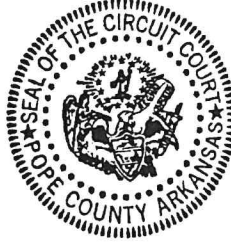


This Instrument Prepared by:

**William F. Smith
203 South Commerce Ave.
Russellville, AR 72801**



**CERTIFICATE OF RECORD
DOCUMENT NUMBER: 2024-00450
FILED: 01/23/2024 09:37 AM
POPE COUNTY, ARKANSAS
RACHEL L. OERTLING
SERENIDY ANDERSON, D.C.
PAGES: 24
FEE: \$ 130.00**

Ordinance

INSTRUMENT TYPE

City of Russellville

GRANTOR

Corrected Ordinance #2479

GRANTEE

ORDINANCE NO. 2479

AN ORDINANCE CODIFYING THE EXISTING CITY FRANCHISE FEES WITH UTILITIES FOR USE OF THE CITY'S RIGHT OF WAYS; SETTING A FEE FOR THE USAGE OF THE CITY'S RIGHT OF WAYS; PROVIDING FOR THE REPEAL OF EXISTING ORDINANCES OR SECTIONS OF ORDINANCES IN CONFLICT HEREWITH; AND FOR OTHER PURPOSES

WHEREAS, the City of Russellville, Arkansas ("City") has various ordinances regulating the City's franchise fees and use of its right of ways ("ROWS") with various utilities operating within the city limits; and,

WHEREAS, the need to consolidate the various ordinances regarding its franchise fees and use of its ROWs into one (1) unifying Code is needed to have all the franchise fees in effect in one document which the public can find for easier public access to review the current laws on the matter and for easier integration of any future amendments.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF RUSSELLVILLE, ARKANSAS, OF THE FOLLOWING:

SECTION 1: The attached Code labeled as Exhibit A and named, "City Franchise Fee Code" ("this Code") is a consolidation of previous ordinances regulating and amending the discharge of firearms, hunting and fireworks within the city limits of the City of Russellville, Arkansas.

SECTION 2: A.C.A. §14-55-207, authorizes municipalities to adopt codes or regulations by reference. The document attached hereto as "Exhibit A", to be known as the Code is hereby adopted by reference. Copies of this Code have been and shall be maintained at City Hall by the City Clerk-Treasurer, the Mayor, and the City Attorney.

SECTION 3: Pursuant to the authority granted to the City by the State of Arkansas under A.C.A. §14-55-501, it is hereby enacted that any violation of the attached Code is a misdemeanor offense subject to punishment as stated within the attached Code.

SECTION 4: The recitals in the Preamble of this Ordinance is hereby incorporated into this Section of this Ordinance by reference.

SECTION 5: The provisions of this Code, which is adopted by this Ordinance, are deemed to be severable. A finding that any part of this Code or Ordinance is invalid by a court of competent jurisdiction shall not affect the validity of the remaining provisions of this Code or Ordinance.

SECTION 6: Ordinance Nos. 59, 67, 141, 259, 534, 604, 692, 693, 694, 695, 785, 860, 982, 985, 1033, 1051, 1806, 1810, 1819 and 1900 and all other ordinances or codes, or parts thereof which are in conflict herewith, are repealed to the extent of said conflict.

SECTION 7: The City Clerk-Treasurer and City Attorney are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

Prepared by:
William F. Smith III
City Attorney
103 S. Commerce Ave.
Russellville, AR 72801
Sponsor: City Attorney
DB#4

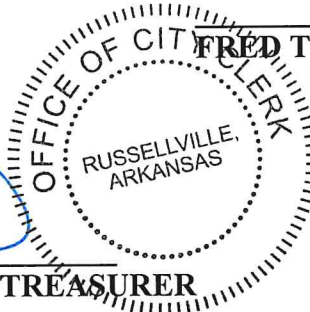
SECTION 8: In exercising the authority to codify the regulation of discharge of firearms and hunting in the City into code form and maintain in accurate and correct code form, the City Attorney is authorized to make the following changes to the adopted Code as Exhibit A:

- (a) Correct the spelling of words;
- (b) Change capitalization for the purpose of uniformity;
- (c) Correct manifest typographical and grammatical errors;
- (d) Correct manifest errors in references to laws, ordinances and other documents;
- (e) Correct manifest errors in internal reference numbers or letters; and
- (f) Correct punctuation.

ORDAINED, this 18th day of January, 2024.

FRED TEAGUE, MAYOR

ATTEST:



GINA SKELTON, CITY CLERK-TREASURER

I, Gina Skelton, City Clerk-Treasurer of the City of Russellville, Arkansas, hereby certify that the above and foregoing is a true and correct copy of Ordinance No. **2479** passed by the City Council of the City of Russellville, Arkansas, on the 18th day of January, 2024.

APPROVED AS TO LEGAL FORM:

WILLIAM F. SMITH III, CITY ATTORNEY

Act 954 Publication Statement:

The City of Russellville, Arkansas, Finance Department, is responsible for the payment of the publication of this Ordinance in the amount per The Courier's PCI rate of \$11.10 plus \$2.00 web publication fee. [Column Inches x PCI Rate = Advertising Cost]

EXHIBIT A

TITLE – CITY FRANCHISE FEE CODE

ARTICLE I – GENERAL

CHAPTER 1 – GENERAL

ARTICLE II – CITY FRANCHISE FEE CODE

CHAPTER 1 – RESERVED

CHAPTER 2 – CITY ELECTRIC FRANCHISE CODE

CHAPTER 3 – CITY GAS FRANCHISE CODE

CHAPTER 4 – CITY CABLE FRANCHISE CODE

CHAPTER 5 – CITY TELEPHONE FRANCHISE CODE

CHAPTER 6 – CITY BROADBAND INTERNET CODE

TITLE – CITY FRANCHISE FEE CODE

ARTICLE I – GENERAL

CHAPTER 1 – GENERAL

SECTION 1: TITLE

- 1.1 This Code shall be known as, referred to and cited as “The City of Russellville, Arkansas, Franchise Fee Code.” Any reference to the word “Code” in this Chapter shall mean this Title and all Articles contained therein.

