

1. Agenda

Documents:

[APRIL 25, 2017 CITY COUNCIL FULL AGENDA.PDF](#)

2. Short Agenda

Documents:

[APRIL 25, 2017 CITY COUNCIL SHORT AGENDA.PDF](#)



BENTONVILLE CITY COUNCIL AGENDA

**Committee of the Whole
Community Development
Planning Commission Meeting Room**

**Tuesday, April 25, 2017 6:00 p.m.
305 SW "A" Street**

**Regular City Council Meeting
Community Development
Planning Commission Meeting Room**

**Tuesday, April 25, 2017 6:00 p.m.
305 SW "A" Street**

**Public Comments on Tonight's Agenda Items (Limited Public Forum)
Questions, Comments and Discussion from Alderman on Tonight's Agenda
Call to Order
Pledge of Allegiance
Moment of Silence – For our Military Forces
Roll Call
Approval of Minutes: April 11, 2017
Swear in Police Officer – James Adam Holland**

AGENDA

1. Planning:
 - 1a. **Lot Split: Lot 18, Block 3, Braithwaite Addition, Jason McNabb, 1802 Oakwood Avenue, R-1, Single Family Residential.**
(Pages 4-7)
The Planning Commission voted 7-0, recommending approval.

The applicant has submitted a lot split that will create one lot from three parcels. The new lot will be known as Lot 18 (1.54 acres), Block 3 of Braithwaite Park Addition. Per the requirements of the current Master Street Plan, right-of-way will be dedicated along Oakwood Avenue. A 20' wide public utility easement will also be dedicated along Oakwood Avenue. The new lot will have access to public utilities and a public street.

- 1b. **Property Line Adjustment: Lot 16, Block 1, Dunn & Davis Addition, Cadence Group, LLC , 505 Southwest 'B' Street, D-C, Downtown Core.**
(Pages 8-11)
The Planning Commission voted 7-0, recommending approval.

The applicant has submitted a property line adjustment creating one lot from two existing lots. The new lot will be known as Lot 16 (0.54 acres), Block 1 of Dunn & Davis Addition. The plat as submitted indicates a portion of the existing public alley along the common lot line of the two existing lots to be vacated, this vacation will require City Council approval. The plat also shows the dedication of a 12' public alley along the northern lot line of the new Lot 16. Per the current Master Street Plan requirements, right-of-way is being dedicated along SW 'B' Street. The new lot will have access to public utilities and a public street.

2. Approval of a resolution authorizing the Mayor and City Clerk to enter into a land exchange agreement with R. Rev. Larry R. Benfield, Bishop of the Episcopal Diocese of Arkansas to facilitate trail development. The parties agree that the properties to be exchanged are of like kind, equal value and mutually beneficial. **(Pages 12-19)**
3. A resolution authorizing the Mayor and City Council to enter into an agreement with Cox Communication for a Pole Attachment License Agreement with the City of Bentonville. **(Pages 20-80)**
4. A resolution authorizing the Mayor and City Council to enter into an agreement with Carroll Electric to purchase electric distribution facilities and 14 electric accounts along SW Ginn Road, SW Anglin Road, and SW Adams Road in the amount of \$158,751.05. **(Pages 81-86)**
5. A resolution setting a public hearing for May 9, 2017 for a Utility Easement Vacation requested by Sean Reber for 304 NW Tall Oaks, Oaklawn Hills Subdivision. **(Pages 87-89)**
6. Fire Department Staff recommends approval of a resolution declaring certain property surplus, and transfer the items to three area volunteer fire departments. **(Pages 90-92)**
7. City Council approval of a budget adjustment allowing for the addition of one (1) full time Recreation Specialist for Parks and Recreation. **(Pages 93-95)**
8. City Council approval of a change order and budget adjustment, in the amount of \$41,320.00, for addition of lights in the extended tunnel along the Wishing Spring Trail. **(Pages 96-99)**
9. Ward redistricting discussion. **(Pages 100-117)**



City Council Agenda Items
For City Council Meeting of April 25, 2017
From the April 18, 2017 Planning Commission Meeting

Lot Split: Lot 18, Block 3, Braithwaite Addition, Jason McNabb, 1802 Oakwood Avenue, R-1, Single Family Residential.

The Planning Commission voted 7-0, recommending approval.

The applicant has submitted a lot split that will create one lot from three parcels. The new lot will be known as Lot 18 (1.54 acres), Block 3 of Braithwaite Park Addition. Per the requirements of the current Master Street Plan, right-of-way will be dedicated along Oakwood Avenue. A 20' wide public utility easement will also be dedicated along Oakwood Avenue. The new lot will have access to public utilities and a public street.

Property Line Adjustment: Lot 16, Block 1, Dunn & Davis Addition, Cadence Group, LLC , 505 Southwest 'B' Street, D-C, Downtown Core.

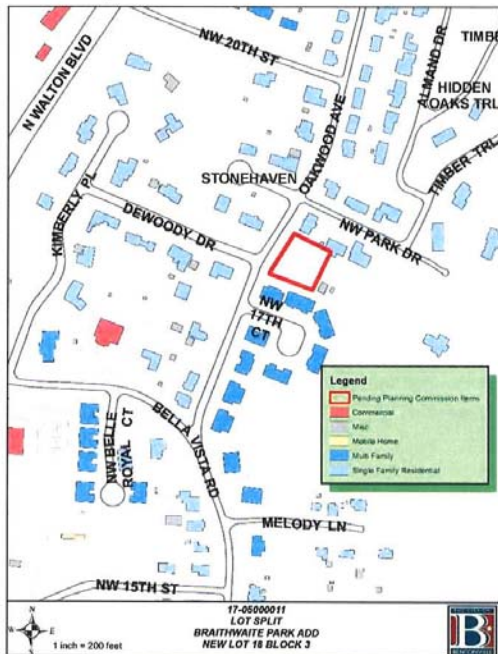
The Planning Commission voted 7-0, recommending approval.

The applicant has submitted a property line adjustment creating one lot from two existing lots. The new lot will be known as Lot 16 (0.54 acres), Block 1 of Dunn & Davis Addition. The plat as submitted indicates a portion of the existing public alley along the common lot line of the two existing lots to be vacated, this vacation will require City Council approval. The plat also shows the dedication of a 12' public alley along the northern lot line of the new Lot 16. Per the current Master Street Plan requirements, right-of-way is being dedicated along SW 'B' Street. The new lot will have access to public utilities and a public street.

PC Date: 4/18/2017
Recommendation: Approval
Reviewer: Jon Stanley, Planner

Project Number	17-05000011
Applicant / Current Owner	Jason McNabb 411 NW 'C' Street Bentonville, AR 72712
Site Area	0.55 acres
Current Zoning	R-1, Single Family Residential
Future Land Use Map Designation	Low Density Residential (LDR)

Location Map



This property is the location of a vacant single-family lot in an established single-family neighborhood.

The applicant has submitted a lot split that will create one lot from three parcels. The new lot will be known as Lot 18 (1.54 acres), Block 3 of Braithwaite Park Addition. Per the requirements of the current Master Street Plan, right-of-way will be dedicated along Oakwood Avenue. A 20' wide public utility easement will also be dedicated along Oakwood Avenue. The new lot will have access to public utilities and a public street.

Per the GIS website, water and sewer are available to this site.

A drainage report is not required for this lot split.

No waivers requested.

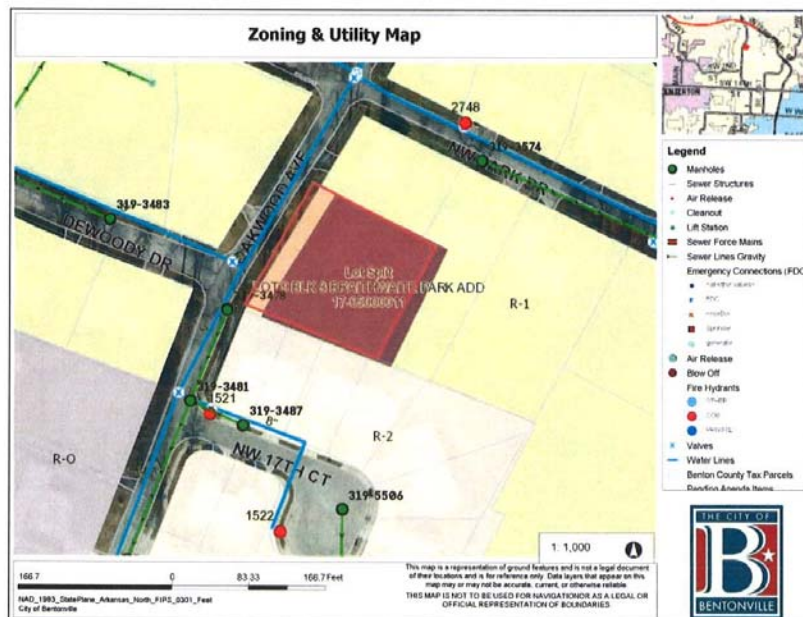
1. Provide digital copy of the plat.
2. Address all technical review comments before requesting a building permit.

This lot split does meet the minimum requirements of the subdivision regulations.

Staff has reviewed this application and based on the findings presented in this report, staff recommends approval.

- **Sidewalks.** Sidewalk installation will be the responsibility of individual lot owners at the time of building permit.

LOT SPLIT STAFF REPORT



ORDINANCE NO. _____

**AN ORDINANCE ACCEPTING A LOT SPLIT OF LOT 18, BLOCK 3,
BRAITHWAITE ADDITION TO THE CITY OF BENTONVILLE, ARKANSAS.**

WHEREAS, pursuant to the provisions of Title 15 of the Bentonville Municipal Code, the lot split of Lot 18, Block 3 Braithwaite Addition, Benton County, Arkansas, was submitted to the Bentonville Planning Commission on April 18, 2017; and,

WHEREAS, said lot split is attached hereto as Exhibit "A"; and,

WHEREAS, the Bentonville Planning Commission considered said lot split on the date stated, and at other times, and voted to recommend the approval of said lot split to the City Council; and,

WHEREAS, the lot split of real property as described herein has been submitted to the City Council of the City of Bentonville and, after consideration and deliberation, said Council is of the opinion that said lot split should be approved.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF BENTONVILLE, ARKANSAS:

Section 1: That the lot split of Lot 18, Block 3 Braithwaite Addition to the City of Bentonville, Arkansas, should be and the same is hereby accepted and approved for all purposes.

Section 2: That the Mayor and City Clerk be and are hereby authorized and directed to evidence the acceptance of said lot split by certifying said acceptance on the approved lot split.

PASSED AND APPROVED this _____ day of _____, 2017.

APPROVED:

MAYOR

ATTEST:

CITY CLERK

PROPERTY LINE ADJUSTMENT STAFF REPORT



Lot 16, Block 1, Dunn & Davis Addition 505 SW 'B' Street

PC Date: 4/18/2017

Recommendation: Approval

Reviewer: Jon Stanley, Planner

Project Number	17-05000010
Applicant / Current Owner	Cadence Group, LLC 101 SE 'G' Court Bentonville, AR 72712
Site Area	0.54 acres
Current Zoning	DC, Downtown Core
Future Land Use Map Designation	Mixed Use (MU)

<http://geo.bentonvillear.com/mgweb/PZ.pending/>

Location Map



Property Description

The property is vacant and located in a rapidly redeveloping Mixed-Use area in Southwest downtown.

Project Details

The applicant has submitted a property line adjustment creating one lot from two existing lots. The new lot will be known as Lot 16 (0.54 acres), Block 1 of Dunn & Davis Addition. The plats as submitted indicates a portion of the existing public alley along the common lot line of the two existing lots, this vacation will require City Council approval. The plat also show the dedication of a 12' public alley along the northern lot line of the new Lot 16. Per the current Master Street Plan requirements right-of-way is being dedicated along SW 'B' Street. The new lot will have access to public utilities and a public street.

Utility Infrastructure

Per the GIS website, water and sewer are available to this site.

Drainage Report

A drainage report is not required for this property line adjustment.

Waivers

No waivers requested.

Standard Conditions of Approval

1. Provide digital copy of the plat.
2. Address all technical review comments before requesting a building permit.

Conclusion

This property line adjustment does meet the minimum requirements of the subdivision regulations.

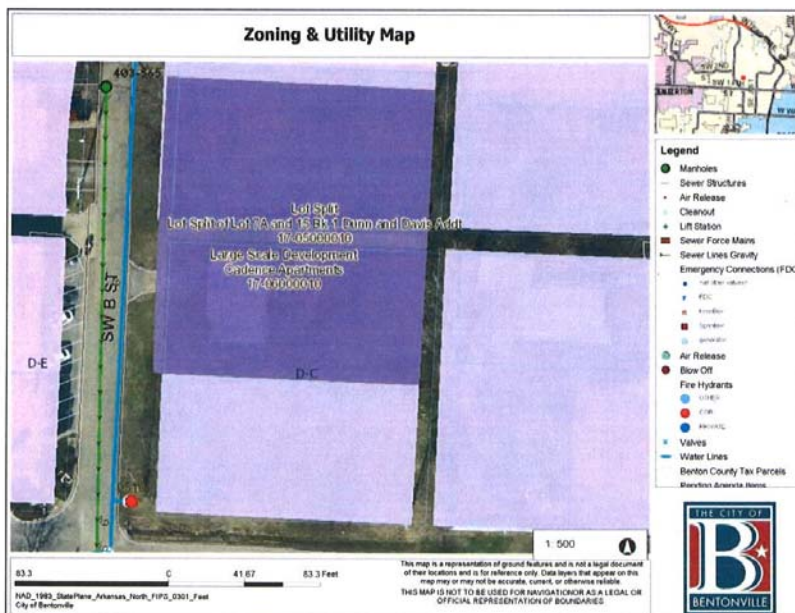
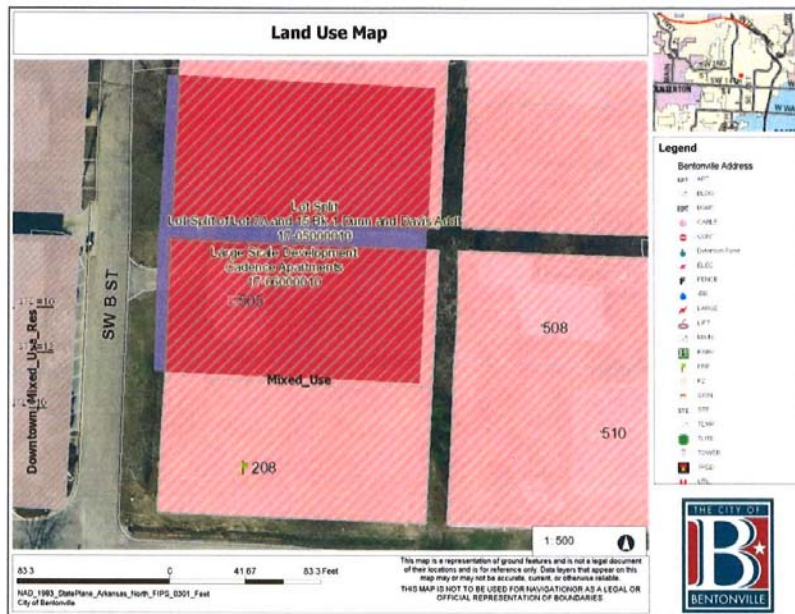
Recommendation

Staff has reviewed this application and based on the findings presented in this report, staff recommends approval.

NOTES

- Sidewalks. Sidewalk installation will be the responsibility of individual lot owners at the time of building permit.

PROPERTY LINE ADJUSTMENT STAFF REPORT



ORDINANCE NO. _____

**AN ORDINANCE ACCEPTING A PROPERTY LINE ADJUSTMENT OF
LOT 16, BLOCK 1, DUNN & DAVIS ADDITION TO THE CITY OF
BENTONVILLE, ARKANSAS.**

WHEREAS, pursuant to the provisions of Title 15 of the Bentonville Municipal Code, the property line adjustment Lot 16, Block 1, Dunn & Davis Addition of the City of Bentonville, Benton County, Arkansas was submitted to the Bentonville Planning Commission on April 18, 2017; and,

WHEREAS, said property line adjustment is attached hereto as Exhibit "A"; and,

WHEREAS, the Bentonville Planning Commission considered said property line adjustment on the date stated and at other times, and voted to recommend the approval of said property line adjustment to the City Council; and,

WHEREAS, the property line adjustment of real property as described herein has been submitted to the City Council for the City of Bentonville, and after consideration and deliberation, said Council is of the opinion that said property line adjustment should be approved.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF BENTONVILLE, ARKANSAS:

Section 1: That the property line adjustment Lot 16, Block 1, Dunn & Davis Addition to the City of Bentonville, Arkansas, should be and the same is hereby accepted and approved for all purposes.

Section 2: That the Mayor and City Clerk be and are hereby authorized and directed to evidence the acceptance of said property line adjustment by certifying said acceptance on the approved property line adjustment.

PASSED AND APPROVED this _____ day of _____, 2017.

APPROVED:

MAYOR

ATTEST:

CITY CLERK



CHECK ALL THAT APPLY		
Bid Award	Bid #	
Budget Adjustment		
Change Order		
Informational		
Ordinance		
X Resolution		
Other		

AGENDA FORM

CITY COUNCIL MEETING OF:

April 25, 2017

Submitted by:

Troy Galloway

Department

Planning

Phone

271-6809

ACTION REQUIRED:

Approval of a resolution authorizing the Mayor and City Clerk to enter into a land exchange agreement with R. Rev. Larry R. Benfield, Bishop of the Episcopal Diocese of Arkansas to facilitate trail development. The parties agree that the properties to be exchanged are of like kind, equal value and mutually beneficial.

COST TO CITY:

Cost of this Request: \$0

Additional Budget Amount

☐ One time amount

☐ Continuing O and M

Previously Budgeted	\$	-
Funds Expended to Date		
Remaining Budget		-
Budget Adjustment		-
Remaining After Adjustment	\$	-

This form must be turned into the Mayor's office 7 days prior to the scheduled City Council meeting.

117 WEST CENTRAL AVENUE * BENTONVILLE, AR 72712

www.bentonvillear.com



PLEASE RECYCLE



MEMO



To: Mayor Bob McCaslin, City Council
From: Troy Galloway, AICP, Community & Economic Development Director
CC Date: April 25, 2017
Re: Resolution for land exchange

Request:

Approval of a resolution authorizing the Mayor and City Clerk to enter into a land exchange agreement with R. Rev. Larry R. Benfield, Bishop of the Episcopal Diocese of Arkansas to facilitate trail development.

The Episcopal Diocese of Arkansas owns .74 acres on the north side of Tiger Boulevard, just east of NW A Street. The city needs this property to facilitate trail development. Likewise, the City owns .34 acres on the south side of Tiger Boulevard that is adjacent to additional property owned by the Episcopal Diocese of Arkansas. The Episcopal Diocese of Arkansas needs this property to facilitate future development and improve their access to Tiger Boulevard.

The two parties agree that the properties are of like kind, equal value and mutually beneficial.



LAND EXCHANGE AGREEMENT

7th This Land Exchange Agreement ("Agreement") is made as of this 28 day of March, 2016, by and between **Rt. Rev. Larry R. Benfield, Bishop of the Episcopal Diocese of Arkansas**, an Arkansas unincorporated non-profit association ("Developer") and the **City of Bentonville, Arkansas**, a municipal corporation ("City").

WHEREAS, the Developer is the owner of the real property ("Parcel 1") legally described as:

Lots 22, 23, 24 Block 3, W.A. Burk's Addition to the City of Bentonville as shown on Plat Record Book "A" Page 81 & 119 as filed in the Benton County Clerk's Office, Benton County, Arkansas.

AND

Lot 20, 21 Block 3 North of the Current Right-of-Way along Tiger Blvd, W.A. Burk's Addition to the City of Bentonville as shown on Plat Record Book "A" Page 81 & 119 as filed in the Benton County Clerk's Office, Benton County, Arkansas.

LESS AND EXCEPT Current Right-of-Way along Tiger Blvd.

and

WHEREAS, the City is the owner of the real property ("Parcel 2") described as:

Lots 11 and 12, Block 7, W.A. Burk's Addition to the City of Bentonville as shown on Plat Record Book "A" Page 81 & 119 as filed in the Benton County Clerk's Office, Benton County, Arkansas.

LESS AND EXCEPT Current Right-of-Way along Tiger Blvd.

and

WHEREAS, the City and the Developer wish to exchange their properties under the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

1. DEFINITIONS. Parcel 1 and Parcel 2 are sometimes individually referred to hereinafter as the "Exchange Property" or collectively as the "Exchange Properties." A party who is intending to convey title to an Exchange Property at Closing is sometimes referred to hereinafter as "Grantor Party" and a party who is intending to accept title to an Exchange Property at Closing is sometimes referred to hereinafter as "Grantee Party."

2. THE EXCHANGE TERMS. Developer and the City acknowledge that Parcel 1 and Parcel 2 are of like kind and equal value. Pursuant to Section 1031 of the Internal Revenue Code, the Developer will convey Parcel 1 to the City and the City will convey Parcel 2 to the Developer at Closing. At Closing, Grantor Party will execute and deliver a special warranty deed conveying marketable title to the Exchange Property to Grantee Party. The Developer shall convey Parcel 1 to the City together with any easements or restrictions of record, free and clear of all liens, encumbrances, encroachments and special assessments levied or assessed. The City shall convey Parcel 2 to the Developer together with any easements or restrictions of record, but free and clear of all liens, encumbrances, encroachments and special assessments levied or assessed.

3. DEDICATIONS AND EASEMENTS. After the date of this Agreement, but prior to Closing, Grantor Party shall not dedicate, gift, transfer, mortgage or convey any interest in Grantor Party's Exchange Property without written consent from Grantee Party, which may be withheld for any reason.

4. TESTS. The City and the Developer shall each have the right for thirty (30) days after the date of this Agreement, at each party's own expense, to undertake an environmental audit, a professional wetlands delineation, professional floodplain analysis, survey, grading and soil tests (collectively "Tests") on the Exchange Property each party is to receive. The Grantor Party shall, upon the execution of this Agreement, promptly furnish to the Grantee Party, any and all documents or reports which each party has in its possession which cover all or any portion of the Exchange Property to be conveyed with regard to any previous Tests. Grantor Party shall allow Grantee Party and its representatives and agents reasonable access onto the Exchange Property to conduct such Tests. Grantee Party shall have thirty (30) days after the date of this Agreement to notify Grantor Party, in writing, that a licensed professional has reviewed the results of the Tests and has determined and concluded either that the Exchange Property to be received may be subject to wetlands protection under federal or state laws or regulations, or that the Exchange Property to be received is otherwise not conducive or suitable for Grantee Party's intended uses based upon the Tests. If the Exchange Property is subject to wetlands protection and/or not suitable for Grantee Party's intended use of the Exchange Property, Grantee Party will furnish Grantor Party with a certified copy of the professional's determination and copies of any relevant tests and conclusion that the Exchange Property is unsuitable. In the event Grantee Party notifies Grantor Party of the above within such thirty (30) day period, Grantee Party shall have ten (10) days from the date of notice of the test results to declare this Agreement null and void and if this option is exercised, then the parties shall have no further obligations under this Agreement.

5. TITLE INSURANCE. Within twenty (20) days after the date of this Agreement, or mutual written extension, Grantee Party shall deliver to Grantor Party a copy of a title insurance commitment (the "Commitment") bearing an effective date subsequent to the date hereof in favor of Grantee Party for an owner's title insurance policy insuring marketability of the title to the Exchange Property in the amount of the Exchange Property's appraised value underwritten by a title insurance company acceptable to Grantee Party. The copy of the Commitment shall be accompanied by a written statement of any objections to Grantor Party's

title to the Exchange Property as disclosed by the Commitment. Any matter not objected to by Grantee Party within such twenty (20) day period shall be deemed approved exceptions to title by Grantee Party. Prior to Closing, Grantor Party shall deliver to Grantee Party a written statement of any objections which Grantor Party could not, upon the exercise of due diligence in good faith, cure prior to or concurrent with Grantee Party's acquisition of the Exchange Property. If Grantor Party gives notice to Grantee Party of any objections which cannot be cured, then Grantee Party shall have the option of: (i) waiving such objections and proceeding with this Agreement or (ii) terminating this Agreement, and thereupon this Agreement shall be null and void and neither Grantor Party nor Grantee Party shall have any further obligations hereunder. Grantee Party shall be responsible for the expense of the title insurance policy issued on the Exchange Property to be transferred to the Grantee Party.

6. TAXES. Real estate taxes on the Exchange Property prior to the date of Closing shall be paid by Grantor Party. Real estate taxes on the Exchange Property after the date of Closing shall be paid by Grantee Party. The taxes for the year of the date of Closing shall be prorated based upon the then most current property valuations and upon the most current tax rate as determined by law.

7. CLOSING. Closing shall occur within forty-five (45) days from the date of this Agreement.

8. RISK OF LOSS. Risk of loss or damage to the Exchange Property shall rest with Grantor Party until the time of delivery of possession.

9. NO REAL ESTATE COMMISSION AND FINDER'S FEE. The parties agree that no party hereto shall be liable for any real estate broker's commission, agent's commission, or finder's fee, in connection with the transaction contemplated by this Agreement.

10. CONDITION OF EXCHANGE PROPERTY. Grantor Party acknowledges that its representatives or agents have examined the Exchange Properties prior to entering into this Agreement. This Agreement is based upon Grantee Party's inspection of the Exchange Property and not upon any representation or warranties or conditions by Grantor Party's agents. Grantee Party acknowledges Grantor Party is conveying the Exchange Property on an "as is" basis, except for the warranties and representations as provided in this Agreement and the warranties in the special warranty deed.

11. DEFAULT. Time is agreed to be of the essence. In the event either party fails to comply with any of the material terms hereof, then the other party may declare a default and seek any remedy at law or in equity without notice or demand, including specific performance.

12. NON-FOREIGN STATUS. At the date of Closing, Developer shall deliver to the City the Certification of Non-Foreign Status duly executed and containing such other information as may be required by Internal Revenue Code Section 1445 and the Regulations issued thereunder.

13. RIGHT TO EFFECTUATE EXCHANGE. The City acknowledges that the

developer may undertake an additional Internal Revenue Code Section 1031 tax deferred exchange of their interest in all or any portion of the Exchange Property. The Developer's rights and obligations under this Agreement may be assigned to facilitate such exchange. The City agrees to cooperate with the Developer and any assignee of the Developer to enable it to qualify for such exchange; provided that such cooperation shall not require the City to incur any additional costs or liability and the City shall be able to realize all intended benefits of this Agreement.

14. ASSIGNMENT. In the case of the assignment of this Agreement by either of the parties, prompt notice shall be given to the other party, who shall at the time of such notice be furnished with a duplicate of such assignment by such assignors. Any such assignment shall not terminate the liability of the assignor to perform, unless a specific release in writing is given and signed by the other party to this Agreement.

