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January 26, 2001

Via Hand-Delivery

K. David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37219

01-00091

Re: Petition of Memphis Networx, LLC for Approval of a Telecommunications Franchise with the City of Memphis

Dear Mr. Waddell:

Enclosed you will find the original and thirteen (13) copies of the Petition of Memphis Networx, LLC for Approval of the Franchise with the City of Memphis and a check for \$25.00 for the filing fee.

Should you have any questions, please do not hesitate to contact me.

Sincerely,



D. Billye Sanders
Attorney for Memphis Light Gas &
Water Division and Memphis
Networx, LLC

REC'D TN
REGULATORY AUTH.
JAN 29 PM 1 18
EXECUTIVE SECRETARY

DBS:lmb
w/Enclosure
cc: John Knox Walkup, Esq.
Ricky E. Wilkins, Esq.
Ward Huddleston, Esq.

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

IN RE: PETITION OF MEMPHIS)
NETWORK, LLC FOR APPROVAL OF)
A TELECOMMUNICATIONS FRANCHISE)
WITH THE CITY OF MEMPHIS)

DOCKET NO. 01-_____

Petition of Memphis Network, LLC for Approval of Franchise

Memphis Network, LLC (“Memphis Network” or “Petitioner”) hereby petitions the Tennessee Regulatory Authority (“TRA”), pursuant to T.C.A. § 65-4-107, for approval of the telecommunications franchise that was granted to Memphis Network by Ordinance No. 4744 of the City of Memphis, Tennessee on December 5, 2000.

In support of this Petition, Memphis Network would show the Authority the following:

1. Memphis Network filed an application for a certificate of convenience and necessity with the Authority on November 24, 1999, and a subsequent Amendment to the application on December 21, 2000 (the “Application”). The Application is pending before the Authority at this time in Docket No. 99-00909 and has been referred to the Pre-Hearing Officer for determination of the extent of additional proceedings. In order to provide the service contemplated in the Application, Memphis Network has obtained a franchise to construct, maintain, and operate a telecommunications system in the public rights-of-way of the City of

Memphis. Assuming the Application is granted, such franchise is necessary and proper for the public convenience and properly conserves the public interest.

2. The City of Memphis enacted Ordinance No. 4404 on December 23, 1996, which requires a public utility offering telecommunications services to apply for and receive a telecommunications franchise prior to occupying the rights-of-way of the city.

3. Pursuant to Ordinance No. 4404, Memphis Networx filed an application for a telecommunications franchise to construct, maintain and operate a telecommunications system within the City of Memphis on January 14, 2000.

4. On December 5, 2000, the Memphis City Council approved by a vote of 12-0 Ordinance No. 4744 which granted the franchise application of Memphis Networx. Pursuant to Section 2 of Ordinance 4744, the City of Memphis and Memphis Networx, LLC entered into a Telecommunications Franchise Contract dated, January 3, 2001 (the "Franchise Contract"). A copy of Ordinance No. 4744, the Franchise Contract, Ordinance 4404 and the minutes from the December 5, 2000 Council meeting are attached to this Petition as collective Exhibit A.

WHEREFORE, Petitioner respectfully requests that the Authority grant this Petition and approve Memphis City Ordinance 4744 and the Franchise Contract as necessary and proper for the public convenience.

Respectfully submitted,

MEMPHIS NETWORKX, LLC

By: *D. Billye Sanders*
D. Billye Sanders, Esq.
Waller Lansden Dortch & Davis
A Professional Limited Liability Company
Nashville City Center
511 Union Street, Suite 2100
Nashville, Tennessee 37219-8966
(615) 244-6380

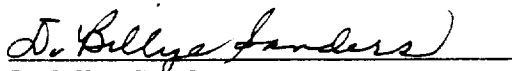
Attorney for Memphis Networx, LLC

By: *John Knox Walkup by LRS*
John Knox Walkup, Esq.
Wyatt, Tarrant & Combs
2525 West End Avenue, Suite 1500
Nashville, Tennessee 37203
(615) 244-0200

Attorney for Memphis Networx, LLC

CERTIFICATE OF SERVICE

I, D. Billye Sanders, hereby certify that on this 29th day of January, 2001, a true and correct copy of the foregoing was delivered by hand delivery, facsimile or U.S. Mail postage pre-paid to the counsel of record for the intervenors in Docket number 99-00909 and other interested parties listed below.


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Memphis, Tennessee 38103

Robert Spence, Esq.
City Attorney
City of Memphis
125 North Main Street
Memphis, Tennessee 38103

ORDINANCE NO: 4744

AN ORDINANCE GRANTING A FRANCHISE TO CONSTRUCT, MAINTAIN, AND OPERATE A TELECOMMUNICATIONS SYSTEM WITHIN THE CITY OF MEMPHIS UNDER THE PROVISIONS OF ORDINANCE NO: 4404.

WHEREAS, in Ordinance No. 4404 the Council of the City of Memphis established terms and conditions for any company wishing to construct, maintain, and operate a telecommunications system in the public rights-of-way, using fiber optic cable, in whole or in part; and

WHEREAS, **Memphis Networx, LLC**, has duly filed an application for such a franchise and is financially capable to construct, maintain, and operate a telecommunications system; and

WHEREAS, it is in the best interest of the City of Memphis that a franchise to construct, maintain, and operate a telecommunications system in the public rights-of-way of the City be granted to **Memphis Networx, LLC**.

NOW, THEREFORE,

SECTION 1. BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, That a franchise to construct, maintain and operate a telecommunications system, as defined by City of Memphis Ordinance No. 4404, which ordinance is attached hereto and by reference made a part of this franchise, within the City of Memphis, is hereby granted to **Memphis Networx, LLC**, 7555 Appling Center Drive, Memphis, Tennessee, 38133-5069, (hereinafter "Grantee") in accordance with the terms and conditions of City Ordinance No. 4404, and for a term of twenty (20) years.

SECTION 2. BE IT FURTHER ORDAINED, That the Telecommunications Franchise contract by and between the City of Memphis and Grantee, which contract is attached hereto and by reference made a part of this ordinance, is hereby approved and the Mayor is hereby authorized to execute said contract.

SECTION 3. BE IT FURTHER ORDAINED, That this Ordinance shall take effect from and after the date it shall have been passed by the Council, signed by the Chairman of the Council, certified and delivered to the Office of the Mayor in writing by the Comptroller, and shall become

effective as otherwise provided by law.

BARBARA SWEARENGEN HOLT

Chairman of Council

Attest:

Danny N. Wray, Comptroller

THE FOREGOING ORDINANCE

4746 PASSED

1st Reading 1-18-00

2nd Reading 2-1-00

3rd Reading 12-5-00

Approved Barbara Swearengen Holt
Chairman of Council

Date Signed: Dec 19, 2000

APPROVED:

[Signature]
Mayor, City of Memphis (L)

Date Signed: 12/24/2000

I hereby certify that the foregoing is a true copy, and said document was adopted by the Council of the City of Memphis as above indicated and approved by the Mayor

[Signature]
Comptroller

**TELECOMMUNICATIONS FRANCHISE CONTRACT
BY AND BETWEEN
THE CITY OF MEMPHIS
AND
MEMPHIS NETWORK, LLC, a joint venture between
MEMPHIS LIGHT, GAS & WATER DIVISION
AND
MEMPHIS BROADBAND, LLC,**

THIS FRANCHISE CONTRACT made and entered into this 3rd day of January 2001, by and between the City of Memphis, a municipal corporation, (hereinafter "City"), and, Memphis Network, LLC, a joint venture between Memphis Light, Gas & Water Division and Memphis Broadband, LLC, duly authorized to do business in the State of Tennessee (hereinafter "Grantee");

WITNESSETH:

WHEREAS, Grantee has duly filed its application for a telecommunications franchise pursuant to the terms of Ordinance No.: 4404; and

WHEREAS, the grant of a telecommunications franchise to Grantee has been approved by ordinance of the City Council of Memphis in accordance with Section 15 of the Charter of the City of Memphis.

NOW, THEREFORE,

Pursuant to the authority granted by the Charter of the City of Memphis and by Ordinance No.: 4404, and for good and valuable consideration, the City hereby grants a telecommunications franchise to Grantee subject to the following terms and conditions:

1. Grantee's application for a franchise to construct and operate a telecommunications system, using fiber optic cable, in whole or in part, which application was filed with the Chief Administrative Officer of the City on January 14, 2000, and is incorporated herein by reference, is hereby accepted by the City.
2. Pursuant to the terms of said application and the provisions of Ordinance No.: 4404, Grantee is hereby awarded a franchise to construct, maintain and operate a telecommunications system, as defined in said ordinance, within the City of Memphis.
3. Grantee hereby agrees to and accepts the terms and conditions contained in Ordinance No.: 4404, which is hereby incorporated into this Contract by reference.

4. Grantee shall, prior to execution of this Franchise Contract, file with the Director of Finance a bond and certificate of insurance meeting the requirements of Ordinance No.: 4404. Grantee shall not commence construction, operation or activation of its telecommunications system until these bond and insurance requirements are satisfied.

5. Grantee warrants that it has the financial capability to construct, maintain, and operate a telecommunications system and to comply with the provisions of Ordinance No.: 4404.

6. Grantee shall provide no service regulated by the Federal Communications Commission and/or the Tennessee Regulatory Authority until it has received all necessary approvals and permits from said Commissions.

7. The City of Memphis agrees to use its best efforts to preserve the confidentiality of information designated by Grantee as proprietary, to the extent permitted by law.

8. The time within which Grantee shall be required to perform any act under the franchise ordinance shall be extended by a period of time equal to the number of days due to a force majeure. The term "force majeure" shall mean delays due to acts of God, inability to obtain governmental approvals, governmental restrictions, war, civil disturbances, fire, unavoidable casualty, construction delays due to weather, or other similar causes beyond the control of Grantee. Grantee shall not be excused from performance of any its obligations under Ordinance No.: 4404, by misfeasance or malfeasance of its directors, officers or employees or by mere economic hardship.

9. Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third persons or the public in the manner which would indicate any such relationship with the other.

10. This Franchise Contract shall be subject to revocation or termination in accordance with the terms and conditions and procedures of Section 27 and 28 of Ordinance No.: 4404.

11. The Franchise granted by this Franchise Contract is subject to the provisions of Tennessee Code Annotated, Section 65-4-107, which requires approval by the Tennessee Regulatory Authority of any municipal franchise granted to a public utility to the full extent that said statute is applicable under the laws of Tennessee.

12. Upon the execution of this Franchise Contract, said Franchise Contract shall be deemed to constitute a contract by and between Grantee and the City of Memphis and shall be enforceable in accordance with its terms even if Ordinance No.: 4404 or any subsection, sentence, clause, phrase, term, provision, condition, covenant or portion thereof is held invalid or unenforceable by a court of competent jurisdiction.

13. This Franchise Contract and all attachments hereto represent the entire understanding and agreement between the parties hereto with respect to the subject matter hereof, and can be amended, supplemented, modified, or changed only as provided in Ordinance No.: 4404.