SECTION 2: PRIOR ACTS OF THE CITY ELECTED OFFICIALS, CITY EMPLOYEES AND SAVINGS

- 2.1 The repeal of any prior ordinance or portion thereof by adoption of this Code shall not affect or impair any act done or right vested or accrued before such repeal takes effect but every such act done or right vested or accrued shall remain in full force and effect to all intents and purposes as if such repeal had not taken place. No act or duty performed in the past by any City officials or employees shall be deemed invalid while the City officials or employees were operating under the authority of state law, prior ordinances or part thereof that are repealed by this Code. All acts prior to the passage of this Code viewed within all respects as if such prior ordinances or part thereof had not been repealed.
- 2.2 The repeal or amendment of prior ordinances does not release or extinguish any penalty, forfeiture, or liability incurred or right accruing or accrued under prior ordinances, unless the repealing or amending act so provides expressly. Those prior ordinances shall be treated as remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of the right, penalty, forfeiture, or liability.
- 2.3 The repeal of an ordinance shall not revive any ordinances in force before or at the time the ordinance repealed took effect. The repeal of an ordinance shall not affect any punishment or penalty incurred before the repeal took effect, nor any suit, prosecution or proceeding pending at the time of the repeal, for an offense committed under the ordinance repealed.

SECTION 3: SEVERABILITY

- 3.1 If any Code, Article, Chapter, Section, Subsection, Provision, Paragraph, Sentence, Clause, or Phrase of this Code is declared unconstitutional or invalid for any reason by a court of competent jurisdiction, such decision shall not affect the validity of the remaining parts of this Code.

SECTION 4: AMENDMENTS TO CODE.

- 4.1 All ordinances passed subsequent to this Code which amend, repeal or in any way affect this Code, may be numbered in accordance with the numbering system of this Code and printed for inclusion herein. In the case of repealed titles, chapters, sections or subsections or any part thereof, by subsequent ordinances, such repealed portions may be excluded from the Code by omission from reprinted pages affected thereby.

- 4.2 Amendment to any of the provisions of this Code shall be made by amending such provisions by specific reference to the section number of this Code in the following language: "That section of the City of Russellville, Arkansas, Code for Franchise Fees is hereby amended to read as follows:..." The new provisions shall then be set out in full.
- 4.3 In the event a new section not heretofore existing in this Code is to be added, the following language shall be used: "That the Code for Franchise Fees is hereby amended by adding a section (or Codes or Chapter) to be numbered which said section (or Code or Chapter) reads as follows: The new provisions shall then be set out in full.
- 4.4 All sections, codes, chapters or provisions desired to be repealed must be specifically repealed by section, code, or chapter number, as the case may be.

SECTION 5: REPEALER

- 5.1 Ordinance Nos. 59, 67, 141, 259, 534, 604, 692, 693, 694, 695, 785, 860, 982, 985, 1033, 1051, 1806, 1810, 1819 and 1900 are hereby repealed in their entirety.
- 5.2 Any ordinance or code in conflict with this Code is hereby repealed.

SECTION 6: DEFINITIONS

The following definitions shall apply throughout this Title and Code:

- 6.1 "A.C.A." mean the abbreviation "A.C.A." means the Arkansas Code of 1987 Annotated, as amended or revised in the future.
- 6.2 "City", "municipal corporation" or "municipality" means the City of Russellville, Arkansas, a municipal corporation organized and incorporated under the laws of the State of Arkansas.
- 6.3 "Code" means all the various Codes contained in this Title.
- 6.4 "Law Enforcement Officer" or "Police Officer" as used in this Title and Code shall mean any appointed or elected law enforcement officer by the City public law enforcement department, office, or agency who: 1) is responsible for the prevention and detection of crime and the enforcement of the criminal, traffic, or highway laws of this state; 2) has met the selection and training requirements for certification set by the Arkansas Commission on Law Enforcement Standards and Training; and 3) vested by law with a duty to maintain order or to make arrests for offenses.
- 6.5 "Motor vehicle" means a self-propelled device or vehicle in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks
- 6.6 "Person" means any individual person or a corporation, association, partnership, limited liability company, or other entity, institution or organization, natural or legal, and commonly recognized by law as a unit.
- 6.7 "State" means the State of Arkansas.

- 6.8 “*Street*” means any paved or unpaved road, thoroughfare, avenue, boulevard, parkway, drive, alley, easement, right-of-way or other public way set aside or open for purposes of vehicular traffic, including any berm, shoulder or median strip thereof within the corporate city limits of the City that is owned, leased, held by the City by easement, licensed to the City, granted possession or otherwise possessed by the City.
- 6.9 “*Title*” means all of the Articles, Chapters, Subchapters, Sections and Subsections within this document.
- 6.10 “*To operate*” or “*operate*” means to ride, drive, or otherwise use a motor vehicle as described within these definitions as a means of transport.

SECTION 7: INTENT AND PURPOSE OF ARTICLE I AND CHAPTER 1

- 8.1 It is the specific intent and purpose of the City that all of the Sections and terms found in Article I and Chapter 1 are to be applied throughout this Title and Code to each Article, Chapter, Section, Subsection and every provision contained within this Title and Code.

SECTION 8: PROVISIONS CONSIDERED CONTINUATION OF EXISTING ORDINANCES

- 8.1 The provisions of this Title and Code, so far as they are the same as ordinances existing at the time of adoption of this Title and Code, shall be considered as a continuation of such ordinances and not as new enactments.