15. SEVERABILITY. If any non-economic mutual term or provision of this Agreement or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

16. FURTHER ASSURANCES. Each undersigned party will, except as otherwise provided herein, whenever it shall be necessary to do so by the other, promptly execute, acknowledge, and deliver, or cause to be executed, acknowledged, or delivered, documents as may be necessary or proper to effectuate the covenants, contingencies and agreements herein provided. The Developer and the City agree to use their best efforts in cooperation to carry out the intent of this Agreement and to provide quality and efficient development sites for both the Developer and the City.

17. INTERPRETATIONS. Any uncertainty or ambiguity existing herein shall not be interpreted against either party because such party prepared any portion of this Agreement, but shall be interpreted according to the application of rules of interpretation of contracts generally.

18. CONSTRUCTION. Whenever used herein including acknowledgments, the singular shall be construed to include the plural, the plural the singular, and the use of any gender shall be construed to include and be applicable to all genders as the context shall warrant.

19. ENTIRE AGREEMENT. This Agreement contains the entire agreement of the parties relating to the transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, warranties and statements, oral or written, are merged herein. This Agreement cannot be modified or altered unless reduced to writing and consented to by all the undersigned parties.

20. NOTICE AND DEMANDS. Notice, demand, or other communication mandated by this Agreement by either party to the other shall be sufficiently given or delivered if it is sent by registered or certified mail, postage prepaid, return receipt requested, or delivered personally

at the address stated above.

21. EXECUTION IN COUNTERPARTS. This Agreement may be executed in two or more counterparts, each of which shall be an original but all of which shall constitute one and the same instrument.

22. GOVERNING LAW. All aspects of this Agreement shall be governed by the laws of the State of Arkansas.

23. SUCCESSORS AND ASSIGNS. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legatees, devisees, personal representatives, successors and assigns.

24. TIME IS OF THE ESSENCE. The parties agree time is of the essence under this Agreement.

25. CITY COUNCIL APPROVAL. This offer is conditioned upon the City of Bentonville receiving Approval from the Bentonville City Council for this transaction.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

Witnesses: "City" (The City of Bentonville, Arkansas) by:

Attest:

Mayor Bob McCaslin

City Clerk

Date: _____

"Developer" (Rt. Rev. Larry R. Benfield, Bishop of the Episcopal Diocese of Arkansas,) by:


Rt. Rev. Larry R. Benfield

Date: 28 Jul 2017

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO
ENTER INTO A LAND EXCHANGE AGREEMENT WITH R. REV.
LARRY R. BENFIELD, BISHOP OF THE EPISCOPAL DIOCESE OF
ARKANSAS TO FACILITATE TRAIL DEVELOPMENT.**

WHEREAS, the parties agree that the properties to be exchanged are of like kind, equal value and mutually beneficial.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE
CITY OF BENTONVILLE, ARKANSAS:**

Section 1. The Mayor and City Clerk are hereby authorized and directed to execute an agreement to exchange land with R. Rev. Larry R. Benfield, Bishop of the Episcopal Diocese of Arkansas to facilitate trail development.

Section 2. This Resolution shall be in full force and effect from and after the date of its passage and approval.

PASSED and APPROVED this ____ day of _____, 2017.

APPROVED:

Mayor Bob McCaslin

ATTEST:

City Clerk



CHECK ALL THAT APPLY		
☐	Bid Award	Bid #
☐	Budget Adjustment	
☐	Change Order	
☐	Informational	
☐	Ordinance	
☒	Resolution	
☐	Other	

AGENDA FORM

CITY COUNCIL MEETING OF:

April 25, 2017

Submitted by:

Travis Matlock

Department

Electric

Phone

271-5941

ACTION REQUIRED:

A resolution authorizing the Mayor and City Council to enter into an agreement with Cox Communication for a Pole Attachment License Agreement with the City of Bentonville.

COST TO CITY:

Cost of this Request:

Additional Budget Amount

☒ One time amount

☐ Continuing O and M

Previously Budgeted	\$
Funds Expended to Date	
Remaining Budget	-
Budget Adjustment	-
Remaining After Adjustment	\$ -

This form must be turned into the Mayor's office 7 days prior to the scheduled City Council meeting.

117 WEST CENTRAL AVENUE * BENTONVILLE, AR 72712

www.bentonvillear.com



PLEASE RECYCLE



MEMORANDUM

DATE: April 25, 2017

TO: City Council, Mayor McCaslin

FROM: Travis Matlock, Engineer Director

**RE: Pole Attachment Agreement between the City
Of Bentonville and Cox Communication**

The Electric Department recommends approval of a Pole Attachment Agreement between the City of Bentonville and Cox Communication. The Agreement sets forth the requirements and rental rates for pole usage within the City Of Bentonville, and will replace an agreement that was signed in 2003.

With the original agreement Cox the per attachment cost was \$6.00/attachment with no escalation clause. The revised agreement does not have a pole limit and the cost per attachment will begin at \$13.00/attachment and increase at a predetermined amount for the next 5-yrs. This charge is consistent with the recent agreement that the City of Bentonville and ATT signed.

This agreement is a pole attachment agreement because Cox does not own any poles within the City, unlike ATT. Any infrastructure Cox owns within the City is either underground or is attached to BEUD poles. This agreement will protect BEUD infrastructure and allow for more control over new attachments.

POLE ATTACHMENT LICENSE AGREEMENT

BETWEEN

CITY OF BENTONVILLE, ARKANSAS

AND

COXCOM, LLC D/B/A COX COMMUNICATIONS ARKANSAS

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POLE ATTACHMENT LICENSE AGREEMENT

This Pole Attachment License Agreement (“Agreement”) is made and entered into on the ____ day of _____, 2017 (“Effective Date”), by and between the City of Bentonville, Arkansas, a municipal corporation (hereinafter “CITY”), and CoxCom, LLC d/b/a Cox Communications Arkansas, a Delaware limited liability company authorized to do business in Arkansas, (hereinafter “Licensee”) (collectively Parties).

RECITALS

- A. Licensee proposes to install and maintain Communications Facilities and associated communications equipment on CITY’s Poles to provide Communications Services to the public; and
- B. CITY is willing, when it lawfully may do so, to issue one or more Permits authorizing the placement or installation of Licensee’s Attachments on CITY’s Poles, provided that CITY may refuse, on a non-discriminatory basis, to issue a Permit where there is insufficient Capacity or for reasons relating to safety, reliability, generally applicable engineering purposes, and/or any other Applicable Standards; and
- C. CITY hereby excludes from the terms of this Agreement: (i) all poles used to support voltages in excess of 35 kV and lighting standards and (ii) any portion of CITY’s underground duct system, without the express written consent of CITY.
- D. This Agreement embodies the entire agreement between CITY and Licensee with respect to the subject matter of this Agreement, and supersedes and replaces any and all previous agreements entered into by and between CITY and Licensee, authorized predecessors and assignees, written or unwritten, with respect to that subject matter.

Therefore, in consideration of the foregoing recitals and of the mutual covenants, terms and conditions and remunerations herein provided, and the rights and obligations created hereunder, the Parties agree as follows:

AGREEMENT

1. DEFINITIONS

For the purposes of this Agreement, the following terms, phrases, words and their derivations shall have the meaning given herein, unless more specifically defined within a specific Article or Section of this Agreement. When not inconsistent with the context, words used in the present tense include future tense, words in the plural number include the singular number, and words in the singular number include plural number. The words “shall” and “will” are mandatory and “may” is permissive. Words not defined shall be given their common and ordinary meaning.

- 1.1 **Affiliate:** means, when used in relation to Licensee, another entity that owns or controls, is owned or controlled by, or is under common ownership or control with Licensee.

- 1.2 **Applicable Standards:** means all applicable engineering and safety standards governing the installation, maintenance and operation of facilities and the performance of all work in or around CITY's Facilities and includes CITY's clearance standards as referenced in appendices included in and made a part of this Agreement, the National Electric Safety Code (NESC), the National Electrical Code (NEC) and any subsequent federal, state, or local amendments which relate to the maintenance of proper clearances and related safety issues, the Bellcore Manual of Construction Procedures (Blue Book) and subsequent revisions thereof, the regulations of the Occupational Safety and Health Act (OSHA) and/or other reasonable requirements of CITY.
- 1.3 **Application Fee:** means the fee described in Section 3.6 and Appendix I of this Agreement, compensating CITY for the work required to process an application for an Attachment Permit.
- 1.4 **Assigned Space:** means space on CITY Poles that Licensee can use, as defined by the Applicable Standards, for the attachment or placement of wires, cables and associated equipment for the provision of Communications Service. The neutral zone or safety space is not considered Assigned Space. If rearrangements can be made so that the existing neutral zone or safety space on a Pole can be relocated in accordance with Applicable Standards it may be considered Assigned Space.
- 1.5 **Attaching Entity:** means any public or private entity, including Licensee, that has a right or privilege to attach or install equipment it owns or controls to a CITY Pole in accordance with a license agreement.
- 1.6 **Attachment(s)** means any wire, line or apparatus attached to a Pole owned by CITY, including, but not limited to, cables, Service Wires (defined below), amplifiers, power supplies, Pedestals (defined below), bonding wires, Overlashings (defined below), guy wires and anchors required to support unbalanced loads. For aerial cable and wire facilities, a single Attachment includes the vertical space consisting of a total of 12", whether wholly or partially, above or below, the point of contact (for the avoidance or doubt and by way of example, an Attachment which included 9" of vertical space above the point of contact would only include 3" of vertical space below the point of contact). Any apparatus or facilities located fully or partly outside this vertical space shall constitute an additional Attachment(s) for rental purposes; provided however, the Parties agree to review how Attachments are defined and considered under this Agreement should a significant change or advancement in technology occur that is not addressed herein. Each thru-bolt type Attachment where the Pole is drilled and bolted to support cable and/or messenger will count as a separate Attachment for rental purposes without respect to separation. Drop/Lift Poles count as one Attachment so long as all Service Wires are contained within 12" of space. Service Wires and "J-hooks" located within a space consisting of a total of 12" either above or below (but not both) of a bolted Attachment shall not constitute separate Attachments for rental purposes. Overlashed Communications Facilities, apparatus cases and power supplies existing on CITY Poles, and aerial dips/risers, strand mounted facilities, and ground blocks do not count as separate Attachments for billing purposes, but are subject to all other provisions of this Agreement, including Sections 3 and 4. Guy wires and anchors, unless a sole Attachment or drilled and bolted separately from its associated cabling, shall not

constitute an additional billable Attachment. Large apparatus cases and power supplies are prohibited in the climbing space of Poles.

- 1.7 **Attachment Fee:** means the annual fee described in Sections 1.6, Section 3, and Appendix I of this Agreement charged by CITY for Permitted Attachments of Licensee's Facilities to CITY Poles.
- 1.8 **CITY Facilities:** means all personal property and real property owned or controlled by CITY, including Poles.
- 1.9 **Cable Services:** means the provision of one-way transmission to subscribers of video programming; or other programming service, and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service by a cable system.
- 1.10 **Capacity:** means the ability of a Pole, including after commercially viable Make-Ready Work, to accommodate an Attachment based on Applicable Standards, including space, design, and loading considerations.
- 1.11 **Communications Facilities:** means wire or cable facilities including, but not limited to, fiber optic, copper and/or coaxial cables or wires utilized to provide Communications Services, including any and all associated equipment. Unless otherwise specified by the Parties in writing, the term "Communications Facilities" does not include wireless antennae, receivers or transceivers. Strand mounted wireless technologies within Licensee's allocated space shall be considered Communications Facilities.
- 1.12 **Communications Services:** means any Telecommunications Services, information services, Cable Services, internet protocol based services or other similar services or combination of services that Licensee provides utilizing Attachments to Poles.
- 1.13 **Drop/Lift Pole:** means an ancillary pole necessary to extend service to a customer; any Attachment to such pole will, for purposes of this Agreement, be included in Licensee's inventory of Attachments to the extent consistent with Section 1.6 above.
- 1.14 **Force Majeure Event:** means an event caused by riot, terrorism, war, earthquake, flood, unusually severe rain, dust storm, tornado or other catastrophic act of nature, governmental, administrative or judicial order or regulation or other event reasonably beyond the ability of CITY and/or Licensee to anticipate or control, where the event was not foreseeable and reasonable measures by CITY and/or Licensee could not have avoided or mitigated the effects it claims were caused by the event.
- 1.15 **In-Progress Inspection:** Inspection of Licensee's work being performed in accordance with an authorized Appendix B, Application To Attach, to ensure Attachments are being made in accordance with Applicable Standards, including, CITY's Specifications for Licensee's Attachments attached hereto as Appendix D and Appendix E, and any other standards and procedures set forth in this Agreement. Where non-compliant Licensee work or Attachments are found, during In-Progress Inspections or Post-Construction Inspections, subsequent follow-up inspections by CITY, or its Agent, as required to ensure compliance, will be paid by Licensee.
- 1.16 **Joint-Use Pole:** means any Pole that is used jointly by CITY and another Joint-Pole User as part of a reciprocal pole-sharing agreement.

- 1.17 **Joint-Use Pole Custodian:** means the Joint-Pole User who is tasked with primary responsibility for the administration and management of the Pole. In the absence of notice to the contrary from a Joint-Pole User, CITY shall be deemed to be the Joint-Use Pole Custodian.
- 1.18 **Joint-Pole User:** means other entities which own Poles that are jointly used by CITY and such other entity.
- 1.19 **Licensee:** means CoxCom, LLC d/b/a Cox Communications Arkansas, a Delaware limited liability company authorized to do business in Arkansas and its authorized successors and assignees.
- 1.20 **Licensee's Facilities:** means Licensee's cables, wires, supporting strands, brackets, Service Wires, bonding wires, taps, line amplifiers, power supplies, Pedestals and any other equipment or property used in connection with the operation of Licensee's business. Subject to Section 1.11, unless agreed to by the Parties in writing, Licensee is not authorized to attach antennae, wireless radio transceivers or other similar devices to CITY Poles.
- 1.21 **Make-Ready Work:** means all work, as reasonably determined by CITY, and as authorized by Licensee on a fully executed Appendix C, which is required to accommodate Licensee's Communications Facilities and/or to comply with all Applicable Standards. Such work includes, but is not limited to, rearrangement and/or transfer of CITY Facilities or existing Attachments, inspections, engineering work, permitting work, tree trimming (other than tree trimming performed for normal maintenance purposes), and Pole replacement.
- 1.22 **Non-Functional Attachments:** means an Attachment or any part thereof that becomes non-functional and no longer fit for service.
- 1.23 **Occupancy:** means the use or specific reservation of Assigned Space for Attachments on the same CITY Pole.
- 1.24 **Overlash/Overlashing:** means to place an additional wire or cable Communications Facility onto an existing Attachment.
- 1.25 **Other Licensee:** means any entity, other than Licensee, to which CITY has extended, or in the future extends, a license to attach facilities to CITY Poles.
- 1.26 **Pedestals/Vaults/Enclosures:** means above- or below-ground housings that are used to enclose a cable/wire splice, power supplies, amplifiers, passive devices and/or provide a service connection point and that shall not be attached to CITY Poles. (See Appendix D - Specifications For Licensee's Attachments.)
- 1.27 **Permit or Permitted:** means the written or electronic authorization from CITY for Licensee to make or maintain Attachments to specific CITY Poles pursuant to the requirements of this Agreement. (See Article 6 and applicable Appendices.)
- 1.28 **Pole:** means an electric distribution system utility pole owned by CITY that is capable of supporting Communications Facilities Attachments.

- 1.29 **Post-Construction Inspection:** means the survey inspection that may be performed by CITY to determine and verify that the Attachments have been made in accordance with Applicable Standards and the Attachment Permit.
- 1.30 **Pre-Construction Survey:** means all work or operations required by Applicable Standards and/or CITY to determine the potential Make-Ready Work necessary to accommodate Licensee's Communications Facilities on a Pole. Such work includes, but is not limited to, field inspection and cost estimating. The Pre-Construction Survey may include Licensee if required by CITY.
- 1.31 **Reserved Capacity:** means Capacity or space on a Pole that CITY has identified and reserved for its own requirements, including internal communications capabilities, pursuant to a reasonable projected need or business plan.
- 1.32 **Service Wires:** means non-guyed wires, not supported by strand, that do not require guying by common design standards, and including the last span that is installed to provide service to an individual customer(s). Subject to Section 6.1, Licensee's Service Wires installed on CITY Poles are considered as Attachments as defined in Section 1.6 of this Agreement and are to be installed in accordance with all Applicable Standards, and all other provisions of this Agreement, including Attachment Fees.
- 1.33 **Tag:** means to place distinct markers on wires and cables or by a means as specified by applicable federal, state or local regulations that will readily identify the owner, as provided in Article 4 and applicable Appendices.
- 1.34 **Telecommunications Services:** means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the technology by which offered. Telecommunications means the transmission, between or among points specified by the user, of information of the user's choosing without change in the form or content of the information as sent and received. Telecommunications Service(s) does not include Cable Services as defined herein.
- 1.35 **Unauthorized Attachment:** means any Attachment of Licensee's Facilities to CITY Poles for which Licensee has not obtained an Attachment Permit in accordance with Section 6 of this Agreement.
- 1.36 **Unauthorized Attachment Charge:** means the charge payable by Licensee under this Agreement for Unauthorized Attachments.

2. SCOPE OF AGREEMENT

- 2.1 **Grant of License.** Subject to the provisions of this Agreement and to the extent lawful, CITY hereby grants Licensee a revocable, nonexclusive license authorizing Licensee to install and maintain Permitted Attachments to CITY Poles, including Joint-Use Poles. Attachments to or rights to occupy CITY Facilities not covered by this Agreement must be separately negotiated.
- 2.2 **Parties Bound by Agreement.** Licensee and CITY agree to be bound by all provisions of this Agreement.

- 2.3 Permit Issuance Conditions. CITY will issue a Permit(s) to Licensee only when CITY determines, in its sole judgment, exercised reasonably, that (i) CITY has sufficient Capacity to accommodate the requested Attachment(s), (ii) Licensee meets all requirements set forth in this Agreement, and (iii) such Permit(s) comply with all Applicable Standards.
- 2.4 Reserved Capacity. Licensee's existing and future Attachments are in spaces on CITY's Poles that are reserved for CITY's future use in accordance with the "CITY's Distribution System Development Plan" set forth in "Appendix L". Access to CITY's Reserved Capacity in Assigned Space on CITY Poles will be made available to Licensee with the understanding that CITY may eliminate or limit the number of Permitted Attachments in accordance with CITY's rights, reserved under this Agreement. On giving Licensee at least sixty (60) calendar days prior notice, CITY may reclaim the Reserved Capacity anytime if required for CITY's future use, including the attachment of communications lines for internal CITY or governmental communications requirements or any energy related service involving the transfer or receipt of information or data concerning the use, measurement, monitoring, or management of energy utility services, including services such as load management or automated meter reading. CITY shall give Licensee the option to remove its Attachment(s) from the affected Pole(s) or to pay for the cost of any Make-Ready Work needed to expand Capacity so that Licensee can maintain its Attachment(s) on the affected Pole(s). The allocation of the cost of any such Make-Ready Work (including the transfer, rearrangement, or relocation of third party Attachments) shall be determined in accordance with Article 9. Notwithstanding the above, if CITY reclaims Reserved Capacity for which Licensee has received a Permit and paid CITY for Make-Ready Work but the installation of Licensee's Attachments is not complete, CITY shall refund all payments from Licensee for Application Fees and Make-Ready Work.
- 2.5 No Interest in Property. No use, however lengthy, of any CITY Facilities, and no payment of any fees or charges required under this Agreement, shall create or vest in Licensee any easement or other ownership or property right of any nature in any portion of such CITY Facilities. Neither this Agreement, nor any Permit granted under this Agreement, shall constitute an assignment to Licensee of any of CITY's rights to CITY Facilities. Notwithstanding anything in this Agreement to the contrary, Licensee shall, at all times, be and remain a licensee only.
- 2.6 Non-Exclusivity. CITY previously may have granted rights or privileges to use CITY Poles to others not parties to this Agreement, including rights or privileges to use Poles covered by this Agreement. CITY retains the right to continue and to amend such licenses or privileges and to grant rights and privileges to others after the execution of this Agreement. The rights granted to Licensee under this Agreement are subject at all times to CITY's right to its Poles and to the rights and privileges which CITY has granted or grants in the future to others. Notwithstanding anything to the contrary in this Agreement, Licensee shall be treated in a non-discriminatory manner.
- 2.7 Licensee's Right to Attach. Unless otherwise expressly provided for in this Agreement, other than a Permit issued pursuant to Article 6, nothing shall be construed as granting Licensee any right to attach Licensee's Communications Facilities to any specific Pole.
- 2.8 Franchise. Prior to applying for an Attachment Permit under this Agreement, Licensee must obtain and provide appropriate copy to the CITY of (a) either (i) a franchise or other authority

by ordinance authorizing Licensee to erect and maintain Licensee's Facilities within the public streets, highways, alleys, utility easements, and other public thoroughfares directly from the governing authority or (ii) a certificate of franchise authority certificate issued by the Arkansas Secretary of State pursuant to the Arkansas Video Service Act, *Ark. Code Ann. §§ 23-19-201 et seq.*; and (b) any other necessary permits, authority, and consents from federal, state, municipal or other public authorities.

- 2.9 CITY's Rights over Poles. The Parties agree that this Agreement does not in any way limit CITY's lawful right to locate, operate, maintain, and remove its Poles in the manner that will best enable it to fulfill its service requirements.
- 2.10 Restrictions on Certain Poles. CITY may deny access to Poles in flood zones, river crossings or other locations where new Attachments cannot be accommodated without creating a potential to disrupt or impair CITY Facilities or endanger safety. In such instances CITY, in its sole discretion, may erect taller/larger Poles to accommodate Licensee's Attachments if the costs of such replacement Poles are approved and paid by Licensee in advance. Further, CITY may deny access or require the removal or modification, at Licensee's expense, of existing Attachments if it reasonably determines that Licensee's Facilities have insufficient clearance, or may create a potential to disrupt or impair CITY Facilities or endanger safety standards.
- 2.11 Expansion of Capacity. CITY will take reasonable steps to expand Pole system Capacity, at Licensee's expense, when necessary to accommodate Licensee's request for Attachment, and when consistent with City land use requirements of general applicability. Notwithstanding the foregoing sentence, nothing in this Agreement shall be construed to require CITY to install, retain, extend, or maintain any Pole system for use when such Pole system is not needed for CITY's service requirements.
- 2.12 Permitted Uses. This Agreement is limited to the uses specifically stated in the Agreement, and no other use shall be allowed without CITY's express written consent to such use. Nothing in this Agreement shall be construed to require CITY to allow Licensee to use CITY's Poles after the termination of this Agreement.
- 2.13 Excluded Poles. Except as expressly consented to in writing, Licensee shall not make Attachments to any Poles used to support voltages in excess of 35kV and those Poles used exclusively for lighting. All Attachments approved and made will comply with all applicable industry standards and approved attachment methods, including drilling requirements for non-wood Poles, as prescribed by CITY within the written consent.

3. FEES AND CHARGES

- 3.1 Payment of Fees and Charges. Licensee shall pay to CITY the applicable fees and charges specified in Appendix I and shall comply with the terms and conditions specified herein. As set out in Appendix I, each Attachment shall be billed at the single Pole Attachment rate as specified on Appendix I and which shall apply to all services, whether Cable Services, Telecommunications Services, or other Communications Services.
- 3.2 Payment Period. Fees shall be calculated and payable for the entire calendar year during which Licensee holds a Permit for such Attachment.

- 3.3 Billing. CITY shall invoice Licensee annually. CITY will submit to Licensee an invoice for the annual rental period no later than January 31st of each year and payment shall be due and payable within 45 days of the invoice date. The invoice shall set forth the total number of Attachments for which Licensee was issued and/or holds a Permit(s) for Attachments as of December 31st of the previous rental year. If Licensee makes Attachments at any time after the December 31st calculation date, Licensee shall pay the full annual Attachment Fee for the additional Attachments at the next calculation date, as well as for existing Attachments, as follows: At each December 31st, CITY shall calculate the additional Attachments from the prior December 31st, and Licensee agrees to pay the full annual Attachment Fee for both the previous year and the upcoming year for such additional Attachments. For example, if Licensee has no Attachments for which an Attachment Fee is due on December 31, 2013, and has 20 such Attachments on December 31, 2014, the payment due in January of 2015 is equal to 40 times the Attachment Fee in effect (20 Attachment Fees for 2014, 20 Attachment Fees payable in advance for 2015). If Licensee has 100 Attachments on December 31, 2013, and 200 Attachments on December 31, 2014, the payment due in January of 2015 is equal to 300 times the current Attachment Fee (100 additional Attachment Fees for 2014, 200 Attachment Fees payable in advance for 2015). There is no pro rata or reduction of the Attachment Fee due to the fact that the Attachment was in place for only part of the year.
- Notwithstanding the preceding paragraph of this Section 3.3, Licensee acknowledges and agrees that CITY will promptly invoice Licensee for Licensee's calendar year 2016 Attachment Fees following the Effective Date of this Agreement. Licensee agrees to pay that invoice within forty-five (45) days of its receipt thereof.
- 3.4 Refunds. No fees and charges specified in Appendix I shall be refunded on account of any surrender of a Permit granted hereunder. There is no pro rata refund of Attachment Fees if CITY or Licensee abandons a Pole.
- 3.5 Late Charge. If CITY does not receive payment for any Attachment Fee or other amount owed within thirty (30) calendar days after it becomes due, Licensee, upon receipt of fifteen (15) calendar days' prior written notice, shall pay interest to CITY equivalent to the lesser of One Percent (1%) per month or the maximum interest rate permitted by Arkansas law on the amount due from the original due date of the invoice.
- 3.6 Application Fees. Each application for an Attachment Permit must be accompanied by an Application Fee to compensate CITY for administrative and other work required, as described below in subsections (i) and (ii), to process the application, perform the Pre-Construction Survey, In-Progress Inspection, and the initial Post-Construction Inspection. The Application Fee is set forth in Appendix I to this Agreement and may be amended in accordance with the terms of this Agreement.
- (i) Application for Permit with applicable administrative fee submitted; and
 - (ii) Applicable per pole fee for each Pole submitted on Appendix B to offset the actual costs of Pre-Construction Survey including pole loading analysis, In-Progress Inspection, and all required Post-Construction Inspections.
- 3.7 Payment for Make-Ready Work. Licensee will be responsible for payment to CITY for all Make-Ready Work required to accommodate Licensee's Communications Facilities and

shall acknowledge its agreement to make payment by executing the CITY-provided Appendix C that shall contain CITY's cost for each specific Permit requiring Make-Ready Work.