All notices, requests or other communications hereunder shall be in writing and shall be deemed duly given if hand delivered or mailed first class, postage prepaid, certified or registered mail, addressed:

FOR CITY

Chief Administrative Officer
City of Memphis, City Hall
125 N. Main Street, Room 308
Memphis, Tennessee 38103

FOR MEMPHIS NETWORKX, LLC

Memphis Networkx, LLC
7555 Appling Center Drive
Memphis, Tennessee 38133-5069
Attn: Chairman of Board, or Chief Manager

In the event that the Grantee should change name or address at any time during the term of this Contract, Grantee shall give written notice of each such change to the City of Memphis within one (1) week subsequent to each such change.

IN WITNESS WHEREOF, the Grantee and the City of Memphis have executed this Franchise Contract by signatures of their lawfully designated representatives, on the day, month and year first above written.

THE CITY OF MEMPHIS

By

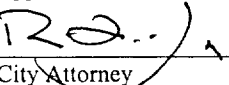

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W.W. Herenton, Mayor

Attest:

Deputy 
Comptroller

Approved:


City Attorney

Franchise contract with
Memphis Network, LLC
Ordinance No.: _____

MEMPHIS NETWORK, LLC
A joint venture between
Memphis Light, Gas & Water Division, and
Memphis Broadband

By: Ward Huddleson
Chairman of Board,
Chief Exec. Officer/Director

Attest:

Corporate Secretary

Approved: [Signature]
Memphis Light, Gas & Water Division,
Chief Executive Officer

Approved: Frank McGrew IV
Frank McGrew IV, Manager
Memphis Broadband

FRANCHISE FOR OPERATORS NO: 4404
FIBER OPTIC AND TELECOMMUNICATIONS

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SUBSTITUTE ORDINANCE NO. 4404

AN ORDINANCE AUTHORIZING THE ISSUANCE OF FRANCHISES FOR USE OF THE STREETS, ALLEYS, THOROUGHFARES AND RIGHTS-OF-WAY OF THE CITY OF MEMPHIS FOR INSTALLATION AND USE OF FACILITIES FOR THE OPERATION OF FIBER OPTIC AND OTHER COMMUNICATIONS SERVICES AND ESTABLISHING REQUIREMENTS, TERMS, CONDITIONS AND LIMITATIONS FOR ANY SUCH FRANCHISE.

WHEREAS, due to expanding and improved technology, the capability of fiber optic cable to provide communications services has grown in recent years; and,

WHEREAS, in order to provide fiber optic communications and other telecommunication services to the public, it is necessary to place fiber optic cable and possibly other facilities as well, on, above or beneath public rights-of-way; and,

WHEREAS, it is proper that permission to use the public rights-of-way for fiber optic communications services be granted in the form of a non-exclusive franchise under authority of Section 15 of Ordinance No. 1852, the Home Rule Charter of The City of Memphis; and,

NOW, THEREFORE, BE IT ENACTED AND ORDERED BY THE COUNCIL OF THE CITY OF MEMPHIS, That the following franchise privilege be granted:

SECTION 1. DECLARATION OF NEED. That the City Council finds and declares that, within the City of Memphis, the public necessity requires the development of competing telecommunication service in the form of fiber optic and other telecommunications capability, and that a number of companies are currently able and willing to provide such service.

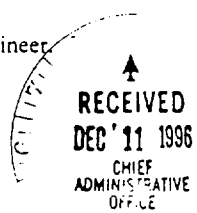
SECTION 2. DEFINITIONS.

2.1 "Anniversary Date" shall mean the date on which a franchise agreement is fully executed.

2.2 "Charter" shall mean collectively (i) Ordinance No. 1852, Home Rule Charter adopted by Referendum vote on November 8, 1966 (the "Home Rule Charter") and (ii) the Charter of the City of Memphis as enacted in Acts 1879 as amended to the extent not repealed by the Home Rule Charter.

2.3 "City" shall mean the City of Memphis.

2.4 "City Engineer" shall mean the position of City Engineer created by the Charter or a successor position, or an acting City Engineer or the designee of the City Engineer.



2.5 "Compensation Year" means each calendar year during the term of a franchise agreement in which compensation is paid to the City.

2.6 "Confidential Information" shall mean any Trade Secrets (as defined below) or other information relating to a Grantee that derives economic value from not being generally known to or readily accessible to other persons and is the subject of reasonable efforts to maintain its secrecy. Confidential Information shall include, but not be limited to, (i) a Grantee's manner of operation, forms of agreements, plans, processes and programs; (ii) information about its finances and financial condition and about the finances and financial condition of clients or other entities affiliated with a Grantee; (iii) research, marketing plans, designs, procedures, formulas, discoveries, inventions, concepts, ideas, specifications, flowcharts, listings of customers, supplies, or analyses; and (iv) information supplied to Grantee by other parties which a Grantee is obligated to keep confidential. As used herein, "Trade Secrets" shall include any technical or non-technical data or information, design, procedure or improvement that derives economic value, actual or potential, from not being generally known to or readily ascertainable by proper means by the competitors of a Grantee. "Confidential Information" shall not include any information which has entered the public domain.

2.7 "Council" shall mean the Council of The City of Memphis.

2.8 "Day" or "Days" shall mean a calendar day or days.

2.9 "Director of Finance" shall mean the position of Director of Finance and Administration created pursuant to and under the Charter or a successor position, or an acting Director of Finance, or the designee of the Director of Finance.

2.10 "FCC" shall mean the Federal Communications Commission, or any successor agency.

2.11 "Franchise" shall mean the non-exclusive privilege and authorization granted as provided in this ordinance to occupy or use the streets and/or public rights-of-way within the City for the construction, operation and maintenance of a fiber optic and/or other telecommunications systems within all or a portion of the City.

2.12 "Franchise Agreement" shall mean a fully executed and notarized contractual agreement by and between the City and Grantee in form and substance agreeable to the City, wherein Grantee accepts and agrees to be bound by the terms and provisions of this ordinance.

2.13 "Grantee" shall mean any company providing access or local telecommunications service using facilities either constructed, owned or leased for the purpose of providing voice, data or video telecommunication service, who has been granted a telecommunication franchise.

2.14 "Gross Revenue" shall mean all receipts collected by the Grantee for all telecommunications and related operations and services within the corporate limits of the City, arising from operation or possession of a telecommunication franchise granted hereunder. By way of example, but without limitation, "Gross Revenue" shall mean all receipts and revenues (exclusive of sales tax) collected by Grantee from operation of Grantee's Telecommunications System installed pursuant to this franchise ordinance, and any related services provided by the Grantee within the City, including, but not limited to:

1. all telecommunications service revenues charged on a flat rate basis;
2. all telecommunications services charged on a usage sensitive or mileage basis;
3. all revenues from installation service charges;
4. all revenues from connection or disconnection fees;
5. all revenues from penalties or charges to customers for checks returned from banks, net of bank costs paid;
6. all revenues and receipts from local service;
7. all revenues and receipts from authorized rental of conduit space;
8. all revenues and receipts from charges for access to local and of long distance networks;
9. all revenues and receipts from authorized rentals of any portion of Grantee's System, including plant, facilities, or capacity leased to others;
10. all other revenues and receipts collected from Grantee's business pursued with the City, excluding third party billing arrangements not related to Grantee's business;
11. recoveries of bad debts previously written off and revenues from the sale or assignment of bad debts. Unrecovered bad debts charged off after diligent, unsuccessful efforts to collect are excludable from gross revenues; and
12. all revenues and receipts from operations of any subsidiary or affiliated company, which provides any of Grantee's telecommunication services within the City;
13. tolls from business which both originates and terminates in the State of Tennessee;
14. actually collected franchise fees and occupation taxes surcharged to customers but only to the extent includible in the franchise tax base of all other telecommunication franchisees of the City;
15. all revenues and receipts from the lease or re-sale of lines or circuit paths to third parties.

Unless authorized by law, gross revenues shall not include revenues from interstate toll operations, nor revenue uncollectible from customers. Gross revenues shall not include any revenues from equipment sold or rented to customers upon customer premises.

2.15 "Public Right-of-Way" shall mean real property surface, subsurface and air rights (appurtenant to surface rights) acquired by the City by any lawful means and includes the surface and that area below the surface which is necessary to support the public street, alley, path, bridge, tunnel, sidewalk, planting strip, median, waterway, dock, wharf, pier, public ground or other public right-of-way. Public right-of-way also includes the surface of any public street, alley, path, bridge, tunnel, sidewalk, planting strip, median, waterway, dock, wharf, pier, public ground or other public right-of-way acquired by the City. No reference herein or in any franchise for use of any public right-of-way shall be deemed to be a representation or guarantee by the City that its title to any public right-of-way or any improvement or object located therein is sufficient to permit or authorize its use by the Grantee.

2.16 "System" or "Telecommunications System" shall mean Grantee's network of cables, wires, lines, towers, wave guides, optic fiber, microwave, laser beams, and any associated converters, equipment, or facilities designed and constructed for the purpose of producing, receiving, amplifying or distributing by audio, video or other forms of electronic signals to or from subscribers or locations within the City, but not including cable television services as defined under the Cable Communications Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992, and/or any franchise granted by the City pursuant to said Act.

2.17 "TRA" shall mean the Tennessee Regulatory Authority or any successor agency.

SECTION 3. GRANT OF FRANCHISE.

3.1 No person shall acquire, construct, expand, reconstruct, maintain, use and operate in, along, across, on, over, through, above and under the public streets, alleys and rights-of-way of the City, a telecommunications system without first obtaining a non-exclusive, revocable franchise from the City. Except to the extent that the federal or state government acquires or assumes exclusive jurisdiction over the regulation of fiber optic or other telecommunications franchises, Grantee agrees that it shall not now or at any time after a Franchise Agreement is

granted challenge this City's right to regulate any Grantee's use of the Public Rights-of-Way or to be compensated, as hereinafter provided, for the use of Public Rights-of-Way in any state or federal court. Accordingly, any Franchise granted hereunder shall remain in full force and effect as a binding contract between the Grantee and the City. Notwithstanding the foregoing, Grantee is not prohibited from challenging the City's arbitrary and capricious exercise of its police powers in the regulation of any franchisee's use of the Public Rights-of-Way hereunder.

Grantee, acquires and accepts only such rights and privileges as the City of Memphis has authority to grant. The City shall not be liable or responsible in any way or for any sum paid to it on account of, or in consequence of, a deficit or defect of any lawful power or authority to grant a telecommunications Franchise, but Grantee assumes all risks of lack of any lawful power in the City of Memphis with respect to such payments.

3.2 Franchise - Grant conditions, terms.

A. A Franchise granted hereunder, and all renewals, extensions and amendments hereof shall be granted only by ordinance. No such ordinance shall be adopted before an application therefor has been filed with the Council through the City's Chief Administrative Officer on forms promulgated by the City Chief Administrative Officer and approved by the Council. Prior to adoption of any franchise ordinance the Council may, from time to time, request such other information as it deems appropriate.

B. Grantee shall not provide cable services or operate a cable system as defined in the Cable Television Consumer Protection and Competition Act of 1992 (47 U.S.C.A. §521, et seq., as amended) or as recognized by the FCC without first obtaining a separate cable franchise from the City and shall not allow the use of the System by a cable system that has not been granted a franchise by the City. Nor shall any provider of cable services or grantee of cable television service operate or provide a telecommunications franchise pursuant to this ordinance, unless a separate telecommunication franchise is obtained from the City.

