OPELIKA CITY COUNCIL
" REGULAR MEETING AGENDA "

204 South 7th Street

December 20, 2016

TIME: 7:00 PM

1. CALL TO ORDER

2. ROLL CALL
    1. Patricia Jones, Tiffany Gibson-Pitts, Dozier Smith T, David Canon, Eddie Smith

3. INVOCATION

4. PLEDGE OF ALLEGIANCE
    1. Jake Caldwell and Avery Massey from Northside Intermediate school.

5. READING OF MINUTES
    1. Minutes from the 12-06-16 City Council Meeting.

6. UNFINISHED BUSINESS

7. REMARKS BY THE MAYOR
    1. Building Inspection Report, November 2016 - Inspection
    2. Reappoint Todd Rauch and appoint Ken Ridley to the LRCOG - MPO Citizen Advisory Committee. Both term send 1-01-19.
    3. Recognize the Police Officer of the Quarter - Sergeant Alfred White.
    4. Recognize the OHS football team, cheerleaders & band.

8. CITIZEN COMMUNICATIONS (Limit comments to five minutes or less)

9. REPORT OF DISBURSEMENTS

10. COMMITTEE REPORTS

11. GENERAL BUSINESS

12. AWARDING OF BIDS
    1. Seven (7) Recycling Cardboard Trailers - OES.

13. RESOLUTIONS
    1. Expense Reports from Various Departments.
    2. Designate City Personal Property as Surplus & Authorize Disposal
    3. Purchase - Fortinet Security Device - IT
    4. Purchase - G Suite Business - Drive & Collab - IT
    5. Purchase - One (1) Dual Purpose Canine - PD
    6. Employment Contract with the City Attorney.

7. Special Appropriation to the JW Darden Foundation.
8. Agreement for Engineering Services to Design Industrial Access Road for Car Tech.
9. License Agreement with Ericsson Mediaroom - OPS.
10. Vacate Water Line Easement.

14. ORDINANCES
    1. Amend Text of Zoning Ordinance, Section 2.2 & 7.3, Truck Fueling Station - 2Nd Reading.
    2. Convey Real Property on Commanche Dr. to the Utilities Board - 2Nd Reading.
    3. Amend City Code, Chapter 29 Vehicles for Hire - 2Nd Reading.
    4. Amending Business License Code - 2Nd Reading.
    5. Lease Agreement with Envision Opelika Foundation & the Arts Assoc. - 1St Reading.

15. APPOINTMENTS
    1. Reappoint Municipal Judge Kenneth Wilkes & Public Defender Joanne Camp.

16. ADJOURN

City Council
204 South 7Th Street
Opelika, AL

SCHEDULED

Meeting: 12/20/16 07:00 PM
Department: City Clerk
Category: CM Minutes
Prepared By: Robert Shuman
Initiator: Robert Shuman
Sponsors:
DOC ID: 2053

CM MINUTES (ID # 2053)

Minutes from the 12-06-16 City Council Meeting.

OPELIKA CITY COUNCIL
" REGULAR MEETING MINUTES "
204 South 7th Street
December 6, 2016
TIME: 7:00 PM

1. Call to Order

President Smith called this council meeting to order and asked Bob Shuman, City Clerk, to call the roll.

2. Roll Call

All council was present.

1. Patricia Jones, Tiffany Gibson-Pitts, Dozier Smith T, David Canon, Eddie Smith

3. Invocation

Councilman David Canon provided the invocation.

4. Pledge of Allegiance
 1. Liliana Aleman and Karmel Torbert from Northside Intermediate School.
 Liliana and Karmel lead the pledge of allegiance.

5. Reading of Minutes
 1. Minutes for the 11-15-16 City Council Meeting.

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	David Canon, Council Member
SECONDER:	Tiffany Gibson-Pitts, Council Member
AYES:	Jones, Gibson-Pitts, Smith T, Canon, Smith

6. Unfinished Business

7. Remarks By the Mayor

Mayor Fuller congratulated the Opelika High School Bulldog football team for a great football season and for being the runner up in the Class 6A State Championship.

Mayor Fuller reminded everyone present about the Christmas in a Railroad Town, the Victorian Front Porch Tour and the City's Christmas parade.

 1. Appointment to Planning Commission - Dale Vaughn. Term ends 2-15-18.
 Mayor Fuller advised the city council that he has appointed Dale Vaughan to the Planning Commission replacing Keith Pridgen who stepped down after 22 years of service.
 2. Recognize Police Officer of the Quarter - Sergeant Alfred White.
 Mayor Fuller stated that Sergeant White could not attend the council meeting tonight and will be recognized at the 12/20 city council meeting.
 3. Recognize Firefighter of the Year - Noah Allmond. Runner-ups Zach Nelson & Bradley Bowen.
 Mayor Fuller recognized Zack Nelson as a runner up for the Fireman of the Year and presented him with a performance award.
 Mayor Fuller recognized Bradley Bowen as a runner up for the Fireman of the Year and presented him with a performance award.
 Mayor Fuller recognized Noah Allmond as the 2016 Fireman of the Year and presented him with a performance award.

8. Citizen Communications

(Limit comments to five minutes or less)

Suzanne Montgomery asked what was going on with the demolitions at the end of South 8th Street and if the Humane Society could help with several feral cats that need picking up. Ms. Pitts stated she had checked on the status of the demolitions and was told that the owners had applied to the Historic Preservation Commission. Ms. Pitts said she would follow up on these questions.

9. Report of Disbursements

10. Committee Reports

11. General Business

1. Super Mini Mart Request a Retail Beer & Wine Off Premise License.

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Dozier Smith T, Council Member
SECONDER:	David Canon, Council Member
AYES:	Jones, Gibson-Pitts, Smith T, Canon, Smith

2. Public Hearing Weed Abatement Assessment - 225 Vero Ct.

President Smith opened this public hearing asking if there was anyone present that would like to speak for or against said assessment. No one came forward to speak. President Smith closed this public hearing.

3. Public Hearing Weed Abatement Assessment - 229 Vero Ct.

President Smith opened this public hearing asking if there was anyone present that would like to speak for or against said assessment. No one came forward to speak. President Smith closed this public hearing.

4. Notice of Public Hearing, Hunting Permit, 1103 Andrews Road

President Smith opened this public hearing asking if there was anyone present that would like to speak for or against said hunting permit. Jerry Kelley, Planning Director, stated the property owner was present if the city council has any questions. Mr. Kelley stated there have been no objections from the citizens living next to said property and recommends approval. President Smith closed this public hearing.

5. Public Hearing, Amend Text of Zoning Ordinance, Section 2.2 & 7.3, Truck Fueling Station.

President Smith opened this public hearing asking if there was anyone present that would like to speak for or against said amendment. No one forward to speak. President Smith closed this public hearing.

12. Awarding of Bids

1. Bids 326-16 Oral Recommendation - Destination Downtown-Shared Use Path 17003 - ENG

Lillie Finley, Purchasing & Revenue Manager, passed out the resolution covering said bid.

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Dozier Smith T, Council Member
SECONDER:	David Canon, Council Member
AYES:	Jones, Gibson-Pitts, Smith T, Canon, Smith

13. Resolutions

1. Resolution 327-16 Weed Abatement Assessment - 1109 Magnolia St. - TABLED

Ms Jones made the motion to remove this resolution from the Table and was seconded by Mr. Smith T. The following vote was recorded:

Aye Jones, Pitts, Smith T, Canon, Smith.
Nay None.

RESULT: **APPROVED [UNANIMOUS]**
MOVER: Patricia Jones, President Pro-Tem
SECONDER: David Canon, Council Member
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith

2. Resolution 328-16 Travel Advance for Zack Hester - OPS.

RESULT: **APPROVED [UNANIMOUS]**
MOVER: Patricia Jones, President Pro-Tem
SECONDER: Dozier Smith T, Council Member
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith

3. Resolution 329-16 Travel Advance for Shane Childs - OPS.

RESULT: **APPROVED [UNANIMOUS]**
MOVER: David Canon, Council Member
SECONDER: Patricia Jones, President Pro-Tem
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith

4. Resolution 330-16 Designate City Personal Property Surplus and Authorize Disposal

RESULT: **APPROVED [UNANIMOUS]**
MOVER: Patricia Jones, President Pro-Tem
SECONDER: Dozier Smith T, Council Member
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith

5. Resolution 331-16 One (1) 2017 Nissan Frontier King Cab P/U - Inspection Dept.

RESULT: **APPROVED [UNANIMOUS]**
MOVER: David Canon, Council Member
SECONDER: Tiffany Gibson-Pitts, Council Member
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith

6. Resolution 332-16 Purchase - Cisco Equipment - IT

RESULT: **APPROVED [UNANIMOUS]**
MOVER: Patricia Jones, President Pro-Tem
SECONDER: Dozier Smith T, Council Member
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith

7. Resolution 333-16 Purchase - Aerial Photogrammetric Services - IT

RESULT: **APPROVED [UNANIMOUS]**
MOVER: Dozier Smith T, Council Member
SECONDER: David Canon, Council Member
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith

8. Resolution 334-16 Weed Abatement Assessment - 225 Vero Ct

RESULT: **APPROVED [UNANIMOUS]**
MOVER: Patricia Jones, President Pro-Tem
SECONDER: Tiffany Gibson-Pitts, Council Member
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith

9. Resolution 335-16 Weed Abatement Assessment - 229 Vero Ct.

RESULT: **APPROVED [UNANIMOUS]**
MOVER: David Canon, Council Member
SECONDER: Dozier Smith T, Council Member
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith

10. Resolution 336-16 Hunting Permit, 1103 Andrews Road, 50.5 Acres, R-1 Zone

RESULT: **APPROVED [UNANIMOUS]**
MOVER: David Canon, Council Member
SECONDER: Dozier Smith T, Council Member
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith

11. Resolution 337-16 Interconnection and Commercial Agreement with Bellsouth (OPS)

RESULT: **APPROVED [UNANIMOUS]**
MOVER: Dozier Smith T, Council Member
SECONDER: Tiffany Gibson-Pitts, Council Member
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith

12. Resolution 338-16 Guaranteeing Payments, Southeast Al. Gas District.

RESULT: **APPROVED [UNANIMOUS]**
MOVER: Dozier Smith T, Council Member
SECONDER: David Canon, Council Member
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith

13. Resolution 339-16 Contract for Appropriation to Ala. Council on Human Relations.

RESULT: **APPROVED [UNANIMOUS]**
MOVER: Patricia Jones, President Pro-Tem
SECONDER: David Canon, Council Member
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith

14. Resolution 340-16 Special Appropriation to the East Ala. Community Ballet.

RESULT: **APPROVED [UNANIMOUS]**
MOVER: Patricia Jones, President Pro-Tem
SECONDER: Dozier Smith T, Council Member
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith

15. Resolution 341-16 Sale of Power Pole to Jeffery A. Hilyer

RESULT: **APPROVED [UNANIMOUS]**
MOVER: Dozier Smith T, Council Member
SECONDER: David Canon, Council Member
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith

16. Resolution 342-16 Authorize Higher Entry Level Salary - Senior Accountant.

Ms. Jones asked for the record to show that she abstained from voting on this resolution to authorize a higher entry level salary for a Senior Accountant because (1) the wording in the resolution refers to entry level and (2) this resolution was received less that 24 hours prior to a vote being requested of the City Council.

RESULT:	**APPROVED [4 TO 0]**
MOVER:	Dozier Smith T, Council Member
SECONDER:	David Canon, Council Member
AYES:	Tiffany Gibson-Pitts, Dozier Smith T, David Canon, Eddie Smith
ABSTAIN:	Patricia Jones

14. Ordinances
    1. Ordinance 128-16-ORD Amend Zoning Ordinance & Map from R-3, GC to C-2, GC at 2004 Yarbrough Dr. - 2Nd Reading.

RESULT:	**SECOND READING AND APPROVED [UNANIMOUS]**
MOVER:	David Canon, Council Member
SECONDER:	Dozier Smith T, Council Member
AYES:	Jones, Gibson-Pitts, Smith T, Canon, Smith

2. Ordinance Amend Text of Zoning Ordinance, Section 2.2 & 7.3, Truck Fueling Station - 1St Reading.

Mr. Canon introduced this ordinance for a first reading.

RESULT: FIRST READING INTRODUCED

3. Ordinance Convey Real Property on Commanche Dr. to the Utilities Board - First Reading.

Mr. Smith T introduced this ordinance for a first reading.

RESULT: FIRST READING INTRODUCED

4. Ordinance Amend City Code, Chapter 29 Vehicles for Hire - First Reading.

Mr. Smith T introduced this ordinance for a first reading.

RESULT: FIRST READING INTRODUCED

5. Ordinance Amending Business License Code - First Reading.

Mr. Canon introduced this ordinance for a first reading.

RESULT: FIRST READING INTRODUCED

15. Appointments

There was no appointments.

16. Adjourn

The City Council meeting minutes of 12-06-16 are hereby adopted and approved this the ____ day of ___________________, 2016.

/S/

____

President of the City Council

City of Opelika, Alabama

ATTEST:

/s/

____

City Clerk - Treasurer

1. Motion to Adjourn

This council meeting was adjourned at 7:54 PM.

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Patricia Jones, President Pro-Tem
SECONDER:	Dozier Smith T, Council Member
AYES:	Jones, Gibson-Pitts, Smith T, Canon, Smith

City Council
204 South 7Th Street
Opelika, AL

SCHEDULED

Meeting: 12/20/16 07:00 PM
Department: Building Inspection
Category: Building Permit Report.
Prepared By: BJ Lowery
Initiator: Jeff Kappelman
Sponsors:
DOC ID: 2055

MAYOR'S REMARKS (ID # 2055)

Building Inspection Report, November 2016 - Inspection

Planning Department - Building Inspections Division
Telephone 334-705-5420
Fax 334-705-5159

Rich in heritage,
with a vision
for the future

Monthly Permits For November, 2016

Work & Repair On Buildings:

Building Repairs	Commercial	Residential
Buildings Condemned	0	0
Buildings Demolished	0	0
Building Repairs	11	9
Plumbing Upgrades	0	8
Electrical Upgrades	1	4
Mechanical Upgrades	0	6
Reroofs And Roof Repairs	0	0
Mobile Home Services	0	0
Building Additions/Accessory Structures	0	3

Monthly Totals For November 2007-2016

2007	$129,263,598.00
2008	$9,667,809.00
2009	$2,274,539.00
2010	$15,454,374.00
2011	$2,746,405.00
2012	$10,335,637.00
2013	$4,029,750.00
2014	$7,735,315.00
2015	$4,185,739.00
2016	$11,620,185.00

Total Permits Issued:

3	New Buildings: Commercial	$7,736,511.00
11	Commercial Renovations And Repairs	$492,576.00
3	Signs	$6,500.00
12	New Single Family Homes	$3,195,379.00
5	Residential Repairs And Renovations	$189,219.00
0	New Apartment Units	$0.00
0	New Duplex Residences	$0.00
34	Total Building Permits Issued	$11,620,185.00

34	Total Permits Issued For November, 2016	**$11,620,185.00**

TAKEN FROM THE RECORDS OF THE BUILDING INSPECTOR

Jeff Kappelman
Jeff Kappelman
Chief Building Inspector

CITY OF OPELIKA • ALABAMA
Rich in Heritage with a Vision for the Future
Est. 1854

Planning Department - Building Inspections Division
Telephone 334-705-5420
Fax 334-705-5159

Rich in heritage,
with a vision
for the future

Fiscal Year To Date Report - 2017

Building Repairs	Commercial	Residential
Buildings Condemned	0	0
Buildings Demolished	0	0
Building Repairs	15	12
Plumbing Upgrades	1	11
Electrical Upgrades	4	12
Mechanical Upgrades	0	12
Reroofs And Roof Repairs	0	5
Mobile Home Services	0	0
Building Additions/Accessory Structures	0	8

Yearly Totals For Oct. 1st - Sept. 30th	
2008	$127,407,288.00
2009	$67,359,271.00
2010	$96,662,342.00
2011	$45,352,237.00
2012	$178,221,004.00
2013	$61,881,917.00
2014	$79,409,560.00
2015	$192,080,600.00
2016	$127,079,852.00
2017	$15,719,216.00

Total Permits Issued:

9	New Buildings: Commercial	$9,019,961.00
15	Commercial Renovations And Repairs	$815,301.00
5	Signs	$109,700.00
21	New Single Family Homes	$5,520,556.00
17	Residential Repairs And Renovations	$253,698.00
0	New Apartment Units	$0.00
0	New Duplex Residences	$0.00
67	Total Building Permits Issued	$15,719,216.00

67	Total Issued for FY 2017	$15,719,216.00

Jeff Kappelman

JEFF KAPPELMAN
Building Official

City Of Opelika- Planning Department
Building Inspection Division
November, 2016-Monthly

Main Address	Permit Type	Permit Status	Work Class	Issue Date	First Name	Last Name	Company	Valuation
1511 KILGORE CIR	Building - Residential	Permit Issued	Alteration	11/21/2016			A&E HOLDINGS LLC	$ 9,974.00
3301 STONYBROOK LN	Building - Residential	Permit Issued	New Single Family Detached	11/16/2016			MOORES CONSTRUCTION	$ 296,025.00
606 BLACKBERRY CV	Building - Residential	Permit Issued	New Single Family Detached	11/18/2016			ADAMSON CONSTRUCTION GROUP LLC	$ 324,234.00
400 HILLCREST AVE	Building - Residential	Permit Issued	Alteration	11/23/2016	Frank	Nelson		$ 45,000.00
1325 A SHANNON CT	Building - Commercial	Permit Issued	Building Shell	11/4/2016	Joe	Zacarro	Evans Hughes & Company, LLC	$ 67,000.00
2800 WYNDHAM INDUSTRIAL DR	Building - Commercial	Permit Issued	New	11/2/2016			MCSHANE CONSTRUCTION COMPANY LLC	$ 6,917,711.00
1410 PIEDMONT AVE	Building - Residential	Permit Issued	Addition	11/14/2016			R L CORLEY CONSTRUCTION	$ 63,000.00
1116 COLLINWOOD ST	Building - Residential	Permit Issued	Alteration	11/17/2016			GUNNELLS	$ 5,000.00
2704 SAMANTHA LN	Building - Residential	Permit Issued	New Single Family Detached	11/10/2016			BUILDERS PROFESSIONAL GRP LLC	$ 248,166.00
1325 F SHANNON CT	Building - Commercial	Permit Issued	Building Shell	11/1/2016	Joe	Zacarro	Evan Hughes & Co., LLC	$ 67,000.00
3509 PEPPERELL PKWY	Building - Commercial	Permit Issued	Signs	11/15/2016			DORRIS SIGN INC	$ 1,000.00
2701 FREDERICK RD 105	Building - Commercial	Permit Issued	Signs	11/29/2016			DORRIS SIGN INC	$ 3,000.00
1325 B SHANNON CT	Building - Commercial	Permit Issued	Building Shell	11/1/2016	Joe	Zacarro	Evans Hughes & Company, LLC	$ 67,000.00
1701 CAPPS LNDG	Building - Commercial	Permit Issued	New	11/22/2016	Jason	Ingermanson	Freddy's Frozen Custard	$ 800,000.00
3803 HERITAGE PL	Building - Residential	Permit Issued	New Single Family Detached	11/2/2016			RIVERCHASE HOME LLC	$ 269,384.00
1410 PIEDMONT AVE	Building - Residential	Permit Issued	Accessory Buildings	11/14/2016	Jean	Meadows Heath		$ 2,500.00
1111 LIVE OAK CIR	Building - Residential	Permit Issued	New Single Family Detached	11/15/2016			RIVERCHASE HOME LLC	$ 404,187.00
2911 ASHLEY LN	Building - Residential	Permit Issued	New Single Family Detached	11/30/2016			EDGAR HUGHSTON BUILDER INC	$ 190,000.00
2701 FREDERICK RD 105	Building - Commercial	Permit Issued	Tenant Build Out	11/15/2016	Diane	Cooper		$ 8,400.00
1325 D SHANNON CT	Building - Commercial	Permit Issued	Building Shell	11/1/2016			Evans Hughes & Company, LLC	$ 67,000.00
1305 LIVE OAK CIR	Building - Residential	Permit Issued	New Single Family Detached	11/2/2016			RIVERCHASE HOME LLC	$ 286,500.00
109 N 17TH ST	Building - Residential	Permit Issued	Accessory Buildings	11/7/2016	Steve	Gunn		$ 2,000.00
3620 QUAIL TRCE	Building - Residential	Permit Issued	New Single Family Detached	11/18/2016			CONNER BROTHERS CONSTRUCTION	$ 264,878.00
508 S 4TH ST	Building - Residential	Permit Issued	Alteration	11/21/2016	Hamlet	Barnes, Jr.		$ 15,000.00
2701 FREDERICK RD 301	Building - Commercial	Permit Issued	Tenant Build Out	11/3/2016	Keon	Davis		$ 1,000.00
2706 SAMANTHA LN	Building - Residential	Permit Issued	New Single Family Detached	11/10/2016			BUILDERS PROFESSIONAL GRP LLC	$ 152,345.00
1325 E SHANNON CT	Building - Commercial	Permit Issued	Building Shell	11/1/2016	Joe	Zacarro	Evans Hughes & Company, LLC	$ 67,000.00
2181 TIGER TOWN PKWY	Building - Commercial	Permit Issued	Signs	11/16/2016			COLUMBUS SIGNS & LIGHTING LLC	$ 2,500.00
3305 STONYBROOK LN	Building - Residential	Permit Issued	New Single Family Detached	11/3/2016	Dan	Mitchell		$ 373,200.00
2680 CORPORATE PARK DR 300	Building - Commercial	Permit Issued	Tenant Build Out	11/17/2016			HUDMON CONSTRUCTION CO INC	$ 15,000.00
501 GENEVA ST STE B	Building - Commercial	Permit Issued	Alteration	11/14/2016	Shane	Neese		$ 7,000.00

311 S 6TH ST	Building - Commercial	Permit Issued	New	11/14/2016	Manish	Desai		$ 18,800.00
605 AVENUE B	Building - Commercial	Permit Issued	Alteration	11/23/2016			RYBERG CONSTRUCTION	$ 16,176.00
3150 CAPPS WAY	Building - Commercial	Plan Review	Swimming Pool	11/4/2016			BLUE HAVEN POOLS	$ 45,000.00
3311 GABBY DR	Building - Residential	Permit Issued	New Single Family Detached	11/4/2016			AUBURDAN INC	$ 139,085.00
2015 NORTHHILLS DR	Building - Residential	Permit Issued	Alteration	11/8/2016			GTR CONTRACTORS LLC	$ 45,009.00
1325 C SHANNON CT	Building - Commercial	Permit Issued	Building Shell	11/1/2016	Joe	Zacarro	Evans Hughes & Company, LLC	$ 65,000.00
1200 MORRIS AVE	Building - Residential	Permit Issued	Accessory Buildings	11/18/2016	H.S.	Bence		$ 1,736.00
2202 QUAIL RDG	Building - Residential	Permit Issued	New Single Family Detached	11/18/2016			CONNER BROTHERS CONSTRUCTION	$ 247,375.00
								$ 11,620,185.00

TAKEN FROM THE RECORDS OF THE BULDING INSPECTOR

JEFF KAPPELMAN
Chief Building Inspector

Attachment: November 2016 Building Report (2055 : Building Inspection Report - November 2016)

City Council
204 South 7Th Street
Opelika, AL

SCHEDULED

BIDS 343-16

Meeting: 12/20/16 07:00 PM
Department: Purchasing and Revenue
Category: Bid
Prepared By: Angela Norrell
Initiator: Lillie Finley
Sponsors:
DOC ID: 2057

Seven (7) Recycling Cardboard Trailers - OES.

RESOLUTION NO. ____________

WHEREAS, the Purchasing Department opened sealed bids for the purchase of seven (7) Recycling Cardboard Trailers for the Opelika Environmental Services Department; and

WHEREAS, Wilhite Trailer & Auto Sales submitted the low bid meeting specifications; and

WHEREAS, this is a budgeted purchase from Small Tools & Minor Equipment;

NOW, THEREFORE, BE IT RESOLVED by the City of Opelika, Alabama as follows:

1. That the bid be awarded to Wilhite Trailer & Auto Sales on their sole bid meeting specifications.

2. That the Purchasing-Revenue Manager be authorized to issue a purchase order to Wilhite Trailer & Auto Sales for no more than $18,725.00.

3. That the Mayor is hereby authorized to sign all documents pertaining to this purchase.

4. That the Controller be authorized to adjust the budget as necessary for this purchase.

APPROVED AND ADOPTED this the _____day of ____________________, 2016.

____
C. E. "Eddie" Smith, Jr.
President of the City Council
City of Opelika, Alabama

ATTEST:

Robert G. Shuman, CMC
City Clerk - Treasurer

FACT SHEET

SUBJECT: Sealed Bid – Bid #17002 – Seven (7) Recycling Cardboard Trailers

FACTS:

- Bid opening date – 12/5/16
- User Department – Environmental Services
- The bid was mailed to 10 vendors
- 3 bids were received
- Wilhite Trailer & Auto Sales submitted the lowest bid meeting specifications
- Budgeted contract
- Bid tabulation sheet attached

RECOMMENDATION:

- **Recommend the bid be awarded to Wilhite Trailer & Auto Sales on their low bid meeting specifications no more than the amount of $18,725.00.**

BID# 17002 DATE: 12/5/16 DEPT: OES							10 VENDORS INVITED
DESCRIPTION: RECYCLING CARDBOARD TRAILER							3 BIDS RECEIVED
	ITEM 1: 8-FT CARDBOARD RECYCLING CAGE TRAILER (EA.)						
	ITEM 2: FREIGHT ON 8-FT TRAILER (EA.)						
	ITEM 3: 14-FT CARDBOARD RECYCLING CAGE TRAILER (EA.)						
	ITEM 4: FREIGHT ON 14-FT TRAILER (EA.)						
VENDOR	**ITEM 1**	**ITEM 2**	**ITEM 3**	**ITEM 4**	**DEL**	**DISC**	**TERMS**
DAVIS MACHINE WORKS INC							
FUNCARTS OF OPELIKA INC							
GULF CITY BODY & TRAILER WORKS							
INGRAM EQUIPMENT CO LLC							
METRAC							
O G HUGHES & SONS INC							
PITTS ENTERPRISES INC							
SHERMAN AND REILLY INC							
TRUCK EQUIPMENT SALES INC							
WILHITE TRAILER & AUTO SALES	**$ 2,250.00**	**$ -**	**$ 2,675.00**	**$ -**	**21 days**	**--**	**--**
K & K Mfg., Inc.	$ 2,285.00	$ 275.00	$ 2,865.00	$ 275.00	60 days	--	--
Pro-Tainer, Inc.	$ 3,995.00	$ 900.00	$ 4,495.00	$ 900.00	90 days	--	--

Attachment: 12-20-16 - RECYCLING CARDBOARD TRAILERS 17002 - BID PKT (343-16 : Seven (7)

RESOLUTION NO. 344-16

Expense Reports from Various Departments.

RESOLUTION NO. _________

BE IT RESOLVED, by the City Council of the City of Opelika, Alabama, as follows:

) That the following employees were required by the City of Opelika to travel on City business and/or attend a training session, meeting or conference.

Employee	Department	$ Amount
Tyler Chaffee	ED	199.26
Lisa Gallagher	P&R	468.99

) That attached is an expense report(s) prepared, dated and signed by the City employee or official covering the various expenses incurred on said trip and reviewed/approved by the City's accounting department and City official(s).

3) That the Opelika City Council hereby approves the attached expense reports for reimbursement to said City employee or official.

4) That the Mayor and/or appropriate City official is hereby directed and authorized to take the necessary steps so a check can be prepared covering the attached expense reports.

5) That the City Treasurer is authorized to sign said check so it can be delivered to the appropriate City employee or official.

ADOPTED and APPROVED this the _____ day of _______________, 2016.

____

C. E. "Eddie" Smith, Jr.

President City Council

City of Opelika, Alabama

ATTEST:

Robert G. Shuman, CMC

City Clerk - City Treasurer

Expense Report

Name: Tyler Chaffee

Department: ECONOMIC DEVELOPMENT

Period Ending

ITEMIZE ALL REIMBURSABLE EXPENSE IN APPROPRIATE BLANKS - ITEMIZE ANY NON-REIMBURSABLE EXPENSES ON REVERSE OF LAST COPY

Date	Day	CITY AND STATE	LODGING	TRANSPORTATION: AIR, RAIL, ETC.	TRANSPORTATION: RENTAL CAR, LIMO, ETC.	TRANSPORTATION: LOCAL TAXI, TOLLS & PUBLIC TRANSIT		TRANSPORTATION: AUTO EXPENSES	BUSINESS MEALS (Itemize Below): BREAKFAST	BUSINESS MEALS: LUNCH	BUSINESS MEALS: DINNER	ENTERTAINMENT Itemize Below	MISC. EXPENSES Itemize Below	DAILY TOTAL
11/7/2016		Opelika, AL						1.08						1.08
11/8/2016		Opelika, AL						8.1						8.1
11/9/2016		Opelika, AL						3.24						3.24
11/10/2016		Opelika, AL						8.1						8.1
11/16/2016		Opelika, AL						8.1						8.1
11/17/2016		Opelika, AL						1.62						1.62
11/18/2016		Opelika, AL						2.16						2.16
11/21/2016		Opelika, AL						8.64						8.64
11/29/2016		Opelika, AL						8.1						8.1
12/1/2016		Auburn, AL						16.2						16.2
12/2/2016		Opelika, AL						9.18						9.18
12/2/2016		Opelika, AL						3.24						3.24
12/2-7/2016		Atlanta, GA						100.44						100.44
12/9/2016		Opelika, AL						8.1						8.1
12/12/2016		Opelika, AL						4.86						4.86
13-Dec		Opelika, AL						8.1						8.1
WEEKLY CATEGORY TOTALS$			0.00	0.00	0	0	0.00	199.26	0.00	0.00	0	0	0	199.26

WEEKLY TOTAL OF EXPENSES

RECEIVED
DEC 13 2016
BY:

Agree To P.O.
Exts Verified
Footing Verified
Inv. Price Bio Price
Ok To Pay
A/C # Verified

ITEMIZED ENTERTAINMENT AND BUSINESS MEAL

DATE	NAME AND PERSON(S) ENTERTAINED; COMPANY, TITLE	TIME & PLACE	NATURE & PURPOSE OF ENTERTAINMENT	AMOUNT	%OR $ ALLOCATED TO BUSINESS
					100%
					100%
					100%
					100%
					100%

NUMBER OF DAYS AWAY FROM HOME

NUMBER OF DAYS AWAY ON PERSONAL AFFAIRS: 0

% OF TOTAL DAYS AWAY FRO PERSONAL AFFAIRS: 0

NATURE OR PURPOSE OF TRAVEL: Personal Auto Travel Expense

ITEMIZED AUTOMOBILE EXPENSES

DATE	PARKING, REPAIRS, TEC.	AMOUNT
11/7/2016	City Hall to Planning 2 miles	1.08
11/8/2016	City Hall to Industrial Park 15 miles	8.1
11/9/2016	City Hall to Frederick Road 6 miles	3.24
11/10/2016	City Hall to Industrial Park 15 miles	8.1
11/16/2016	City Hall to Industrial Park 15 miles	8.1
11/17/2016	City Hall to Souther Union 3 miles	1.62
11/18/2016	City Hall to West Fraser 4 miles	2.16
11/21/2016	City Hall to Industrial Park 15 miles	8.64
11/29/2016	City Hall to Industrial Park 15 miles	8.1
12/1/2016	City Hall to Auburn 30 miles	16.2
12/2/2016	City Hall to Pharmavite/Baxter 17 miles	9.18
12/2/2016	City Hall to Frederick Road 6 miles	3.24
12/2-7/2016	City Hall to Atlanta Airport 186 miles (round trip)	100.44
12/9/2016	City Hall to Industrial Park 15 miles	8.1
12/12/2016	City Hall to PCA	4.86
13-Dec	City Hall to Industrial Park 15 miles	8.1

METHOD OF REIMBURSEMENT

☐

DEDUCT FROM M\ OR

ITEMIZED MISCELLANEOUS EXPENSES

DATE	ITEMS	AMOUNT

SIGNATURE

APPROVED BY

EXPENSE REPORT

NAME Lisa Gallagher

DEPARTMENT Department Parks & Recreation

PERIOD ENDING 11/18/16

DAY	CITY AND STATE	LODGING	TRANSPORTATION AIR RAIL, ETC	RENTAL CAR LIMO ETC	LOCAL TAXI, TOLLS & PUBLIC TRANSIT	AUTO EXPENSES Itemize Below	BUSINESS MEALS Itemize Below BREAKFAST	LUNCH	DINNER	ENTERTAINMENT Itemize Below	MISC EXPENSES Itemize Below	DAILY TOTAL
11/15/2016	Orlando, FL				3.00	mileage 231.12						234.12
16-Nov	Orlando, FL											
17-Nov	Orlando, FL											
18-Nov	Orlando, FL				3.75	231.12						234.87
WEEKLY CATEGORY TOTALS $					6.75	462.24						468.99

WEEKLY TOTAL EXPENSES

RECEIVED
DEC 15 2016
BY:

DATE	NAME OF PERSON(S) ENTERTAINED, COMPANY, TITLE	TIME & PLACE	NATURE & PURPOSE OF ENTERTAINMENT	AMOUNT	% OR $ ALLOCATED TO BUSINESS
					100%
					100%
					100%
					100%
					100%
					100%

Agree To P.O. ____
Exts Verified ____ JM
Footing Verified ____
Inv. Price Bio Price ____
Ok To Pay ____
A/C # Verified ____

NUMBER OF DAYS AWAY FROM HOME: 4

NUMBER OF DAYS AWAY ON PERSONAL AFFAIRS: 0

% OF TOTAL DAYS AWAY FOR PERSONAL AFFAIRS: 0%

NATURE OR PURPOSE OF TRAVEL

National Conference to acquire continuing education towards my ACSM certification.