SECTION 9: INTERPRETATION

- 9.1 Unless otherwise provided herein, or by law or implication required, the same rules of construction, definition, and application shall govern the interpretation of this Title and Code as those governing the interpretation of state law.

SECTION 10: REFERENCE TO OFFICES, ETC.

- 10.1 Reference to a public office or officer shall be deemed to apply to any office, officer, or employee of this municipality exercising the powers, duties, or functions contemplated in the provision, irrespective of any transfer of functions or change in the official title of the functionary.

SECTION 11: ERRORS AND OMISSIONS

- 11.1 If a manifest error is discovered, consisting of the misspelling of any words; the omission of any word or words necessary to express the intention of the provisions affected; the use of a word or words to which no meaning can be attached; or the use of a word or words when another word or words was clearly intended to express such intent, such spelling shall be corrected and such word or words supplied, omitted, or substituted as will conform with the manifest intention, and the provisions shall have the same effect as though the correct words were contained in the text as originally published. No alteration shall be made or permitted if any question exists regarding the nature or extent of such error.

SECTION 12: ORDINANCES UNAFFECTED

- 12.1 All ordinances of a temporary or special nature and all other ordinances pertaining to subjects not embraced in this Title and Code shall remain in full force and effect unless herein repealed expressly or by necessary implication.

SECTION 13: RULES OF CONSTRUCTION

- 13.1 In the construction of this Title and Code, the following rules shall be observed, unless such construction would be inconsistent with the manifest intent of the City.

13.1.1 *Acts by assistants.* When a statute or ordinance requires an act to be done which, by law, an agent or deputy as well may do as the principal, such requisition shall be satisfied by the performance of such act by an authorized agent or deputy.

13.1.2 *Conjunctions.* In a provision involving two or more items, conditions, provisions or events, which items, conditions, provisions or events are connected by the conjunction "and," "or" or "either...or," the conjunction shall be interpreted as follows, except that the terms "and" and "or" may be interchangeable when the context so requires:

13.1.2.1 "And" indicates that all the connected terms, conditions, provisions or events apply.

13.1.2.2 "Or" indicates that the connected terms, conditions, provisions or events apply singly or in any combination.

13.1.2.3 "Or, And." "Or" may be read "and", and "and" may be read "or" if the sense requires it.

13.1.2.4 "Either...or" indicates that the connected terms, conditions, provisions or events apply singly but not in combination.

13.1.3 *Delegation of authority.* A provision that authorizes or requires a city officer or city employee to perform an act or make a decision authorizes such officer or employee to act or make a decision through subordinates.

13.1.4 *Gender.* Words of one gender include all other genders and to firms, partnerships, and corporations.

13.1.5 *Generally.*

13.1.5.1 When provisions conflict, the specific prevails over the general. All provisions shall be liberally construed so that the intent of the city council may be effectuated.

13.1.5.2 Words and phrases shall be construed according to the common and approved usage of the language, but technical words, technical phrases and words and phrases that have acquired peculiar and appropriate meanings shall be construed according to such meanings.

13.1.5.3 Provisions shall be interpreted and applied so as to be the minimum requirements adopted for the promotion of the public health, safety, comfort, convenience and general welfare.

13.1.5.4 Grammatical errors shall not vitiate, and a transposition of words and clauses may be resorted to when the sentence or clause is without meaning as it stands.

13.1.6 *Include, including.* The term "include," "including" or any other similar term of inclusion means without limitation or restriction.

13.1.7 *May.* The term "may" is to be construed as being permissive and not as being mandatory.

13.1.8 *May not.* The term "may not" has a prohibitory effect and states a prohibition.

13.1.9 *Must.* The term "must" is to be construed as being mandatory and not as being permissive.

13.1.10 *Number.* Words used in the singular include the plural, and the plural includes the singular number.

13.1.11 *Oath.* The word "oath" shall be construed to include an affirmation in all cases in which, by law, an affirmation may be substituted for an oath, and in such cases the words "swear" and "sworn" shall be equivalent to the words "affirm" and "affirmed".

13.1.11 *Other City Officials or Officers.* Whenever reference is made to officials, boards, commissions, departments, etc., by title only, i.e., "clerk-treasurer", "police chief", etc., they shall be deemed to refer to the officials, boards, commissions and departments of the City.

13.1.12 *Shall.* The term "shall" is to be construed as being mandatory.

13.1.13 *Tenses.* The present tense of a verb includes the past and future tenses. The future tense includes the present tense, if applicable.

SECTION 14: ALTERING CODE

- 14.1** It shall be unlawful for any person to purposefully change or amend by additions or deletions, any part or portion of this Title and Code, or to insert or delete pages, or portions thereof, or to alter or tamper with said Title and Code in any manner whatsoever except by ordinance of the city council, which shall cause the law of the City to be misrepresented thereby.

SECTION 15: REFERENCE TO OTHER SECTIONS

- 15.1** Whenever in one section reference is made to another section hereof, such reference shall extend and apply to the section referred to as subsequently amended, revised, recodified, or renumbered unless the subject matter is changed or materially altered by the amendment or revision.

SECTION 16: AUTHORITY

- 16.1** The provisions contained within this Title and Code formerly, currently or hereinafter enacted are based upon, derive authority from and are enacted pursuant to any and all of the power and authority conferred upon cities by the Arkansas Constitution and by the Arkansas General Assembly through its statutes, including, but not limited to, all of Title 14 Local Government of the Arkansas Code specifically including but not limited to Subchapter 6, Power Over Municipal Affairs of Chapter 43 Government of Cities of the First Class, Chapter 54 Powers of Municipalities, Chapter 55 Ordinances of Municipalities, Chapter 199, Public Utilities Generally, Chapter 200, Municipal Authority over Utilities and any and all other state statutes or constitutional provisions that provide any authority to the City to enact ordinances, codes, or regulations within or referenced by the Title and Code. No specific reference to authority within any Title and Code Chapters or Section excludes the general authority of all state law and this Section.