C. Grantee shall not provide services directly regulated by the TRA under the laws of Tennessee unless duly authorized by the TRA or by any successor entity.

D. Except as permitted by Section 26 hereof, any Franchise granted hereunder shall be granted to Grantee solely for the purpose of directly serving its end-user customers

(including but not limited to hotels, motels, hospitals and buildings with shared tenant services) and inter-exchange carriers.

E: Any Franchise granted hereunder shall be deemed a contract, which contract shall be enforceable in accordance with its terms even if this ordinance or any subsection, sentence, clause, phrase, term, provision, condition, covenant or portion thereof is held invalid or unenforceable by a court of competent jurisdiction.

SECTION 4. APPLICATION OF OTHER LAWS.

4.1 Licenses and Permits. The Grantee shall have the sole responsibility for diligently obtaining, at its own cost and expense, all permits, licenses, or other forms of approval or authorization necessary to construct, operate, maintain or repair the System, and to construct, maintain and repair any part thereof prior to commencement of any such activity.

Issuance of a permit by any agency of the City as to the construction and installation of any portion of Grantee's System does not waive other applicable requirements of federal or Tennessee law, and Grantee shall comply with such other legal requirements.

4.2 Subject to Police Power.

The construction, expansion, reconstruction, excavation, use, maintenance and operation of the System shall be subject to all lawful police regulations of the City and performed in accordance with all ordinances, laws, resolutions and regulations of the City for utility location and excavation in Public Rights-of-Way presently in effect or hereafter adopted. In addition to the duty under any other law or regulation of the City, not less than seven (7) days prior to filing of a request for a construction permit, Grantee shall provide to the City Engineer a copy of all the construction work plans and drawings for the System, or any segment or expansion thereof. Grantee shall not proceed with construction until the plans and drawings have been approved in writing by the City Engineer.

Nothing in this Ordinance shall be construed as preventing the City of Memphis, whenever it shall be empowered by applicable state and federal law so to do, from fixing or regulating the rates, rentals, charges, services, facilities and equipment of Grantee or from exercising general supervision and regulation of, jurisdiction and control over, a telecommunication franchise, the Grantee, and its property, property rights, facilities and franchises located within the City. It being

the intention of this Ordinance, that the City of Memphis in no way surrenders such general powers it may now have, or may hereafter have or acquire.

SECTION 5. AS BUILT DRAWINGS.

Upon request, Grantee shall submit to the City Engineer "as built" drawings of the portions of Grantee's System located along the public right-of-way of a size and material satisfactory to the City Engineer within sixty (60) days after completion of construction of such portions or approval of a Franchise hereunder, whichever occurs last. Grantee shall also upon request update such drawings within sixty (60) days whenever material changes are made to Grantee's System which impact the public right-of-way. Said drawings, set forth by utility quarter sections, shall at a minimum include cable routings and the location of amplifiers, power supplies and system monitor test points.

SECTION 6. CONSTRUCTION STANDARDS.

6.1 All work performed in connection with the construction, expansion, reconstruction, maintenance or repair of the System shall be subject to and governed by all laws, rules, and regulations of the City in accordance with the applicable provisions of the City's Building Code. Grantee shall excavate only for the construction, installation, expansion, repair, removal, and maintenance of all or a portion of its System.

All installations shall be underground in those areas of the City where public utilities providing telephone and electric service are underground at the time of installation. In areas where either telephone or electric utility facilities are above ground at the time of installation, Grantee may install its service above ground, provided that, at such time as any facilities are required to be placed underground by the City, or are placed underground, Grantee shall likewise place its facilities underground without additional cost to the City or to the individual subscriber so served.

6.2 Electrical Standards.

Grantee shall at all times comply fully with provisions of the Electrical Code of the City.

6.3 Interference with persons, improvements, public and private property and utilities. Grantee's System and facilities, including poles, lines, equipment and all appurtenances, shall be located, erected and maintained so that such facilities shall not:

- (A) endanger or interfere with the health, safety or lives of persons;
- (B) interfere with any improvements the City or State may deem proper to make;
- (C) interfere with the free and proper use of public streets, alleys, bridges, easements or other public ways, places or property, except to the minimum extent possible during actual construction or repair;
- (D) interfere with the rights and reasonable convenience of private property owners, except to the minimum extent possible during actual construction or repair; or
- (E) obstruct, hinder or interfere with any gas, electric, water or telephone facilities or other utilities within the City.

6.4 **Protect Structures.** In connection with the construction, operation, maintenance, repair or removal of the System, the Grantee shall, at its own cost and expense, protect any and all existing structures and improvements, including landscaping and trees belonging to the City, and all designated historical landmarks, as well as all other structures within any designated historical district. The Grantee shall obtain the prior approval of the City before altering or crossing any water main, sewerage or drainage system, or any other municipal, state or federally-owned structure in the streets required because of the presence of the System in the Streets. Any such alteration shall be made by the Grantee at its sole cost and expense, and in a manner prescribed by the City. The Grantee shall be liable, at its own cost and expense, to replace or repair and restore to serviceable condition in a manner as may be specified by the City, any street or any municipal, state or federally-owned structure involved in the construction of the System that may become disturbed or damaged as a result of any work thereon by or on behalf of the Grantee pursuant to its franchise.

6.5 **Erection, Removal and Use of Poles.**

No poles shall be erected by Grantee without prior approval of the City with regard to location, height, types and any other pertinent aspect. However, no location of any pole or wire-holding structure of Grantee shall give rise to a vested interest, and such pole or structures shall be removed or modified by Grantee at its own expense whenever the City determines that

the public convenience would be enhanced thereby. Approval under this section shall require the prior written approval of the City Engineer.

6.6 Upon request of the City or other authority of competent jurisdiction, Grantee shall remove and abate any portion of the System or any facility that is dangerous to life or property, and in case Grantee, after ten (10) days written notice from the City Engineer, fails or refuses to act, the City may remove, relocate or abate the same, at the sole cost and expense of Grantee, all without compensation or liability for damages to Grantee; provided, however, Grantee may recover damages sustained by it from any person other than the City who relocates, removes or abates any such Grantee facility negligently or without the City Engineer giving ten (10) days written notice to Grantee authorizing such other person to relocate or remove Grantee's facilities on behalf of the City.

SECTION 7. SUSPENSION OR REVOCATION OF CONSTRUCTION PERMIT.

The City Engineer may suspend or revoke any permit issued by the City or take any action he deems necessary, including the stopping of work, should Grantee violate the terms of said permit, until said violation has been corrected to the City Engineer's satisfaction.

SECTION 8. ADJUSTMENT OF UTILITY FACILITIES.

In the event that the location of Grantee's System will require an adjustment of the location of existing public or private utility facilities, Grantee must obtain written consent of the owner of such utility, including, where applicable, all relevant City departments to such adjustment and make such arrangements for the payment or reimbursement of the cost of such adjustment as are satisfactory to the owner of such utility, including, where applicable, all relevant City departments. No permit for construction will be issued until the City Engineer is satisfied that the requirements of this section have been satisfied. In no case shall Grantee be entitled to perform such adjustment or disturb such utility facilities without the written consent of the owner of such utility.

SECTION 9. ADJOINING PROPERTY OWNERS.

All of Grantee's System shall be so installed and located so as to cause minimum interference with the rights and appearance and reasonable convenience of adjoining property owners and all times shall be kept and maintained in a safe, adequate and substantial condition.

and in good order and repair. Grantee shall at all times employ reasonable care, and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries or nuisances to the public.

SECTION 10. EMERGENCY OR DISASTER.

In case of emergency or disaster, Grantee shall, upon request of the City, make available its facilities to the City, without cost, for emergency use.

SECTION 11. MOVING WIRES. The City may, at any time, in case of fire, disaster or other emergency, as determined by the City in its reasonable discretion, cut or move any other optical fibers, wires, cable, amplifiers, appliances, or other parts of the System in the streets or in City buildings, in which event the City shall not be liable therefor to the Grantee.

SECTION 12. TEMPORARY REMOVAL OF FACILITIES FOR DEMOLITION OF BUILDINGS.

Upon the request of a person holding a permit issued by the City for the moving or demolition of a building, and at least ten (10) days notice, Grantee shall temporarily raise, lower or removing its facilities to permit the removal or demolition of such building. The expense of such temporary removal, raising or lowering of facilities shall be paid by the person requesting the same and Grantee shall have the authority to require such payment in advance; provided, however, that no payment (direct or indirect) shall be required of the City.

SECTION 13. REMOVAL OF CITY PROPERTY. No property of the City is to be removed from the right-of-way, including signage on utility poles, without prior written approval from the City.

SECTION 14. RESERVATION OF RIGHTS.

The City reserves the right to exercise its police and/or proprietary powers to modify, vacate or transfer any right-of-way in use by Grantee for a public purpose. At Grantee's own risk, the City has the predominant right to use its right-of-way in the placement, maintenance and repair of sewers, water mains and other public utility franchises or to relocate or remove Grantee's System where the City determines that the public convenience and/or necessity would be enhanced or for any other public purpose, including, but not limited to the use of any Public Right-of-Way used by Grantee for public transportation purposes. The permits referred to in

Section 4 may be amended or revoked in whole or in part by the issuing department whenever such action is necessary or advisable for a public purpose. Grantee shall make no claims for costs or damages against the City by reason of such removal or relocation. Upon 30 days written notice to Grantee of partial or complete revocation of such permit from the City Engineer, Grantee shall remove, modify, replace or relocate its facilities as required at its own expense. In the event Grantee does not remove, modify, replace or relocate its facilities as required by said notice within thirty (30) days as aforesaid, the City Engineer may cause the same to be done at Grantee's expense and all expenses incurred or damages paid by the City on account of such action shall be paid by Grantee on demand. Grantee shall remove, replace or modify, at its own expense, the installation of any of its facilities as may be deemed necessary by any other appropriate governmental authority to meet such authority's proper responsibilities. In the event the City exercises its predominant right to use any Public Right-of-Way used by Grantee for a public purpose, the City shall reasonably cooperate with Grantee in finding an alternate site for any telecommunications facilities removed and in avoiding disruption to Grantee's telecommunications system to the extent not reasonably required by the City. In an emergency, as determined by the City Engineer, the City may order Grantee to remove or relocate its facilities within forty-eight (48) hours. If the City exercises any of its rights pursuant to this Section, Grantee shall have the option, upon notice to the City Engineer, of abandoning the portion of its Telecommunications System to be so removed or relocated and deleting such portion from the Public Right-of-Way.

SECTION 15. ABANDONMENT OF RIGHT-OF-WAY.

In the event that the City shall close or abandon any public street, alley or right-of-way, which contains any portion of Grantee's system, any conveyance of land contained in such closed or abandoned public street, alley, highway or right-of-way shall be subject to the rights herein granted.

SECTION 16. RELOCATION OF THE SYSTEM.

16.1 **New Grade or Lines.** If the grades or lines of any street on which Grantee's System is placed are changed at any time during the term of the Franchise, then the Grantee shall, at its own cost and expense and upon the request of the City, protect or promptly alter or relocate

the System, or any part thereof, so as to conform with such new grades or lines. In the event that the Grantee refuses or neglects to so protect, alter, or relocate all or part of the System, the City shall have the right to break through, remove, alter or relocate such part of the System, without any liability to the City, and the Grantee shall pay to the City the costs incurred in connection with such breaking through, removing, altering or relocating.