METHOD OF REIMBURSEMENT
☐ DEDUCT FROM MY ADVANCE
☑ MAIL TO Sportsplex

ITEMIZED AUTOMOBILE EXPENSES

DATE	MILEAGE, GAS, PARKING REPAIRS, ETC	AMOUNT
11/15	428 miles	231.12
11/15	Toll	3.00
11/18	428 miles	231.12
11/18	Tolls	3.75
		468.99

ITEMIZED MISCELLANEOUS EXPENSES

DATE	ITEMS	AMOUNT

Lisa Gallagher

Sam Bailey
Signature

Approved By Sam Bailey

RESOLUTION NO. 345-16

Designate City Personal Property as Surplus & Authorize Disposal

RESOLUTION NO. ________

WHEREAS, the City of Opelika, Alabama, has certain items of personal property which are no longer needed for public or municipal purposes; and

WHEREAS, Section 11-43-56 of the Alabama Code of 1975 authorizes the Municipal Governing body to dispose of unneeded personal property;

NOW, THEREFORE, BE IT RESOLVED by the City of Opelika, Alabama as follows:

SECTION 1. That the following personal property owned by the City of Opelika, Alabama, is no longer needed for public or municipal purposes:

No.	Qty.	Unit	Item Description	Fixed Asset #
1.	1	Ea.	2000 Chevrolet 3500 Crew Cab 1GCGC33R5YF509818	87002045
2.	1	Lot	Phones and accessories	N/A

SECTION 2. That the Mayor is hereby authorized and directed to dispose of the personal property owned by the City of Opelika, Alabama, described in Section 1 above. If any such property has marketable value, the Mayor shall receive bids or quotations for such property and shall sell the same to the highest bidder. If the property has no marketable value, the Mayor may dispose of such property in the most economical and feasible manner available to him.

ADOPTED AND APPROVED this the ________day of ________________, 2016.

C. E. “Eddie Smith, Jr.

President of the City Council

City of Opelika

ATTEST:

Robert G. Shuman, CMC

City Clerk - Treasurer

RESOLUTION NO. 346-16

Purchase - Fortinet Security Device - IT

RESOLUTION NO. ____________

WHEREAS, the Opelika Information Technology department desires to purchase a Fortinet Security Device utilizing the State of Alabama Contract #MA 999 16000000085; and

WHEREAS, CDW Government, Inc. is the contract vendor for the Fortinet Security Device; and

WHEREAS, this is a budgeted purchase from Capital Expenditures;

NOW, THEREFORE, BE IT RESOLVED by the City of Opelika, Alabama as follows:

1. That the purchase be awarded to CDW Government, Inc. utilizing the State of Alabama Contract #MA 999 16000000085.

2. That the Purchasing-Revenue Manager is hereby authorized to issue a purchase order to CDW Government, Inc. in the total amount of $35,444.58.

3. That the Mayor is hereby authorized to sign all documents pertaining to this purchase.

4. The Controller is authorized to adjust the budget as necessary for this purchase.

APPROVED AND ADOPTED this the _____day of ____________________, 2016.

C. E. "Eddie" Smith, Jr.

President of the City Council

City of Opelika, Alabama

ATTEST:

Robert G. Shuman, CMC

City Clerk - Treasurer

State of Alabama
Department of Finance
Division of Purchasing
Master Agreement

New

CONTRACT INFORMATION

MASTER AGREEMENT NUMBER: MA 999 16000000085

NOT TO EXCEED AMOUNT:

Begin Date: 07/21/2016
Expiration Date: 07/20/2017
Solicitation Number:
Award Date:
Modification Date: 07/20/16

Procurement Folder: 36224
Procurement Type: Master Agreement
Replaces Award Document:
Replaced by Award Document:
Version Number: 1

CONTACT INFORMATION

REQUESTOR:	ISSUER:	BUYER:
Jennifer Loretz	Jennifer Loretz	Jennifer Loretz
334-242-7370	334-242-7370	334-242-7370
jennifer.loretz@purchasing.alabama.gov	jennifer.loretz@purchasing.alabama.gov	jennifer.loretz@purchasing.alabama.gov

CONTRACT DESCRIPTION

MA- Security Products Catalog - Fortinet
Award Reference: RFB 010 160000000033

Ship To:

Bill To:

REASON FOR MODIFICATION

VENDOR INFORMATION

Name /Address:

VC000004220 - CDW GOVERNMENT INC

75 REMITTANCE DR
SUITE 1515
CHICAGO IL 60675-1515

Contact:

Courtney Monaco
312-705-3361
courmon@cdwg.com

Thanks

Stephen Dawe
CTO
City of Opelika
204 South 7th Street
Opelika, AL, 36801
Call: 334-705-5140

QUOTE CONFIRMATION

CDW•G PEOPLE WHO GET IT

DEAR STEPHEN DAWE,

Thank you for considering CDW•G for your computing needs. The details of your quote are below. Click here to convert your quote to an order.

QUOTE #	QUOTE DATE	QUOTE REFERENCE	CUSTOMER #	GRAND TOTAL
HNRD535	12/5/2016	HNRD535	0936449	$35,444.58

QUOTE DETAILS

ITEM	QTY	CDW#	UNIT PRICE	EXT. PRICE
Fortinet FortiGate 500D - security appliance Mfg. Part#: FG-500D-BDL-974-36 UNSPSC: 43222501 Contract: MARKET	1	4169737	$23,499.98	$23,499.98
Fortinet - power supply - redundant Mfg. Part#: FRPS-100 UNSPSC: 39121004 Contract: Alabama Fortinet (MA 999 16000000085)	1	3084115	$418.60	$418.60
FortiGate Multi-Threat Security Systems I - live e-learning Mfg. Part#: FT-FGT1 UNSPSC: 86101601 Contract: Alabama Fortinet (MA 999 16000000085)	2	3305802	$1,690.50	$3,381.00
FortiGate Multi-Threat Security Systems II - live e-learning Mfg. Part#: FT-FGT2 UNSPSC: 86101601 Contract: Alabama Fortinet (MA 999 16000000085)	2	3430814	$2,572.50	$5,145.00
FG-500D ON-SITE 4 HOURS Mfg. Part#: FC-10-00502-254-02-12 Contract: MARKET	1	4399144	$3,000.00	$3,000.00

PURCHASER BILLING INFO	SUBTOTAL	$35,444.58
Billing Address: CITY OF OPELIKA ACCOUNTS PAYABLE PO BOX 390 OPELIKA, AL 36803-0390 **Phone:** (334) 705-5120 **Payment Terms:** Net 30 Days-Govt State/Local	SHIPPING	$0.00
	GRAND TOTAL	**$35,444.58**
DELIVER TO	**Please remit payments to:**	
Shipping Address: CITY OF OPELIKA STEPHEN DAWE 204 S 7TH ST OPELIKA, AL 36801 **Shipping Method:** DROP SHIP-GROUND	CDW Government 75 Remittance Drive Suite 1515 Chicago, IL 60675-1515	

Need Assistance? CDW•G SALES CONTACT INFORMATION

Griffin Curcio	(877) 635-6656	grifcur@cdwg.com

This quote is subject to CDW's Terms and Conditions of Sales and Service Projects at
http://www.cdwg.com/content/terms-conditions/product-sales.aspx
For more information, contact a CDW account manager

RESOLUTION NO. 347-16

Purchase - G Suite Business - Drive & Collab - IT

RESOLUTION NO. ____________

WHEREAS, the Opelika Information Technology department desires to purchase the G Suite Business - Drive & Collab utilizing the US Communities GPAC #4400006642; and

WHEREAS, SADA Systems, Inc. is the contract vendor for the G Suite Business - Drive & Collab; and

WHEREAS, this will give city employees access to google applications and services and provide the City with the ability to actively manage its mobile devices; and

WHEREAS, this is a budgeted purchase from Capital Expenditures;

NOW, THEREFORE, BE IT RESOLVED by the City of Opelika, Alabama as follows:

1. That the purchase be awarded to SADA Systems, Inc. utilizing the US Communities GPAC #4400006642.

2. That the Purchasing-Revenue Manager is hereby authorized to issue a purchase order to SADA Systems, Inc. in the total amount of $35,864.00.

3. That the Mayor is hereby authorized to sign all documents pertaining to this purchase.

4. The Controller is authorized to adjust the budget as necessary for this purchase.

APPROVED AND ADOPTED this the _____day of ___________________, 2016.

____

C. E. "Eddie" Smith, Jr.

President of the City Council

City of Opelika, Alabama

ATTEST:

____

Robert G. Shuman, CMC

City Clerk - Treasurer

Carahsoft Contract

Google Products, Services & Solutions

Technology Products, Services, Solutions, and Related Products and Services

Lead Agency:
County of Fairfax, Virginia

Contract Number:
4400006642

3 year initial term, May 1, 2016 – April 30, 2019
Option to renew for (4) additional (1) year periods or any combination thereof

Contract Documents:

Contract 4400006642 Carah
Amendment 1 4400006642 Carahsoft

RFP Documents:

RFP 2000001701
RFP 2000001701 Addendun
RFP 2000001701 Addendun
RFP 2000001701 Addendun
RFP 2000001701 Posting Document

Postings

Number of suppliers who responded to RFP: 18

Posting Information:	Date Posted:
U.S. Communities: Upcoming Contract	Aug 12, 2015-Sept 17, 2015
Canadian MERX Public Tenders	Aug 12, 2015-Sept 17, 2015
Onvia Demand Star	Aug 12, 2015-Sept 17, 2015
Fairfax County, VA	Aug 12, 2015-Sept 17, 2015
Association of Oregon Counties	Aug 12, 2015-Sept 17, 2015
State of Hawaii and Oregon	Aug 12, 2015-Sept 17, 2015

SADA systems

Google Cloud

SADA Systems, Inc.
G Suite Business ORDERING DOCUMENT

This G Suite Business Ordering Document (the "Ordering Document") and the corresponding G Suite Business Customer Agreement (the "Agreement") between SADA Systems, Inc. a corporation organized under the laws of the State of California, with offices at 5250 Lankershim Blvd., Suite 620, North Hollywood, CA 91601, authorized U.S. Communities Government Purchasing Alliance Vendor ("SADA") and Customer (as defined below) governs Customer's access to and use of the Services. Undefined capitalized terms used in this Ordering Document will have the meanings set forth in the Agreement.

SADA Systems is a licensed and authorized Premier Professional Services Partner and Reseller of G Suite and Google Cloud products and services.

Customer: City of Opelika
Corporate Address: 204 South 7th Street, Opelika, AL 36801
Entity: City Government
State of Organization: Alabama
County of Organization: Lee County

Contact	Main Contact	Accounts Payable	Tech Contact / Admin
Full Name	Stephen Dawe		Stephen Dawe
Title	CIO		CIO
Street	204 S. 7th Street		204 S. 7th Street
City, State ZIP	Opelika, AL 36801		Opelika, AL 36801
Phone	334-705-5140		334-705-5140
Email	sdawe@opelika-al.gov		sdawe@opelika-al.gov

Customer off-domain email address: TBD

Google Product Description:

G Suite Business - Drive and Collab: Customer is ordering GAPPS-UNLIM-NOGMAIL-1USER-12MO ("GSBDC"). Use of the Services in connection with GSBDC stipulates that Customer is not authorized to use the Google Mail/Gmail functionality within the Services.

G Suite Business - Drive and Collab is the premium version of G Suite, without access to Google Mail. The solution includes unlimited storage for all platform data and content, and Google Vault (data archive, retention, eDiscovery and legal hold) for everyone in your organization - plus additional Google Drive administration, auditing, and reporting features.

G Suite includes the following core functionality: Calendar, Contacts, Groups, IM, Hangouts, Drive, Sites, Docs, Sheets, Slides, Forms, Drawings, MDM, Spam/Virus Filtering, Google SSO, Security, Reporting, LDAP Integration, Outlook Integration, Google Data Migration Tools, G Suite Training (formerly synergyse.com). Please note that for GSBDC, Google Mail is not included.

Licensing & Pricing:

Under the terms of the Agreement accessible at http://sadasystems.com/agreements/gafw/gafw.pdf of which this Ordering Document is a part, Customer agrees to purchase and SADA Systems agrees to provide the following Google services to Customer in the indicated quantity and at the indicated pricing in U.S. Dollars:

Google Product Pricing:

SADA Systems is an authorized vendor on **Carahsoft Technology Corporation's U.S. Communities Government Purchasing Alliance Contract # 4400006642:**
http://www.uscommunities.org/suppliers/carahsoft/carahsoft-contract/

Product Name	SKU	List Price per User - Annual	Lsn Qty	Discounted Price per User - Annual	Annual Total
G Suite Business - Drive & Collab	GAPPS-UNLIM-NOGMAIL-1USER-12MO	$102	400	$89.66	$35,864

Google Product Discount Value: $4,936

Initial Term of the Agreement: 12-months, upon successful booking.

Domain(s) (where the products are to be provisioned): opelika-al.gov

The above pricing is valid through: 12/31/2016

Payment Terms:

Payment	Invoice Date	Amount
100% of Licenses	Agreement Signature Date	$35,864

Payment is accepted by check or ACH/EFT.

Bank Information
Automated Clearing House (ACH) or
Electronic Funds Transfer (EFT)
Wells Fargo Bank
Swift Code: WFBIUS6
464 California St. San Francisco, CA 94104
Routing Number: 121042882
Bank Account Name: SADA Systems, Inc.
Bank Account Number: 7757670067

Remittance Address:
SADA Systems, Inc
5250 Lankershim Blvd., Suite 620
North Hollywood, CA 91601
ATTN: Accounting

Additional Licenses Purchased During the Term:

Additional licenses will be billed on a prorated basis for the remaining portion of the signed term. Invoicing and payment will follow the terms of the above payment schedule, with immediate payment due for any schedule periods already in progress. .

Notices:

Any notices under this Agreement will be directed, if to SADA, at:

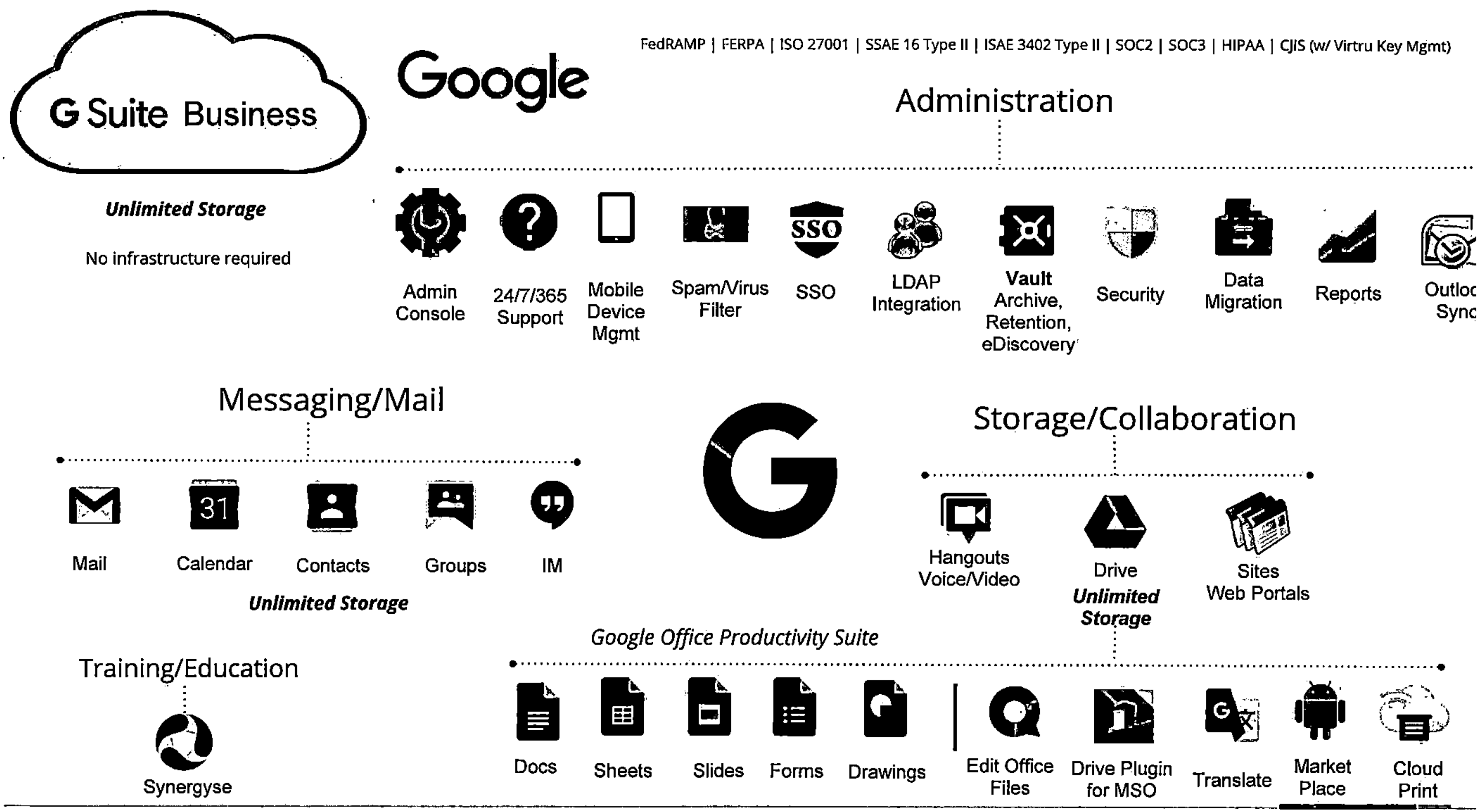
Annie Safoian, Chief Financial Officer
SADA Systems, Inc.
5250 Lankershim Blvd., Suite 620
North Hollywood, CA 91601
Email: annie.safoian@sadasystems.com
Fax: 818-766-0090

and if to Customer, at the Main Contact above.

CUSTOMER ACKNOWLEDGES THAT IT HAS READ THIS ORDERING DOCUMENT AND THE CORRESPONDING AGREEMENT, AND UNDERSTANDS AND AGREES TO BE LEGALLY BOUND BY THEIR TERMS.

IN WITNESS WHEREOF, this Ordering Document has been executed by the parties through their duly authorized officers.

SADA Systems, Inc.	**City of Opelika**
______________________	______________________
Print name: ______________	Print name: ______________
Print title: ______________	Print title: ______________
Date: ______________	Date: ______________


G Suite Business
Unlimited Storage
No infrastructure required
Google
FedRAMP | FERPA | ISO 27001 | SSAE 16 Type II | ISAE 3402 Type II | SOC2 | SOC3 | HIPAA | CJIS (w/ Virtru Key Mgmt)
Administration
Admin Console
24/7/365 Support
Mobile Device Mgmt
Spam/Virus Filter
SSO
LDAP Integration
Vault Archive, Retention, eDiscovery
Security
Data Migration
Reports
Outloo Sync
Messaging/Mail
Mail
31
Calendar
Contacts
Groups
IM
Unlimited Storage
Storage/Collaboration
Hangouts Voice/Video
Drive Unlimited Storage
Sites Web Portals
Google Office Productivity Suite
Training/Education
Synergyse
Docs
Sheets
Slides
Forms
Drawings
Edit Office Files
Drive Plugin for MSO
Translate
Market Place
Cloud Print

RESOLUTION NO. 348-16

Purchase - One (1) Dual Purpose Canine - PD

RESOLUTION NO. ____________

WHEREAS, the Police Department desires to purchase One (1) Dual Purpose Canine, including training and housing for canine trainee; and

WHEREAS, this is a sole source purchase; and

WHEREAS, AL Canine Law Enforcement Officer Training Center, Inc. is the sole vendor; and

WHEREAS, this is a budgeted purchase from Capital Outlay;

NOW, THEREFORE, BE IT RESOLVED by the City of Opelika, Alabama as follows:

1. That the purchase be awarded to AL Canine Law Enforcement Officer Training Center, Inc.

2. That the Purchasing-Revenue Manager be authorized to issue a purchase order to AL Canine Law Enforcement Officer Training Center, Inc. not to exceed $19,000.00 as a sole source purchase.

3. The Controller is authorized to adjust the budget as necessary for this purchase.

APPROVED AND ADOPTED this the _____day of ___________________, 2016.

C. E. “Eddie” Smith, Jr.

President of the City Council

City of Opelika, Alabama

ATTEST:

Robert G. Shuman, CMC

City Clerk - Treasurer

CITY OF OPELIKA
Sole Source Justification

DEPARTMENT Opelika Police Department

REQUISITION NUMBER ______________________

NAME OF REQUESTING EMPLOYEE Assistant Chief of Police Robert Holley

VENDOR Alabama Canine Law Enforcement Officers Training Center

PRODUCT/SERVICE (1) One Dual Purpose Canine, Training/Housing for Canine Trainee

____

Estimated annual expenditure for the commodity or service $ 19,000

Initial all entries below that apply to the proposed purchase: Attach a detailed explanation containing complete justification and support documents. (More than one entry will apply to most sole source products/services requested).

1. Sole Source Request is for the original manufacturer or provider of item(s) or services, and there are no regional distributors. (Attach the manufacturer's witness certification that no regional distributors exist. Item no.4 also must be completed). __________

2. Sole Source Request is for the only the vendor who supplies this product/services within the State of Alabama (Franchised Protected Area). __________

3. The Parts/Equipment are not interchangeable with similar parts of another manufacturer. (Explain in separate memorandum) __________

4. This is the only known item or service that will meet the specialized needs of the Police Department or perform the intended function. (Attach memorandum with details of specialized function(s) or application.) RWH

5. The Parts/Equipment are required from this sole source to permit standardization. (Attach memorandum describing basis for standardizing request.) __________

6. None of the above apply. A detailed explanation and justification for this sole source request is contained in the attached memorandum. __________

The undersigned requests that the State of Alabama Bid Law Title 41 Article 3 Competitive Bidding Requirements be waived and that the vendor identified as the supplier of the service or material described in this sole source justification be authorized as a sole source for the service or material. I further certify that the item(s) requested is of an indispensable nature, all other viable alternatives have been explored and it has been determined that only this product or service will fulfill the function for which the product is needed.

DEPARTMENT HEAD SIGNATURE Robt 2 Holly

DEPARTMENT/DIVISION/DATE 12-13-16

PURCHASING DEPARTMENT USE ONLY

PURCHASING AGENT APPROVAL
(SIGNATURE/DATE)

DISAPPROVAL/DATE 12-13-16

COMMENTS The Opelika Police Department requests the purchase of one (1) dual purpose canine to be utilized in the detection of explosives/patrol. The Alabama Canine Law Enforcement Officers Training Center is the only such training offered in the state. Alabama Canine Law Enforcement Training Center is the only training to offer "PSP" (Polizeispurhundprufungn) training and certification in the state. This purchase requisition is for the canine and training/housing of the canine trainee.

COUNCIL ACTION/DATE

Alabama Canine Law Enforcement
Officers Training Center Inc
18539 John Swindle Road
Northport, AL 35475

PRICE QUOTE

Date	Estimate #
5/11/2016	259

Name / Address
Opelika Police Department Accounts Payable PO Box 390 Opelika, AL 36803-0390

Project

Description	Qty	Cost	Total
Dual-Purpose Canine with Explosive	1	17,000.00	17,000.00
Housing of Officer per night	40	50.00	2,000.00
		Total	$19,000.00

RESOLUTION NO. 349-16

Employment Contract with the City Attorney.

Resolution No. ________

Resolution Approving Employment Contract

with Guy F. Gunter, III

WHEREAS, the City of Opelika, Alabama, (the "City") requires the services of a part-time City Attorney; and

WHEREAS, Guy F. Gunter, III, has the necessary education, experience, skills and expertise to serve as City Attorney; and

WHEREAS, Guy F. Gunter, III is presently serving the City as City Attorney and has performed the duties of his job in accordance with the requirements of his contract; and

WHEREAS, the City desires to continue to employ Guy F. Gunter, III to serve as City Attorney; and

WHEREAS, the City Council of the City of Opelika desires to renew Guy F. Gunter, III's Employment Contract to serve as City Attorney; and

WHEREAS, the City Council has been furnished an Employment Contract between the City and Guy F. Gunter, III,, and the City Council has determined that the terms of said Contract are acceptable to the City.

NOW, THEREFORE, BE IT RESOLVED by the City Council (the "Council") of the City of Opelika as follows:

1. That the Employment Contract (the "Contract") to be entered into between the City and Guy F. Gunter, III,, a copy of which is attached hereto and marked as Exhibit "A", be and the same is hereby approved, authorized, ratified and confirmed in the form substantially submitted to the City Council with such changes thereto (by addition, deletion or substitution), as the Mayor shall approve, which approval shall be conclusively evidenced by the execution and delivery of said Contract.

2. That the Mayor is hereby authorized and directed to execute and deliver said Contract in the name of and on behalf of the City of Opelika and the City Clerk is hereby authorized and directed to attest the same.

3. That the Mayor and the Controller are hereby authorized and directed to make budget adjustments as necessary to fund the position.

4. That this Resolution shall take effect upon its passage and adoption by the City Council.

ADOPTED AND APPROVED this the ______ day of ____________________, 2016.

____

PRESIDENT OF THE CITY COUNCIL OF THE
CITY OF OPELIKA, ALABAMA

ATTEST:

____

CITY CLERK

STATE OF ALABAMA)
: EMPLOYMENT CONTRACT
COUNTY OF LEE)

THIS AGREEMENT made and entered into this the _____ day of December, 2016, by and between the **CITY OF OPELIKA, ALABAMA,** a municipal corporation**,** hereinafter called "Employer", as party of the first part, and **GUY F. GUNTER, III,,** hereinafter called "Employee", as party of the second part.

In consideration of the mutual covenants herein contained, the parties agree as follows:

SECTION I. DUTIES AND WORKING HOURS.

Employer hereby employs Employee as City Attorney and Employee accepts such employment, subject to the terms and conditions set forth herein. As City Attorney, Employee shall perform such duties and assume such responsibilities as set forth in the job description incorporated herein and attached hereto as Exhibit "A" and any other job responsibilities and duties as may be assigned by the Mayor and/or City Council from time to time. Employee hereby accepts and agrees to such employment, subject to the general supervision and pursuant to the orders, advice and direction of the Mayor and/or City Council. The Employee agrees that he will at all times faithfully, industriously, and to the best of his ability, experience and talents, perform all of the duties that may be required of and from him pursuant to the express and implicit terms of this agreement and shall assure and perform all additional responsibilities and duties related to his job description that the Mayor and City Council from time to time may assign him.

Employee shall prosecute criminal cases in the Opelika Municipal Court on alternate court sessions and supervise the prosecution of all other cases in the Municipal Court. Employee's duties shall not include the prosecution of appeal cases in the Lee County Circuit

Court. Employee shall coordinate with law firms and attorneys providing representation to the City in civil litigation and other matters.

Employee agrees to adhere to all of the policies, procedures, rules and regulations promulgated by the Employer. These policies, procedures, rules and regulations include, but are not limited to, those set forth within the Personnel Policies and Procedures Manual and executive orders. To the extent that the Employer's policies, procedures, rules and regulations conflict with the terms of this Agreement, the specific terms of this Agreement will control.

Employee shall be classified as a part-time employee and shall not be entitled to benefits except as specifically outlined herein. Employee will normally be scheduled to work twenty-nine (29) hours or less per week. Employee's salary includes compensation for all hours worked and Employee shall be classified as an exempt employee for purposes of overtime and wage and hour laws.

Employee shall not engage in any activity, consulting service or enterprise which is actually or potentially in conflict with or inimical to, or which materially interferes with his duties to Employer. The Employee currently represents several clients in litigation and Employer agrees that Employee may continue to represent said clients until the conclusion of litigation. The Employee has no present employment which is adverse to the Employer. The Employee reserves the right to represent the Utilities Board of the City and Lee County E-911 in matters not connected with his representation of the City.

SECTION II. TERM.

Unless sooner terminated in accordance with the provisions of Sections IV and V hereof, this Agreement shall remain in full force and effect for a term of three (3) years beginning

January 2, 2017 to and including January 1, 2020. Either party may, at any time, terminate this Agreement upon ninety (90) days advance prior written notice to the other party.

SECTION III. COMPENSATION

As compensation for his services, Employer shall pay Employee an annual salary of $74,833.20, payable in installments at the same time as classified employees of the City are paid. All compensation paid to Employee by Employer shall be subject to customary withholding and employment taxes as required by law.

Beginning fiscal year 2017-2018, Employee shall be eligible for merit increases on an annual basis from 1% to 10% per year based on his job performance. All increases shall be awarded at the discretion of the Mayor and will become effective on or after the anniversary date of his contract.

SECTION IV. TERMINATION BY EMPLOYER

(A) DEATH OF EMPLOYEE. If Employee dies before his employment is otherwise terminated, this Contract shall terminate on the date of the Employee's death and all payments of compensation to which the Employee would have been entitled shall cease as of the date of the Employee's death.

(B) MISCONDUCT. This Agreement may, at the option of Employer, be terminated immediately by Employer upon the occurrence of any of the following acts:

(1) The Employee being indicted or convicted for any misdemeanor involving moral turpitude, or a felony.

(2) The Employee conducting himself in a fraudulent or dishonest manner with respect to his duties of employment if, in the opinion of the Mayor and/or City Council, that such conduct discredits Employer or is detrimental to the

reputation and standing of Employer. Such option shall be exercised by the Employer giving written notice to Employee of the Employer's intent to terminate and the grounds for such termination.

