups.

Alderman Reynolds stated he had been on the Planning Commission for six years and during that time he had never heard that they were running short of sewer services. Last week was the first time anyone on the Commission had heard of the shortage. He added this developer had gone through the city's process and had been approved and should not be cut off now. If they were going to stop rezoning they should start at the Planning Department.

Alderman Williams noted the Planning Staff report stated the increase in population should not overburden the public services including schools, water, and sewer facilities.

Alderman Reynolds stated the moratorium needed to start in the Planning Department and not at the Council level.

Mayor Hanna stated the city needed to quit pretending they had all the time they want to build another waste water treatment plant or to expand the existing plant.

Mr. Jorgensen stated the citizens were becoming more aware of the need for a new plant. He did not believe the problem would be solved for the next five to six years. He thought it would be too drastic to place a city-wide moratorium on taps. He suggested limiting the moratorium to the west side of town where the problem was. He believed the subject of a moratorium needed to be discussed in detail. He added they would like to proceed with their development.

Alderman Williams noted the land was located on the east side of town, where the city did not have a collection problem. He added the city needed to look closely at future development and the development in the surrounding towns which the city serviced. If Fayetteville was going to slow their development then they should also slow the flows from the surrounding cities.

Alderman Young asked if the City contract with the surrounding towns would allow them to limit their sewer taps.

Mayor Hanna thought if they were to place a moratorium on sewer taps it would also affect the surrounding communities they serviced.

Mr. Dave Chapman, owner of the development, stated they had planned only sixty lots. He asked the council to consider the rezoning, until they had more information on the sewer plant.

The item was left on the first reading.

UNDERGROUND UTILITY ORDINANCE: Mayor Hanna introduced an ordinance approving changes to the Underground Utilities Ordinance which was forwarded to the Planning Commission from the Ordinance Review Committee for their review and comment.

Mr. Rose explained there had been an ordinance submitted which would have exempted certain utility lines from being placed underground. The proposed ordinance had been forwarded to the Planning Commission for comments. The Planning Commission's response was different from the Council proposal. He asked if the revisions should be forwarded to the Ordinance Review Committee.

Alderman Williams replied there was a disagreement between the Ordinance Review Committee and the Planning Commission about the major line, 12.4 KV, whether or not they should be placed underground. He stated he would like the Ordinance Review Committee to review the changes. He added they had exempted the major distribution line for the hospital in CMN Park, which had been an existing line. The Planning Commission proposal would still require existing lines to be buried.

Alderman Young agreed the Ordinance Review Committee should review the revisions.

The item was forwarded to the Ordinance Review Committee.

RECORD DESTRUCTION: Mayor Hanna introduced an ordinance authorizing the destruction of records.

Alderman Pettus asked if the records had been microfilmed and the records would not be lost.

Alderman Trumbo moved to approve the resolution. Alderman Pettus seconded the motion. Upon roll call the motion carried unanimously.

HVAC RENOVATION: Mayor Hanna introduced an ordinance awarding Bid 98-88, Fayetteville City Administration Building HVAC Renovation to Airworks, Division of MCC, Inc. in the amount of $662,836, approval of a project contingency of $46,400, and approval of a budget adjustment.

Mr. Crosson explained this contract would replace the existing HVAC inside the City Administration Building.

Mayor Hanna stated the installation was more expensive because the Administration Building was an older building.

Alderman Daniel added it was an expensive item, however, it needed to be done.

Alderman Young asked if the noise and vibrations would be reduced.

Major Hanna asked Mr. Mike Green if this would eliminate the water running off the building.

Mr. Green replied there would be a new cooling tower. He thought the new system would serve them for a long time. The main problem with the existing system was that the company which manufactured the system was no longer in business and it was becoming more and more difficult to find parts to keep the system running. Some of the capacity problems were due to the fact that some of the compressors were not operating and they were not able to get the full capacity out of the existing system. The new system was highly efficient with modulating air volume into the spaces rather than having individual units above the ceiling. The noise and vibrations should be contained within the main mechanical rooms by the elevator. Most of the difficulty and expense of the system was because it would be installed over the offices while they maintained operations. Some money could be saved if the offices were shut down.

In response to questions from Alderman Daniels in regards to savings, Mr. Green replied the new system should have a service life in excess of thirty years and should pay for itself within that time period.

Alderman Daniel asked if this system would help health conditions related to air quality.

Mr. Green replied when the current system was designed and installed the main concerns were on energy conservation and not air quality. The outside air per cubic foot had been increased in the new system which increased the outside air by three or four times. It would increase the amount of energy required to temper the air, but it flushed out the building interior air spaces. It had been shown to improve health.

Alderman Trumbo moved to approve the motion. Alderman Williams seconded the motion. The motion carried unanimously.

Alderman Young moved to approve the motion to approve the contract amendment to Green Anderson Engineering. Alderman Pettus seconded the motion. Upon roll call the motion carried unanimously.

PLANNING COMMISSION APPEAL: Mayor Hanna introduced a request to appeal the Planning Commission's decision to deny a rezoning request at 716 W. Sycamore Street.

Alderman Pettus stated she would be abstaining because her law firm had represented the applicant in another case.

Alderman Reynolds stated he would be abstaining because he voted on rezoning at the Planning Commission meeting.

Mr. Rose stated there were still five council members to vote. It would require a majority of those elected to council to pass anything. He stated it was an appeal by right. The council would need to vote on whether or not to uphold the Planning Commission decision or not. If they voted not to uphold the Planning Commission they would have to have an ordinance to rezone the property, which would have to be read three times.

Mr. Richard King stated he was owner of the building and that they had new information. The Planning Commission had thought that they could not have a tavern at that location, but they *would* be allowed to have a tavern in that location. They were requesting to rezone the property to C-2. They had not been able to rent all their space in years, now they had a serious person willing to rent the property who was going to place a tavern there. They were requesting the property to be rezoned to C-2 which would allow the applicant to have a conditional use for a dance floor.

Mayor Hanna asked if the dance floor would be for patrons.

Mr. King replied it would be for patrons.

Mayor Hanna asked if there would be entertainment like Regina House of Dolls.

Mr. King replied they would not.

The property owner explained that the Planning Commission had been given misinformation. They had been told in I-1 zoning districts they were not allowed to have a tavern. By right a tavern can be located in I-1. They would not need a rezoning for a tavern; however, they would like C-2 zoning so they could apply for a conditional use for a dance hall. The conditional use for a dance hall would require them to upgrade the parking lot and to change the landscaping.

Ms. Little clarified that "taverns" and "night clubs" are allowed in a use unit that were not allowed in I-1 zoning districts, however, I-1 did allow private clubs. She noted not even a private club could have a dancing activity by patrons without the conditional use approval by the Planning Commission.

Alderman Young asked if they could apply for a conditional use for dancing with I-1 zoning.

Ms. Little replied they could not. She explained in order for them to apply for a conditional use they would need to have C-2 zoning. C-1 would allow restaurants, which would allow the serving of alcohol, but they would not have to opportunity to apply for a conditional use for a dance floor.

Alderman Daniel noted there had been some objections from apartments, but thought it was a matter of economics.

In response to questions from Mayor Hanna, Ms. Little replied that a sexually-oriented business would be allowed in C-2 zoning districts. She added the Gentlemen's Club was not a sexually-oriented business by the definition used by the Alcoholic Beverage Commission or the City's ordinances. As long as they are selling alcohol they are governed by the Alcohol Beverage Commission, which had a set of standards as to what items of anatomy had to be clothed.

Alderman Williams believed that a commerical zoning would make more sense in that location. He thought C-1 would be a more appropriate use, than C-2.

In response to questions from Alderman Daniel, the property owner stated they had room to expand their parking lot, and if they were granted their conditional use then they could increase the parking lot. He stated the reason they were requesting the C-2 was so that Mr. Clark could request conditional use.

Alderman Daniel moved to overturn the Planning Commission motion to deny the rezoning. Alderman Young seconded the motion. The motion failed by a vote of 4-1-2. The Mayor did not wish to vote, but stated the item should come back when there were more members of the council present.

Mr. Rose stated they could decide at the next agenda session if they wanted it on the agenda.

The meeting adjourned at 9:10 p.m.

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

DEPARTMENTAL CORRESPONDENCE

DATE: December 8, 1998

TO: Fayetteville City Council

FROM: Charles E, Venable, Public Works Director

RE: Condemnation Procedure
Jill R. Jacoway Property
Old Missouri/Zion Road Intersection

Please find attached letters from our Land Agents office which advised Ms. Jacoway of the City's need to seek Council approval and court possession of right of way and easements associated with her lands at the intersection of Old Missouri and Zion Roads. We have not had any written response from Ms. Jacoway since our letter of November 9th, 1998.

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

December 2, 1998

Jill R. Jacoway
Attorney at Law
26 W. Center Street
Fayetteville, AR 72701

RE: Old Missouri/Zion Road Intersection
Job No. 97027
Tract No. 4

Dear Ms. Jacoway:

Our letter to you of November 9, 1998 indicated that the City staff would request approval of the Fayetteville City Council, during their meeting of December 1, 1998, for the City Attorney to seek possession of the required right of way and easement areas from the subject property through the courts.

The ordinance presented at the December 1, 1998 meeting was left on its second reading pending advisement to you that a third and final reading will occur at the next regularly scheduled meeting on December 15, 1998. Please so be advised and we would welcome your attendance at such meeting to explain your position before the Council. Council meetings normally begin at 6:30 pm.

If you have any questions or comments, or if there is a possibility of resolving the matter that is before the Council prior to that time, please contact Ed Connell at 444-3415 or Jerry Rose, City Attorney, at 575-8313.

Sincerely,

Ed Connell

Ed Connell
City Land Agent

/edc

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

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

November 9, 1998

Jill R. Jacoway
Attorney at Law
26 W. Center
Fayetteville, AR 72701

RE: Old Missouri/Zion Road Intersection
Job No. 97027
Tract No. 4
Parcel No. 765-15624-000

Dear Ms. Jacoway:

The above mentioned project is almost ready to go to bid for construction purposes. However, the City must secure possession before bids are accepted.

This letter is to inform you that due to lack of an agreement having been reached regarding the original offer made to you (dated June 8, 1998), and the subsequent counter offer (dated September 23, 1998), the City is proceeding with condemnation procedures in regard to your property located at the southeast corner of the intersection of Old Missouri and Zion Roads.

We are requesting approval of the City Council at their December 1, 1998, meeting authorizing the City Attorney to seek possession of your property through the court.

Our basis is our revised offer of $3,760.00 (dated September 23, 1998) which was for reduced areas of right of way and easements. But please keep in mind that negotiation efforts do not necessarily need to end here. If an agreement is reached before the court date, procedures will be discontinued.

If you have any questions, comments or concerns, please feel free to call either Ed Connell at 444-3415, Jill Goddard at 444-3407, or Jerry Rose, City Attorney, at 575-8313.

Sincerely,

Jim Beavers

Jim Beavers
City Engineer

JB/jsg

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

DICKSON STREET
III.A.1

AGENDA REQUEST FORM

XX AGENDA REQUEST, City Council meeting of December 15, 1998

FROM: Don Bunn (Name) | PW Works Director (Division) | Public Works (Department)

ACTION REQUIRED: Approval of a resolution authorizing the Mayor and City Clerk to enter into an agreement with The Benham Group for planning and engineering services relative to the Dickson Street Enhancement Project. The amount of the Contract is $346,748.04. Approval of a budget adjustment.

COST TO CITY:

$ 346,748.04	$ -0- (See Note)	Street Improvement
Cost-This Request	Category/Project Budget	Category/Project Name
	$ -0-	
Account Number	Funds Used To Date	Program Name
	$ -0-	Sales Tax
Project Number	Funds Remaining	Fund Category

BUDGET/CONTRACT REVIEW: ____ Budgeted Item XX Budget Adj. Attached

Budget Coordinator	Date	Administrative Services Director	Date
Accounting Manager	Date	ADA Coordinator	Date
City Attorney	Date	Internal Auditor	Date
Purchasing Officer	Date		

STAFF RECOMMENDATION: The Staff recommends approval of the engineering contract between the City and The Benham Group. The Contract is in relation to the Dickson Street Enhancement Project and totals $346,748.04, and approval of the budget adjustment.

Division Head ______ Date

Department Director ______ Date

Admin Services Director ______ Date

Mayor ______ Date

Cross Reference

New Item: Yes **No**

Prev Ord/**Res** #: 149-98

Resolution Date: Nov 17, 1998

Note: The 1999 Budget has a line item for this project of $2,200,000.00

DICKSON STREET
III.A.2

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

DEPARTMENTAL CORRESPONDENCE

December 1, 1998

To: Fayetteville City Council

From: Don Bunn, Ass't Public Works Director
Thru: Charles Venable, Public Works Director
Mayor Fred Hanna

Subject: Engineering Contract
Dickson Street and Vicinity Area Enhancement

An engineering contract with The Benham Group of Bella Vista, Arkansas and Tulsa, Oklahoma will be presented to you at the Council Agenda Meeting of December 8, 1998 for consideration at the regular Council Meeting of December 15, 1998. The engineering is in connection with the improvement and enhancement of Dickson Street and Vicinity. The contract amount is $346,748.04.