ARTICLE II – CITY FRANCHISE FEE CODE

CHAPTER 1 – GENERAL

SECTION 1: TITLE

- 1.1 The Chapters within this Article shall be titled, known as, referred to and cited as the “City Franchise Fee Code.”

CHAPTER 2 – CITY ELECTRIC FRANCHISE FEE CODE

SECTION 1: TITLE

- 1.1 This Chapter shall be titled, known as, referred to and cited as the “City Electric Franchise Fee Code (“Electric Franchise Code”).”

SECTION 2: FINDINGS, PURPOSE AND INTENT

- 2.1 Whereas, Ordinance Nos. 604 and 1033 established a franchise with Arkansas Power and Light, the predecessor in interest to Entergy Arkansas, LLC, for use of the City’s ROWs in exchange for four and a half percent (4½%) of its prior year's gross electric revenue collections of its residential and commercial customers located in the corporate limits of the City.
- 2.2 Whereas, this Electric Franchise Code does not alter any of the terms in Ordinance No. 604 or the rate in Ordinance No. 1033 and this Code is a continuation of the same terms and rate contained in Ordinance Nos. 604 and 1033.

SECTION 3: EXCLUSIVE ELECTRIC FRANCHISE GRANTED

- 3.1 The City of Russellville, Arkansas (“City and “Grantor”) hereby grants to the Arkansas Power & Light Company, its successors and assigns (“Grantee”), the exclusive right, privilege and authority within the present and all future expansion of the corporate limits of the City, (1) to sell, furnish, transmit and distribute electric power and energy to Grantor and to all inhabitants and consumers within said limits, and (2) to construct, maintain, operate and extend a system for such purposes and to enter on, under and upon and use any and all of the streets, alleys, avenues, bridges and other public grounds and ways belonging to, or under the control of Grantor, for the purpose of erecting, maintaining, repairing, replacing and operating poles, wires, anchors, stubs, transformers, substations, cables, conduits and other related facilities, appliances and apparatus which are necessary for, or useful in, the furnishing, sale, transmission or distribution of said electric service (“Facilities”).

SECTION 4: REQUIREMENT TO PROVIDE ELECTRIC SERVICE

- 4.1 Grantee shall, and does by acceptance hereof, agree to provide to the City and its inhabitants adequate and reasonable electric service as a public utility and the Facilities necessary to provide such service. Grantor, in recognition of the large and continuing investment necessary for Grantee to perform its obligations hereunder, and the need and duty to promptly construct its Facilities, as defined above, required to serve customers, in all areas and zones of the City, consents to

the construction of such Facilities as defined in Section 3.1 in all such areas and zones.

- 4.2 Grantor agrees to protect by ordinance, regulation, code and otherwise, to the fullest extent permitted by law, and except as otherwise limited herein, the grants of rights and privileges to Grantee set forth in Section 3.1 from interference with, or duplication by, other persons, firms or corporations seeking to engage in the sale or distribution of electric energy.

SECTION 5: OBSTRUCTIONS, STANDARDS AND REPAIRS TO PUBLIC ROWS

- 5.1 All facilities of Grantee which may be located on public ways, places and public property, as authorized herein, shall be located so as to not unreasonably obstruct public use and travel.
- 5.2 All of Grantee's facilities shall be constructed, operated and maintained in accordance with standards at least equivalent to the standards prescribed by the National Electrical Safety Code.
- 5.3 Grantee, its successors and assigns, shall replace and repair, at its own expense, all excavations, holes or other damage caused or done by it to public streets, ways, places and public property in the construction, operation and maintenance of its facilities.

SECTION 6: PERMISSION TO CUT VEGETATION WITHIN ROWS

- 6.1 The Grantee, its successors and assigns, is hereby given the right to trim, cut or remove trees, shrubbery or growth on or in public ways, places and public property which interfere or offer hazards to the operation of Grantee's facilities used or useful for the rendition of electric service.
- 6.2 Grantee is hereby given the right, authority and permission to trim, cut and remove portions of trees, shrubbery or growth growing on private property but overhanging or encroaching on public ways, places and public property which interfere or offer hazards to the construction, operation and maintenance of Grantee's facilities.

SECTION 7: DURATION OF FRANCHISE

- 7.1 The rights, privileges and authority hereby granted shall exist and continue from the date of passage of this ordinance, and thereafter, until terminated in accordance with provisions of Section 44 of Act 324 of the 1935 Acts of the State of Arkansas (A.C.A. §14-200-103 of A.C.A. §14-200-101 *et seq.*), as presently enacted or hereafter amended.

SECTION 8: ELECTRIC RATES

- 8.1 The rates which are to be charged by Grantee for electric service hereunder shall be those which are now lawfully approved or prescribed, and as said rates may, from time to time, be amended by Grantee in accordance with law or by any regulatory authority having jurisdiction thereof.

SECTION 9: GRANTEE STANDARD OF CARE AND HOLD GRANTOR HARMLESS

- 9.1 In the construction, operation, and maintenance of its facilities, said Grantee shall use reasonable and proper precaution to avoid damage or injury to persons or property.
- 9.2 Grantee shall hold and save harmless the said Grantor from damage, injury, loss or expense caused by the negligence of the Grantee, or its agents, servants or employees, in constructing, operating and maintaining said facilities or in repaving or repairing any streets, avenues, alleys, bridges or other public grounds.

SECTION 10: FACILITIES TO BE KEPT IN REASONABLE STATE OF REPAIR

- 10.1 The Grantee shall endeavor at all times to keep its Facilities in a reasonable state of repair, and to conform to such practices and install such appliances and equipment as may be in keeping with the customary usage and practice in cities of similar size in this State during the time this franchise shall remain in force.