16.2 **Relocation of Right-of-Way.** Wherever a Public Right-of-Way or other public property is being constructed, paved (whether or not such paving is part of a more extensive improvement project), resurfaced, relocated or otherwise altered or improved (including, but not limited to, the installation of sidewalk, curb, gutter, drainage facilities, water mains, or sewer mains, traffic signals or trees), Grantee shall, within ninety (90) days of written notice from the City Engineer, and at no cost (direct or indirect) to the City, remove or relocate any Grantee facility located within the Public Right-of-Way or public property or perform such work as it deems necessary for the extension of new facilities, except that Grantee may recover from any other person other than the City who relocates any such Grantee facility without ninety (90) days written notice from the City Engineer authorizing such other person to relocate or remove Grantee's facilities. The relocation or extension of new facilities shall be to a location approved by the City. Failure to obtain the City's approval of the location of facilities relocated under this section will be considered a forfeiture under Section 31 of this Ordinance. Grantee shall be responsible for any damage it causes to property, including damage to trees and other landscaping, as a result of the relocation or removal of facilities.

16.3 **Time Limit - Liquidated Damages.** Failure of Grantee to remove or relocate the facility to a location approved by the City within ninety (90) days of the City's written notice shall entitle the City to recover liquidated damages from Grantee. The liquidated damages for failure to remove or relocate a facility shall not exceed \$250.00 per diem.

If Grantee believes it will be unable to complete the relocation within ninety (90) days from receipt of notice from the City, Grantee shall explain the reasons for its inability in detail and the City and Grantee shall attempt to agree on an alternate schedule, subject, however, to the City's right to finally determine the schedule and liquidated damages, as long as Grantee's explanation is not unreasonable. Grantee shall be excused.

SECTION 17. BONDS.

(A) Grantee shall obtain and maintain, at its sole cost and expense, and file with the Division of Finance and Administration, a corporate surety bond with a surety company authorized to do business in the State of Tennessee and found acceptable by the City Attorney, in the amount of One Hundred Thousand Dollars (\$100,000), both to guarantee the timely construction and full capability of Grantee's system, and to secure Grantee's performance of its obligations and faithful adherence to all requirements of this franchise ordinance. On and after June 30, 2000, the City reserves the right to impose a reasonable bond requirement applicable to all telecommunication franchisees to secure Grantee's performance of its obligations and faithful adherence to all of the requirements of this franchise Ordinance. Grantee shall provide this corporate surety bond at the time of execution of a written acceptance of a Franchise Agreement as required by Section 23 herein.

(B) The rights reserved to the City with respect to the bond are in addition to all other rights of the City, whether reserved by this franchise Ordinance or authorized by law; and no action, proceeding or exercise of a right with respect to such bond shall affect any other right the City may have.

(C) The bond shall contain the following endorsement: it is hereby understood and agreed that this bond may not be cancelled by the surety nor any intention not to renew be exercised by the surety until sixty (60) days after receipt by the City, by registered mail, of written notice of such intent.

SECTION 18. INSURANCE REQUIREMENTS.

On or before the effective date of a Franchise granted hereunder, Grantee shall file with the City a certificate of insurance and thereafter maintain in full force and effect at all times for the full term of the franchise, at the expense of Grantee, a comprehensive general liability insurance policy, including underground property damage coverage, naming the City as additional insured, written by a company authorized to do business in the State of Tennessee, protecting the City against liability for loss or bodily injury and property damage occasioned by the installation, removal, maintenance, or operation of the communications system by Grantee in the following minimum amounts:

- (1) One Million Dollars (\$1,000,000.00) combined single limit, bodily injury and for real property damage in any one occurrence.
- (2) Five Million Dollars (\$5,000,000.00) aggregate

Grantee shall also file with the City a certificate of insurance for a comprehensive automobile liability insurance policy written by a company authorized to do business in the State of Tennessee, for all owned, non-owned, hired and leased vehicles operated by Grantee, with limits no less than One Million Dollars (\$1,000,000.00) each accident, single limit, bodily injury and property damage combined, or evidence of self-insurance.

Grantee shall also maintain and specifically agrees that it will maintain throughout the term of the Franchise, workers compensation and employers liability, valid in the State, in the minimum amount of the statutory limit for workers compensation.

All liability insurance required pursuant to this section shall be kept in full force and effect by Grantee during the existence of the Franchise and until after the removal of all poles, wires, cables, underground conduits, manholes and any other conductors and fixtures installed by Grantee incident to the maintenance and operation of the communications System as defined in this ordinance. All policies shall be endorsed to give the City thirty (30) days written notice of the intent to amend or cancel by either Grantee or the insuring company.

SECTION 19. INDEMNIFICATION.

Grantee shall indemnify, defend and save whole and harmless the City and all of its officers, agencies, and employees against and from any and all claims, suits, final judgments, actions, losses, costs and expenses, including attorney's fees and costs or expenses incidental to the investigation and defense of claims and lawsuits brought for, on behalf of, or on account of any injuries or damages received or sustained by any person, firm or corporation or to any property, which may be occasioned by, or arising out of or from, the conduct of Grantee in connection with this franchise ordinance, the construction, reconstruction, expansion, removal, maintenance, operation, or repair of Grantee's System, the conduct of Grantee's business in the City of Memphis pursuant to this franchise ordinance, any occurrence in connection with the franchise ordinance, any and all claims and lawsuits arising from any breach or default on the part of Grantee in the performance of any term, condition, provision, covenant or agreement to be performed by Grantee pursuant to this franchise ordinance or the Franchise Agreement, any

act or omission of Grantee, or any of its agents, contractors, subcontractors, servants, employees or licensees, or any relationship between Grantee and its end use customers and retailers whether caused by or attributable solely to Grantee and others, or the City, and Grantee shall pay all final judgments, with costs, attorneys fees and expenses, which may be obtained against the City related to any such claim. The City agrees to give Grantee prompt and reasonable notice of any claims or lawsuits; and Grantee shall have the right to investigate, compromise, intervene and defend same to the extent of its own interest. The above indemnification shall not apply to any judgment of liability resulting from the gross negligence or willful misconduct of the City. The terms and provisions contained in this Section are intended to be for the benefit of the City and Grantee, and are not intended to be for the benefit of any third party. The City shall have the right to participate or conduct the defense of its interests in any proceeding, and thereby assume risks and liabilities for its own acts or omissions.

SECTION 20. INITIAL COMPENSATION TO THE CITY.

(A) As an additional Compensation for any Franchise granted hereunder, Grantee shall furnish, and transfer during the entire term of the franchise, to the City of Memphis, without charge therefor, for the use of the City of Memphis on official business only the functional equivalent in Grantee's telecommunications system of up to 200 connecting locations in the aggregate selected by the City (i) in four (4) optical fibers in the main backbone loop of a telecommunications system having approximately 58 miles, and (ii) in any cable outside said backbone loop where 12 or more optical fibers are installed. If additional connection points are requested by the City, the City will reimburse Grantee, reasonable expense for those connections. All the previously described connections shall be restricted to splice points which are located at a maximum spacing of one-half (1/2) mile. The type of fibers provided for the City of Memphis shall be equal to the fibers used by Grantee. Grantee shall be responsible for maintenance of the City's optical fibers up to the point where the City connects, and shall assist with problem resolution in such optical fibers.

(B) That as a further consideration for the Franchise herein granted hereunder, Grantee shall at its own expense provide, furnish, and reserve, and continue to provide, furnish, and reserve, in its overhead or underground system or systems, and in all replacement, additions and

extensions thereof, space, crossarms, pins and supports on all poles, and one duct in all conduits, and necessary space in manholes, for the wires, fixtures, and other equipment of the police and fire alarm telephone and telegraph systems of the City of Memphis, as requested from time to time by the City of Memphis.

In order to ensure coordination of City facilities with Grantee's network, Grantee agrees:

- (1) To provide twenty-four (24) hour per day continuous monitoring of the facilities that the City is using in conjunction with Grantee's network; and
- (2) To coordinate design and installation of other network specific requirements the City may have, including maintenance, at Grantee's cost, plus ten percent (10%).
- (C) Alternatively, Grantee shall make, at the sole option of the City of Memphis, in lieu of the compensation specified in Section 20(A) above, a cash payment equal to the cost the City would be required to pay in the open market to another provider for the lease, sublease, purchase or use of the optical fibers described in Sections 20(A) and (B) above.

SECTION 21. GENERAL COMPENSATION TO THE CITY.

21.1 General Compensation. The City finds that the public streets, alleys and Public Rights-of-Way to be used by Grantee in the operation of its system within the boundaries of the City are valuable, public properties, acquired and maintained by the City at great expense to its taxpayers, and that the grant to Grantee of the use of said public streets, alleys and public rights-of-way is a valuable property right, without which the Grantee would be required to invest substantial capital in Public Right-of-Way costs and acquisitions; the Grantee agrees to pay to the City as general compensation during each year of the Franchise Agreement, an amount equal to five percent (5%) of Gross Revenues for each quarter of a Compensation Year. Grantee shall forward by check or money order an amount equal to the quarterly payment by the fifteenth day of the second calendar month immediately following the close of the calendar quarter for which the payment is calculated. Any necessary prorations shall be made.

21.2. Recalculation at end of Compensation Year. At the end of each Compensation year, Grantee shall recalculate the total general compensation actually due. If additional amounts are due the City by Grantee, said amounts shall be paid by the fifteenth (15th) day of the second month of the Compensation Year following the Compensation Year during which such amounts were originally due. If amounts are found to be due the Grantee by the City, said amounts shall

be credited by the fifteenth (15th) day of the second month of the Compensation Year following the Compensation Year during which such amounts were originally due. Any necessary prorations shall be made. The compensation set forth in this section shall be exclusive of and in addition to all special assessments and taxes of whatever nature, including, but not limited to, ad valorem taxes. In the event any quarterly payment is made after noon on the date due, Grantee shall pay a late payment penalty of the greater of: (i) \$100 or (ii) simple interest at the highest rate allowable from time to time by Tennessee law multiplied by the total amount past due for the actual number of days elapsed.

Payment of money under this section shall not in any way limit or inhibit any of the privileges or rights of the City, whether under this franchise ordinance or otherwise.

Grantee shall file annually with the Director of Finance and Administration no later than ninety (90) days after the end of the Grantee's fiscal year, an audited statement of revenues (for that year) attributable to the operations of the Grantee's System, within the City pursuant to this franchise ordinance. This statement shall present a detailed breakdown of Gross Revenues and uncollectible accounts for the year. This statement shall be audited by an Independent Certified Public Accountant whose report shall accompany the statement.

Any transaction which has the effect of circumventing payment of required franchise fees and/or evasion of payment of franchise fees by non-collecting or non-reporting of Gross Revenues, bartering, or any other means, which evade the actual collection of revenues for business pursued by Grantee, are prohibited.

SECTION 22. ACCOUNTS, RECORDS AND REPORTS.

22.1 Grantee shall keep the City fully informed as to all matters in connection with or affecting the construction, reconstruction, removal, maintenance, operation and repair of Grantee's System. Grantee's accounting methods and procedures in connection therewith, and the recording and reporting by Grantee of all revenues and uncollectibles.