Engineer Selection: A Selection Committee was formed for the purpose of choosing an engineering firm to develop a concept plan for Dickson Street, Block Street, and East Street and to develop plans and specifications for the enhancement of Dickson Street. The Selection Committee members were:

- Bootsie Ackerman, Dickson Street Enhancement
- Laleh Amirmoez, Hailey and Amirmoez Architects
- Don Bailey, City of Fayetteville
- Jim Beavers, City of Fayetteville
- Don Bunn, City of Fayetteville
- Jim Foster, Foster, Whitsell, and Evans, Architects
- David Glasser, University of Arkansas
- Sid Norbash, City of Fayetteville
- Len Schaper, City of Fayetteville Alderman

Proposals for the project were obtained by mailing Requests for Proposals to various engineers and planners and by advertising the project in the local newspaper. A total of eight Proposals was received by the City. The Selection Committee met in mid September and chose four firms to interview. Those firms were 1) The Benham

Group, 2) Crafton and Tull, 3) Garver and Garver, and 4) McClelland Engineers. The Selection Committee met on Wednesday, September 30 and chose The Benham Group for the work. The Benham Group proposed to use sub-consultants as follows:

LandPlan Consultants, Inc - Concept Plan and Decorative Hardscape Items between the right of way and the curb line.

Peters and Associates - Traffic Studies.

Milholland Company - Provide all surveys in connection with topography, horizontal and vertical controls, utility location, identification of drainage facilities, etc.

General Scope of Work:

1. Develop a Conceptual Design for Dickson Street from North College to Arkansas Avenue, and for Block and East Streets from Dickson to the Square.

2. Provide a detailed design for the enhancements and improvements on Dickson Street from North College Avenue to Arkansas Avenue. Improvements and enhancements would include construction of new sidewalks for the entire length of the project, street surfacing improvements and/or reconstruction, streetscape items such as special surfacing, benches, landscaping, special street lighting, and other items as may be determined by the consultants and approved by the City.

Proposed Fee: Total value of the contract is $376,748.04. A breakdown of the costs is given on the attached sheet. This cost does not include any bidding services or engineering services during construction. A provision is contained in the proposed contract which will allow for a future amendment which would cover engineering services during construction.

Availability of Funding: This project is included in the 1999-2003 Capital Improvement Plan as a 1999 project at $2,200,000.00. Eighty (80) percent of the cost of this project (to a maximum of $1,500,000) will come from the Federal-Aid Surface Transportation Program Enhancement program. The balance of the money will be provided by the City of Fayetteville through the Sales Tax Fund. Some funding from the Dickson Street Improvement District is expected, however, the amount and timing on that funding source has not yet been worked out.

The Federal-Aid share will be available to the City over the next six (6) years, beginning with the Federal Fiscal Year 1998 and will be allocated as follows:

Fiscal Year	Allocation	Fiscal Year	Allocation
1998	$165,000	2001	270,000
1999	225,000	2002	285,000
2000	270,000	2003	285,000

Since not all of the Federal-Aid funding will be available at the time of construction, the entire cost is budgeted in the CIP and the subsequent Federal-Aid reimbursements to the City is shown as revenue to the City in the appropriate year.

Estimated Total Project Cost: A breakdown of the estimated total cost of the project is:

Item	Total Estimated Cost	Local Share	Federal-Aid Share
1. Prelim. Engineering	$ 346,748.04*	$ 346,748.04	$ -0-
2. Street Construction	1,875,000.00	375,000.00	1,500,000.00
3. Eng. During Const.**	200,000.00*	200,000.00	-0-
Totals	$ 2,421,748.04	$ 921,748.04	$ 1,500,000.00

* Not eligible for Federal Funding

** The cost of engineering during construction is not included in the proposed contract with the Benham Group.

You will note that the total estimated cost ($2,301,748.04) is greater than the budgeted amount of $2,200,000.00. The estimated costs given in the table are based on utilizing the entire $1,500,000 of matching Federal-Aid Enhancement Funds available to the City. The actual costs will be determined during the preliminary engineering phase of the project and a budget adjustment will be requested if necessary.

Another item of work associated with this project is the relocation and replacement of an eight (8) inch water line in Dickson Street with a twelve (12) inch line. The cost of the water line replacement is included in the 1999-2003 Capital Improvement for 1999 at a cost of $500,000.00, however, the engineering for the work is included in the proposed engineering contract with the Benham Group.

Recommendation: The Staff recommends approval of the engineering contract with The Benham Group for engineering work associated with the development of a Concept Plan for Dickson Street, East Street, and Block Street; and for development of detailed construction plans for improvements on Dickson Street. Since the money for this project will not be available until 1999, a budget adjustment of $346,748.04 will be required. The Staff recommends approval of the budget adjustment.

CAT CONTRACT
III.A.1.

STAFF REVIEW FORM

_X_ Agenda Request
____ Contract Review
____ Grant Review

FOR THE FAYETTEVILLE CITY COUNCIL MEETING OF December 15, 1998

FROM:

Name	Division	Department
Marvin Hilton	Cable Administration	Community Access Television Contrac

ACTION REQUESTED: Passage of a resolution accepting a contract with the Community Access Television fo public access television services.

COST TO THE CITY:

$ $63,000.00	$ 1999 budget	Public Access Contract
Cost of this request	Category/Project Budget	Category/Project Name
1010-0600-5713-00	$0.00	General
Account Number	Funds used to date	Program Name
	$63,000.00	
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 ADA Coordinator Date

Purchasing Officer Date

STAFF RECOMMENDATION:

Marvin A. Hilton
Division Head Date

Department Director Date

Administrative Services Director Date

Mayor Date

Fayetteville
CHAMBER OF COMMERCE

M E M O R A N D U M

DATE: December 15, 1998

TO: Fayetteville City Council

FROM: Fayetteville Chamber of Commerce

SUBJECT: Creation/Retention of Jobs

Listed below are business with whom the Fayetteville Chamber of Commerce Economic Development Office has worked on behalf of the City of Fayetteville to create/retain jobs.

COMPANY	* NEW/ EXPANDED	FACILITY SQUARE FEET	CAPITAL INVESTMENT	NO. JOBS
BioEngineering Resources	N	14,000	$ 2,200,000	50
Community Bioresources	N	12,000	$ 1,000,000	30
Hanna's Potpourri Specialties	N/E	110,000	$ 1,352,000	75
Hanna's Potpourri Specialties	N	113,900	$ 1,400,000	75
Hanna's Potpourri Specialties	N	69,000	$ 750,000	40
Hanna's Potpourri Specialties	N	682,000	$ 9,800,000	200
Heartland Supply/T&K Enterpr.	N/E	20,000	$ 1,000,000	10
Indutec Corporation	N	10,000	$ 500,000	15
Superior Industries Int'l.	E	285,000	$30,000,000	500
Superior Industries Int'l.	N	170,000	$32,000,000	300
United States Postal Service (prevented loss of existing employees to neighboring cities) communities)	N	70,000	$ 5,000,000	100
West TeleServices	N	12,300	$ 2,000,000	275
Grant Total		**1,568,200**	**$87,002,000**	**1670**

123 WEST MOUNTAIN • P.O. Box 4216 • FAYETTEVILLE, ARKANSAS 72702-4216 • (501) 521-1710 • FAX (501) 521-1791

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

DEPARTMENTAL CORRESPONDENCE

DATE: December 8, 1998

TO: Fayetteville City Council

THRU: Charles Venable, Public Works Director CV
Donald R. Bunn, Assistant Public Works Director
Jim Beavers, City Engineer JB

FROM: Ed Connell, Land Agent EC

RE: West Side Waste Water Treatment Land Acquisition
Option to Purchase

The city has entered into *Offer and Acceptance* contracts with four property owners for the acquisition of 320 acres of land on the West side of Fayetteville for the possible location of a second waste water treatment plant; said contracts being subject to the approval of the City Council. These contracts were presented to the Council on November 17th and are summarized hereafter:

Contracts to Purchase:

Tract #	Owner(s)	Purchase Cost ($)
3 -	McClelland (100 acres)	1,040,000
4 -	Shipp (100 acres)	1,000,000
5 -	Broyles Farm Corp. (116.5 acres)	967,000
6 -	Hammond (3.5 acres + residence)	120,000
	TOTAL (320 acres)	3,127,000

The Council deferred a decision on this acquisition by requesting staff to negotiate a one year *Option to Purchase* on these properties. Even though there was considerable consternation, verbal agreement was reached with the owners relative to a one year option to purchase, such cost of option being independent of the purchase price on the land itself. The following summarizes the option costs presented at the council agenda meeting of November 24, 1998;

Tract #	Owner(s)	Purchase Price		Option Cost
3 -	McClelland	1,040,000		52,000
4 -	Shipp	1,000,000		50,000
5 -	Broyles Farm *	967,000		48,350
6 -	Hammond *	120,000		No Option
	Option Cost	120,000	plus	150,350

* Broyles Farm option is contingent upon City fee simple acquisition of Hammond property.

For Tracts 3 thru 5, the option price represents 5% of the contract purchase price which is a reasonable value to pay for the one-year maintenance of a purchase contract or a return on the monies the owners may have received if the purchase of the land had been consummated. Of all the lands, the only owner who was interested in selling their land prior to this inquiry was the Hammond property. With options out on the adjoining properties, their chances of a sale are remote. Since this property is an integral part of the Broyles Farm and owned by a member of the Broyles Farm Corp., the immediate sale would allow them to begin relocation as soon as possible. Mr. and Mrs. Hammond wish to relocate closer to town and family. If the decision is not to locate a second treatment plant in this area, the city would look to resell the property or use it for one of the many service uses (women's shelter, children's house, etc.) that are currently investigating relocation.

It is important that the option cost and the property purchase price remain independent of each other, especially with relation to two of the four tracts. Owners of Tracts 3 & 4 are considering Code 1031 like-kind land exchange, in total or in part, associated with sale of these properties. Accordingly, with such a transaction, money for the purchase of the land goes to an intermediary, not to the sellers. By maintaining the option and purchase separate, we are able to avoid any endangerment of violating the rules of 1031 exchange. Tracts 5 & 6 are not contemplating like-kind exchange.

Revised Option Proposals:

Tract #3, McClelland Property: (For like-kind exchange)

- The one year option, with the total price of $52,000, would be split into two parts, namely; An initial six month option with the provision that the Seller will extend the option for an additional six months if such extension is requested by the Buyer prior to the expiration of the initial six month option.
- Of the total option price, 60% or $31,200, is to be paid with the initial six month option. There would be no credit against the purchase price, however, if the option is exercised within that first six months, there would be a $20,800 savings to the city by not having to extend the option period.
- If the City (Buyer) elects to extend the option period beyond the initial six months, a payment of 40% or $20,800 would be paid to the Seller.
- No credit against the purchase price would be applicable in either of these steps.

Tract #4, Shipp Property: (For like-kind exchange)

- The one year option, with the total price of $50,000, would be split into two parts, namely; An initial six month option with the provision that the Seller will extend the option for an additional six months, if such extension is requested by the Buyer prior to the expiration of the initial six month option.
- Of the total option price, 60% or $30,000, is to be paid with the initial six month option. There would be no credit against the purchase price, however, if the option is exercised within that first six months, there would be a $20,000 savings to the city by not having to extend the option period.
- If the City (Buyer) elects to extend the option period beyond the initial six months, a payment of 40% or $20,000 would be paid to the Seller.
- No credit against the purchase price would be applicable in either of these steps.

Tract #5, Broyles Farm: Similar option scenario as above, except contingent upon fee simple purchase of the Hammond property;

- The one year option, with the total price of $48,350, would be split into two parts, namely; An initial six month option with the provision that the Seller will extend the option for an additional six months, if such extension is requested by the Buyer prior to the expiration of the initial six month option.
- Of the total option price, 60% or $29,010, is to be paid with the initial six month option. There would be no credit against the purchase price, however, if the option is exercised within that first six months, there would be a $19,340 savings to the city by not having to extend the option period.
- If the City (Buyer) elects to extend the option period beyond the initial six months, a payment of 40% or $19,340 would be paid to the Seller.

Tract #6, Hammond Property:

- In order to obtain a one year option to purchase on the Broyles Farm property, a condition of such option is the fee simple purchase of the Hammond Property ($120,000). No option is available on this property.

Option Cost Summary:

	Ultimate Purchase Price ($)	Initial Option/Pur. Cost ($)	Subsequent Option/Pur. Cost ($)
#3-McClelland (100 acres)	1,040,000	31,200	20,800
#4-Shipp (100 acres)	1,000,000	30,000	20,000
#5-Broyles Frm.(116.5 acres)	967,000	29,010	19,340
#6-Hammond(3.5 acres+imp.)	(120,000)	120,000	none
TOTALS	3,007,000	210,210	60,140

Using this option approach, $90,210 will be required for up front options money plus $120,000 for the out-right purchase of the Hammond property. An additional $60,140 will be required if the options period extends beyond six months, otherwise that money is saved.

With this third go-round, all owners have indicated an unwillingness to negotiate further on any aspects of this project. This is a take-it or leave-it situation and a decision at the December 15th meeting is imperative. This will be the third Council meeting since the *Offer and Acceptance* contracts have been signed by the city and the owners. If a decision is made not to enter into the option agreements nor to approve the Offer and Acceptance contracts, these contracts could become null and void for lack of action and any further negotiations for these lands will begin anew.

AGENDA REQUEST FORM

XX AGENDA REQUEST, City Council meeting of December 15, 1998

FROM: Don Bunn (Name) — PW Works Director (Division) — Public Works (Department)

ACTION REQUIRED: Approval of a resolution authorizing the Mayor and City Clerk to enter into an agreement with The Benham Group for planning and engineering services relative to the Dickson Street Enhancement Project. The amount of the Contract is $346,748.04. Approval of a budget adjustment.