(3) Employee having been disciplined by the Employer repeatedly and/or having serious unacceptable conduct in accordance with the provisions of Section 8 of the Personnel Policies and Procedures Manual of the City of Opelika. Employee shall comply with all policies and procedures of Employer which shall, from time to time, be reasonably promulgated.

(C) FAILURE TO MAINTAIN STANDING AS LICENSED ATTORNEY. Employee represents and warrants at the time of the signing of this Contract and at all times during the term of this Contract that he is licensed to practice law by the Alabama State Bar Association and his privileges as such have not been rescinded, revoked or restricted in any manner. The Employer shall have the right to terminate this Contract immediately in the event of the termination, suspension or nonrenewal of the Employee's law license by the Alabama State Bar Association.

(D) OPTION OF EMPLOYER. Employer may terminate this Agreement, without cause, by giving ninety (90) days advance notice to Employee of its intent to terminate. Upon the effective date of termination, neither party shall have any further obligation to the other.

SECTION V. TERMINATION BY EMPLOYEE

Employee may voluntarily resign his position with Employer before the expiration of the term of his employment, by giving ninety (90) days advance notice of his intent to terminate.

Upon termination by voluntary resignation, neither party shall have any further obligation to the other beyond the effective date of termination.

SECTION VI. EMPLOYEE BENEFITS

Except as provided herein, Employee shall be entitled to all benefits to which a part-time employee may be entitled. During each twelve (12) month period of the term of this Contract, Employee shall be entitled to fifteen (15) paid days of vacation. It is specifically understood and agreed that the City shall not provide life and health insurance benefits, and shall not provide retirement benefits to the Employee. Employee acknowledges that he shall not be eligible to participate in the Employer's Life and Accidental Death Plan, Health Plan, any other group insurance plan or the Employer's retirement plan. The City shall not make any contributions to the Alabama Retirement System on behalf of the Employee. The Employer shall provide workman's compensation insurance and shall pay Social Security and Medicare taxes.

SECTION VII. EMPLOYER DUTIES.

Employer agrees to provide access to records and information as is necessary for employee to effectively render its professional services under this agreement. The Employer, at Employer's expense, will make available sufficient office space, furniture, telephones, computers and secretarial support that are suitable to his position and appropriate for the performance of his duties.

Employee shall furnish a Sharp Copier for office use, and Employer shall assume the monthly lease payment on said copier to US Bank Equipment Finance in the amount of $288.39.

Employer agrees to subscribe to and pay access to Westlaw Information Services and Alacourt Judicial Information Services.

SECTION VIII. LICENSE FEES AND DUES.

The Employer agrees to budget and pay for all license fees and dues for Employee for his membership and participation in the Alabama State Bar Association, the Lee County Bar Association and the Alabama Association of Municipal Attorneys.

SECTION IX. PROFESSIONAL DEVELOPMENT.

The Employer agrees to budget for and to pay travel and other expenses of employee to attend the Spring and Fall Law Conferences sponsored by the Alabama League of Municipalities.

SECTION X. OWNERSHIP OF DOCUMENTS.

All reports, documents and other materials prepared by Employee shall be the property of the Employer and shall be delivered to the Employer upon request of the Employer or upon termination of this Agreement.

SECTION XI. INDEMNIFICATION.

The Employer shall defend, save harmless and indemnify Employee against any claims, demands, causes of action, losses, damages, expenses or liability of any kind whether stated in or arising from tort, professional liability or any other legal action or equitable theory, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of the Employee's duties as City Attorney to the fullest extent allowed by law.

SECTION XII. OTHER TERMS AND CONDITIONS OF EMPLOYMENT.

The Mayor and City Council, in consultation with Employee, shall fix any other terms and conditions of employment as he may determine from time to time, relating to the performance of Employee, provided such terms and conditions are not inconsistent with the provisions of this Agreement, the Employee's job description or any other law.

SECTION XIII. REDUCTION OF BENEFITS.

Employer shall not at any time during the term of this Agreement reduce the salary, compensation or other financial benefits of Employee except to the degree as such a reduction across the board for all employees of the Employer.

SECTION XIV. SEVERABILITY.

If any term, covenant, or condition of this Agreement is held invalid or unenforceable, the remainder of this Agreement and all other terms shall be valid and enforceable to the fullest extent permitted by law.

SECTION XV. ASSIGNMENT.

No assignment of this Agreement or the rights and obligations hereunder shall be valid without the specific written consent of both parties hereto.

SECTION XVI. GOVERNING LAW.

This Agreement has been executed and delivered in, and shall be interpreted, construed and enforced pursuant to and in accordance with the laws of the State of Alabama.

SECTION XVII. AMENDMENTS AND AGREEMENT EXECUTION

This Agreement and amendments thereto shall be in writing and executed in multiple copies. Each multiple copy shall be deemed an original, but all multiple copies together shall constitute one and the same instrument.

SECTION XVIII. WAIVER OF BREACH.

The waiver of either party of a breach or violation of any provision of this Agreement shall not operate as, or be construed to be, a waiver of any subsequent breach of the same or other provision hereof.

SECTION XIX. TIME OF ESSENCE.

Time shall be of the essence with respect to this Agreement.

SECTION XX. ENTIRE AGREEMENT.

This Agreement (including attachments) supersedes all previous contracts and constitutes the entire agreement between the parties hereto.

SECTION XXI. HEADINGS.

Headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.

IN WITNESS WHEREOF, the City of Opelika has caused this Agreement to be signed and executed in its behalf by its Mayor, and duly attested by its City Clerk, and the Employee has signed and executed this Agreement the day and year first above written.

THE CITY OF OPELIKA, ALABAMA

By:_______________________________
GARY FULLER, ITS MAYOR

ATTEST:

____
ROBERT G. SHUMAN, CITY CLERK

____
GUY F. GUNTER, III,

STATE OF ALABAMA
COUNTY OF LEE

I, the undersigned authority, a Notary Public in and for said county and state, hereby certify that GARY FULLER and ROBERT G. SHUMAN, whose names as Mayor and City Clerk, respectively, of the City of Opelika, Alabama, a municipal corporation, are signed to the foregoing instrument who are known to me, acknowledged before me on this day, that, being informed of the contents of said instrument they, in their capacity as Mayor and City Clerk for the City of Opelika, executed the same voluntarily on the day the same bears date.

GIVEN under my hand and official seal of office this the ______ day of December, 2016.

____
NOTARY PUBLIC
MY COMMISSION EXPIRES:________

STATE OF ALABAMA
COUNTY OF LEE

Before me, the undersigned authority, a Notary Public in and for said county and state, hereby certify that GUY F. GUNTER, III,, whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day, that, being informed of the contents of said conveyance, she executed the same voluntarily on the day the same bears date.

GIVEN under my hand and official seal of office this the ______ day of December, 2016.

____
NOTARY PUBLIC
MY COMMISSION EXPIRES:________

CITY OF OPELIKA
POSITION DESCRIPTION

TITLE: CITY ATTORNEY

GENERAL DESCRIPTION

Under the strategic direction of the Mayor and City Council, acts as the Chief Legal Officer of the City. Responsible for the proper administration of the legal affairs of the City.

PRIMARY DUTIES: *This list represents the essential tasks performed by this position. Employees may be assigned additional duties by management as required.*

Provides legal advice, written opinions and consultations on matters affecting the City to the Mayor, City Council, City boards, officers and employees.

Performs legal research including extensive analysis of legal positions.

Determines and applies legal principles and precedents to problems and issues.

Attends all City Council meetings and work sessions.

Attends regularly scheduled Planning Commission meetings.

Prepares and reviews necessary legal documents such as resolutions, ordinances, deeds, easements, contracts, etc.

Monitors pending and potential litigation.

Trains, motivates, evaluates, disciplines and directs employees of the legal department.

Answers communications of the public relative to municipal ordinances and legal matters affecting the City.

Reviews the legality and/or sufficiency of contracts, bonds, bids, leases, etc.

Coordinates with law firms and attorneys providing representation to the City in litigation and other matters.

Prosecutes and supervises the prosecution of cases in the Opelika Municipal Court.

Prepares annual department budget and monitors expenditures against budget.

DATA RESPONSIBILITY: *Data refers to information, knowledge, and conceptions obtained by observation, investigation, interpretation, visualization, and mental creation. Data are intangible and include numbers, words, symbols, ideas, concepts, and oral verbalizations.*

Compiles, examines, or evaluates data or information and possibly recommends action based on results.

PEOPLE RESPONSIBILITY: *People refers to individuals who have contact with or are influenced by the position.*

Requires the ability to work effectively with the Mayor, City Council members and other co-workers.

CITY ATTORNEY

Must relate positively and professionally with press representatives, public officials, co-workers and members of the general public.

Must exhibit patience and empathy with persons holding hostile or opposing views.

Maintain professional decorum in a manner which promotes public confidence in the City, its officials, and employees.

Requires tact and judgment to avoid friction.

INVOLVEMENT WITH THINGS: *Things refers to inanimate objects such as substances, materials, machines, tools, equipment, work aids, or products. A thing is tangible and has shape, form, and other physical characteristics.*

Regular use of telephone as required and occasional use of copier machine to copy legal documents.

ASSETS RESPONSIBILITY: *Assets responsibility refers to the responsibility for achieving economies or preventing loss within the organization.*

Requires some responsibility for achieving minor economies and/or preventing minor losses through the handling of or accounting for materials, supplies, or equipment.

MATHEMATICAL REQUIREMENTS: *Mathematics deals with quantities, magnitudes, and forms and their relationships and attributes by the use of numbers and symbols.*

Uses addition, subtraction, multiplication, and division; may compute ratios, rates, and percents.

COMMUNICATIONS REQUIREMENTS: *Communications involves the ability to read, write, and speak.*

Ability to effectively counsel, persuade and inform others regarding City operations, policies and needs under close scrutiny of the public, press, courts, and other agencies of government.

Requires ability to exercise discretion and maintain confidentiality.

COMPLEXITY OF WORK: *Complexity of work addresses the analysis, initiative, ingenuity, creativity, and concentration required by the position and the presence of any unusual pressures.*

Requires knowledge of the organization, functions and goals of City government; requires extensive knowledge of the provisions of federal and state law affecting municipalities; requires extensive knowledge of the Opelika City Code, Opelika Zoning Ordinance, Subdivision Regulations and Personnel Policies and Procedures; requires the use of discretion and independent judgment, acquiring and retaining familiarity with a large number of complex court cases and sophisticated and rapidly changing principles of law and applying these principles to complex factual situations, drafting contract provisions, ordinances, regulations, and other legal documents for City departments.

JUDGMENT REQUIREMENTS: *Judgment requirements refers to the frequency and complexity of judgments and decisions given the stability of the work environment, the nature and type of guidance, and the breadth of impact of the judgments and decisions.*

Initiative and ingenuity is necessary; responsible for making decisions and recommendations in matters of serious financial or practical consequence; must have the ability to apply principles of law to complex factual situations.

IMPACT OF ERRORS: *Impact of decisions refers to consequences such as damage to property, loss of data or property, exposure of the organization to legal liability, or injury or death for individuals.*

Updated December 2013

CITY ATTORNEY

Makes decisions and recommendations in matters of serious financial or practical consequence or involving the welfare of lives and property.

EDUCATION REQUIREMENTS: *Education requirements refers to job specific training and education required for entry into the position.*

Graduation from school of law accredited by the American Bar Association with a juris doctorate degree.

LICENSES, CERTIFICATIONS, AND REGISTRATIONS REQUIRED: *Licenses, certifications, and registrations refers to professional, state, or federal licenses, certifications, or registrations required to enter the position.*

Must be licensed to practice law in the State of Alabama.

EXPERIENCE REQUIREMENTS: *Experience refers to the amount of work experience that is required for entry into the position that would result in reasonable expectation that the person can perform the tasks required by the position.*

Requires seven years of professional experience as a practicing attorney, including trial experience.

PHYSICAL DEMANDS: *Physical demands refers to the requirements for physical exertion and coordination of limb and body movement.*

Requires sedentary work involving standing or walking for brief periods, exerting up to 10 pounds of force on a regular basis, and moderate dexterity in operating machines, tools, or office equipment.

SAFETY OF OTHERS: *Safety of others refers to the responsibility for the safety of others, either inherent in the job or to assure the safety of the general public.*

Requires no responsibility for the safety and health of others.

UNAVOIDABLE HAZARDS: *Unavoidable hazards refers to unusual conditions in the work environment that may cause illness or injury.*

The position is exposed to no unusual environmental hazards.

SENSORY (ADA) REQUIREMENTS: *Sensory requirements refers to hearing, sight, touch, taste, and smell necessary to perform the tasks required by the position efficiently.*

The position requires normal visual acuity and field of vision, hearing, and speaking.

AMERICANS WITH DISABILITIES ACT COMPLIANCE

The City of Opelika is an Equal Opportunity Employer. ADA requires the City to provide adequate accommodations to qualified persons with disabilities. Prospective and current employees are encouraged to discuss ADA accommodations with management.

Updated December 2013

RESOLUTION NO. 350-16

Special Appropriation to the JW Darden Foundation.

RESOLUTION NO. _________

WHEREAS, Doctor J. W. Darden was the first African-American medical doctor in Opelika, Alabama, and

WHEREAS, the J. W. Darden Foundation Inc. has been formed to honor and preserve the many contributions that Doctor Darden made to this community, and

WHEREAS, the J. W. Darden Foundation Inc. is holding their annual "Black Tie Legacy Gala" on January 28, 2017 to raise additional funds that are needed to support Medical Scholarships and the Darden Wellness Center, and

WHEREAS, City Council President Eddie Smith Ward 4, President Pro-tem Patricia Jones Ward 1, Councilwoman Tiffany Pitts Ward 2, Councilman Dozier Smith T Ward 3 and Councilman David Canon Ward 5 would like to contribute a portion of their discretionary funds to the J. W. Darden Foundation Inc. to help sponsor the 2017 Black Tie Legacy Gala.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Opelika, Alabama, a municipal corporation, as follows:

1. The City Council approves a special appropriation of $2000.00 from the City Council discretionary funds as detailed below:

Patricia Jones	Ward 1 Reserve Fund	$400.00
Tiffany Pitts	Ward 2 Current Year	$400.00
Dozier Smith T	Ward 3 Reserve Fund	$400.00
Eddie Smith	Ward 4 Reserve Fund	$400.00
David Canon	Ward 5 Reserve Fund	$400.00

2. That the City Council hereby declares and determines that the expenditures of said public funds will serve a public purpose for the City of Opelika.
3. That Mayor Fuller and the Controller are hereby authorized and directed to transfer said funds as designated above to the appropriate account(s).

4. That the City Clerk-Treasurer is hereby authorized to prepare and process the appropriate document(s) so that a check can be prepared for $2,000.00 payable to the J.W. Darden Foundation Inc.

ADOPTED and APPROVED this the _____ day of _________________, 2016.

____

C. E. "Eddie" Smith, Jr.

President of the City Council

City of Opelika, Alabama

ATTEST:

____

Robert G. Shuman, CMC

City Clerk - Treasurer

RESOLUTION NO. 351-16

Agreement for Engineering Services to Design Industrial Access Road for Car Tech.

RESOLUTION NO. _____________

RESOLUTION APPROVING AGREEMENT FOR PROFESSIONAL ENGINEERING AND CONSULTATION SERVICES WITH CDG ENGINEERS & ASSOCIATES, INC.

WHEREAS, the City of Opelika, Alabama (hereinafter the "City") is sponsoring an industrial access road grant to benefit the Cartech project in Opelika; and

WHEREAS, road improvements are needed on Fox Run Parkway to expand an existing turn lane from Columbus Parkway (Highway 280) back to Fox Run Avenue in the southbound land, and to improve Fox Run Avenue to benefit the new Cartech facility; and

WHEREAS, the City has determined that there is a need for professional engineering and technical services related to said industrial access road improvements on Fox Run Parkway and Fox Run Avenue; and

WHEREAS, City staff recommends that CDG Engineers & Associates, Inc. ("CDG") perform said services; and

WHEREAS, an Agreement for Engineering and Consultation Services (the "Agreement") has been prepared by CDG and submitted to the City Council for approval and the City Council has determined that it is now in the best interest of the City and its citizens to approve said Agreement.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Opelika, Alabama, as follows:

1. That the Agreement for Professional Engineering and Consultation Services to be entered into by and between the City and CDG, a copy of which is attached hereto and incorporated herein by reference as Exhibit “A”, be and the same is hereby approved, authorized, ratified and confirmed in the form substantially submitted to the City Council with such changes thereto (by addition, deletion or substitution) as the Mayor shall approve which approval shall be conclusively evidenced by execution and delivery of said Agreement.

2. That the Mayor is hereby authorized and directed to execute and deliver the Agreement in the name and on behalf of the City.

3. That the officers of the City and any person or persons designated and authorized by any officers of the City to act in the name and on behalf of the City, or any one or more of them, are authorized to do or cause to be done or performed in the name and on behalf of the City such other acts and to execute and deliver or cause to be executed and delivered in the name and on behalf of the City such other notices, certificates, assurances or other instruments or other communications under the seal of the City or otherwise, as they, or any of them deem necessary or advisable or appropriate in order to carry into effect the intent of the provisions of this Resolution and the attached Agreement.

4. That the compensation to be paid to CDG under and pursuant to the Agreement shall be paid from the 2011 Road Construction Fund and the Controller is hereby authorized and directed to make all necessary and appropriate budget adjustments and accounting entries to implement this Resolution.

5. That the Purchasing-Revenue Manager is hereby authorized and directed to issue a purchase orders to CDG for the provision of engineering services as outlined in the Agreement

attached hereto at a total cost not to exceed $65,000.

6. That this Resolution shall take effect upon its passage and adoption by the City Council.

ADOPTED AND APPROVED this the ______ day of ___________________, 2016.

____

PRESIDENT OF THE CITY COUNCIL OF THE CITY OF OPELIKA, ALABAMA

ATTEST:

____

CITY CLERK

CDG Project No. 41-16-71301

CDG

Engineering. Environmental. Answers.

AGREEMENT FOR PROFESSIONAL ENGINEERING AND CONSULTATION SERVICES

THIS AGREEMENT, made and entered into this ______ day of December, 2016, by and between the **City of Opelika, Alabama** hereinafter referred to as the OWNER, and **CDG Engineers & Associates, Inc.**, hereinafter referred to as the ENGINEER.

WHEREAS, the OWNER desires to have professional engineering services and consultation performed relative to preparation of plans and specifications for construction involved in the Industrial Access Road Improvements of Alabama Department of Transportation (ALDOT) Project No. IAR-041-000-018 herein after referred to as the PROJECT.

STATEMENT OF EXPECTATIONS:

The intent of this project is to assist the City of Opelika in the development and preparation of plans and specifications to include geotechnical report necessary for the competitive bidding for the construction of ALDOT Project No. IAR-041-000-018 Industrial Access Road Improvements. The plans and specifications for this project will consist of two (2) improvements for the City of Opelika which are on Fox Run Avenue (1) and Fox Fun Parkway (2). The Fox Run Avenue rehabilitation (1) will include the removal and replacement of the existing road which will connect the property of the Industry to a main arterial of Fox Run Parkway. The existing roadway is 30 feet in width with curb and gutter. Due to the proposed heavy loads and traffic count, the existing flexible pavement will be removed and replaced with a total of approximately 7.75 inches (to be verified by Materials Testing) of flexible bituminous concrete. The Fox Run Parkway project (2) will consist of the extension of an existing turn lane from Columbus Parkway (Highway 280) back to Fox Run Avenue in the southbound lane. Plans and specifications will also include, once the widening has been completed, the entire surface area of Fox Run Parkway between Fox Run Avenue and Highway 280 receiving 2 inches of wearing surface and re-striping. CDG will coordinate all plans and specifications with the City of Opelika and the Alabama Department of Transportation for final approval before submitted for bidding per ALDOT's requirements and procedures.

WHEREAS, not having engaged any other engineers for the Project, OWNER desires to retain the ENGINEER as its sole and exclusive engineering and consulting firm for the Project;

NOW THEREFORE, in consideration of the mutual covenants and conditions hereinafter contained, the OWNER and ENGINEER do agree, each with the other, as follows:

CDG Project No. 41-16-71301

ARTICLE 1. Basic Services.

The ENGINEER shall provide the OWNER the following basic professional engineering services and consultation:

The Design Phase

1.1 The ENGINEER will consult with the OWNER to determine the OWNER's requirements for the project.

1.2 The ENGINEER will conduct preliminary studies and investigations of the proposed work, prepare preliminary cost estimates, and make recommendations as to the general type and quantities of work that appear to be required.

1.3 The ENGINEER will perform and accomplish the detailed design, including the preparation of plans and specifications, for the proposed improvements.

1.4 The ENGINEER will facilitate the required ALDOT review(s) and approval(s) necessary to let the contract to construction in accordance with established ALDOT Standards and Specifciations.

The Bid Phase

1.5 After the OWNER's acceptance of the plans and specifications as well as the ENGINEER's most recent estimate of probable Project cost, and upon OWNER's authorization to proceed, the ENGINEER shall proceed with performance of the services called for in the Bidding Phase. This phase shall terminate and the services to be rendered thereunder shall be considered complete upon awarding of the bid to the selected Contractor and upon approval of ALDOT.

1.6 The ENGINEER will assist the OWNER in preparing the Contract Documents, the bid and any pre-qualification packages, and any necessary advertisements, in receiving bids and any pre-qualification applications for the Project, in conducting any pre-bid conferences and bid openings, and in making recommendations for qualifying contractors and awarding contracts for construction. For projects subject to the competitive bid law, the OWNER is responsible for the final determination of the lowest responsible and responsive bidder to whom a construction contract is awarded and shall obtain such legal counsel as necessary to make that determination.

The Construction Phase

1.7 The ENGINEER will not provide Construction Engineering & Inspection Services under this agreement. Separate agreement will be forwarded.

ARTICLE 2. Additional Services.

If authorized in writing by OWNER and accepted by the ENGINEER through written amendment hereto, ENGINEER shall furnish, or obtain from others, additional services of the types listed below. These services will be paid for by the OWNER as indicated in Article 4 of the Agreement.

2.1 Preparation of applications and supporting documents (in addition to those furnished under Article 1, if applicable) for private or governmental grants, loans or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.

2.2 Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by OWNER.

2.3 Services resulting from significant changes in the scope, extent, or character of the portions of the Services designed or specified by ENGINEER or its design requirements including, but not limited to, changes in size, complexity, OWNER's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date of this Agreement or are due to any other causes beyond ENGINEER's control.

2.4 Providing renderings or models not defined as part of construction plans for OWNER's use.

2.5 Geotechnical design will be in accordance with ALDOT Bureau of Materials Testing requirements utilized in the preliminary design of the Project.

2.6 Undertaking investigations and studies including, but not limited to, detailed consideration of operations, maintenance, and overhead expenses; the preparation of feasibility studies, cash flow and economic evaluations, rate schedules, and appraisals; assistance in obtaining financing for a Project; evaluating processes available for licensing, and assisting OWNER in obtaining process licensing; detailed quantity surveys of materials, equipment, and labor; and audits or inventories required in connection with construction performed by OWNER.

2.7 Services during out-of-town travel required of ENGINEER other than for visits to the Site or OWNER's office.

2.8 Providing construction surveys and staking to enable Contractor to perform its work, and any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.

2.9 Preparing and furnishing to OWNER Record Drawings showing appropriate record information based on Project annotated record documents received from Contractor.

2.10 Preparing to serve or serving as a consultant or witness for OWNER in any litigation, arbitration or other dispute resolution process related to the Project.

2.11 Prepare property deeds, temporary easements, construction easements, Right-of-Way documents, and assist in acquisition of such documents deemed necessary in the scope of each project.

2.12 Other services performed or furnished by ENGINEER not otherwise provided for in this Agreement.

ARTICLE 3. Responsibilities of the OWNER.

The OWNER shall provide for the ENGINEER the following information and shall do the following:

3.1 The OWNER shall provide all criteria and complete information as to the OWNER's requirements for the Project and shall furnish all design and construction standards which the OWNER will require to be included in the engineering plans, specifications, and operational narrative.

3.2 The OWNER will assist the ENGINEER by placing at the ENGINEER's disposal all available information pertinent to the Project.

3.3 The OWNER shall arrange for access to and make all provisions for the ENGINEER to enter upon public and private property to perform surveying, testing and other data collection as required for ENGINEER to perform services under this Agreement. OWNER shall appoint and designate in writing a person to act as OWNER's site access representative for such purpose, and shall include contact information for the individual so designated.

3.4 The OWNER shall be responsible for obtaining Right-of-Way (R.O.W.) acquisitions and/or Easements necessary to carry out construction tasks detailed within the project plans and specifications. The ENGINEER will assist with acquisitions at the OWNER's request. The ENGINEER will be compensated at an amount equal to the cumulative hours charged to the Project by each class of ENGINEER's employees times the rate shown in the ENGINEER's most current Standard Fee Schedule for each applicable billing class.

3.5 The OWNER shall designate in writing a person to act as the OWNER's representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions and receive information.

3.6 The OWNER shall provide such accounting, independent cost estimating and insurance counseling services as may be required for the Project The OWNER shall also provide such legal services as the OWNER may require or the ENGINEER may reasonably request with regard to legal issues pertaining to the Project that must be resolved in order for the ENGINEER to carry out its obligations under this Agreement. It is expressly understood and agreed that the ENGINEER itself shall not furnish or render any legal opinions or legal interpretations as to matters of law or application of law.

3.7 The OWNER agrees to pay all costs of physical testing of materials and equipment to be incorporated in the work and other such analysis or testing when necessary or deemed advisable by the ENGINEER, including but not limited to that testing provided for and reflected in the OWNER's Project budget.

CDG Project No. 41-16-71301

ARTICLE 4. Compensation.

4.1 The OWNER agrees to pay to the ENGINEER, in cash, total compensation of **SIXTY-FIVE THOUSAND DOLLARS ($65,000.00)** to be paid periodically as work progresses on the Design and Bid Phases as herein detailed:

DESCRIPTION OF PHASE	PERCENT OF FEE	AMOUNT PER PHASE
Additional Services – Geotech	31%	**$20,000.00**
Preliminary Design	35%	**$22,500.00**
Final Design	21%	**$13,500.00**
Bid and Award	13%	**$9,000.00**

4.2 The OWNER may, from time to time, request changes in the scope of the services of the ENGINEER to be performed hereunder. Such changes, including any increase or decrease in the amount of ENGINEER's compensation, that are mutually agreed upon by the OWNER and the ENGINEER, shall be incorporated in written amendments to this Agreement.

4.3 If the period of service for construction observation or for engineering services during construction is extended due to time extensions or time overruns to the construction contract, compensation for these additional construction observation and engineering services during the extended Period of Service shall be at the rates shown in the ENGINEER's most current Standard Fee Schedule.

4.4 OWNER shall reimburse ENGINEER for all costs incurred for the OWNER's direct instruction to rebid the project at the rates shown in the ENGINEER's most current Standard Fee Schedule.

4.5 OWNER shall reimburse ENGINEER for all costs incurred for the physical testing of materials and equipment to be incorporated in the work and other such analysis or testing when necessary or deemed advisable by the ENGINEER, including but not limited to that testing included in the OWNER's Project budget.

4.6 Compensation for services performed by ENGINEER's employees as witnesses giving testimony in any litigation, arbitration or administrative proceeding shall be paid by OWNER at a rate of 1.5 times the ENGINEER's standard hourly rates. Whenever ENGINEER's bill to OWNER includes charges for ENGINEER's consultants for such services, those charges shall be the amounts billed by ENGINEER's consultant to ENGINEER times a factor of 1.15.

4.7 Invoices are due and payable within 30 days of receipt. If OWNER fails to make any payment due ENGINEER for services and expenses within 30 days after receipt of ENGINEER's invoice therefore, the amounts due ENGINEER will be increased at the rate of 1.5% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, ENGINEER may, after giving seven days written notice to OWNER, suspend services under this Agreement until ENGINEER has been paid in full all amounts due for services, expenses, and other related charges. Payments will be credited first to interest and then to principal. OWNER shall pay all costs and fees, including but not limited to attorney's fees, incurred by ENGINEER in the collection of any sums due for services rendered and related service expenses.

ARTICLE 5. Relationship of the Parties.

5.1 The parties intend that this Agreement create an independent contractor relationship between them. The ENGINEER is a professional corporation and is not an agent or employee of OWNER for any purpose. The ENGINEER cannot and will not represent that he has the authority to bind OWNER in any contractual manner. Nevertheless, with regard to the bidding and construction phases, it is understood that ENGINEER may serve as the OWNER's representative with full authority to participate therein as designated in Article 1, above. Moreover, OWNER agrees to defend and hold ENGINEER, its employees, directors, officers and agents, harmless from any and all claims, suits, damages and expenses, including but not limited to attorneys fees, resulting from or based upon ENGINEER's actions as OWNER's representative.

5.2 Neither party is to represent to others that the relationship between them is other than as stated above.

5.3 Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than the OWNER and the ENGINEER, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of the OWNER and the ENGINEER and not for the benefit of any other party.

5.4 The OWNER and the ENGINEER each is hereby bound and the partners, successors, executors, administrators, legal representatives and assigns (to the extent permitted by Paragraph 5.5 below) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrations, legal representatives and said assigns of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

5.5 Neither the OWNER nor the ENGINEER shall assign, sublet or transfer any rights under or interest in this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated or restricted by law . Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent the ENGINEER from employing such independent professional associates, consultants, subcontractors, and vendors as the ENGINEER may deem appropriate to assist in the performance of services hereunder.

5.6 ENGINEER may employ such independent professional associates, consultants, subcontractors, and vendors as the ENGINEER may deem appropriate to assist in the performance or furnishing of services under this Agreement. ENGINEER shall not be required to employ any consultant unacceptable to ENGINEER.

ARTICLE 6. Ownership and Use of Project Documents.

6.1 All documents are instruments of service in respect to the Services, and ENGINEER shall retain an ownership and proprietary property interest therein (including the right of reuse at the discretion of the ENGINEER) whether or not the Services are completed.

6.2 Copies of documents that may be relied on by OWNER are limited to the printed copies (also known as hard copies) that are signed or sealed by the ENGINEER. Files in electronic media format of text, data, graphics, or of other types that are furnished by ENGINEER to OWNER are only for convenience of OWNER. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.

6.3 OWNER may make and retain copies of documents for information and reference in connection with the services by OWNER. Such documents are not intended or represented to be suitable for reuse by OWNER or others on extensions of the services or on any other project. Any such reuse or modification without written verification or adaptation by ENGINEER, as appropriate for the specific purpose intended, will be at OWNER's sole risk and without liability or legal exposure to ENGINEER or to ENGINEER's consultants. OWNER shall indemnify and hold harmless ENGINEER and ENGINEER's consultants from all claims, damages, and expenses including attorneys' fees arising out of or resulting therefrom.

6.4 In the event of a discrepancy between the electronic files and the hard copies, the hard copies govern.

6.5 Any verification or adaptation of the documents for extensions of the services or for any other services will entitle ENGINEER to further compensation at rates to be agreed upon by OWNER and ENGINEER.

ARTICLE 7. Liability and Indemnity.

7.1 The ENGINEER will not be responsible for delays or obstacles attributable to acts of God, acts of third parties, weather, intervention of public authorities, work stoppages, changes in the applicable laws or regulations after the date of commencement of performance hereunder and any other acts or omissions or events which are beyond the control of the ENGINEER.