SECTION 11: FRANCHISE FEE

- 11.1 Beginning July 1, 1982 AP&L [Entergy Arkansas, LLC] and thereafter during the life of this franchise, the Grantee shall pay to Grantor each year, a franchise tax in an amount equal to: City four and one-half percent (4½%) of the preceding calendar year's gross residential and commercial electric revenues as paid to the Grantee by residential and commercial customers located within the corporate limits of the City.
- 11.2 Payments shall be made by the Grantee to the Grantor in approximately equal quarterly installments beginning each January Residential and commercial electric revenues are those revenues so classified pursuant to Grantee's uniform classification standards.
- 11.3 Grantor shall have the right to examine and verify, from the records of the Grantee, any data relating to the gross revenues of Grantee from customers on which said franchise tax is due.
- 11.4 In the event of a controversy between the Grantor and Grantee as to the amount of gross revenues received by Grantee in the City of Russellville upon which said tax is due, such controversy shall be referred to the Arkansas Public Service Commission, or such successor regulatory agency which may have jurisdiction over the Grantee, for final determination, and the decision of said Commission shall be binding upon both parties hereto.
- 11.5 It is expressly agreed and understood by the Grantor and Grantee that the aforesaid payment shall constitute and be considered as complete payment and discharge by the Grantee, its successors and assigns, of all licenses, fees, charges, impositions or taxes of any kind (other than automobile license fees, special millage taxes, and the general ad valorem taxes) which are now or might in the future be imposed by the Grantor under authority conferred upon the Grantor by law. In the event such other tax or taxes are imposed by Grantor, the obligation of the Grantee set forth in Section 11 hereof, to pay the City the sum of four and

one-half percent (4.½%) annually of the gross residential and commercial electric revenues shall immediately terminate.

SECTION 12: STREET LIGHTING

- 12.1** Electric service furnished the Grantor for street lighting and other purposes shall be paid for by the Grantor in accordance with the applicable rate schedules of the Grantee now on file and/or as they may in the future be filed by the Grantee and approved by the Arkansas Public Service Commission or other regulatory authority having jurisdiction. The Grantee shall have the privilege of crediting any amount due Grantor with any unpaid balances due said Grantee for electric service rendered to said Grantor.

SECTION 13: BINDING CONTRACT

- 13.1** Upon written acceptance by Grantee, this Electric Franchise Code [Ordinance No. 604] shall constitute a contract between Grantor and the Grantee, and their successors and assigns.

CHAPTER 3 – CITY GAS FRANCHISE CODE

SECTION 1: TITLE

- 1.1 This Chapter shall be titled, known as, referred to or cited as the “City Gas Franchise Fee Code (“Gas Franchise Code”).”

SECTION 1: TITLE

- 1.1 This Chapter shall be titled, known as, referred to and cited as the “City Electric Franchise Fee (“Electric Franchise Code”).”

SECTION 2: FINDINGS, PURPOSE AND INTENT

- 2.1 Whereas, Ordinance Nos. 695, 982 and 1051 established a franchise with Arkansas Louisiana Gas Company, the predecessor in interest to Summit Utilities, for use of the City’s ROWs in exchange for four and a half percent (4½%) of its prior year's gross electric revenue collections of its residential and commercial customers located in the corporate limits of the City.
- 2.2 Whereas, this Electric Franchise Code does not alter any of the terms in Ordinance No. 695 or the rate in Ordinance Nos. 982 and 1051 and this Code is a continuation of the same terms and rate contained in Ordinance Nos. 695, 982 and 1051.

SECTION 3: EXCLUSIVE ELECTRIC FRANCHISE GRANTED

- 3.1 The City of Russellville, Arkansas (“City and “Grantor”) hereby grants to the Arkansas Louisiana Gas Company, its successors and assigns (“Grantee”) [Summit Utilities], the exclusive right, privilege and authority within the present and all future expansion of the corporate limits of the City, (1) to sell, furnish, transmit and distribute natural gas to Grantor and to all inhabitants and consumers within said limits, and (2) to construct, maintain, operate and extend a system for such purposes and to enter on, under and upon and use any and all of the streets, alleys, avenues, and other public grounds and ways belonging to, or under control of grantor, for the purpose of constructing, maintaining, repairing, replacing and other related facilities, appliances and apparatus which are necessary for, and are useful in, the furnishing, sale, transmission or distribution of natural gas (“Facilities”).

SECTION 4: RIGHTS AND RESPONSIBILITIES OF GAS COMPANY AND CITY

- 4.1 Grantee shall, does by acceptance hereof, agree to provide to the city and its inhabitants adequate and reasonable service as a public utility and facilities necessary to provide such service. Grantor, in recognition of the large and continuing investment necessary for grantee to perform its obligations herein under, and the need in duty to promptly construct its facilities, as defined above, required to serve customers in all areas and comes of the city, consents to the construction of such facilities as defined in Subsection 3.1 and all such areas and zones. Grantor agrees to protect by ordinance, regulation and otherwise, to the fullest extent permitted by law, and except as otherwise limited herein, the grants of rights and privileges to grantee set forth in Subsection 3.1 from interference

with, or duplication by, any persons, firms or corporations seeking to engage in the sale or distribution of natural gas.

SECTION 5: REPAIR AND MAINTENANCE

- 5.1 All Facilities of Grantee which may be located on public ways, places and public property, as authorized herein, shall be located so as to not reasonably obstruct public use and travel. All of Grantee's Facilities shall be constructed, operated and maintained in accordance with standards at least equivalent to the standards prescribed by the national and/or state safety code. Grantee, its successors and assigns, shall replace and repair, at its own expense, all excavations, holes or other damage caused or done by it to public streets, ways, places and public property in the construction, operation and maintenance of its facilities.