COST TO CITY:

$ 346,748.04 Cost-This Request	$ -0- (See Note) Category/Project Budget	Street Improvement Category/Project Name
4470-9470-5809-00 Account Number	$ -0- Funds Used To Date	Program Name
98097-10 Project Number	$ -0- Funds Remaining	Sales Tax Fund Category

BUDGET/CONTRACT REVIEW: ____ Budgeted Item XX Budget Adj. Attached

Budget Coordinator	Date: 12-7-98	Administrative Services Director	Date
Accounting Manager	Date: 12-7-98	ADA Coordinator	Date
City Attorney	Date: 12-8-98	Yolanda Fields — Internal Auditor	Date: 12-8-98
Purchasing Officer	Date: 12-8-98		

STAFF RECOMMENDATION: The Staff recommends approval of the engineering contract between the City and The Benham Group. The Contract is in relation to the Dickson Street Enhancement Project and totals $346,748.04, and approval of the budget adjustment.

Ass't Public Works Director	Date: 12-7-98	Cross Reference
Department Director	Date: 12-8-98	New Item: Yes **No**
Admin Services Director	Date: 8DEC98	Prev Ord/**Res** #: 149-98
Mayor	Date: 12/9/98	Resolution Date: Nov 17, 1998

Note: The 1999 Budget has a line item for this project of $2,200,000.00

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

DEPARTMENTAL CORRESPONDENCE

December 1, 1998

To: Fayetteville City Council

From: Don Bunn, Ass't Public Works Director
Thru: Charles Venable, Public Works Director
Mayor Fred Hanna

Subject: Engineering Contract
Dickson Street and Vicinity Area Enhancement

Attached for your review and approval is a copy of the proposed contract with The Benham Group of Bella Vista, Arkansas and Tulsa, Oklahoma. The engineering work is in connection with the improvement and enhancement of Dickson Street and Vicinity. The contract amount is $346,748.04.

Engineer Selection: A Selection Committee was formed for the purpose of choosing an engineering firm to develop a concept plan for Dickson Street, Block Street, and East Street and to develop plans and specifications for the enhancement of Dickson Street. The Selection Committee members were:

- Bootsie Ackerman, Dickson Street Enhancement
- Laleh Amirmoez, Hailey and Amirmoez Architects
- Don Bailey, City of Fayetteville
- Jim Beavers, City of Fayetteville
- Don Bunn, City of Fayetteville
- Jim Foster, Foster, Whitsell, and Evans, Architects
- David Glasser, University of Arkansas
- Sid Norbash, City of Fayetteville
- Len Schaper, City of Fayetteville Alderman

Proposals for the project were obtained by mailing Requests for Proposals to various engineers and planners and by advertising the project in the local newspaper. A total of eight Proposals was received by the City. The Selection Committee met in mid September and chose four firms to interview. Those firms were 1) The Benham Group, 2) Crafton and Tull, 3) Garver and Garver, and 4) McClelland Engineers.

The Selection Committee met on Wednesday, September 30 and chose The Benham Group for the work. The Benham Group proposed to use sub-consultants as follows:

LandPlan Consultants, Inc - Concept Plan and Decorative Hardscape Items between the right of way and the curb line.

Peters and Associates - Traffic Studies.

Milholland Company - Provide all surveys in connection with topography, horizontal and vertical controls, utility location, identification of drainage facilities, etc.

General Scope of Work:

1. Develop a Conceptual Design for Dickson Street from North College to Arkansas Avenue, and for Block and East Streets from Dickson to the Square.

2. Provide a detailed design for the enhancements and improvements on Dickson Street from North College Avenue to Arkansas Avenue. Improvements and enhancements would include construction of new sidewalks for the entire length of the project, street surfacing improvements and/or reconstruction, streetscape items such as special surfacing, benches, landscaping, special street lighting, and other items as may be determined by the consultants and approved by the City.

Proposed Fee: Total value of the contract is $376,748.04. A breakdown of the costs is given on the attached sheet. This cost does not include any bidding services or engineering services during construction. A provision is contained in the proposed contract which will allow for a future amendment which would cover engineering services during construction.

Availability of Funding: This project is included in the 1999-2003 Capital Improvement Plan as a 1999 project at $2,200,000.00. Eighty (80) percent of the cost of this project (to a maximum of $1,500,000) will come from the Federal-Aid Surface Transportation Program Enhancement program. The balance of the money will be provided by the City of Fayetteville through the Sales Tax Fund. Some funding from the Dickson Street Improvement District is expected, however, the amount and timing on that funding source has not yet been worked out.

The Federal-Aid share will be available to the City over the next six (6) years, beginning with the Federal Fiscal Year 1998 and will be allocated as follows:

Fiscal Year	Allocation	Fiscal Year	Allocation
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Since not all of the Federal-Aid funding will be available at the time of construction, the entire cost is budgeted in the CIP and the subsequent Federal-Aid reimbursements to the City is shown as revenue to the City in the appropriate year.

Estimated Total Project Cost: A breakdown of the estimated total cost of the project is:

Item	Total Estimated Cost	Local Share	Federal-Aid Share
1. Prelim. Engineering	$ 346,748.04*	$ 346,748.04	$ -0-
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Totals	$ 2,421,748.04	$ 921,748.04	$ 1,500,000.00

* Not eligible for Federal Funding

** The cost of engineering during construction is not included in the proposed contract with the Benham Group.

You will note that the total estimated cost ($2,421,748.04) is greater than the budgeted amount of $2,200,000.00. The estimated costs given in the table are based on utilizing the entire $1,500,000 of matching Federal-Aid Enhancement Funds available to the City. The actual costs will be determined during the preliminary engineering phase of the project and a budget adjustment will be requested if necessary.

Another item of work associated with this project is the relocation and replacement of an eight (8) inch water line in Dickson Street with a twelve (12) inch line. The cost of the water line replacement is included in the 1999-2003 Capital Improvement for 1999 at a cost of $500,000.00, however, the engineering for the work is included in the proposed engineering contract with the Benham Group.

Recommendation: The Staff recommends approval of the engineering contract with The Benham Group for engineering work associated with the development of a Concept Plan for Dickson Street, East Street, and Block Street; and for development of detailed construction plans for improvements on Dickson Street. Since the money for this project will not be available until 1999, a budget adjustment of $346,748.04 will be required. The Staff recommends approval of the budget adjustment.

AGREEMENT FOR
CONSULTING SERVICES

This **AGREEMENT**, effective ____________________, 1998, by and between:

The CONSULTANT
The Benham Group
1801 Forest Hills Boulevard
Bella Vista, AR 72715

and the **CLIENT**
City of Fayetteville, Arkansas

THE PARTIES AGREE AS FOLLOWS:

A. **APPOINTMENT OF THE CONSULTANT**:

A-1. THE BENHAM GROUP: Client desires Consultant to perform engineering, planning and/or architecture services associated with the project hereinafter described. Client hereby appoints the Consultant to provide those engineering, planning, and landscape architecture services. Consultant hereby accepts such appointment and agrees to perform those services in accordance with all laws, regulations, applicable codes, instructions of Client and with the provisions of this Agreement.

A-2. SUBCONTRACTORS: The subcontractors for this project and their general responsibilities shall be:

LandPlan Consultants, Inc. - Tulsa, Oklahoma
Conceptual Design, Dickson Street, Arkansas Avenue to College Avenue, Block and East Streets from Dickson Street to the Square. Final design plans for landscape and decorative hardscape items in the area between the curb and right of way (Dickson Street).

Peters and Associates Engineers, Inc. - Little Rock, Arkansas
Studies of vehicle and pedestrian movements in the project area. Studies of parking in the project area.

Milholland Company - Fayetteville, AR
Conduct surveys for the purpose of vertical and horizontal control, collect topographic data, locate drainage facilities and utilities.

No additional subcontractors may be used for this project without prior written approval of the City.

B. **SCOPE:** Provide comprehensive planning and design services for the work described in the City of Fayetteville Request for Proposals, RFP No. 98-5. A copy is attached along with the specific scope of services for each subconsultant for the project.

C. **COMPENSATION AND TERMS OF PAYMENT**:

C-1. NOT TO EXCEED MAXIMUM AMOUNT: The work of the Consultant and his Subconsultants shall be provided to the Client based on hourly rates for the actual hours required to do the work, reimbursable expenses, and a fixed fee. The hourly rates will include a 150% overhead factor. All the charges from the Consultant and his Subconsultants including hourly charges, overhead, reimbursable expenses, and the fixed fee shall be a not to exceed maximum of $346,748.04.

C-2. FIXED FEE: The fixed fee included in the above not to exceed maximum amount shall be paid to the Consultant regardless of the final amount of the actual charges, as long as the scope of the work is not revised. The fixed fee will be $44,190.54.

C-3. SUBCONSULTANT FEES: The Subconsultants shall be paid by the Consultant for their work. Each Subconsultant's portion of the work is also a not to exceed maximum amount with a fixed fee. The not to exceed maximum amount includes hourly charges, overhead, reimbursable expenses and the Subconsultant's fixed fee.

The fixed fee will be paid to the Subconsultant regardless of the final amount of the actual charges as long as their scope of work is not revised. A summary of the not to exceed maximum amount and the fixed fee for the Consultant and each Subconsultant is listed below.

Downtown Dickson Enhancement Project
Summary of All Fees

		Fixed Fee	**Not to Exceed Maximum**
LandPlan	Concept	$6,302.34	$52,160.14
	Final Plans	$8,867.85	$68,934.55
		$15,170.19	**$121,094.69**
Peters	Concept	$4,032.75	$32,172.75
	Final Plans	$2,321.00	$18,393.00
		$6,353.75	**$50,565.75**
Milholland		**$4,503.00**	**$34,525.00**
Benham	Concept Planning	$948.60	$7,272.60
	Concept - Engineering	$1,539.00	$12,025.00
	Street Plans	$11,019.00	$85,131.00
	Utility Plans	$4,657.00	$36,134.00
		$18,163.60	**$140,562.60**
	Total	**$44,190.54**	**$346,748.04**

C-4. HOURLY RATES: The hourly rates for the disciplines of service required for this project are listed on the following page. These abbreviations are used:
TBG - The Benham Group
LPC - LandPlan Consultants
PAE - Peters & Associates Engineers
MSC - Milholland Surveying Company

	Discipline	Hourly Rate
TBG	Project Engineer	$30.00
TBG	Civil Engineer	$23.00
TBG	Planner	$20.40
TBG	Technician	$15.00
TBG	Clerical	$12.00
LPC	Principal	$33.60
LPC	Associate	$17.00
LPC	Clerical	$12.00
PAE	Engineer	$38.00
PAE	Technician	$20.00
MSC	Engineer V /Mgr.	$29.60
MSC	Surveyor IV/Mgr.	$22.60
MSC	Surveyor III/RLS	$20.00
MSC	Surveyor II	$16.00
MSC	Surveyor I	$10.00
MSC	Clerical	$7.00

C-5. TERMS OF PAYMENT: Consultant's charges for Services performed shall be invoiced monthly by Consultant and shall be payable by Client within thirty (30) days after receipt of invoice. In the event Client disputes any invoice item, Client shall give Consultant written notice of such disputed item within ten (10) days after receipt of invoice and shall pay to Consultant the undisputed portion of the invoice according to the provisions hereof.

C-6. REIMBURSABLE EXPENSES: The following rates will be charged for the appropriate reimbursable expense items.

	ITEM	RATE AND MEASURE
1.	Xerox Reproduction	
	11 X 17 Plat	$1.00/copy
	Outside Printing	Actual cost + 5% handling
	Color Copies	$1.00/copy
2.	Drawing Reproduction	
	Blueline	$0.272/sf
	Mylar Sepia (vacuum frame)	$3.00/sf
	Outside Reproduction	Actual cost
3.	Custom Plotting	
	Velbond (11x17)	$0.60/drawing
	Velbond (full size)	$7.00/drawing
	Mylar (full size)	$18.00/drawing
4.	Long distance telephone calls	Actual cost + 5% handling
5.	Telefax Transmittal	$1.00/sheet
6.	Express Mail	Actual cost + 5% handling
7.	Automobile Expenses	31.5 ¢/mile
8.	Airline and Rental Car	Actual cost + 5% handling
9.	Meals	$30.00 ($6.00 breakfast, $8 lunch, $16 dinner
10.	Lodging	$70.00/day
11.	Renderings	$500 each

D. **TERMINATION**: Should the Client, for any reason whatsoever, decide to postpone the work the Client will notify TBG, who will immediately suspend work. Should the Client decide during such suspension not to resume the work, or should such suspension not be terminated within a year, the work shall be canceled as hereinafter provided.

Should the Client, for any reason whatsoever, decide to cancel or to terminate the use of TBG's services, the Client will give written notice thereof to TBG, who will immediately terminate the work. If the Client so elects, TBG may be instructed to bring a reasonable stage of completion to those items whose value would otherwise be lost. TBG shall turn over all data, charts, survey notes, figures, drawings, and other records or information collected or produced hereunder, whether partial or complete. Upon such termination of TBG's services, TBG shall be paid on the basis of actual hours of work completed up to the time of termination, less prior partial payments; provided, however, that the total compensation so computed is in reasonable agreement with the estimates for such work as given elsewhere in this contract.

Cancellation or postponement by the Client shall not be considered default.

E. **FORCE MAJEURE**: Consultant, including Consultant's subcontractors, if any, shall not be responsible hereunder for any delay, default or nonperformance of this Agreement, if and to the extent that such delay, default, or nonperformance is caused by an act of God, or any other cause beyond the reasonable control of the Consultant.

F. **ASSIGNMENT**: This Agreement shall not be assignable by either party without the prior written consent of the other party hereto, except that it may be assigned without such consent to the successor of either party acquiring all or substantially all of the business and assets of such party. No assignment of this Agreement shall relieve the assignor of its obligations hereunder.