7.2 OWNER may not utilize ENGINEER's construction cost estimate after thirty calendar days from the date of delivery to OWNER without ENGINEER's written consent. Estimates of cost are made on the basis of the ENGINEER's experience, qualifications, and professional judgment, but since ENGINEER has no control over the cost of labor, materials, equipment or services furnished by others, or over competitive bidding or market conditions, ENGINEER cannot and does not guarantee or warrant that proposals, bids or actual construction costs will not vary from estimates of probable costs prepared by ENGINEER. Approvals, recommendations, estimates and decisions by the ENGINEER are made on the basis of the ENGINEER's experience, qualifications, and professional judgment and are not to be construed as warranties or guarantees.

7.3 Any and all liability resulting from conditions not created or caused to be created by the ENGINEER shall be the liability of the OWNER or some third party. Any and all liability that may arise from the construction, ownership and/or operation of the improvements is solely the responsibility of the OWNER, except as such that would relate to the services provided by the Engineer or an act of a third party. If allowed by law, the OWNER hereby agrees to hold the ENGINEER harmless from such liability, claims, actions, loss or damage, including but not limited to attorney's fees, arising solely from a wrongful act of Owner.

7.4 Any and all liability resulting from conditions not created or caused to be created by the ENGINEER shall be the liability of the OWNER. Any and all liability that may arise from the construction, ownership and/or operation of the improvements is solely the responsibility of the OWNER, and the OWNER hereby agrees to hold the ENGINEER harmless from such liability, claims, actions, loss or damage, including but not limited to attorney's fees, arising therefrom.

7.5 The OWNER shall make no claim for professional negligence, either directly or by way of a cross complaint against the ENGINEER unless the OWNER has first provided the ENGINEER with a written certification executed by an independent consultant currently practicing in the same discipline as the ENGINEER and licensed in the State of Alabama. This certification shall: a) contain the name and license number of the certifier, b) specify the acts or omissions that the certifier contends are not in conformance with the standard of care for an ENGINEER performing professional services under similar circumstances; and c) state in detail the basis for the certifiers opinion that such acts or omissions do not conform to the standard of care. This certificate shall be provided by the consultant not less than thirty (30) calendar days prior to the presentation of any claim or the institution of any arbitration or judicial proceeding. This Certificate of Merit clause will take precedence over any existing state law in force at the time of the claim or demand for arbitration

ARTICLE 8. Termination.

8.1 This Agreement shall be subject to termination by either party hereto, with or without cause, upon twenty (20) days advance notice in writing. Payment due ENGINEER at such time shall be computed upon applicable terms of Article 4, the amount of work completed or in progress as of the termination date and ENGINEER's reasonable cost of winding down its services after termination.

ARTICLE 9. Miscellaneous.

9.1 This Agreement represents the entire and integrated Agreement between the OWNER and ENGINEER and supersedes all prior negotiations, representations or agreements, whether written or oral. This Agreement may only be amended, supplemented or modified by written instrument executed by both the OWNER and the ENGINEER.

9.2 It is understood and agreed by the parties hereto, that if any part, term or provision of this Agreement is held by any court of competent jurisdiction to be illegal or in conflict with any applicable law, the validity of the remaining portion or portions of this Agreement shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

9.3 It is expressively understood and agreed that the indemnity and insurance obligations of this Agreement, as well as the ENGINEER's proprietary interest in its engineering plans and specifications, shall survive the termination of this Agreement under Article 8 above as well as the completion of services under this Agreement.

9.4 This Agreement is to be governed by the laws of the State of Alabama.

WHEREFORE, the undersigned, by their signatures, certify that they have carefully read this Agreement, understand the terms and conditions contained herein, have proper authority to execute this Agreement, and do so as their own free act:

OWNER:		ENGINEER:	
By:	The Honorable Gary Fuller	By:	Jeffrey A. Harrison, P.E.
Title:	Mayor	Title:	Senior Project Manager
Date:		Date:	

OWNER's Designated Representative:		ENGINEER's Designated Representative:	
	Scott H. Parker, P.E.		Jeffrey A. Harrison, P.E.
Title:	City Engineer	Title:	Senior Project Manager
Phone:	334.705.5450	Phone:	(334) 466-9431
Fax:	334.705.5452	Fax:	(334) 466-9430
Email:	sparker@ci.opelika.al.us	Email:	jeff.harrison@cdge.com

CDG Project No. 41-16-71301

ATTACHMENT A
TERMS AND CONDITIONS

Federal Guidelines Applicable to Professional Services Contracts

1. <u>Termination of Contract for Cause / Breach of Contract</u>

If, through any cause, the Contractor shall fail to fulfill in timely and proper manner his obligations under this Contract, or if the Contractor shall violate any of the covenants, agreements or stipulations of this Contract, the Local Government shall thereupon have the right to terminate this Contract by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. If the Contractor determines that the Local Government has not provided contractual support as necessary for completion of services required herein, then the Contractor may also be able to terminate the contract with five (5) days written notice to the Local Government. Upon termination by the Contractor, compensation will be negotiated and payment made for work performed.

In such event (upon payment as outlined in article V and subject to this clause), all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by the Contractor under this Contract shall, at the option of the Local Government, become its property and the Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder.

Notwithstanding the above, the Contractor shall not be relieved of liability to the Local Government for damages sustained by the Local Government by virtue of any breach of the Contract by the Contractor, and the Local Government may withhold any payments to the Contractor for the purpose of set-off until such time as the exact amount of damages due the Local Government from the Contractor is determined.

2. <u>Termination for Convenience</u>

The Local Government or Contractor may terminate this agreement at any time by submitting a ten (10) day notice in writing to the other party. If the agreement is terminated by either party as provided herein, the Contractor will be paid for the time provided and expenses incurred up to the termination date. If this agreement is terminated due to the fault of the Contractor, Article VI relative to termination shall apply. In such event, all finished or unfinished documents and other materials as described in Paragraph 1 (upon payment as outlined in Article V and subject to this clause), shall, at the option of the Local Government, become its property.

If the agreement is terminated by the Local Government as provided herein, the Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed on such documents and materials. The Contractor shall also be reimbursed (in addition to the above payment) for that portion of the actual out-of-pocket expenses (not otherwise reimbursed under this agreement) incurred by the Contractor during the agreement period which are directly attributable to the uncompleted portion of the services covered by this agreement. If this agreement is terminated due to the fault of the Contractor, Article VI relative to termination shall apply.

3. Indemnification

To the fullest extent permitted by law, the Local Government shall defend, indemnify, and hold harmless Contractor, its agents, employees, consultants and independent contractors, from and against any and all claims, losses, damages, and expenses, including but not limited to attorney's fees, arising out of, or related to, or resulting from performance of this project, provided that such claim, loss, damages or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, including loss of use resulting there from, and is caused in whole or in part by acts or omissions of the Local Government, or its agents, employees or representatives, and regardless of whether or not such claim, damage, risk, loss or expense is caused by the negligence or other fault of any party indemnified hereunder.

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the Local Government, its agents, employees, consultants, council members and independent contractors, from and against any and all claims, losses, damages, and expenses, including but not limited to attorney's fees, arising out of, or related to, or resulting from performance of this project, provided that such claim, loss, damages or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, including loss of use resulting there from, and is caused in whole or in part by acts or omissions of Contractor, or its agents, employees or representatives, and regardless of whether or not such claim, damage, risk, loss or expense is caused by the negligence or other fault of any party indemnified hereunder.

4. Changes

The OWNER may, from time to time, request changes of the ENGINEER in the Scope of Services to be performed hereunder. Such changes, or renegotiation, including any increase or decrease in the amount of the ENGINEER'S compensation, which is mutually agreed upon by and between the OWNER and the ENGINEER, shall be incorporated in written amendments to this contract. The contract may be extended under mutually agreed provisions, through a written amendment to this document.

5. Assignability:

The ENGINEER shall not assign any interest on this contract, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the OWNER: provided, however, that claims for money by the ENGINEER from the OWNER under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment or transfer shall be promptly furnished to the OWNER.

6. Reports and Information

The Contractor, at such times and in such forms as the Local Government may require, shall furnish the Local Government such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Contract, the cost and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Contract.

7. Findings Confidential

All of the reports, information, data, etc., prepared or assembled by the Contractor under this Contract are confidential and the Contractor agrees that they shall not be made available to any individual or organization without the prior written approval of the Local Government.

8. Copyright

No reports, maps or other documents produced in whole or in part under this Contract shall be the subject of an application for copyright by or on behalf of the Contractor and No material produced in whole or in part under this contract shall be subject to copyright by or on behalf of the ENGINEER in the United States or in any other country. The OWNER shall have unrestricted authority to publish, disclose, distribute, and otherwise use, in whole or in part, any reports, data or other materials prepared under this contract.

9. Compliance with Local Laws

The Contractor shall comply with all applicable laws, ordinances and codes of the State and local governments, and the Contractor shall hold the Local Government harmless with respect to any damages arising from any actions committed in performing any of the work embraced by this Contract.

10. Access to Records

The Contractor shall maintain accounts and records, including personnel, property and financial records, adequate to identify and account for all costs pertaining to the Contract and such other records as may be deemed necessary by the Local Government to assure proper accounting for all project funds, both CDBG and non-CDBG shares. These records will be made available for audit purposes to the Local Government or any authorized representative, and will be retained for five (5) years after the expiration of this Contract unless permission to destroy them is granted by the Local Government.

11. Title VI Civil Rights Act of 1964

Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

12. Section 109 of the Housing and Community Development Act of 1974

No person in the United States shall on the ground of race, color, national origin or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.

13. Conflict of Interest Clauses

Interest of Members of a Local Government – No member of the governing body of the Local Government and no other officer, employee, or agent of the Local Government who exercises any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in the Contract; and the Contractor shall take appropriate steps to assure compliance.

Interest of Other Local Public Officials – No member of the governing body of the locality and no other public official of such locality, who exercises any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this Contract; and the Contractor shall take appropriate steps to assure compliance.

Interest of Consultant and Employees – The Contractor covenants that he presently has no interest and shall not acquire interest, direct or indirect, in the study area or any parcels therein or any other interest which would conflict in any manner or degree with the performance of his services hereunder. The Contractor further covenants that in the performance of this Contract, no person having any such interest shall be employed.

Lobbying Activities and Disclosure – The Contractor certifies, to the best of his or her knowledge and belief, that:

A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Local Government, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of any agency, a Member of

Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

C. The Contractor in the award documents for all sub awards (as allowed for herein) at all tiers (including shall require that the language of this certification be included subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.

14. Rehabilitation Act of 1973, Section 504 Handicapped (if $2,500 or over)

Affirmative Action for Handicapped Workers:

A. The Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

B. The Contractor agrees to comply with the rules, regulations and relevant orders of the Secretary of Labor issued pursuant to the Act.

C. In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations and relevant orders of the Secretary of Labor issued pursuant to the Act.

D. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the contracting officer. Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants.

E. The Contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.

F. The Contractor will include the provisions of this clause in every subcontract or purchase order of $2,500 or more unless exempted by rules, regulations or orders of the Secretary issued pursuant to Section 503 of the Act, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

15. <u>Age Discrimination Act of 1975 (for Contracts over $2,000)</u>

No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination receiving Federal financial assistance.

16. <u>"Section 3" Compliance in the Provision of Training, Employment and Business Opportunities</u>

A. The work to be performed under this Contract is on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the project.

B. The parties to this Contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in `24 CFR Part 135, and all applicable rules and orders of the Department issued there under prior to the execution of this Contract. The parties to this Contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.

C. The Contractor will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

D. The Contractor will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 135. The Contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

E. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued hereunder prior to the execution of the contract, shall be a condition of the Federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors and assigns to those sanctions specified by the grant or loan agreement or contract through which Federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135.

17. Section 3 Plan Format (for Contracts $10,000 and Above)

CDG ENGINEERS & ASSOCIATES, INC. agrees to implement the following specific affirmative action steps directed at increasing the utilization of low income residents and businesses within the COUNTY OF LEE, ALABAMA.

A. To ascertain from the locality's CDBG program official the exact boundaries of the Section 3 covered project area and where advantageous, seek the assistance of local officials in preparing and implementing the affirmative action plan.

B. To attempt to recruit from within the Local Government the necessary number of lower income residents through: local advertising media, signs placed at the proposed site for the project, and community organizations and public or private institutions operating within or serving the project area such as Service Employment and Redevelopment (SER), Opportunities Industrialization Center (OIC), Urban League, Concentrated Employment Program, Hometown Plan, or the U.S. Employment Service.

C. To maintain a list of all lower income area residents who have applied either on their own or on referral from any source, and to employ such persons, if otherwise eligible and if a vacancy exists.

* D. To insert this Section 3 Plan in all bid documents, and to require all bidders on subcontracts to submit a Section 3 affirmative action plan including utilization goals and the specific steps planned to accomplish these goals.

E. To insure that subcontracts which are typically let on a negotiated rather than a bid basis in areas other than Section 3 covered project areas are also let on a negotiated

* Loans, grants, contracts and subsidies for less than $10,000.00 will be exempt.

basis, whenever feasible, when let in a Section 3 covered project area.

F. To formally contact unions, subcontractors and trade associations to secure their cooperation for this program.

G. To insure that all appropriate project area business concerns are notified of pending sub contractual opportunities.

H. To maintain records, including copies of correspondence, memoranda, etc., which document that all of the above affirmative action steps have been taken.

I. To appoint or recruit an executive official of the company or agency as Equal Opportunity Officer to coordinate the implementation of this Section 3 Plan.

J. To list all project workforce needs for all phases of this project by occupation, trade, skill level and number of positions.

18. Executive Order 11246, Section 202 Equal Opportunity Clause (Contracts Above $10,000)

During the performance of this Contract, the Contractor agrees as follows:

A. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, sex, color or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, sex, color or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection of training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Local Government setting forth the provisions of this non-discrimination clause.

B. The Contractor will, in all solicitation or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex or national origin.

C. The Contractor will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Contract so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

D. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

E. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the Local Government's Department of Housing and Community Development and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

F. In the event of the Contractor's noncompliance with the noncompliance clause of this Contract or with any of such rules, regulations or orders, this Contract may be canceled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

G. The Contractor will include the provisions of paragraphs (A) through (G) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Local Government's Department of Housing and Community Development may direct as a means of enforcing such provisions including sanctions for noncompliance: provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the County's Department of Housing and Community Development, the Contractor may request the United States to enter such litigation to protect the interests of the United States.

19. Special Equal Opportunity Provisions (Applicable to Federally Assisted Construction Contracts and Related Subcontracts $10,000 and Under)

Three paragraph Equal Opportunity Clause for activities and contracts not subject to Executive Order 11246, as amended.

During the performance of this Contract, the Contractor agrees as follows:

A. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor shall take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

B. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by Contracting Officer setting forth the provisions of this non-discrimination clause. The Contractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

C. Contractor shall incorporate foregoing requirements in all subcontracts.

20. Section 402 Veterans of the Vietnam Era (if $10,000 or over):

Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era

1. The ENGINEER will not discriminate against any employee or applicant for employment because he or she is a disabled veteran or veteran of the Vietnam era in regard to any position for which the employee or applicant for employment qualified. The ENGINEER agrees to take affirmative action to employ, advance in employment and otherwise treat qualified disabled veterans and veteran of the Vietnam era without discrimination based on their disability or veteran status in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

2. The ENGINEER agrees that all suitable employment openings of the ENGINEER which exist at the time of the execution of this Contract and those which occur during the performance of this Contract, including those not generated by this Contract and including those occurring at an establishment of the Contractor other than the one wherein the Contract is being performed but excluding those of independently operated corporate affiliates, shall be listed at an appropriate local office of the State Employment Service system wherein the opening occurs. The ENGINEER further agrees to provide such reports to such local office regarding employment openings and hires as may be required.

State and local government agencies holding Federal contracts of $10,000 or more shall also list all their suitable openings with the appropriate office of the State Employment Service, but are not required to provide those reports set forth in paragraphs 4 and 5.

3. Listing of employment openings with the employment service system pursuant to this clause shall be made at least concurrently with the use of any other recruitment source or effort and shall involve the normal obligations which attach to the placing of a bona fide job order, including the acceptance of referrals of veterans and non—

veterans. The listing of employment openings does not require the hiring of any particular job applicant or from any particular group of job applicants, and nothing therein is intended to relieve the ENGINEER from any requirements in Executive Orders or regulations regarding non—discrimination in employment.

4. The reports required by paragraph 2 of this clause shall include, but not be limited to, periodic reports which shall be filed at least quarterly with the appropriate local office or, where the ENGINEER has more than one hiring location in a State, with the central office of that State Employment Service. Such reports shall indicate for each hiring local (1) the number of individuals hired during the reporting period; (2) the number of nondisabled veterans of the Vietnam era hired; (3) the number of disabled veterans hired. The reports should include covered veterans hired for on-the-job training under 38 U.S.C. 1787. The ENGINEER shall submit a report within 30 days after the end of each reporting period wherein any performance is made on this contract identifying data for each hiring location copies of the reports submitted until the expiration of one year after final payment under the Contract, during which time these reports and related documentation shall be made available, upon request, for examination by any authorized representatives of the contracting officer or one of the Secretary of Labor. Documentation would include personnel records respecting job openings, recruitment and placement.

5. Whenever the ENGINEER becomes contractually bound to the listing provisions of this clause, it shall advise the employment service system in each State where it has establishments of the name and location of each hiring location in the State. As long as the ENGINEER is contractually bound to these provisions and has so advised the State system, there is no need to advise the State system when it is no longer bound by the contract clause.

6. This clause does not apply to the listing of employment openings which occur and are filled outside of the 50 States, The District of Columbia, Puerto Rico, Guam and the Virgin Islands.

7. The provisions of paragraphs 2, 3, 4 and 5 of this clause do not apply to openings which the ENGINEER proposes to fill from within his own organization or to fill pursuant to a customary and traditional employer—union hiring arrangement. This exclusion does not apply to a particular opening once an employer decides to consider applicants outside of his own organization or employer—union arrangement for that opening.

8. As used in this clause:

a. "All suitable employment openings" includes, but is not limited to, openings which occur in the following job categories: production and nonproduction; plant and office; laborers and mechanics; supervisory and nonsupervisory; technical; and executive, administrative, and professional openings are compensated on a salary basis of less than $25,000 per year. This term includes full—time employment, temporary employment of more than three days duration, and part-time employment. It does not include openings which the ENGINEER proposed to fill from within his own organization or to fill pursuant to a customary and traditional employer—union hiring arrangement nor openings in an educational institution which are restricted to students of that institution. Under the most compelling circumstances an employment opening may not be suitable for listing, including such situations where the needs of the Government cannot reasonably be otherwise supplied, where listing would be contrary to national security, or where the requirement of listing would otherwise not be for the best interest of the Government.

b. "Appropriate office of the State Employment Service system" means the local office of the Federal State national system of public employment offices with assigned responsibility for serving the areas where the employment opening to be filled, including the District of Columbia, Guam, Puerto Rico and the Virgin Islands.

c. "Openings which the ENGINEER proposed to fill from within his own organization" means employment openings for which no consideration will be given to person outside the ENGINEER'S organization (including any affiliates, subsidiaries, and the parent companies) and includes any openings which the ENGINEER proposes to fill from regularly established "recall" lists.

9. The ENGINEER agrees to comply with the rules, regulations and relevant orders of Secretary of Labor issued pursuant to the Act.

10. In the event of the ENGINEER'S noncompliance with the requirements of this clause, actions for non-compliance may be taken in accordance with the rules, regulations and relevant orders of the Secretary of Labor issued pursuant to the Act.

11. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by their Director, provided by or through the contracting officer. Such notice shall state the ENGINEER'S obligation under the law to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era for

employment, and the rights of applicants and employees.

12. The ENGINEER will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of the Vietnam Era Veterans Readjustment Assistance Act, and is committed to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era.

13. The ENGINEER will include the provisions of this clause in every subcontract or purchase order of $10,000 or more unless exempted by rules, regulations or orders of the Secretary issued pursuant to the Act, so that provisions will be binding upon each subcontractor or vendor. The ENGINEER will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provision, including action for noncompliance.

In addition to the foregoing requirements, all nonexempt ENGINEERS and subcontractors shall furnish to the OWNER the following:

A. A stipulation by the ENGINEER or subcontractors, that any facility to be utilized in the performance of any nonexempt contract or subcontract, is not listed on the List of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 CFR 15.20.

B. Agreement by the ENGINEER to comply with all the requirements of Section 114 of the Clean Air Act, as amended, (42 U.S.C. 1857c—8) and Section 308 of the Federal Water Pollution Control Act, as amended, (33 U.S.C. 1318) relating to inspection, monitoring, entry, reports and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.

C. A stipulation that as a condition for the award of the contract, prompt notice will be given of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized, or to be utilized for the contract, is under consideration to be listed on the EPA List of Violating Facilities.

D. Agreement by the ENGINEER that he will include, or cause to be included, the criteria and requirements in paragraphs A through D of this section in every nonexempt subcontract and requirement that the Contractor will take such actions as the Government may direct as a means of enforcing such provisions.

14. Special Conditions Pertaining to Hazards, Safety Standards and Accident Prevention.

A. Lead-Based Paint Hazards (applicable to contracts for construction or rehabilitation of residential structures).

The construction or rehabilitation of residential structures is subject to the HUD Lead—Based Paint regulations, 24 CFR Part 35. The ENGINEER and Subcontractors shall comply with the provisions for the elimination of lead-based paint hazards under sub-part B of inspections and certifications required under Section 3.14 (f) thereof.

B. Use of Explosives (modify as required).

When the use of explosives is necessary for the prosecution of the work, the ENGINEER shall observe all local, State and Federal laws in purchasing and handling of explosives. The ENGINEER shall take all necessary precaution to protect completed work, neighboring property, water lines or other underground structures. Where there is danger to structures or property from blasting, the charges shall be reduced and the material shall be covered with suitable timber, steel or rope mats.

21. Non-Segregation of Facilities

The contractor certifies that all facilities utilized in performance of said duties outlined herein will not be segregated in any form or manner.

22. Beason-Hammon Alabama Taxpayer and Citizen Participation Act

By signing this contract, grant, or other agreement, the contracting parties affirm, for the duration of the agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom.

____

Jeffrey A. Harrison, Principal

Date: __________________

CDG Project No. 41-16-71301

State of Alabama
County of Lee

CERTIFICATE OF COMPLIANCE WITH THE BEASON-HAMMON ALABAMA TAXPAYER AND CITIZEN PROTECTION ACT (ACT 2011-535, as amended by ACT 2012-491)

DATE: ____________________

RE Contract/Grant/Incentive: **41-16-71301** by and between CDG Engineers & Associates, Inc. and the City of Opelika, AL.

The undersigned hereby certifies to the State of Alabama as follows:

1. The undersigned holds the position of Principal with the Contractor/Grantee named above, and is authorized to provide representations set out in this Certificate as the official and binding act of that entity, and has knowledge of the provisions of THE BEASON-HAMMON ALABAMA TAXPAYER AND CITIZEN PROTECTION ACT (ACT 2011-535 of the Alabama Legislature, as amended by ACT 2012-491) which is described herein as "the Act."
2. Using the following definitions from Section 3 of the Act, select and initial either (a) or (b), below, to describe the Contractor/Grantee's business structure.

   BUSINESS ENTITY. Any person or group of persons employing one or more persons performing or engaging in any activity, enterprise, profession, or occupation for gain, benefit, advantage, or livelihood, whether for profit or not for profit.

   a. Self-employed individuals, business entities filing articles of incorporation, partnerships, limited partnerships, limited liability companies, foreign corporations, foreign limited partnerships, and foreign limited liability companies authorized to transact business in this state, business trusts, and any business entity that registers with the Secretary of State.

   b. Any business entity that possesses a business license, permit, certificate, approval, registration, charter, or similar form of authorization issued by the state, any business entity that is exempt by law from obtaining such a business license, and any business entity that is operating unlawfully without a business license.

   EMPLOYER. Any person, firm, corporation, partnership, joint stock association, agent, manager, representative, foreman, or other person having

CDG Project No. 41-16-71301

control or custody of any employment, place of employment, or of any employee, including any person or entity employing any person for hire within the State of Alabama, including a public employer. This term shall not include the occupant of a household contracting with another person to perform casual domestic labor within the household.

X (a) The Contractor/Grantee is a business entity or employer as those terms are defined in Section 3 of the Act.

___ (b) The Contractor/Grantee is not a business entity or employer as those terms are defined in Section 3 of the Act.

3. As of the date of this Certificate, the Contractor/Grantee does not knowingly employ an unauthorized alien within the State of Alabama and hereafter it will not knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama;
4. The Contractor/Grantee is enrolled in E-Verify unless it is not eligible to enroll because of the rules of that program or other factors beyond its control.

Certified this 13th day of December 2016.

Jeffrey A. Harrison
Name of Contractor/Grantee/Recipient

By: ____________________

Its Principal

The above Certification was signed in my presence by the person whose name appears above, on this 13th day of December 2016.

WITNESS: ____________________

Louie A. Arvelo
Printed Name of Witness

RESOLUTION NO. 352-16

License Agreement with Ericsson Mediaroom - OPS.

RESOLUTION NO. _____________

RESOLUTION APPROVING ERICSSON MEDIAROOM LICENSE AGREEMENT

WHEREAS, Ericsson ("Ericsson") is a multinational networking and telecommunications equipment and services company; and

WHEREAS, Ericsson Mediaroom is an end-to-end video platform for operators to deliver Internet Protocol Television (IPTV) subscription services, including content-protected, live, digital, video recorder, video on demand, multiscreen and applications; and

WHEREAS, Ericsson multimedia services are delivered to customers via set-top boxes; and

WHEREAS, Ericsson Mediaroom is essential to help the City of Opelika, Alabama (the "City") d/b/a Opelika Power Services ("OPS") deliver innovative, advanced IP HDTV and HD multi-room DVR experiences to its premium customers; and

WHEREAS, Ericsson provides Mediaroom use rights to OPS pursuant to Ericsson Mediaroom License Agreement; and

WHEREAS, the City desires to obtain Ericsson Mediaroom services; and

WHEREAS, a proposed Ericsson Mediaroom License Agreement ("Agreement") has been prepared and submitted to the City Council for approval, and the City Council has determined that it is now in the best interest of the City and its citizens to approve said Agreement; and

WHEREAS, licensing fees are based on the number of set-top boxes that have been enabled on a monthly basis; and

WHEREAS, Ericsson Mediaroom licensing fees are projected to equal approximately $50,000 per year and are included in the OPS budget for the current fiscal year.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Opelika, Alabama, as follows:

1. That the proposed Ericsson Mediaroom License Agreement, a copy of which is attached hereto and marked Exhibit “A”, be and the same is hereby approved, authorized, ratified and confirmed in the form substantially submitted to the City Council with such changes thereto (by addition, deletion or substitution) as the Mayor shall approve, which approval shall be conclusively evidenced by execution and delivery of said Agreement.

2. That the Mayor is hereby authorized and directed to execute and deliver said Agreement in the name and on behalf of the City and to execute such other ancillary documents, applications, schedules, attachments, exhibits and certificates as may be necessary to carry into effect the purpose and intent of said Agreement and to carry out fully the transactions contemplated therein on behalf of the City.

3. That the officers of the City and any person or persons designated and authorized by any officers of the City to act in the name and on behalf of the City, or any one or more of them, are authorized to do or cause to be done or performed in the name and on behalf of the City such other acts and to execute and deliver or cause to be executed and delivered in the name and on behalf of the City such other notices, certificates, assurances or other instruments or other communications under the seal of the City or otherwise, as they or any of them deem necessary

or advisable or appropriate in order to carry into effect the intent of the provisions of this Resolution and the attached Agreement.

4. That this Resolution shall take effect upon its passage and adoption by the City Council.

ADOPTED AND APPROVED this the ______ day of ___________________, 2016.

____

PRESIDENT OF THE CITY COUNCIL OF THE CITY OF OPELIKA, ALABAMA

ATTEST:

____

CITY CLERK

ERICSSON MEDIAROOM LICENSE AGREEMENT

This Ericsson Mediaroom License Agreement ("Agreement") is entered into between the following entities, signing as of the effective date identified below.

This Agreement consists of (1) this cover page, (2) the contact information page(s), (3) the attached terms and conditions, (4) the attached schedules, and (5) any affiliate agreement entered into under this Agreement.

By signing below, the parties agree to be bound by the terms of this Agreement.

Customer	Ericsson Affiliate
Name of entity* Opelika Power Services	**Ericsson ___**
Signature*	**Signature**
Printed name * **Printed title ***	**Printed name** Mark Burke **Printed title** VP I&S Energy and Utilities
Signature date *	**Signature date** (date Ericsson affiliate countersigns)
* indicates required fields	**Effective date** (may be different than signature date)

Contact Information

1. Primary contact information.

The primary contact information must be for the Customer signing on the cover page. The contact will become the default online administrator for this Agreement and receive all notices unless a different contact is provided in the notices and online access contact information. As administrator, this contact may appoint others as administrators and/or grant others access to online information.

Name of entity*
Contact name* First Last
Contact email address*
Street address*
City * State/Province* Postal code*
Country*
Phone* Fax

2. Notices and online access contact information.

Complete this only if Customer wants to designate a notices and online access contact different than the primary contact. This contact will become the default online administrator for this Agreement and receive all notices. As administrator, this contact may appoint others as administrators and/or grant others access to online information.

☐ Same as primary contact
Name of entity*
Contact name* First Last
Contact email address*
Street address*
City* State/Province* Postal code*
Country*
Phone* Fax

3. Additional electronic contractual notices contact information.

This contact will receive electronic contractual notices in addition to the notices contact. This contact is not required if Customer does not want an additional set of notices issued.

☐ Same as primary contact
Name of entity*
Contact name* First Last
Contact email address (required for electronic notices) *
Street address*
City* State/Province* Postal code*
Country*
Phone* Fax

4. Billing Information.

This section designates where invoices should be sent.

☐ Same as primary contact
Name of entity* Ericsson
Accounts payable contact name* First Last
Accounts payable contact email address*
Street address*

City* **State/Province*** **Postal code***
Country*
Phone* **Fax**
VAT number

5. Ericsson Account Manager.

This section designates Customer's Ericsson Account Manager.

Ericsson account manager name: Gerry Fisher
Ericsson account manager email address: gerald.fisher@Ericsson.com

Copy To: Mediaroom Licensing email address: Mediaroom@Ericsson.com

Terms and Conditions

1) Definitions.

The following definitions apply in this Agreement:

"Affiliate" means any legal entity that a party owns, that owns a party, or that is under its common ownership. "Ownership" means, for purposes of this definition, control of more than a 50% interest in an entity.

"Authorized Original Equipment Manufacturer" means an entity that has signed an agreement with Ericsson that, among other things, permits it to distribute and sell certain Mediaroom Client Devices that contain Client Software

"Client Software" means the Ericsson Mediaroom client software that is installed on a Mediaroom Client Device and that allows the Mediaroom Client Device to access or use the services or functionality provided by the Server Software.

"Consumer Subscriber" means an individual who subscribes to the IP Television Service. A Consumer Subscriber does not include any business or commercial entity, including without limitation a commercial or business entity that provides residences or residential services to others (including, without limitation, hotels, hospitals and assisted care facilities).

"Customer" means the entity that has entered into this agreement and its Affiliates.

"Customer Data" means all data, including all text, sound, software, or image files that are provided to Ericsson by, or on behalf of, Customer through Customer's use of the Online Services or in connection with Services.