SECTION 6: CONTINUANCE OF RIGHTS

- 6.1 The rights, privileges and authority hereby granted shall exist and continue from the day of passage of Ordinance No. 695 and incorporation of Ordinance No. 982 and 1051 into Ordinance No. 695 and thereafter, until terminated in accordance with provisions and acts of the state, and/or city as presently enacted or herein amended.

SECTION 7: RATES

- 7.1 The rates which are to be charged by grantee for natural gas service hereunder shall be those which are now lawfully approved or prescribed, and as said rates may, from time to time, be amended by Grantee in accordance with law or any regulatory authority having jurisdiction thereof.

SECTION 8: PRECAUTIONS IN CONSTRUCTION

- 8.1 In the construction, operation and maintenance of its Facilities, said Grantee shall use reasonable and proper precaution to avoid damage or injury to persons or property and shall hold and save harmless the said grantor from damage, injury, loss or expense caused by the negligence of the Grantee or its agents, servants or employees in constructing, operating and maintaining said Facilities or repaving or repairing any streets, avenues, alleys, or other public grounds.

SECTION 9: REASONABLE STATE OF REPAIR

- 9.1 The Grantee shall endeavor at all times to keep its Facilities in a reasonable state of repair and to conform such appliances and equipment as may be in keeping with customary uses and practice in towns of similar size in this state during the time this franchise shall remain in force.

SECTION 10: FRANCHISE FEE

- 10.1 The amount of occupation (license, franchise, or other special City) tax to be paid by Arkansas Louisiana Gas Company to the City of Russellville, Arkansas shall be four and one-half percent (4½%) of the total gas consumption of all residential and commercial customers located within the corporate limits of the City of Russellville, Arkansas.

Prepared by:
William F. Smith III
City Attorney
103 S. Commerce Ave.
Russellville, AR 72801
Sponsor: City Attorney
DB#4

- 10.2 Payments shall be made by Arkansas Louisiana Gas Company each quarter and shall be payable during the first ten (10) days of each month following the end of a quarter.

SECTION 11: CONTRACT

- 11.1 Upon written acceptance by Grantee, this Gas Franchise Code [Ordinance No. 695, as amended by Ordinance Nos. 982 and 1051], shall constitute a contract between Grantor and Grantee and their successors and assigns.

CHAPTER 4: CITY CABLE FRANCHISE CODE

SECTION 1: TITLE

- 1.1 This Chapter shall be titled, known as, referred to and cited as the “City Cable Franchise Fee Code (“Cable Franchise Code”).”

SECTION 2: FINDINGS, PURPOSE AND INTENT

- 2.1 Whereas, Ordinance Nos. 1806, 1810 and 1819 established a franchise with Grantees, Classic Cable and Cox Communications/TCA, the predecessor in interest to Friendship Cable Of Arkansas, Inc., and Cebridge Acquisition, L.P. [Optimum], respectively, for use of the City’s ROWs in exchange for four and a quarter (4¼%) of its prior year's gross electric revenue collections of its residential and commercial customers located in the corporate limits of the City.
- 2.2 Whereas, this Chapter and Cable Franchise Code does not alter any of the terms or rates in Ordinance Nos. 1806, 1810 and 1819 and this Code is a continuation of the same terms and rate contained in Ordinance Nos. 1806, 1810 and 1819.

SECTION 3: DEFINITIONS AND CONSTRUCTION

For the purpose of this Chapter and Cable Franchise Code and when not inconsistent with the context, words used herein in the present tense include the future tense and words used in the plural sense shall include the singular and vice versa. The word “shall” is always mandatory. The following terms and phrases as used herein shall have the meaning set forth as follows:

- 3.1 “City” shall mean the City of Russellville, Arkansas.
- 3.2 “Federal Communications Commission” or “FCC” shall mean the present federal agency of that name as constituted by the Communications Act of 1934, or any successor agency created by the United States Congress.
- 3.3 “Grantees” shall mean TCA Cable Partners, Inc., d/b/a Cox Communications, and Classic Cable, Inc., both foreign corporations doing business in Arkansas, or their successors or assigns.
- 3.4 “MFA” or “Municipal Franchise Adjustment” shall be defined as that charge levied by the city for the privilege of occupying municipal right-of-way, easement or property.
- 3.5 “Public way” shall be defined as including streets, avenues, alleys, roads, highways, rights-of-way, easements and other public places and ways, within the jurisdiction of the city.
- 3.6 “System” shall mean a television cable system composed of electrical cable, wires, transformers, receivers, transmitters, poles, conduits, fixtures and appurtenances thereto, constructed for the purpose of supplying and distributing television signals and for similar purposes.

SECTION 4: NON-EXCLUSIVE FRANCHISE

- 4.1 The City hereby grants to Grantees and to their successors, lessees and assigns, the non-exclusive franchise, right, privilege and authority to operate, and to continue to operate, its existing television signal distribution system within the present and all future expansions of the corporate limits of the City.
- 4.2 Grantees shall have the right, privilege and authority under the terms of this non-exclusive franchise, and subject to the regulatory authority of the City Council and the FCC and other regulatory authorities:
 - 4.2.1 To sell, furnish, transmit and distribute television signals to all residents, inhabitants and consumers within the corporate limits of the City;
 - 4.2.2 Subject to the terms, conditions and stipulations set forth in this Chapter and Cable Franchise Code, to construct, equip, operate, repair and maintain a television signal distribution system; and,
 - 4.2.3 To construct, equip, operate, repair and maintain television signal distribution system for the purpose of conveying distributing and conducting television signals to any point beyond the city limits in order to enable grantee to distribute and sell television signals to the city and to its residents and inhabitants thereof and to others.