G. **OWNERSHIP OF DRAWINGS, PLANS AND SPECIFICATIONS**: All documents, including original drawings, disks of CADD drawings, cross sections, cost estimates, specifications, field notes, and other data shall remain the property of the Client. TBG shall retain reproduced copies (or the originals should the Client not elect to take physical possession of them) of any and all such data and disks for a period of at least three (3) years. Such copies or originals shall be made available to the Client for audit or other purposes. It is understood that TBG will not be liable for the use of any documents or data produced under this contract except where they are used in connection with this specific project.

H. **WARRANTIES**:

1. Consultant shall perform its duties hereunder consistent with generally accepted industry standards, consistent with the state of art within the industry; but Consultant's liability in the event of default, error, omission, or failure (collectively called "defect") in any of Consultant's Services under this Agreement shall be limited to defects arising out of its negligence and not the negligence of contractors, builders, suppliers, etc. , provided Consultant is notified by Client in writing of such defect within one (1) year after completion of Consultant's Services under each separately assigned project undertaken pursuant to this Agreement and any amendments thereto,

   Notwithstanding anything to the contrary in this provision, any peril or liability insured against by the insurance coverages identified in paragraph J hereof shall be fully warranted to the full extent of the policy limits still available.

2. Notwithstanding anything in this Agreement to the contrary, its is agreed that Consultant shall not be liable for damages arising out of the Services performed hereunder such as loss of capital, loss of product, loss of profit, loss of use of any system or other property.

3. It is further expressly provided that Consultant does not warrant materials or equipment either supplied by Client or others or purchased for third parties. Consultant will, however, act on behalf of Client in assisting in the enforcement of any warranties of the vendors or suppliers of materials or equipment.

I. **INSURANCE**: Consultant shall maintain the following schedule of insurance by type and amount:

Errors & Omissions	$1,000,000
Workmen's Compensation	Statutory Limits
Coverage B	$100,000
Comprehensive General	$1,000,000/1,000,000/1,000,000 Bodily Injury
and Automobile Liability	$1,000,000/1,0000,000 Property Damage
	(no fault endorsement applicable where required by law.)

J. **LIABILITY AND INDEMNITY**: Consultant agrees to protect, indemnify, and hold Client free and harmless from and against claims, liabilities, demands and causes of action for personal injuries, death, or damages to property (other than property of Client or construction work in progress, for which Client assumes responsibility) if and to the extent that the same arise out of the negligence of Consultant, its agents, and employees while engaged in the performance of Services hereunder.

K. **GOVERNING LAW**: The provisions of this Agreement shall be interpreted and the relations between the parties hereto determined in accordance with the laws of the State of Arkansas, U.S.A.

L. **RELEASE OF INFORMATION** Consultant will be allowed to release information relative to the project for publication and advertising purposes unless restricted by the Client in a written request.

M. **APPROVALS, AUTHORIZATIONS, NOTICES:** All notices authorized or required between the parties, or required by any of the provisions herein shall be given in writing and shall be sent by certified mail, return receipt requested, and deposited with an accepted postal service, postage prepaid, and addressed to the party intended to receive it. Notices may also be given by personal delivery or may be sent by telex to the party intended to receive it with the sending party confirming the message by certified mail in the same manner as provided above within ten (10) calendar days thereafter, but said notice shall be deemed given on the date the telex is sent. Notices shall be addressed, mailed, and delivered or telexed to the party to whom the notice is given at the address shown herein.

N. **SERVICES DURING CONSTRUCTION**: Prior to bidding and construction of the project, the Client and TBG shall enter into negotiations for Title II Services (Construction Management). The contract amount shall be based on an estimated number of hours required for proper observation and inspection of the construction. The cost for Title II services shall be computed in the same manner as the one given in this contract (cost times a multiplier plus a fixed fee).

IN WITNESS OF THE ABOVE AGREEMENT, the parties hereto affix our signature on this ___ day of ________________, 1998.

CITY OF FAYETTEVILLE, ARKANSAS	THE BENHAM GROUP
By: ______________________	By: Gary L. Carnahan
Title: ______________________	Title: Vice President

genservfay.wpd

TBG Cost Summary Sheet 1
Downtown Dickson Enhancement Project
Summary of All Fees

		Fixed Fee	Total
LandPlan	Concept	$6,302.34	$52,160.14
	Final Plans	$8,867.85	$68,934.55
		$15,170.19	**$121,094.69**
Peters	Concept	$4,032.75	$32,172.75
		$2,321.00	$18,393.00
		$6,353.75	**$50,565.75**
Milholland		**$4,503.00**	**$34,525.00**
Benham	Concept Planning	$948.60	$7,272.60
	Concept - Engineering	$1,539.00	$12,025.00
	Street Plans	$11,019.00	$85,131.00
	Utility Plans	$4,657.00	$36,134.00
		$18,163.60	**$140,562.60**
	Total	**$44,190.54**	**$346,748.04**

manhours(sheet1).xls

TBG Cost Summary Sheet 2

TBG Planner 124 hours x 20.4 x 2.5 = $6,324.00
Fixed Fee 6,324 x 0.15 = $948.60 TOTAL $7,272.60

PROJECT NAME: *Conceptual Planning-Dickson/Block/East Streets*

FILE NAME: BUD. DATE: PREPARED BY: FRANKLIN

PROJECT NO.: UPDATED: 11/17/98

SCOPE OF SERVICES

LandPlan Consultants, Inc.

DESCRIPTION	PRIN	TBG PLANNER	ASSOC	CLER	TOTAL MH's	RAW LABOR
Conceptual Design Phase					0.00	0.00
Prepare base map from Client supplied aerial topo	2.00		36.00		38.00	679.20
Identify general improvement areas for general budgeting purposes	2.00		16.00		18.00	339.20
Define approximate budget for landscape, hardscape, amenities and irrigation	6.00		12.00		18.00	405.60
Provide inital recommendations for amenities, benches, litter, tree grates, lights...	2.00		8.00		10.00	203.20
Review information with TEAM	2.00				2.00	67.20
Meet with Client to discuss design program, issues, schedule, budget	4.00	2.00			6.00	134.40
Meet with DDEP to discuss design issues and define problem areas	4.00	2.00			6.00	134.40
Compile a database with owner and merchants address, phone, fax and email			4.00	12.00	16.00	212.24
Meet with DDEP and various property owners/merchants to discuss specific site problems (1 Day)	12.00	8.00			20.00	403.20
Review topographic survey to identify site problems/ADA issues, utilities, etc.	4.00				4.00	134.40
Review preliminary utility relocation plans	4.00				4.00	134.40
Review traffic recommendations to determine how they impact the streetscape	2.00				2.00	67.20
Prepare draft overall concept plan (dickson--topographic survey---Block/East aerial survey)	36.00	36.00	120.00		192.00	3249.60
Prepare cost estimate	6.00		16.00		22.00	473.60
Prepare detail solutions to specific site problems	40.00	20.00	60.00		120.00	2364.00
Review with TEAM	4.00	2.00			6.00	134.40
Review with Client	4.00	2.00			6.00	134.40
Revise plans as needed, overall and site specific	20.00	10.00	40.00		70.00	1352.00
Review with various property owners/merchants-site specific problem areas (1 day)	12.00	8.00			20.00	403.20
Revise plans as needed, overall and site specific to satisfy owner and merchants	10.00	10.00	30.00		50.00	846.00
Update cost estimate	4.00		4.00		8.00	202.40
Review with Client	4.00	2.00			6.00	134.40
Review with various property owners/merchants-site specific problem areas	12.00	8.00			20.00	403.20
Prepare final overall concept plan (B&W)	6.00		60.00		66.00	1221.60
Prepare 5 illustrative sketches depicting the character of the project (B&W)	5.00		0.00		5.00	168.00
Update cost estimate	2.00		2.00		4.00	101.20
Review with TEAM	4.00	2.00			6.00	134.40
Review with Client	4.00	2.00			6.00	134.40
Prepare for Public Meeting	12.00	6.00	36.00		54.00	1015.20
Facilitate Public meeting	8.00				8.00	268.80
Prepare final overall concept plan (Color)	6.00		30.00		36.00	711.60
Prepare 5 illustrative sketches depicting the character of the project (Color)	1.00		10.00		11.00	203.60
Udape cost estimate	2.00		2.00		4.00	101.20
Review with TEAM	4.00	4.00			8.00	134.40
					0.00	0.00
					0.00	0.00
					0.00	0.00
					0.00	0.00
					0.00	0.00
					0.00	0.00
					0.00	0.00
TOTAL MANHOURS FOR EACH CATEGORY	250	124	486	12	872	16806.24

EXPENSES	PROP
Film and Reproduction	150.00
Plotting	200.00
Dry Mounting	175.00
Long Distance Phone	175.00
Postage	50.00
Mileage 1680 mi. @ .315	582.20
Renderings- 5@500	2500.00
	3842.20

			PRIN	TBG PLANNER	ASSOC	CLER		
OVERHEAD	150%	BUDGET RATE	33.60		17.00	12.02	$42,015.60	TOTAL LABOR W/ OVERHEAD
							$3,842.20	TOTAL DIRECT EXPENSES
PROFIT RATE (LABOR)	15%	COST	8400.00		8262.00	144.24	$45,857.80	SUBTOTAL
							$6,302.34	PROFIT
		% UTILIZATION	29%	14%	56%	1%	$52,160.14	TOTAL FEE

TBG Cost Summary Sheet 3

THE BENHAM GROUP
DICKSON, BLOCK, AND EAST STREET
CONCEPT DESIGN

	DESCRIPTION	PROJECT ENGR (hrs.)	CIVIL ENGR (hrs.)	TECH (hrs.)	CLERICAL (hrs.)	TOTAL HRS
A.	**Phase I**					
	Meet with AHTD		8			8
	Review info with TEAM		8			8
	Meetings with City		8			8
	Meetings with DDEP		16			16
	Review topographic survey		8			8
	Review traffic recommendations		8			8
	Utility Relocation		36			36
	Prepare prelim. cost estimate		8			8
	Finalize street/utility plan		16			16
	Review with TEAM		16			16
	Review with City		16			16
	Prepare for Public Meeting		16			16
	Public Meeting		4		20	4
	Review with AHTD					-
	QC/QA					
	SUBTOTAL	-	168	-	20	188
	RATE	$ 30	$ 23	$ 15	$ 12	
	SUBTOTAL PHASE I COST	$ -	$ 3,864	$ -	$ 240	$ 4,104
	SUBTOTAL WITH OVERHEAD (150%)					$ 10,260
	PROFIT (15%)					$ 1,539
(1)	Reimbursables					$ 100
(2)	Mileage					$ 126
	TOTAL PHASE I COST					$ 12,025

(1) copies
(2) $0.315/mile @ 400 miles

11/18/98
manhours.xls

THE BENHAM GROUP
DICKSON STREET
STREETS AND DRAINAGE

	DESCRIPTION	PROJECT ENGR (hrs.)	CIVIL ENGR (hrs.)	TECH (hrs.)	CLERICAL (hrs.)	TOTAL HRS
C.	**FINAL PLANS**					
	Title Sheet	4	16	20		40
	Typical Sections (2 sheets)	4	32	40		76
	Summary of Quantities (1 sheet)	8	24	32		64
	Summary Schedules (3 sheets)	16	60	72		148
	Survey Reference Sheet (1 sheet)	4	16	32		52
	All Plan Layout (7 sheets)	8	160	160		328
	Storm Sewer (4 sheets)	8	64	80		152
	Lighting Plans (3 sheets)	8	48	48		104
	Cross Sections (7 sheets)	2	48	48		98
	Specifications/Special Provisions	16	80		80	96
	Cost Estimate	16	60			76
	QC/QA	20	80	80		180
						-
	SUBTOTAL	114	688	612	80	1,494
	RATE	$ 30	$ 23	$ 15	$ 12	
	SUBTOTAL FINAL PLANS	$ 3,420	$15,824	$ 9,180	$ 960	$ 29,384
	SUBTOTAL WITH OVERHEAD (150%)					$ 73,460
	PROFIT (15%)					$ 11,019
(1)	Reimbursables					$ 400
(2)	Mileage					$ 252
	TOTAL FINAL PLANS COST					$ 85,131

(1) copies
(2) $0.315/mile @ 800 miles

THE BENHAM GROUP
DICKSON STREET
UTILITY RELOCATION PLANS

	DESCRIPTION		PROJECT ENGR (hrs.)	CIVIL ENGR (hrs.)	TECH (hrs.)	CLERICAL (hrs.)		TOTAL HRS
C.	UTILITY RELOCATION PLANS							
	Water plan		4	40	56			100
	Water profile		4	12	64			80
	Water coordination			24				24
	Water specifications			24				24
	Irrigation coordination			8				8
	Sewer plan		4	40	64			108
	Sewer profile		4	12	72			88
	Sewer coordination			24				24
	Sewer specifications			24				24
	ADOH permitting		4	32				36
	Phone coordination		4	16		80		20
	Electrical coordination		3	24				27
	Gas coordination			16				16
	SUBTOTAL		27	296	256	80		659
	RATE		$ 30	$ 23	$ 15	$ 12		
SUBTOTAL UTILITY RELOCATION PLANS			$ 810	$ 6,808	$ 3,840	$ 960		$ 12,418
SUBTOTAL WITH OVERHEAD (150%)								$ 31,045
	PROFIT (15%)							$ 4,657
(1)	Reimbursables							$ 180
(2)	Milage							$ 252
TOTAL UTILITY RELOCATION PLANS								$ 36,134

(1) copies
(2) $0.315/mile @ 800 miles

DDEP PROPOSED LIST OF DRAWINGS

1	Title Sheet	BG
3	Typical Sections - Hardscape	LP
1	Typical Sections - Landscape and Irrigation	LP
2	Typical Sections - Streets and Drainage	BG
1	ADA Summary Schedule	LP
1	Summary of Quantities	BG and LP
4	Summary Schedules (4)	(1 LP and 3 BG)
1	Survey Reference Sheet	BG
7	Plan and Profile Sheets	BG
2	Sidewalk Details	LP
6	Landscape and Irrigation Plan	LP
5	Hardscape Detail Plan	LP
4	Storm Sewer Plans	BG
3	Lighting Plans	BG
5	Traffic Control Plans	EP and BG
2	Signing and Striping Plans	EP
7	Signal Layout and Details	EP
7	Cross Sections	BG
62	**Total**	

REQUEST FOR PROPOSAL - DICKSON STREET ENHANCEMENT

RFP No. 98-5

Due to the nature of the work involved and the City of Fayetteville's current work load, it has become necessary to retain the services of an engineering firm to develop construction plans for carrying out the enhancement along Dickson Street between Arkansas Avenue and College Avenue, a distance of approximately 3,200 feet.