"Customer's QoS Network" means a Network owned or leased by Customer or its Affiliates, and operated by Customer or its Affiliates, where (i) access to the Network is managed by authenticating the devices that may connect to the Network and then authorizing the content and services that may be delivered over the Network to the authenticated device and (ii) the bandwidth of the Network is managed to ensure the quality of the IP Television Service. With respect to an IP Television Service provided to Subscribers by a Third Party Television Service Provider, the access network portion of the overall network may be owned or leased by, and operated by, such Third Party Television Service Provider. Only those IP Networks supported by the Product shall be included in the definition of Customer's QoS Network. No communication system for which the Product must be changed in order to be supported shall be included in the definition of Customer's QoS Network, and no such Product shall be licensed to Customer under this Agreement.

"Fixes" means Product fixes that Ericsson either releases generally (such as commercial product service packs), or that Ericsson provides to Customer when performing Services (such as workarounds, patches, bug fixes, beta fixes and beta builds).

"IP Television Service" means a service provided by Customer or a Third Party Television Service Provider that Customer enables using the Server Software to deliver video or television programming to Subscribers using Mediaroom Client Devices.

"Mediaroom Client Device" means a device capable of accessing the IP Television Service and displaying television programming, where such device incorporates Client Software or other software authorized by Ericsson for access to the Server Software.

"Mediaroom Advantage Program" is an optional subscription program that provides Customer with the benefits described in Section 3.

"Ericsson" means the Ericsson entity that has entered into this Agreement and its Affiliates.

“Network” means a communication system using wired (such as cable, fiber, hybrid fiber cable and digital subscriber line) or wireless (such as Wi-Fi or WiMax) broadband transmission technology capable of delivering multiple pieces of data sent simultaneously using internet protocols (“IP Networks”). The Network may be comprised of various portions, such as the edge, transport or access networks. For purposes of this Agreement, an “access network” means that portion of the Network comprised of the wires leading from the Subscriber’s premises directly to the switching office owned or operated by the network operator that is used to direct data traffic to and from the switching office to specific premises (and not to another network switching office). The access network is sometimes referred to as “the last mile” of the network, where the wires are commonly copper loop (although passive optical network (PON) formats, such as G-PON and E-PON, are currently being introduced) and the switching office is commonly a DSLAM or Class 5 switch.

“Party” or “Parties” means Ericsson and/or Customer as the context requires.

“Product” means (1) Server Software, and (2) Client Software and any Fixes thereto, as applicable, in each case as more fully described in the applicable Ericsson documentation.

“Server Software” means the software described on Schedule A.

“Set-Top Box” or “STB” means any of the devices set forth in the document entitled “Supported and Planned Set-Top Boxes” published by Ericsson from time to time that connects a television to a Network for the receipt and decoding of television and video programming for display on the television.

“Subscriber License” means the license Customer is required to purchase from Ericsson for each Subscriber.

“Subscriber” means a Consumer Subscriber or a legal entity that obtains access to, or has the right to access, any IP Television Service either through Customer or through a Third Party Television Service Provider.

“Territory” means United States of America.

“Third Party Television Service Provider” means an individual or entity other than Customer or its Affiliates that provides IP Television Service to Subscribers as described in Section 2.m.

PROVISIONS AROUND THIRD PARTY TELEVISION SERVICE PROVIDERS ALLOW CUSTOMER TO ACT AS A WHOLESALER FOR OTHER OPERATORS

“Upgrades” means a new version of Product that provides new features or functionality more than a collection of Fixes, as designated by Ericsson from time to time.

2) Licensing and Use Rights.

This Agreement provides the only Product use rights granted to Customer for Product licensed pursuant to this Agreement. Any Product use rights provided in any other manner, including by publication on the World Wide Web or in an end user license agreement, for any of the components of Product, do not apply to the use of Product licensed to Customer under this Agreement.

Ericsson hereby grants to Customer the non-exclusive, terminable, non-transferable, limited rights, during the term of this Agreement, and solely within the Territory, to use the Products as described in this Section 2. Additional restrictions on use are set forth in Schedule B-1.

Customer may use the Products solely for the purpose of providing IP Television Service to Subscribers over Customer’s QoS Network for the Subscribers’ own use and not for resale.

Customer must comply with any technical limitations in the Products that allow Customer to use it only in certain ways. Customer may not work around these limitations.

The Ericsson documentation for the Products includes requirements for installation and operation of the Products. Customer must comply with these requirements.

Ericsson may also require Customer to promptly install Product Fixes solely to address digital rights management ("DRM") or other security issues.

If any source code is provided with the Products, Ericsson hereby grants to Customer the non-exclusive, terminable, non-transferable, limited rights, during the term of this Agreement, and solely within the Territory, to use the source code in accordance with the documentation provided with such source code. Any other modifications of the Products are prohibited.

Customer is responsible for securing necessary rights to any content it distributes using the Products.

a. **Server Software.** Customer may run extra copies of the Server Software on passive servers to test the Server Software or for fail-over support. Customer may not use the Server Software to test any hardware or software other than the Server Software.

Customer may permit its employees, agents and other individuals acting on its behalf to use devices other than Mediaroom Client Devices to access the Server Software solely to administer it.

Customer may permit Subscribers to use devices other than Mediaroom Client Devices to access the Server Software solely to manage the IP Television Service they receive, such as account changes, determining or managing the content available to them, and customer service inquiries (but explicitly excluding video consumption). Customer may also permit persons other than Subscribers to use devices other than Mediaroom Client Devices to access the Server Software solely for the purpose of determining the content available via Customer's IP Television Service and for no other purpose (such as video consumption or transactions). All such access permitted by this paragraph shall be accomplished only through application programming interfaces ("APIs") identified by Ericsson in the documentation for the Product as published APIs for this purpose.

Customer may separate the components of the Server Software to run them on different servers in accordance with requirements set forth in the applicable Ericsson documentation even if the Master Agreement provides otherwise.

Customer may use the Server Software to configure and install Fixes and Upgrades to the Server Software and Client Software. Customer may also use the Server Software to monitor data received from the Server Software and Client Software.

b. **Windows Server.** The following use rights apply only to the Windows Server component of the Server Software:

The 32-bit version of the Server Software includes data storage technology called Mediaroom SQL Server Desktop Engine for Windows. The 64-bit version of the Server Software includes data storage technology called Windows Internal Database. Components of the Server Software use this technology to store data. Customer may not otherwise use or access this technology under this Agreement.

Although Ericsson Mediaroom Server includes an RDP Application Server, Customer is not licensed under this Agreement to use either the RDP Application Server or the Terminal Server technology in Windows Server. RDP Application Server and the Terminal Server technology are separately available for license from Ericsson.

c. **Client Software.** Client Software must be initially installed on a Mediaroom Client Device by one of Ericsson's Authorized Original Equipment Manufacturers unless a separate license for the Client Software specifies otherwise. Client Software features and functions are described in the applicable Ericsson documentation.

If Customer's Mediaroom Client Device collects or transmits user information to Customer or a third party, Customer is responsible for complying with all applicable data protection laws, rules and regulations and for informing Subscribers of Customer's terms of use and privacy policy that apply. Ericsson's terms of use and privacy policies will not apply to a Subscriber's use of the Mediaroom Client Device.

Customer may permit Subscribers to use Fixes and Upgrades of Client Software provided to Customer under this Agreement that Customer installs onto Mediaroom Client Devices solely for the purpose of receiving IP Television Service.

d. Subscriber Licenses. The rights of Customer to use Product under this Agreement are conditioned on Customer acquiring and assigning Subscriber Licenses as described in Schedule B-1 for all Subscribers. Hardware or software that reduces the number of Mediaroom Client Devices that directly access the IP Television Service, pool connections, or reroute user information (sometimes referred to as “multiplexing” or “pooling”) does not reduce the number of Subscriber Licenses Customer needs. If a single device supports multiple displays with different video streams, each display shall be treated as a separate Mediaroom Client Device even if the Client Software is resident in the device supporting the displays.

Subscriber Licenses are not specific to any particular Subscriber and therefore may be reassigned from one Subscriber, who no longer subscribes to the IP Television Service, to another as long as Customer has obtained sufficient Subscriber Licenses for all Subscribers. Customer may need to assign more than one Subscriber License to a Subscriber in accordance with Schedule B-1.

Subject to the requirements for the number of Subscriber Licenses in Schedule B-1 and the other requirements for Subscriber Licenses set forth in this Agreement, Customer must acquire enough Subscriber Licenses for each Subscriber based on the maximum number of Mediaroom Client Devices provisioned for such Subscriber at any point in time during the applicable reporting period.

e. Documentation. Customer may copy and make internal use of any applicable Ericsson documentation solely to support its IP Television Service. Customer may modify, copy, and distribute to Subscribers portions of the documentation, as identified by Ericsson as intended for use by Subscribers, solely as part of a user’s manual. Customer must include the applicable Ericsson copyright, trademark and proprietary notices on the first page of any such manual. Customer also may not remove any such notices from the portions of the Ericsson documentation it uses in this manner.

f. Marks. Customer may make descriptive reference to Ericsson’s non-stylized word marks in documentation, advertising, and marketing materials, including web pages, according to Ericsson’s standard trademark guidelines (available for viewing at http://www.Ericsson/trademarks). Customer does not have permission to use any Ericsson logo, including but not limited to the Mediaroom logo, without a separate license from Ericsson, and this Agreement does not grant Customer any rights to any Ericsson trademarks, logos or service marks.

g. Restrictions on use. Except for the rights to use Product as permitted in this Agreement, this Agreement does not grant Customer any right to use, or permit Third Party Television Service Providers or Subscribers to use, any other software. This includes software applications licensed by Ericsson or its Affiliates. Customer must acquire licenses for such software under a separate agreement.

Customer also may not run any such software on the Server Software. The only software that Customer may run on any component of the Server Software are other components of the Server Software.

The rights granted to Customer in this Agreement do not give Customer any right to implement Ericsson patents or other Ericsson intellectual property in software or devices that access Product.

h. Use by Affiliates. Customer may grant to its Affiliates the rights granted to Customer under this Agreement regarding the use of Product, so long as (i) Customer obtains Ericsson’s prior written consent, and (ii) each Affiliate (1) has executed an affiliate agreement in a form provided by or otherwise approved by Ericsson, and (2) remains Customer’s Affiliate. A form of affiliate agreement is attached as Schedule D. Customer agrees to provide Ericsson a copy of all affiliate agreements upon execution. Customer unconditionally guarantees its Affiliates' compliance with the terms of this Agreement, and Customer shall be jointly and severally liable with the applicable Affiliate for any Affiliate's noncompliance. Any Subscriber Licenses acquired by Customer's Affiliates under this Agreement will be included in any calculation of volume discounts that Ericsson may offer Customer for Product. Customer must consolidate information regarding Customer's Affiliates' use of Product and report that information to Ericsson in Customer's software use reports.

i. **Compliance with license requirements.** Customer must make reasonable efforts to make employees, agents, Third Party Television Service Providers and others with access to Product aware that Product is licensed from Ericsson and may only be used in accordance with the terms of this Agreement. Customer must also make reasonable efforts to prevent any unauthorized use of Product under Customer's possession or control.

j. **Non-Ericsson license requirements.** Product takes advantage of industry standards and other technologies for which Customer must obtain licenses from parties other than Ericsson. A list of such technologies is set forth on Schedule E. Ericsson may update the list in connection with its release of Upgrades to Product solely with respect to new features or functionality in such Upgrades. The technologies will be treated as a non-Ericsson product under this Agreement. As a result, Ericsson will not defend Customer for infringement claims related to these technologies and Customer will reimburse Ericsson for any costs or damages that result from such claims.

k. **Notices.**

(i) **Notice About the MPEG-4 Visual Standard.** Product includes MPEG-4 visual decoding technology. This technology is a format for data compression of video information. MPEG LA, L.L.C. requires this notice:

USE OF THIS PRODUCT IN ANY MANNER THAT COMPLIES WITH THE MPEG-4 VISUAL STANDARD IS PROHIBITED, EXCEPT FOR USE DIRECTLY RELATED TO (A) DATA OR INFORMATION (1) GENERATED BY AND OBTAINED WITHOUT CHARGE FROM A CONSUMER NOT THEREBY ENGAGED IN A BUSINESS ENTERPRISE, AND (2) FOR PERSONAL USE ONLY; AND (B) OTHER USES SPECIFICALLY AND SEPARATELY LICENSED BY MPEG LA, L.L.C.

If Customer has questions about the MPEG-4 Visual Standard, please contact MPEG LA, L.L.C., 250 Steele Street, Suite 300, Denver, Colorado 80206; http://www.mpegla.com.

(ii) **Digital Rights Management.** Product contains digital rights management technology (DRM). Content owners use DRM to protect their intellectual property, including copyrights. If the software fails to protect the content, content owners may ask Ericsson to revoke the software's ability to use the DRM to play or copy that content. Revocation does not affect other content. Content owners may require Customer to upgrade the DRM to access their content. Ericsson may also require Customer to update Product solely to address DRM or other security issues.

(iii) **Mediaroom PlayReady Certificates.** If Customer wishes to enable the PlayReady functionality in Product, Customer will need to engage directly with Microsoft to obtain the necessary technology to work with Mediaroom.

l. **Benchmark testing.** Customer must obtain Ericsson's prior written approval to disclose to a third party the results of any benchmark test of the Server Software or additional software that comes with it.

m. **Use Rights Specific to Third Party Television Service Providers.** Customer may use the Products to permit one or more Third Party Television Service Providers to provide IP Television Service to Subscribers over Customer's QoS Network. Customer may only permit a Third Party Television Service Provider to provide IP Television Service pursuant to this Agreement if the Customer is also providing an IP Television Service directly to Subscribers in the Territory. Customer must sign and maintain a valid agreement with the Third Party Television Service Provider(s) that states that the Third Party Television Service Provider may provide IP Television Service only to Subscribers and only in the Territory and solely in accordance with the terms and conditions of this Agreement.

Customer is responsible to Ericsson for the Third Party Television Service Provider's compliance with the terms and conditions of this Agreement and any unauthorized access or use of Product by the Third Party Television Service Provider.

n. Mediaroom DRM. The Product contains a Mediaroom Digital Rights Management implementation ("Mediaroom DRM"). The Mediaroom DRM is licensed to Ericsson from Microsoft Corporation ("Microsoft"). In addition to all other remedies available under this Agreement, in the event that Customer breaches this Agreement and such breach relates to the Mediaroom DRM, Microsoft shall be a third party beneficiary of this Agreement solely as it relates to Mediaroom DRM to enforce its rights and interest in Mediaroom DRM.

Ericsson sublicenses its rights to the Mediaroom DRM to Customer solely for the purpose of Customer providing IP Television Service as otherwise described in this MLA**.**

3) Mediaroom Advantage Program.

The Mediaroom Advantage Program (which is subject to a separate fee) is an annual program that entitles Customers to the benefits set forth in this Section 3.

a. Upgrades. The Mediaroom Advantage Program entitles Customers to upgrade to the latest version of Product commercially released by Ericsson during the year in which Customer is enrolled in the program. In the Mediaroom Advantage Program, Ericsson will notify Customer of the availability of an Upgrade of Product at least as soon as it is generally commercially offered to other licensees of Product. Ericsson will also provide Customer with advance notice of development plans for Upgrades of Product, generally on a quarterly basis, and provide Customer with the opportunity to comment on those plans. Customer will have no obligation to install any Upgrade, although Customer may be obligated to install certain Fixes as provided in this Agreement.

While Customer's enrollment in the Mediaroom Advantage Program entitles Customer to provide input into development plans for the Product, Customer has no obligation to give Ericsson any such suggestions, comments or other input into the development of Product, including any Upgrade ("Product Input"). However, if Customer provides Ericsson with Product Input, Customer agrees that Ericsson may freely use, disclose, reproduce, license, distribute and otherwise commercialize the Product Input in Product, and in any modification or other derivative work of Product, including any related specification or documentation, and that Ericsson may permit third parties to use or interface with any specific parts of Product, and such modifications and derivative works, that incorporate the Product Input. Customer will not give Ericsson any Product Input that Customer has reason to believe is subject to an intellectual property right of a third party or would be subject to license terms that may require that any Ericsson intellectual property be licensed to or otherwise shared with any third party.

b. Additional Client Devices. Customer's participation in the Mediaroom Advantage Program converts the limitations on Consumer Subscribers' Subscriber Licenses in Schedule B-1 as follows:

Device Limitation	Participation in Mediaroom Advantage Program Converts Consumer Subscriber's Subscriber License to:
One (1) Set-Top Box Mediaroom Client Device	One (1) Set-Top Box Mediaroom Client Device and Six (6) additional Mediaroom Client Devices of any type other than Set-Top Boxes
Six (6) Set-Top Box Mediaroom Client Devices	Twelve (12) Mediaroom Client Devices of any type.

The Mediaroom Advantage Program also entitles Customers to order a license for a set of three (3) additional Mediaroom Client Devices (an "Additional Client License") for a Consumer Subscriber using more than twelve (12) Mediaroom Client Devices at the pricing described on Schedule B-1.

c. **Network Restrictions**. The Mediaroom Advantage Program entitles Customer to deliver its IP Television Service over Networks other than Customer's QoS Network.

d. **Enrollment.** Customer must indicate on Schedule C whether it wants to enroll in the Mediaroom Advantage Program. Customer must decide whether it wants to enroll in the Mediaroom Advantage Program at the time this Agreement is signed. If Customer chooses to enroll, it will be automatically enrolled in each subsequent annual program during the term unless it gives Ericsson at least 90 days prior written notice of its intention to terminate its enrollment in the Mediaroom Advantage Program for subsequent annual periods. If Customer does not enroll in the Mediaroom Advantage Program, or it later ends its enrollment, Customer may not thereafter take advantage of any of the benefits of the Mediaroom Advantage Program, including the right to license or use any future Upgrades of Product released by Ericsson after Customer's enrollment ends. In order to re-enter the Mediaroom Advantage Program, Customer will need to purchase Subscriber Licenses from Ericsson for the most recent version of Product prior to enrollment.

4) Ordering and reporting.

a. **Ordering.** Customer's initial order for Subscriber Licenses is set forth on Schedule C. The initial order sets forth Customer's purchase schedule for the Subscriber Licenses ordered. Additional Subscriber Licenses may be ordered at any time during the term of this Agreement by submission of a purchase order.

If necessary or appropriate, Ericsson will provide Customer with keys for Product activation or copy protection in order to permit installation of Product. Customer will treat these keys as Ericsson's confidential information. Ericsson may request additional information and verification from Customer before fulfilling any orders for licenses. Ericsson may change the process for ordering by providing Customer with at least thirty (30) days prior written notice. Orders will not be fulfilled after the expiration or termination of this Agreement.

b. **Advantage Program Ordering.** If Customer participates in the Mediaroom Advantage Program, Customer must submit a purchase order with the last monthly software use report for the applicable calendar quarter to cover the applicable fees (as described on Schedule B-2), and for any Additional Client Licenses.

c. **Reporting and Tracking of Subscriber Licenses.** Customer must report its use of Subscriber Licenses within fifteen (15) days following each calendar month of the term by submitting software use reports. Customer will provide all applicable information requested in the software use report for its use under the Agreement, including but not limited to (1) the total number of Customer's Subscribers and Subscriber Licenses during the preceding month, (2) the total number of Mediaroom Client Devices enabled for such Subscribers, (3) if Customer participates in the Mediaroom Advantage Program, the number of Set-Top Box Mediaroom Client Devices and the number of other Mediaroom Client Devices in the total number of Mediaroom Client Devices reported pursuant to (2) above, (4) the number of Subscribers requiring Additional Client Licenses grouped by the number of Additional Client Licenses necessary (i.e., the number of Subscribers needing one Additional Client License, the number of Subscribers needing two Additional Client Licenses, etc.) and (5) the location of the data centers where the servers on which Customer has installed the Server Software are located. If Customer grants rights to any Affiliates or Third Party Television Service Providers under this Agreement, Customer must incorporate and consolidate their use of Product in Customer's software use reports. Ericsson will use this information for revenue calculation, internal revenue allocation, compliance and billing purposes, product development and planning purposes. Ericsson will treat this information as confidential information.

Customer is responsible for tracking the number of Subscribers it has and the number of Subscriber Licenses needed for those Subscribers. Customer is responsible for submitting additional orders for Subscriber Licenses to ensure that all Subscribers are covered before the number of Subscribers exceeds the number of Subscriber Licenses it has purchased. However, Customer may order Additional Client Licenses at the time of delivery of the software use report indicating that Additional Client Licenses are necessary.

Customer will submit a software use report covering Customer's use of Product up to the date of termination or expiration of this Agreement. This software use report must be submitted within thirty (30) days after termination or expiration of this Agreement.

d. **Order confirmations.** Ericsson will issue Customer an invoice covering the Subscriber Licenses and, if applicable, fees for the Mediaroom Advantage Program and any Additional Client Licenses, as applicable. Such invoice shall serve as Customer's order confirmation. Invoices may be issued in a manner reasonably determined by Ericsson.

e. **Modification of reporting structure.** Ericsson may reasonably change the form of software use report by providing Customer with at least forty-five (45) days prior written notice. Ericsson may also change the process for submitting software use reports, electronically or otherwise, by providing Customer with at least forty-five (45) days prior written notice. Customer will not be required to submit more than one software use report per month however.

5) Pricing and payment.

a. **Prices.** Subscriber Licenses are subject to a one-time fee. The Advantage Program is subject to a recurring quarterly subscription fee. Customer must purchase sufficient Subscriber Licenses for Customer's Subscribers in accordance with this Agreement. The current volume price levels that are available are set forth on Schedule B-1 together with the prices for Subscriber Licenses at each applicable discount level.

b. **Invoicing and Payment terms.** Ericsson will invoice Customer for Customer's initial order for Subscriber Licenses in accordance with Schedule C, and for subsequent orders upon receipt of Customer's purchase order. Ericsson will invoice Customer for Mediaroom Advantage Program fees and fees for any Additional Client Licenses (if applicable) quarterly, based on Customer's monthly software use reports for each such calendar quarter. If a Customer fails to submit a software use report for each month of a quarter on time, Ericsson may invoice Customer in an amount equal to the total invoiced for the prior quarter, which shall not be deemed to be payment in full for such quarter, and will be subject to true-up when Customer submits its late or missing software use report(s) for such calendar quarter. All invoiced amounts are due within thirty (30) days of the date of Ericsson's invoice, and shall be paid in U.S. dollars. Payments not received by Ericsson within the required time may be assessed a late payment charge at the maximum allowable legal rate. Customer must make all payments in the form of bank wire transfers or electronic funds transfers through an automated clearinghouse with electronic remittance detail attached, in accordance with the payment instructions Ericsson provides to Customer. Customer will include the Agreement number and the invoice number, if any, on each electronic payment. Customer agrees to make payment regardless of whether it has received payment from its Subscribers or Third Party Television Service Providers. Customer may not withhold payment or make deductions to any payment prior to the issuance of a credit by Ericsson for rebates, billing errors or for any other appropriate reasons.

c. **Taxes.** The amounts to be paid by Customer to Ericsson do not include any taxes. Customer shall pay to Ericsson any applicable value added, sales, or like taxes that are owed by Customer solely as a result of entering into this Agreement and which are permitted to be collected from Customer by Ericsson under applicable law. If Customer provides Ericsson with a valid exemption certificate, Ericsson will not collect taxes covered by that certificate. Ericsson is not liable for any of the taxes that Customer is legally obligated to pay ("Customer Taxes") which are incurred or arise in connection with or related to the sale of goods and services under this Agreement and all such taxes (including but not limited to net income or gross receipts taxes, franchise taxes, property taxes, and/or taxes arising from sales between Customer and its customers) shall be the financial responsibility of Customer. Customer agrees to indemnify and hold Ericsson harmless from Customer Taxes and any claims, costs (including reasonable attorneys' fees) and liabilities that relate to such taxes.

   If any taxes are required to be withheld on payments made by Customer to Ericsson, Customer may deduct such taxes from the amount owed Ericsson and pay them to the appropriate taxing authority, provided however that Customer promptly secures and delivers an official receipt for those withholdings and other documents reasonably requested by Ericsson to claim a foreign tax credit or refund. Customer shall use reasonable efforts to ensure that any taxes withheld are minimized to the extent possible under applicable law.

   This tax section shall govern the treatment of all taxes arising as a result of or in connection with this Agreement notwithstanding any other section of this Agreement.

d. **Foreign exchange regulations.** Customer must comply with foreign exchange regulations and any other applicable law when making payment to Ericsson. This includes obtaining all applicable regulatory consents and approvals.

6) Services and support.

Ericsson has no obligation to provide services or support under this Agreement. Any services or support that Ericsson may provide will be set forth in a separate agreement. Customer is responsible for providing support directly to its Subscribers.

7) Term and Termination.

a. **Term.** This Agreement will remain in effect for three (3) years following the effective date unless it is extended by mutual agreement of the Parties or is terminated earlier as described below.

b. **Termination.**

   (i) **Termination without cause**. Customer may terminate this Agreement without cause, so long as it provides sixty (60) days' advance written notice to Ericsson. Any amounts previously paid by Customer to Ericsson pursuant to this Agreement will not be refunded.

   (ii) **Termination for breach**. Either Party may terminate this Agreement if the other Party breaches its material obligations under this Agreement, including any obligation to submit orders, software reports, or pay amounts owed. Except where the breach is by its nature not curable within thirty (30) days, the terminating Party must give the other Party thirty

(30) days' written notice and opportunity to cure. In addition, either Party may terminate this Agreement if the other Party becomes insolvent or makes any assignment for the benefit of creditors or similar transfer evidencing insolvency; or permits the commencement of any form of insolvency or receivership proceeding; or has any petition under any bankruptcy law filed against it, which petition is not dismissed within sixty (60) days of such filing; or has a trustee or receiver appointed for its business or assets or any part thereof.

c. Obligations on termination or expiration. The termination or expiration of this Agreement will automatically terminate all license rights granted under this Agreement except as set forth in this paragraph. Customer cannot obtain additional Subscriber Licenses after that time. Customer's rights under the Mediaroom Advantage Program also terminate, except for Upgrades Customer was entitled to install prior to the date of termination. Upon termination or expiration of this Agreement, Customer must submit a software use report and pay all amounts due as of the expiration or termination date. Customer may not copy, install or use any portion of Product other than to replace defective servers that Customer is removing from service and upon which Customer has installed and paid for the Server Software prior to termination or expiration. Following expiration or termination (other than termination of Customer for breach in accordance with paragraph b(ii) of this section), Customer may continue to use the Server Software to support the number of Subscribers for which Customer has acquired Subscriber Licenses prior to the time of expiration or termination in a manner permitted under this Agreement and for which Customer has paid in full the applicable fees.

d. Survival. The following sections of this Agreement will survive any termination or expiration: 1, 4c and e, 7 c., d. and e., 8, 9, 10 and 15, as well as all terms in this Agreement and the Schedules that, as expressed or by their nature, are intended to survive.

e. License fee true-up for Subscriber Licenses. Upon termination or expiration of this Agreement for any reason other than by Customer pursuant to paragraph b(ii) of this section, without limiting any other remedy available to Ericsson, if such termination or expiration results in Customer's failure to purchase Subscriber Licenses equal to or in excess of the volume commitments for the term of the Agreement set forth on Schedule C for its initial order of Subscriber Licenses (if any), then Customer is not entitled to the volume pricing discount Customer received as set forth on Schedule C. As a result, Customer must make an additional true-up payment together with the submission of Customer's software use report within thirty (30) days after termination or expiration of this Agreement. This payment will be equal to the difference between the Subscriber Licenses for which Customer paid under this Agreement for each Product and the aggregate amount Customer would have paid based on the pricing schedule on Schedule B-1 for the number of Subscribers for which Customer actually purchased Subscriber Licenses.

The following is an example. Assume the pricing on Schedule B-1 was as follows:

Subscriber Licenses	Licensee fee
100,000 - 200,000	$90 per SL sold in increments of 5,000 SLs
Over 200,000	$80 per SL sold in increments of 5,000 SLs

If Schedule C indicated that Customer would purchase 250,000 SLs, Customer would pay $80 per SL. If Customer terminated pursuant to paragraph b.(i) of this section after purchasing licenses for only 150,000 SLs, however, Customer should have paid $90 per SL. As a result, Customer's additional payment would be $1,500,000 (calculated as ($90-$80) * 150,000 = $10 * 150,000 = $1,500,000

8. Warranties.

a. **Limited warranty.** Ericsson warrants that Products will perform substantially as described in the documentation.

b. **Limited warranty term.** The limited warranty for Products is one year from the date Customer first uses the Product.

c. **Limited warranty exclusions.** This limited warranty is subject to the following limitations:

(i) any implied warranties, guarantees or conditions not able to be disclaimed as a matter of law last for one year from the start of the limited warranty;

(ii) the limited warranty does not cover problems caused by accident, abuse or use in a manner inconsistent with this agreement or the Product Use Rights, or resulting from events beyond Ericsson's reasonable control;

(iii) the limited warranty does not apply to components of Products that Customer is permitted to redistribute;

(iv) the limited warranty does not apply to free, trial, pre-release, or beta products; and

(v) the limited warranty does not apply to problems caused by the failure to meet minimum system requirements.

d. **Remedies for breach of limited warranty.** If Ericsson fails to meet any of the above limited warranties and Customer notifies Ericsson within the warranty term, then Ericsson will at its option either (1) return the price paid or (2) repair or replace the Products.

These are Customer's only remedies for breach of the limited warranty, unless other remedies are required to be provided under applicable law.

e. **DISCLAIMER OF OTHER WARRANTIES. OTHER THAN THIS LIMITED WARRANTY, ERICSSON PROVIDES NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS. ERICSSON DISCLAIMS ANY IMPLIED REPRESENTATIONS, WARRANTIES, OR CONDITIONS, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, TITLE, OR NON-INFRINGEMENT. THESE DISCLAIMERS WILL APPLY UNLESS APPLICABLE LAW DOES NOT PERMIT THEM.**

9. Defense of infringement, misappropriation, and third party claims.

a. **Ericsson's agreement to protect.** Ericsson will defend Customer against any claims made by an unaffiliated third party that any Product made available by Ericsson for a fee infringes that party's patent, copyright or trademark or makes unlawful use of its Trade Secret. Ericsson will also pay the amount of any resulting adverse final judgment (or settlement to which Ericsson consents). This Section 9 provides Customer's exclusive remedy for these claims.

b. **Limitations on defense obligation.** Ericsson's obligations will not apply to the extent that the claim or award is based on:

(i) Customer Data, non-Ericsson software, modifications Customer makes to, or any specifications or materials Customer provides or makes available for a Product;

(ii) Customer's combination of a Product with a non-Ericsson product, data or business process; or damages based on the use of a non-Ericsson product, data or business process;

(iii) Damages attributable to the value of the use of a non-Ericsson product, data or process

(iv) Customer's use of either Ericsson's trademarks or the use or redistribution of a Product, in violation of this agreement or any agreement incorporating its terms; or

(v) Customer's use of a Product after Ericsson notifies Customer to discontinue that use due to a third party claim.

Customer will reimburse Ericsson for any costs or damages that result from any of the above actions.

c. **Customer's agreement to protect.** Customer will defend Ericsson against any claims made by an unaffiliated third party that:

(i) any Customer Data, third party content, or non-Ericsson software Ericsson hosts on Customer's behalf infringes the third party's patent, copyright, or trademark or makes unlawful use of its Trade Secret;

(ii) any Customer Data, third party content or non-Ericsson software that is used in conjunction with the Product; or

(iii) arises from violation of the Acceptable Use Policy, which is described in the Product Use Rights.