22.2 Grantee shall keep complete and accurate books of account and records of its business and operations pursuant to this franchise ordinance in accordance with generally accepted accounting principles, subject to approval by the City. If required by the City or the FCC, Grantee shall use the system of accounts and the forms of books, accounts, records, and

memoranda prescribed by the FCC in 47 CFR Part 32 or its successor and as may be further described herein. The City may require the keeping of additional records or accounts which are reasonably necessary for purposes of identifying, accounting for, and reporting gross revenues and uncollectibles for purposes of Section 21 hereof. Grantee shall keep its books of account and records in such a way that breakdowns of revenues are available by type of service within the City.

In order to determine the Gross Revenues received by the Grantee for those categories identified in Section 2.14, Grantee agrees that on the same date that payment is made, as provided in Section 21, it will file with the Director of Finance and Administration a sworn copy of a report in a form acceptable to the City, in sufficient detail to itemize revenues from each of the categories identified in Section 2.14. It is agreed that the report will not require such detail that will divulge proprietary information. The City may, if it sees fit, have the books and records (including those books and records that may divulge proprietary information) of Grantee examined by a representative of said City to ascertain the correctness of the reports agreed to be filed herein, including those financial records that may divulge proprietary information.

22.3 Grantee shall report to the City such other information relating to Grantee as the City may consider useful and shall comply with the City's determination of forms for reports, the time for reports, the frequency with which any reports are to be made, and if reports are to be made under oath.

22.4 Grantee shall provide the City with access at reasonable times and for reasonable purposes, to examine, audit, review and/or obtain copies of the papers, books, accounts, documents, maps, plans and other records of Grantee pertaining to the Franchise Agreement. Grantee shall fully cooperate in making available its records and otherwise assisting in these activities.

22.5 The City may, at any time, make inquiries pertaining to Grantee's operation of its System within City. Grantee shall respond to such inquiries on a timely basis.

22.6 The City agrees that:

- (i) any Confidential Information received by the City hereunder will be held in confidence and will not be disclosed to third parties, except as otherwise provided herein;
- (ii) the disclosure and use of any Confidential Information will be limited to recipient's employees and affiliates having a need-to-know and use such Confidential Information; or
- (iii) it will use the Confidential Information only for the purposes contemplated under this Agreement;

Notwithstanding any provision of this Ordinance to the contrary, the City shall not be precluded from disclosing Confidential Information if such disclosure is:

- (i) in response to a valid order of a court, regulatory or other governmental body of the United States or any political subdivision thereof; provided, however, that the recipient shall first have given notice of such order to the Grantee, and the recipient shall, to the extent possible, give Grantee the opportunity to obtain a protective order requiring that the information and/or documents so disclosed be used only for the purpose for which the order was issued;
- (ii) otherwise required by law or government regulation;
- (iii) of Confidential Information already in the possession of the recipient;
- (iv) of Confidential Information independently developed by the recipient;
- (v) of Confidential Information that becomes publicly available without breach of this Agreement;
- (vi) of Confidential Information rightfully received by the recipient from a third party free of restriction and without breach of this Agreement; or
- (vii) released for disclosure by the Grantee with the Grantee's prior written consent.

The City shall not be liable to any Grantee hereunder for any disclosure of information, which the City determines in good faith or on advice of counsel not to be Confidential Information or

which the City determines on advice of counsel that it is required to disclose based on applicable law.

22.7 Grantee shall provide the City with notices of all petitions, applications, communications and reports submitted by Grantee to the FCC, Securities and Exchange Commission and the TRA or their successor agencies, relating to any matters directly affecting the use of public streets, alleys and public rights of way and/or the telecommunications operations authorized pursuant to this franchise ordinance. Upon written request from the City, Grantee shall provide the City with copies of all such documentation.

SECTION 23. TERM OF FRANCHISE.

23.1 **Term.** Within thirty (30) days after adoption of an ordinance granting a telecommunications franchise pursuant hereto, Grantee shall execute an agreement accepting this franchise substantially in the form attached hereto as Exhibit "A." In the event any such franchise agreement is not executed by a Grantee within said thirty (30) days, the award of the telecommunications franchise shall be null and void. Upon execution of a Franchise Agreement between the City and Grantee, a Franchise shall be in full force and effect for a term and period of twenty (20) years, ending on the Anniversary Date of the Franchise.

23.2 **Adjustment of Compensation.** Commencing July 1, 2000 and on every fifth (5th) anniversary date thereafter, the City hereby reserves the right to establish in good faith, the amount, nature and terms of compensation (other than Initial Compensation) to be paid by Grantee for use of the public rights-of-way during the remaining term of the Franchise Agreement. Any adjustment to compensation shall become effective on the first day of the next succeeding calendar quarter ("Adjustment Date"). The terms of any such compensation shall be reflected in a master amending ordinance effecting all then existing telecommunication franchises. Any adjustment to compensation shall be reasonable and non-discriminatory as to other telecommunication franchises. No such amendment may take effect except by a duly enacted ordinance of the City.

23.3 **Dispute Resolution.** If Grantee shall in good faith maintain that the amount, terms or nature of any adjustment to compensation approved by the City Council pursuant to Section 23.2 is excessive or unreasonable, given the value of the privileges granted under this Ordinance

and Grantee's franchise. Grantee shall, within ten (10) days of such determination, file with the Chairman of the City Council a statement identifying the reasons why the adjusted compensation is excessive or unreasonable. In the event that the City Council does not reconsider and change its adjustment to compensation within thirty (30) days of such adjustment, Grantee shall have the right to make a demand for arbitration in writing to the City Attorney within thirty (30) days after such Adjustment Date. In such event, the City and Grantee shall each appoint an arbitrator and a third arbitrator shall be appointed by the arbitrators so appointed. Each arbitrator shall have at least five (5) years of experience in the field of rights-of-way procurement. Pursuant to the then current rules of the American Arbitration Association, or any successor organization, an arbitration shall be held as expeditiously as possible and the question to be answered by the arbitrators shall be:

"Is the Compensation adjusted by the City excessive or unreasonable, taking into account the value of the privileges granted to Grantee, both present and future, and the charges required by municipalities in comparable urban areas for similar rights-of-way?"

Unless the majority of the arbitrators shall decide the foregoing question in the affirmative, Grantee shall be bound to pay the Adjusted Compensation requested by the City, retroactive to the applicable Adjustment Date. If a majority of the arbitrators shall decide the foregoing question in the affirmative, then the City shall withdraw the proposed adjustment to compensation, and Grantee shall continue paying the compensation previously in effect. The cost of arbitration shall be borne entirely by Grantee, except that each party shall be responsible for their respective attorney's fees and expenses.

SECTION 24. EXTENSION OF TERM.

If, on the expiration date, Grantee shall not be in default under the Franchise Agreement, and if neither party has notified the other of its intent to terminate the franchise on or before the expiration date, then the terms of the Franchise Agreement shall be deemed extended on an interim basis until terminated, renewed or renegotiated. Said interim extension period shall not extend beyond a date sixty (60) days after the expiration date, after which date the Franchise shall be considered terminated and all rights of the Grantee to use the Public Rights-of-Way to provide telecommunications services shall cease.

SECTION 25. RENEWAL.

At any time during the last year of a Franchise, Grantee may request the City to enter into negotiations toward renewing or extending the Franchise. The exercise by Grantee of this option shall not bind the City as to acceptance of any particular terms or renewal of the rights granted by the Franchise. Any proposed renewal, extension or modification of the Franchise is subject to the Council's approval, modifications or rejection in its sole discretion.

Upon expiration of the twentieth (20) year of the Franchise Agreement, the City shall have the right, at its election, to:

- a. Renew or extend the Franchise for an additional period, as agreed by the City and Grantee;
- b. Invite additional franchise applications or proposals; or
- c. Allow the Franchise to terminate without further action.

It is a condition to the grant of a Franchise hereunder that the City shall have the right to exercise these options.

SECTION 26. ASSIGNMENT OR LEASE OF FRANCHISE.

Neither the Franchise, the assets held by Grantee under this franchise ordinance, nor any rights or privileges of Grantee under this franchise ordinance or the Franchise Agreement, Grantee's System capacity, or allowance of access to Grantee's system, either separately or collectively, shall be sold, resold, assigned, transferred or conveyed by Grantee to any other person, firm, corporation, affiliate or entity, without the prior written consent of the City by ordinance of the Council. No such sale, assignment, transfer or conveyance by Grantee shall be approved by the Council for one year after the execution of the Franchise Agreement, unless such sale, assignment, transfer or conveyance is to another City franchisee or licensee, and the Council determines such sale, assignment, transfer or conveyance is in the best interest of the City and its citizens. Should the Grantee sell, assign, transfer, convey or otherwise dispose of any of its rights or its interests under this franchise ordinance, or attempt to do so, in violation of this requirement to obtain prior written consent, the City may revoke a Franchise granted hereunder for default, in which event all rights and interest of the Grantee shall cease and no purported sale, assignment, transfer or conveyance shall be effective.

Plant and facilities owned by Grantee located within public property shall not be leased or subleased to a provider or reseller of similar services for the purpose of serving the reseller's own customers ("Reseller"), except for the purpose of directly serving Grantee's end-user customers (including but not limited to hotels, motels, hospitals and buildings with shared tenant services) unless such Reseller has obtained a license or a Franchise from the City to be a Reseller of telecommunication services and remains in good standing as a licensee or franchisee; provided, however, but not limited to, access services from interexchange or long distance carriers is not prohibited.

SECTION 27. VIOLATIONS AND CURE PROVISIONS.

If the City has reason to believe that Grantee is in violation of this Ordinance, the City shall notify Grantee in writing of the violation, setting forth the nature of such violation. Within ten (10) days of receipt of such notice, Grantee shall respond in writing to provide explanation or documentation to support that the violation did not occur. Grantee shall be allowed thirty (30) days to cure violations after written notice is received from the City, unless prevented from doing so for reasons beyond control of Grantee.

Upon evidence being received by the City that any violation of this franchise ordinance, any City Charter provisions or any ordinances lawfully regulating Grantee in the construction and operation of the System is occurring, or has occurred, the City shall cause an investigation to be made. If the City finds that such a violation exists or has occurred, the Grantee shall take appropriate steps to comply with the terms of this franchise ordinance and any lawful regulation. Should Grantee fail to comply, after the above-stated notice and opportunity to cure, then the City may take any action authorized by law, including revocation or repeal of the Franchise or a suit in court to compel compliance. If, in any such proceeding, default is finally established, Grantee shall be required to pay to the City the reasonable expenses incurred in the prosecution of such suit and all the City's damages and costs (including attorney fees); provided, however, the preceding sentence shall be inapplicable unless its provisions may be lawfully enforced against other telecommunication franchisees of the City.

SECTION 28. REVOCATION AND TERMINATION.