- 3.8 Payment. CITY will bill Licensee monthly for all reasonable costs, including, but not limited to, administrative, construction, inspections, and Make-Ready Work expenses, in connection with the initial installation or rearrangement of Licensee's Communications Facilities pursuant to the procedures set forth in Articles 6 and 7.
- 3.9 Determination of Charges. Wherever this Agreement requires Licensee to pay for work done or contracted by CITY, the charge for such work shall include all reasonable material, labor, engineering and administrative costs, and applicable overhead costs. Such costs will be determined in accordance with CITY's cost accounting systems used for recording capital and expense activities. If Licensee was required to perform work and fails to perform such work, CITY shall notify Licensee of the deficiency in writing and shall give Licensee thirty (30) days to correct the deficiency. If Licensee fails to perform the work, necessitating its completion by CITY, CITY may either charge an additional ten percent (10%) to its costs or assess the charges specified in Appendix I.
- 3.10 Work Performed by CITY. Wherever this Agreement requires CITY to perform any work, Licensee acknowledges and agrees that CITY, at its sole discretion, may utilize its employees, contractors, or agents, or any combination thereof, to perform such work.
- 3.11 Default for Nonpayment. Nonpayment of an undisputed amount due under this Agreement beyond ninety (90) days shall constitute a material default of this Agreement upon an additional thirty (30) days written notice being provided to Licensee. If Licensee disputes any amount claimed owed, Licensee shall pay the undisputed portion and shall provide a detailed explanation of the basis for its dispute.

4. SPECIFICATIONS

- 4.1 Installation/Maintenance of Communications Facilities. When a Permit is issued pursuant to this Agreement, Licensee's Communications Facilities shall be installed and maintained in accordance with the requirements of this Agreement, including the appropriate Appendices, and all Applicable Standards. Licensee shall, at its own expense, make and maintain its Attachments in safe condition and good repair in accordance with all Applicable Standards. Notwithstanding anything in this Agreement to the contrary, Licensee shall in no event be required to modify or upgrade its Attachments if not required to do so either by any generally applicable code, like the NESC or NEC, or other applicable government requirement. Further, Licensee shall not be required to modify or upgrade any pre-existing Attachment, made to a Pole prior to the Effective Date of this Agreement, provided that such Attachment is in safe condition and good repair, in accordance with all Applicable Standards which were in effect at the time when that Attachment was initially made or subsequently modified by Licensee.
- 4.2 Tagging. Licensee and any Overlapping third party shall Tag all mainline Communications Facilities, installed subsequent to the execution of this Agreement as specified in Appendix K and/or applicable federal, state and local regulations in effect upon installation of Licensee's Facilities; prior untagged Attachments of Licensee shall be Tagged within one

year of the execution of this Agreement. Failure to provide proper Tagging will be considered a violation of the Applicable Standards. Notwithstanding the foregoing, Licensee shall in no event be required to Tag Service Wires.

- 4.3 Interference. Licensee shall not allow its Communications Facilities to impair the ability of CITY, Joint-Pole Users, or any third party to use CITY's Poles, nor shall Licensee allow its Communications Facilities to interfere with the operation of any CITY Facilities. Licensee shall not be responsible for interference with future installations by Joint-Pole Users or third parties, provided that Licensee's Attachments comply with all Applicable Standards and are Permitted Attachments.
- 4.4 Protective Equipment. Licensee, and its employees and contractors, shall utilize and install adequate protective equipment to ensure the safety of people and facilities. Licensee shall install, at its own expense, protective devices designed to handle the voltage and current impressed on its Communications Facilities in the event of a contact with the supply conductor. CITY shall not be liable for any actual or consequential damages to Licensee's Communications Facilities or Licensee's customers' facilities or to any other property, or for any death or personal injuries whatsoever, except to the limited extent provided in Article 16.
- 4.5 Overlashing. The following provisions will apply to Overlashing:
 - 4.5.1 Any person, including Licensee, seeking to Overlash Licensee's existing Attachments shall first obtain a Permit pursuant to Article 6 and Appendix A for each such Overlash. Absent such authorization, Overlashing constitutes an Unauthorized Attachment and is subject to the Unauthorized Attachment Charge specified in Appendix I. Where such Overlashing by Licensee is to provide for "competitive service requirements", and where Licensee did not have reasonable advance knowledge of the potential for such "competitive service requirements", CITY will make all reasonable efforts to respond to the Application within fifteen (15) business days, including providing Licensee with estimates of CITY Make-Ready Work requirements. CITY shall, at the completion of the Pre-Construction Survey, notify Licensee that it may proceed with Overlashing if such can be performed in compliance with the Applicable Standards. CITY may schedule Make-Ready Work for Licensee upon receipt of acknowledgment that Licensee shall be responsible for all costs, including, but not limited to, appropriate overtime and other related costs incurred by CITY. CITY shall not withhold Permits if such Overlashing can be accomplished consistent with Article 2, Section 2.3 and Articles 4 and 6 of this Agreement.
 - 4.5.2 If Overlashing is required to accommodate facilities of a third party that is not Affiliated with Licensee, such third party must enter into a License Agreement with CITY and obtain Permits. CITY shall not grant Permits to third parties authorizing Overlashing of Licensee's Communications Facilities unless Licensee has first consented in writing to such Overlashing. Nothing in this Agreement shall prevent Licensee from seeking a contribution from an Overlashing third party to defray fees and charges paid by Licensee.

- 4.5.3 Licensee or Overlashing third party shall be responsible for all Make-Ready Work and other charges associated with accommodating the Overlashing, as evidenced on Appendix C, but shall not be required to pay a separate annual Attachment Fee for such Overlashed Attachment.
- 4.5.4 Make-Ready Work procedures set forth in Article 7 shall apply, as necessary, to all Overlashing.
- 4.6 Enclosures. Licensee shall not place Pedestals, Vaults and/or other ground-mounted facilities, or below-ground Enclosures, on or within five (5) feet of any Pole or other CITY Facilities without CITY's prior written permission. If permission is granted, all such installations shall be per the Specifications found in applicable Appendices of this Agreement and subject to the charges as provided in Appendix I. Such permission shall not be unreasonably withheld.
- 4.7 Emergency and Imminent Danger Violations. In the event a violation of this Agreement (including, without limitation, a violation of any of the Applicable Standards) that poses an imminent danger to persons or property is discovered, Licensee shall correct such violation immediately. Should Licensee fail to correct such violation after notification (either written or verbal), or when CITY believes that such violation(s) pose an immediate threat to the safety of any person, interfere with the performance of CITY's service obligations, or pose an immediate threat to the physical integrity of CITY Facilities, or any property, CITY may perform such work and/or take such action as it deems necessary without first giving notice to Licensee. CITY will then bill Licensee for the actual costs incurred for such corrections.
- 4.8 Violation of Specifications. Except as stated in Section 4.7, above, where Licensee's Communications Facilities, or any part thereof, are installed, used, or maintained in violation of this Agreement, CITY shall provide written notice to Licensee (including location and Pole number where available) and Licensee shall either: (a) provide plans of correction to CITY's reasonable satisfaction within fourteen (14) calendar days of Licensee's receipt of the notice of violations; or (b) correct the violation(s) within sixty (60) calendar days from Licensee's receipt of notice of the violation(s) from CITY, so long as such violation was caused by the action(s) or inaction(s) of Licensee and was not caused by CITY, its affiliates, agents, or contractors, or by others attached to CITY's Pole or their affiliates, agents, or contractors. The foregoing notwithstanding, however, the sixty (60) calendar day period in which Licensee is obligated to correct violations shall be tolled during any period of delay caused by CITY or a third party. In case of numerous Licensee violations, Licensee may request additional time to correct the violations and such request will not be unreasonably denied by CITY. If the violations are not corrected within the time specified in this Section 4.8, CITY, at its option, may correct said conditions, including, but not limited to, those specified in Section 4.7. CITY will attempt to notify Licensee in writing prior to performing such work whenever practicable. CITY will advise Licensee of the work performed or the action taken. Licensee shall be responsible for all costs incurred by CITY in taking action pursuant to this Section 4.8. However, in no event shall Licensee be liable for any cost or expense associated with correcting violations caused by CITY, its affiliates or contractors or by others attached to CITY's Pole, except where Licensee has been properly notified under Section 2.4, Reserved Capacity.
- 4.9 Restoration of CITY Service. CITY's service restoration requirements shall take precedence

over any and all work operations of Licensee on CITY's Poles. CITY may relocate, replace, renew or remove Licensee's Facilities, transfer them to substituted Poles or perform any other work in connection with Licensee's Facilities that CITY deems desirable or necessary in the restoration of CITY Service, and CITY shall not be liable to Licensee for any actions CITY takes pursuant to this Section 4.9, except to the limited extent provided in Article 16. Licensee shall reimburse CITY for the costs CITY incurs relating to such work within forty-five (45) days of the date CITY sends Licensee an invoice for such work.

- 4.10 Effect of Failure to Exercise Access Rights. If Licensee does not exercise any access right granted pursuant to this Agreement and/or applicable Permit(s) within ninety (90) calendar days after CITY notifies Licensee that Make-Ready Work is completed, CITY may use the space scheduled for Licensee's Attachment(s), for its own needs, Joint-Pole User's needs, or other Attaching Entities' needs. In such instances, CITY shall endeavor to make other space available to Licensee, upon written application by Licensee for a Permit pursuant to Article 6, as soon as reasonably possible and subject to all requirements of this Agreement, including the Make-Ready Work provisions.
- 4.11 Removal of Nonfunctional Attachments. At its sole expense, Licensee shall remove any Non-Functional Attachments as provided in this Section 4.11. Except as otherwise provided, Licensee shall remove Non-Functional Attachments within one (1) year of the Attachment becoming nonfunctional, unless Licensee receives written notice from CITY that removal is necessary to accommodate CITY's use of the affected Pole(s), pursuant to a reservation of Capacity, in which case Licensee shall remove such Non-Functional Attachments within thirty (30) days of receiving the notice. Where Licensee has received a Permit to Overlash a Non-Functional Attachment, such Non-Functional Attachments shall be removed at the time the Overlashed Communications Facility is no longer used by the Licensee. Licensee shall promptly give CITY notice of any Non-Functional Attachments.
- 4.12 Removal of Abandoned Facilities. Licensee agrees to remove, at Licensee's expense, all property or other facilities which Licensee has placed or in the future places on CITY Poles (1) which Licensee does not utilize for providing Licensee's services; (2) which Licensee abandons or has abandoned; or (3) which are no longer required by Licensee, due to the operating Capacity of Licensee's Facilities having been replaced by other facilities. Where such removals constitute removal of all Attachments on a CITY's Pole(s), Licensee shall submit Appendix H, Notification of Attachment Removal, to CITY.

5. PRIVATE AND REGULATORY COMPLIANCE

- 5.1 Necessary Authorizations. Licensee shall be responsible for obtaining from the appropriate public and/or private authority or other appropriate persons any required authorization to construct, operate, and/or maintain its Communications Facilities on public and/or private property before it occupies any portion of CITY's Poles, including Joint-Pole Users' Poles. Upon request, Licensee must provide CITY with evidence that appropriate authorization has been obtained before any Permit is issued to Licensee. Licensee's obligations under this Article 5 include, but are not limited to, its obligation to obtain all necessary approvals to occupy public/private rights-of-way and to pay all costs associated therewith, and to maintain such approval for the term of the Permit. Licensee shall defend, indemnify and reimburse CITY for all loss, costs and expense, including reasonable attorney's fees, that

CITY may incur as a result of claims by governmental bodies, owners of private property, or other persons, that Licensee does not have sufficient rights or authority to attach Licensee's Communications Facilities on CITY's Poles.

- 5.2 Lawful Purpose and Use. Licensee's Communications Facilities must at all times serve a lawful purpose, and the use of such Licensee Facilities must comply with all applicable federal, state, and local laws.
- 5.3 Forfeiture of CITY's Rights. No Permit granted under this Agreement shall extend to any Pole on which the attachment of Licensee's Communications Facilities would result in a forfeiture of CITY's rights. Any Permit, which on its face would cover Attachments that would result in forfeiture of CITY's rights, is invalid. Further, if any of Licensee's existing Communications Facilities, whether installed pursuant to a valid Permit or not, would cause such forfeiture, Licensee shall promptly remove Licensee's Facilities upon receipt of written notice from CITY. If Licensee does not remove its Licensee Facilities within thirty (30) calendar days from CITY's issuance of the written notice, CITY will perform such removal at Licensee's expense. If any Attachment by Licensee leads to the termination of the rights of CITY and/or other Attaching Entities to occupy the real property on which CITY Poles are located, Licensee shall use its best efforts to restore CITY and/or other Attaching Entities to their original status before such Attachment was installed and agrees to pay CITY and/or other Attaching Entities for all losses, damages and costs resulting from the Attachment and/or termination.
- 5.4 Effect of Consent to Construction/Maintenance. Consent by CITY to the construction or maintenance of any Attachments by Licensee shall not be deemed consent, authorization, or an acknowledgment that Licensee has the authority to construct or maintain any other such Attachments. It is Licensee's responsibility to obtain all necessary approvals for each Attachment from all appropriate parties or agencies.
- 5.5 Conflicts. If, for or with respect to any Attachment, a difference or conflict in a specification, regulation, or practice exists, with the exception of pre-existing Attachments made prior to the Effective Date of this Agreement, the following rules will apply: (a) if one specification, regulation, or practice is more stringent than the other, the more stringent will apply; (b) if one of the conflicting specifications, regulations, or practices is not more stringent than the other, the specification, regulation, or practice of the National Electrical Safety Code will apply; (c) if the conflict cannot be resolved under the first two rules, CITY will determine in good faith which specification, regulation, or practice shall apply, with safety concerns given the highest priority in such determination.

6. PERMIT APPLICATION PROCEDURES

- 6.1 Permit Required. Licensee shall not install any Attachments on any CITY Pole without first submitting an Appendix B, Application to Attach, and obtaining a Permit pursuant to the applicable requirements of Appendix A. An installation plan as described in Appendix B will accompany each Application To Attach. Unless otherwise notified, CITY shall be presumed by Licensee to be the Joint-Use Pole Custodian for all CITY Joint-Use Poles. Pre-existing Attachment(s) of Licensee prior to January 2015 shall be grandfathered with respect to Permitting but shall be subject to the Attachment Fees and correction of any code violations whether known or unknown as of January 2015.

- 6.1.1 Notwithstanding the requirements of Section 6.1, Licensee may attach Service Wires to any Pole without first submitting an application for Permit requesting such Attachment; provided, however, that Licensee shall submit Appendix B, Part 3, Record of Service Wire Attachments as set forth in Appendix A. Service Wires are considered as Attachments as defined in Section 1.6 of this Agreement and are subject to all Applicable Standards and Attachment Fees. Records of Service Wire Attachments submitted are not subject to either component of the Application Fee.
- 6.2 CITY Review of Application to Attach. Upon receipt of a properly executed Application To Attach, an installation plan including the necessary information for pole loading analysis, and the Application Fee, CITY, or its contractor or agent, will perform the Pre-Construction Survey. CITY will notify Licensee within forty-five (45) days of receipt of the Application To Attach whether access is granted or denied. In the case of an Application to Attach solely involving Overlashing where no Make-Ready Work is required and the Overlashing will be in compliance with the Applicable Standards, CITY will notify Licensee within fourteen (14) days of receipt of the Application to Attach whether access is granted or denied. In the event CITY fails to respond to an Application within the applicable timeframe, Licensee may give written notification of such failure to CITY, which if not responded to within seven (7) days after receipt shall then constitute an approval. If Licensee's Application is deemed approved under the default provisions of this Section 6.2, Licensee shall nonetheless be bound by the requirements of this Agreement, including the appropriate Appendices, and all Applicable Standards. Before Licensee attaches its Communications Facilities, CITY will discuss any issues with Licensee, including engineering or Make-Ready Work requirements associated with the Permit.
- 6.2.1 In making its decision as to whether to issue a Permit, CITY may consider engineering, safety and Capacity constraints, including Reserved Capacity. In addition, CITY may consider and deny such Permit based upon the aesthetic impact of the proposed Attachment to the extent that they would be inconsistent with City requirements on aesthetics.
- 6.2.2 CITY acceptance of the submitted design documents does not relieve the Licensee of full responsibility for any errors and/or omissions in those design documents.
- 6.3 Permits for Overlashing As set out in Article 4, Section 4.5, Permits are required for all Overlashings allowed under this Agreement, and Licensee, Licensee's Affiliate or third party, as applicable, shall pay any necessary engineering and Make-Ready Work costs to accommodate such Overlashing.
- 6.4 Performance of Make-Ready Work. If Make-Ready Work is required to accommodate Licensee's Attachments, CITY or its contractors shall perform such work pursuant to Article 7.
- 6.5 Permit as Authorization to Attach. After receipt of all payment for any necessary Make-Ready Work, CITY will sign and return the Appendix C, which shall serve as authorization for Licensee to make its Attachment(s) upon completion of all Make-Ready Work required to accommodate Licensee's Attachment(s).

- 6.6 Post-Construction Inspection. Licensee shall, within thirty (30) days of completion of all work, notify CITY, or its agent, in writing that work is complete. CITY, or its agent, may, in the CITY's discretion, perform the initial Post-Construction Inspection to ensure that Licensee's Communications Facilities were installed on the identified Poles in compliance with the Applicable Standards, in accordance with Article 4 and the Permit, within thirty (30) days of notification by Licensee in writing that work is complete. Where non-compliant Licensee work or Attachments are found during the initial Post-Construction Inspection, subsequent follow-up inspection(s) by CITY, or its agent, as required to ensure compliance with the Applicable Standards, will be performed. Licensee will be invoiced for all costs incurred by CITY, or its agent, in performing the follow-up inspections, including costs incurred resulting from additional trips where Licensee has incorrectly reported corrections to non-compliant Licensee Facilities. In no event shall Licensee be liable for the costs of any subsequent follow-up inspections that do not occur within forty-five (45) days of Licensee's written notification that its work is complete, unless CITY is delayed in performing such follow up inspection due to a Force Majeure Event as provided for in Section 15.

7. MAKE-READY WORK/INSTALLATION

- 7.1 Make-Ready Work. In the event CITY determines that it can accommodate Licensee's request for Attachment(s), including Overlashing of an existing Attachment, it will advise Licensee by issuance of an Authorization for Make-Ready Work, set forth as Appendix C, including any Make-Ready Work charges necessary to accommodate the Attachment. Whenever CITY provides Make-Ready Work estimates for Licensee, CITY will incorporate the rearrangement costs of Joint-Pole Users and other Attaching Entities, where such costs are known, and will require advance payment from Licensee for those costs. In no event shall Licensee be responsible for any Make-Ready Work charges necessary to correct pre-existing non-compliant conditions that Licensee did not cause. As a part of the Make-Ready Work process, CITY will request Joint-Pole Users and other Attaching Entities to adjust their facilities to accommodate Licensee's Attachments within thirty (30) days of CITY's request. Where such work is paid in advance by Licensee, CITY shall reimburse the Joint-Pole User or other Attaching Entities. In the event after CITY's commercially reasonable efforts, the Joint-Pole User or other Attaching Entity fails to accommodate CITY's request on behalf of Licensee, CITY shall perform Make-Ready Work to accommodate Licensee's request. In the event the Joint-Pole User or Attaching Entity accommodates CITY's request on behalf of Licensee, CITY shall reimburse the Joint-Pole User or other Attaching Entity. CITY shall not, however, perform Make-Ready Work on Joint-Pole User or third party Attaching Entity risers, splices, dead-ends, or fiber, and shall reimburse Licensee for any such Make-Ready Work charges paid to CITY.
- 7.2 Denial of Licensee's Attachments. In the event of a CITY denial of Licensee's proposed Attachment, CITY shall apply the denial in a nondiscriminatory manner where there is insufficient Capacity or for reasons of safety, reliability, aesthetics, and generally applicable engineering purposes.
- 7.3 Scheduling of Make-Ready Work. Make-Ready Work shall be completed in a timely manner and at a reasonable cost and as soon as practical after the date payment is received. In performing all Make-Ready Work to accommodate Licensee's Communications Facilities,

CITY will endeavor to include such work in its normal work schedule. Upon payment of estimated Make-Ready Work costs, the City will employ its commercially reasonable efforts to complete Make-ready Work within 45 days. Where the CITY reasonably determines that the requested or necessary Make-Ready Work will require more than 45 days to complete, CITY and Licensee shall work in good faith to negotiate other mutually satisfactory conditions and an adjusted timeframe to complete the Make-Ready Work. In the event Licensee requests that the Make-Ready Work be performed on a priority basis or outside of CITY's normal work hours, Licensee agrees to pay any resulting increased costs, plus any additional administration costs that result from such request. Nothing herein shall be construed to give precedence to Licensee's work over the scheduled work or CITY service restoration.

- 7.4 Who May Perform Make-Ready Work. Make-Ready Work shall be performed only by CITY and/or a contractor authorized by CITY to perform such work. If CITY cannot perform the Make-Ready Work to accommodate Licensee's schedule requirements, and after Licensee's payment of estimated Make-Ready Work costs, Licensee may seek permission from CITY for Licensee to employ an authorized, qualified contractor to perform such work.
- 7.5 Licensee's Installation/Removal/Maintenance Work.
 - 7.5.1 All of Licensee's installation, removal and maintenance work, pertaining to or otherwise impacting its Attachments or any Poles, shall be performed at Licensee's sole cost and expense, in a good and workmanlike manner, and must not adversely affect the structural integrity of CITY's Poles, or other CITY Facilities or any Joint-Use Pole, or CITY's or Other Licensees' facilities or equipment attached thereto. All such work is subject to the insurance requirements of Article 18.
 - 7.5.2 All of Licensee's installation, removal and maintenance work performed on CITY's Poles in the vicinity of other CITY Facilities, either by its employees or contractors, shall be in compliance with all Applicable Standards specified in Article 4. Licensee shall assure that any person installing, maintaining, or removing Licensee's Facilities is fully qualified and familiar with all Applicable Standards, the provisions of Article 17, and the Design Specifications contained in Appendix D and Appendix E.

8. TRANSFERS

- 8.1 Required Transfers of Licensee's Communications Facilities. If CITY or a Joint-Pole User that is currently reserving space occupied by Licensee's Attachments, reasonably determines that a transfer of Licensee's Facilities is necessary, Licensee agrees to perform such transfer at its own expense, unless the transfer is requested by another Attaching Entity. If Licensee fails to transfer on the date specified after receiving written notice from CITY that the pole is ready for Licensee to perform such transfer (including, without limitation, notice by means of the National Joint Utilities Notification System ("NJUNS")), Licensee shall be responsible for the costs incurred by CITY for the return trip to the job site to remove the old Pole. Further, unless such time is extended, if Licensee fails to transfer its Facilities within sixty (60) calendar days after receiving such written notice from CITY, CITY shall have the right to transfer Licensee's Facilities using its personnel and/or contractors at Licensee's expense plus the charge specified in Appendix I. CITY shall not be liable for damage to Licensee's Facilities, except as provided in Article 16. Unless such time is

extended, if Licensee fails to transfer its Facilities within sixty (60) calendar days after receiving such written notice from City, then the Licensee shall pay to CITY the sum of one dollar (\$1.00) per day, for each Pole from which the Licensee has failed to transfer its Facilities, until such time as the Licensee completes the requested transfer of its Facilities. Licensee may request additional time to complete the transfer in unusual cases and such request will not be unreasonably denied. The sixty (60) day timeframe provided in this Section 8.1 for Licensee to take action with respect to its Facilities as requested by CITY, shall be extended as may be reasonably necessary in the event that delay in such action is attributable to a third party, including other Attaching Entities or Joint-Pole Users. The written advance notification requirement of this Section shall not apply to emergency situations, in which case CITY shall provide such advance notice as is practical given the urgency of the particular situation. CITY then shall provide written notice of any such actions taken within ten (10) days of the occurrence. Irrespective of who owns them, Licensee is responsible for the transfer of facilities that are Overlashed onto Licensee's Attachments.

- 8.2 Billing for Transfers Performed by CITY. If CITY performs the transfer(s), CITY will bill Licensee for costs per Article 3, Section 3.9. Licensee shall reimburse CITY within forty-five (45) calendar days of the receipt of the invoice.

9. POLE MODIFICATIONS AND/OR REPLACEMENTS

- 9.1 Licensee's Action Requiring Modification/Replacement. In the event that any Pole to which Licensee desires to make Attachment(s) is unable to support or accommodate additional facilities in accordance with all Applicable Standards, including flood zone requirements, CITY will notify Licensee of its approval or denial of such proposed Attachment and if approved, the necessary Make-Ready Work, and associated costs, to provide an adequate Pole, including, but not limited to, replacement of the Pole and rearrangement or transfer of CITY's Facilities. Whenever CITY provides Make-Ready Work estimates for Licensee, CITY will attempt to incorporate the rearrangement costs of Joint-Pole Users and other Attaching Entities, where such costs are known, and will require advance payment from Licensee for those costs. In no event shall Licensee be responsible for any Make-Ready Work charges necessary to correct pre-existing non-compliant conditions that Licensee did not cause. As a part of the Make-Ready Work process, CITY will request Joint-Pole Users and other Attaching Entities to adjust their facilities to accommodate Licensee's Attachments within 30 days of CITY's request. Where such work is paid in advance by Licensee, CITY shall reimburse the Joint-Pole User or other Attaching Entities. In the event that after CITY's commercially reasonable efforts, the Joint-Pole User or other Attaching Entity fails to accommodate CITY's request on behalf of Licensee, CITY shall perform Make-Ready Work to accommodate Licensee's request. In the event the Joint-Pole User or Attaching Entity accommodates CITY's request on behalf of Licensee, CITY shall reimburse the Joint-Pole User or other Attaching Entity. CITY shall not, however, perform Make-Ready Work on Joint-Pole User or third party Attaching Entity risers, splices, dead-ends, or fiber, and shall reimburse Licensee for any such Make-Ready Work charges paid to CITY. In the event of a CITY denial of Licensee's proposed Attachment, CITY shall apply the denial in a nondiscriminatory manner where there is insufficient Capacity or for reasons of safety, reliability, and generally applicable engineering purposes.

