

ORDINANCE NO. 9798-21

AN ORDINANCE
REVISING THE ANNUAL BUDGET ORDINANCE
(Telecommunications Consultant - \$7,000)

WHEREAS, the Annual Budget Ordinance of and for the City of Urbana, Champaign County, Illinois, for the fiscal year beginning July 1, 1997, and ending June 30, 1998, (the "Annual Budget Ordinance") has been duly adopted according to sections 8-2-9.1 et seq. of the Illinois Municipal Code (the "Municipal Code") and Division 2, entitled "Budget", of Article VI, entitled "Finances and Purchases", of Chapter 2, entitled "Administration", of the Code of Ordinances, City of Urbana, Illinois (the "City Code"); and

WHEREAS, the City Council of the said City of Urbana finds it necessary to revise said Annual Budget Ordinance by deleting, adding to, changing or creating sub-classes within object classes and object classes themselves; and

WHEREAS, funds are available to effectuate the purpose of such revision; and

WHEREAS, such revision is not one that may be made by the Budget Director under the authority so delegated to the Budget Director pursuant to section 8-2-9.6 of the Municipal Code and section 2-133 of the City Code.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF URBANA, ILLINOIS, as follows:

Section 1. That the Annual Budget Ordinance be and the same is hereby revised to provide as follows:

FUND:	Tax Stabilization
AMOUNT:	\$7,000
ADD TO:	Telecommunications Consultant
REDUCE:	Fund Balance

THIS ORDINANCE CONSISTS OF 2 PAGES.

Section 2. This Ordinance shall be effective immediately upon passage and approval and shall not be published.

Section 3. This Ordinance is hereby passed by the affirmative vote of two-thirds of the members of the corporate authorities then holding office, the "ayes" and "nays" being called at a regular meeting of said Council.

PASSED by the City Council this 18th day of August, 1997.

AYES: Hayes, Huth, Kearns, Patt, Taylor, Whelan, Wyman and Mayor Satterthwaite

NAYS:

ABSTAINED:



Phyllis D. Clark
Phyllis D. Clark, City Clerk

APPROVED by the Mayor this 26th day of August, 1997.

Tod Satterthwaite
Tod Satterthwaite, Mayor

AGREEMENT TO FURNISH CONSULTING SERVICES

THIS AGREEMENT TO FURNISH CONSULTING SERVICES ("Agreement") is made and entered into at Urbana, Illinois effective as of the 23rd day of April, 1997, by and between THE CITY OF URBANA, ILLINOIS (the "City") and RIVER OAKS COMMUNICATIONS CORPORATION, a Colorado corporation ("Consultant").

WHEREAS, the City desires to engage the Consultant to render the telecommunications consulting services described in this Agreement and Consultant is qualified and willing to perform such services in accordance with and subject to the provisions of this Agreement; and

WHEREAS, sufficient legal authority exists and sufficient funds have been budgeted and are available for the work to be performed by Consultant under this Agreement and other necessary approvals have been obtained.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and intending to be legally bound, the parties agree as follows:

1. **The Project.** The Project ("Project") for which the Consultant has been retained is to assist the City with telecommunications services as more particularly described in the hereafter described Services.
2. **Consultant's Services.** The Consultant shall provide the telecommunications consulting services described in the attached Exhibit "A" ("Services").
3. **Additional Services.** When authorized by the City, the Consultant agrees to furnish additional telecommunications consulting services ("Additional Services") in connection with the Project due to changes in the scope of the Project or the City's desire for additional or different work to be performed by Consultant.
4. **Consultant's Fees.** The compensation for the Consultant's services hereunder shall be as set forth in the attached Exhibit "B". The Consultant shall submit invoices to the City for services rendered and costs incurred on a monthly basis for services rendered and costs incurred hereunder during the preceding month, such invoices to be in such form and detail as shall reasonably be required by the City. Reimbursable expenses incurred in connection with Additional Services shall be itemized. The City agrees to pay the Consultant within thirty (30) days of receipt of a properly documented invoice.

5. **Commencement And Completion of Services.** The Consultant understands and agrees that time is an essential requirement of this Agreement. The Services shall be completed as soon as good practice and due diligence will permit.

6. **Termination.**

6.1 This Agreement may be terminated by either party upon thirty (30) days' prior written notice to the other party.

6.2 In the event of termination as provided in this Section, the City shall pay the Consultant in full for services performed and costs incurred to the date of notice of termination, plus any services and costs the City deems necessary during the notice period.

7. **Insurance.**

7.1 Consultant agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands and other obligations assumed by Consultant pursuant to Paragraph 14 of this Agreement. Such insurance shall be in addition to any other insurance requirements imposed by the Agreement or by law. Consultant shall not be relieved of any liability, claims, demands or other obligations assumed pursuant to Paragraph 14 of this Agreement by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.