The recently enacted Federal Aid Transportation Act for the 21st Century "TEA-21," contains federal aid highway funds under Subsection F-Section 1601 "High Priority Projects" in the amount of $1.5 million dollars for enhancements in the vicinity of Dickson Street in Fayetteville, Arkansas.

A conception study dated June 11, 1998, and entitled *"Downtown Dickson Enhancement Project, Phase I Conceptual Study"* was completed by the University of Arkansas Community Design Center and contains a concept plan for enhancement of both the Dickson Street area and downtown Fayetteville. A copy of this study is enclosed for your use and information in responding to this request. The proposed project is the first phase in implementing the entire project. It is desired that all design work be completed in order to advertise for construction by late winter or early spring 1999.

Dickson Street is an important part of the Fayetteville street network and is considered to be a collector street in Fayetteville's master street plan. It is also considered to be the main entrance into the University from the east. The street is developed with commercial type businesses as well as churches, the Walton Arts Center, restaurants, U.S. Post Office, etc. The average daily traffic on portions of Dickson Street is approximately 15,000 V.P.D. The existing street is generally 40 feet wide with parallel parking on both sides of the street except in areas where left turn lanes exist.

The scope of the work for enhancement of Dickson Street is as follows:

1. To reduce the width of the roadway along Dickson Street, where feasible, consistant

with traffic safety, and convenience. New on-street parking places should be maximized.

2. Landscaping, including tree planting, planter boxes, etc., shall be incorporated in the overall project along both sides of Dickson Street but should be designed so that safety to both pedestrians and traffic is not deminished.
3. Replace the existing sidewalks, curbs, and gutters and widen the sidewalks where feasible. Alternate paving material should be studied and evaluated with respect to durability and cost. Storm water run off shall also be investigated and the capacities of existing storm sewers shall be determined.
4. Curb cuts to existing parking lots adjacent to Dickson Street should be revised if possible.
5. All driveway and sidewalk construction shall be in accordance with the latest City of Fayetteville standards.
6. Street reconstruction over a portion of the project length may be necessary depending on whether replacement of utilities that are located within the street require repair or replacement.
7. Street lighting should also be included along both sides of Dickson Street and shall be pedestrian friendly. All electric service to the lights shall be placed underground.
8. An irrigation system should be installed in conjunction with the tree planting and landscaped areas.
9. Curb extensions at street intersections and mid-block should be considered where feasible in order to increase pedestrian safety and to provide traffic calming measures. Crosswalks at all street intersections, as well as mid-block, should be consistent with the sidewalk treatment used.
10. Plans depicting the handling of the traffic and pedestrian usage during the construction stage should be included.
11. All signs required for construction and signs required after construction is completed will be a part of the plans developed.
12. Since disruptions to businesses, traffic, and pedestrians will occur, the project should be designed in order that the construction, including utility adjustments, will have the least

effect possible.

13. Close coordination with all utility owners will be required and determinations shall be made as to which utility will need to be replaced, relocated, repaired, etc. A time schedule for utility work will also be necessary. All electric, cable, and telephone lines are to be placed underground where possible.
14. Amenities such as benches, trash receptacles, fountains, and information kiosks should be considered during the design process.
15. American with Disabilities Act Accessibility Guidelines (ADAAG) shall be met throughout the project length to the extent possible.
16. The project is to be designed and constructed in accordance with the latest City of Fayetteville and Arkansas Highway and Transportation Department specifications and shall meet all federal aid requirement.
17. Meetings will be required throughout the design stage with representatives from the City, the Downtown-Dickson Enhancement Project, the Dickson Street Improvement District, the Arkansas Highway and Transportation Department, and the University of Arkansas Community Design Center as plan preparation progresses in order to revise and amend the plans if necessary and to keep everyone apprised of the project.
18. A detailed estimate of costs on construction and the time of construction, including a proposed staging plan, will be a part of the planning process.
19. The social, economic, and environmental impact of this project shall also be determined by the consultant.
20. The consultant must be a registered professional engineer in the State of Arkansas and should have either on staff or as a sub to the consultant the use of a landscape architect to assist in the development of the Enhancement Plan.

The consulting firm shall provide information that addresses the following:

1. Work on a project similar in nature to this type of work. Examples of the work done should be included in the proposal.
2. The present workload and ability to complete the work in the time frame derived.

City of Fayetteville, Arkansas
Budget Adjustment Form

Budget Year	Department:	Public Works	Date Requested	Adjustment #
1998	Division:	Engineering	12/15/98	
	Program:	Sales Tax Capital		

Project or Item Requested:	Project or Item Deleted:
$346,748 is requested to start the Dickson Street Enhancements Capital Project.	$346,748 from the Sales Tax Capital Improvements Fund - Use of Fund Balance Account.

Justification of this Increase:	Justification of this Decrease:
The funding for this project is budgeted in 1999 at $2,200,000.	The funding requested for this budget adjustment was budgeted in 1999. Sufficient fund balance remains to comply with this budget adjustment.

Increase Expense (Decrease Revenue)

Account Name	Amount	Account Number					Project Number	
Street Improvements	346,748	4470	9470		5809	00	98097	10

Decrease Expense (Increase Revenue)

Account Name	Amount	Account Number					Project Number	
Use of Fund Balance	346,748	4470	0947		4999	99		

Approval Signatures		Budget Office Use Only
Requested By	Date	Type: A B C D E
Stephen [signature] Budget Coordinator	12/7/98 Date	Date of Approval
Department Director	Date	Posted to General Ledger
Admin. Services Director	Date	Posted to Project Accounting
Mayor	Date	Entered in Category Log

Blue Copy: Budget & Research / Yellow Copy: Requester

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STAFF REVIEW FORM

X Agenda Request
___ Contract Review
___ Grant Review

FOR THE FAYETTEVILLE CITY COUNCIL MEETING OF December 15, 1998

FROM:

Marvin Hilton	Cable Administration	Community Access Television Contract
Name	Division	Department

ACTION REQUESTED: Passage of a resolution accepting a contract with the Community Access Television for public access television services.

COST TO THE CITY:

$ $63,000.00	$ 1999 budget	Public Access Contract
Cost of this request	Category/Project Budget	Category/Project Name
1010-0600-5713-00	$0.00	General
Account Number	Funds used to date	Program Name
	31,500.00 (1999 Budget) ~~$63,000.00~~ JH	
Project Number	Remaining Balance	Fund

BUDGET REVIEW:

___ Budgeted Item ___ Budget Adjustment Attached

Funding proposed in the 1999 Budget before Council is $31,500 for this contract. JH

Budget Coordinator — Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW: GRANTING AGENCY:

	12-2-98		12-2-1998
Accounting Manager	Date	Internal Auditor	Date
	12-4-98		
City Attorney	Date	ADA Coordinator	Date
	12-4-98		
Purchasing Officer	Date		

STAFF RECOMMENDATION:

Marvin A. Hilton

Division Head — Date

12-7-98

Department Director — Date

8DEC98

Administrative Services Director — Date

12/8/98

Mayor — Date

STAFF REVIEW FORM

Description CAT contract Meeting Date 12-15-98

Comments: Reference Comments:

Budget Coordinator

Accounting Manager

attached contract: $5250.00/mo for 1 yr, w/30 day term clause - should this be amended if $31,500.00 is approved as total funding?

City Attorney

Purchasing Officer

ADA Coordinator

Internal Auditor

FAYETTEVILLE
THE CITY OF FAYETTEVILLE, ARKANSAS

DEPARTMENTAL CORRESPONDENCE

TO: MAYOR HANNA AND COUNCIL MEMBERS

FROM: MARVIN HILTON, CABLE ADMINISTRATOR

SUBJECT: COMMUNITY ACCESS TELEVISION CONTRACT

DATE: DECEMBER 2, 1998

The Cable Board, at their December 1, 1998 meeting, voted 4-0 to recommend to the City Council that the present contract with Community Access Television for public access services be renewed for 1999. The present contract was for one year with automatic renewal for four consecutive one year terms.

The Cable Board also voted 4-0 to recommend to the City Council that the present contract budget amount of $63,000 annually for community access television be maintained for 1999 with a consideration of increasing this budget for the year 2000.

See the attached minutes for the Cable Board meeting of December 1, 1998 and the attached contract for public access television.

Special Cable Board Meeting
December 1, 1998

1. Call to Order

A special meeting of the Cable Board was called to order on December 1, 1998 at 5:15 p.m. by Cable Board Chair Katherine Shurlds.

2. Roll Call:

Cable Board members present were Katherine Shurlds, Barbara Stripling, James Alford, Rowland McKinney. Also in attendance were Marvin Hilton, Cable Administrator and Jim Goodlander, Community Access Television manager. Members of the Press Laura Kellams and Sara Post were also in attendance..

3. Discussion on Community Access Television Contract and Budget

Community Access Manager, Jim Goodlander reported that the City had proposed a 50 percent cut in the C.A.T. budget. This would cut C.A.T.'s budget by 31,500 dollars. Mr. Goodlander spoke on the detrimental effects such a budget reduction would have on Community Access Television. Mr. Goodlander reported that such a budget cut would mean a great reduction in programing hours as well as training.

James Alford moved that the Cable Board recommend to the City Council that the City of Fayetteville renew the contract with Community Access Television for 1999. The motion was seconded by Barbara Stripling and unanimously passed by the Cable Board.

Cable Board Member Barbara Stripling moved that the Cable Board recommend to the City Council that Community Access Television receive a budget of $63,000. The motion was seconded by Board Member James Alford and passed by all the Cable Board members present.

A resolution was proposed by Barbara Stripling to say:

Whereas C.A.T. provides an educational outlet for the entire Fayetteville community,

Whereas C.A.T. provides a forum for all diverse aspects of the community to work together,

Whereas C.A.T. provides educational opportunities for community members to learn video production,

Whereas C.A.T. production and use is on the increase,

Whereas C.A.T. is a main outlet for political, artistic & educational value,

Therefore the Cable Board recommends that the City maintain a $63,000 annual budget with a consideration of increasing this budget the following year.

Rowland McKinney seconded this motion of a resolution.

The motion was passed unanimously by the Cable Board Members present.

A motion was made and agreed to by the Board to instruct Marvin Hilton to table the letter to the City Council concerning the Gross Receipts redefinition of the cable operator until the next Board meeting on December 17.

4. Adjournment:

The meeting was adjourned at 6:25 p.m.

final

RESOLUTION NO. 107-97

A RESOLUTION APPROVING THE COMMUNITY ACCESS TELEVISION CONTRACT TO PROVIDE PUBLIC ACCESS TELEVISION SERVICES TO BEGIN JANUARY 1, 1998.

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

Section 1. That the City Council hereby approves the Community Access Television contract to provide Public Access Television services begin January 1, 1998 and hereby authorizes the Mayor and City Clerk to execute said contract. A copy of the contract is attached hereto marked Exhibit "A" and made a part hereof.

PASSED AND APPROVED this ~~3rd~~ 4th day of November, 1997.

APPROVED:

By: Fred Hanna

Fred Hanna, Mayor

ATTEST:

By: Traci Paul

Traci Paul, City Clerk

EXHIBIT A

PUBLIC ACCESS ADMINISTRATION
AGREEMENT BETWEEN THE CITY OF FAYETTEVILLE
AND ACCESS 4 FAYETTEVILLE, INC.
A.K.A.COMMUNITY ACCESS TELEVISION

THIS AGREEMENT is made and entered into this 3rd day of November, 1997, by and between the City of Fayetteville, a municipal corporation of the State of Arkansas (hereafter City), and Community Access Television, (hereafter Contractor) for the operation of the public access channel.

SECTION I.
CONTRACT PERIOD.

A. The contract period shall begin the 1st day of January, 1998 and shall continue until the 31st day of December, 1998. However, this agreement may automatically renew for four (4) consecutive one (1) year terms. Each such annual renewal term shall be subject to a favorable recommendation from the Cable Board to the City Council, approval of renewal by the City Council, and budget approval by the City Council.

SECTION II.
SERVICES/DUTIES.

A. The Contractor hereby agrees and shall be responsible for operating the public access channel, which shall entail the following:

1. Scheduling and teaching of video production and telecommunications workshops for the Fayetteville general public.

2. Scheduling of programs on the public access channel.

3. Cablecasting of programs on the public access channel.

4. Promoting use of the Public Access Channel.

B. The Contractor shall provide, oversee, administer, and carry out all of the activities and services set out in this Agreement with such satisfactory performance as is determined solely by the City in accordance with all the terms, provisions and requirements of the Agreement.