Customer must pay the amount of any resulting adverse final judgment (or settlement to which Customer consents). This section provides Ericsson's exclusive remedy for these claims.

d. **Rights and remedies in case of possible infringement or misappropriation.** If Ericsson reasonably believes that a Product may infringe or misappropriate a third-party's intellectual property rights, Ericsson will seek to: (1) procure for Customer the right to continue to use the Product; or (2) modify or replace it with a functional equivalent to make it non-infringing and notify Customer to discontinue use of the prior version, which Customer must do immediately. If the foregoing options are not commercially reasonable for Ericsson, or if required by a valid judicial or government order, Ericsson may terminate Customer's license or access rights in the Product. In such a case, Ericsson will provide Customer with notice and refund any amounts Customer has paid for those rights to the Product.

e. **Obligations of protected party.** Customer must notify Ericsson promptly in writing of a claim subject to the Subsection titled "Ericsson's agreement to protect" and Ericsson must notify Customer promptly in writing of a claim subject to the Subsection titled "Customer's agreement to protect." The party invoking its right to protection must (1) give the other party sole control over the defense or settlement; and (2) provide reasonable assistance in defending the claim. The party providing the protection will reimburse the other party for reasonable out of pocket expenses that it incurs in providing assistance.

10. Limitation of liability.

a. **Limitation on liability.** To the extent permitted by applicable law, the liability of each party, its Affiliates, and its Contractors arising under this agreement is limited to direct damages up to the amount Customer was required to pay for the Product giving rise to that liability. In the case of Products provided free of charge, or code that Customer is authorized to redistribute to third parties without separate payment to Ericsson, Ericsson's liability is limited to U.S. $5,000. These limitations apply regardless of whether the liability is based on breach of contract, tort (including negligence), strict liability, breach of warranties, or any other legal theory. However, these monetary limitations will not apply to:

(i) liabilities arising out of any breach by either party of its obligations under the section entitled “Confidentiality”; and

(ii) violation by either party of the other party’s intellectual property rights.

b. EXCLUSION OF CERTAIN DAMAGES. TO THE EXTENT PERMITTED BY APPLICABLE LAW, WHATEVER THE LEGAL BASIS FOR THE CLAIM, NEITHER PARTY, NOR ANY OF ITS AFFILIATES, OR CONTRACTORS, WILL BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, OR INCIDENTAL DAMAGES, OR DAMAGES FOR LOST PROFITS, REVENUES, BUSINESS INTERRUPTION, OR LOSS OF BUSINESS INFORMATION ARISING IN CONNECTION WITH THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH POSSIBILITY WAS REASONABLY FORESEEABLE. HOWEVER, THIS EXCLUSION DOES NOT APPLY TO EITHER PARTY’S LIABILITY TO THE OTHER FOR VIOLATION OF ITS CONFIDENTIALITY OBLIGATIONS (EXCEPT TO THE EXTENT THAT SUCH VIOLATION RELATES TO CUSTOMER DATA) OR THE OTHER PARTY’S INTELLECTUAL PROPERTY RIGHTS.”

c. Affiliates and Contractors. Neither Ericsson nor Customer shall bring any action against the other’s Affiliates or Contractors in respect of any matter disclaimed on their behalf in this agreement. Each party will indemnify the other in the event of any breach of this provision.

11. Verifying compliance.

a. Right to verify compliance. Customer must keep records relating to the Products it and its Affiliates use or distribute. Ericsson has the right to verify compliance with the license terms for the Products, at Ericsson’s expense.

b. Verification process and limitations. Ericsson will provide customer at least 30 days’ notice of its intent to verify compliance. Ericsson will engage an independent auditor, which will be subject to a confidentiality obligation. Verification will take place during normal business hours and in a manner that does not interfere unreasonably with Customer’s operations. Customer must promptly provide the independent auditor with any information it reasonably requests in furtherance of the verification, including access to systems running the Products and evidence of licenses for Products Customer hosts, sublicenses, or distributes to third parties. As an alternative, Ericsson may require Customer to complete Ericsson’s self-audit process relating to the Products Customer and any of its Affiliates use or distribute. Such information will be used solely for purposes of determining compliance.

c. Remedies for non-compliance. If verification or self-audit reveals any unlicensed use, Customer must within 30 days order sufficient licenses to cover its use. If unlicensed use is 5% or more, Customer must reimburse Ericsson for the costs Ericsson has incurred in verification and acquire the necessary additional licenses at 125% of the then current price list and Customer price level within 30 days. The unlicensed use percentage is based on the total number of licenses purchased compared to actual install base. If there is no unlicensed use, Ericsson will not undertake another verification of the same Customer for at least one year. By exercising the rights and procedures described above, Ericsson does not waive its rights to enforce this agreement or to protect its intellectual property by any other means permitted by law.

12) Controlling language.

This Agreement shall be written in English and the English version shall be the controlling version notwithstanding whether another version is translated by either Customer or Ericsson into a language other than English.

13) *Ericsson's Affiliates.*

Ericsson may perform its obligations or exercise its rights under this Agreement through its Affiliates. Ericsson will be responsible for the performance of all of its obligations in this Agreement however.

14) *Notices to Ericsson.*

Notices, authorizations, and requests in connection with this Agreement must be sent by regular or overnight mail, or express courier to the addresses and numbers listed in this Agreement. Notices will be treated as delivered on the date shown on the return receipt or on the courier confirmation of delivery.

Copies must be sent to:
Rob Balachandran
6300 Legacy Drive
MS: EVR-1-C-9
Plano, TX 75024

15) *Miscellaneous*

a. **Assignment.** Neither party may assign this Agreement without the written consent of the other, except Ericsson may assign this Agreement to an Ericsson Affiliate without Customer's written consent.

b. **Severability.** If a court holds any provision of this agreement to be illegal, invalid, or unenforceable, the rest of the document will remain in effect and this agreement will be amended to give effect to the eliminated provision to the maximum extent possible.

c. **Waiver.** A waiver of any breach of this agreement is not a waiver of any other breach. Any waiver must be in writing and signed by an authorized representative of the waiving party.

d. **Applicable law.** The terms of this agreement and/or any Supplemental Agreement entered into with any Ericsson Affiliate located outside of Europe will be governed by and construed in accordance with the laws of the State of Washington and federal laws of the United States. The terms of this agreement and/or any Supplemental Agreement entered into with any Ericsson Affiliate located in Europe will be governed by and construed in accordance with the laws of Ireland. Unless otherwise agreed in writing, any dispute arising out of or in relation to Services will be governed by the law of the jurisdiction where the Ericsson Affiliate delivering the Services is organized. The 1980 United Nations Convention on Contracts for the International Sale of Goods and its related instruments will not apply to this agreement or any Supplemental Agreement or Statement of Services entered into with any Ericsson Affiliate that incorporates these terms. The Products are protected by copyright and other intellectual property rights laws and international treaties.

e. **Amending the agreement.** This agreement and any Supplemental Agreement or Statement of Services incorporating its terms may be amended only by a formal written agreement signed by both parties. The Product List and Product Use Rights (including any documents referenced therein) may be changed by Ericsson in accordance with the terms of this agreement or a Supplemental Agreement. Any terms and conditions contained in a purchase order that contradict these terms and conditions will not apply.

f. **No transfer of ownership.** Ericsson does not transfer any ownership rights in any Product.

g. Confidentiality. The parties shall maintain confidentiality and may not, without the other party's prior consent, disclose to any third party any documentation and any information designated by the furnishing party as confidential, whether of a commercial or a technical nature, furnished by the other party pursuant to this Agreement, i.e. the receiving party shall use the information only for the purpose of this Agreement. Customer may however, disclose such documentation and information to Ericsson Companies, subcontractors and Sublicensees under similar conditions of confidentiality to the extent necessary to enable Customer to exercise its rights under this Agreement.

(i) Neither party shall be liable for disclosing any such information if it was:

(ii) public knowledge at the time of disclosure or thereafter becomes generally known other than through an act of negligence by the receiving party;

(iii) already known to the other party prior to its receipt from the disclosing party;

(iv) demonstrably developed at any time by the receiving party without any connection to the information received hereunder;

(v) rightfully obtained by a party from other unrestricted sources; or

(vi) disclosed with the prior written permission of the disclosing party.

16) List of schedules.

The following schedules are a part of the terms and conditions of this Agreement:

Schedule A – Server Software Product Components

Schedules B-1 and B-2 – Products, Price Lists, and Mediaroom Advantage Program

Schedule C – Initial Order

Schedule D – Affiliate Agreement

Schedule E – Non-Ericsson Technologies

SCHEDULE A
(Server Software Product Components)

1. Ericsson Mediaroom Server

2. Windows Server

3. SQL Server

4. Microsoft Core Infrastructure Server Suite Datacenter Edition enrollment, currently comprised of

   a. Microsoft Systems Center Server Management Suite Enterprise (SMSE)

   b. Microsoft Forefront Endpoint Protection

The foregoing Server Software Product components include any additional software provided to Customer along with the component. If other terms come with the additional software, those terms apply to Customer's use of it, provided however that such components may only be used in providing or supporting the IP Television Service.

SCHEDULE B-1
(Products, Price List and Definitions)

1. Mediaroom Products.

Server Software features and functions for all Products are described in the applicable Ericsson documentation.

Mediaroom Products	Mediaroom License Part Number
Live+VoD for one Set-Top Box	FAL 124 1966/31
Live+VoD for up to six Set-Top Boxes	FAL 124 1966/1

2. Definitions.

"Live+VoD" means an IP Television Service that may be comprised of either or both of Live and VoD.

3. Subscriber License Pricing.

The following license pricing shall be in effect for the term of this Agreement. Customer's orders for Subscriber Licenses must be for a minimum of at least one thousand Subscriber Licenses per order. On Schedule C, Customer may commit to order a specific number of Subscriber Licenses, which will entitle Customer to the corresponding volume discount based on Customer's commitment (subject to true-up for early termination). Otherwise, Customer shall be entitled to the applicable volume discount based on the number of Subscriber Licenses it has purchased prior to its order.

Service	Devices	Licenses Price
Live + VoD	6 STB	$70.00
	1 STB	TBD

SCHEDULE B-2
(Mediaroom Advantage Program)

The Mediaroom Advantage Program fee is an annual payment of [eighteen percent (18%)] of the aggregate fees Customer owes or has paid Ericsson for SLs and Additional Client Licenses that Customer needs for its Subscribers at the end of each reporting period, rounded to the nearest cent. For example, if Customer has purchased 100,000 Subscriber Licenses, but Customer's software use report for a month indicates that the maximum Subscriber Licenses it needed for the Subscribers it had in that month was 52,000, Customer will pay fees for the Mediaroom Advantage Program only for 52,000 Subscriber.

In order to receive Upgrades of the Client Software to access Upgrades of the Server Software provided in the Mediaroom Advantage Program, Customer must also pay an annual Client Software Upgrade fee of seventy-five cents ($0.75) for each Mediaroom Client Device that is a Set-Top Box that has been enabled for any Subscriber to access Customer's IP Television Service at any point in time during the applicable reporting period.

Each calendar quarter, Customer will pay a pro-rated amount of the annual fees due for the Mediaroom Advantage Program and Client Software Upgrades. The Mediaroom Advantage Program and Client Software Upgrade fees due for each such quarter will be calculated on a monthly basis based on the monthly software use reports for such quarter. In other words, each month will represent 1/12th of the annual fees due and each quarter Customer will pay an amount equal to the aggregate of the three monthly calculations for such quarter. Customer will submit a purchase order for the total amount owed for a particular quarter in conjunction with the submission of its software use report for the last month of such quarter.

Mediaroom Product upgraded	Advantage converts to the following:	Advantage Server Upgrade Part Number	Set of three (3) additional Client Devices
Live+VoD for one Set-Top Box	1 STB + 6 Non-STB Clients	FAL 124 1966/38	Not applicable
Live+VoD for up to six Set-Top Boxes	12 Clients any type	FAL 124 1966/38	FAL 124 1966/39

Advantage Client Software Upgrade Fee Part Number
FAL 124 1966/36

SCHEDULE C
(Initial Order)

1. Mediaroom Advantage Program.

Customer must indicate below whether or not it wants to enroll in the Mediaroom Advantage Program under this Agreement. Customer must check one of the boxes below.

☒ **Yes.** Customer should select this option by checking this box if it wants to enroll in the Mediaroom Advantage Program.

☐ **No.** Customer should select this option by checking this box if it does not want to enroll in the Mediaroom Advantage Program.

2. Product.

Customer agrees to purchase Subscriber Licenses during the Term pursuant to the following schedule

Purchase Date	Purchase Commitment	Cumulative Purchase Commitment
Effective Date	Minimum purchase in blocks of 1000 licenses	No cumulative commitment

If Customer purchases Subscriber Licenses in advance of the minimum purchase commitment milestones, Customer's next scheduled minimum purchase commitment milestone(s) will be reduced to the extent necessary so that the next minimum purchase milestone will not cause Customer to exceed the cumulative purchase commitment corresponding with that milestone.

For example, assume a purchase commitment of 300,000 SLs with 100,000 SLs purchased on the Effective Date and 100,000 SLs to have been purchased on each of the first two anniversaries of the Effective Date. If as of the second anniversary of the Effective Date, Customer has already purchased 75,000 Subscriber Licenses in addition to the 100,000 SLs purchased on the Effective Date, then Customer need only purchase an additional 25,000 Subscriber Licenses so that the cumulative total purchase will be 200,000 Subscriber Licenses. For the avoidance of doubt, this section does not affect Customer's obligation under the ordering section of this Agreement to submit additional orders for Subscriber Licenses to ensure that all of Customer's Subscribers are covered before Customer's usage exceeds the Subscriber Licenses purchased.

SCHEDULE D

(Affiliate Agreement)

[To be printed on Affiliate's company letterhead]

AFFILIATE AGREEMENT

For good and valuable consideration, [insert name of affiliate], a corporation organized under the laws of [insert name of jurisdiction] ("Affiliate"), covenants and agrees with Ericsson Licensing, GP, a Nevada general partnership and an affiliate of Ericsson Corporation ("Ericsson"), that Affiliate will comply with all obligations of [insert company's legal name here], a corporation organized under the laws of [insert name of jurisdiction] ("Company") under the Ericsson Mediaroom License Agreement between Ericsson and Company effective as of [insert Effective Date] (the "Agreement").

Affiliate acknowledges and agrees that its agreement herein is a condition for Affiliate to exercise any of the rights granted by Company to Affiliate under the terms of the Agreement. Affiliate acknowledges and agrees that it will be bound by the terms and conditions of the Agreement applicable to Company and that it and Company will be jointly and severally liable to Ericsson and its affiliates for all obligations related to Affiliate's exercise of any license rights under the Agreement, including but not limited to, the payment of all license fees under the Agreement. Notwithstanding the foregoing, Affiliate acknowledges that all software use reports and payments to be provided by each Affiliate to Ericsson under the Agreement will be consolidated and provided to Ericsson by Company on behalf of Affiliate.

Affiliate acknowledges and agrees that, in the event Affiliate ceases to be an Affiliate of Company (as such term "Affiliate" is defined in the Agreement), then the rights granted under the Agreement will automatically terminate with respect to Affiliate on the date that Affiliate ceases to be an Affiliate of Company.

Any terms used herein that are defined in the Agreement will have the same meaning as in the Agreement.

IN WITNESS WHEREOF, a duly authorized officer of Affiliate has executed this document as of the date set forth below. All signed copies of this document will be deemed originals.

____

(Name of Affiliate)

____

(Signature)

____

(Print Name and Title)

____

(Date)

SCHEDULE E
(Non-Ericsson Technologies)

Ericsson Mediaroom Server

1. MPEG-2 transport
2. MPEG-2 video decode
3. AVC/H.264 video decode
4. VC-1 video decode

Ericsson Mediaroom Client

1. MPEG-1 layer 2 audio decode
2. MPEG-1 layer 3 audio decode (MP3)
3. JPEG decode
4. MPEG-2 video decode
5. MPEG-2 transport
6. VC-1 decode
7. AVC/H.264 decode
8. Macrovision
9. HDCP
10. HDMI
11. CGMS-A
12. HPNA
13. Dolby Digital (AC3) audio decode and output
14. Dolby Digital Plus
15. IR Protocols (depends on particular Mediaroom Client Device, but may include NEC, R-step, RCMM, RC-5 and RC-6)
16. MPEG-2 AAC
17. MPEG-4 AAC
18. MPEG-2 audio decode
19. MHEG5 [EU only]
20. DVB [EU only]

RESOLUTION NO. 353-16

Vacate Water Line Easement.

RESOLUTION NO. _________

RESOLUTION RATIFYING VACATION AND

ABANDONMENT OF WATER LINE EASEMENT

WHEREAS, THE UTILITIES BOARD OF THE CITY OF OPELIKA, a public corporation, is the owner of the land on which a certain water line easement presently exists, as hereinafter described, which easement lies within the City of Opelika, Lee County, Alabama; and

WHEREAS, The Utilities Board of the City of Opelika has executed a Declaration or Petition for vacating and abandoning said easement as described in said Petition, which has been presented to the City Council (the "City Council") of the City of Opelika, Alabama, a municipal corporation, said Petition being hereto affixed, marked Exhibit "A" and made a part hereof; and

WHEREAS, it appears to the City Council that the vacation of said easement is in order and that the vacation of said easement will not impair or diminish the ability of The Utilities Board of the City of Opelika to provide water service in the immediate are; and

WHEREAS, said water line easement is no longer necessary or useful for the operation of the water distribution system operated by The Utilities Board of the City of Opelika.

NOW, THEREFORE, BE IT RESOLVED by the City Council that the vacation of the above-described water line easement is declared and assented to and approved and the same is hereby vacated, said easement being described as follows, to-wit:

> An easement to the City of Opelika for a transite 10 inch water line running from Rocket Avenue to the division line between sections 18 and 19 of T19N, Range 27-E and running generally parallel to Steel Street according to and as shown by

survey dated December 23, 1963, prepared by Noah L. McCrory, Engineer, a copy of which is attached hereto as Exhibit “A” and which is referenced in that certain deed dated July 6, 1981 from Johnson Motor Lines, Inc. to The Water Works Board of the City of Opelika, of record in Deed Book 1117 at Page 156 in the Office of the Judge of Probate of Lee County, Alabama.

BE IT FURTHER RESOLVED, that the City of Opelika, Alabama, a municipal corporation, remise, release and quitclaim unto THE UTILITIES BOARD OF THE CITY OF OPELIKA, whatever right, title and interest the City of Opelika, Alabama, may have acquired in and to the above-described water line easement by virtue of the dedication of said easement or otherwise, and that Gary Fuller, Mayor of the City of Opelika, Alabama, a municipal corporation, be and he is hereby authorized and directed on behalf of the City of Opelika, Alabama, to execute a quitclaim deed to The Utilities Board of the City of Opelika for the purpose of carrying out the intent and intention of this paragraph and that Robert G. Shuman, City Clerk, be and he is hereby authorized and directed on behalf of the City of Opelika, Alabama, to attest the same.

ADOPTED AND APPROVED this the ____ day of ________________________, 2016.

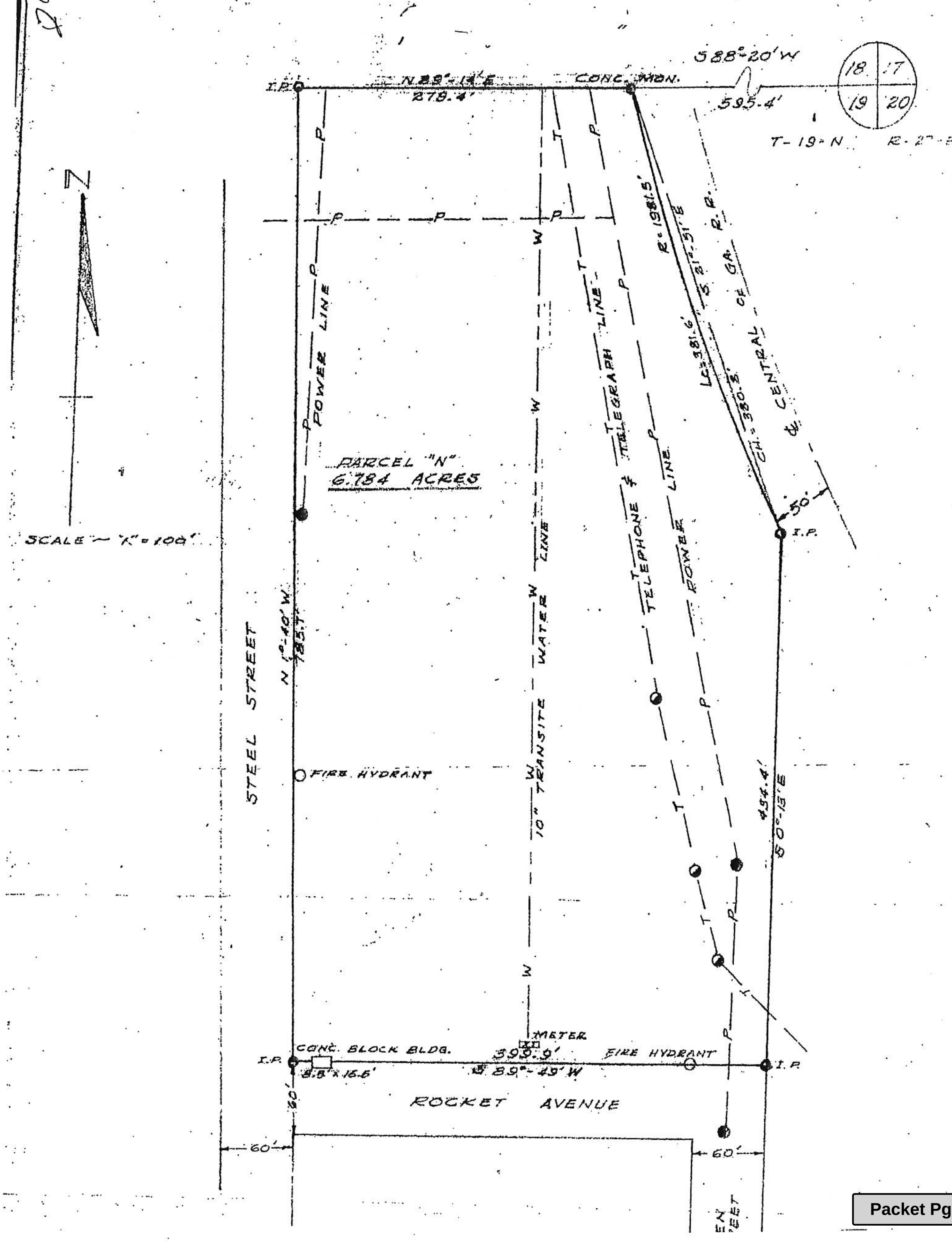
____

PRESIDENT OF THE CITY COUNCIL OF
THE CITY OF OPELIKA, ALABAMA

ATTEST:

CITY CLERK

EXHIBIT "A"



S 88°-20' W
595.4'
18 17 19 20
T-19-N
I.P.
N 89°-14' E
279.4'
CONC. MON.
POWER LINE
TELEGRAPH LINE
R=1981.5'
S 31°-51' E
L=381.6'
CH.=380.3'
℄ CENTRAL OF GA. R.R.
50'
I.P.
PARCEL "N"
6.784 ACRES
SCALE ~ 1"=100'
STEEL STREET
N 1°-40' W
785.7'
WATER LINE
10" TRANSITE
TELEPHONE & POWER LINE
FIRE HYDRANT
434.4'
S 0°-13' E
METER
CONC. BLOCK BLDG.
8.5' x 16.6'
399.9'
S 89°-49' W
FIRE HYDRANT
I.P.
ROCKET AVENUE
30'
60'
60'

ORDINANCE NO. 129-16-ORD

Amend Text of Zoning Ordinance, Section 2.2 & 7.3, Truck Fueling Station - 2Nd Reading.

ORDINANCE NO. ________

AN ORDINANCE TO AMEND THE TEXT OF THE ZONING ORDINANCE OF THE CITY OF OPELIKA

BE IT ORDAINED by the City Council (the "City Council") of the City of Opelika, Alabama (the "City") as follows:

Section 1. Amendment. That Ordinance 124-91 entitled "Zoning Ordinance of the City of Opelika, Alabama", adopted on September 17, 1991, as amended, is further amended in the following respect:

(a) That Section 2.2, "DEFINITIONS" is further amended to add the following definition of "Truck Fueling Station"

TRUCK FUELING STATION Any fuel sales facility selling and dispensing motor fuels, other petroleum products or accessories for trucks, tractor-trailer rigs, buses and similar commercial freight vehicles where the gas dispensing facilities are designed to primarily service semi-tractors or tractor-trailer truck vehicles. A truck fueling station shall not include premises where vehicle repair and maintenance activities are conducted by the business. A truck fueling station shall not offer overnight accommodations, shower facilities or restaurant. No more than twelve (12) parking spaces for tractor-trailer vehicles shall be permitted on site. A truck fueling station may include a convenience store where limited food products, beverages and household items are sold.

(b) That the use categories in the matrix table in Section 7.3, as amended, are further amended to provide for the use category of "Truck Fueling Station" as follows:

Truck Fueling Stations shall be allowed in the C-3 (General Commercial), M-1 (Industrial) and GC (Gateway Corridors) as a conditional use. Truck Fueling Stations are not allowed in the R-1, R-1A, R-2, R-3, R-4, R-5, R-5M, C-1, C-2, M-2 or I-1 districts.

The matrix table in Section 7.3 for "Truck Fueling Station" shall read as follows:

Uses:	Districts: R-1	R-1A	R-2	R-3	R-4	R-4M	R-5	R-5M	C-1	C-2	C-3	M-1	M-2	I-1	GC
Truck Fueling Station	**N**	**N**	**N**	**N**	**N**	**N**	**N**	**N**	**N**	**N**	**C**	**C**	**N**	**N**	**C**

Except as specifically amended or changed therein, all other use categories as shown in the matrix table shall remain in full force and effect.

Section 2. Repeal of Conflicting Ordinances. Any ordinance or part thereof in conflict with provisions of this Ordinance be and the same are hereby repealed.

Section 3. Effective Date. This Ordinance shall become effective upon its adoption, approval and publication as required by law.

Section 4. Publication. This Ordinance shall be published in a newspaper of general circulation in the City of Opelika, Lee County, Alabama.

ADOPTED AND APPROVED this the _____day of ____________________, 2016.

____

PRESIDENT OF THE CITY COUNCIL OF THE

CITY OF OPELIKA, ALABAMA

ATTEST:

____

CITY CLERK

TRANSMITTED TO MAYOR on this the ______day of ______________________, 2016.

____

CITY CLERK

ACTION BY MAYOR

APPROVED this the ______day of ___________________, 2016.

____

MAYOR

ATTEST:

____

CITY CLERK

ORDINANCE NO. 130-16-ORD

Convey Real Property on Commanche Dr. to the Utilities Board - 2Nd Reading.

ORDINANCE NO. _____________

BE IT ORDAINED by the City Council (the "Council") of the City of Opelika, Alabama as follows:

Section 1. The Council upon evidence duly presented to and considered by it, has found and determined, to and does hereby find, determine and declare as follows:

(a) The following described real property of the City Opelika, Alabama (the "City"), is no longer needed for public or municipal purposes, to-wit:

> Commencing at the Northwest corner of Section 29, T-19-N, R-27-E, in Opelika, Lee County, Alabama; thence South, 1208.6 feet, thence East 2759.2 feet; thence N 44°35'00" E, 69.81 feet to the true point of beginning of the parcel of land herein described; thence N 45°14'00" W, 100.00 feet; thence N 44°46'37" E, 100.00 feet to a point within the margin of Commanche Drive; thence , along said drive, S 45°12'46" E, 100.00 feet; thence, leaving said drive, S 44°46'37" W, 99.96 feet to the true point of beginning; that the buildings and structures thereon are located with respect to the boundaries thereof, that there are no encroachments, rights-of-way, easements or joint driveways on, over or across said parcel visible on the surface except as shown on the plat of survey prepared by Mark L. Miller, a registered surveyor, on August 22, 2003.
>
> Being further described as Parcel No. 43-10-09-29-0-000-054.002 according to the records maintained in the Lee County Revenue Commissioner's Office.

(b) The property described above has been utilized by The Utilities Board of the City of Opelika (the "Utilities Board") as a water storage tank and pump station.

(c) The Utilities Board has maintained the property described above for more than 35 years.

(d) The City is desirous of conveying the property to the Utilities Board.

Section 2. It is hereby declared to be in the best interest of the public and the City to convey the real property described in Section 1, above, to The Utilities Board of the City of Opelika.

Section 3. The Mayor and the City Clerk be, and they are, authorized and directed to execute and attest, respectively, for and on behalf of the City of Opelika, Alabama, a statutory warranty deed, a copy of which is on file in the Office of the City Clerk, whereby the City of Opelika does convey the premises described in Section 1 hereof to The Utilities Board of the City of Opelika without consideration.

Section 4. This ordinance shall become effective immediately upon its adoption and publication as required by law.

Section 5. The City Clerk of the City of Opelika is hereby authorized and directed to cause this ordinance to be published one (1) time in a newspaper published in and of general circulation in the City of Opelika, Alabama.

ADOPTED AND APPROVED this the _____day of _____________________, 2016.

____

PRESIDENT OF THE CITY COUNCIL OF THE

CITY OF OPELIKA, ALABAMA

ATTEST:

____

CITY CLERK

TRANSMITTED TO MAYOR this the _____day of _____________________, 2016.

____

CITY CLERK

ACTION BY MAYOR

APPROVED this the _____day of _______________________, 2016.

____

MAYOR

ATTEST:

____

CITY CLERK

Attachment: COMMANCHE TANK BOUNDARY (130-16-ORD : Ordinance Conveying Property to Utilities Board - 2Nd Reading)

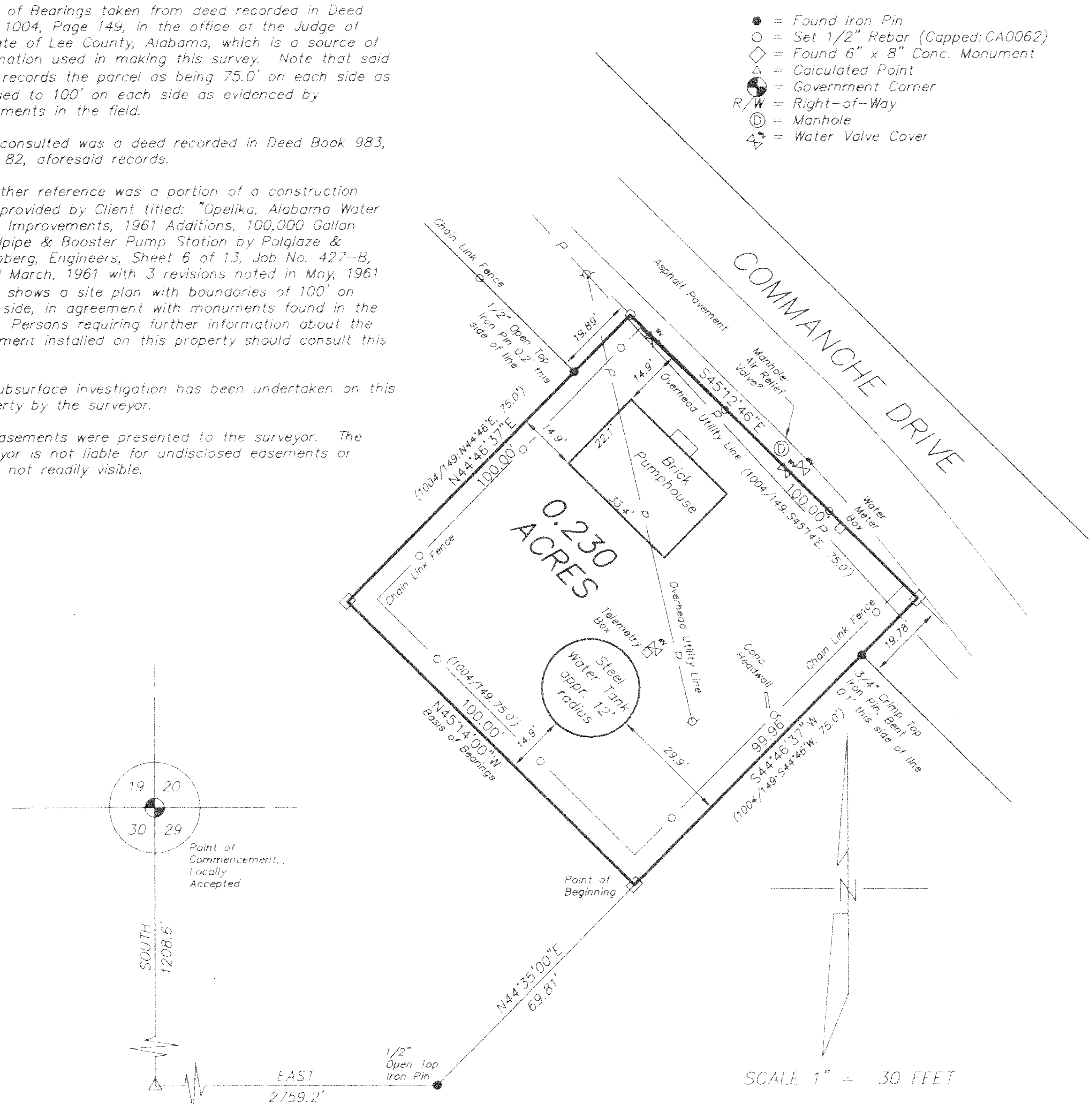
NOTE:
Basis of Bearings taken from deed recorded in Deed Book 1004, Page 149, in the office of the Judge of Probate of Lee County, Alabama, which is a source of information used in making this survey. Note that said deed records the parcel as being 75.0' on each side as opposed to 100' on each side as evidenced by monuments in the field.