- 9.1.1 **REPLACEMENT OF EXISTING LICENSEE ATTACHED POLES.** Where an existing Licensee attached Pole is replaced for reasons other than maintenance by a new one, the cost shall be divided as specified below. The replaced Pole shall be removed and retained by the City.
- 9.1.2 A Pole satisfactory for the CITY's needs which can also accommodate the facilities of the Licensee shall be erected at the sole expense of the CITY. If without giving such advance notice, the Licensee places one or more Attachments on a Pole and thereby creates a violation of the Applicable Standards, or otherwise renders the Pole unsuitable for joint use, or interferes with or causes violations of the Applicable Standards, for the other attachers to the Pole, then the Licensee must pay the full cost of removing and replacing the Pole with a Pole of sufficient size to remedy the violation or render the Pole suitable for joint use, plus the cost of all transfers and other work incident thereto.
- 9.1.3 A Pole larger than the existing Pole, which is installed to replace an existing Pole, the extra height or strength of which is due wholly to the CITY's requirements and requirements as to keeping the CITY's wires clear of trees shall be erected at the sole expense of the CITY. The CITY shall bear the full expense of replacing or transferring all the CITY's Attachments and the Licensee shall bear the full expense of replacing or transferring all the Licensee's Attachments.
- 9.1.4 In the case of a Pole larger than the existing Pole, the extra height or strength of which is due wholly to the Licensee's requirements including Licensee's requirements as to keeping the Licensee's wires clear of trees, the Licensee shall pay to the CITY the Make-Ready Work cost of the new Pole.
- 9.1.5 Except as to existing contracts, in the case of a Pole larger than the existing Pole, which is installed to replace an existing Pole, the extra height or strength of which is due to the requirements of both Parties for additional space or the requirements for proper ground clearance or of public authorities or of property owners (other than requirements with regard to keeping the wires of one Party only clear of trees), the difference between the cost in place of such Pole and the cost in place of the existing Pole shall be shared equally by the Licensee and the CITY, the rest of the cost of erecting such Pole to be borne by the CITY. The CITY and Licensee shall replace or transfer all Attachments at their own expense.
- 9.1.6 For purposes of this Article, any Pole on which the Licensee has placed or places an Attachment shall be deemed satisfactory to the Licensee whether or not the terms of this Agreement have been satisfied.
- 9.1.7 **RESPONSIBILITY FOR OWN ATTACHMENTS.** Each Party shall place, maintain, rearrange, transfer and remove its own Attachments at its own expense except as otherwise expressly provided herein.
- 9.2 Treatment of Multiple Requests for Same Pole. If CITY receives Permit applications for the same Pole from two or more prospective licensees within sixty (60) calendar days of the initial request, and accommodating their respective requests would require modification or replacement of the Pole, CITY will allocate among such licensees the applicable costs associated with such modification or replacement. Such allocation applies only to those

Attachments involving cable/wire and not risers and/or other equipment.

- 9.3 Guying. The use of guying to accommodate Licensee's Attachments shall be provided by and at the expense of Licensee and to the satisfaction of CITY as specified in appropriate Appendices. On a going-forward basis, Licensee shall not attach its guy wires to CITY's anchors without prior written permission of CITY. If permission is granted, Make-Ready Work costs may apply. All appropriate anchors and guys shall be installed and appropriately tensioned by Licensee prior to placing cables and tensioning support messengers.
- 9.4 Allocation of Costs. The costs for any rearrangement or transfer of Licensee's Communications Facilities or the replacement of a Pole, including any related costs for tree-cutting or trimming required to clear the new location of CITY's cables or wires, shall be allocated to CITY and/or Licensee and/or other Attaching Entity, including Joint-Pole Users, on the following basis:
- 9.4.1 If CITY intends to modify or replace a Pole solely for its own requirements and not for aesthetic purposes under Section 9.6, it shall be responsible for the costs related to the modification/replacement of the Pole except as provided for in Section 2.4 – Reserved Capacity and Appendix L. Licensee shall be responsible for the rearrangement or transfer of Licensee's Communications Facilities within the timeframe specified by CITY except when the rearrangement or transfer of Licensee's Communications Facilities is required for a CITY competitive service other than energy related services as described in Section 2.4. Prior to making any such modification or replacement, CITY shall provide Licensee written notification of its intent to allow Licensee a reasonable opportunity to elect to modify or add to its existing Attachment. Should Licensee so elect, it must seek CITY's written permission per this Agreement. The notification requirement of this subsection 9.4.1 shall not apply to routine maintenance or emergency situations. If Licensee elects to add to or modify its Communications Facilities, Licensee shall bear the total incremental costs incurred by CITY in making the space on the Poles accessible to Licensee.
- 9.4.2 If the modification or the replacement of a Pole is the result of an additional Attachment or the modification of an existing Attachment sought by an Attaching Entity, the Attaching Entity requesting the additional or modified Attachment shall bear the entire cost of the modification or Pole replacement, as well as the costs for rearranging or transferring Licensee's Communications Facilities. This provision will not apply to modifications or replacements at the request of: a) CITY, except when the rearrangement or transfer of Licensee's Communications Facilities is required for a CITY competitive service other than energy related services as described in Section 2.4 or, b) an existing Joint-Pole User that is currently reserving space occupied by Licensee's Attachments. Licensee shall cooperate with such third party Attaching Entity to determine the costs of moving Licensee's Facilities.
- 9.5 CITY Not Required to Relocate. No provision of this Agreement shall be construed to require CITY to relocate its Attachments or modify/replace its Poles for the benefit of Licensee, provided, however, that any denial by CITY for modification of the Pole is applied in a nondiscriminatory manner.

- 9.6 Aesthetics. Consistent with the franchise agreement, Licensee will be required to bear all expenses associated with the relocation, re-routing, abandonment or upgrading of Licensee's Facilities required by a decision of CITY or any other governmental body having jurisdiction over the matter to beautify and/or improve the aesthetics of a given location in which CITY Poles may be located.

10. ABANDONMENT OR REMOVAL OF CITY FACILITIES

- 10.1 Notice of Abandonment or Removal of CITY Facilities. If CITY desires at any time to abandon, remove or relocate underground any CITY Facilities to which Licensee's Communications Facilities are attached, it shall give Licensee notice in writing (including, without limitation, by means of NJUNS) to that effect at least sixty (60) calendar days prior to the date on which it intends to abandon, remove, or relocate such CITY Facilities. Notice may be limited to thirty (30) calendar days if CITY is required to remove or abandon its CITY Facilities as the result of the action of a third party and the greater notice period is not practical. Such notice shall indicate whether CITY is offering Licensee an option to purchase the Pole(s). If, following the expiration of the applicable notice period, unless such notice period has been extended, Licensee has not yet removed and/or transferred all of its Communications Facilities and has not entered into an agreement to purchase CITY Facilities pursuant to Section 10.2 of this Article, CITY shall have the right, subject to any applicable laws and regulations, to have Licensee's Communications Facilities removed and/or transferred from the Pole at Licensee's expense, and subject Licensee to the provisions of Appendix I. CITY shall give Licensee prior written notice of any such removal or transfer of Licensee's Facilities. Further, if, following the expiration of the applicable notice period, unless such notice period has been extended, Licensee has not yet removed and/or transferred all of its Communications Facilities and has not entered into an agreement to purchase CITY Facilities pursuant to Section 10.2 of this Article, then Licensee shall pay to CITY the sum of one dollar (\$1.00) per day, for each Pole (comprising the subject CITY Facilities) from which Licensee has failed to remove and/or transfer all of its Communications Facilities, until such time as Licensee completes the requested removal and/or transfer of its Communications Facilities. Licensee may request an extension of the applicable notice period in unusual cases and such request will not be unreasonably denied. The applicable notice period provided in this Section 10.1 for Licensee to take action with respect to its Facilities, as requested by CITY, shall be extended as may be reasonably necessary in the event that delay in such action is attributable to a third party, including other Attaching Entities or Joint-Pole Users.
- 10.2 Option to Purchase Abandoned Poles. Should CITY desire to abandon any Pole, CITY, in its sole discretion, may grant Licensee the option of purchasing such Pole at a rate negotiated with CITY. Licensee must notify CITY in writing within thirty (30) calendar days of the date of CITY's notice of abandonment that Licensee desires to purchase the abandoned Pole. Thereafter, Licensee must also secure and deliver proof of all necessary governmental approvals and easements allowing Licensee to independently own and access the Pole within forty-five (45) calendar days. Should Licensee fail to secure the necessary governmental approvals, or should CITY and Licensee fail to enter into an agreement for Licensee to purchase the Pole prior to the end of the forty-five (45) calendar days, Licensee must remove its Attachments as required under Section 10.1 of this Article 10. CITY is under no

obligation to sell Licensee Poles that it intends to remove or abandon. Licensee shall save harmless CITY from all obligation, liability, damages, cost, expenses or charges incurred thereafter, and not arising out of anything theretofore occurring because of or arising out of the presence or condition of such Pole or of any Attachments thereon; and shall pay CITY the then negotiated price of the Pole.

- 10.3 Underground Relocation. If CITY moves its aerial system underground, Licensee shall relocate Licensee's Communications Facilities within sixty (60) calendar days of receipt of notice from CITY or find other means to accommodate Licensee's Facilities. Failure of Licensee to remove Licensee's aerial Facilities upon CITY's conversion to underground may subject, in CITY's sole discretion, Licensee to the Underground Relocation Charge provisions of Appendix I. If Licensee fails to remove Licensee's Facilities within ninety (90) calendar days of receipt of written notice, CITY shall have the right to remove Licensee's Facilities at Licensee's expense without prior approval of Licensee and without liability to CITY, unless agreed upon otherwise by CITY.

11. REMOVAL OF LICENSEE'S FACILITIES

Removal on Expiration/Termination. At the expiration or other termination of this Pole Attachment License Agreement or any individual Permit(s), unless the parties are in the process of negotiating a new Pole Attachment License Agreement in good faith, Licensee shall remove its Communications Facilities from the affected Poles at its own expense. If Licensee fails to remove such Licensee Facilities within one-hundred eighty (180) calendar days of expiration or termination or some greater period as allowed by CITY, CITY shall have the right to have such Licensee Facilities removed without liability, except as provided in Section 16.

12. TERMINATION OF PERMIT

- 12.1 Automatic Termination of Permit. Any Permit issued pursuant to this Agreement shall automatically terminate when Licensee ceases to have local franchise, other government authority or private property owner permission to construct and operate its Communications Facilities on public or private property, including federal property, at the location of the particular Pole(s) covered by the Permit. Notwithstanding the foregoing, to the extent Licensee is pursuing a challenge of the revocation of any such authority or permission, Licensee shall not be obligated to remove its Attachments and may remain on the particular Pole(s) until such time as all appeals and remedies are exhausted, provided Licensee agrees to indemnify CITY for any actual damages resulting from such revocation of authority or permission.
- 12.2 Surrender of Permit. Licensee may at any time surrender any Permit for Attachment and remove its Communications Facilities from the affected Pole(s). All such work is subject to the insurance requirements of Article 18. Licensee shall notify CITY following such removal with a list of vacated Poles so that CITY can update its billing records. No refund of any fees or costs will be made upon removal. If Licensee surrenders such Permit pursuant to the provisions of this Article, but fails to remove its Attachments from CITY's Facilities within sixty (60) calendar days thereafter, CITY shall have the right to remove Licensee's Attachments at Licensee's expense.

13. INVENTORY AND INSPECTION OF LICENSEE'S FACILITIES

- 13.1 Inspections. After the Effective Date of this Agreement, CITY may perform a safety and/or compliance inspection not more often than once every three years, except where CITY determines, in its reasonable discretion, that systemic or other exceptionally hazardous safety considerations (examples of exceptionally hazardous safety considerations include compromised pole structural integrity and inadequate clearances over roadways) justify the need for an immediate inspection. If such an inspection demonstrates the existence of material Licensee-caused violations, hazards, or conditions concerning Licensee's Attachments to CITY's facilities on more than 5% of the Poles included in a preliminary inspection conducted by CITY, and Licensee was provided sufficient notice to participate throughout, as required by Section 13.3, and such inspection included at least the minimum number of Poles set forth in this subsection, Licensee shall, upon notice by CITY, provide a representative to accompany a CITY representative on a complete inspection of all of Licensee's Facilities attached to CITY's Poles. Licensee's failure to provide a representative shall not delay or nullify the findings of such inspection. The minimum number of Poles to be included in a preliminary inspection, as described in this subsection, shall be 10% of the number of CITY Poles having Licensee's Attachments thereon. If any Attachments inspected are in violation of Article 4, Licensee shall correct all Attachments that it caused to be in non-compliance with Applicable Standards or CITY-approved modifications in accordance with Section 4. If such an inspection demonstrates the existence of violations, hazards or conditions caused by CITY to CITY facilities, CITY shall correct such facilities that it caused to be in non-compliance with Applicable Standards at its own cost. The actual and reasonable costs of any safety and/or compliance inspection shall be pro-rated between CITY and Licensee based on the number of violations found on each Party's facilities. For example, if 90% of all violations were found on Licensee's Facilities, then Licensee would be responsible for 90% of such inspection costs and CITY would be responsible for 10% of such inspection costs. Any revisions to the Applicable Standards shall not be retroactive to existing Attachments, unless required by City, county, state or federal law. However, Licensee shall comply with any new Applicable Standards when Licensee next works on any Licensee Facility which is not in compliance.
- 13.2 Inventory Audit. At intervals of not less than five (5) years and not more often than every three (3) years, CITY may conduct an audit of Licensee's Attachments at Licensee's expense to verify the number of Licensee's Attachments. If CITY's audit is for the purpose of gathering information on multiple licensees, CITY shall apportion the costs and expenses of the audit among all licensees as provided for in their respective agreements. If it is found that Licensee has made an Attachment without a Permit in accordance with Article 6 of this Agreement or Attachments that are being utilized to provide a service beyond which they were Permitted for, Licensee shall pay an Unauthorized Attachment Charge as specified in Appendix I, in addition to applicable Permit charges and Make-Ready Work charges, if any.
- 13.3 Notice. Except for an In-Progress Inspection or a Post-Construction Inspection, CITY will give Licensee one hundred twenty days (120) days advance written notice of such inspections so that Licensee has an opportunity to participate, except in those instances where safety considerations justify the need for such inspection without the delay of waiting until written notice has been received. Before any inspections are performed, CITY shall

notify Licensee and define the scope of the work desired and determine the estimated cost impact upon Licensee.

- 13.4 No Liability. The making of any inspections under this Article 13, or the failure to do so, shall not operate to impose upon CITY any liability of any kind whatsoever or relieve Licensee of any responsibility, obligations or liability, whether assumed under this Agreement or otherwise existing.

- 13.5 Attachment Records. Notwithstanding the above inspection provisions, on an annual basis no later than December 31st of each year, CITY shall request and Licensee shall provide to CITY an up-to-date strand map depicting the locations of its Attachments in an electronic format specified by CITY. Failure to provide the above information by the due date will result in an automatic and immediate suspension of any and all placement of new or additional Attachments by Licensee to CITY facilities until such time as the information is received by the CITY.

14. UNAUTHORIZED OCCUPANCY OR ACCESS

- 14.1 Unauthorized Attachments. If any of Licensee's Attachments are found occupying any Pole for which no Permit has been issued, or any Attachments are found being utilized to provide a service beyond which they were Permitted for, CITY, without prejudice to its other rights or remedies under this Agreement, will send Licensee a written notice, including the Pole number, when posted, and location, of the Unauthorized Attachment(s). If Licensee wishes to dispute CITY's finding of an Unauthorized Attachment, Licensee shall submit evidence or argument of its position to CITY within thirty (30) calendar days after receipt of CITY's notice, and CITY shall determine whether the Attachment in question is an Unauthorized Attachment within 30 days after receipt of Licensee's evidence or argument. Factual disputes shall be resolved pursuant to Article 25. If Licensee does not dispute CITY's finding of an Unauthorized Attachment, Licensee must submit an Application To Attach, the correct Application Fee, and the Unauthorized Attachment Charge (described below) to CITY within thirty (30) calendar days after the date CITY sends Licensee the written notice of the Unauthorized Attachment(s). If such Attachment Fee, Unauthorized Attachment Charge, and associated completed Application To Attach is not received by CITY within thirty (30) calendar days of the date the notice was sent, Licensee must remove Licensee's Facilities which constitute the Unauthorized Attachment(s) within sixty (60) calendar days from the date CITY sent Licensee the written notice of the Unauthorized Attachment(s). If Licensee does not remove Licensee's Facilities, CITY may remove Licensee's Facilities without liability, and Licensee will promptly reimburse CITY for the removal expense.

- 14.2 Unauthorized Attachment Charge. CITY, without prejudice to its other rights or remedies under this Agreement, may assess an Unauthorized Attachment Charge as specified in Appendix I. Unauthorized Attachments will be assumed to have been installed by Licensee on the next day following the last inventory conducted by CITY as described in Section 13 or 5 years prior to the date the Attachment is discovered, whichever is shorter. The Unauthorized Attachment Charge is due and payable irrespective of whether a Permit is subsequently issued to Licensee for the Attachment(s).

- 14.3 No Ratification of Unlicensed Use. No act or failure to act by CITY with regard to any unlicensed use by Licensee of a CITY Pole shall be deemed as ratification of the unlicensed use, and if any Permit should be subsequently issued, such Permit shall not operate retroactively or constitute a waiver by CITY of any of its rights or privileges under this Agreement or otherwise; provided, however, that Licensee shall be subject to all liabilities, obligations and responsibilities of this Agreement in regards to said unauthorized use from its inception.
- 14.4 Excessive Unauthorized Attachments. If Licensee is determined by CITY to have made Unauthorized Attachments at more than thirty (30) separate, non-contiguous locations during any 12 month period of this Agreement, Licensee shall be considered to be in breach of this Agreement and CITY will have the right to terminate this Agreement and require removal of all of Licensee's Facilities in accordance with Article 11 of this Agreement. This provision applies only to Unauthorized Attachments made after the Effective Date of this Agreement. Any Unauthorized Attachments made prior to the Effective Date of this Agreement shall not be considered in determining whether Licensee has excessive Unauthorized Attachments under this provision.

15. FORCE MAJEURE EVENT

If either Party becomes unable, either wholly or in part, by a Force Majeure Event, to fulfill its obligations under this Agreement, the obligations affected by the Force Majeure Event will be suspended only during the continuance of that inability. The Party so affected will give written notice of the existence, extent and nature of the Force Majeure Event to the other Party within forty-eight (48) hours after the occurrence of the event. The Party so affected will remedy its inability as soon as possible. Failure to give notice will result in the continuance of the affected Party's obligation regardless of the extent of any existing Force Majeure Event.

16. INDEMNIFICATION

- 16.1 Disclaimer of Liability: CITY shall not at any time be required to pay from its own funds for injury or damage occurring to any person or property from any cause whatsoever arising out of Licensee's construction, reconstruction, maintenance, repair, use, operation, condition or dismantling of Licensee's cable system or Licensee's provision of service.
- 16.2 Indemnification: Licensee shall, at its sole cost and expense, indemnify, defend and hold harmless CITY and all associated, affiliated, allied and subsidiary entities of CITY, now existing or hereinafter created, and their respective officers, boards, commissions, councils, employees, agents, attorneys, and contractors (CITY and such other persons and entities being collectively referred to herein as "Indemnitees"), from and against:
- 16.2.1 Any and all liabilities, obligations, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or be asserted against the Indemnitees by reason of any act or omission of Licensee, its personnel, employees, agents, contractors, subcontractors or Affiliates, resulting in economic harm, personal injury, bodily injury, sickness, disease or death to any

person or damage to, loss of or destruction of tangible or intangible property, libel, slander, invasion of privacy and unauthorized use of any trademark, trade name, copyright, patent, service mark or any other right of any person, firm or corporation, which may arise out of or be in any way connected with the construction, reconstruction, installation, operation, maintenance or condition of Licensee's Facilities or other property of Licensee or its Affiliates and any other facilities authorized by or Permitted under this Agreement (including those arising from any matter contained in or resulting from the transmission of programming over the Communications Facilities), but excluding any programming provided by the Indemnites' Communications Services or other services authorized by or Permitted under this Agreement, the release of hazardous substances, or, the failure to comply with any federal, state or local statute, law, code, ordinance or regulation [please confirm that the highlighted exclusions from Cox's indemnity obligations are acceptable to the City]

- 16.2.2 Any and all liabilities, obligations, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and other consultants), which are imposed upon, incurred by or asserted against the Indemnites by reason of any claim or lien arising out of work, labor, materials or supplies provided or supplied to Licensee, its contractors or subcontractors, for the installation, construction, reconstruction, operation or maintenance of Licensee's Facilities (and any other facilities authorized by or Permitted under this Agreement, or provision of Communications Services or other services authorized by or Permitted under this Agreement), and, upon the written request of CITY, Licensee shall cause such claim or lien covering CITY's property to be discharged or bonded within thirty (30) days following such request.
- 16.2.3 Any and all liabilities, obligations, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or be asserted against the Indemnites by reason of any financing or securities offering by Licensee or its Affiliates for violations of the common law or any laws, statutes, or regulations of the State of Arkansas or the United States, including those of the Federal Securities and Exchange Commission, whether by Licensee or otherwise.
- 16.2.4 Licensee's obligation to indemnify Indemnites under this Agreement shall not extend to claims, losses, and other matters covered hereunder that are caused or contributed to by the gross negligence or willful misconduct of one or more Indemnites. In such case the obligation to indemnify shall be reduced in proportion to the gross negligence or willful misconduct of the Indemnites. By entering into this Agreement, CITY does not consent to suit, waive its governmental immunity or the limitations as to damages contained in federal, state, or local laws.
- 16.3 Assumption of Risk: Licensee undertakes and assumes for its officers, agents, contractors and subcontractors and employees (collectively "Licensee" for the purpose of this Section), all risk of dangerous conditions, if any, on or about any CITY-owned or controlled property, the streets and public ways, and Licensee hereby agrees to indemnify and hold harmless the

Indemnites against and from any claim asserted or liability imposed upon the Indemnites for personal injury or property damage to any person (other than from Indemnites' gross negligence) arising out of Licensee's installation, operation, maintenance or condition of the Communications Facilities or other facilities or Licensee's failure to comply with any federal, state or local statute, law, code, ordinance or regulation.

- 16.4 Defense of Indemnites: In the event any action or proceeding shall be brought against the Indemnites by reason of any matter for which the Indemnites are indemnified hereunder, Licensee shall, upon notice from any of the Indemnites, at Licensee's sole cost and expense, resist and defend the same with legal counsel selected by Licensee and consented to by CITY, such consent not to be unreasonably withheld; provided, however, that Licensee shall not admit liability in any such matter on behalf of the Indemnites without their written consent and provided further that Indemnites shall not admit liability for, nor enter into any compromise or settlement of, any claim for which they are indemnified hereunder, without the prior written consent of Licensee.
- 16.5 Notice, Cooperation and Expenses: The Indemnites shall give Licensee prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this Section 16. Nothing herein shall be deemed to prevent the Indemnites at their own expense from cooperating with Licensee and participating in the defense of any litigation by their own counsel.

17. DUTIES, RESPONSIBILITIES, AND EXCULPATION

- 17.1 Duty to Inspect. Licensee acknowledges and agrees that CITY does not warrant the condition or safety of CITY Facilities or the premises surrounding the CITY Facilities, and Licensee further acknowledges and agrees that it has an obligation to inspect CITY's Poles, and/or premises surrounding the Poles prior to commencing any work on CITY's Poles or entering the premises surrounding the Poles.
- 17.2 Knowledge of Work Conditions. By executing this Agreement, Licensee warrants that it has acquainted, or will fully acquaint, itself and its employees and/or contractors and agents with the conditions relating to the work that Licensee will undertake under this Agreement and that it fully understands or will acquaint itself with the facilities, difficulties, and restrictions attending the execution of such work.
- 17.3 Duty of Competent Supervision and Performance. The Parties further understand and agree that in the performance of work under this Agreement, Licensee and its agents, servants, employees, contractors and subcontractors will work near electrically energized lines, transformers, or other CITY Facilities, and it is the intention that energy therein will not be interrupted during the continuance of this Agreement, except in an emergency endangering life, or potentially causing grave personal injury or significant property damage. Licensee shall ensure that its employees, servants, agents, contractors and subcontractors have the necessary qualifications, skill, knowledge, training, and experience to protect themselves, their fellow employees, employees of CITY, and the general public from harm or injury while performing work permitted pursuant to this Agreement. In addition, Licensee shall comply with all requirements of federal, state, and local laws, and shall furnish its employees, servants, agents, contractors and subcontractors with competent supervision and sufficient and adequate tools and equipment for their work to be performed in a safe manner.

Licensee agrees that in emergency situations in which it may be necessary to de-energize any part of CITY's equipment, Licensee shall ensure that work is suspended until the equipment has been de-energized and that no such work is conducted unless and until the equipment is made safe.

- 17.4 Requests to De-energize. In the event CITY de-energizes any equipment or line at Licensee's written request and for its benefit and convenience in performing a particular segment of any work, Licensee shall reimburse CITY in full for all costs and expenses incurred in accordance with Article 3, Section 3.9, in order to comply with Licensee's request. Before CITY de-energizes any equipment or line, it shall provide, upon request, all costs and expenses to be incurred in accommodating Licensee's request.
- 17.5 Interruption of Service. In the event that Licensee causes an interruption of service by damaging or interfering with any equipment of CITY, Licensee, at its expense, shall immediately do all things reasonable to avoid injury or damages, direct and incidental, resulting from and shall notify CITY immediately.
- 17.6 Duty to Inform. Licensee further warrants that it understands the imminent dangers, INCLUDING SERIOUS BODILY INJURY OR DEATH FROM ELECTROCUTION, inherent in the work necessary to make installations on CITY's Poles by Licensee's employees, servants, agents, contractors or subcontractors, and Licensee accepts as its duty and sole responsibility to notify, inform, and keep informed Licensee's employees, servants, agents, contractors or subcontractors of such dangers, and to keep them informed regarding same.

18. INSURANCE

- 18.1 Insurance: During the term of this Agreement, Licensee shall maintain, or cause to be maintained, in full force and effect and at its sole cost and expense, the following types and limits of insurance:
 - 18.1.1 Worker's compensation insurance meeting Arkansas statutory requirements and employer's liability insurance with minimum limits of One Million Dollars (\$1,000,000) for each accident, and any applicable Federal insurance (such as Jones Act) of a similar nature.
 - 18.1.2 Commercial general liability insurance with minimum limits of Two Million Dollars (\$2,000,000) as the combined single limit for each occurrence of bodily injury, personal injury and property damage. The policy shall include coverage for: products and completed operations liability; independent contractor's liability; and coverage for property damage from perils of explosion, collapse or damage to underground utilities, commonly known as XCU coverage.
 - 18.1.3 Automobile liability insurance covering all owned, hired, and non-owned vehicles in use by Licensee, its employees and agents, to comply with the provisions of Arkansas law with minimum limits of One Million Dollars (\$1,000,000) as the combined single limit for each occurrence for bodily injury and property damage.
 - 18.1.4 The coverage amounts set forth above may be met by a combination of underlying (primary) and umbrella policies so long as in combination the limits equal or exceed those stated.