C. In furtherance of the above referenced services and duties, the parties hereby agree as follows:

1. Facility:

a. The City shall provide a facility to which the Contractor shall have access for the performance of their duties hereunder. Such facility shall be known as the Access Center.

b. The City shall be responsible for the payment of the Access Center utilities, routine, building and grounds maintenance and maintenance of the structure.

c. Use of the Access Center conference/breakroom will be scheduled through the City.

2. Copier:

a. The Contractor may use the City's current copier at the Access Center for a charge of $.015 per copy. Additionally, the Contractor may use the copier located at the City Administration Building for the standard charge as is allocated per copy to the City Departments and Divisions. If the City upgrades the copier located in the Access Center, Contractor shall pay an adjusted charge per copy, up to, but not to exceed the standard City rate charged to City Departments and Divisions as determined annually.

b. Copy machine maintenance costs will be paid by the City.

3. Video Equipment:

a. The City and the Contractor shall each bear one-half of each separate maintenance expense incurred on the video equipment used by the Contractor. Contractor's total liability shall be limited to $1,000 cash and up to $1,000 in-kind maintenance on equipment. All in-kind maintenance shall be mutually agreed upon by City and Contractor.

b. One camera, to be designated by the City, and one tripod shall not be available for public access checkout. The reserved equipment shall be used only for government production, Contractor's contract productions, and contractor's promotional programs. Use of the reserved camera and tripod will be as scheduled by the City. Additional reservation of equipment may be required should it be determined, by the City, that the equipment was not available as needed for government channel productions.

c. The City will be responsible for scheduling use of the equipment. After hours scheduling must be confirmed by the City the next business day before it is finalized. Weekend checkout of equipment must be confirmed with the City by 5:00 Friday afternoon.

d. The Contractor is responsible for training all public access users on the equipment, certifying their ability to use the equipment, checking the equipment out to users, and checking it back into the facility. Contractor will make sure all of the City's equipment used for public access purposes is checked-out and returned in good working order. Contractor will notify the City immediately of any problems with equipment.

e. All video production equipment owned by the City and used for public, educational and/or government access productions shall be covered under the City's insurance policy.

4. Phone:

a. The City shall make one telephone line available for Contractor's business use. Contractor shall be responsible for reimbursing the City, on a quarterly basis, for this expense at a rate of $20 per month.

b. Contractor shall be responsible for their own long distance telephone calls.

c. Contractor shall be responsible for paying the costs of their listing in the telephone directory.

d. Contractor shall be responsible for answering their own phone line. Contractor will have an answering machine on their line when they are unable to answer calls.

e. Contractor shall not be required to answer the City's telephone lines at the Access Center.

5. Fees:

a. There shall be no charge to citizens of Fayetteville for the use of the public access channel, facilities or equipment. However, Contractor's fees and charges may apply.

6. Other/Misc.:

a. All communication between the City and the Contractor with regard to contractual matters will be directed through the Cable Administrator, or any other such representative as may be appointed by the City, and the Contractor's duly appointed representative. In the event of a disagreement over the administration of this agreement, either party may appeal to the cable board who shall make recommendations to the Mayor or City Council, as may be required.

b. The use of alcohol, tobacco products, and illegal drugs is strictly prohibited in the Access Center.

c. Contractor's and City's employees shall not park in the spaces in front of the Access Center.

d. Contractor shall have at least one paid staff person or a designated volunteer in the Access Center whenever a program is being produced in the studio. Contractor shall have a paid staff person on site during the production of live programming at the Access Center.

e. Contractor and City shall each bear one-half of the costs of supplies used by everyone in the facility's breakroom.

f. Contractor's staff shall do their part to keep the Access Center clean by keeping the breakroom clean after use by their staff and public access users.

g. Contractor shall be responsible for placing messages from non-profit groups and organizations on the public access channel.

h. Contractor will follow the City's rules for the use of the Access Center.

i. Live shows will be taped by the Contractor and held for four days. All other shows are on tape and available for review at the Access Center. The owners of the taped programs will be asked to leave them for four days if they are not in the tape library. Accurate cablecast logs will be kept by Contractor as proof of what programs were cablecast.

j. Ownership title to all capital acquisition, supplies, material or any other property purchased with funds received under this Contract, is vested with the City and possession of such property shall, upon termination of the Contract, revert to the City unless otherwise provided for by the City, in writing. Donations of goods to the Contractor remain with the Contractor.

SECTION III.
LEGAL AUTHORITY.

A. The Contractor assures and guarantees that it possesses the legal authority to enter into this Agreement. Further, that the person or persons signing and executing this Contract on behalf of the Contractor have been fully authorized by the Contractor to execute this Agreement on behalf of the Contractor. That such authority is evidenced pursuant to a proper, appropriate and official motion and resolution, which was passed and approved specifically to enter into this Agreement and shall legally bind the Contractor to all the terms, performances and provisions herein set forth. A copy of such resolution shall be provided upon execution of this Agreement.

B. The City may exercise its right to either temporarily suspend or permanently terminate this Agreement if there is a dispute as to the legal authority of either the Contractor or the person signing the Agreement to enter into this Agreement. The City shall not be obligated to pay Contractor for any performance of the provisions of this Agreement after the City has suspended or terminated this Agreement as provided in this Section.

SECTION IV.
COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS.

A. The Contractor shall comply with all applicable laws, regulations, procedures and policies of the Federal, State and local governments.

SECTION V.
FUNDING/CONSIDERATION.

A. Consideration.

1. The City hereby agrees to pay Contractor the monthly sum of $ 5,250.00 for services performed under the terms of this contract. Each monthly payment will be remitted on or before the 15th day of each month, beginning January 15th, 1998.

SECTION VI.
PROGRAMMING.

A. Public access equipment shall be provided on a first come, first served, non-discriminatory basis, subject only to any restrictions set forth herein. Public access channel time shall be made available on a non-discriminatory basis, with consideration being given to an appropriate scheduling time.

B. Contractor shall require access producers to sign an agreement warranting that the program they are submitting does not contain:

1. any violation of any state or federal law relating to obscenity;

2. any material that is libelous, slanderous, or other defamation of character, or an unlawful invasion of privacy;

3. any advertising or material which promotes any commercial product or service;

4. any use of material which violates copyright law; or,

5. any material contrary to local, state or federal laws, regulations, procedures and policy.

SECTION VII.
PERSONNEL.

A. Contractor shall adequately staff the public access operation to meet the services and duties outlined in this agreement.

B. During the contract period, the staff for the public, educational and government channels will be working together at the Access Center. The Contractor's staff will be expected to work in a cooperative manner with all groups using the facility.

SECTION VIII.
REPORTS AND INFORMATION.

A. At such times and in such form as the City may require, the Contractor shall furnish such statements, records, reports, data and information, as the City may request and deem pertinent to matters covered by this Agreement.

B. The City shall provide the Contractor with equipment usage forms which are to be completed by Contractor's staff as well as public access users each time equipment is used. Contractor is responsible for submitting these completed forms to the City within one working day after the equipment is used.

C. Contractor shall submit quarterly reports on the operations of the public access channel to the City.

D. Contractor shall submit an annual report which shall include a summary of all quarterly reports, review contract requirements and document compliance with contract requirements. The annual report will be due sixty (60) days following the end of the contract year.

E. In addition to the above listed reports, the Contractor shall provide the following additional information to the City:

1. Reports of stolen or damaged equipment within one working day of learning of each occurrence.

2. Requests for changes in any procedures or rules pertaining to protection or preservation of City owned equipment and facilities.

3. All corporate documents, including but not limited to the Contractor's by-laws, articles of incorporation, certification of compliance with affirmative action plan and EEO standards, and a list of Board members.

4. Amendments or changes to programming policies.

SECTION IX.
AUDIT/REVIEW

A. The Contractor agrees to provide the City with a monthly financial report summarizing activity during the preceding 30 day period. Said report shall include income and balance sheet statements.

B. Contractor shall have a certified public accountant complete an official review of its financial records annually. This report shall be submitted to the City by the last day of the third month after the end of Contractor's fiscal year.

SECTION X.
ACCESSIBILITY OF RECORDS.

A. At any reasonable time and as often as the City may deem necessary, the Contractor shall make available to the City, or any of its authorized representatives, all of Contractor's records related to all matters covered by this Agreement and shall permit the City to audit, examine, make excerpts and copies of such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to matters covered by this Contract.

SECTION XI.
INSURANCE.

A. Contractor shall obtain and keep in force during the term of this agreement a policy or policies of public liability and property damage insurance. The coverage, at a minimum, shall be in the following amounts:

1. General Liability:

a. General Aggregate	$1,000,000
b. Products/Completed Oper. Aggr.	$1,000,000
c. Personal & Advertising Injury	$1,000,000
d. Each Occurrence	$100,000
e. Fire Damage (any one fire)	$50,000
f. Medical Expense (any one person)	$5,000

2. Worker's Compensation for all employees as required by Arkansas Statutes.

B. Contractor shall furnish the City with a certificate showing that such coverage has been obtained and is currently in effect. Contractor shall not change or cancel any policy of insurance obtained for the purposes of this agreement except after thirty (30) days written notice to City and written acceptance by the City of such changes or cancellation.

SECTION XII.
DIRECTOR'S MEETINGS

A. During the term of this Contract, the Contractor shall cause to be delivered to the City copies of all notices of meetings of its Board of Directors, setting forth the time and place thereof. Such notice shall be delivered to the City in a timely manner to give adequate notice and shall also include an agenda.

B. Minutes of all meetings, if taken, and materials distributed in meetings of the Contractor's Board of Directors, or committees thereof, shall be submitted to the City.

C. The Contractor's Board meetings and records shall be subject to the provisions of the Arkansas Freedom of Information Act, Ark. Code Ann., §25-19-101 et. seq.

SECTION XIII.
BONDING.

A. The Contractor shall obtain a fidelity bond covering all persons handling funds received or disbursed and/or signing or co-signing checks to disburse funds under this Agreement, within ten (10) days of Contract execution. The fidelity bond shall be in an amount equal to ten percent (10%) of the City grant award or $5,000, whichever is less. The Contractor shall furnish the City proof of an adequate fidelity bond prior to the first payment of funds under this Agreement.

SECTION XIV.
EQUAL OPPORTUNITY.

A. Contractor shall comply with all applicable equal opportunity, affirmative action and ADA laws or regulations, including those of the City of Fayetteville.

B. The Contractor will furnish all information and reports requested by the City, and will permit access to its books, records, and accounts for purposes of investigation to ascertain compliance with such rules and regulations.

C. In the event of the Contractor's non-compliance with the non-discrimination requirements of this Agreement, this Agreement may be canceled, terminated, or suspended in whole or in part, and the Contractor may be debarred from further agreements with the City.

SECTION XV.
PERSONNEL POLICIES.

A. Personnel policies shall be established by the Contractor and shall be available for examination by the City. Public access operations shall be open to the public the maximum hours permitted by resources available but at least forty (40) hours per week. In planning these times, Contractor shall take into consideration the needs of the public to include evening and weekend hours.

B. Upon termination of an employee by the City Cable Administrator, and in the event that the contractor's manager wishes to hire the employee over the objections of the Cable Administrator, an appeal of the action may be brought by the Cable Administrator to the contractor's Board of Directors. Similarly, upon termination of an employee by the contractor, and in the event that the Cable Administrator wishes to hire the employee over the objections of the contractor's manager, an appeal of the action may be brought by the contractor's manager to the Cable Board.

SECTION XVI.
CONFLICT OF INTEREST.

A. The Contractor covenants that neither it nor any member of its Board of Directors currently has any interest or shall acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. The Contractor further covenants that in the performance of this Agreement no person having such interest shall be employed or appointed as a member of its Board of Directors.

B. The Contractor further covenants that no member of its Board of Directors or its staff or employees shall possess any interest in or use their position for a purpose that is or gives the appearance of being motivated by desire for private gain for themselves, or others particularly, those with which they have family, business, or other ties.

C. No officer, member, or employee of the City and no member of its governing body who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this Agreement, shall:

1. Participate in any decision relating to the Agreement which affects his personal interest or the interest of any corporation, partnership, or association in which he has a personal financial direct or indirect interest; or

2. have any personal financial interest, direct or indirect, in this Agreement or the proceeds thereof.

SECTION XVII.
POLITICAL ACTIVITY.

A. No portion of the funds received by the Contractor hereunder shall be used by the Contractor to directly produce any programs nor to participate in any Contractor-sponsored activities of a political nature (including, but not limited to, any activity to further the appointment, election, defeat or removal of any applicant, incumbent, or candidate for public office or any activity undertaken to influence the passage, defeat or final content of any legislation). However, Contractor will cablecast programs made by the public which express opinions on issues or candidates.

SECTION XVIII.
SECTARIAN ACTIVITY.

A. No portion of the funds received by the Contractor here under shall be used by the Contractor to directly produce any programs nor participate in any Contractor-sponsored activities which establish any religion or prohibit the free exercise thereof.

SECTION XIX.
PUBLICITY.

A. In any news release, sign, brochure, or other medium disseminating information prepared or distributed by or for the Contractor, mention shall be made of the City of Fayetteville having made the project possible, i.e. "Community Access Television" is a project partially funded by the City of Fayetteville."

SECTION XX.
HOLD HARMLESS.

A. It is expressly understood and agreed by both parties hereto that the City is contracting with the Contractor as an independent contractor and that as such, the Contractor shall save and hold the City, its officers, agents and employees harmless from all liability of any nature of any kind, including costs and expenses for, or on account of, any claims, audits exceptions, demands, suits or damages of any character whatsoever resulting from injuries or damages sustained by persons or property, resulting in whole or in part from the performance or omission of any employee, agent or representative of the Contractor. This Agreement shall not be construed in any manner or form as a waiver of that Tort Immunity as set out under Arkansas Law.