Also consulted was a deed recorded in Deed Book 983, Page 82, aforesaid records.

A further reference was a portion of a construction plan provided by Client titled: "Opelika, Alabama Water Works Improvements, 1961 Additions, 100,000 Gallon Standpipe & Booster Pump Station by Polglaze & Basenberg, Engineers, Sheet 6 of 13, Job No. 427–B, dated March, 1961 with 3 revisions noted in May, 1961 which shows a site plan with boundaries of 100' on each side, in agreement with monuments found in the field. Persons requiring further information about the equipment installed on this property should consult this plan.

No subsurface investigation has been undertaken on this property by the surveyor.

No Easements were presented to the surveyor. The surveyor is not liable for undisclosed easements or those not readily visible.



BOUNDARY SURVEY FOR
THE UTILITIES BOARD OF THE CITY OF OPELIKA

OPELIKA	LEE COUNTY	ALABAMA
SEC. 29	T–19–N	R–27–E

I, MARK L. MILLER, A REGISTERED SURVEYOR IN THE STATE OF ALABAMA, HEREBY CERTIFY THAT ALL PARTS OF THIS SURVEY AND DRAWING OF THE FOLLOWING DESCRIBED PARCEL OF LAND HAVE BEEN COMPLETED IN ACCORDANCE WITH THE CURRENT REQUIREMENTS OF THE STANDARDS OF PRACTICE FOR SURVEYING IN THE STATE OF ALABAMA, TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF: COMMENCING AT THE NORTHWEST CORNER OF SECTION 29, T–19–N, R–27–E, IN OPELIKA, LEE COUNTY, ALABAMA; THENCE SOUTH, 1208.6 FEET; THENCE EAST, 2759.2 FEET; THENCE N44°35'00"E, 69.81 FEET TO THE TRUE POINT OF BEGINNING OF THE PARCEL OF LAND HEREIN DESCRIBED; THENCE N45°14'00"W, 100.00 FEET; THENCE N44°46'37"E, 100.00 FEET TO A POINT WITHIN THE MARGIN OF COMMANCHE DRIVE; THENCE, ALONG SAID DRIVE, S45°12'46"E, 100.00 FEET; THENCE, LEAVING SAID DRIVE, S44°46'37"W, 99.96 FEET TO THE TRUE POINT OF BEGINNING; THAT THE BUILDINGS AND STRUCTURES THEREON ARE LOCATED WITH RESPECT TO THE BOUNDARIES THEREOF; THAT THERE ARE NO ENCROACHMENTS, RIGHTS–OF–WAY, EASEMENTS OR JOINT DRIVEWAYS ON, OVER OR ACROSS SAID PARCEL, VISIBLE ON THE SURFACE, EXCEPT AS SHOWN ON THIS PLAT; ACCORDING TO MY SURVEY OF AUGUST 22, 2003.

THIS IS TO CERTIFY THAT I HAVE CONSULTED THE FEDERAL INSURANCE ADMINISTRATION FLOOD HAZARD BOUNDARY MAP COMMUNITY PANEL NOS. 010145 0001–100 & 0100B, DATED SEPTEMBER 16, 1981 AND FOUND THAT THE ABOVE–DESCRIBED PARCEL OF LAND LIES IN ZONE "C" (MINIMAL), WHICH IS NOT A SPECIAL FLOOD HAZARD AREA.

Mark L. Miller

Cert. No. 18677

BOLES ENGINEERING, INC.
9324 LEE ROAD 146
OPELIKA, AL 36804
(334) 745–2108
www.bolesengineering.com
OpUtilBdCommancheDr82203.dwg

ORDINANCE NO. 131-16-ORD

Amend City Code, Chapter 29 Vehicles for Hire - 2Nd Reading.

ORDINANCE NO.__________

AN ORDINANCE AMENDING CHAPTER 29 OF THE *CODE OF ORDINANCES*; REGULATING VEHICLES FOR HIRE

BE IT ORDAINED by the City Council (the "Council") of the City of Opelika, Alabama (the "City") as follows:

Section 1. **Amendments to Chapter 29 of the *Code of Ordinances*.** That Chapter 29 of the *Code of Ordinances* of the City of Opelika, Alabama, is hereby amended to read as follows:

Chapter 29 VEHICLES FOR HIRE

ARTICLE I. VEHICLES FOR HIRE AND TRANSPORTATION COMPANIES

DIVISION 1. - GENERALLY

Sec. 29-1. - Definitions.

Unless the context clearly indicates a different meaning, the following words and phrases, wherever used in this article, shall have the meanings respectively described in this section:

Business license means the license required by chapter 14 to operate a taxicab within the city, or a transportation network company permit under Section 29-91.

Executive sedan means a motor vehicle that furnishes transportation for hire in the city, not over fixed routes, operated by a chauffeur on a prearranged basis, which has a seating capacity of five (5) to seven (7) passengers and is a large sedan or sport utility vehicle. Executive sedans may include Lincoln, Cadillac, Mercedes, Chevrolet Tahoes, Ford Expeditions and other like vehicles. The Revenue Officer or his designee has the discretion to allow and deny vehicles based on type. However, the classification "executive sedan" shall not apply to any motor vehicle which is classified as a taxicab, transportation network company (TNC) vehicle, or shuttle vehicle, used exclusively by or under a written agreement with a hotel, motel, airport, hospital, club or such entity for the transportation of its members, guests, patients or clients, or operated as a bus on fixed routes.

Limousine means a motor vehicle that furnishes transportation for hire in the city, not over fixed routes, operated by a chauffeur on a prearranged basis which meets the manufacturers specifications for luxury limousine, with a minimum of six (6) seats located behind the operator of the vehicle, with a designed seating capacity for no more than ten (10) passengers, and with a door at the rear of the vehicle designed to allow passenger entry or exit. Provided, however, the classification "limousine" shall not apply to any motor vehicle which is classified as a taxicab, TNC vehicle, or shuttle vehicle, used exclusively by or under a written agreement with a hotel, motel, airport, hospital, club or such entity for the transportation of its members, guests, patients or clients, or operated as a bus on fixed routes.

Owner, operator means any person engaged in the business of operating a vehicle for hire company in the city or its police jurisdiction.

Specialty limousine means the requirements and rules for specialty limousines shall be the same as for limousines. They shall be defined as an antique or special interest vehicle which is maintained in excellent condition. The antique or vintage vehicle shall also be a private passenger automobile weighing not more than twenty-six thousand (26,000) pounds gross weight, over thirty (30) years old, and operated as a collector's item. Specialty limousines must comply with Section 29-18 unless the vehicle was manufactured without required equipment the code enumerates.

Taxicab means a motor vehicle not operated over a fixed route furnishing transportation for hire within the city to no more than seven (7) passengers at the same time, from points of origin to destinations as directed by the passengers. Provided, however, the classification "taxicab" shall not apply to any motor vehicle which is:

(1) Classified as a limousine, TNC vehicle, or shuttle vehicle as herein defined.

(2) Used exclusively by or under a written agreement with a hotel, motel, airport, hospital, club or other such entity for the transportation of its members, guests, patients or clients, provided, that each vehicle under such agreement will have the same distinctive visible outside painted appearance as each other vehicle under the agreement to any such hotel, motel, airport, hospital, club or other such entity.

(3) Operated as bus under a franchise granted by the city.

Transportation network company or TNC means an entity licensed pursuant to division 4 that uses a digital network or online-enabled application service to connect passengers to transportation network company services provided by transportation network company drivers. The vehicles used to provide transportation network company services are not taxicabs or vehicles for hire for purposes of this article. A transportation network company shall not be deemed to control, direct, or manage the transportation network company vehicles or transportation network company drivers that connect to its digital network or online-enabled application service, except where agreed to by written contract.

Transportation network company (TNC) driver means an individual who operates a motor vehicle that is:

(1) Owned, leased or otherwise authorized for use by the individual;

(2) Not classified as a taxicab or vehicle-for-hire under this article;

(3) Used to provide transportation network company services;

(4) Inspected and insured as required by this article; and

(5) Capable of carrying no more than seven (7) passengers at the same time.

Transportation network company (TNC) services means the transportation of a passenger beginning when a TNC driver accepts a request for transportation received through the TNC's digital network or online-enabled application service, continuing while the TNC driver transports the passenger in the TNC driver's vehicle, and ending when the passenger exits the TNC driver's vehicle. TNC service is not taxicab or vehicles for hire service for purposes of this article.

Transportation network company (TNC) vehicle means a vehicle that is used by a TNC driver and is owned, leased, or otherwise authorized for use by the individual, and not classified as a taxicab or vehicle for hire under this article.

Vehicle for hire means a vehicle providing shared transport, which transports one (1) or more passengers between locations of the passengers' choice for a fee, including but not limited to executive sedans, limousines, specialty limousines and taxicabs.

Sec. 29.2 - Exclusions from this chapter.

(a) The provisions of this chapter shall not apply to the following categories of vehicles and services:

(1) buses as defined in this chapter.

(2) hearses and mortuary limousines when used as funeral vehicles

(3) ambulances and other emergency vehicles

(4) school and church buses when used for school or church purposes

(5) vehicles rented or leased to the public without a driver

(6) vehicles operated by the Lee-Russell Public Transit

(7) vehicles operated on a share-the-expense plan such as carpools

(8) courtesy vehicles such as limousine or van provided by a hotel for free transportation over fixed route or an automobile furnished by an automobile provided by a garage or repair shop for use while a person's own car is being repaired.

(9) government owned or leased vehicles.

(b) The provisions of this chapter shall not be construed to limit any powers that Auburn University Regional Airport may have to regulate the operation of transportation service vehicles on airport premises.

Sec. 29-3. - License or permit required.

No person shall operate or drive a vehicle for hire without first being licensed or permitted as otherwise provided in this article and no person shall operate a TNC under this article without first being permitted as provided.

Sec. 29-4. - Prerequisite to issuance of license.

No privilege license, or permit under any license schedule or ordinance shall be issued to any person to engage in the business of operating a vehicle for hire or TNC in the city unless the applicant has a valid unrevoked permit to operate a vehicle for hire or TNC in the city as provided in this article.

Sec. 29-5. - Application.

Application for a permit required by this article shall be made on a form to be furnished by the city Revenue Department.

Sec. 29-6. - Term and conditions.

A permit issued as provided in this article shall be for such a length of time, not to exceed twelve (12) months at a time, and upon such terms and conditions as may be prescribed by the governing body.

Sec. 29-7. - Out-of-city vehicles.

Vehicles for hire permitted under this article having no city business license and licensed in another jurisdiction may bring passengers into the city but may not pick up any passenger for any destination or accept any business within the city. A TNC driver that is affiliated with a TNC that has no city business license and licensed in another jurisdiction may bring riders into the city but may not pick up any riders for any destination or accept any ride requests within the city.

Sec. 29-8. - Unauthorized use of driver's license.

It shall be unlawful for any person to hold such person's self out as a licensed driver of a vehicle permitted under this article, unless such person is so licensed. It shall further be unlawful to borrow or lend such person's license or permit, or for any person to use a license or permit of any other person.

Sec. 29-9. - Drivers to use most direct route; designation of routes between terminals and hotels.

It shall be the duty of every driver of a vehicle permitted under this article to carry passengers to their destination by the most direct available route unless otherwise directed by such passengers; provided, that, in order to minimize traffic congestion, the Revenue Officer may, by written order, designate the routes to be followed in carrying passengers from passenger terminals to hotel and vice versa.

Sec. 29-10. - Refusal of passengers.

It shall be unlawful for any person engaged in operation of a taxicab business or other business permitted under this article in the city, or the driver of any taxicab or other vehicle permitted under this article, to refuse without sufficient cause, to carry any passenger, including handicapped persons with seeing eye dogs, to any designation in the city designated by the passenger; provided, however, no person shall be required to carry any person who is intoxicated or disorderly or who is afflicted with a contagious or infectious disease, or who refuses to pay in advance when requested to do so, or who, for other good reasons, deemed adequate by the court, shall be excluded.

Sec. 29-11. - Maintaining the vehicle in a clean and sanitary condition.

It shall be the duty of every person operating a vehicle permitted under this article to keep and maintain the interior and exterior of any such vehicle permitted under this article in a clean and sanitary condition at all times. Any unclean or unsanitary vehicle permitted under this article may be ordered out of service at any time by the Revenue Officer or his representative until such time as the vehicle has been cleaned. It shall be the duty of every person operating a vehicle permitted under this article to keep and maintain any such vehicle at all times in accordance with Section 29-19.

Sec. 29-12. - Lost property.

Drivers of vehicles for hire must conduct a search of the interior of their vehicles at the termination of each trip. If the driver discovers any property of a passenger, the driver shall immediately report the property discovered to his employer and, as soon as practicable, deliver the property to his employer. The employer shall, when able, make every reasonable effort to notify passenger or recovery of lost property. The employer shall also maintain property in his possession in a secured location for a minimum of thirty (30) days. A sign reflecting this policy shall be placed in each vehicle for hire.

Sec. 29-13. - Appearance and conduct of drivers.

(a) *Appearance.* All drivers of vehicles permitted under this article shall be neat and clean in appearance.

(b) *Demeanor.* No driver of a vehicle permitted under this article shall be discourteous or use vulgar or profane language while on duty.

(c) *Possession of alcoholic beverages prohibited.* No driver of a vehicle permitted under this article, while in charge of or operating the same, shall have any alcoholic beverages in his possession.

(d) *Use of drugs.* No driver of any vehicle permitted under this article shall consume or be under the influence of any prescription or nonprescription drug which impairs driving ability or any alcoholic beverage while on duty.

(e) *Smoking.* It shall be unlawful for the driver of any vehicle permitted under this article operated upon the streets of the city to smoke or allow any other person to smoke in such vehicle.

Sec. 29-14. - Use for purpose of prostitution, lewdness or any illegal purpose.

It shall be unlawful for the driver of any vehicle permitted under this article to permit any person to occupy or use such vehicle for the purpose of prostitution, lewdness or for any illegal purpose, with knowledge or reasonable cause to know that the same is or is to be used for such purpose, or to direct, take or transport, or offer or agree to direct, take or transport any person to any building or place or to any other person, with knowledge or reasonable cause to know that the persons purpose of such directing, taking or transporting is prostitution, lewdness or for any illegal purpose.

Sec. 29-15. - Reports concerning passengers.

It shall be the duty of the owner or operator or dispatching office of the owner or operator of any vehicle, or any affiliated TNC permitted under this article to keep a daily record of the following information:

(1) The time and place at which all passenger or passengers engage the vehicle.

(2) The time and place at which such passengers were delivered to their destination.

(3) The amount of the fare received.

(4) It shall be the duty of every owner or operator of every vehicle permitted under this article to preserve all reports required by this section for not less than three (3) months and to exhibit the same to the city upon demand. The audit provisions of TNC's in Section 29-100 shall satisfy the exhibition requirement of this subsection.

Sec. 29-16. - Failure to pay.

It shall be unlawful for any person to refuse to pay the driver of any vehicle permitted under this article the rate fixed for the services rendered such person. On the trial of any person for a violation of this section, it may be shown in mitigation or justification of the offense that the permitted vehicle did not have posted therein, or in the associated digital network or online-enabled application service, if applicable, the schedule of rates to be charged, as required by this article.

Sec. 29-17. - Application for chauffeur's licenses.

(a) An application for a chauffeur's license shall be filed with the Revenue Officer on forms provided by the city. Such form shall be verified under oath subject to the penalty of perjury, and shall contain the following information:

(1) That the applicant is a citizen of the United States or an alien admitted for permanent residence who has otherwise been granted employment authorization by the United States Immigration and Naturalization Service.

(2) That the applicant is nineteen (19) years of age or over.

(3) That the applicant:

a. Does not have a record of more than three (3) moving violations in the prior three (3) year period, or one (1) major violation in the prior three (3) year period (including, but not limited to, attempting to evade the police, reckless driving, or driving on a suspended or revoked license);

b. Has not been convicted, within the past seven (7) years, of driving under the influence of drugs or alcohol, fraud, sexual offenses, use of a motor vehicle to commit a felony, a crime involving property damage, and/or theft, acts of violence, or acts of terror;

c. Is not a match in the National Sex Offender Registry database;

d. Possesses a valid driver's license.

e. Does not have a general reputation for turbulence, violence or instability of character in the community where he resides;

f. On making application for a chauffer's license each applicant shall submit with the application the following: thirty dollars ($30.00) for the processing fee, a money order or cashier's check in the amount of five dollars and seventy-five cents ($5.75) payable to the Alabama Department of Public Safety for the applicant's driver's history, a cashier's check or money order in the amount of eighteen dollars ($18.00) payable to the Treasury of United States for the applicant's Federal Bureau of Investigation background check and twenty-five dollars ($25.00) by cashier's check or money order made payable to the State of Alabama, along with a release form to the state, to obtain a criminal background history from the state. All forms are available at the Revenue Department. Once completed, all forms must be submitted to the Revenue Officer or his designee.

g. The foregoing notwithstanding, in lieu of complying with the application procedures set out in this section, the driver of a vehicle for hire may comply with the TNC driver requirements in Section 29-96 and present evidence of said compliance to the Revenue Department.

Sec. 29-18. - Investigation of applicant; duties of the Revenue Officer; issuance of temporary license.

(a) When applying for a chauffeur's license under Section 29-17, each applicant shall, at the applicant's expense, obtain a comprehensive criminal background check from the National Crime Information Center ("NCIC"). The NCIC report shall include a list of all misdemeanors or felonies of which the applicant has been convicted, stating the names and locations of the court in which, and the date on which, such convictions were issued and the penalties imposed therefor.

(b) (1) Any applicant who has been convicted, within the past seven (7) years of driving under the influence of drugs or alcohol, fraud, sexual offenses, use of a motor vehicle to commit a felony, a crime involving property damage, and/or theft, acts of violence or acts of terror shall be ineligible for a chauffeur's license.

(2) Any applicant who is a match on the National Sex Offender Registry data base shall be ineligible for a chauffeur's license.

(3) Any applicant who has been placed on probation or parole or forfeited a cash bond to appear in court to answer to one (1) of the offenses listed in subsection (b)(1) may be found ineligible for a chauffeur's license.

(4) Any applicant charged with one (1) of the criminal offenses listed in subsection (b)(1) during the application process may be found ineligible for a chauffeur's license until the charges are resolved, and, upon conviction, shall be ineligible.

(c) The applicant shall accompany the application and release form submitted to the Revenue Officer or his designee with a certified cashier's check or money order payable to Treasury of the United States in an amount sufficient to obtain a comprehensive criminal background check. The Revenue Officer or his designee will mail the completed application and payment to NCIC.

(d) Upon receipt of the application, the Revenue Officer or his designee shall perform a preliminary criminal background check for the purpose of determining whether the applicant is eligible for a temporary chauffer's license pending receipt of the NCIC comprehensive criminal background check. The preliminary background check shall include an investigation of the applicant's character, reputation, driving record, record of arrests and convictions, if any. The Revenue Officer or his designee may secure such information as may be required to insure compliance with the requirements of this article, including photographing and fingerprinting of the applicant.

(e) Upon completion of the initial examination of the applicant's qualifications, an applicant found to meet all eligibility requirements shall be issued a temporary city driver's license. The temporary certificate shall be valid for a period not exceeding one hundred eighty (180) days (subject to extension for such longer period as may be necessary to receive a report from NCIC provided the delay results solely from the acts or omissions of NCIC). On the completion of the investigation by the Revenue Officer, or his designee, the Revenue Officer or his designee shall either:

(1) Issue a temporary chauffer's license to the applicant; or

(2) Refuse to issue such license and notify the applicant of the reasons for such refusal.

(f) If at any time after issuance of a temporary chauffeur's license the Revenue Officer or his designee learns that the applicant cancelled his or her request for a comprehensive criminal background check from NCIC, the temporary license shall immediately be withdrawn and the applicant shall thereafter be ineligible for a chauffeur's license.

(g) The applicant shall bring the NCIC report to the Revenue Officer or his designee upon receipt. If the report establishes that the applicant fails to meet the requirements for a chauffeur's license, the temporary license shall be revoked and the applicant will be found ineligible for a chauffer's license. If the report establishes that the applicant meets the requirements, the Revenue Officer or his designee shall issue a chauffeur's license. On the issuance of a chauffeur's license, the temporary license shall automatically terminate.

Sec. 29-19 General Condition and Maintenance of Vehicles

(a) Each passenger motor vehicle for hire permitted under this article, including taxicabs and TNC vehicles, shall be maintained by the owner in good mechanical and safe condition at all times.

(b) Each vehicle permitted in this article shall be in a clean condition free of foreign matter and offensive odors. There shall be no litter in the vehicle or trunk. The seats shall be clean and without holes or large wear spots. The vehicle shall contain a spare tire, a jack, sufficient trunk space (within reason) for passenger’s luggage, a functional means of communication for limousines, sedans and shuttles and a functional two-way radio for taxicabs which will serve as means of communication between the company and the driver.

(c) There shall be no tears or rust holes in the vehicle body. The paint shall not be peeling or in a faded condition. No loose pieces such as fenders, bumpers or trim shall be hanging from the vehicle body. There shall be no unrepaired body damage or any body condition which would create a safety problem or interfere with the operation of the vehicle.

(d) The Revenue Department may conduct random inspections of any vehicle permitted under this article at any time. The inspections shall be made to determine that the vehicle is in a reasonably good state of repair, clean, and equipped and being operated in compliance with all requirements of this article. The inspection shall be made at a place designated by the Revenue Officer. Inspections may include, but are limited to, foot brakes, parking brake, head lamps, tail lamps, license plate lamps, windshield wipers, heating, ventilating and air conditioning systems, safety belts and air bags, speedometer, turn indicator lights, stop lights, horn, rearview mirror, all glasses, cleanliness, safety, condition of paint, steering mechanism, tires, mufflers and exhaust system, condition of the body of the vehicle and fenders. If the inspection reveals that the vehicle is not in a reasonably good operating condition, from the standpoint of safety, health and comfort of passengers, the Revenue Officer shall order the vehicle out of service until remedial repairs and corrections have been made. When the repairs and corrections have been made, the vehicle shall be reinspected to determine whether or not proper repairs and corrections have been made, and in no case shall the vehicle be permitted to resume its operation until repairs and corrections have been made. It shall be unlawful for a permittee to utilize any vehicle for hire that has been ordered out of service until the vehicle has been reinspected and the Revenue Officer authorizes resumption of its use.

Sec. 29-20. - Suspension and revocation.

(a) Violations of any regulations of this article may be cause for suspension of the permit or license to operate a vehicle permitted under this article. The Revenue Officer or his designee may suspend a permit or license for cause.

(1) Upon receipt of notification of suspension, the permittee or licensee, within fifteen (15) days, may submit a written request for a hearing to be held before the City Council. The receipt of a written request by the Revenue Officer or his designee for a hearing within the prescribed time shall stay the suspension pending final disposition unless it is determined by the Revenue Officer that it would endanger public safety to allow the permittee or licensee to continue operating.

(2) A hearing shall be held at the next regularly scheduled public City Council meeting provided that it is at least seven (7) days following the receipt of the hearing request. At such public hearing the permittee or licensee shall be provided an opportunity to be heard. The City Council may require the Revenue Officer to appear.

(3) The City Council shall render a decision within ten (10) days from the date of such hearing.

(4) The Revenue Department shall reinstate the permit or license upon written application after the period of suspension has elapsed and after the Revenue Department has determined that such permittee or licensee is in compliance with all the regulations pertaining to drivers of vehicles permitted under this article.

(b) If any violations of any regulations pertaining to vehicles permitted under this article are deemed to be of such an emergency nature as to endanger public safety, the Revenue Department shall immediately suspend the permit or license for committing such a violation.

(c) Any permit or license granted under this article may be revoked by the city council at their discretion, at any time after not less than thirty (30) days in writing shall have been given the permit or license holder thereof that such may appear before the city council and show cause why the permit or license shall not be revoked. Such notice shall be signed by the Revenue Officer or his designee or as may be otherwise directed by the city council and may be served upon the permittee or licensee personally or by certified mail. Any permit or license shall be deemed suspended upon initiation of revocation proceedings and shall remain suspended pending city council's action on revocation.

Secs. 29-21-29-49. - Reserved.

DIVISION 2. - INSURANCE

Sec. 29-50. - Insurance for all vehicles permitted under this article.

(a) It shall be unlawful for any person, either as owner, operator, driver or lessee, to operate or drive, or permit to be operated or driven, a vehicle permitted under this article in the city, unless such vehicle is covered by a public liability insurance policy complying with the terms of this article. It shall likewise be unlawful for any person to display any sign indicating that the person provides the services permitted under this article, without complying with all of the provisions of this division.

(b) Any holder of a permit under this article automatically forfeits such permit, and such permit shall become void and of no effect, if such permit holder operates or permits the operation of any vehicle permitted by this article in the city without such vehicle being at the time covered by a liability insurance policy as provided in this division.

(c) The policy of insurance required by this division shall be subject to approval by the Revenue Officer or Revenue Department as to the sufficiency of the insurer and by the city attorney as to the form and terms of the policy, and, when so approved, shall be filed with and remain on file in the Revenue Department.

(d) The insurance policy required by this division shall provide that it cannot be cancelled until thirty (30) days written notice of such cancellation shall have been filed with the Revenue Officer, stating the day and time when such cancellation shall become effective. If such policy is cancelled and the owner or operator of the vehicle permitted under this article fails to provide another policy of insurance complying with the provisions of this division on or before the effective date of such cancellation, then the license or permit issued for such vehicle shall automatically become null and void and of no effect. The cancellation of any policy shall in no way effect or terminate any liability for accident occurring prior to the effective day and time of such cancellation. No cancellation notice shall be recalled by a letter of reinstatement.

(e) No license or permit to operate a vehicle permitted under this article in the city shall be issued to any person until he has complied with all the provisions of this division.

Sec. 29-51. - Insurance requirements pertaining to vehicles for hire

(a) This insurance policy required by this division shall provide liability coverage in the minimum limits required by the state public service commission but in any event not less than one hundred thousand dollars ($100,000.00) for the injury or death of any one (1) person and three hundred thousand dollars ($300,000.00) for injury or death of any number of persons in any one (1) accident and also for a coverage of at least one hundred thousand dollars ($100,000.00) for property damage in any one (1) accident, such coverage to be effective whether the vehicle for hire was, at the time of any accident, being driven by the owner, agent, employee, lessee or licensee. Such policy shall not be canceled or suspended, either by the insured or the insurer, unless at least thirty (30) days' notice in writing of the intention to cancel or suspend policy has been filed with the revenue department, and upon such suspension or cancellation of insurance, the vehicle for hire of said insured shall stand suspended until such time as an acceptable policy and certificate of insurance shall be on file with the revenue department.

(b) It is not required that such coverage shall apply to bodily injury or to death of any employee of the insured while engaged in the employment, other than domestic, of the insured, or while engaged in the operation, maintenance or repair of such vehicle for hire, nor any obligation for which the insured or any company as such person's insurer may be held liable under any worker's compensation law.

(c) The insurance coverage required by this section shall be commercial vehicle for hire insurance and the city shall be named as an additional insured endorsed on the policy.

(d) Proof of insurance must be physically present in each licensed vehicle for hire.

(e) The insurance policy required by this division shall be issued by a solvent, incorporated insurance company authorized to write automobile liability insurance in this state and whose agent is engaged in business in this county.

(f) The policy of insurance required by this division shall recite the year, model, body type, motor number and trade name or name of the maker of the vehicle for hire covered thereby.

Sec. 29-52. - Insurance requirements pertaining to transportation network company vehicles.

Transportation network companies and transportation network company drivers shall at all times maintain insurance coverage as set out in Act No. 2016-409 of the Legislature of Alabama.

Secs. 29-53-29-69. - Reserved.

DIVISION 3. - VEHICLE FOR HIRE; TAXI CABS

Sec. 29-70. - Identification of vehicles.

(a) All taxicabs shall have the words "taxi" or "taxicab" or "cab" painted or decaled on at least one (1) door on each side of the taxicab in letters not less than two (2) inches in height and of corresponding width, in paint of a different color from that of remainder of the door so as to be easily read. For LSV taxicabs, the vehicle body may be used to comply, in a manner as approved by the city Revenue Department, to paint or affix by decal the words "taxi" or "taxicab" or "cab" to the vehicle.

(b) All taxicabs shall have a unit number painted or decaled on both sides of the body of each taxicab on the front end and rear end of each taxicab in numerals of at least three (3) inches in height. Any person with more than one (1) taxicab shall have a different unit number painted on each taxicab. For LSV taxicabs, the vehicle body may be used to comply, in a manner as approved by the Revenue Department, to paint or affix by decal a number to the vehicle.

(c) All taxicabs shall have a sign on top of the taxicab that includes the words "taxi" or "taxicab" or "company name" that is visible both day and night.

(d) All taxicabs shall have the name of the corporation or person that is the owner or operator painted on both sides of the taxicab in letters not less than two (2) inches in height and corresponding width, in paint of a different color from that of the remainder of the door so as to be easily read.

(e) The color scheme for taxicabs shall be the same as that proposed in the application for a license and all taxicabs within any company must be the same. A diagram of the vehicle with colors, color number, name, and any logo must be attached. Any changes must be approved by the Revenue Officer or his/her designee. This section shall not apply to any licensed vehicle for hire in operation at the time of the adoption of the ordinance from which this section is derived. Effective January 1, 2017, all taxicab companies must have on file a registered color scheme.

Sec. 29-71. - Unlicensed vehicles not to operate under taxicab license plates; surrender of license plates.

It shall be unlawful for any person to operate a private motor vehicle in the city under a state taxicab license plate without also having obtained a taxicab license plate from the city. If a taxicab ceases to operate as such a vehicle, all taxicab license plates shall be turned over by the operator to the Revenue Officer on the day that the operation of such vehicle as a taxicab ceases. The Revenue Officer shall retain such license plates until such vehicle qualifies as a taxicab under the provisions of this article or until such plates expire. The fact that a vehicle is not insured or identified as a taxicab as required by this article shall be prima facie evidence that such vehicle is a private one and not a taxicab.