SECTION 5: CONSTRUCTION OF SYSTEM

- 5.1 Under the terms of the non-exclusive franchise awarded herein, Grantees shall have the right and privilege to construct, erect, operate and maintain its systems in, upon, along, across, over and under the public ways now laid or dedicated and all extensions thereof, and all additions thereto in the City, all poles, wires, cables, underground conduits, manholes, other appurtenances, conductors and fixtures necessary for the maintenance and operation of its system for the transmission of television signals, impulses and other electronic services and data, either separately or upon or in conjunction with any public utility maintaining the same within the City.
- 5.2 In addition thereto, this franchise does authorize Grantees to acquire the use of all poles, ducts, conduits, lines and equipment necessary to operate its systems and the right to make connections to subscribers and to repair, replace, enlarge or extend said lines, equipment or connections; and in addition thereto, Grantees shall have the right and privilege to own and erect or maintain poles in or on any of the herein mentioned public ways.
- 5.3 No fee, assessment or charge of any [kind] except as provided herein shall be imposed by the city upon grantee for the construction of any portion of its system or for making connections therewith, except as would generally be imposed upon performing similar work under similar circumstances and conditions.
- 5.4 Grantees shall at all times maintain and display the proper warning devices and allow sufficient space along the public way for the passage of vehicles around areas of construction, and shall as soon as practicable restore the public ways to as good condition as before the construction was commenced.

- 5.5 Grantees shall have the authority to divert or detour traffic from the area of construction on proper notice to the Police and Public Works Department of the City when diversion or detour is necessary for the safety and well-being of the inhabitants of the city.
- 5.6 Grantees shall promptly furnish to the Department of Public Works, or to any other authority, any and all information which necessary for the enforcement of this agreement or the lawful exercise of the City's police powers.
- 5.7 Grantees shall remove, raise or lower their wires, cables or lines temporarily to permit the moving of houses or other structures provided that a person requesting such temporary removal, raising or lowering of any portion of the system shall pay the expense of such temporary removal, raising or lowering, and provided that Grantees shall not be required to take action to remove, raise or lower any portion of their systems within less than forty-eight (48) hours advance notice.
- 5.8 Permission is hereby granted to Grantees to trim trees upon and overhanging the public ways of the City so as to prevent the branches of such trees from coming in contact with any portion of their systems.

SECTION 6: MUNICIPAL FRANCHISE ADJUSTMENT FEE

- 6.1 Grantees shall pay to the city a municipal franchise adjustment fee in an amount equal to four and one quarter (4.25%) of Grantees' annual gross revenues, before taxes, derived from sales to all consumers for the basic maintenance and service charges. Payments shall be made to the city in monthly installments, payable within thirty (30) days following conclusion of the month for which payment is made.
- 6.2 In addition:
 - 6.2.1 The City shall have the right to examine and verify from the records of Grantees any data relating to the gross revenues of sales subject to municipal franchise adjustment fee; and
 - 6.2.2 Payment of the MFA fee herein required shall be in lieu of all other charges, licenses, fees or impositions, other than a usual, general or special ad valorem tax which may be imposed by the City under authority conferred by law.

SECTION 7: FRANCHISE TERM

- 7.1 The non-exclusive franchises awarded hereunder shall take effect and be in full force from and after approval by the Mayor and City Council of the City of Russellville, Arkansas, from the date signed. The franchise to the Grantees shall be unlimited as to time consistent with A.C.A. §14-200-103(a), and shall be subject to termination as listed in A.C.A. §14-200-103(c) subject to 47 U.S.C. §547. Nothing in the preceding sentence shall be construed as to prohibit the City and the Grantees from mutually agreeing to modifications of the Franchise Agreements.

- 7.2 The Mayor shall send a certified copy of this Ordinance to Grantee once this Ordinance becomes law to notify Grantees of the Ordinance.

SECTION 8: ASSIGNMENT

- 8.1 Grantees shall have the right to assign this non-exclusive franchise and its respective rights, terms and conditions, so long as the operations to be conducted by said grantees are in accordance with the applicable standards contained therein. Any such assignment to an “unrelated entity,” as that term is hereinafter defined in this paragraph, or any subsequent assignment of this franchise to an unrelated entity, shall be subject to the prior approval of lessor, which approval shall not be unreasonably denied or delayed. For purposes of this Chapter and Cable Franchise Code, an “unrelated entity” shall be defined as a corporation or other entity which is neither partially nor totally owned by nor a subsidiary of grantee nor the partial or total owner of Grantees.

SECTION 9: PENALTIES

- 9.1 If Grantees violate any provision of this Chapter and Cable Franchise Code it shall be deemed to be guilty of a civil penalty and be assessed a fine in the amount of \$500.00. If a violation is found to be continuing in nature, then the fine shall be \$250.00 for each day the violation is found to have occurred. The Department of Public Works administrative office shall forward a bill to the Grantee assessing a civil penalty for the violation of this Chapter and Cable Franchise Code.

SECTION 10: CONTINUANCE OF RIGHTS

- 10.1 The rights, privileges and authority hereby granted shall exist and continue from the day of passage of Ordinance Nos. 1806, 1810 and 1819, and thereafter, until terminated in accordance with provisions and acts of the state, and/or city as presently enacted or herein amended.

CHAPTER 5 – CITY TELEPHONE FRANCHISE CODE

SECTION 1: TITLE

- 1.1 This Chapter shall be titled, known as, referred to and cited as the “City Telephone Franchise Code (“Phone Franchise Code”).”