28.1 In addition to all other rights and powers retained by the City under this franchise ordinance or otherwise, the City reserves the right to revoke and terminate any Franchise issued by authority of this Ordinance, and all rights and privileges of Grantee hereunder shall cease in the event of substantial breach, subject to reasonable notice and opportunity to cure, of its terms and conditions. A substantial breach of Grantee shall include, but shall not be limited to, the following:

- (1) Grantee's violation of any material provision of the franchise ordinance or any material rule, order or regulation of the City made pursuant to this franchise ordinance;
- (2) Grantee's failure to properly compensate the City as required in this franchise ordinance;
- (3) Grantee's attempt to evade any material provision of the franchise ordinance or to practice any fraud or deceit upon the City or upon Grantee's end-user Customers or interexchange carriers;
- (4) Grantee's failure to be capable of providing actual services to its initial end-user Customers within twelve (12) months from the date of the award of Grantee's franchise, unless otherwise authorized or extended by the Council;
- (5) Grantee's failure to complete its construction and provide service as described in Section 6 of this franchise ordinance;
- (6) For failure to file and maintain the bond, security or insurance required under this ordinance;
- (7) Grantee's attempt to sell, transfer, convey or assign any of the rights and privileges granted pursuant to this franchise ordinance within one year after the passage of this ordinance;
- (8) Grantee's attempt to sell, resell, lease, sublease, transfer, convey or assign any of the rights and privileges granted pursuant to this franchise ordinance without Council approval;
- (9) Grantee's failure to respond to or comply with reports, audits, statements and other information lawfully requested by the City;
- (10) Any material cessation in the operation of Grantee's system for six months after it has been constructed; or
- (11) Grantee's material misrepresentation of fact in its application or negotiations during the franchise process; or the conviction of any director, officer, employee or agent of Grantee for the offense of bribery or fraud connected with or resulting from the award of the franchise to Grantee.

28.2. The foregoing shall not constitute a substantial breach if the violation occurs without the fault of Grantee or occurs as a result of circumstances beyond its control. Grantee

shall not be excused by mere economic hardship, nor mistéasance or malfeasance of its directors, officers or employees. Revocation or termination shall only take place for material cause.

28.3 Upon expiration of the term of the Franchise Agreement or upon any other termination therefor as provided herein, or by application for approval of transfer of the entire Franchise or a majority interest thereof, the City at its election and upon the payment to the Grantee of a price equal to the fair market value of the System shall have the right to purchase the System and all interests therein as the City's sole and absolute property. In the event of dispute between City and Grantee of what is fair market value, the dispute shall be submitted to arbitration pursuant to provisions of Tennessee Code Annotated 29-5-101, et seq. In such event, the City and Grantee shall each appoint an arbitrator and a third arbitrator shall be appointed by the arbitrators so appointed. Each arbitrator shall have at least five (5) years of experience in the field of rights-of-way procurement. Pursuant to the then current rules of the American Arbitration Association, or any successor organization, an arbitration shall be held as expeditiously as possible. If City has exercised its option to purchase at fair market value, it shall have the right to assume operation of the System even though the final award has not been made by the arbitrators or as approved by the court. This right of first refusal for purchase shall also include the right to purchase for the price offered to the Grantee. In the event that there is a contemplated sale of the System or majority interest thereof, or upon the termination as provided herein, or by law, the City must exercise its option within thirty (30) days. In the event the Grantee has petitioned the City for renewal and renegotiation of its Franchise as provided herein, the City must exercise its option to purchase the System within thirty (30) days of the requested renewal or renegotiation or at least six (6) months prior to the end of the Franchise, whichever is later. Nothing shall prohibit the Grantee in the event of the election of the City to purchase the System from requesting the court to set a reasonable bond of the City to secure the purchase price. The Grantee shall execute such warranty deeds and other instruments as may be necessary.

SECTION 29. SERVICE STANDARDS.

Grantee shall maintain and operate its communications System and business in an efficient manner and shall provide adequate, efficient and reasonable service to its customers in the City. Once it commences operation, Grantee's System shall provide continuous and uninterrupted

service throughout the term of the Franchise, unless prevented from doing so by circumstances beyond the control of Grantee.

Grantee shall comply with all applicable federal, state and local laws, rules and regulations, including those adopted by the TRA or by any successor agency or commission.

Grantee shall not practice unjust discrimination regarding rates and services between individual customers or classes of customers.

SECTION 30. PREFERENTIAL OR DISCRIMINATORY PRACTICES PROHIBITED.

Grantee shall not make or grant any unreasonable preference or advantage to any person, nor subject any person to any unreasonable prejudice or disadvantage in its exercise of the rights and privileges granted by its Franchise; provided, however, that nothing in its Franchise shall be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules, consistent with applicable law, to which any customer coming within such classification would be entitled.

SECTION 31. CONFLICT WITH OTHER LAWS.

Where a provision of this ordinance or Grantee's Franchise is in conflict with any state or federal statute or a rule of the TRA or FCC, so that Grantee cannot reasonably comply with both the provisions of this ordinance or Franchise and the statute or rule of the TRA or FCC, then Grantee may, after giving the City written notice of its intent to do so and a statement of the legal grounds for its position, comply with such rule instead of the conflicting provision of this ordinance or the Franchise until such time as the City obtains a contrary ruling or other relief from an appropriate regulatory agency or court of competent jurisdiction; but Grantee shall comply with all remaining provisions of this ordinance or Franchise. Notice of intention not to comply given pursuant to this section shall not relieve Grantee--upon determination that the noncompliance was unlawful or otherwise improper--from the obligation to pay more damages, redo work at Grantee's expense, or otherwise take such steps as may be necessary to restore the City to the position it would have been in if Grantee had remained in compliance with this ordinance and its Franchise.

SECTION 32. COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES.

Grantee shall, at all times during the term of its Franchise, be subject to the provisions of the present Charter of the City, the present ordinances, resolutions, rules, regulations and laws of the City and the State of Tennessee, and to the provisions of any further charter, ordinance, resolution, rule, regulation or law of the City or of the State of Tennessee, so far as they may be applicable.

SECTION 33. TENNESSEE LAW GOVERNS.

In any controversy or dispute under this ordinance, the law of the State of Tennessee shall apply to the extent such law has not been superseded or preempted.

SECTION 34. CITY TAKING PART IN LITIGATION.

The City shall have the right to take part, by intervention or otherwise at its option, in any suit, action, or proceeding instituted by or against Grantee in which any judgment, decree, or order can be rendered affecting the rights, powers or duties of Grantee to do or not to do anything which, by its Franchise or this ordinance, it is obligated or may be required to do or not to do or affecting, such as by foreclosure or lien, Grantee's title to any facility. Grantee shall not object to the City's exercise of such right.

SECTION 35. OFFICE LOCATION.

The Grantee shall maintain an office in the City. Grantee shall always keep and maintain city specific books, records, contracts, accounts, documents, and papers for its operation within the City. All maps, plats, records and inventories and books of the Grantee, insofar as they show values and location of existing property shall be preserved for use, if necessary, in connection with any future valuation of the property of the Grantee.

SECTION 36. SEVERABILITY.

If any section, subsection, sentence, clause, phrase, term, provision, condition, covenant or portion of this franchise ordinance is for any reason held invalid or unenforceable by any court of competent jurisdiction, the remainder of this franchise ordinance shall not be affected thereby, but shall be deemed as a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof, and each remaining section, subsection,

sentence, clause, phrase, term, provision, condition, covenant and portion of this franchise ordinance shall be valid and enforceable to the fullest extent permitted by law.

SECTION 37. ENACTMENT CLAUSE.

37.1 Be it further ordained, that this ordinance shall take effect from and after the date it shall have been passed by the Council, signed by the chairman of the council, certified and delivered to the office of the Mayor in writing by the comptroller, and become effective as otherwise provided by law.

JANET P. HOOKS
Chairman of Council

Attest:
Danny N. Wray, Comptroller.

THE FOREGOING ORDINANCE
4404 PASSED
1st Reading 3-19-96
2nd Reading 4-2-96
3rd Reading 11-19-96
Approved [Signature]
Chairman of Council
Date Signed: 12/10/96

APPROVED:
[Signature]
Mayor, City of Memphis
Date Signed: 12/23/96

I hereby certify that the foregoing is a true copy, and said document was adopted by the Council of the City of Memphis as above indicated and approved by the Mayor.

[Signature]
Comptroller

MINUTES
REGULAR MEETING OF THE CITY COUNCIL
CITY OF MEMPHIS
December 5, 2000

3:30 P.M. SESSION

ROLL CALL: Joe Brown, Edmund H. Ford, Janet Hooks, E.C. Jones, Myron Lowery, Tom Marshall, TaJuan Stout Mitchell, Rickey Peete, Jack Sammons, Brent Taylor, Pat Vander Schaaf, John Vergos and Chairman Barbara Swearengen Holt

**THE MEETING WAS CALLED TO ORDER
BY THE SERGEANT-AT-ARMS**

INVOCATION

The meeting was opened with prayer by Rev. LaSimba Gray from New Sardis Baptist church, followed by the Pledge of Allegiance. Councilwoman Mitchell presented Rev. Gray with a certificate naming him Chaplain of the day.

An original of each item is filed in the Office of Council Records, Room 2B-08, and on microfilm in the Office of Records Management, Room 2B-08.

19. **ORDINANCE REZONING THE EAST SIDE OF SYCAMORE VIEW ROAD, +525.9 FEET SOUTH OF RALEIGH LAGRANGE ROAD, CONTAINING 1.3 ACRES IN THE SINGLE FAMILY RESIDENTIAL (R-S8) DISTRICT, UP FOR T H I R D AND F I N A L READING.**

Ordinance No. 4832
Case No. Z 00-130

Held to December 19, 2000

20. **ORDINANCE REZONING THE WEST SIDE OF LAMAR AVENUE (U.S. 78); ±1,345 FEET NORTHWEST OF HOLMES ROAD, CONTAINING 86.20 ACRES IN THE AGRICULTURAL (AG), AGRICULTURAL FLOOD PLAIN (AG[FPI]) AND HIGHWAY COMMERCIAL (C-H) DISTRICTS, UP FOR T H I R D AND F I N A L READING.**

Ordinance No. 4833
Case No. Z 00-145cc

Held to December 19, 2000

28. **RESOLUTION APPROVING A PLANNED DEVELOPMENT LOCATED ON THE NORTHEAST CORNER OF RIVER FALL COVE AND OAK RIVER DRIVE, CONTAINING 4.7 ACRES IN THE SINGLE FAMILY RESIDENCE/AGRICULTURAL (AG) DISTRICT OVERLAID BY PD 96-362.**

Case No. PD 00-358

Held to December 19, 2000

29. **RESOLUTION APPROVING A SUBDIVISION REVOCATION LOCATED ON THE WEST SIDE OF SWINNEA ROAD; BEGINNING 573 FEET NORTH OF RUNWAY ROAD, CONTAINING 8.07 ACRES IN THE VACANT/TOWNHOUSE RESIDENTIAL (R-TH) DISTRICT OVERLAID BY PD 92-341.**

Case No. SR 00-903

Held to December 19, 2000

- 36. **RESOLUTION APPROVING AN APPEAL OF A DECISION OF THE LANDMARKS COMMISSION PROPERTY, LOCATED AT 295 KIMBROUGH IN CENTRAL GARDENS HC DISTRICT, CASE # MLC #01-36.**

MOTION: Marshall
 SECOND: Jones
 AYES: Hooks, Jones, Marshall, Mitchell, Sammons, Taylor, Vander Schaaf, Vergos and Chairman Holt
 Brown, Ford, Lowery and Peete did not cast a vote