- 18.1.5 All policies of insurance shall contain a waiver of subrogation clause consistent, however, with Section 16.2.4.
- 18.1.6 Notwithstanding the above, if Licensee is authorized to operate as a self-insured entity under the laws of the State of Arkansas, Licensee may provide self-insurance to meet the requirements of this Section 18.1 upon terms and conditions satisfactory to CITY.
- 18.2 Named Insureds: All policies, except for worker's compensation policies, shall name CITY and all associated, affiliated, allied and subsidiary entities of CITY, now existing or hereafter created, and their respective officers, boards, commissions, councils, employees, agents, attorneys and contractors, as their respective interests may appear, as additional insureds (CITY and such other persons and entities being collectively referred to herein as the "Additional Insureds") and shall include cross-liability coverage.
- 18.3 Evidence of Insurance: A certificate of insurance evidencing the preceding coverages shall be provided upon execution of this Agreement. Certificates of insurance for each insurance policy required to be obtained by Licensee in compliance with this Section, along with written evidence of payment of required premiums, shall be filed and maintained with CITY annually during the term Agreement. Licensee shall immediately advise the Additional Insureds of any claim or litigation that may result in liability to them.
- 18.4 Cancellation of Policies of Insurance: All insurance policies maintained pursuant to this Agreement shall contain an endorsement in the form set forth on Appendix J, or such subsequent form mutually agreed to between the Parties, requiring prior written notice to be given to CITY by the insurer of any intention to cancel or not renew such policy.
- 18.5 Insurance Companies: (a) All insurance shall be effected under valid and enforceable policies, insured by insurers licensed to do business by the State of Arkansas or surplus line carriers on the State of Arkansas Insurance Commissioner's approved list of companies qualified to do business in the State of Arkansas. (b) All insurance carriers and surplus line carriers shall be rated A- or better by A.M. Best Company. Should the rating of an insurance carrier fall below that set forth in the preceding sentence then Licensee shall either immediately obtain policies from carriers complying with the preceding rating or the CITY may obtain at Licensee's expense policies from carriers meeting the preceding rating requirement.
- 18.6 Contractors: Licensee shall either (a) require that each and every one of its contractors and their subcontractors carry, in full force and effect, workers' compensation, commercial general liability, and automobile liability insurance which complies with all terms of this Section 18, or (b) Licensee may provide such coverages for any or all its contractors or subcontractors (such as by adding them to Licensee's policies).
- 18.7 Insurance Primary: As between CITY and/or Additional Insureds on the one hand, and Licensee on the other hand, if more than one policy of insurance does or may apply to a given claim or matter, then the policy maintained by Licensee pursuant to this Agreement shall be deemed the primary policy, and that policy shall contain a provision that states that it is the primary policy as opposed to any other policy of insurance that may apply to the CITY/Additional Insureds on any given claim or matter. The term "policy of insurance" as applied to the Additional Insureds shall include any self-insurance program, self-insured

retention or deductible, or risk pooling program or an indemnification, defense, or other similar program purchased or maintained by CITY/Additional Insureds.

- 18.8 Review of Limits: Once every year after 2017 during the term of this Agreement, CITY may review the insurance coverages to be carried by Licensee. If CITY determines that higher limits of coverage are necessary to protect the health, safety or welfare of the public or the interests of CITY or the Additional Insureds, Licensee shall be so notified and shall obtain the additional limits of insurance, at its sole cost and expense. However, such higher limits of coverage shall not be more than twice the limits set forth above.

19. AUTHORIZATION NOT EXCLUSIVE

CITY shall have the right to grant, renew and extend rights and privileges to others not party to this Agreement, including Joint-Use Pole owners, by contract or otherwise, to use CITY Facilities covered by this Agreement. Such rights shall not interfere with the rights granted to Licensee by the specific Permits issued pursuant to this Agreement.

20. ASSIGNMENT

- 20.1 Limitations on Assignment. Licensee shall not assign its rights or obligations under this Agreement, nor any part of such rights or obligations, without the prior written consent of CITY, which consent shall not be unreasonably withheld, conditioned, or delayed. As a condition of an assignment the proposed assignee shall execute a written acknowledgment that it has read, understood, and intends to abide by this Agreement, and that the assignee assumes all obligations and liabilities imposed by this Agreement on the former Licensee. Further, CITY and Licensee acknowledge and agree that, as a condition to consenting to any such assignment, CITY may, in its sole discretion, require that the proposed assignee provide a performance bond in compliance with Section 28, even if CITY may have previously suspended or conditioned Licensee's obligation to provide or maintain such a performance bond. Notwithstanding the foregoing, Licensee may, upon reasonable notice to CITY, assign its rights or obligations under this Agreement to another entity that is wholly owned by Licensee's parent company without the prior written consent of CITY.
- 20.2 Sub-licensing. On a going forward basis, without CITY's prior written consent, Licensee shall not sub-license to a third party, including, but not limited to, allowing third parties to place Attachments on CITY's Facilities, including Overlashing, or to place Attachments for the benefit of such third parties on CITY's Poles. Any such action shall constitute a material breach of this Agreement. The use of Licensee's Facilities by third parties (including, but not limited to, leases of dark fiber) that involves no additional Attachment or Overlashing is not subject to the provisions of this Article 20, Section 20.2.

21. FAILURE TO ENFORCE

Failure of CITY or Licensee to take action to enforce compliance with any of the terms or conditions of this Agreement, or to give notice or declare this Agreement or any authorization granted hereunder terminated, shall not constitute a waiver or relinquishment of any term or condition of this Agreement, but the same shall be and remain at all times in full force and effect until terminated, in accordance with this Agreement.

22. TERMINATION OF AGREEMENT

- 22.1 Notwithstanding CITY's rights under Article 12, CITY shall have the right, pursuant to the procedure set out in Article 22, Section 22.2, to terminate this entire Agreement, or any Permit issued hereunder, whenever Licensee is in default of any term or condition of this Agreement, including, but not limited to, the following circumstances:
- 22.1.1 Construction, operation or maintenance of Licensee's Communications Facilities in violation of law or in aid of any known unlawful act or undertaking; or
 - 22.1.2 Construction, operation or maintenance of Licensee's Communications Facilities after any authorization required of Licensee has lawfully been denied or revoked by any governmental or private authority, subject to Section 12.1.
 - 22.1.3 Construction, operation or maintenance of Licensee's Communications Facilities without the insurance coverage required under Article 18.
- 22.2 CITY will notify Licensee in writing within fifteen (15) calendar days, or as soon as reasonably practicable, of any condition(s) applicable to Section 22.1 above. Licensee shall take immediate corrective action to eliminate any such condition(s) within thirty (30) calendar days, or such longer period mutually agreed to by the parties, and shall confirm in writing to CITY that the cited condition(s) has (have) ceased or been corrected. If Licensee fails to discontinue or correct such condition(s), and/or fails to give the required confirmation, CITY may immediately terminate this Agreement or any Permit(s) upon thirty (30) days written notice to Licensee. In the event of termination of this Agreement or any of Licensee's rights, privileges or authorizations hereunder, CITY may seek removal of Licensee's Communications Facilities pursuant to the terms of Article 11, provided, that Licensee shall be liable for and pay all fees and charges to CITY pursuant to terms of this Agreement until Licensee's Communications Facilities are actually removed. Licensee will reimburse CITY all costs associated with removal of Licensee's Communications Facilities within thirty (30) days of invoicing.

23. TERM OF AGREEMENT

- 23.1 Term. This Agreement shall become effective upon its execution and if not terminated in accordance with other provisions of this Agreement, shall continue in effect for a term of five (5) years and renewing thereafter in one-year intervals unless terminated by either Party. Either Party may terminate this Agreement after the end of the initial five (5)-year term by giving to the other Party written notice of an intention to terminate the Agreement at least one-hundred-eighty (180) calendar days prior to the date of termination.
- 23.2 Survival of Obligations. Even after the termination of this Agreement, and subject to any applicable statute of limitations, the Parties' responsibility and indemnity obligations to each other shall continue with respect to any claims or demands related to this Agreement as provided for in Article 16.

24. AMENDING AGREEMENT

Notwithstanding other provisions of this Agreement, the terms and conditions of this Agreement shall not be amended, changed, or altered except in writing signed by authorized representatives of both Parties.

25. DISPUTE RESOLUTION

This Article shall govern any dispute resolution process between CITY and Licensee arising from or related to the subject matter of this Agreement that is not resolved by agreement between their respective personnel responsible for day-to-day administration and performance of this Agreement. Upon mutual agreement of the Parties, prior to the filing of any suit with respect to such a dispute, other than a suit seeking injunctive relief with respect to intellectual property rights, the Party believing itself aggrieved ("the Invoking Party") will call for progressive management involvement in the dispute negotiation by giving written notice to the other Party. Such a notice will be without prejudice to the Invoking Party's right to any other remedy permitted by this Agreement. CITY and Licensee will use their best efforts to arrange personal meetings and/or telephone conferences as needed, at mutually convenient times and places, between their negotiators at the following successive management levels, each of which will have a period of allotted time as specified below in which to attempt to resolve the dispute:

	<u>CITY</u>	Licensee	
First Level	<i>City Pole Attachment Representative</i>	<i>New Construction Supervisor</i>	5 days
Second Level	<i>Electric Distribution Manager</i>	<i>Construction Services Manager</i>	5 days
Third Level	<i>Director of Electric Utilities</i>	<i>Director of Systems Engineering</i>	15 days

The allotted time for the first-level negotiators will begin on the third day following delivery of the Invoking Party's notice. If a resolution is not achieved by the negotiators at any given management level at the end of their allotted time, then the allotted time for the negotiators at the next management level, if any, will begin on the next business day unless the Parties agreed otherwise. If a resolution is not achieved by negotiators at the final management level within their allotted time, then either Party may within ten (10) days thereafter request non-binding mediation to resolve the dispute. The mediation shall take place in a location mutually agreed to by the Parties. The allotted period for completion of the mediation shall be thirty (30) days. Based on mutual agreement, disputes may be submitted to binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association in effect at the time the matter is submitted to arbitration, with discovery to be conducted under the supervision of the arbitrator pursuant to the Arkansas Rules of Civil Procedure. Notwithstanding the foregoing, either Party may file an action in a court of competent jurisdiction within the State of Arkansas to resolve the dispute at any time unless otherwise agreed.

26. NOTICES

26.1 Notice.

- a) Wherever this Agreement requires notice to be given as to Sections 16, 18, 20, 22, 24, 25, 27, or 28 by either Party to the other, such notice shall be in writing and delivered to the other Party via certified mail, return receipt requested, or national overnight delivery

service with postage prepaid, and, except where specifically provided for elsewhere, properly addressed as follows:

If to CITY: City of Bentonville
 Attn: City Attorney
 117 West Central
 Bentonville, Arkansas 72712

If to Licensee: CoxCom, LLC d/b/a Cox Communications Arkansas
 Attn: Mr. Ed Fairchild
 Manager of Construction
 4901 S. 48th Street
 Springdale, AR 72762

(with copy to) Cox Communications, Inc.
 Attn: Chief Compliance Officer
 6205-B Peachtree Dunwoody Road
 Atlanta, GA 30328

b) Wherever this Agreement requires notice to be given as to any other section of this Agreement by either Party to the other, such notice shall be in writing and delivered to the other Party via certified mail, return receipt requested, or national overnight delivery service with postage prepaid, and, except where specifically provided for elsewhere, properly addressed as follows:

If to CITY: City of Bentonville
 Engineering Director
 117 West Central
 Bentonville, Arkansas 72712

If to Licensee: CoxCom, LLC d/b/a Cox Communications Arkansas
 Attn: Mr. Ed Fairchild
 Manager of Construction
 4901 S. 48th Street
 Springdale, AR 7

(with copy to) Cox Communications, Inc.
 Attn: Chief Compliance Officer
 6205-B Peachtree Dunwoody Road
 Atlanta, GA 30328

or to such other address as either Party, from time to time, may give the other Party in writing. Notices shall be deemed to have been delivered upon the actual, verifiable date of receipt or refusal of delivery thereof by the recipient Party.

- 26.2 Emergency Contact. Each Party shall maintain a staffed 24-hour emergency telephone number where a Party can contact the other Party to report damage to the other Party's Facilities or other situations requiring immediate communications between the Parties. Such contact person shall be qualified and able to respond to the other Party's concerns and requests. Failure to maintain an emergency contact shall subject the Licensee to a charge equal to the actual costs incurred by CITY per incident and shall eliminate CITY's liability to Licensee for any actions that CITY deems reasonably necessary given the specific circumstances.

27. RECEIVERSHIP, FORECLOSURE, OR ACT OF BANKRUPTCY

- 27.1 The rights granted to Licensee hereunder, at the option of CITY, shall cease and terminate one hundred twenty (120) days after the appointment of a receiver or receivers, or trustee or trustees, to take over and conduct the business of Licensee whether in a receivership, reorganization, bankruptcy or other action or proceeding unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless:
- 27.1.1 to the extent permitted by law, within one hundred twenty (120) days after their election or appointment, such receivers or trustees shall have complied fully with all the terms and provisions of this Agreement granted pursuant hereto, and the receivers or trustees within said one hundred twenty (120) days shall have remedied all defaults under the Agreement, if any; and
- 27.1.2 to the extent permitted by law, within said one hundred twenty (120) days, such receivers or trustees shall execute an agreement duly approved by CITY having jurisdiction in the premises, whereby such receivers or trustees assume and agree to be bound by each and every term, provision and limitation of this Agreement.
- 27.2 In the case of foreclosure or other judicial sale of the plant, property and equipment of Licensee, or any part thereof, including or excluding this Agreement, CITY may serve notice of termination upon Licensee and the successful bidder at such sale, in which event the Agreement herein granted and all rights and privileges of the Agreement hereunder shall cease and terminate thirty (30) days after service of such notice, unless:
- 27.2.1 CITY shall have approved the transfer of this Agreement, as and in the manner in this Agreement provided; and
- 27.2.2 Unless such successful bidder shall have agreed with CITY to assume and be bound by all the terms and conditions to this Agreement.
- 27.3 Licensee shall notify CITY not later than thirty (30) days of the filing of a receivership, reorganization, bankruptcy or other such action or proceeding by or against Licensee.

28. PERFORMANCE BONDS

- 28.1 Prior to making any Attachments under this Agreement, Licensee shall furnish and maintain throughout the term of this Agreement, and thereafter until all of the obligations of Licensee have been fully performed, a bond, or other security instrument satisfactory in form and content to CITY, to guarantee the payment of any sums which may become due to CITY or a CITY agent for Pole Attachment Fees, inspections, inventories, Make-Ready Work costs,

Unauthorized Attachment Charges, for work performed for the benefit of Licensee under this Agreement, including the removal of Attachments upon termination of this Agreement, for any expense that may be incurred by CITY or a CITY agent because of any default of Licensee, or for any other expense that is to be borne by Licensee under this Agreement. The initial amount of said security instrument shall be an amount equal to thirty dollars (\$30.00) per Licensee Attachment (the "Bond Rate") multiplied by the number of Licensee Attachments on CITY Pole. The Bond Rate shall not be subject to escalation, or other annual or periodic adjustments; provided, however, that the Bond Rate shall only remain in effect until such time as the total number of Licensee Attachments on CITY Poles exceeds seven-thousand (7000). At such time as the total number of Licensee Attachments on CITY Poles exceeds seven-thousand (7000), or at any time thereafter, CITY may, in its reasonable discretion and based on cost or other operational factors, increase the Bond Rate. Upon being provided with notice of any such increased Bond Rate, Licensee shall, within thirty (30) days of receiving such notification, provide a replacement bond, or other satisfactory security instrument, in an amount consistent with the increased Bond Rate. Failure to provide and maintain the aforementioned bond or other security instrument shall be deemed a default under this Agreement, in which event CITY shall have the right to pursue any and all remedies set forth in this Agreement. The furnishing of such bond or other security instrument shall not affect, limit, diminish or otherwise reduce any obligations of Licensee under this Agreement. The institution providing the bond or other security instrument shall be a U.S. Treasury listed company and authorized to write bonds in the State of Arkansas.

- 28.2 Within thirty (30) days after notice to Licensee that any amount has been drawn against the bond by CITY, Licensee shall take action to replenish the bond to its prior amount.
- 28.3 Licensee shall provide CITY with thirty (30) days prior written notice of any cancellation or replacement of the bond. Failure to maintain the bond throughout the term of the Agreement shall constitute a material breach of the Agreement retroactive to the date of the notice of cancellation of the bond.
- 28.4 Notwithstanding the foregoing requirements of this Section 28, CITY may, in its sole discretion, and by written notice to Licensee made in accordance with Section 26, suspend or otherwise condition Licensee's obligation to provide or maintain a performance bond.

29. ENTIRE AGREEMENT

Except as to any payments or credits due under previous agreements as of the execution of this Agreement, this Agreement supersedes all previous agreements, whether written or oral, between CITY and Licensee for placement and maintenance of Licensee's Facilities on CITY's Poles within the geographical service area covered by this Agreement; and there are no other provisions, terms or conditions to this Agreement except as expressed herein.

30. SEVERABILITY

If any provision or portion thereof of this Agreement is or becomes invalid under any applicable statute or rule of law, and such invalidity does not materially alter the essence of the Agreement to either Party, such provision shall not render unenforceable this entire Agreement but rather it is the intent of the parties that this Agreement be administered as if not containing the invalid provision.

31. GOVERNING LAW

The validity, performance and all matters relating to the effect of this Agreement and any amendment hereto shall be governed by the laws (without reference to choice of law) of the State of Arkansas.

32. INCORPORATION OF RECITALS AND APPENDICES

The Recitals stated above and all appendices to this Agreement are incorporated into and constitute part of this Agreement.

33. MISCELLANEOUS PROVISIONS

- 33.1 Revisions to Appendices. The Appendices to this Agreement are part of the Agreement. CITY may revise any of the Appendices to this Agreement at any time upon thirty (30) days prior written notice to Licensee. Upon acceptance by the Licensee and Joint-Pole Users, the revised Appendix will become a part of this Agreement and Licensee shall comply with any new requirements on a going forward basis, except as otherwise specifically provided in this Agreement. Licensee will be deemed to accept the revised Appendix if CITY does not receive a written rejection of the Appendix from Licensee within sixty (60) calendar days of the date CITY sends the revised Appendix to Licensee. If CITY receives a written rejection within the sixty (60)-calendar day period, and Licensee and CITY are unable to reach a compromise, the new requirement(s) shall become effective or either Party may seek dispute resolution in accordance with Section 25 of this Agreement or judicial or administrative review.
- 33.2 No Waiver. The failure of CITY or Licensee to enforce or to insist upon compliance with any of the terms or conditions of this Agreement does not constitute a waiver or relinquishment of any terms or conditions of the Agreement.
- 33.3 Prior Agreements. Except as to any payments or credits due under prior agreements as of the execution of this Agreement, this Agreement supersedes all prior agreements, oral or otherwise, between the parties providing for attachment of Licensee's Facilities to CITY Poles. All Attachments existing as of the execution of this Agreement and all future Attachments are and shall be governed by this Agreement, except that it is not necessary for Licensee to obtain a new Attachment Permit for Attachments authorized prior to the execution of this Agreement under permits obtained under prior agreements between Licensee and CITY. From time to time, the Applicable Standards incorporated into this Agreement may be revised by CITY to reflect changes in national standards, laws, technology and working conditions. Except as required by federal, state, or municipal law, rule, regulation, or ordinance, any of Licensee's Facilities which were installed in compliance with the Applicable Standards at the time of said installation shall be excepted from any new or revised Applicable Standards until Licensee next performs work on those Facilities. Thereafter, when Licensee next performs work on Licensee's Facilities that do not comply with the new or revised Applicable Standards, Licensee shall insure that such locations are brought into compliance with all new or revised Applicable Standards.
- 33.4 Contractors and Agents Bound. Licensee agrees to include in all its contracts and agreements with independent contractors or agents provisions which are consistent with and which will

fulfill the requirements of this Agreement, including, without limitation, the indemnities, all waivers of liability and insurance requirements.

- 33.5 No Third Party Beneficiaries. The terms and provisions of this Agreement are intended to be for the benefit of CITY and Licensee except as otherwise provided in this Agreement, and nothing in this Agreement, express or implied, is intended to confer upon any person or entity, other than the Parties to this Agreement, any benefits, rights or remedies under or by reason of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement in duplicate on the day and year first written above.

City Bentonville, Arkansas

Signed: _____

Name: _____

Title: _____

Date: _____

CoxCom, LLC d/b/a Cox Communications Arkansas

Signed: _____

Name: _____

Title: _____

Date: _____

List of Appendices

Appendix A	 Attachment Permit Procedure
Appendix B	 Attachment Application and Attachment Permit
Appendix C	 Authorization for Make-Ready Work
Appendix D	 Specifications for Licensee's Attachments
Appendix E	 Pole Specifications
Appendix F	 Reserve for CITY Future Use
Appendix G	 Reserve for CITY Future Use
Appendix H	 Notification of Attachment Removal by Licensee
Appendix I	 Schedule of Pole Attachment Rates
Appendix J	 Form of Insurance Cancellation Notice
Appendix K	 Tag List
Appendix L	 Development Plan

APPENDIX A
ATTACHMENT PERMIT PROCEDURE
(Page 1 of 2)

- I. Before Licensee makes any Attachment, except Service Wires, to the Poles owned by CITY, or performs any Overlashing to existing Attachments on CITY's Poles, Licensee shall request permission in writing using the Application To Attach form attached hereto and identified as Appendix B, Part 1, attaching thereto an installation plan and drawings for each Pole line where Licensee desires to make Attachments, which shall consist of maps adequate to enable CITY to identify and locate the Poles to which Licensee desires to attach, as well as the weight, tension, sag data, and size of the Attachments to be placed on such Poles. No Application To Attach form shall include more than 50 Poles unless prior permission is obtained from CITY or except as otherwise expressly permitted in the Agreement. Nothing in this paragraph shall be construed to require Licensee to submit an Application To Attach for (i) authorized Attachments of Licensee existing on Poles owned by CITY as of the Effective Date of this Agreement or (ii) for Attachments to Poles which come to be owned by CITY where such exist as of the date such Poles come to be owned by CITY. For Service Wires, Licensee shall submit Appendix B, Part 3, Record of Service Wire Attachments to CITY within 30 days of the installation of Service Wires so that CITY may adjust CITY's inventory records for the placement of such Attachments. Licensee may furnish a summary Record of Service Wire Attachments periodically, but shall do so not less than monthly, listing all such Service Wires placed on CITY's Poles. Such listing shall consist of a map designating the Pole(s), including any intermediate Poles, to which such Service Wires are attached and the number of such Service Wires if not attached in the same foot of space. Service Wires which are located within Licensee's Assigned Space, as defined in Article 1 of the Agreement, on previously Permitted Poles, do not require such Notice. Nonetheless, all Service Wire installations must comply with, and are subject to, all other provisions of this Agreement. Service Wires are not subject to Post-Construction Inspections and Service Wires Reported on Records of Service Wire Attachments are not subject to either portion of the Application Fee.
- II. Each Appendix B, Application To Attach form submitted by Licensee shall be accompanied with an Application Fee as set forth in Appendix I as to each Appendix B to offset CITY's administrative costs associated with processing the application. The costs incurred by the City for performing the Pre-Construction Survey, In-Progress Inspections if such are required, and Post-Construction Inspection of the Poles covered by the application shall be billed to the Licensee at the actual costs incurred by the City:

Failure to include payment of the Application Fee, or all required information when submitting an Appendix B, will result, at CITY's option, in the returning of the Appendix B to Licensee unapproved, or holding Appendix B until payment or required information is received.
- III. All Poles shall remain the property of CITY and any payments made by Licensee for changes in Poles under this Agreement shall not entitle Licensee to ownership of any Poles.
- IV. A single Application To Attach may be submitted for multiple Poles in a Pole line or area of operations. If one or more of the Poles will have more than one Attachment, then a single Appendix B may be submitted for all of the Attachments on such Pole.

APPENDIX A
ATTACHMENT PERMIT PROCEDURE
(Page 2 of 2)

- V. In the event Licensee requires a source of commercial electrical energy for any Attachment on any of CITY's Poles, Licensee will obtain such energy from CITY and CITY will supply such energy in accordance with its standard service policies and rates and tariffs. Any and all connections made to CITY's electrical system will be performed by CITY.
- VI. In the event Licensee or its agent connects any device to CITY's electrical system, such connection shall be considered a default under the terms of this Agreement and CITY shall have the right to any and all remedies allowed by this Agreement. Further, Licensee shall pay the estimated costs of energy consumed by such device for a period equal to one month after the manufacture date of the equipment through the date discovered by CITY. In addition to the remedies which are provided in this Agreement, Licensee is also subject to the terms of CITY's Service Rules and Regulations, including but not limited to terms related to theft of electrical service, and to any other remedies available to CITY at law or in equity.

APPENDIX B
APPLICATION TO ATTACH

Submitted by Licensee: _____ Licensee Request No. _____
CITY Request No. _____

Part 1 (Completed by Licensee)

To: Engineering Director
 City of Bentonville
 608 SE 3rd Street
 Bentonville, AR 72712
Date: _____

Check 1 of These 2: This Application is for ☐New Attachments ☐Overlashing

Licensee hereby requests permission pursuant to its Pole Attachment License Agreement to make an Attachment or Overlashing to the Poles shown on the attached installation plan, which shall consist of maps adequate to enable CITY to identify and locate the Poles to which Licensee desires to attach, the weight, tension, sag data, and size of the Attachments to be placed on such Poles and all field data necessary for pole loading calculations to be performed by the City. Work will begin on or about _____ and will be completed on or about _____. This Appendix B is for Attachments or Overlashing to be made on _____ Poles. Please advise Licensee as to whether or not these Attachments will be Permitted and an estimate of any costs that Licensee may be required to pay as Make-Ready Work. Upon notice of any such costs, Licensee will pay the estimated amount, or Licensee will advise CITY that Licensee will not undertake to make these Attachments.

☐ Licensee certifies any other necessary permits, authority, and consents from federal, state, municipal or other public authorities have been obtained.

Name (Printed): _____ Phone: _____

Signature: _____ Fax: _____

Part 2 (Completed by CITY)

To: _____ Date: _____

(Check 1 of these 2)

_____ CITY approves the above request to make Attachments or Overlashing. Modifications are – are not - required to accommodate your request. The estimated costs are \$ _____. Upon receipt of payment of this amount, CITY will begin the work order required to accommodate your proposed Attachments. CITY expects to begin making these modifications about _____ days after receipt of your payment and expects to complete the work in about _____ days after the work is begun.

_____ Your request to attach to these Poles is denied.

Name (Printed): _____ Phone: _____

Signature: _____ Fax: _____

APPENDIX B – Part 3,
RECORD OF SERVICE WIRE ATTACHMENTS

Submitted by Licensee: _____ Licensee Request No. _____

CITY Request No. _____

(To be completed by Licensee)

To Engineering Director
 City of Bentonville
 608 SE 3rd Street
 Bentonville, AR 72712

Date: _____

Licensee hereby submits notification, pursuant to its Pole Attachment License Agreement, of the initial Attachment of _____ Service Wire(s) on Poles belonging to CITY. The Attachments are detailed on the attached list, which includes all Service Wires, the address of the Service Wire(s), any intermediate Poles, the number of Service Wires at each location, and the date each Service Wire was installed. Service Wires reported on Records of Service Wire Attachments are not subject to either portion of the Application Fee. Notwithstanding the foregoing, the list of Service Wire Attachments shall be considered proprietary and confidential and shall be used by CITY only for operational purposes to carry out obligations of Licensee under this Agreement.

Name (Printed): _____

Phone: _____

Signature: _____

Fax: _____

APPENDIX C
AUTHORIZATION FOR MAKE-READY WORK

Submitted by Licensee: _____ Licensee Request No: _____

CITY Tracking No: _____

Part 1 (Completed by Licensee)

To Engineering Director
 City of Bentonville
 608 SE 3rd Street
 Bentonville, AR 72712

Date: _____

(Check 1 of these 2)

_____ Licensee agrees to pay the costs related to CITY's Make-Ready Work required for the Attachments requested herein. A check for the costs to make the Poles suitable for the requested Attachments in the amount of \$ _____ is attached. CITY is hereby requested to proceed to make the necessary changes.