7.2 Consultant shall procure and maintain the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to the City. All coverages shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by Consultant pursuant to Paragraph 14 of this Agreement. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

(A) Workmen's Compensation insurance to cover obligations imposed by applicable laws for any employee of Consultant engaged in the performance of work under this Agreement. Evidence of qualified self-insured status or exemption under applicable state law may be substituted for the Workmen's Compensation requirements of this Paragraph.

(B) Comprehensive General Liability insurance with minimum combined single limits of \$150,000 per person per occurrence and \$1,000,000 aggregate per occurrence. The policy

shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for employees' acts), products and completed operations.

(C) Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than \$150,000 per person per occurrence and \$1,000,000 aggregate per occurrence with respect to each of Consultant's owned vehicles assigned to or used in performance of this Agreement. The coverages required under this Subparagraph (C) may be part of Consultant's Comprehensive General Liability insurance provided pursuant to Subparagraph (B), above.

(D) Professional Business Liability insurance with minimum combined single limits of \$500,000, but in any event in sufficient amount to cover Consultant's liability to City under Paragraph 13.

7.3 The policies required by Subparagraphs (B) and (C) above shall be endorsed to include the City as an additional insured. Any insurance carried by the City, its officers, or its employees, or carried by or provided through any insurance pool of the City, shall be excess and not contributory insurance to that provided by Consultant. Consultant shall be solely responsible for any deductible losses under its policies required above.

7.4 Certificates of insurance shall be completed by Consultant's insurance agent(s) and provided to the City as evidence that policies providing the required coverages, conditions and minimum limits are in full force and effect and shall be deemed to have been approved by the City unless the City notifies the Consultant to the contrary. The completed certificates of insurance shall be sent to the City.

7.5 Notwithstanding any other portion of this Agreement, failure on the part of the Consultant to procure or maintain policies providing the required coverages, conditions and minimum limits shall constitute a breach of this Agreement for which the City may, after giving Consultant thirty (30) days' prior notice, procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the City shall be repaid by Consultant to the City upon demand, or the City may offset the cost of the premiums against any monies due to Consultant from the City.

8. **Subconsultants.** Consultant may use or employ subconsultants in connection with its performance of the Services under this Agreement with the prior approval of the City.

9. **Compliance With Laws.** Consultant agrees that, in the performance of its Services under this Agreement, it shall comply fully with any and all federal, state and local laws and regulations now in effect, hereafter enacted or otherwise becoming effective during the term of this Agreement which are applicable to Consultant and its employees. Without limiting the generality of the foregoing, Consultant shall not discriminate against any person because of race, sex, disability, age, creed, color, religion or national origin in connection with its performance of this Agreement, and shall comply with the Americans With Disabilities Act, Public Law 101-335, 42 U.S.C., Section 12101, et seq. and all applicable regulations and rules promulgated thereunder by any regulatory agency. The indemnification and termination provisions of this Agreement shall apply with respect to Consultant's failure to comply with all applicable laws or regulations.

10. **Prohibited Interest.** No official or employee of the City shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

11. **Books and Records.** The Consultant's books and records with respect to the Services and Reimbursable costs shall be kept in accordance with recognized accounting principles and practices, consistently applied, and will be made available for the City's inspection at all reasonable times at the places where the same may be kept. The Consultant shall not be required to retain such books and records for more than three (3) years after completion of the Services.

12. **Ownership Of Documents; Reuse.** All documents relating to the Services shall be the joint property of the City and Consultant. Upon completion of the Services, or at such other time as the City may require, the Consultant shall deliver to the City a complete corrected set of such documents and such additional copies thereof as the City may request. All documents prepared by Consultant pursuant to this Agreement are instruments of service in respect of the Project. They are not intended or represented to be suitable for reuse by the City or others on extensions of the Project or on any other project. Any reuse without written verification or adaptation by Consultant of the specific purpose intended will be at the City's sole risk and without liability or legal exposure to the Consultant; and the City shall indemnify and hold harmless Consultant from all claims, damages, losses and expenses including attorneys' fees and costs arising out of or resulting therefrom.

13. **Professional Liability.** The Consultant shall exercise in its performance of the Services hereunder the standard of care required by law for Consultant's services. The Consultant shall be liable to the City for any loss, damage or costs incurred by the City as a result of any failure of the Consultant to comply with this standard.