APPROVED

- 33. **RESOLUTION APPROVING THE TRANSFER OF CITY OWNED REAL ESTATE TO HABITAT FOR HUMANITY. THE PROPERTY IS A VACANT LOT AT 806 IOKA AVENUE WHICH WAS PURCHASED WITH FEDERAL FUNDS UNDER THE DIVISION OF HOUSING AND COMMUNITY DEVELOPMENT'S REPLACEMENT HOUSING PROGRAM.**

MOTION: Jones
 SECOND: Vander Schaaf
 AYES: Hooks, Jones, Marshall, Mitchell, Sammons, Taylor, Vander Schaaf, Vergos and Chairman Holt
 Brown, Ford, Lowery and Peete did not cast a vote

APPROVED

- 34. **RESOLUTION DECLARING DECEMBER 11, 2000, AS SHELBY COUNTY REPUBLICAN WOMEN DAY.**

MOTION: Taylor
 SECOND: Jones
 AYES: Hooks, Jones, Marshall, Mitchell, Sammons, Taylor, Vander Schaaf, Vergos and Chairman Holt
 Brown, Ford, Lowery and Peete did not cast a vote

APPROVED

- 37. **RESOLUTION APPROVING MIDDLE INCOME HOUSING PROGRAM, FUNDING RECOMMENDATION.**

MOTION: Marshall
 SECOND: Vander Schaaf
 AYES: Ford, Hooks, Jones, Marshall, Mitchell, Taylor, Vander Schaaf, Vergos and Chairman Holt
 Brown, Lowery, Peete and Sammons did not cast a vote

APPROVED

- 10. **RESOLUTION CONVENING CITY COUNCIL AS A RATE MAKING BOARD FOR THE PURPOSE OF DETERMINING THE FEASIBILITY OF A REVISION IN THE SCHEDULE OF RATES, AND TO PRESCRIBE RATES SUFFICIENT FOR THE OPERATION OF MEMPHIS LIGHT, GAS AND WATER DIVISION.**

MOTION: Taylor
 SECOND: Jones
 AYES: Ford, Hooks, Jones, Marshall, Mitchell, Sammons, Taylor, Vander Schaaf, Vergos and Chairman Holt
 Brown, Lowery and Peete did not cast a vote

APPROVED

COUNCIL RECESSES AS CITY COUNCIL AND CONVENES
AS A RATE-MAKING BOARD

MEETING CALLED TO ORDER AS A RATE-MAKING BOARD BY
THE SERGEANT-AT-ARMS

PUBLIC HEARING Re: Revised schedule of MLGW rates

Presentation by: Memphis Light, Gas & Water

- 11. RESOLUTION TO CHANGE MLG&W RETAIL GAS SCHEDULE TO BE EFFECTIVE FROM JANUARY 8, 2001 THROUGH APRIL 5, 2001.

MOTION: Taylor
SECOND: Marshall
AYES: Ford, Hooks, Jones, Lowery, Marshall, Mitchell, Peete, Sammons, Taylor, Vander Schaaf, Vergos and Chairman Holt
Brown did not cast a vote

APPROVED

ADJOURNMENT AS A RATE MAKING BOARD BY
THE SERGEANT-AT-ARMS

MEETING CALLED BACK TO ORDER AS THE CITY COUNCIL
BY THE SERGEANT-AT-ARMS

- 12. RESOLUTION APPROVING THE MLGW 2001 BUDGETS OF THE ELECTRIC, GAS AND WATER DIVISIONS FOR OPERATION AND MAINTENANCE EXPENSES AND CAPITAL EXPENDITURES.

MOTION: Lowery - Include the \$20 million dollars
SECOND: Hooks

Friendly Amendment: 1) MLGW shall provide Council with annual review of status and payback schedule (including interest accrued) of \$20,000,000.00 loan with review of MLGW Budget
2) Any pledge, loan, or other use of MLGW credit or assets relating to investment in Networx must be reviewed and approved by Council

MOTION: Peete
SECOND: Vander Schaaf

Lowery accepted Mr. Peete's motion as a Friendly Amendment

MAIN MOTION: Taylor
SECOND: Sammons
AYES: Brown, Ford, Hooks, Jones, Lowery, Mitchell, Peete, Sammons, Taylor, Vander Schaaf, Vergos and Chairman Holt
Marshall recused himself

APPROVED, as amended

- 13. RESOLUTION APPROVING LOCAL PREFERENCE POLICY FOR HEALTH, EDUCATION AND HOUSING FACILITIES BOARD.

MOTION: Brown
SECOND: Peete
AYES: Brown, Ford, Hooks, Jones, Lowery, Marshall, Mitchell, Peete, Sammons, Taylor, Vander Schaaf, Vergos and Chairman Holt

APPROVED

- 14. **RESOLUTION AUTHORIZING THE EXECUTION OF A LEASE AGREEMENT WITH PATTON TULLY TRANSPORTATION LLC FOR CERTAIN LANDS IN THE PRESIDENTS ISLAND INDUSTRIAL PARK, AS APPROVED BY THE BOARD OF COMMISSIONERS OF THE MEMPHIS AND SHELBY COUNTY PORT COMMISSION ON MAY 26, 2000.**

Contract No. CR-4612

MOTION: Sammons
 SECOND: Peete
 AYES: Brown, Ford, Hooks, Jones, Lowery, Marshall, Mitchell, Peete, Sammons, Taylor, Vander Schaaf, Vergos and Chairman Holt

APPROVED

- 15. **ORDINANCE GRANTING A FRANCHISE TO CONSTRUCT, MAINTAIN AND OPERATE A TELECOMMUNICATIONS SYSTEM WITHIN THE CITY OF MEMPHIS UNDER PROVISIONS OF ORDINANCE #4404 TO MEMPHIS NETWORK UP FOR T H I R D AND F I N A L READING. (Held from 2/15; 3/7; 4/11; 4/25; 5/16; 6/6; 6/20; 7/11; 7/25; 8/15; 9/19; 11/7; 11/21)**

Ordinance No. 4744

Chairman Holt recognized the following persons from the audience:

Debra Godwin, IBEW 1288
 Brent Hall, IBEW 1288
 Charlie Jones, 3290 New Getwell, Mphs, TN 38118
 Bill Ray, 6055 Primacy Pkwy, Suite 438, Mphs, TN 38119
 Frances Turner, 83 Asphodel Dr., Mphs, TN 38103

MOTION: Taylor
 SECOND: Jones
 AYES: Brown, Ford, Hooks, Jones, Lowery, Mitchell, Peete, Sammons, Taylor, Vander Schaaf, Vergos and Chairman Holt
 Marshall recused himself

APPROVED

- 27. **RESOLUTION APPROVING A PLANNED DEVELOPMENT LOCATED ON THE SOUTH SIDE OF U.S. HIGHWAY 64; +1,040 FEET WEST OF KATE BOND ROAD, CONTAINING 1.1 ACRES IN THE SINGLE FAMILY RESIDENCE/AGRICULTURAL (AG) DISTRICT.**

Case No. PD 00-354

Applicant: Gary Blume
 Mike Williams - Representative

Request: Amend PD 00-309cc to include Lot 1, Chism Subdivision as part of Area "A" containing Planned Commercial (C-P) District uses

LUCB and OPD recommendation: APPROVAL, subject to conditions

MOTION: Peete
 SECOND: Vander Schaaf
 AYES: Brown, Ford, Hooks, Lowery, Marshall, Mitchell, Peete, Sammons, Taylor, Vander Schaaf, Vergos and Chairman Holt
 Jones did not cast a vote

APPROVED

Judge Joe Brown made a presentation to the Council regarding a group named The Diverse Group who wants to purchase the Hunt Phelan Home for a museum.

Chairman Holt recognized the following persons from the audience:

Elma L. Goodloe, 6401 Poplar Avenue, Suite 299, Mphs, TN
 Bernice, no last name or address given

MOTION: Marshall - Add items #38 and #39
SECOND: Peete

APPROVED, by unanimous voice vote, items added

- 16. **ORDINANCE GRANTING A FRANCHISE FOR A GAS LINE TO PROTEIN TECHNOLOGIES, INC., UP FOR T H I R D AND F I N A L READING.**(Held from 5/16;6/6; 6/20; 7/11;7/25;8/1; 8/15; 9/5; 10/3; 10/17; 11/7; 11/21)
Ordinance No. 4761

DROPPED

- 17. **ORDINANCE REZONING THE NORTH SIDE OF FINCH ROAD AT THE INTERSECTION OF APRIL FOREST DRIVE, CONTAINING 4.97 ACRES IN THE SINGLE FAMILY RESIDENCE AND BARN/AGRICULTURAL (AG) DISTRICT, UP FOR T H I R D AND F I N A L READING.**

Ordinance No. 4830
Case No. Z 00-142cc
(Companion Case No. S 00-043cc)

Applicant: Fred Elam
Doveland Engineering - Frank Palumbo, Representative

Request: Single Family Residential (R-S6) District

LUCB and OPD recommendation: REJECTION

MOTION: Peete
SECOND: Vander Schaaf
AYES: Ford, Jones, Lowery, Mitchell, Peete, Taylor and Chairman Holt
Brown, Hooks, Marshall, Sammons, Vander Schaaf and Vergos did not cast a vote

APPROVED

- 30. **RESOLUTION APPROVING A SUBDIVISION APPEAL LOCATED ON THE NORTH SIDE OF FINCH ROAD AT THE INTERSECTION OF APRIL FOREST DRIVE.**

Case No. S 00-043cc
(Companion Case No. Z 00-142cc- Ordinance No. 4830)

Applicant: Fred Elam
Frank Palumbo - Representative

Request: An appeal to overturn the action of the Land Use Control Board rejecting the preliminary plan for the Chelsea Estates Subdivision

LUCB and OPD recommendation: REJECTION

MOTION: Peete
SECOND: Jones
AYES: Brown, Ford, Jones, Lowery, Mitchell, Peete, Taylor and Chairman Holt
Hooks, Marshall, Sammons, Vander Schaaf and Vergos

APPROVED

- 18. **ORDINANCE REZONING THE SOUTH SIDE OF OLD HIGHWAY 78 AT THE INTERSECTION OF REPUBLIC DRIVE, CONTAINING 9.073 ACRES IN THE AGRICULTURAL (AG) DISTRICT, UP FOR T H I R D AND F I N A L READING.**

Ordinance No. 4831
Case No. Z 00-112cc

Applicant: Wayne E. Lomax
Fisher & Arnold - Representative

Request: Light Industrial (I-L) District

LUCB and OPD recommendation: APPROVAL

MOTION: Peete
SECOND: Jones
AYES: Brown, Ford, Jones, Lowery, Mitchell, Peete, Sammons, Taylor and Chairman Holt
Hooks, Marshall, Vander Schaaf and Vergos did not cast a vote

APPROVED

- 21. RESOLUTION APPROVING A SPECIAL USE PERMIT LOCATED ON THE NORTHWEST CORNER OF WINCHESTER AND PERKINS ROAD, CONTAINING .63 ACRE IN THE PLANNED COMMERCIAL (C-P) DISTRICT. (Held from 11/7;11/21)

Case No. SUP 00-241

Applicant: Soun Tan
Buddy Fong - Representative

Request: Motor Vehicle Sales

LUCB recommendation: APPROVAL

OPD recommendation: REJECTION

No Public Hearing Required; No opposition at LUCB

MOTION: Peete
SECOND: Jones
AYES: Brown, Ford, Jones, Lowery, Peete, Sammons, Taylor, Vergos and Chairman Holt
Hooks, Marshall, Mitchell and Vander Schaaf did not cast a vote

APPROVED

- 22. RESOLUTION APPROVING A SPECIAL USE PERMIT LOCATED ON THE SOUTH SIDE OF JAMES ROAD; BEGINNING +200 FEET WEST OF HOLLYWOOD STREET, CONTAINING 5 ACRES IN THE SINGLE FAMILY RESIDENTIAL (R-S10) DISTRICT.