Please keep us informed as to the status of your work.

_____ Licensee has decided not to make the Attachments listed in this request.

Name (Printed): _____ Phone: _____

Signature: _____ Fax: _____

Part 2 (Completed by CITY)

To: _____ Date: _____

CITY has completed the work required to prepare the Poles listed in your Application for your Attachments.

.Licensee shall provide notice to CITY (1) at least 48 hours in advance of beginning Licensee's construction. This Application, and CITY's job order associated with this request, will not be closed until we receive notice that all Licensee's work is complete and CITY has completed its final inspection of Licensee's Facilities installed or modified on CITY's Poles covered by this Application.

Licensee must notify CITY within thirty (30) days of completion of Licensee's construction.

Name (Printed): _____ Phone: _____

Signature: _____ Fax: _____

APPENDIX D
SPECIFICATIONS FOR LICENSEE'S ATTACHMENTS
(Page 1 of 2)

The following engineering and construction practices will be followed by Licensee when making new Attachments to CITY Poles on or after the Effective Date of this Agreement.

- I. Attachment and Cable Clearances: Licensee's Attachments on CITY Poles, including metal attachment clamps and bolts, metal cross-arm supports, bolts and other equipment, must be attached so as to maintain the minimum clearances specified in the National Electrical Safety Code and in drawings and specifications CITY may from time to time furnish Licensee.
- II. Sag and Mid-Span Clearances: Licensee will be particularly careful to leave proper sag in its lines and cables and shall observe the established sag of power line conductors and other cables so that minimum clearances are (a) achieved at Poles located on both ends of the span; and (b) retained throughout the span. At mid-span, a minimum of 12" of separation must be maintained between any other communications cables. At the Pole support, a 12" separation must be maintained between Licensee and any other connection.
- III. Vertical Runs on Poles: All vertical runs on Poles, including those for power feed for TV amplifiers, shall be placed on the quarter faces of the Pole and shall be covered by a riser guard with a two-inch (2") clearance in any direction from cable, bolts clamps, metal supports and other equipment. Secondary cable providing service to streetlights may be covered with non-metallic conduit to allow minimum clearances to communication cables as permitted in the National Electric Safety Code.
- IV. Cable Bonding: Licensee's messenger cable shall be bonded to CITY's Pole ground wire at each CITY Pole that has a ground wire. Under no condition will CITY's vertical ground wire be broken, cut, severed, or otherwise damaged by the Licensee. It shall be the responsibility of the Licensee to instruct its personnel working on CITY's Poles of the dangers involved in bonding its wires to the Electric Company's "vertical ground wire" and associated dangers thereof, and to furnish adequate protective equipment so as to save its personnel from bodily harm. CITY assumes no responsibility either for instructing Licensee's personnel, for furnishing equipment to the Licensee or its personnel, or for any liability resulting from the Licensee's personnel working on CITY's Poles.
- V. Down Guys and Anchors:
 - A. Any unbalanced loading of the City's distribution poles caused by the placement of Licensee's circuits shall be properly guyed and anchored by Licensee prior to tensioning strand with a guy and anchor provided by Licensee at no expense to the City.
 - B. Licensee may not place guy attachments to the City's anchors without the City's prior written consent.
 - C. Licensee's down guys shall be effectively insulated and shall not provide a current path to ground from the Pole ground or power system neutral.

APPENDIX D

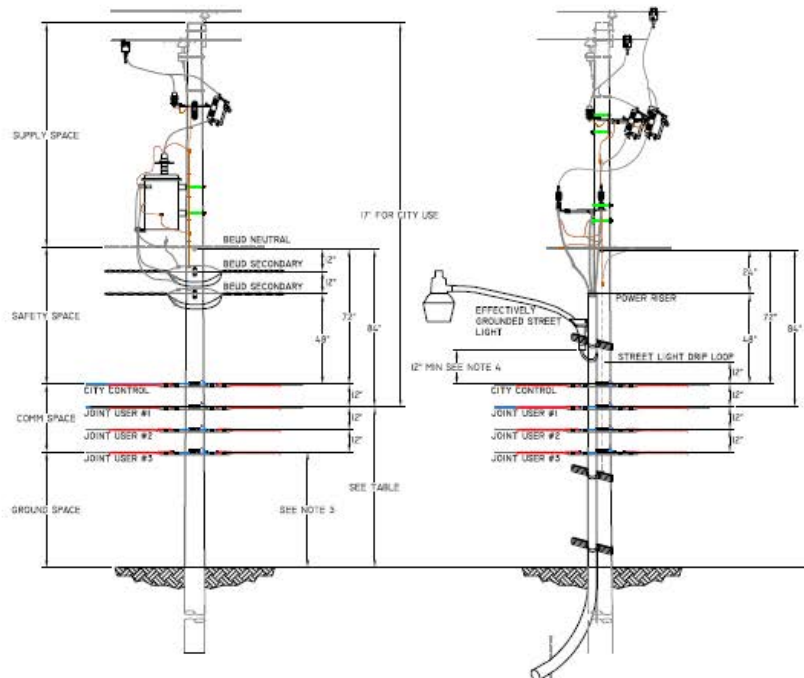
(Page 2 of 2)

- VI. Service Wire Clearance: The parallel minimum separation between Licensee's Service Wires and telephone service drops shall be twelve (12) inches.
- VII. Customer Premises: Licensee's service drop into customer premises shall be protected as required by the most current edition of the National Electrical Code.
- VIII. Service Clearances: A four-inch (4") separation shall be maintained, between CITY's service cable and/or any Other Licensees' facilities located on the customer's private property in accordance with the National Electric Safety Code and/or the National Electrical Code.
- IX. Climbing Space: A clear climbing space must be maintained at all times on the face of the Pole. All Attachments must be placed as to allow and maintain a clear and proper climbing space on the face of the CITY Pole. Licensee's Attachments shall be placed on the same side as power neutral unless otherwise specified by CITY. In general, all other Attachments and vertical runs should be placed on Pole quarter faces.
- X. Riser Installations: For and with respect to any Attachments made or new construction undertaken by Licensee after the Effective Date of this Agreement, Licensee's riser installations shall be placed on metal stand-off brackets.
- XI. Telecommunication Cables. All telecommunications cables not owned by CITY shall be attached within the communications space that begins 40 inches below the CITY neutral or the lowest CITY-owned effectively grounded equipment or messenger, which can include CITY figure-eight communication cable or CITY fiber optic cable and extends to the minimum NESC ground clearance for communications cables.
- XII. Safety Zone. No mounting brackets are permitted in the safety zone. The safety zone between communications facilities and supply facilities on the same Pole extends horizontally out to the boundaries of the climbing space and working space. The safety zone is measured vertically from the level of the closest surface of the communications facility to the level of the closest surface of the supply facility. The required clearance of the safety zone is measured vertically between the levels of the equipment involved. Stand-off bracket installation will not be allowed to meet the 40" clearance requirement.

APPENDIX E

SPECIFICATION DRAWING #1

Pole Height	Max Height of 1st Attachment
35	NA
40	17
45	21.5
50	26
55	30.5
60	35



- NOTE:
1. ALL COMMUNICATION CABLES TO BE INSTALLED AS LOW ON POLE AS POSSIBLE WHILE MAINTAINING CLEARANCES.
 2. IF HIGH NEUTRAL (AT SAME ELEVATION AS PHASES) THEN MINIMUM OF 18" SEPARATION BETWEEN CONDUCTORS AND JOINT USER #1.
 3. MINIMUM NESC GROUND CLEARANCE FOR COMMUNICATIONS CABLE IS 18'-0" UNDER WORST CASE SAG CONDITIONS. REFER TO RULE 212 AND TABLE 232-1 OF THE NESC.
 4. IF STREETLIGHT IS NOT EFFECTIVELY GROUND, MAINTAIN A MINIMUM OF 20" OF SEPARATION BETWEEN BASE OF STREET LIGHT FIXTURE AND FIRST ATTACHMENT.
 5. JOINT USER REFERS TO COUNTY, SCHOOL, CDX, AT&T, ETC.
 6. NO COMMUNICATION EQUIPMENT SHALL BE ALLOWED TO BE MOUNTED ON THE POLE.

6/25/2014



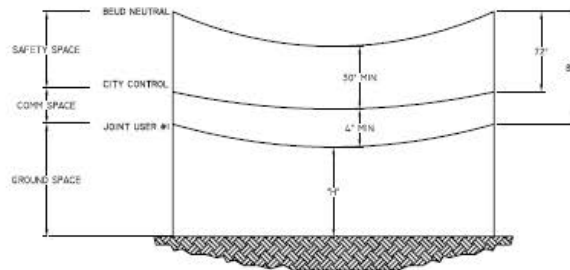
JOINT USE SPACING - TANGENT THREE PHASE POLE

DS-12xx

APPENDIX E

SPECIFICATION DRAWING #2

TYPICAL LOW NEUTRAL



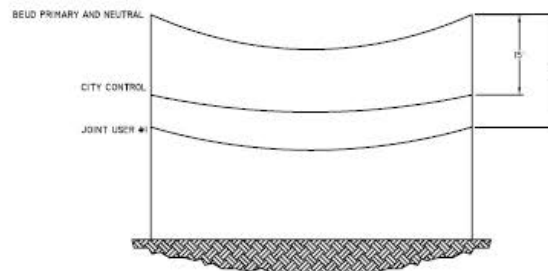
NOTE:

1. "H" IS DEFINED AS THE VERTICAL DISTANCE (HEIGHT) AS MEASURED FROM THE LOWEST POINT (TYPICALLY MIDSPAN) OF THE WIRES, CONDUCTORS, OR CABLES TO THE SURFACE BELOW.
2. SUPPLY CONDUCTOR AT GREATER OF ICE LOADED OR HIGHEST OPERATING TEMPERATURE FINAL SAG AND COMMUNICATIONS CABLE AT 33°F FINAL SAG.
3. THE SPACING AT A POLE BETWEEN MESSENGERS SUPPORTING COMMUNICATION CABLES MUST NOT BE LESS THAN 12 INCHES. THE MIDSPAN CLEARANCE BETWEEN TWO COMMUNICATION CABLES SHALL NOT BE LESS THAN 4 INCHES.

"H"

- RAILROADS - 30'
- ROADS / DRIVEWAYS / PARKING LOTS - 18'
- PEDESTRIAN ACCESS / RESTRICTED TRAFFIC - 10.5'

BEUD HIGH NEUTRAL



NOTE:

1. SOME AREAS OF THE SYSTEM DO NOT HAVE A LOW NEUTRAL. IF BEUD DOES NOT HAVE A NEUTRAL ATTACHMENT LOW ON THE POLE AS A POINT OF REFERENCE, 15' OF SPACE SHALL BE ALLOWED BETWEEN BEUD CROSSARM AND CITY CONTROL.
2. 4' SHALL BE ALLOWED BETWEEN BEUD CROSSARM AND FIRST JOINT USER.

6/25/2014



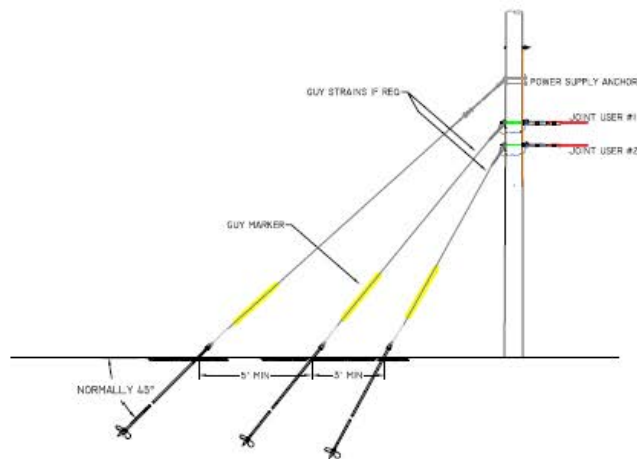
JOINT USE - MIDSPAN CLEARANCES

DS-12xx

APPENDIX E

SPECIFICATION DRAWING #3

FOR NEW CONSTRUCTION



NOTE:

1. ALL COMMUNICATION CABLES SHALL BE GUYED SEPARATELY.
2. COMMUNICATION CABLES SHALL NOT ATTACH TO A BELD ANCHOR.
3. MINIMUM OF 5' DISTANCE BETWEEN BELD ANCHOR AND JOINT USER ANCHOR.
4. MINIMUM 5' DISTANCE BETWEEN JOINT USER ANCHORS.
5. TYPE AND SIZE OF ANCHOR DEPENDING ON TERRAIN AND EARTH CONDITIONS. ANCHOR SHALL BE DESIGNED TO WITHSTAND TENSIONS.
6. INSTALL GUY MARKERS ON ALL GUY WIRES.

6/25/2014



JOINT USE - GUY / ANCHOR DETAIL

DS-12xx

APPENDIX F

RESERVED FOR CITY FUTURE USE

APPENDIX G

RESERVED FOR CITY FUTURE USE

APPENDIX H
NOTIFICATION OF ATTACHMENT REMOVAL

Submitted by Licensee: _____ Licensee Request No. _____

CITY Request No. _____

(To be completed by Licensee)

To Engineering Director
 City of Bentonville
 608 SE 3rd Street
 Bentonville, AR 72712

Date: _____

Licensee hereby provides notification, pursuant to its Pole Attachment License Agreement, of the removal of _____ Licensee's Attachments on Pole(s) belonging to CITY. The Attachments are designated on the attached maps. Work will begin on or about _____ and will be completed on or about _____.
This Appendix H is for the removal of Attachments made on _____ Poles (indicate total number of Pole(s)).

Name (Printed): _____

Phone: _____

Signature: _____

Fax: _____

APPENDIX I

SCHEDULE OF POLE ATTACHMENT RATES

Summary

The City charges a uniform Pole and conduit Attachment rate to all communications providers (telephone, cable, other).

City reserves the right to adjust the *Schedule of Pole Attachment Rates* pertaining to Pole Attachment Rates in accordance with changes in the FCC Formulas, also delineated below. Increases in other designated rates will be as described in this Appendix I or in accordance with updated City cost information.

Attachment Fees

2017 Invoice for 2016 rental \$13.00
2018 Invoice for 2017 rental \$13.50
2019 Invoice for 2018 rental \$14.00
2020 Invoice for 2019 rental \$14.50
2021 Invoice for 2020 rental \$15.00

For the year ending 2021 and at intervals of not less than every five (5) years thereafter, the rental rates applicable under this Agreement shall be subject to joint review and revision upon the written request of either Party. Such written request shall be made at least 90 days prior to January 1 of the year the new rental rates will be effective. If any such request is made, the Parties shall negotiate in good faith to reach a mutually satisfactory rental rate, taking into consideration the allocation of space and the historical cost of Bare Poles. In the event that no agreement is reached by the Parties, the current rental rate shall be adjusted by the Handy Whitman Index, Account 364, South Central Region.

Application Fee

Effective January 1, 2017

The Application Fee consists of two components: 1) an administrative fee to cover CITY's cost of receiving, logging and tracking the application for Permit; and, 2) a per pole fee to offset and applied to the actual costs of the Pre-Construction Survey required to perform preliminary engineering and to provide an estimate of the costs to accommodate the Licensee's Facilities, the In-Progress Inspection, and the initial Post-Construction Inspection. The administrative charge component is \$50 for each application, without respect to the number of Poles on the application for Permit. The per pole charge component, initially \$100.00 per pole, represents the estimated costs incurred by the City in inspecting the facilities, including pre-attachment inspections, post construction inspections, and in-progress inspections, within the area covered by the Application To Attach.

APPENDIX I

(Page 2 of 2)

Effective January 1, 2018 and on that same date Each Subsequent Year

The Application Fees may be increased annually by the change in the Handy Whitman Index, Account 364, South Central Region.

Other Charges

Unauthorized Attachment Charge – In addition to any annual Attachment Fees that would have been due, Licensee agrees to pay CITY an Unauthorized Attachment Charge equal to five (5) times the yearly Attachment Fee (in effect during the unauthorized period) per Attachment for which there is an Unauthorized Attachment and for which a proper Attachment Permit has not been issued by CITY or for any Attachments found being utilized to provide a service beyond which they were Permitted for. Unauthorized Attachments will be assumed to have been installed by Licensee on the next day following the last inventory conducted by CITY as described in Section 13 or 5 years prior to the date the Attachment is discovered, whichever is shorter.

Underground Relocation Charge – Licensee agrees to pay CITY \$50.00 per month for each connection which Licensee has failed to relocate.

Failure to perform timely transfers, removals, or other work required by CITY shall result in a \$50 charge at each location plus the cost incurred by the City in returning to the subject location/locatio to remove the old poles. If the Licensee advises the CITY in error that transfers are complete, the CITY in its sole discretion may charge the LICENSEE a trip charge of \$200.

APPENDIX J

**FORM OF CANCELLATION OF INSURANCE NOTICE
THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY**

ENDORSEMENT #

This endorsement, effective 12:01 A.M. _____ forms a part of Policy

No. _____ issued to _____ by _____
(The above "attaching clause" need be completed only when this endorsement is issued subsequent to the preparation of the policy).

NOTICE OF CANCELLATION AND NONRENEWAL TO CERTIFICATE HOLDER

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
TRUCKERS COVERAGE FORM
GARAGE COVERAGE FORM

We shall provide written notice in accordance with state law in the event this policy is cancelled or nonrenewed, for any reason other than non payment of premium, to those entities set out in the schedule below.

Schedule: _____

Notice will be mailed to: _____

To the attention of: _____

Contract, Permit or Job Number: _____

APPENDIX K
TAGGING SPECIFICATIONS
(Page 1 of 2)

[illegible]

APPENDIX K

TAGGING SPECIFICATIONS

(Page 2 of 2)



Clear Lamination both sides

Part #: 97-2X4-TAG
Qty: 500 EA
Size: 2" T x 4" W
Material: .010
Color: Orange with black text (1.5" Tall) (Double sided)
Holes: 2 - 5/16 Eyelet
Scale: Shown @ 100%

Please inspect this proof carefully. We cannot be responsible for misspelled words, information or layout if OK'd by the customer. This shows how your custom print job will be printed. Colors are a representation only and may vary from actual manufactured product.

Final artwork approval: _____ OK to print? _____ Your REF #:0104715
Date: _____ Name: _____ Drawing #: 12-9524
A12-0193

APPENDIX L

DEVELOPMENT PLAN

- A. Based on historical experience, CITY is required to add equipment to and modify attachments to existing Poles in order to fulfill CITY's obligations to its customers. Given the ongoing changing needs of the CITY's customers as well as system improvements for safety and reliability, CITY is projecting that the need to add additional equipment to Poles will continue in the foreseeable future.
- B. The CITY is projecting that the following types of equipment will be added to existing Poles in the foreseeable future:
- Transformers
 - Reclosers
 - Switches
 - Regulated Outdoor Lighting
 - Capacitor Equipment
 - Reconductoring Equipment
 - Control / Monitoring Cabling
 - Governmental Communications
 - Approved Budget Items
- C. As the City continues system improvements, costs for a larger pole due to existing attachers will be cost shared equally with all existing attachers.

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING THE MAYOR AND
CLERK TO ENTER INTO AN AGREEMENT WITH COX
COMMUNICATION FOR THE JOINT USE OF POLES
WITHIN THE CITY OF BENTONVILLE.**

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE
CITY OF BENTONVILLE, ARKANSAS.**

Section 1: That the Mayor and Clerk be and are hereby authorized to enter into an Agreement with Cox Communications for the Joint Use of Poles within the City of Bentonville, Arkansas, as attached hereto as Exhibit "A".

Section 2: This resolution shall be in full force and effect from and after the date of its passage.

PASSED and APPROVED this ____ day of _____, 2017.

APPROVED:

MAYOR

ATTEST:

CITY CLERK



CHECK ALL THAT APPLY		
Bid Award	Bid #	
Budget Adjustment		
Change Order		
Informational		
Ordinance		
X Resolution		
Other		

AGENDA FORM

CITY COUNCIL MEETING OF:

April 25, 2017

Submitted by:

Travis Matlock

Department

Electric

Phone

271-5941

ACTION REQUIRED:

A resolution authorizing the Mayor and City Council to enter into an agreement with Carroll Electric to purchase electric distribution facilities and 14 electric accounts along SW Ginn Road, SW Anglin Road, and SW Adams Road in the amount of \$158,751.05.

COST TO CITY:

Cost of this Request: \$158,751

Additional Budget Amount

☒ One time amount

☐ Continuing O and M

Previously Budgeted	\$
Funds Expended to Date	
Remaining Budget	-
Budget Adjustment	-
Remaining After Adjustment	\$ -

This form must be turned into the Mayor's office 7 days prior to the scheduled City Council meeting.

117 WEST CENTRAL AVENUE * BENTONVILLE, AR 72712

www.bentonvillear.com



PLEASE RECYCLE



MEMORANDUM

DATE: April 25, 2017

TO: City Council, Mayor McCaslin

FROM: Travis Matlock, Engineer Director

RE: Purchase of Carroll Electric Facilities

The Electric Department recommends approval of purchasing existing Carroll Electric distribution facilities and acquiring 14 electric accounts along SW Ginn Rd., SW Adams Rd., and SW Anglin Rd. for \$158,751.05.

There is a large subdivision (400+ lots) currently going through the Preliminary Plat process in Bentonville located along SW Adams Rd. and extending north of SW Anglin Rd. In order for BEUD to serve the proposed subdivision properly, BEUD must install quite a bit of overhead line in an area that is occupied by Carroll Electric at this time. BEUD will purchase the infrastructure and accounts and include the takeovers in the overall design of the subdivision.

The acquisition of this infrastructure will also allow BEUD to provide backup power to the proposed WMT distribution center located east of SW Opal Rd.



**Carroll Electric
Cooperative Corporation**

800-432-9720
www.carrollecc.com

Your Local Energy Partner

RECEIVED APR 17 2017

April 13, 2017

The Honorable Bob McCaslin
MAYOR, CITY OF BENTONVILLE
117 W. Central Ave
Bentonville, AR 72712

Re: Sale of facilities

Dear Mayor McCaslin:

We have completed our inventory and appraisal of the cooperative properties for the facilities currently serving eighteen consumers in Southwest Bentonville, per the letter dated February 13, 2017, stating your intent to provide service to this area. For practical purposes, we have designated this cutover project as Adams Road to Ginn Road – Phase II. Pursuant to Arkansas law and the Mediation Settlement Agreement dated September 13, 2010, the following amounts have been determined as the proper valuation:

Present-day reproduction cost, new, of the properties and facilities being acquired, less depreciation computed on a straight-line basis	\$ 49,530.41
Cost of construction of necessary facilities to reintegrate the system after detaching the portion to be sold	752.42
Stranded costs	2,682.88
Transformer removal	802.50
Meter removal	350.00
Three hundred fifty-five percent (355%) of gross revenues less gross receipts taxes received for the 12-month period.	93,062.19
Administrative, engineering and accounting expenses associated with establishing valuation	3,465.94
Demand cost	<u>8,104.71</u>
Total	\$ 158,751.05

Bentonville
707 SE Walton Blvd.
PO Box 329
Bentonville, AR 72712
(479) 273-2421

Berryville
920 Hwy. 62 Spur
PO Box 4000
Berryville, AR 72616
(870) 423-2161

Huntsville
5056 Hwy. 412 B
PO Box 280
Huntsville, AR 72740
(479) 738-2217

Jasper
511 E Court St.
PO Box 389
Jasper, AR 72641
(870) 446-5114

A billing statement and tabulations are included for your convenience.

Complete inventories and records of all the above area are available for city inspection at your convenience.

After receipt of payment in full, please contact Mr. Mike Dodge, Vice President of our Bentonville District to coordinate this cutover. All Carroll Electric facilities in the area are included in the above amounts with the exception of transformers and meters.

Carroll Electric Cooperative is in full agreement of the release of these facilities and account to the City of Bentonville and will coordinate the exchange of this service with your personnel in order to cause minimum inconvenience. Please contact me concerning this information should any questions arise.

Sincerely,



Rob Boaz
President, CEO

RB/tg

Enclosure

cc: Mike Dodge, Bentonville District
Derek Thurman, Bentonville District
Tim Pianalto, Bentonville District
Travis Matlock, City of Bentonville

707 SE Walton Blvd.
PO Box 329
Bentonville, AR 72712

Phone: (479)273-2421
Fax: (479)273-1231

Statement

Date: April 13, 2017

Bill To: City of Bentonville
117 W. Central Ave
Bentonville, AR 72712

Date	Type	Description	Amount	Payment	Balance
4/13/2017	Facility Sale	Adams Rd to Ginn Rd - Phase II	158,751.05		158,751.05
				Total	\$ 158,751.05

Terms: Balance due in 60 days.

REMITTANCE	
Customer Name:	City of Bentonville
Customer ID:	
Statement #:	000908
Date:	
Amount Due:	158,751.05
Amount Enclosed:	

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING THE MAYOR AND
CLERK TO PURCHASE CERTAIN CUSTOMERS AND
FACILITIES FROM CARROLL ELECTRIC
COOPERATIVE CORPORATION.**

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE
CITY OF BENTONVILLE, ARKANSAS.**

Section 1: That the Mayor and Clerk be and are hereby authorized to purchase certain customers and facilities in the vicinity of SW Ginn Road, SW Anglin Road and SW Adams Road in the amount of \$158,751.05 as set forth in the attached documentation pursuant to the settlement agreement reached between the parties.

Section 2: This resolution shall be in full force and effect from and after the date of its passage.

PASSED and APPROVED this _____ day of _____, 2017.

APPROVED:

MAYOR

ATTEST:

CITY CLERK



CHECK ALL THAT APPLY			
☐	Bid Award	Bid #	
☐	Budget Adjustment		
☐	Change Order		
☐	Informational		
☐	Ordinance		
☒	Resolution		
☐	Other		

AGENDA FORM

CITY COUNCIL MEETING OF:

March 14, 2017

Submitted by:

Travis Matlock

Department

Engineering

Phone

271-5941

ACTION REQUIRED:

A resolution setting a public hearing for May 9, 2017 for a Utility Easement Vacation requested by Sean Reber for 304 NW Tall Oaks, Oaklawn Hills Subdivision.

COST TO CITY:

Cost of this Request:

Additional Budget Amount

☐ One time amount

☐ Continuing O and M

Previously Budgeted	\$
Funds Expended to Date	
Remaining Budget	-
Budget Adjustment	-
Remaining After Adjustment	\$ -

This form must be turned into the Mayor's office 7 days prior to the scheduled City Council meeting.

117 WEST CENTRAL AVENUE * BENTONVILLE, AR 72712

www.bentonvillear.com



PLEASE RECYCLE



RESOLUTION NO. _____

IN THE CITY COUNCIL FOR THE CITY OF BENTONVILLE, ARKANSAS

WHEREAS, a petition was duly filed with the City Council of Bentonville, Arkansas by Sean Reber requesting utility easement vacation within the City of Bentonville, Arkansas be vacated, which said street right of way is described as follows:

SOUTH 20' FEET OF LOT 57, OAKLAWN HILLS SUBDIVISION TO THE CITY OF BENTONVILLE, BENTON COUNTY, ARKANSAS AS SHOWN IN PLAT RECORD 2006 AT PAGES 560, 561, 562.