SECTION XXI.
USE OF CITY PROPERTY.

A. Contractor hereby recognizes that it is performing services for the City on City-owned property and that while on such property, Contractor shall not engage in any activity that is not directly related to services provided pursuant to this Agreement.

SECTION XXII.
OPERATIONAL POLICIES AND PROCEDURES.

A. Contractor's policies relating to the use of City owned equipment and facilities shall be submitted to the Cable Board for approval and may be reviewed periodically as needed.

SECTION XXIII.
CONTRACT ENTIRE AGREEMENT.

A. This Agreement, together with the attached Schedule, constitutes the entire agreement between the parties hereto, and any prior agreement, assertion, statement, understanding, or other commitment antecedent to this Agreement, whether written or oral, shall have no force or effect whatsoever, nor shall any agreement, assertion, statement, understanding, or other commitment occurring during the term of this Agreement, or subsequent thereto, have any legal force or effect whatsoever unless properly executed in writing and if appropriate, recorded as a addendum to, or amendment of, this Agreement.

SECTION XXIV.
TERMINATION OF AGREEMENT.

A. This contract may be terminated by either party with a thirty day written notice.

SECTION XXV.
SEVERABILITY.

A. If any section, subsection, sentence, clause, phrase or word of this agreement is held to be invalid or unconstitutional by any court of competent jurisdiction, such section, subsection, sentence, clause, phrase or word will be deemed a separate, distinct and independent provision, and such holding will not affect the validity of the remaining provisions of this agreement.

COMMUNITY ACCESS TELEVISION

By: [signature]
Title: President Board of Directors

ATTEST:

By: ______________________________
Title: ______________________________

CITY OF FAYETTEVILLE, ARKANSAS

By: [signature]
Fred Hanna, Mayor

ATTEST:

By: Traci Paul
Traci Paul, City Clerk

STAFF REVIEW FORM

X AGENDA REQUEST
___ CONTRACT REVIEW
___ GRANT REVIEW

For the Fayetteville City Council meeting of December 17, 1998

FROM:

Jim Beavers	Engineering	Public Works
Name	Division	Department

ACTION REQUIRED: Approval of a resolution authorizing City to purchase 1.73 acres of land along Crossover Road; remainder of Lot #5, Block #3, Westwood Addition, from Harry F. Locke, Jr., at a cost of $33,400 plus closing expenses for storm water drainage purposes in connection with the improvements and widening of Highway 265.

COST TO CITY:

$ 33,400	$ 200,000	Ridgley Drainage
Cost of this Request	Category/Project Budget	Category/Project Name
4470-9470-5817.00	$ 64,413	Drainage Improvements
Account Number	Funds Used To Date	Program Name
98038-0030	$ 135,587	Sales Tax Capital Imp.
Project Number	Remaining Balance	Fund

BUDGET REVIEW: X Budgeted Item ___ Budget Adjustment Attached

Budget Coordinator

Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW:

GRANTING AGENCY:

Marilyn J. Cramer 11-30-98
Accounting Manager Date

Yolanda Fields 11-30-98
Internal Auditor Date

11-30-98
City Attorney Date

ADA Coordinator Date

12-2-98
Purchasing Officer Date

STAFF RECOMMENDATION: Approval of the resolution.

Jim Beavers 11/30/98
Division Head Date

12-7-98
Department Director Date

8 DEC 98
Administrative Services Director Date

Fred Hanna 12/8/98
Mayor Date

Cross Reference

New Item: Yes ___ No ___

Prev Ord/Res #: ___

Orig Contract Date: ___

STAFF REVIEW FORM

Description: Purchase of 1.73 acres from Harry F. Locke, Jr. for Hwy 265 drainage project. Meeting Date 12-17-98

Comments: **Reference Comments:**

Budget Coordinator

Accounting Manager

City Attorney

Purchasing Officer

ADA Coordinator

Internal Auditor

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

DEPARTMENTAL CORRESPONDENCE

TO: Fayetteville City Council

THRU: Fred Hanna, Mayor
Charles E. Venable, Public Works Director

FROM: Jim Beavers, City Engineer JB
Ed C.

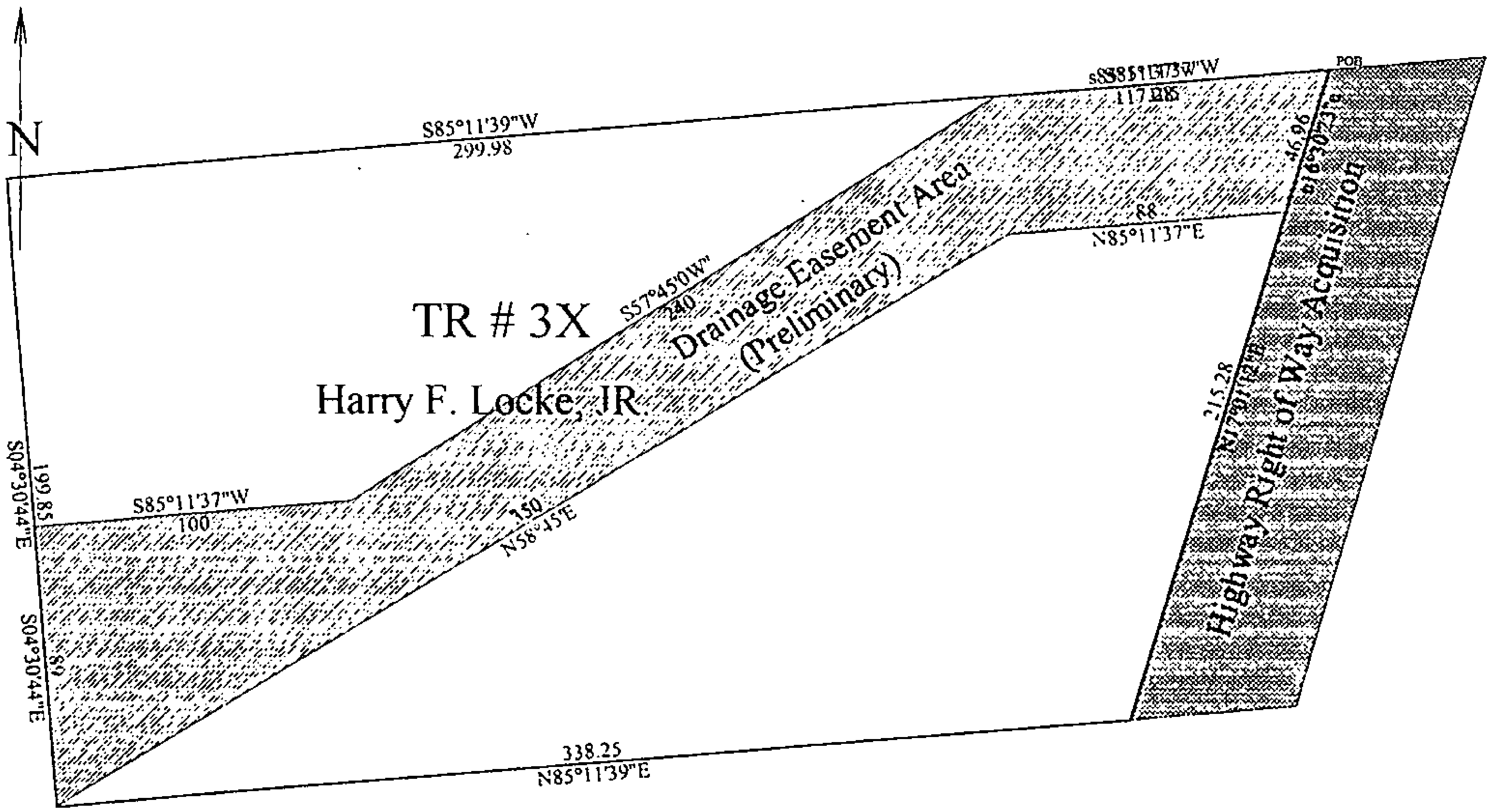
RE: Highway 265 Road Improvement and Drainage
Property Acquisition
Lot #5, Block #3, Westwood Addition
Harry F. Locke, Jr., Owner

As a part of Highway 265 widening, the City and the Arkansas State Highway Department (AHTD) have entered into an agreement, approved by the Council on July 21, 1998 as Resolution No. 98-98, for the cost share of additional drainage improvements on this project so as to alleviate current drainage problems along Ridgely Drive, which is outside the project limits. The fore mentioned project, to be a part of the highway construction project, directed one large drainage pipe along the west side of the new highway from Ridgely Drive south about 800 feet in the highway right of way to a point on the subject lot. The contour of that lot is such that the water would then be directed to the southwest (diagonally across the lot) to the natural watershed. This latter drainage, from the highway southwest to the natural drainage, will be open ditch. The fact that this open ditch goes diagonally virtually eliminates the property for any future development purposes by the owner, thus requiring the City to purchase the property (1.73 acres).

The AHTD has already purchased a 50 ft. right of way requirement from this property. Such right of way requirement also meant the purchase of the residence and relocation of the owner. The AHTD has verbally indicated that the remainder (after their taking of ROW land and the residence) value appraised for $33,400, the amount of payment for the settlement as indicated in the attached *Offer and Acceptance* contract. The remainder property has a small shop on it, a building that the City would have to demolish and remove. In negotiating for this land, additional consideration was given to the seller's request be able to salvage the building materials from this shop. Since it was going to cost the city for demolition and removal of the building, his removal of the building was considered equivalent to the value of the materials salvaged. This then became an additional consideration on the settlement of this contract to purchase.

The purchase of this land for drainage purposes is not part of the cost share arrangement made with the Highway Department under Resolution No. 98-98. That arrangement effectively provided for a large drainage line about 800 feet along the highway to get to this property. Since a drainage easement across this property is not feasible for the owner, it has been the intention of the City to purchase the remainder of this property.

The City Council is hereby requested to approve a resolution which authorizes the City to purchase the subject parcel for a purchase price of $33,400 plus applicable closing costs. Staff believes it is prudent to acquire this land at this time to accommodate the planned drainage system.



Title: HWY 265: TR# 3X : Harry F. Locke Jr.		Date: 10-29-1998
Scale: 1 inch = 61 feet	File: 265-3X.DES	

Tract 1: 0.234 Acres: 10186 Sq Feet: 946.3 Sq Meters: No significant closure error. : Perimeter = 531 feet
Tract 2: 1.733 Acres: 75493 Sq Feet: 7013.6 Sq Meters: No significant closure error. : Perimeter = 1171 feet
Tract 3: 0.446 Acres: 19444 Sq Feet: 1806.4 Sq Meters: No significant closure error. : Perimeter = 1019 feet

001=/N85.1139E 117.32	008=S04.3044E 199.85	015=S85.1137W 100
002=N85.1139E 49.49	009=N85.1139E 338.25	016=S04.3044E 89
003=S16.1710W 214.20	010=N17.0112E 215.28	017=N58.45E 350
004=S85.1139W 52.45	011=s85.1137w 117.28	018=N85.1137E 88
005=N17.0112E 215.28 POB	012=@2	019=n16.3023e 46.96
006=@1	013=S85.1137W 105	
007=S85.1139W 299.98	014=S57.450W 240	

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

November 13, 1998

Mr. Harry F. Locke, Jr.
% Mr. Gary Head
McIlroy Bank & Trust, Inc.
McIlroy Court
Mission Blvd. & Crossover Road
Fayetteville, AR 72701

RE: City Acquisition
Lot #5, Block #3, Eastwood Subdivision (Remainder)

Dear Mr. Locke and Mr. Head:

In accordance with our discussions relating to the possible City acquisition of the subject property, we are pleased to include herewith a proposed *Offer and Acceptance* contract which provides the terms and conditions under which this acquisition should take place. This contract relates to the remaining property of Lot #5, Block #3 after that portion of said property which was conveyed to the Arkansas State Highway Commission for the widening of Highway 265. Of the original 2.0 acre lot, 0.234 acre and the residence were conveyed to the Highway Commission, leaving 1.73 acres and a shop building as remainder. The purpose for the City acquisition of this remainder is to provide an open storm water drainage area diagonally across this property (see attached diagram).

As indicated by the proposed contract, the price for the acquisition of the remainder is $33,400 which corresponds to the Arkansas Highway and Transportation Department appraisal value of the remainder. As additional consideration for this acquisition, the City is willing to allow you to dismantle and remove the shop building within a period of six months after we close on this transaction. As you indicated that this be part of the consideration for the sale of this property, the City also views your removal of this building as a savings to us since the City would otherwise have to demolish and remove such building from the premises.

It is virtually impossible to close this transaction by the end of November. A purchase of this magnitude is required by ordinance to be approved by the Fayetteville City Council. AS of this date and following required procedures, We are already late trying to get it in on the meeting of December 15, 1998. To get this in as an agenda item, we need to have a signed contract. As of this week, the engineering staff will prepare and circulate this agenda request based upon receiving a signed *Offer and Acceptance* contract by November 30, 1998 at the latest.

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

Also included herewith is a Vendor Form which needs to be completed and returned to the City with the signed contract. IRS requires this document to be in City files before we can issue an earnest money check.

Please return one fully executed original of the *Offer and Acceptance* document; the other original is for your retention. If you have any questions or comments, please contact Ed Connell at 444-3415 or myself at 575-8206.

Sincerely,

Jim Beavers

Jim Beavers
City Engineer

Enclosures

JB/edc

OFFER AND ACCEPTANCE CONTRACT

1. The City of Fayetteville, Arkansas, a municipal corporation, hereinafter referred to as the Buyer, offers to buy, subject to the terms and conditions set forth herein, the following described property:

   SEE ATTACHED EXHIBIT "A"
   FOR PROPERTY DESCRIPTION

2. **Purchase Price**: Subject to the following conditions, the Buyer shall pay for the property at closing, the total and cash payment of **$33,400.00**.