Case No. SUP 00-246

Applicant: Mankind Project Memphis
Carson Owen - Representative

Request: Lodge

LUCB and OPD recommendation: APPROVAL, subject to conditions

No Public Hearing Required; No opposition at LUCB

MOTION: Peete
SECOND: Ford
AYES: Brown, Ford, Lowery, Mitchell, Peete, Sammons, Taylor, Vergos, and Chairman Holt
Hooks, Jones, Marshall and Vander Schaaf did not cast a vote

APPROVED

- 23. RESOLUTION APPROVING A SPECIAL USE PERMIT LOCATED ON THE NORTH SIDE OF RALEIGH LAGRANGE; +368.43 FEET OF BARTLETT ROAD, CONTAINING 2.59 ACRES IN THE TOWNHOUSE RESIDENTIAL (R-TH) DISTRICT.

Case No. SUP 00-248

24. RESOLUTION APPROVING A SPECIAL USE PERMIT LOCATED ON THE NORTHEAST CORNER OF WINCHESTER ROAD AND WINCHESTER COVE, CONTAINING .343 ACRE/14,941 SQ. FT., IN THE LOCAL COMMERCIAL (C-L) DISTRICT.

Case No. SUP 00-250

Applicant: Avis Rent a Car Sys. Inc.
Shroyer Engineering Co. - Representative

Request: Car Rental

LUCB and OPD recommendation: APPROVAL, with conditions

No Public Hearing Required: No opposition at LUCB

MOTION: Peete
SECOND: Sammons
AYES: Brown, Ford, Lowery, Mitchell, Peete, Sammons, Taylor, Vergos and
Chairman Holt
Hooks, Jones, Marshall and Vander Schaaf did not cast a vote

APPROVED

25. RESOLUTION ESTABLISHING A TECHNOLOGY CORRIDOR.

MOTION: Sammons
SECOND: Taylor
AYES: Ford, Jones, Mitchell, Peete, Taylor, Vergos and Chairman Holt
Brown, Hooks, Lowery, Marshall, Sammons and Vander Schaaf did not cast
a vote

APPROVED

MINUTES

Approval of the minutes of the regular meeting of November 21, 2000

MOTION: Sammons
SECOND: Jones
AYES: Ford, Hooks, Jones, Lowery, Mitchell, Peete, Sammons, Taylor, Vergos and
Chairman Holt
Brown, Marshall and Vander Schaaf did not cast a vote

APPROVED

26. RESOLUTION APPROVING A TIME EXTENSION FOR A USE VARIANCE LOCATED AT 831 BULLINGTON AVENUE (SOUTH SIDE OF BULLINGTON AVENUE ± 200 FEET WEST OF MISSISSIPPI BOULEVARD).

Case No. 98-28

Request: Time Extension for a Use Variance to allow operation and parking for a
medical transportation service

MOTION: Peete
SECOND: Jones
AYES: Brown, Ford, Hooks, Jones, Mitchell, Peete, Sammons, Taylor, Vergos and
Chairman Holt
Lowery, Marshall and Vander Schaaf did not cast a vote

APPROVED

CONSENT AGENDA - Items 1-9, 31, 32, 35, 38 and 39 may be acted upon by one motion. SEE PAGE FOR ROLL CALL

1. ORDINANCE TO ESTABLISH MEETING DATES FOR CITY COUNCIL MEETINGS IN 2001, UP FOR F I R S T READING.

Ordinance No. 4836

APPROVED, on First reading

- 2. **ORDINANCE TO AMEND CHAPTER 18, CODE OF ORDINANCES, CITY OF MEMPHIS, SO AS TO MODIFY SECTION 18-44, SUBSECTION (C), CONVERSION OF UNUSED SICK LEAVE INTO CREDITABLE SERVICE, UP FOR S E C O N D READING.**

Ordinance No. 4833

APPROVED, on Second reading

- 3. **ORDINANCE REZONING +1250 FEET SOUTH OF HOLMES RD.; +1300 FT. WEST OF MALONE ROAD, CONTAINING 2,273 SQ. FT., IN THE AGRICULTURAL (AG), AGRICULTURAL FLOOD PLAIN(AG[FPI]) DISTRICTS, UP FOR F I R S T READING.**

Ordinance No. 4835
Case No. Z 00-147cc

APPROVED, on First reading

- 4. **ORDINANCE REZONING THE SOUTHEAST CORNER OF BOEINGSHIRE STREET AND WINCHESTER ROAD, CONTAINING .27 ACRE IN THE SINGLE FAMILY RESIDENTIAL (R-S8) DISTRICT, UP FOR S E C O N D READING.**

Ordinance No. 4834
Case No. Z 00-101

APPROVED, on Second reading

- 5. **RESOLUTION APPROVING FINAL PLAT FOR ALMOST PERFECT DAYCARE SEWER EXTENSION.**

Case No. SUP 97-230cc
Contract No. CR-4613

Resolution approves the final plat located on the north side of Holmes Road, east of Annandale Drive. Cost of the required improvements to be borne by the Developer. Resolution also authorizes the proper officials to execute the attached standard sewer extension contract.

City Engineer recommends approval

APPROVED

- 6. **RESOLUTION APPROVING FINAL PLAT OF RUBY ESTATES SUBDIVISION.**

Case No. S 99-067
Contract No. CR-4614

Resolution approves the final plat located on the east side of Weaver Road, 1,892 feet south of Holmes Road. Cost of the required improvements to be borne by the Developer. Resolution also authorizes the proper officials to execute the attached standard improvement contract.

City Engineer recommends approval

APPROVED

- 7. **RESOLUTION APPROVING FINAL PLAT OF GEMSTONE P.D., PHASE 1.**

Case No. PD 99-380
Contract No. CR-4615

Resolution approves the final plat located on the south side of Holmes Road, 758 feet east of Weaver Road. Cost of the required improvements to be borne by the Developer. Resolution also authorizes the proper officials to execute the attached standard improvement contract.

City Engineer recommends approval

APPROVED

- 8. **FILING OF LETTER CERTIFYING RESULTS FROM THE NOVEMBER 7, 2000 ELECTION (ON FILE IN COUNCIL RECORDS OFFICE).**

Comptroller
City of Memphis
125 N. Main, Suite 348
Memphis, TN 38103

Dear Sir:

We, the undersigned members of the Shelby County Election Commission, do hereby certify that, pursuant to law, we held a Referendum Election on Tuesday, November 7, 2000, in the City of Memphis, Tennessee; and that pursuant to Sec. 2-8-104, T.C.A., that the following official tabulation showing total votes is a true, correct and complete accounting of the results of said election as established by the canvassing of the returns, this the 20th day of November, 2000.

Sincerely,

SHELBY COUNTY ELECTION COMMISSION

Signed:

O. C. Pleasant, Jr., Chairman
David H. Lillard, Jr., Secretary
Yvonne B. Acey
Gregory M. Duckett
Richard L. Holden

9. **NOTATIONS FROM LAND USE CONTROL BOARD THAT THE FOLLOWING CASES WERE HEARD AND RECOMMENDATION MADE REQUESTING A DATE OF PUBLIC HEARING:**

- A. Case No. PD 00-357
- B. Case No. PD 00-360
- C. Case No. PD 00-372 (Converted from Z 00-146)
- D. Case No. SAC 00-602 - Nancy Street
- E. Case No. SAC 00-613 - Walker Avenue Alley
- F. Case No. SAC 00-617 - Wellington Street Alley
- G. Case No. SUP 00-242

Public Hearing set for December 5, 2000

- H. Case No. UV 00-008

Public Hearing set for February 6, 2001

MOTION: Taylor - Pull H from the Consent Agenda to go back on the Consent Agenda on January 16, 2001 and Public Hearing on February 6, 2001

SECOND: Vergos

WITHOUT OBJECTION, item H is removed

31. **RESOLUTION ACCEPTING GOODLETT FARMS P.D., PHASE 3, AND AUTHORIZING RELEASE OF BOND.**

Case No. PD 88-348cc
(Contract No. CR-4537)

Resolution accepts completion of the improvements and the dedication of public streets and easements as shown on the final plat located on the west side of Wynne Road, south of Goodlett Farms Parkway. The standard improvement contract was approved on February 1, 2000. Resolution also authorizes the release of the certificate of deposit in the amount of \$30,000.00. This action subject to County approval.

City Engineer recommends approval

APPROVED

32. **RESOLUTION APPROVING FINAL PLAT OF FIELDSTONE P.D., 2ND AMENDMENT, PHASE 7, PARCEL E.**

Case No. PD 00-317

Resolution approves the final plat located on the north side of Players Club Parkway, 960.5 feet west of Hacks Cross Road. Cost of the required improvements to be borne by the Developer. Resolution also authorizes the proper officials to execute the attached standard improvement contract.

City Engineer recommends approval

APPROVED

- 33. RESOLUTION APPROVING THE TRANSFER OF CITY OWNED REAL ESTATE TO HABITAT FOR HUMANITY. THE PROPERTY IS A VACANT LOT AT 806 IOKA AVENUE WHICH WAS PURCHASED WITH FEDERAL FUNDS UNDER THE DIVISION OF HOUSING AND COMMUNITY DEVELOPMENT'S REPLACEMENT HOUSING PROGRAM.

APPROVED

- 35. ORDINANCE AMENDING CHAPTER 25, CODE OF ORDINANCES, SO AS TO REVISE AND CLARIFY SECTIONS OF PENSIONS AND RETIREMENT PLAN, UP FOR F I R S T READING.

Ordinance No. 4837

APPROVED, on First reading

- 38. ORDINANCE APPROVING TREE PRESERVATION, UP FOR F I R S T READING.

Ordinance No. 4838

APPROVED, on First reading

- 39. ORDINANCE AMENDING SUBDIVISION REGULATIONS, UP FOR F I R S T READING.

Ordinance No. 4839

APPROVED, on First reading

ROLL CALL - CONSENT ITEMS

MAIN MOTION: Hooks
 SECOND: Jones
 AYES: Brown, Ford, Hooks, Jones, Lowery, Mitchell, Peete, Sammons, Taylor, Vergos and Chairman Holt
 Marshall and Vander Schaaf did not cast a vote

APPROVED, as amended

INTRODUCTION OF ITEMS ON MATTERS BY THE GENERAL PUBLIC:

Chairman: Is there any further business to come before the Council?

A D J O U R N M E N T

Upon statement of the Chairman, without objection, the meeting was adjourned, subject to the call of the Chairman.

Barbara Swearingen Holt
 CHAIRMAN

Attest:

[Signature]
 Deputy Comptroller/Council Records