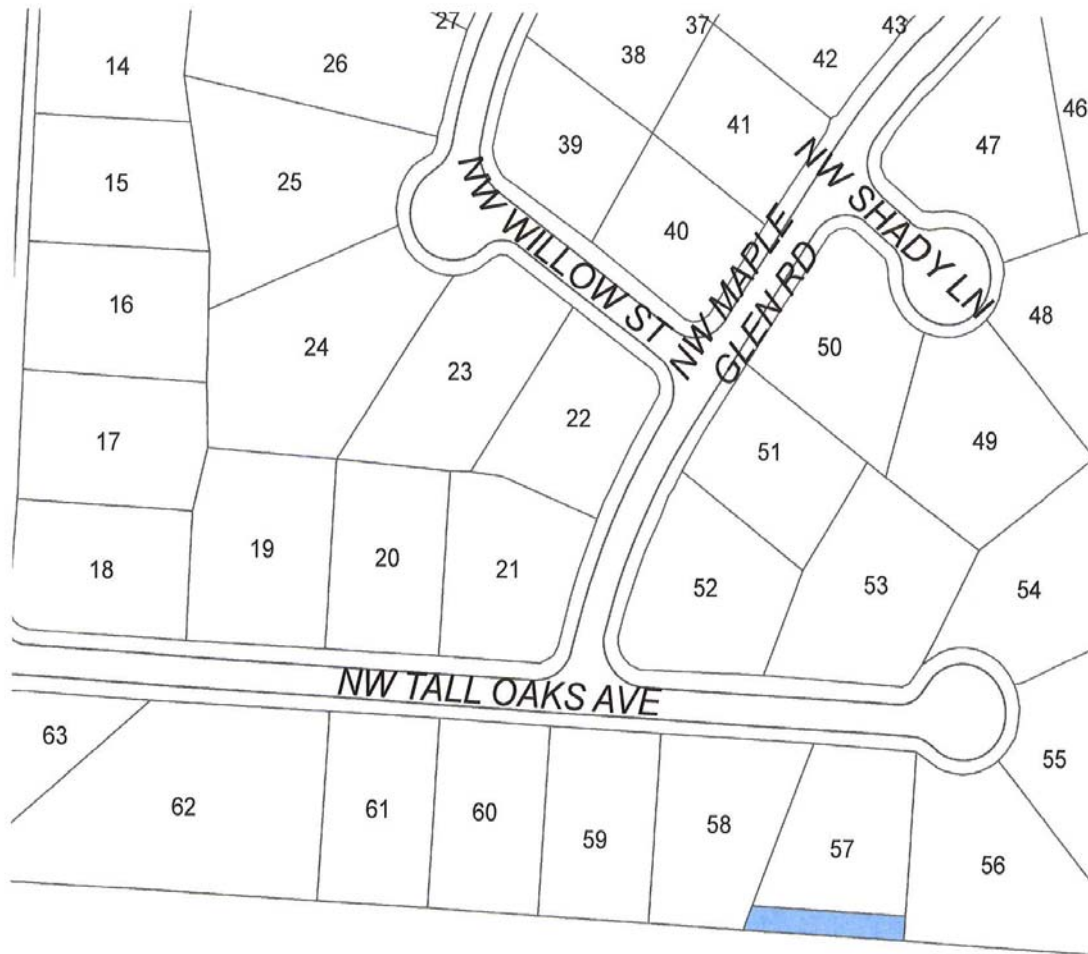
WHEREAS, Ark. Code Ann. Section 14-301-302(c) provides that the City Council shall by resolution fix a day for the hearing of the petition and shall direct the City Clerk and Recorder to give notice of the meeting, by publication, once per week for two (2) consecutive weeks in some newspaper published in and having general circulation in Bentonville, Benton County, Arkansas.

NOW, THEREFORE, BE IT RESOLVED, by the City of Bentonville, Arkansas, that the petition to close the above described utility easement is set for a hearing on May 9, 2017 at 6:00 p.m. in the City Council Room of the City of Bentonville, Arkansas, and the Bentonville City Clerk and Recorder is directed to give notice of this meeting by publication as set forth by Ark. Code Ann. Section 14-301-302(c).

The above and foregoing resolution was passed, approved, and adopted the _____ day of _____ 2017 at a regular meeting of the City Council of the City of Bentonville, Arkansas.

Linda Spence, City Clerk
Bentonville, Arkansas

Bob McCaslin, Mayor
City of Bentonville, Arkansas



Legend

Easement Vacations

TYPE

 Easement Vacation



20' Utility Easement Vacation
 Lot 57 Oaklawn Hills Subdivision
 304 NW TALL OAKS AVE

1 inch = 119 feet





CHECK ALL THAT APPLY		
☐	Bid Award	Bid #
☐	Budget Adjustment	
☐	Change Order	
☐	Informational	
☐	Ordinance	
☒	Resolution	
☐	Other	

AGENDA FORM

CITY COUNCIL MEETING OF:

April 29, 2017

Submitted by:

Brent Boydston

Department

Fire

Phone

271-5927

ACTION REQUIRED:

Fire Department Staff recommends approval of a resolution declaring certain property surplus, and transfer the items to three area volunteer fire departments.

COST TO CITY:

Cost of this Request: \$0

Additional Budget Amount

☐ One time amount

☐ Continuing O and M

Previously Budgeted	\$
Funds Expended to Date	
Remaining Budget	-
Budget Adjustment	-
Remaining After Adjustment	\$ -

This form must be turned into the Mayor's office 7 days prior to the scheduled City Council meeting.

117 WEST CENTRAL AVENUE * BENTONVILLE, AR 72712

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PLEASE RECYCLE





Inter-office Memorandum

To: Mayor McCaslin and City Council
From: Brent Boydston, Fire Chief
CC: Camille Thompson, Staff Attorney, Denise Land, Finance Director, Kathy Bertschy, Purchasing Agent
Date: April 25, 2017
Re: Declaring certain property surplus and transfer the items.

Fire Department Staff recommends declaring three thermal imagers surplus property and transfer them to Highfill Fire Department, Cave Springs Fire Department, and Avoca Fire Department.

These departments are using this type of thermal imager today, and will allow them to expand their capabilities to other fire department apparatus.

Serial Numbers: 3349-XR
4794-XR
4795-XR

We have upgraded our current inventory of thermal imagers to meet the demands of response frequency, departmental needs and service life. The smaller, volunteer departments that we run mutual aid with do not have the resources to provide the technical equipment for their personnel and community. This surplus equipment not only enhances the safety of citizens in other communities, but also will help ensure the safety of our personnel when they respond outside of the city for mutual aid response.

RESOLUTION NO. _____

**A RESOLUTION DECLARING CERTAIN PROPERTY
BELONGING TO THE CITY OF BENTONVILLE,
ARKANSAS AS SURPLUS PROPERTY.**

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE
CITY OF BENTONVILLE, ARKANSAS.**

Section 1: That certain Fire Department property, specifically the cameras more particularly described on the agenda item submitted herewith, is hereby declared to be surplus property, and the transfer is authorized as set forth therein.

Section 2: This resolution shall be in full force and effect from and after the date of its passage.

PASSED and APPROVED this ____ day of _____, 2017.

APPROVED:

MAYOR

ATTEST:

CITY CLERK



CHECK ALL THAT APPLY			
	Bid Award	Bid #	
X	Budget Adjustment		
	Change Order		
	Informational		
	Ordinance		
	Resolution		
	Other		

AGENDA FORM

CITY COUNCIL MEETING OF:

April 25, 2017

Submitted by:

David Wright

Department

Parks and Rec

Phone

271-6813

ACTION REQUIRED:

City Council approval of a budget adjustment allowing for the addition of one (1) full time Recreation Specialist for Parks and Recreation.

COST TO CITY:

Cost of this Request: \$34,500

Additional Budget Amount \$34,500

☐ One time amount

☒ Continuing O and M

Previously Budgeted	\$
Funds Expended to Date	
Remaining Budget	-
Budget Adjustment	34,500
Remaining After Adjustment	\$ 34,500

This form must be turned into the Mayor's office 7 days prior to the scheduled City Council meeting.

117 WEST CENTRAL AVENUE * BENTONVILLE, AR 72712

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PLEASE RECYCLE





Memo



To: City Council, Mayor McCaslin
From: David Wright, Parks and Recreation Director
Date: April 10, 2017
Re: City Council approval of a budget adjustment allowing for the addition of one new full time Recreation Specialist position for Parks and Recreation.

Parks and Recreation Staff is requesting City Council's approval of a budget adjustment allowing for Parks and Recreation to add one (1) additional full time Recreation Specialist for the Bentonville Community Center's aquatics program.

As we have discussed in the past, the Bentonville Community Center continues to be a very successful investment for the City of Bentonville. More than 400,000 people visited the center in 2016 and attendance is up since January 1, 2017. During the first three (3) months of the year, daily attendance exceeds 1,400 people.

A major part of these attendance numbers are driven by our aquatics programs. The most popular program is our swim lessons. Parks and Recreation's 2017 work plan and budget was for 2,100 swim lesson participants producing \$87,300. However, after only three months, the Bentonville Community Center has provided lessons for 1,174 participants and produced \$78,085. When we noticed our swim lessons enrollment numbers were much higher than predicted, we began looking at the success of the program. We were quick to realize the success of the program is due to two major reasons. First, there is an overwhelming need in the community for instructional swim. Second, the team implementing the programs are doing a great job of customer service. However, continuing this program at the current rate with only these two individuals is not sustainable if we wish to maintain levels our current levels of success.

Because of this, Parks and Recreation is requesting to add one (1) full time staff member to the Community Center. This individual will work in aquatics and will assist with the day-to-day management of the natatorium at the Community Center. The position's primary task will be to oversee the instructional swim program. The cost of this new position for the balance of 2017 is \$34,500. Moving forward, this position will cost the City of Bentonville \$45,740. All expenses for this program will be completely funded from revenue produced from the programs.

If you have any questions regarding this item, please call me at 479.464.7275 or email dwright@bentonvillear.com.



CHECK ALL THAT APPLY			
	Bid Award	Bid #	
x	Budget Adjustment		
x	Change Order		
	Informational		
	Ordinance		
	Resolution		
	Other		

AGENDA FORM

CITY COUNCIL MEETING OF:

April 25, 2017

Submitted by:

David Wright

Department

Parks and Rec

Phone

271-6813

ACTION REQUIRED:

City Council approval of a change order and budget adjustment, in the amount of \$41,320, for addition of lights in the extended tunnel along the Wishing Spring Trail.

COST TO CITY:

Cost of this Request: \$41,320

Additional Budget Amount \$41,320

☒ One time amount

☐ Continuing O and M

Previously Budgeted	\$
Funds Expended to Date	
Remaining Budget	-
Budget Adjustment	41,320
Remaining After Adjustment	\$ 41,320

This form must be turned into the Mayor's office 7 days prior to the scheduled City Council meeting.

117 WEST CENTRAL AVENUE * BENTONVILLE, AR 72712

www.bentonvillear.com



PLEASE RECYCLE



Memo



To: City Council, Mayor McCaslin
From: David Wright, Parks and Recreation Director
Date: April 17, 2017
Re: City Council approval of a change order and budget adjustment, for \$41,320, for addition of lights in the extended trail tunnel along the Wishing Spring Trail.

Parks and Recreation Staff is requesting City Council's approval of a change order and budget adjustment, in the amount of \$41,320, to install new, permanent lighting in the Wishing Spring Trail Tunnel.

When the Bella Vista Bypass project began with utility relocation (2014), Parks and Recreation lost permanent power to the tunnel on the Wishing Spring Trail. Since this time, our department has limped by with solar powered lighting. The solar powered lights have been undependable, at best.

In addition, the new roundabout required the length of the tunnel to increase dramatically. The tunnel almost doubled in length to approximately 370 linear feet. This increase in distance requires we install permanent lighting for patron's ability to use the trail safely. Lighting will be in accordance with the provisions and plans required by Bentonville Electric Department and the 2003 AHTD Specifications for Highway and Bridge Construction. The provided costs is \$41,320.

After installation by AHTD, the LED lights will connect to a permanent power source and will remain on at all times.

If you have any questions regarding this item, please call me at 479.464.7275 or email dwright@bentonvillear.com.



Date of Request: April 17, 2017

Acct Number	Account Name	Revenue + (-)	Expense + (-)	Fund Balance + (-)
10-5030-452.73-90	Capital - Other		\$ 41,320.00	\$ (41,320.00)
	Fund Balance	\$ 41,320.00		\$ 41,320.00
				\$ -
				\$ -
				\$ -
				\$ -
				\$ -
				\$ -
				\$ -
				\$ -
	Totals	\$ 41,320.00	\$ 41,320.00	\$ -

Justification:

Budget adjustment funds a change order to install permanent lighting in the Wishing Spring Tunnel. Permanent lighting is required now because of the length of the tunnel.

FOR ACTING USE ONLY

Council Action: Approved Disapproved Other _____

Date: _____ Date entered: _____ By: _____

Revised 5/1/07

117 WEST CENTRAL AVENUE * BENTONVILLE, AR 72712
www.bentonvillear.com



PLEASE RECYCLE



**ARKANSAS STATE HIGHWAY COMMISSION
CHANGE ORDER**

Job Name Hwy. 71B-Hwy. 72 South (Bella Vista Bypass) (S) **Route & Section** 71, Section 19
Job No. CA0904 **FAP No.** ACNHPP-NCIIP-0004(49) **County** Benton
Changes located STA 401+00 Hwy 71 Southbound Exit Ramp & STA 1132+76 Roundabout **Change Order No.** 35

DESCRIPTION OF CHANGE: Increase the quantities for "Non-metallic Conduit (2")", "Concrete Pull Box (Type 2 HD)", and "Electrical Conductors-in-Conduit, Aluminum (3C/2 A.W.G.)". Establish and add the following items to the Contract: "PVC Coated Galvanized Steel Conduit (1.5")" and "Submersible Luminaire (3000 Lumens)"

REASON FOR CHANGE: Lighting will be installed for the recreational trail which passes through the outside barrels of the Reinforced Concrete Box Culverts at STA 401+00 Hwy 71 Southbound Exit Ramp and STA 1133+76 Mainline per request of the City of Bentonville. Lighting will be in accordance with the attached Special Provisions, plans, Bentonville Electric Utility Department (BEUD) specifications, and the 2003 edition of the AHTD "Specifications for Highway and Bridge Construction". A cost quote from the contractor is attached for "PVC Coated Galvanized Steel Conduit (1.5")" and "Submersible Luminaire (3000 Lumens)".

FUNDING CHANGE: The City of Bentonville will pay the additional costs resulting from this change..

NOTE: UNIT PRICES FOR "SUBMERSIBLE LUMINAIRE (3000 LUMENS)" AND "PVC COATED GALVANIZED STEEL CONDUIT (1.5")" ARE CONTINGENT UPON THE EXECUTION OF A SUPPLEMENTAL AGREEMENT.

ATTACHMENTS: Plans and details, Special Provisions, Related correspondence, and Contractors price quote for new items.

SUMMARY

Item No.	Item	Unit	Unit Price	PRESENT		REVISED	
				Quantity	Amount	Quantity	Amount
710	Non-Metallic Conduit (2")	LF	8.05	2,300.00	18,515.00	3,000.00	24,150.00
SPSS711	Concrete Pull Box (Type 2 HD)	EACH	900.00	11.00	9,900.00	14.00	12,600.00
SP	Electrical Conductors-in-Conduit, Aluminum (3C/2 A.W.G.)	LF	2.50	3,295.00	8,237.50	4,665.00	11,662.50
SP	PVC Coated Galvanized Steel Conduit (1.5")	LF	31.57	0.00	0.00	705.00	22,256.85
SP	Submersible Luminaire (3000 Lumens)	EACH	486.85	0.00	0.00	15.00	7,302.75
				36,652.50		77,972.10	

Overrun **\$41,319.60**

Concurrence By:

	Date	Initials	Remarks
PROGRAM ADMINISTRATOR			
MAINTENANCE			
DISTRICT 9			
CONSTRUCTION			
CITY OF BENTONVILLE			

Authorized _____

Requested _____

W.E. Mott, District Engineer

Gary D. Icenogle - Consultant, Resident Engineer



CHECK ALL THAT APPLY			
	Bid Award	Bid #	
	Budget Adjustment		
	Change Order		
	Informational		
	Ordinance		
	Resolution		
X	Other		

AGENDA FORM

CITY COUNCIL MEETING OF:

April 25, 2017

Submitted by:

George Spence

Department

Mayor's Office

Phone

271-3112

ACTION REQUIRED:

Ward redistricting discussion.

COST TO CITY:

Cost of this Request:

Additional Budget Amount

☐ One time amount

☐ Continuing O and M

Previously Budgeted	\$
Funds Expended to Date	
Remaining Budget	-
Budget Adjustment	-
Remaining After Adjustment	\$ -

This form must be turned into the Mayor's office 7 days prior to the scheduled City Council meeting.

117 WEST CENTRAL AVENUE * BENTONVILLE, AR 72712

www.bentonvillear.com



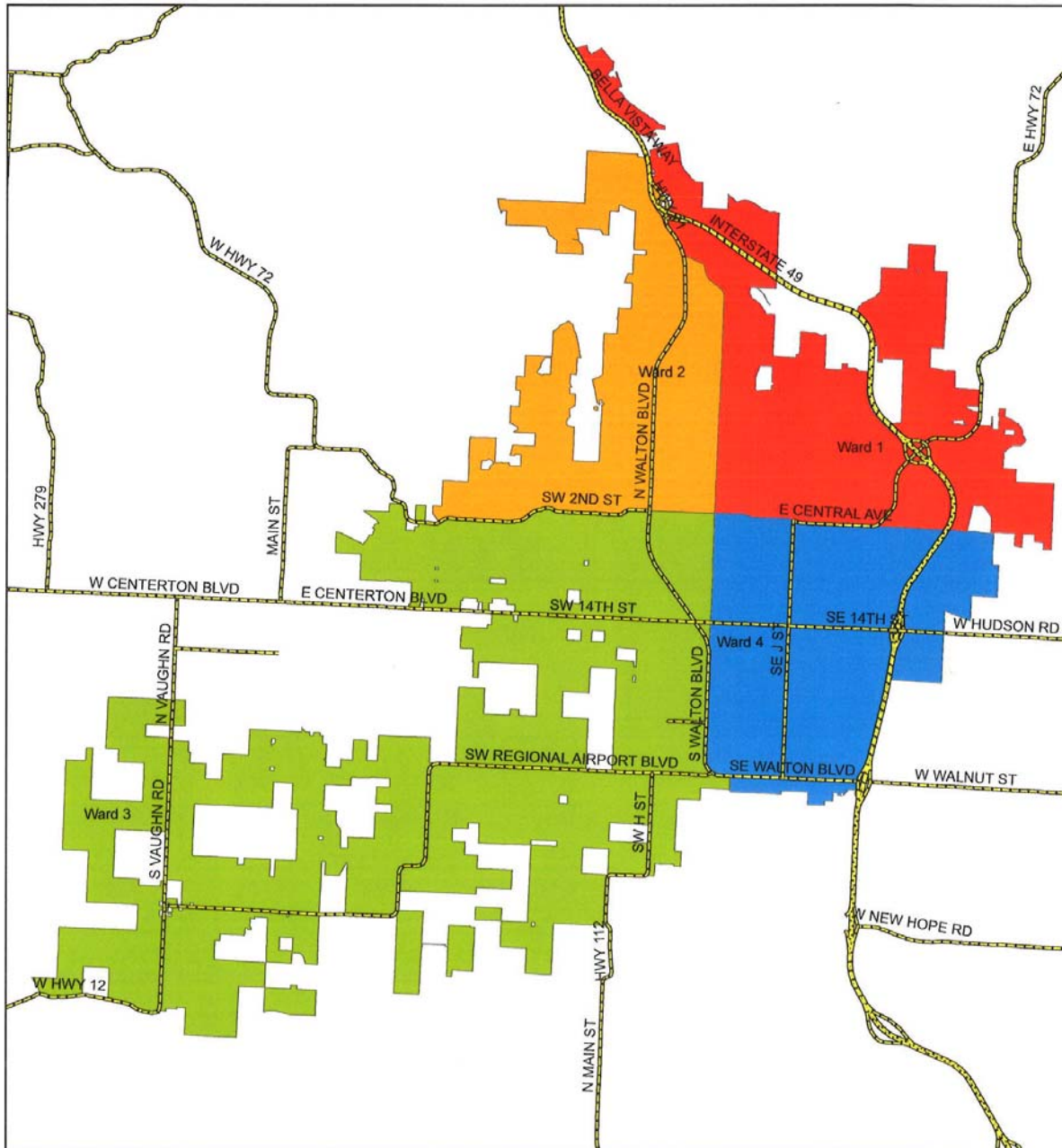
PLEASE RECYCLE



REDISTRICTING

CURRENT WARDS

Ward	2015 Pop	Change	2017 Pop	2017 %	2017 PreAddress	Project pop	Projected
Ward 1	6355	3.93%	6605	15.03%	203	6944	5.13%
Ward 2	7452	1.76%	7583	17.26%	181	7885	3.99%
Ward 3	18859	10.23%	20788	47.31%	824	22164	6.62%
Ward 4	8748	2.44%	8961	20.4%	84	9102	1.57%



Note – A question was asked at the prior meeting where this subject was broached about the population figures from the maps presented in connection with this issue. The 2015 and 2017 population figures are based on housing units per the City's records and figures established by the census bureau (2009-2013 American Community Survey 5-Year Estimates, Selected Housing Characteristics, Bentonville, AR). The census bureau uses 2.65 as the multiplier for dwellings with a single unit per structure. This was used for mobile homes as well. For dwellings with multiple units, 1.67 was the multiplier.

For an estimate for future growth, the figures are based on actual data of "pre-addresses" issued by the City. In the development process, when a preliminary plat is submitted which indicates future construction of a dwelling will take place, an address is created for the dwelling and since the dwellings are still not constructed and ready for occupancy, those are called "pre-addresses." It should be noted that pre-addresses only apply to preliminary residential subdivisions.

WHY/WHEN –

ACA §14-43-311 (a)(1)(A) provides that “City councils shall have the authority to redistrict the wards in their city when they determine that the people can best be served by adding wards, combining wards, or changing ward boundary lines to equalize the population in the various wards.”

AG Opinion 93-427 states that “it appears that the city council is responsible for the establishment and redistricting of wards, and that redistricting may be done whenever the city council determines it is necessary to equalize the population of the various wards. ...

AG 88-186 states that “The city council must review all of the relevant facts and ultimately determine whether redistricting the wards will best serve the people....

Ward 3 currently has almost half the City’s population. That appears to make a clear case for redistricting. However, only the Council can decide if redistricting will “best serve the people.”

HOW –

ACA § 14-43-311 (a)(1)(A) provides “City councils in cities of the first class shall have the authority to redistrict the wards in their city by adding wards, combining wards, or changing ward boundary lines to equalize the population in the various wards.

(B) It shall be the duty of the council to see that each ward has as nearly an equal population as would best serve the interest of the people of the city.

If redistricting is agreed to, the Council may consider increasing the number of wards, and once that is decided on, will need to change the ward boundary lines to “equalize the population in the various wards.”

ACA § 14-43-307(a)(1) provides that “Candidates for... alderman ... shall reside in the ward from which they seek to be elected and shall run at large.” However, subsection (b)(1)(A) allows the “city council.... to provide, by ordinance, that all aldermen be elected by ward,...Moreover, subsection (b)(1)(B)(ii) provides that the “city council ... may provide for the election of one (1) alderman from each ward citywide and the other aldermen from each ward by the voters of the ward only.

The default method of election is “at large,” but the Council may also consider having one or both aldermen from each ward elected solely by the residents of that ward.

RESULTS

ACA § 14-43-311(b) provides with regard to redistricting that “At the next city election held,..., there shall be elected from each of the new wards two (2) aldermen who shall organize the new city council at the first council meeting in January after their election.

Subsection (c)(2)(A) states that “It shall be lawful to increase the number of wards or continue the same number of wards without affecting the terms of office of incumbent aldermen of the city.”

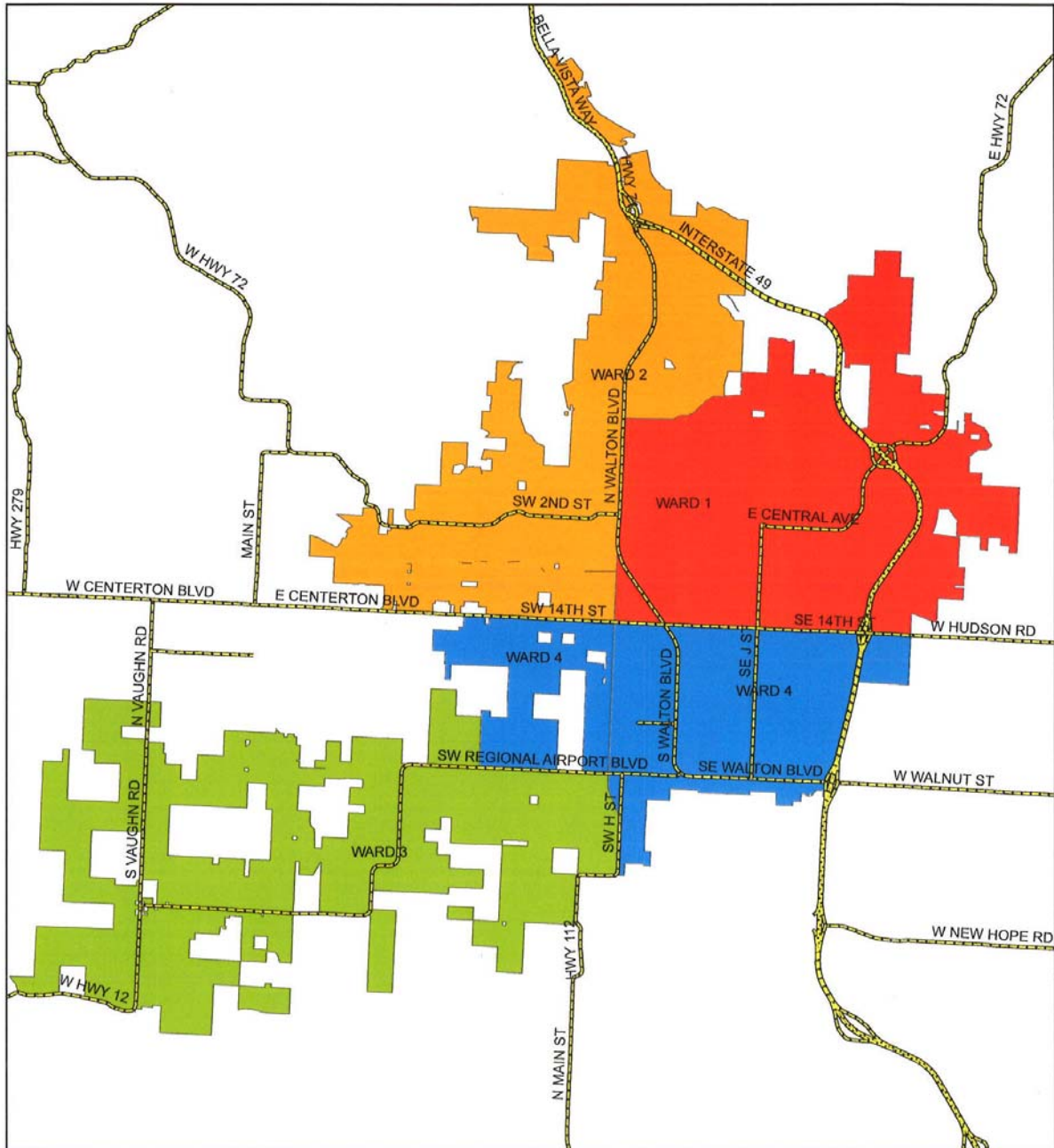
None of these changes would affect anyone’s current term as they would not take effect until after the “next city election held.”