3. **Additional Consideration**: As additional consideration, Buyer agrees to allow Seller to dismantle and remove the shop building, hereinafter referred to as the "Building", from the property within a time period of six (6) months from the date of closing on the property and under the following terms and conditions; (a) full insurance coverage by the party doing the removal; (b) all personal property must be removed from the Building at the time of closing; (c) complete removal of all materials and debris except for the concrete pad and foundation, and (d) safe disconnect of any and all utilities to said Building. It is understood that Buyer will have no responsibility relative to the Building or its contents nor will carry any insurance policy that covers non-city personnel on the property.

4. **Contingent Earnest Money Deposit**: The Buyer shall, within two weeks of receipt of this fully executed contract, tender a check for **$3000.00** to **Harry F. Locke, Jr.**, hereinafter referred to as the Seller, as earnest money, which shall apply on the purchase price. This offer of purchase is contingent upon approval of the City Council of the City of Fayetteville, Arkansas, and, if they do not so approve, the earnest money deposit will be returned to the Buyer by the Seller. If title requirements are not fulfilled or the Seller fails to fulfill any obligations under this contract, the earnest money shall be promptly refunded to the Buyer. If the Buyer fails to fulfill his obligations under this contract or after all conditions have been met, the Buyer fails to close this transaction, the earnest money may, at the option of the Seller, become liquidated damages to the Seller. Alternatively, the Seller may assert legal or equitable rights which it may have because of breach of this contract.

5. Conveyance will be made to the Buyer by general Warranty Deed, except it shall be subject to recorded instruments and easements, if any, which do not materially affect the value of the property. Such conveyance shall include mineral rights owned by the Seller.

6. The Seller shall furnish a policy of title insurance in the amount of the purchase price from a title insurance company as selected by the Buyer. Buyer and Seller shall equally share in the cost of such title insurance policy.

7. Seller agrees to allow Buyer, if Buyer so desires, at Buyer's expense, to survey the property. Seller agrees to cure any title problems which may result from any differences between the recorded legal descriptions of the property and the survey description. Said title problems, if any, must be solved prior to closing to the satisfaction of the Buyer.

8. Taxes and special assessments due on or before closing shall be paid by the Seller. Insurance, general taxes, ad valorem taxes, special assessments and rental payments shall be prorated as of closing.

9. The closing date is designated to be **thirty (30)** days after approval of this offer by the Fayetteville City Council. If such date of closing falls on a weekend or holiday, it will be held the following working day.

10. Possession of the property shall be delivered to the Buyer on the date of closing.

11. Seller hereby grants permission for the Buyer or its employees or designates to enter the above described property and improvements for the purpose of inspection and/or surveying.

12. All fixtures, improvements and attached equipment are included in the purchase price.

13. Risk of loss or damage to the property by fire or other casualty occurring up to the time of closing is assumed by the Seller.

14. Seller shall disclose to Buyer any and all environmental hazards of which Seller has actual knowledge.

15. This agreement shall be governed by the laws of the State of Arkansas.

16. This agreement, when executed by both the Buyer and the Seller shall contain the entire understanding and agreement of the parties with respect to the matters referred to herein and shall supersede all price or contemporaneous agreements, representations and understanding with respect to such matters, and no oral representations or statements shall be considered a part hereof.

17. This contract expires, if not accepted on or before **November 20, 1998.**

18. NOTICE: BUYER ASSERTS AND SELLER HEREBY ACKNOWLEDGES THAT THIS OFFER IS EXPRESSLY CONTINGENT UPON THE APPROVAL OF THIS OFFER OF PURCHASE BY THE CITY COUNCIL OF FAYETTEVILLE AND THAT THE FAILURE OF THE COUNCIL TO SO APPROVE WILL MAKE ALL PORTIONS OF THIS OFFER NULL AND VOID, INCLUDING, BUT NOT LIMITED TO, THE RETURN TO BUYER OF THE $3000.00 EARNEST MONEY DEPOSIT.

SELLER:

Harry F. Locke, Jr.

Harry F. Locke, Jr., a single person

Date: 11/20/98

BUYER:

City of Fayetteville, Arkansas,
a municipal corporation

Fred Hanna

Fred Hanna, Mayor

Date: 11/12/98

Heather Woodruff

Heather Woodruff, City Clerk

Date: 11/13/98

EXHIBIT "A"
PROPERTY DESCRIPTION

Lot Five (5) of Block Three (3) of Eastwood Subdivision to the City of Fayetteville, Washington County, Arkansas, LESS AND EXCEPT that portion of said Lot 5 conveyed to the Arkansas State Highway Commission and more particularly described as follows: Commencing at the Southwest corner of Lot 4, block 3 of Eastwood Subdivision; thence North 85° 11' 39" East along the South line of Lot 4 a distance of 117.32 feet to a point on the Westerly proposed right of way line of Arkansas State Highway 265 for the Point of Beginning; thence continue North 85° 11' 39" East along the South line of Lot 4, Block 3 of Eastwood Subdivision a distance of 49.49 feet to a point on the Westerly existing right of way line of Arkansas State Highway 265; thence South 16° 17' 10" West along said existing right of way line a distance of 214.20 feet to a point on the South line of Lot 5, Block 3 of Eastwood Subdivision; thence South 85° 11' 39" West along said South lot line a distance of 52.45 feet to a point on the Westerly proposed right of way line of Arkansas State Highway 265; thence North 17° 01' 12" East along said proposed West right of way line a distance of 215.28 feet to the Point of Beginning, said Less and Except containing 10,186 square feet, more or less.

SIGNED FOR IDENTIFICATION:

SELLER:

Harry F. Locke, Jr.

Harry F. Locke, Jr., a single person

BUYER:

The City of Fayetteville, Arkansas,
a municipal corporation

BY: Fred Hanna

Fred Hanna, Mayor

ATTEST:

Heather Woodruff

Heather Woodruff, City Clerk

Post-it® Fax Note 7671	Date 10-26-98 # of pages ▶ 5
To Ed Connell	From Jim Franks
Co./Dept.	Co. Ark St. Hwy Dept
Phone # 444-3415	Phone # 569-2310
Fax # 501-5258316	Fax # 569-2018

Job No. 004999
Tract No. 3X

Deed - 166.79 to Exist ROW
New ROW POB - 117.32
to Exist. ROW 49.47 - OK
for 30' ROW

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS:

THAT I, **Harry F. Locke, Jr., a single person,** for and in consideration of the sum of ONE HUNDRED FORTY-SEVEN THOUSAND FIVE HUNDRED AND NO/100 dollars ($147,500.00), and other good and valuable consideration, cash in hand paid by the Arkansas State Highway Commission, the receipt of which is hereby acknowledged, does hereby grant, bargain, sell and convey unto the **Arkansas State Highway Commission** and unto its successors and assigns forever the following lands, save and except such minerals therein and thereunder, as oil, gas, distillate, condensate, salt water and its component parts, and all other hydrocarbons which do not interfere with the surface use for highway purposes, lying and being situated in the County of Washington, State of Arkansas, to-wit:

Part of Lot 5, Block 3 of Eastwood Subdivision to the City of Fayetteville, Washington County, Arkansas, more particularly described as follows:

Starting at the Southwest Corner of Lot 4, Block 3 of Eastwood Subdivision; thence North 85° 11′ 39″ East along the South line of Lot 4 a distance of 117.32 feet to a point on the Westerly proposed right of way line of Arkansas State Highway 265 for the point of beginning; thence continue North 85° 11′ 39″ East along the South line of Lot 4 Block 3 of Eastwood Subdivision a distance of 49.49 feet to a point on the Westerly existing right of way line of Arkansas State Highway 265; thence South 16° 17′ 10″ West along said existing right of way line a distance of 214.20 feet to a point on the South line of Lot 5, Block 3 of Eastwood Subdivision; thence South 85° 11′ 39″ West along said lot line a distance of 52.45 feet to a point on the Westerly proposed right of way line of Arkansas State Highway 265; thence North 17° 01′ 12″ East along said proposed right of way line a distance of 215.28 feet to the point of beginning and containing 10,186 square feet more or less.

TO HAVE AND TO HOLD the same unto the said Arkansas State Highway Commission and unto its successors and assigns forever.

This instrument was prepared by
Calvin Gibson, Title Attorney
Arkansas State Highway and Transportation Dept.
P. O. Box 2261, Little Rock, Arkansas 72203

And I hereby covenant with the said Arkansas State Highway Commission that I will forever warrant and defend the title to said lands against all claims whatever.

WITNESS my hand on this ___ day of ___________, 1998.

____
Harry F. Lock, Jr.

ACKNOWLEDGMENT

STATE OF)
) SS
COUNTY OF)

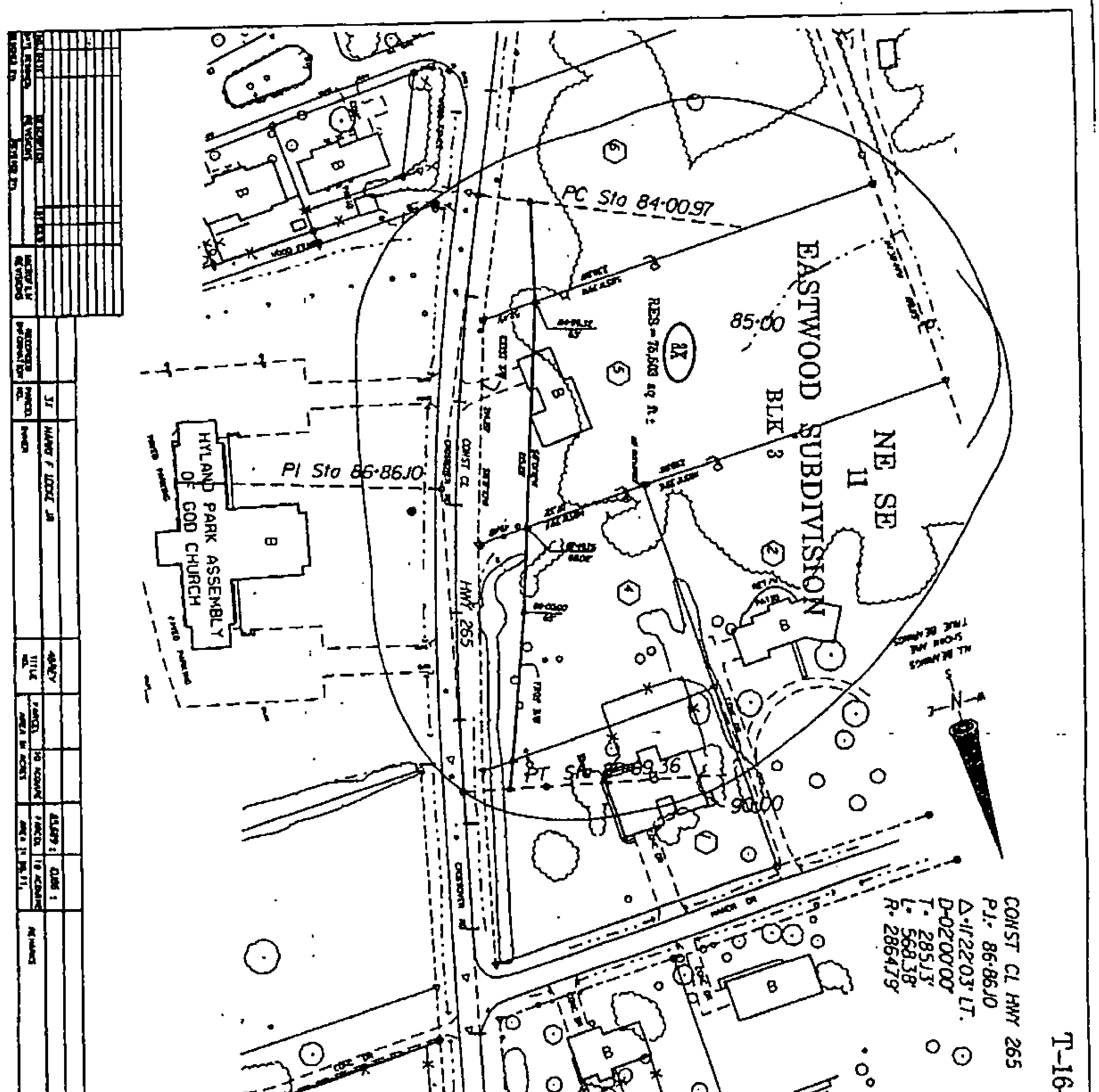
BE IT REMEMBERED, that on this day before the undersigned, a Notary Public, within and for the County and State aforesaid, duly commissioned and acting, appeared in person Harry F. Lock, Jr. to me well known as the Grantor in the foregoing instrument, and stated that they had executed the same for the consideration and purposes therein mentioned and set forth.

WITNESS my hand and seal as such Notary Public on this ___ day of _________________, 1998.

____
NOTARY PUBLIC

MY COMMISSION EXPIRES:

____


T-16-N;R-30-W
NE SE
11
EASTWOOD SUBDIVISION
BLK 3
85+00
90+00
95+00
PC Sta 84+00.97
PI Sta 86+86.10
PC Sta 95+87.39
HYLAND PARK ASSEMBLY OF GOD CHURCH
HWY 265
CONST CL HWY 265
HWY 16 - HWY 45
RT 265 SEC 2
ARKANSAS STATE HIGHWAY COMMISSION
RIGHT OF WAY MAP
JOB 004999
WASHINGTON CO.