SECTION 2: GRANT OF NON-EXCLUSIVE FRANCHISE

- 2.1 That permission be and is hereby granted to CenturyTel, or its other business names and its successors in interests, assigns, and subsidiary or parent corporations or limited liability companies, subject to the regulatory authority of the City Council and the FCC and other regulatory authorities, to construct, maintain and operate, its poles, posts, cables, wires, and all other necessary overhead apparatus on, over and along; and its conduits, ducts, mains, pipes, cables, wires, manholes, distributing poles and all other necessary underground appliances on, in, under and through the streets, alleys and highway, within the limits of the City of Russellville, Arkansas, and to sell, furnish, transmit and distribute telecommunications signals to all inhabitants and consumers within the corporate limits of the City of Russellville, and to use the property of other companies and permit other companies to use its property upon such arrangements as the two companies may agree, subject to the following conditions:
 - 2.1.1 That all poles erected by CenturyTel shall be located so they will not interfere with the safety or convenience of persons traveling on or over the said streets, alleys and highways; and in the work of installing and maintaining any underground system, CenturyTel shall not open or encumber more of any City street, alley or highway than will be necessary to enable it to perform same with proper economy and efficiency; nor shall it permit such opening or encumbrance to remain for a longer period than shall be necessary to do the work for which said opening shall have been made.
 - 2.1.2 That all work done under the provisions of this ordinance in said City, shall be subject to the supervision of the City Engineer, the Department of Public Works or some other representative appointed by said Council and CenturyTel shall replace and properly relay any sidewalk or street pavement which may have been displaced or damaged by it in the construction and maintenance of its system in said City.
 - 2.1.3 That CenturyTel shall maintain all poles, cables, wires, conduits, ducts, mains, pipes, manholes, distributing poles and all other apparatus erected or constructed under the provisions of this Chapter and Phone Franchise Code, in good and safe order and condition; and shall at all times fully indemnify, protect, and save harmless the said City from and against all loss and necessary expenditures arising from the erection, construction and maintenance of its system in said City, or from its neglect or failure to maintain the said apparatus in good and safe order and condition.

SECTION 3: NON-EXCLUSIVITY OF FRANCHISE

- 3.1 That nothing in this Ordinance shall be construed to grant unto the said CenturyTel any exclusive right, or to prevent a grant of similar privileges to other companies.

SECTION 4: FRANCHISE FEE

- 4.1 So long as CenturyTel, or its other business names and its successors in interests, assigns, and subsidiary or parent corporations or limited liability companies, shall operate a telephone system within the City, it shall pay to the City a franchise tax in an amount equal to four and a quarter percent (4.25%) of basic local service excluding extension, terminal equipment, toll, yellow pages and other miscellaneous equipment revenues within the corporate boundaries of the City.
- 4.2 This amount shall be paid to the City of Russellville each quarter, and shall be made during the first ten (10) days of each month following the end of the quarter; provided, the amount of the tax levied herein by the City may be collected by the Telephone Company from those of the Telephone Company customers receiving local exchange telephone service within the corporate boundaries of the City of Russellville, in accordance with the tariffs of the telephone company and the rules, regulations and orders of the Arkansas Public Service Commission.
- 4.3 This Chapter and Phone Franchise Code does not restrict the City from the right to alter the tax, upon proper notification in advance, to the CenturyTel.

SECTION 5: DISCHARGE OF OTHER FEES

- 5.1 It is expressly agreed and understood by the City of Russellville and CenturyTel that the aforesaid payment shall constitute and be considered as complete payment and discharge by CenturyTel, or its other business names and its successors in interests, assigns, and subsidiary or parent corporations or limited liability companies, of all licenses, fees, charges, impositions or taxes of any kind (other than automobile license fees, special millage taxes, general ad valorem taxes, curb cut fees, and other general taxes applicable to all citizens and taxpayers) which are now or might in the future be imposed by the City of Russellville under authority conferred upon the City of Russellville by law.
- 5.2 In the event such other taxes are imposed by the City of Russellville, the obligation of CenturyTel to pay the City of Russellville the franchise tax set out in Section 4 of this Chapter and Phone Franchise Code shall be immediately terminated.

SECTION 6: CONSTRUCTION AND REPAIR WORK CONDITIONS, REQUIREMENTS AND PERMISSIONS

- 6.1 CenturyTel shall at all times maintain and display the proper warning devices and allow sufficient space along the public way for the passage of vehicles around areas of construction, and shall as soon as practicable restore the public ways to as good condition as before the construction was commenced.
- 6.2 CenturyTel shall have the authority to divert or detour traffic from the area of construction on proper notice to the Police Department and Public Works Department of the city when diversion or detour is necessary for the safety and well-being of the inhabitants of the City.
- 6.3 CenturyTel shall promptly furnish to the Department of Public Works, or to any other authority, any and all information which may be requested in regard to any portion of its system, in any form whatsoever, and any other information in regard to its occupation of the public ways.

- 6.4 CenturyTel shall remove, raise or lower its wires, cables or lines temporarily to permit the moving of houses or other structures provided that a person requesting such temporary removal, raising or lowering of any portion of the system shall pay the expense of such temporary removal, raising or lowering, and provided that CenturyTel shall not be required to take action to remove, raise or lower any portion of its system within less than forty-eight (48) hours advance notice.
- 6.5 Permission is hereby granted to CenturyTel to trim trees upon and overhanging the public ways of the city so as to prevent the branches of such trees from coming in contact with any portion of its system.

SECTION 7: DURATION OF FRANCHISE

- 7.1 The non-exclusive franchise awarded hereunder shall take effect and be in full force from and after approval by the Mayor and City Council of the City of Russellville, Arkansas, from the date signed. The franchise shall be unlimited as to time as required by A.C.A. §16-200-103 (a), and shall be subject to termination as listed in A.C.A. §14-200-103 (c). Nothing in the preceding sentence shall be construed as to prohibit any modification of this Agreement.
- 7.2 The Mayor shall send a certified copy of this Ordinance to CenturyTel once this Ordinance becomes law to notify CenturyTel of the Ordinance.

SECTION 8: CONTINUANCE OF RIGHTS

- 8.1 The rights, privileges and authority hereby granted shall exist and continue from the day of passage of Ordinance No. 1900, and thereafter, until terminated in accordance with provisions and acts of the State, and/or City as presently enacted or herein amended.