14. **Indemnification.** Consultant agrees to indemnify and hold harmless the City, its officers, employees, insurers, and self-insurance pool, from and against all liability, claims and demands on account of injury, loss or damage, including without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Agreement if such injury, loss or damage is caused in whole or in part by the negligence of Consultant, or any officer, employee, representative, or agent of the Consultant, or which arise out of any worker's compensation claim of any employee of the Consultant except to the extent such liability, claim or demand arises through the negligence of the City, its officers, employees or agents. Consultant agrees to investigate, handle, respond to and to provide defense for and defend against, any liability, claims, or demands at the sole expense of the Consultant if Consultant is ultimately determined to be negligent and if the City, its officers, employees and agents, are ultimately determined not to be negligent. Consultant also agrees to bear all other costs and attorney fees if Consultant is ultimately determined to be negligent and if the City, its officers, employees and agents are ultimately determined not to be negligent.

15. **Assignment.** This Agreement is for personal services predicated upon Consultant's special abilities or knowledge. The Consultant shall not assign this Agreement in whole or in part without the prior written consent of the City.

16. **Notices.** Any notices required or permitted hereunder shall be sufficient if personally delivered or if sent by certified mail, return receipt requested, addressed as follows:

If to the City:

City of Urbana
c/o Steve Holz - Legal Department
400 S. Vine, P.O. Box 219
Urbana, IL 61803-0219

If to the Consultant:

River Oaks Communications Corporation
c/o Thomas F. Duchon, President
2 North Cascade Avenue, Suite 1100
Colorado Springs, CO 80903

Notices personally delivered shall be effective upon delivery. Mailed notices shall be effective five business days after mailing.

17. **Information Prepared by Others.** During the course of the Project, the Consultant may use information which has been prepared by others. The Consultant shall advise the City of any errors or omissions discovered during the use of such information; however, the Consultant shall not be responsible for discovering any or all errors or omissions in such information, nor for any damages attributable to defects in the information prepared by others except for those related to the work of Consultant's subconsultants.

18. **Attorney's Fees.** If any action is brought in a court of law by either party to this Agreement concerning the enforcement, interpretation or construction of this Agreement, the prevailing party, either at trial or upon appeal, shall be entitled to reasonable attorney's fees as well as costs, including expert witness' fees, incurred in the prosecution or defense of such action.

19. **Applicable Laws.** This Agreement, and all questions concerning the execution, validity or invalidity, capacity of the parties, and the performance of this Agreement, shall be interpreted in all respects in accordance with the City Code and the laws of the State of Illinois.

20. **Entire Agreement.** This Agreement shall constitute the entire agreement between the parties hereto and shall supersede all prior contracts, proposals, representations, negotiations and letters of intent, whether written or oral, pertaining to services for the Project.

21. **Modification.** This Agreement may be modified or amended only by a duly authorized written instrument executed by the parties hereto.

22. **Copies.** This Agreement may be executed simultaneously in two or more copies, each of which shall be considered an original for all purposes and all of which together shall constitute but one and the same instrument.

23. **Paragraph Headings.** Paragraph headings are inserted for convenience only and in no way limit or define the interpretation to be placed upon this Agreement.

24. **Waiver.** The failure of either party to exercise any of its rights under this Agreement shall not be a waiver of those rights. A party waives only those rights specified in writing and signed by the party waiving its rights.

25. **Binding Effect.** This Agreement shall be binding upon, and shall inure to the benefit of the parties, and their respective successors and permitted assigns.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers as of the date first appearing above.

CONSULTANT:

CITY OF URBANA, ILLINOIS

By: Thomas F. Fuley, President
President

By: Bruce Walden
BRUCE WALDEN, CAO

SCOPE OF SERVICES

Scope of Work as agreed to by the City of Urbana, Illinois (the "City") and River Oaks Communications Corporation (the "Consultant") relating to Consultant's services:

1. Attend meetings with the City as requested by the City.
2. Review and draft changes to the Zoning Ordinance, review materials filed by potential wireless providers and review draft of Zoning Ordinance for compliance with state and federal law.
3. Review and draft changes to MTO and review draft of MTO for compliance with state and federal law. Review related Franchise Agreements and Ordinances as provided by the City for consistency with MTO.
4. Assist the City with other telecommunications matters as requested.

EXHIBIT "A"

In consideration of the services to be performed pursuant to the Scope of Work, the City agrees to pay Consultant on a time and reimbursable cost basis according to the following schedule:

Hourly billing rates: \$100.00 - \$145.00/hour

Hourly billing rates for travel time 1/2 of hourly rate

Reimbursable direct costs:

Federal Express

Postage

Long Distance Telephone Charges

Typing

Fax

Copies

Travel, Meals and Lodging

The City and the Consultant anticipate that the Consultant will spend up to eighty (80) hours on the services outlined in the Scope of Work. Consultant will keep the City apprised as to the expenditure of time and will notify the City prior to any work that would extend beyond the eight (80) hour allotment. If additional hours are needed on the project, such additional time shall be subject to mutual agreement of the City and the Consultant.

EXHIBIT "B"