CHOICES TO BE MADE:

- 1) Whether to redistrict at all?**
- 2) If the decision is made to redistrict, whether to keep four wards or increase the number of wards?**
- 3) If the decision is made to redistrict, where to set the boundary lines for the wards?**
- 4) Whether to continue with election of all aldermen at large or change to election by ward?**
- 5) If the decision is made to change to election by ward, whether to have all aldermen elected by ward or to have one from each ward elected by ward and the other elected at large?**

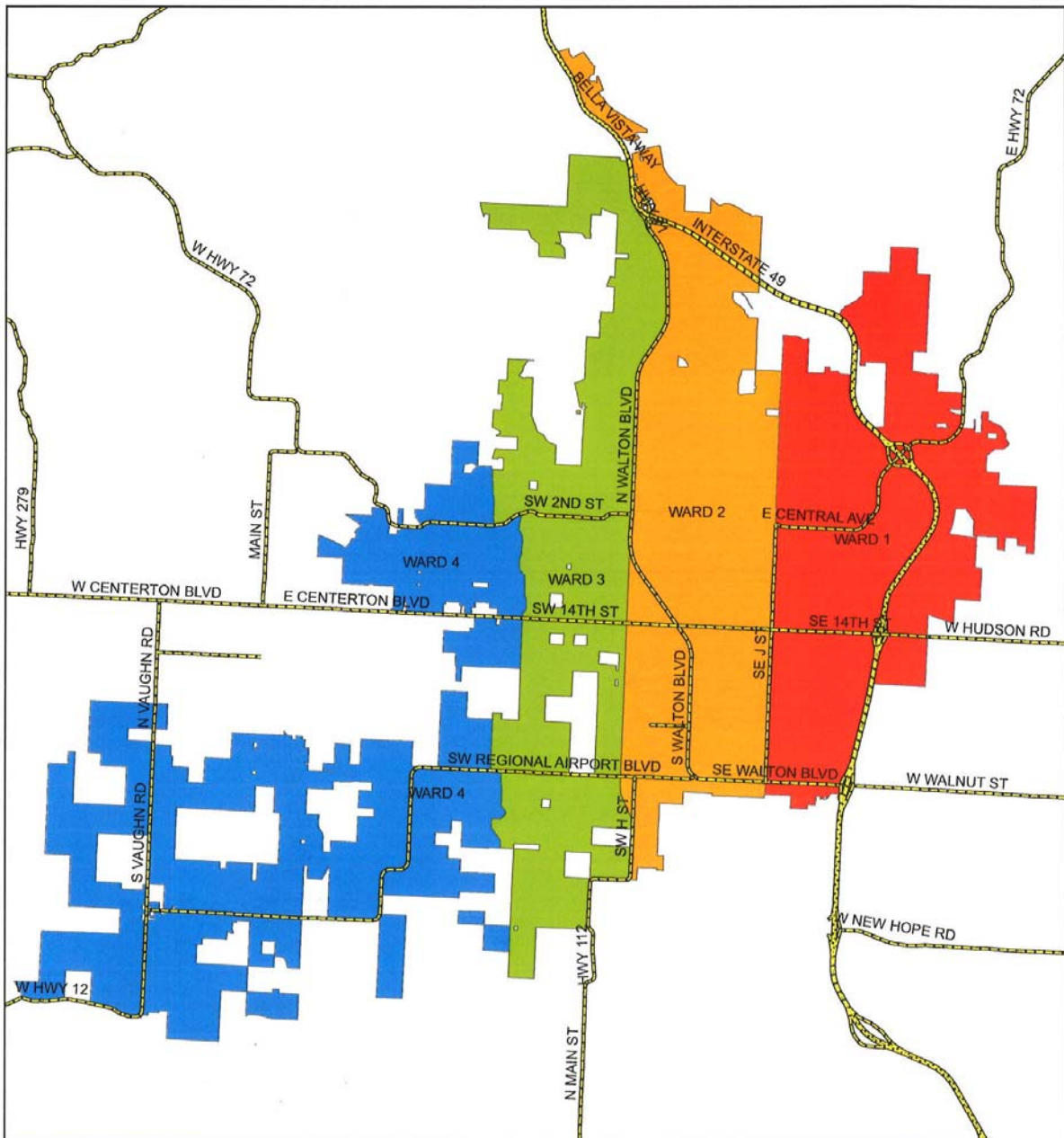
PLAN 1

WARD	2015 Pop	Change	2017 Pop	2017 %	2017 PreAddress	Project_po	Projected
WARD 1	13775	2.11%	14065	32.02%	260	14499	3.08%
WARD 2	11839	4.98%	12429	28.29%	336	12990	4.51%
WARD 3	7741	8.04%	8364	19.04%	524	9239	10.47%
WARD 4	8048	12.68%	9069	20.65%	172	9356	3.17%



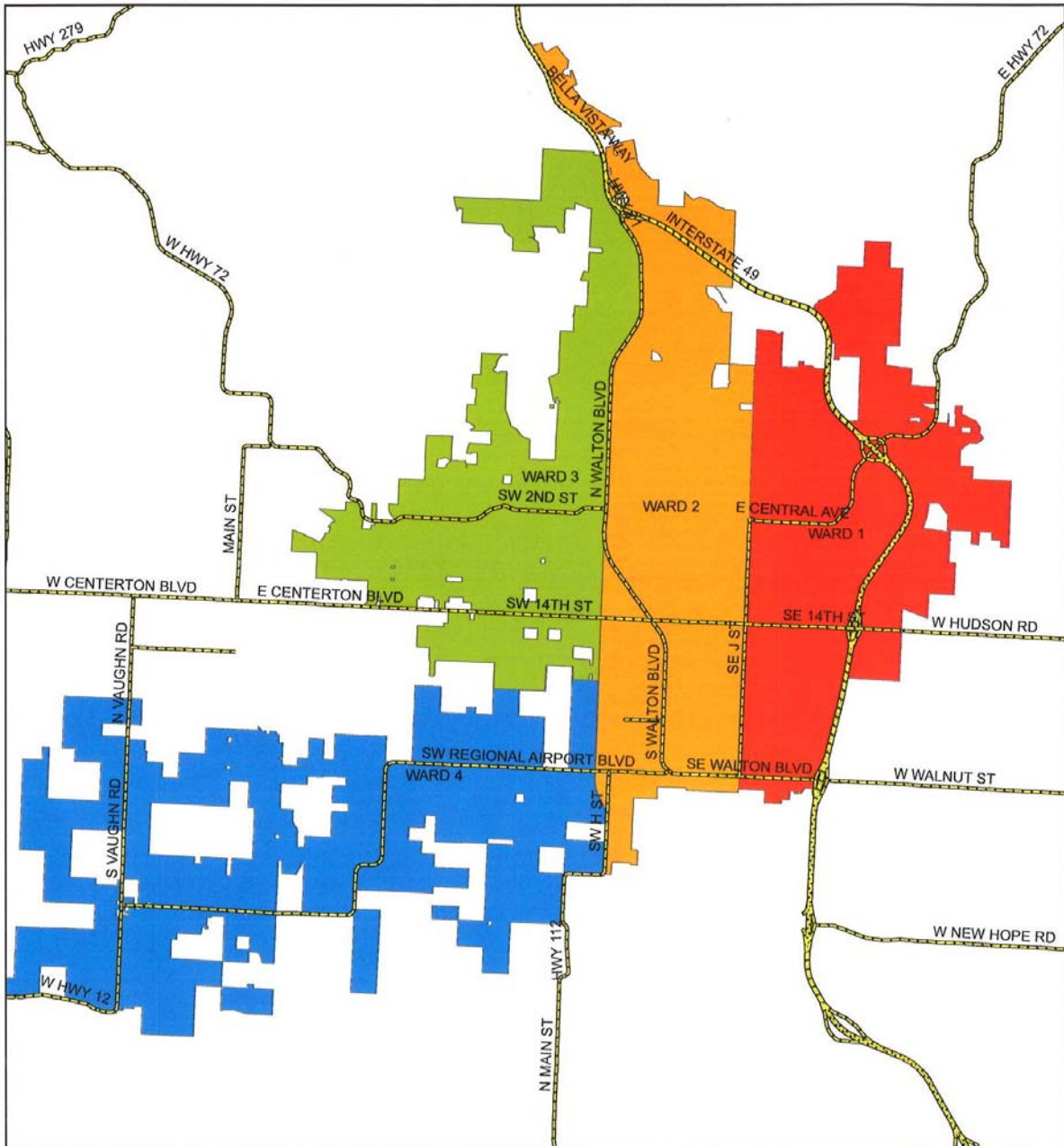
PLAN 2

LABEL	2015 pop	Change	2017 Pop	2017 %	2017 PreAddress	Project_po	Projected
WARD 1	9429	3.3%	9738	22.16%	195	10063	3.34%
WARD 2	10511	8.9%	11450	26.06%	197	11779	2.88%
WARD 3	10580	2.7%	10867	24.73%	326	11411	5.01%
WARD 4	10894	9.1%	11883	27.04%	574	12842	8.07%



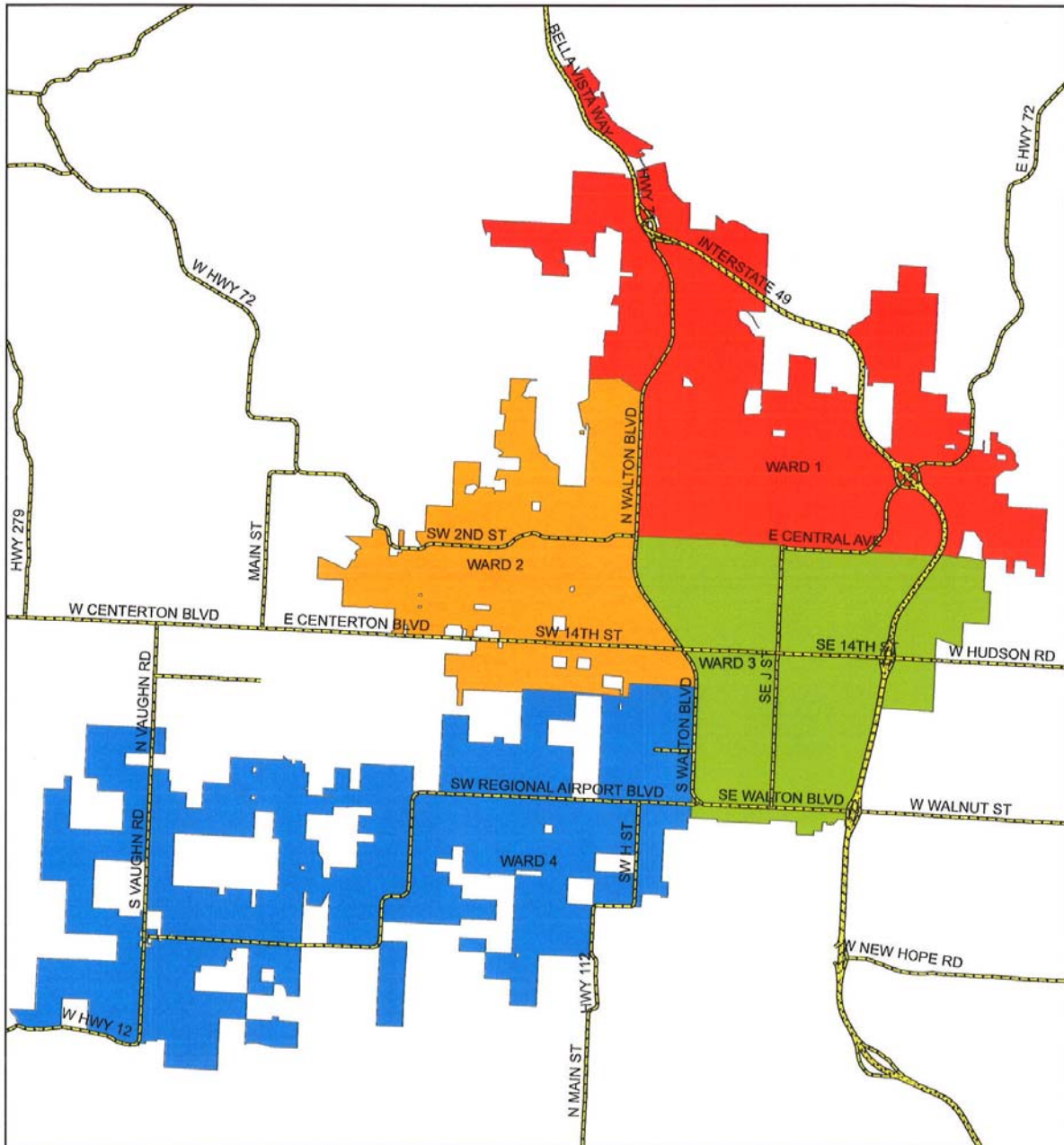
PLAN 3

Ward	2015 Pop	Change	2017 Pop	2017 %	2017 PreAddress	Project_po	Projected
WARD 1	9429	3.27%	9738	22.16%	195	10063	3.34%
WARD 2	10511	8.93%	11450	26.06%	197	11779	2.88%
WARD 3	11995	5.92%	12706	28.92%	354	13297	4.66%
WARD 4	9479	5.97%	10044	22.86%	546	10956	9.08%



PLAN 4

WARD	2015 Pop	Change	2017 Pop	2017 %	2017 PreAddress	Project_po	Projected
WARD 1	10547	2.48%	10808	24.6%	294	11299	4.54%
WARD 2	10614	5.96%	11247	25.6%	297	11743	4.41%
WARD 3	9999	2.39%	10238	23.3%	112	10425	1.83%
WARD 4	10255	13.56%	11645	26.5%	589	12629	8.45%



A.C.A. § 14-43-311
§ 14-43-311. City redistricting; new ward

(a)(1)(A) City councils in cities of the first class shall have the authority to redistrict the wards in their city when they determine that the people can best be served by adding wards, combining wards, or changing ward boundary lines to equalize the population in the various wards.

(B) It shall be the duty of the council to see that each ward has as nearly an equal population as would best serve the interest of the people of the city.

(2)(A) Within ninety (90) days after redistricting, if one hundred (100) or more qualified electors in the city are dissatisfied with the redistricting of the city into wards, they shall have the authority to petition the circuit court.

(B) The court, after due hearing, shall have authority to redistrict the city into such wards as the court shall deem best if the court finds that the redistricting action by the council was arbitrary and capricious.

(b) At the next city election held, more than twenty (20) days after the approval of redistricted wards, there shall be elected from each of the new wards two (2) aldermen who shall organize the new city council at the first council meeting in January after their election.

(c)(1)(A) All aldermen elected in the city prior to redistricting of wards shall give up their positions to the new aldermen at the time for the organization of the new council, as provided in subsection (b) of this section.

(B) From that date the terms of office of all previously elected aldermen shall cease and terminate.

(2)(A) It shall be lawful to increase the number of wards or continue the same number of wards without affecting the terms of office of incumbent aldermen of the city.

(B)(i) When the wards are reapportioned so as to increase the number of wards or readjust existing wards so that such wards contain nearly equal population, the aldermen who remain in their old ward, or part thereof, shall continue in office.

(ii) New aldermen shall be elected only for new wards actually formed out of the territory of old wards.

(d)(1) All clerk's costs and other costs incurred in the proceedings authorized in this section shall be paid by the persons at whose instance the services were rendered.

(2)(A) In case these proceedings result in the redistricting of the city into new wards, the compensation of those individuals making the redistricting shall be fixed by the circuit judge, certified to the city council, and paid out of the city treasury.

(B) This compensation shall not exceed the sum of twenty-five dollars (\$25.00) each.

A.C.A. § 14-43-307
§ 14-43-307. Aldermen; at large or by ward

(a)(1) Candidates for the office of alderman in cities of the first class shall reside in the ward from which they seek to be elected and shall run at large.

(2)(A) All of the qualified electors of these cities shall be entitled to vote in the election.

(B)(i) Provisions shall be made by the election commissioners in these cities so that the qualified electors of each ward shall have at least one (1) voting precinct in each ward where the resident electors thereof may cast their ballots.

(ii) Cities of the second class that elect their aldermen citywide may have one (1) public place only for holding elections.

(b)(1)(A) The city council of any such city or the governing body of any city in transition to the mayor-council form of government is empowered and authorized to provide, by ordinance, that all aldermen be elected by ward, in which event each alderman shall be voted upon by the qualified electors of the ward from which the person is a candidate.

(B)(i) When so provided by city ordinance, the name of the candidate shall appear upon the ballot only in the ward in which he or she is a candidate.

(ii) The city council of these cities may provide for the election of one (1) alderman from each ward citywide and the other aldermen from each ward by the voters of the ward only.

(2) All such cities choosing to elect all aldermen by wards or in part by wards shall provide, in the manner provided by law, for the establishment of wards of substantially equal population in order that each alderman elected from each ward shall represent substantially the same number of people in the city.

Ark. Op. Atty. Gen. No. 93-427 (Ark.A.G.), 1994 WL 23045
Office of the Attorney General
State of Arkansas
Opinion No. 93-427
January 20, 1994

The Honorable W.R. "Bud" Rice
State Representative
P.O. Box 2195
Waldron, AR 72958-2195

Dear Representative Rice:

This is in response to your request for an opinion on the following questions:

- (1) Who is responsible for establishing the districts or wards within a city; and, who notifies whoever is responsible when and if it needs to be done?
- (2) Once notified, how long do they have to establish the districts or wards?
- (3) How often are the districts or wards reapportioned?

The answers to these questions appear to depend upon whether the particular city involved is a first or second class city and, if a first-class city, upon its type of government. It is my understanding that your questions concern the city of Waldron, Arkansas, and that Waldron is a first-class city operating under the mayor-council form of government.

Arkansas Code Annotated Section 14-43-307(b)(2) (Cum.Supp.1993) provides, with reference to cities of the first class,:

All such cities choosing to elect all aldermen by wards or in part by wards shall provide, in the manner provided by law, for the establishment of wards of substantially equal population in order that each alderman elected from each ward shall represent substantially the same number of people in the city.

I can find no statutory provision regarding the initial establishment of wards in cities of the first class utilizing the mayor-council form of government; thus, I cannot provide a complete answer to your first two questions. Arkansas Code Annotated Section 14-43-311 (1987) provides for the redistricting of wards in first class cities, however, and it has been held applicable to the redistricting of wards in cities utilizing the aldermanic form of government. See *Moorman v. Lynch*, 310 Ark. 525, 837 S.W.2d 886 (1992). It states, in pertinent part:

(a)(1)(A) City councils in cities of the first class shall have the authority to redistrict the wards in their city when they determine that the people can best be served by adding wards, combining wards, or changing ward boundary lines to equalize the population in the various wards.

(B) It shall be the duty of the council to see that each ward has as nearly an equal population as would best serve the interest of the people of the city.

(2)(A) Within ninety (90) days after redistricting, if one hundred (100) or more qualified electors in the city are dissatisfied with the redistricting of the city into wards, they shall have the authority to petition the circuit court.

(B) The court, after due hearing, shall have authority to redistrict the city into such wards as the court shall deem best if the court finds that the redistricting action by the council was arbitrary and capricious.

Pursuant to these provisions, it appears that the city council is responsible for the establishment and redistricting of wards in cities of the first class utilizing the aldermanic or mayor-council form of government, and that redistricting may be done whenever the city council determines it is necessary to equalize the population of the various wards. A judicial means of challenging any such redistricting is also provided.

The foregoing opinion, which I hereby approve, was prepared by Assistant Attorney General Catherine Templeton.

Sincerely,
Winston Bryant
Attorney General

Ark. Op. Atty. Gen. No. 88-186 (Ark.A.G.), 1988 WL 279470
Office of the Attorney General
State of Arkansas
Opinion No. 88-186
July 7, 1988

The Honorable Bobby Tullis
State Representative
Box 277
Mineral Springs, Arkansas 71851

Dear Representative Tullis:

This is in response to your request for an opinion regarding the alteration of ward boundary lines. You note in your correspondence that the wards in question are disproportionate in number, to the extent that the vote in one may be the sole determinant of the election results. You have asked, specifically, whether this situation is unconstitutional or contrary to State law, and if so whether the election will be valid.

Act 253 of 1983, which is codified at A.C.A. § 14-43-311, states in pertinent part:
City councils in either of the first class shall have the authority to redistrict the wards in their city when they determine that the people can best be served by adding wards, combining wards; or changing ward boundary lines to equalize the population in the various wards.

It shall be the duty of the council to see that each ward has as nearly an equal population as would best serve the interest of the people of the city.

It is clear under § 14-43-311 that the city council has a duty to equalize the population of the wards in a manner that will 'best serve the interest of the people of the city.' This is a factual determination to be made by the council, based upon the particular circumstances.

We cannot conclusively state that a disproportionate number of voters in one ward will necessarily render the election unconstitutional or contrary to State law. The extent to which the numbers are disproportionate would, reasonably, be a factor. However, the composition of the population must also be considered. The Eighth Circuit Court of Appeals in *Perkins v. City of West Helena*, 675 F.2d 201, 220 (8th Cir. 1982) held that an at-large system was unconstitutionally maintained for the discriminatory purpose of limiting the opportunity of blacks to participate meaningfully or effectively in the political process and to elect legislators of their choice. This exemplifies a successful election challenge based upon voter dilution of a racially suspect class. The court held that such voter dilution challenge will succeed only if the at-large electoral system was created or maintained for a discriminatory purpose. *Perkins*, 675 F.2d at 209

The city council must review all of the relevant facts and ultimately determine whether redistricting the wards will best serve the people. The wards should be composed of as equal population as possible so that the constitutional theory of 'one man—one vote' will be satisfied. The Constitution of the United States protects the rights of all qualified citizens to vote and to have their votes

counted. It has uniformly been held that the 'one man—one vote' rule applies to the election of city councils. Annotation, Applicability of 'One Man—One Vote' Rule, 18 L.Ed.2d 1537, 1538.

It should also be noted, however, that alteration of ward boundary lines within thirty (30) days of an election is contrary to State law. A.C.A. § 7-5-101 states in pertinent part:

*2 The commissioners shall not have the power to change the boundaries of existing precincts, to create any new precincts, or to change the voting place in any precinct, within thirty (30) days of any election.

This office does not have the authority to determine the validity of an election. Elections must, instead, should be challenged in the appropriate circuit court. *Perkins v. City of West Helena*, 675 F.2d 201 (8th Cir. 1982).

While we cannot provide conclusive responses in this instance, we hope that the foregoing offers general guidance in addressing the matter.

The foregoing opinion, which I hereby approve, was prepared by Assistant Attorney General Elisabeth A. Walker.

Sincerely,
Steve Clark
Attorney General



BENTONVILLE CITY COUNCIL AGENDA

**Committee of the Whole
Community Development
Planning Commission Meeting Room**

**Tuesday, April 25, 2017 6:00 p.m.
305 SW "A" Street**

**Regular City Council Meeting
Community Development
Planning Commission Meeting Room**

**Tuesday, April 25, 2017 6:00 p.m.
305 SW "A" Street**

**Public Comments on Tonight's Agenda Items (Limited Public Forum)
Questions, Comments and Discussion from Alderman on Tonight's Agenda
Call to Order
Pledge of Allegiance
Moment of Silence – For our Military Forces
Roll Call
Approval of Minutes: April 11, 2017
Swear in Police Officer – James Adam Holland**

AGENDA

1. Planning:
 - 1a. **Lot Split: Lot 18, Block 3, Braithwaite Addition, Jason McNabb, 1802 Oakwood Avenue, R-1, Single Family Residential.**

The Planning Commission voted 7-0, recommending approval.

The applicant has submitted a lot split that will create one lot from three parcels. The new lot will be known as Lot 18 (1.54 acres), Block 3 of Braithwaite Park Addition. Per the requirements of the current Master Street Plan, right-of-way will be dedicated along Oakwood Avenue. A 20' wide public utility easement will also be dedicated along Oakwood Avenue. The new lot will have access to public utilities and a public street.

- 1b. **Property Line Adjustment: Lot 16, Block 1, Dunn & Davis Addition, Cadence Group, LLC , 505 Southwest 'B' Street, D-C, Downtown Core.**

The Planning Commission voted 7-0, recommending approval.

The applicant has submitted a property line adjustment creating one lot from two existing lots. The new lot will be known as Lot 16 (0.54 acres), Block 1 of Dunn & Davis Addition. The plat as submitted indicates a portion of the existing public alley along the common lot line of the two existing lots to be vacated, this vacation will require City Council approval. The plat also shows the dedication of a 12' public alley along the northern lot line of the new Lot 16. Per the current Master Street Plan requirements, right-of-way is being dedicated along SW 'B' Street. The new lot will have access to public utilities and a public street.

2. Approval of a resolution authorizing the Mayor and City Clerk to enter into a land exchange agreement with R. Rev. Larry R. Benfield, Bishop of the Episcopal Diocese of Arkansas to facilitate trail development. The parties agree that the properties to be exchanged are of like kind, equal value and mutually beneficial.
3. A resolution authorizing the Mayor and City Council to enter into an agreement with Cox Communication for a Pole Attachment License Agreement with the City of Bentonville.
4. A resolution authorizing the Mayor and City Council to enter into an agreement with Carroll Electric to purchase electric distribution facilities and 14 electric accounts along SW Ginn Road, SW Anglin Road, and SW Adams Road in the amount of \$158,751.05.
5. A resolution setting a public hearing for May 9, 2017 for a Utility Easement Vacation requested by Sean Reber for 304 NW Tall Oaks, Oaklawn Hills Subdivision.
6. Fire Department Staff recommends approval of a resolution declaring certain property surplus, and transfer the items to three area volunteer fire departments.
7. City Council approval of a budget adjustment allowing for the addition of one (1) full time Recreation Specialist for Parks and Recreation.
8. City Council approval of a change order and budget adjustment, in the amount of \$41,320.00, for addition of lights in the extended tunnel along the Wishing Spring Trail.
9. Ward redistricting discussion.