Sec. 29-72. - Posting fares.

(a) The rates of fares for any taxicab shall be posted in a conspicuous place in such taxicab at a place where the same is well lighted and is clearly discernible and visible to any passenger within such vehicle.

(b) The foregoing notwithstanding, no owner or driver of a vehicle under permitted under this division shall be in violation of this section for charging a fare that is made known to the customer and accepted by the customer before the customer decides to accept the services offered.

Sec. 29-73. - Amounts charged.

(a) It shall be unlawful for the owner, driver, or operator of any taxicab to charge any passenger a fare for the use of such taxicab which is in excess of the rate displayed within the taxicab. Passengers shall have the right to pro-rate charges among themselves as they see fit. In the event the passengers cannot reach agreement as to their respective share of the total fare, the driver then shall be allowed to collect the fare to the point of final destination from the first passenger engaging the taxicab.

(b) No driver shall allow or permit any other person to occupy or ride in such taxicab unless the person or persons first employing the taxicab shall consent to the acceptance of additional passengers.

(c) If a vehicle for hire is carrying two (2) or more persons to different destinations, the driver shall be the sole judge of the order in which such persons shall be delivered to their destination, and the shortest possible route to all destinations shall be followed.

(d) No vehicle for hire driver shall stop to pick up any additional passengers while proceeding to the destination of any passengers then occupying the vehicle for hire without the consent of all such passengers.

Sec. 29-74. - Transportation of passenger's baggage without charge.

Each passenger of any taxicab shall be allowed to have conveyed with such passenger in such vehicle, without charge, therefore, such person’s traveling baggage, not exceeding in the aggregate forty (40) pounds in weight.

Sec. 29-75. - Prohibition against preferences and referral fees.

It shall be unlawful for any hotel, motel, restaurant, cab starter, bell person, maitre d', or other person having the ability or authority to control the selection of taxicabs available for hire at any business premises to solicit a fee or other compensation or favor for the purpose of granting preference or priority rights to any taxi.

Sec. 29-76. - Driver to give certain information upon request.

Every driver of a vehicle for hire in the city, upon request to do so, shall give to any person who has been a passenger in the vehicle, or who is about to become a passenger, or to any police officer, the license number and name of such driver, the license number of such vehicle, the name of the person by whom the driver is employed, and the rate per mile, and the odometer reading if related to the service being offered.

Secs. 29-77-29-89. - Reserved.

DIVISION 4. - TRANSPORTATION NETWORK COMPANIES

Sec. 29-90. - Purpose; authorization.

Transportation network services provide an alternate form of transportation for residents and visitors to the city. The purpose of this division is to authorize use of the city's rights-of-way by transportation network company drivers in a manner that is safe, convenient and serves the public welfare.

Sec. 29-91. - TNC permit required.

(a) A person shall not operate a TNC in the city without first having obtained a permit from the city, however, a person operating a TNC in the city as of the effective date of this article may continue to operate for a period of thirty (30) days following the effective date of this article so as to permit the person or entity to obtain a permit from the city pursuant to this section.

(b) Each applicant for a permit to operate a TNC shall comply with the requirements of this article and pay an annual fee of one thousand dollars ($1,000.00), due January 1 and last payable without penalty February 15 of each year.

(c) A TNC permit is a privilege and not a right. A TNC shall be subject to suspension or revocation of its permit for failing to comply with the requirements of this article.

Sec. 29-92. - Agent.

The TNC must at all times it operates in the municipal limits of the city or its police jurisdiction provide the city with current contact information including an agent to accept service of process in the state.

Sec. 29-93. - Fare charged for services.

On behalf of a TNC driver, a TNC may charge a fare for the services provided to riders; provided that, if a fare is charged, the TNC shall disclose to riders, the fare or fare calculation method on its website or within the online-enabled application service. The TNC shall provide riders with the applicable rates being charged and provide riders the option to receive an estimated fare before riders decide to accept the services offered.

Sec. 29-94. - Identification of TNC vehicles and drivers.

(a) The TNC's online-enabled application or website shall provide:

(1) the potential rider a picture of the TNC driver, and

(2) The license plate number of the motor vehicle utilized for providing the TNC service before the rider enters the TNC driver's vehicle.

(b) All vehicles operating through transportation network company shall have a sign not less than two (2) inches in height and of corresponding width on at least one (1) door identifying the transportation network company or the associated digital platform, and color contrasted so as to be visible from a distance of at least twenty (20) feet. A magnet or other temporary sign shall satisfy this section if the height and width requirements are met.

Sec. 29-95. - Receipt.

Within a reasonable period of time following the completion of a trip, a TNC shall transmit a receipt to the passenger that lists:

(1) The origin and destination of the trip;

(2) The total time and distance of the trip; and

(3) An itemization of the total fare paid, if any.

Sec. 29-96. - TNC driver requirements.

(a) Prior to permitting an individual to act as a TNC driver on its digital platform, the TNC shall:

(1) Require the individual to submit an application to the TNC, which includes information regarding his or her address, age, driver's license, motor vehicle registration, automobile liability insurance, and other information required by the TNC;

(2) Conduct, or have a third party conduct, a local and national criminal background checks for each applicant that shall include:

a. Multi-state/multi-jurisdiction criminal records locator or other similar commercial nationwide database with validation (primary source search); and

b. U.S. Department of Justice National Sex Offender Public Website.

(b) The TNC shall not permit an individual to act as a TNC driver on its digital platform who:

(1) Has had more than three (3) moving violations in the prior three (3) year period, or one (1) major violation in the prior three (3) year period (including, but not limited to, attempting to evade the police, reckless driving, or driving on a suspended or revoked license);

(2) Has been convicted, within the past seven (7) years, of driving under the influence of drugs or alcohol, fraud, sexual offenses, use of a motor vehicle to commit a felony, a crime involving property damage, and/or theft, acts of violence, or a violation that constitutes a felony under the Anti-Terrorism Act of 2002, Code of Ala. 1975, § 13A-10-150 et al., or a similar felony under the laws of another jurisdiction.

(3) Is a match in the U.S. Department of Justice National Sex Offender Public Website.

(4) Does not possess a valid driver's license;

(5) Does not possess proof of registration for the motor vehicle(s) used to provide TNC services;

(6) Does not possess proof of automobile liability insurance for the motor vehicle(s) used to provide TNC services; or

(7) Is not at least nineteen (19) years of age.

Sec. 29-96. - No street hails.

A TNC driver shall exclusively accept rides booked through a TNC's digital network or online-enabled application service and shall not solicit or accept street hails.

Sec. 29-97. - No discrimination; accessibility.

(a) The TNC shall adopt a policy of non-discrimination on the basis of destination, race, color, national origin, religious belief or affiliation, sex, disability, age with respect to passengers and potential passengers and notify TNC drivers of such policy.

(b) TNC drivers shall comply with all applicable laws regarding nondiscrimination against passengers or potential passengers on the basis of destination, race, color, national origin, religious belief or affiliation, sex, disability, age, sexual orientation.

(c) TNC drivers shall comply with all applicable laws relating to accommodation of service animals.

(d) A TNC shall not impose additional charges for providing services to persons with physical disabilities because of those disabilities.

(e) A TNC shall provide passengers an opportunity to indicate whether they require a wheelchair-accessible vehicle. If a TNC cannot arrange wheelchair accessible TNC service in any instance, it shall direct the passenger to an alternate provider of wheelchair-accessible service, if available.

Sec. 29-98. - Records.

A TNC shall maintain:

(1) Individual trip records for at least two (2) years from the date each trip was provided;

(2) TNC driver records at least until the two (2) year anniversary of the date on which a TNC driver's activation on the TNC digital network has ended; and

(3) When requested, and no more frequently than on a biannual basis, the TNC shall allow the city to visually inspect or audit the records of the TNC for purposes of verifying that the TNC is in compliance with the requirements of this article including, but not

limited to, vehicle inspections, proper completion of criminal background checks, and proper insurance. The audit shall take place at a mutually agreed locale in the city. The city does not assume any responsibility for the operations of the TNC, its drivers or any actions or omissions arising in connection with its activities, which, at all times, shall remain the responsibility of the TNC.

Secs. 29-99-29-109. - Reserved.

ARTICLE II. PEDICABS

Sec. 29-110. - Definitions

"Pedicab" means a multi-wheeled, hooded or unhooded vehicle that is primarily propelled by human power, is used in the transport of passengers and is available for hire on the public streets.

"Operator" means the person who is in actual physical control of the pedicab.

"Person" means an individual, corporation, firm, partnership, limited liability company, association or organization.

Sec. 29-111 - Pedicab operating area.

Boundaries of the pedicab operating area shall be shown on Exhibit "A", the pedicab operating area map, adopted herein by reference and shall remain on file in the Opelika Revenue Department. Generally, its boundaries are all areas within a two (2) mile radius of the Opelika Train Depot located at 1032 South Railroad Avenue. Pedicabs are further restricted to not traveling on any street or section of a street with a posted speed limit of greater than thirty-five (35) mph. The Revenue Officer or his or her designee may extend the operating area beyond the boundaries described herein for special events. Any extension of the operating boundaries must be in writing limited to a specified date and time and be in the possession of any operator who travels into the extended area.

Sec. 29-112 - Pedicab equipment.

Each pedicab shall be equipped at all times and maintained in good operating condition with the following items and equipment:

(a) Headlights;

(b) Taillights;

(c) Turn indicators for left and right turn on the back of the pedicab;

(d) A braking system;

(e) Rubber on all wheels;

(f) A slow-moving vehicle triangle attached to the rear of the pedicab with an orange fluorescent center and red reflective borders. The triangle shall be at least sixteen (16) inches wide at the bottom and at least fourteen (14) inches in height.

(g) Reflective tape, a minimum of eighteen (18) inches in length x two (2) inches in width of seven-inch white x eleven-inch red Alabama Department of Transportation (ALDOT) compliance prismatic conspicuity retro-reflective tape displayed on both sides of the pedicab;

(h) Proof of insurance;

(i) Reserved;

(j) Side mirrors;

(k) Brake lights and turn indicators;

(l) Horn;

(m) Reserved;

(n) Name and telephone number of the company operating the pedicab along with a unit number. The lettering shall be plainly visible of a size and location to be approved by the Revenue Officer or his or her designee.

Sec. 29-113 - Rules for operation of pedicabs.

(a) [*Insurance*.] Each pedicab shall be insured for at least the following minimum limits: one hundred thousand dollars ($100,000.00) bodily injury for each person, three hundred thousand dollars ($300,000.00) bodily injury for each accident and property damage limits of one hundred thousand dollars ($100,000.00).

(b) Pedicab width. No pedicab shall be wider than ninety-five (95) inches at its widest point.

(c) [Speed]. No pedicab shall operate on a street with a posted speed limit of greater than 35 mph except for the purpose of crossing that street.

(d) [Vehicle identification number.] No pedicab shall operate without a clearly visible manufacturer's vehicle identification number.

(e) Passengers restriction. No pedicab shall be operated transporting more than the manufactured recommended maximum number of passengers or exceeding the manufacturer's recommended weight limit.

(f) *Standing*. No pedicab shall stand or park on any public street or walkway for longer than is necessary to load or unload passengers.

(g) *Fares*. The fare and schedule of fares shall be available upon request to any passengers upon entry into or while seated in the pedicab.

(h) *[Condition of pedicab.]* All pedicabs shall be in good mechanical working order, have no exposed rust, ripped upholstery or fabric, have no visible chips or scratches on painted surfaces, have no exposed untreated wood and the passenger compartment shall be kept in a clean and sanitary condition.

(i) *[Operator identification card.]* No person shall operate a pedicab without a valid operator identification card.

(j) *[Inspection decal.]* No person shall operate a pedicab without a valid inspection decal.

(k) *[Required equipment.]* No person shall operate a pedicab without all equipment required by section 29-112.

(l) *[Area of operation]* No person shall operate a pedicab outside of the operating area defined by section 29-110.

ARTICLE III HORSE-DRAWN CARRIAGES

Sec. 29-114 Permit Required.

Except in connection with special events authorized by City officials, including but not limited to, parades and weddings, it shall be unlawful for any person to drive or permit to drive a horse-drawn carriage on the streets of the City. The Revenue Officer may issue permits for special events subject to such reasonable conditions as the Revenue Officer may impose.

Sec. 29-115 Diapers.

No equine shall pull a horse-drawn carriage unless the equine is wearing a diaper. Diapers must be properly fitting and constructed of a sturdy material to enforce comfort to the equine and complete waste disposal. Any excrement which shall fall upon the streets of the City shall be immediately removed by the driver. If any excrement should fall on the streets of the City and is not immediately removed by the driver, it may be removed by the City and the expense of the removal shall be recovered from the permittee.

Sec. 29-116 Shoes.

No equine shall be used to pull a horse-drawn carriage without properly fitted shoes on each properly trimmed hoof.

Sec. 29-117 Water.

Adequate water for equine pulling horse-drawn carriage will be provided at all times as often as needed and as climate conditions require.

Sec. 29-118 Trailers.

Any trailer or vehicle involved in transporting equine governed by this article must be in good working order and must be near the working location to provide speedy removal of any equine in an emergency situation.

Sec. 29-119 Fares.

A schedule of fares shall be conspicuously displayed on signs that shall be hung or painted on the exterior sides of the carriage. The signs should bear the amount to be charged per trip and the maximum number of passengers to be carried. It shall be unlawful to charge any rate in excess of the fare so displayed or to carry more than the specified number of passengers.

Sec. 29-120 Operating Regulations.

(a) Equine drawn vehicles shall observe applicable traffic rules and regulations.

(b) The driver of an equine drawn carriage shall:

(1) Possess and display at all times his or her special event permit from the Revenue Officer.

(2) Not drive a carriage when a passenger is standing in the carriage or not seated securely inside the carriage.

(3) Provide humane care of the equine under his or her direct supervision or control.

(4) Not drive or operate an equine drawn carriage on any public street in the City or any day or time unless approved by the Revenue Officer.

Sec. 29-121 Permit Application.

An application for a special event permit hereunder shall include the following information:

(a) The name, address and telephone number of the applicant.

(b) The carriages to be operated.

(c) The operators of the carriages.

(d) The horses which will be pulling the carriages.

(e) A general description of the area and the streets on which the carriages are to be operated.

(f) The dates and times the carriages will be operated.

(g) The locations for loading and unloading passengers.

(h) Such other information as the Revenue Officer may require.

Sec. 29-122. Insurance Requirements.

No permit shall be issued or remain in effect unless the permittee, at the permittee's expense and without cost to the City, shall procure, maintain in force and on file with the Revenue Office, sufficient evidence of a general liability policy naming the City as an additional insured covering bodily injury, including death, in the amount of $100,000 for any one person, $300,000 for bodily injury for each accident and property damage limits of $100,000.00.

Sec. 29-123. Fees.

The fees for special event permits under this article shall be as follows:

Annual Permit Fee $10.00 per carriage

Sec. 29-124. - 29-149--- Reserved.

ARTICLE IV ENFORCEMENT; VIOLATIONS; AND PENALTIES.

Sec. 29-150. Violations; Penalties

(a) Any person who violates a provision of this chapter or fails to perform an act required of the person by this chapter commits an offense. A person commits a separate offense for each day during which a violation is committed

(b) An offense under this chapter is punishable as provided in Section 1-8 of this *Code* and the City may enforce the provisions of this chapter through any other means prescribed in this chapter.

Sec. 29-151. Civil Remedies and Enforcement.

(a) The City Council is hereby authorized to institute any appropriate action or proceeding, including suit for injunctive relief in order to prevent or abate any violations of this chapter. Filing a suit for injunctive relief shall not be a bar against or a prerequisite for taking any other action against the offender.

(b) The City Council shall have the right to revoke or refuse to renew the business license of any non-compliant owner or operator.

Sec. 29-152. Remedies Not Exclusive.

The remedies provided for in this chapter are not exclusive. The City may take any, all or any combination of actions against a non-compliant owner, operator or business.

Section 2. **Incorporation Into the *Code of Ordinances.*** The provisions of this Ordinance shall be included in and incorporated into the *Code of Ordinances* of the City of Opelika, Alabama, and shall replace the provisions of Chapter 29 of the *Code of Ordinances* and shall be renumbered to conform to the uniform numbering system of the *Code.*

Section 3. **Severability Clause.** If any section, subsection, clause, sentence or phrase of this ordinance is held to be invalid or unconstitutional by any court of valid jurisdiction, said section shall in no way effect the validity of the remaining portions of this Ordinance.

Section 4. **Repealer Clause.** All ordinances or parts of ordinances in all sections of the *Code* of the City of Opelika in conflict herewith or to the extent of such conflict, are hereby repealed.

Section 5. **Effective Date**. This ordinance and the section adopted shall become effective and enforced immediately upon its passage and publication as required by law.

Section 6. **Publication**. The City Clerk of the City of Opelika, Alabama is hereby authorized and directed to cause this Ordinance to be published one (1) time in a newspaper of general circulation published in the City of Opelika, Lee County, Alabama.

ADOPTED AND APPROVED this the _____day of _________________, 2016.

____

PRESIDENT OF THE CITY COUNCIL OF THE

CITY OF OPELIKA, ALABAMA

ATTEST:

____

CITY CLERK

TRANSMITTED TO MAYOR on this the _____day of ____________________, 2016.

____

CITY CLERK

ACTION BY MAYOR

APPROVED this the _____day of _______________________, 2016.

____

MAYOR

ATTEST:

CITY CLERK

ORDINANCE NO. 132-16-ORD

Amending Business License Code - 2Nd Reading.

ORDINANCE NO.__________

AN ORDINANCE AMENDING THE BUSINESS LICENSE CODE OF THE CITY OF OPELIKA, ALABAMA BY AMENDING SECTIONS 14-326 AND 14-327 OF THE *CODE OF ORDINANCES* OF THE CITY OF OPELIKA

BE IT ORDAINED by the City Council (the "Council") of the City of Opelika, Alabama (the "City") as follows:

Section 1. **Amendment to Section 14-326 of the *Code of Ordinances*.** That Section 14-326 of the *Code of Ordinances*--**CLASSIFICATION OF BUSINESSES; TAX RATES-**as amended, be and is further amended in the following respect:

(a) That NAICS Sub-Sector 8128, General Services-Manicurist is hereby amended to read as follows:

8128	General Services -Manicurist	GS

(b) That NAICS Sub-Sector 485320-Limousine Services is hereby amended to read as follows:

485320	Limousine Services Before a license can be issued, applicant must meet all regulations and prerequisites of all City of Opelika ordinances pertaining thereunto.	GS

(c) That NAICS Sub-Sector 4921 Services/Delivery Services (local) is hereby deleted.

(d) That Section 141-326 is further amended to add the following NAICS Sub-Sector 48599-Other Transit; Ground Passage Transportation as follows:

48599	Other Transit; Ground Passenger Transportation Before a license can be issued, applicant must meet all regulations and prerequisites of all City of Opelika ordinances pertaining thereunto.	GS

(e) That NAICS Sub-Sector 48511-Miscellaneous Taxicab Company is amended to read as follows:

48511	Miscellaneous - Taxicabs; Pedicabs	MS

(f) Except as specifically amended or changed above, all other classifications, NAICS Sectors and Sub-Sectors shall remain in full force and effect.

Section 2. **Amendment to Section 14-327 of the *Code of Ordinances*.** That Section 14-327 of the *Code of Ordinances*, as amended, be and is further amended in the following respect:

(a) That Schedule 48511-Taxicab Company is amended to read as follows:

NAICS #:	485	
	11 Taxicab and Pedicab Company	
	All Taxicab and Pedicab company licenses are $100.00 plus $30.00 for each taxi vehicle and pedicab. Before a license can be issued, applicant must meet all regulations and prerequisites of all City of Opelika ordinances pertaining thereunto	

(b) Except as specifically amended or changed above, all of the schedules of license fees as shown in Section 14-327 shall remain in full force and effect.

Section 3. **Non Repealer Clause.** Nothing in this ordinance shall be construed to repeal or amend any other portion of Article XII of Chapter 14 of the *Code of Ordinances*, except as expressly provided herein.

Section 4. **Severability Clause.** If any section, subsection, clause, sentence, phrase or word of this ordinance is declared or judged to be invalid or unconstitutional such declaration or adjudication shall not affect the remaining portions of this ordinance which shall remain in full force and effect as if the portion so declared or adjudged invalid or unconstitutional was not originally a part of this ordinance.

Section 5. **Effective Date**. This ordinance shall become effective upon its passage and publication as required by law.

Section 6. **Publication**. The City Clerk of the City of Opelika, Alabama is hereby authorized and directed to cause this ordinance to be published one (1) time in a newspaper of general circulation published in the City of Opelika, Lee County, Alabama.

ADOPTED AND APPROVED this the _____day of _________________, 2016.

____

PRESIDENT OF THE CITY COUNCIL OF THE

CITY OF OPELIKA, ALABAMA

ATTEST:

____

CITY CLERK

TRANSMITTED TO MAYOR on this the _____day of ____________________, 2016.

____

CITY CLERK

ACTION BY MAYOR

APPROVED this the _____day of _______________________, 2016.

____

MAYOR

ATTEST:

____

CITY CLERK

ORDINANCE NO. (ID # 2065)

Lease Agreement with Envision Opelika Foundation & the Arts Assoc. - 1St Reading.

ORDINANCE NO.__________

AN ORDINANCE APPROVING THE LEASING OF CERTAIN UNIMPROVED PROPERTY LOCATED ON COLUMBUS PARKAY TO ENVISION OPELIKA FOUNDATION, INC., AND THE ARTS ASSOCIATION OF EAST ALABAMA, INC.

BE IT ORDAINED by the City Council of the City of Opelika, Alabama as follows:

Section 1. It is hereby established and declared that the following described real property of the City of Opelika, Alabama (the “City”) is not currently needed for public or municipal purposes, to-wit:

> A parcel of land containing 4.32 acres, more or less, and being further described as Tax Parcel Number 43 10 04 18 1 001 062.002 according to the records maintained in the Lee County Revenue Commissioner’s Office. The above-described property is bounded on the North and West sides by Columbus Parkway, on the East side by Glenn Street, on the South side by the Northern boundaries of lots in Crestview Subdivision and on the West by Geneva Street. The tax map depicting the boundaries of the Leased Premises is attached hereto as Exhibit “A”.
>
> **LESS AND EXCEPT,** the area of the above-described property designated as Compassionate Friends Memorial Garden.

Section 2. That the City, having received an offer from Envision Opelika Foundation, Inc., and The Arts Association of East Alabama, Inc., to lease described in Section 1 above, it is hereby declared to be in the best interest of the public and the City, to lease said property to Envision Opelika Foundation, Inc,. and The Arts Association of East Alabama, Inc., for a term expiring on September 30, 2020.

Section 3. That a proposed Lease Agreement to be entered into between the City and Envision Opelika Foundation, Inc., and The Arts Association of East Alabama, Inc., a copy of which is attached as Exhibit “A”, be and the same is hereby approved, authorized, ratified and confirmed in substantially the form submitted to the City Council.

Section 4. Pursuant to the authority granted by §11-47-21 of the *Code of Alabama*, 1975, the Mayor is hereby authorized and directed to execute and deliver said Lease Agreement in the name and on behalf of the City, and the City Clerk is hereby authorized and directed to attest said Lease Agreement.

Section 5. That this ordinance shall become effective immediately upon its adoption and publication as required by law.

Section 6. That the City Clerk of the City of Opelika is hereby authorized and directed to cause this ordinance to be published one (1) time in a newspaper published in and of general circulation in the City of Opelika, Alabama.

ADOPTED AND APPROVED this the _____day of ____________________, 2016.

____

PRESIDENT OF THE CITY COUNCIL OF THE

CITY OF OPELIKA, ALABAMA

ATTEST:

____

CITY CLERK

TRANSMITTED TO MAYOR this the _____day of ____________________, 2016.

____

CITY CLERK

ACTION BY MAYOR

APPROVED this the _____day of ______________________, 2016.

____

MAYOR

ATTEST:

CITY CLERK

STATE OF ALABAMA)
: LEASE AGREEMENT
COUNTY OF LEE)

THIS LEASE AGREEMENT is made and entered into this the _____ day of December, 2016, at Opelika, Alabama, by and between the City of Opelika, a municipal corporation, hereinafter called "**LANDLORD"**, and The Arts Association of East Alabama, Inc., a non-profit corporation, and Envision Opelika Foundation, Inc., a non-profit corporation, hereinafter called "**TENANTS**".

In consideration of the mutual covenants contained herein, **LANDLORD** and **TENANTS** agree as follows:

1. Property leased. **LANDLORD** hereby leases to **TENANTS** and **TENANTS** hereby lease from **LANDLORD,** for the term and subject to the terms, covenants and conditions set forth in this Lease, the following described property being hereinafter referred to as the "Leased Premises", to-wit:

> A parcel of land containing 4.32 acres, more or less, and being further described as Tax Parcel Number 43 10 04 18 1 001 062.002 according to the records maintained in the Lee County Revenue Commissioner's Office. The above-described property is bounded on the North and West sides by Columbus Parkway, on the East side by Glenn Street, on the South side by the Northern boundaries of lots in Crestview Subdivision and on the West by Geneva Street. The tax map depicting the boundaries of the Leased Premises is attached hereto as Exhibit "A".
>
> **LESS AND EXCEPT,** the area of the above-described property designated as Compassionate Friends Memorial Garden.

2. **Term.** The term of this Lease (the "Term") shall begin on January 1, 2017 and shall expire at 12:00 midnight on September 30, 2020.

3. **Rent.** **TENANTS** agree to pay **LANDLORD** the sum of ten dollars ($10.00) as annual rent for the Leased Premises, which sum shall be payable in advance on or before January 1 of each year beginning January 1, 2017.

4. **Condition of Premises.** **TENANTS** accept the Leased Premises in its present, "AS IS" condition. **LANDLORD** shall not be obligated to perform any work, or make any improvements or alterations to the Leased Premises. **TENANTS,** during the term of this Lease, shall keep the Leased Premises in clean condition, free of debris and trash.

5. **Use.** The Leased Premises shall be used by the **TENANTS** as a public parking lot and farmers market, as ornamental gardens, flower beds and natural landscape areas, for festivals and public events and for cultural, scientific and artistic purposes only.

6. **Utilities.** **TENANTS** agree to pay all bills for utilities related to the **TENANTS'** use of the Leased Premises.

7. **Insurance.** **LANDLORD** agrees to provide and keep in full force general comprehensive commercial liability insurance with limits of not less than two million dollars ($2,000,000.00) for injury or death to any one person and two million dollars ($2,000,000.00) for any one accident to protect the **TENANTS** and **LANDLORD** from general liability claims arising from the use of the Leased Premises.

8. **Loss, Damage.** **LANDLORD** shall not be liable for any loss, damage or expense to any person or to the personal property of the **TENANTS'** employees or invitees. **LANDLORD** shall also not be liable for any theft of **TENANTS'** property, nor for injury or damage to persons or property resulting from any cause whatsoever, unless due to the willful acts or gross negligence of **LANDLORD**, its agents, servants and/or employees.

9. Maintenance. LANDLORD shall be responsible for all lawn maintenance of the Leased Premises, including cutting, edging and blowing the lawn. The **TENANTS** agree to maintain the Leased Premises in good and safe condition and shall keep the Leased Premises reasonably free from trash and other refuse matter.

10. **Alterations and Improvements. TENANTS** shall not make any alterations, additions or improvements to the Leased Premises, including the construction of buildings, paving and fencing, without the prior written consent of **LANDLORD.**

11. Indemnification. To the extent that the loss is not covered by liability insurance, **TENANTS** agree to indemnify and hold **LANDLORD** harmless from and against any and all liability for any injury to or death of any person or persons or any damage to property, or in any way arising out of or connected with the use or occupancy of the Leased Premises, or in any way arising out of the activities of the **TENANTS,** their employees, guests, and invitees in the premises, and from all costs, expenses and liabilities, including, but not limited to, court costs and reasonable attorney's fees incurred by the **LANDLORD** in connection therewith, excepting, however, liability caused by the **LANDLORD'S** gross negligence.

12. Compliance with Laws. TENANTS shall comply with all laws, orders and regulations of Federal, State, County and Municipal authorities as to its use of the Leased Premises.

13. Relationship of LANDLORD and TENANTS. The execution of this Lease Agreement or the performance of any act pursuant to the provisions thereof shall not be deemed or construed to have the effect of creating between **LANDLORD** and **TENANTS** the relationship of principle or agent, or of partnership, or of joint venture, and the relationship between them shall only be that of **LANDLORD** and **TENANTS.**

14. Assignment. TENANTS shall not assign, transfer or encumber this Lease and shall not sublease the Leased Premises or any part thereof without the prior written consent of **LANDLORD,** in each and every instance.

15. LANDLORD's Right of Entry. LANDLORD or **LANDLORD's** agent may enter at reasonable hours to inspect the Leased Premises, and to do anything **LANDLORD** may be required to do hereunder.

16. Toxic or Hazardous Materials. TENANTS shall not store, use or dispose of any toxic or hazardous materials in or about the Leased Premises without the prior written consent of **LANDLORD.**

17. Remedies for Default. If **TENANTS** shall at any time fail and neglect to perform and observe any of the covenants or conditions herein contained on their part to be performed and observed, then **LANDLORD** shall have the right to terminate this Lease by giving fifteen (15) days' notice of its intention to do so and, after the expiration of said fifteen (15) days, default not having been remedied by **TENANTS,** have the right to re-enter said Leased Premises or any part thereof without further notice or demand and to hold and peaceably enjoy the same as if these presents had not been made. In addition to all remedies provided at law or in equity, **LANDLORD** may re-let the Leased Premises or any part thereof for all or part of the remainder of said term to a party satisfactory to **LANDLORD.** All rights or remedies of **LANDLORD** under this Lease shall be cumulative, and none shall exclude any other right or remedy at law.

Such rights or remedies shall be exercised and enforced concurrently and whenever and as often as the occasion therefore arises.

18. Successors and Assigns. This Lease shall inure to the benefit and be binding upon the successors and assigns of the parties hereto.

19. Entire Agreement. This Lease constitutes the entire agreement between the parties hereto, and all representations, agreements and statements made previously by any party to the other, unless set forth herein, are null and void.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals this the ______ day of December, 2016.

CITY OF OPELIKA-- LANDLORD

BY:________________________________
ITS MAYOR

ATTEST:

____
CITY CLERK

THE ARTS ASSOCIATION OF EAST ALABAMA, INC. - TENANT

BY:____
Its ___________________

ENVISION OPELIKA FOUNDATION, INC.
TENANT

BY:____
Its ___________________

EXHIBIT "A"

Lee County Alabama 2016 - Public GIS		
Web11 - f16.2-d16.2 - LeeAL - 09-22-2016		
Parcel Details		
FavLink NewSrch Back Print		

Parcel

Delta Pin:	12134		
Parcel No:	43 10 04 18 1 001 062.000		
Prop Addr:	0 TORBERT BLVD		
Deed Acres:	0.00		
Deed Info:	B 2262	P 0000715	D 10-01-2004
Plat Info:	B	P	D --
Neighborhood:	OP H GS		
Tax District:	01-Opelika		

Owner

Name:	OPELIKA CITY OF
Address:	204 SOUTH 7TH ST
City, State, ZIP:	OPELIKA, AL 36801

Values

Land Total:	$200,000.00
Building Total:	$0.00
Appraised Value:	$200,000.00
Yrly Tax:	$0 for 2016

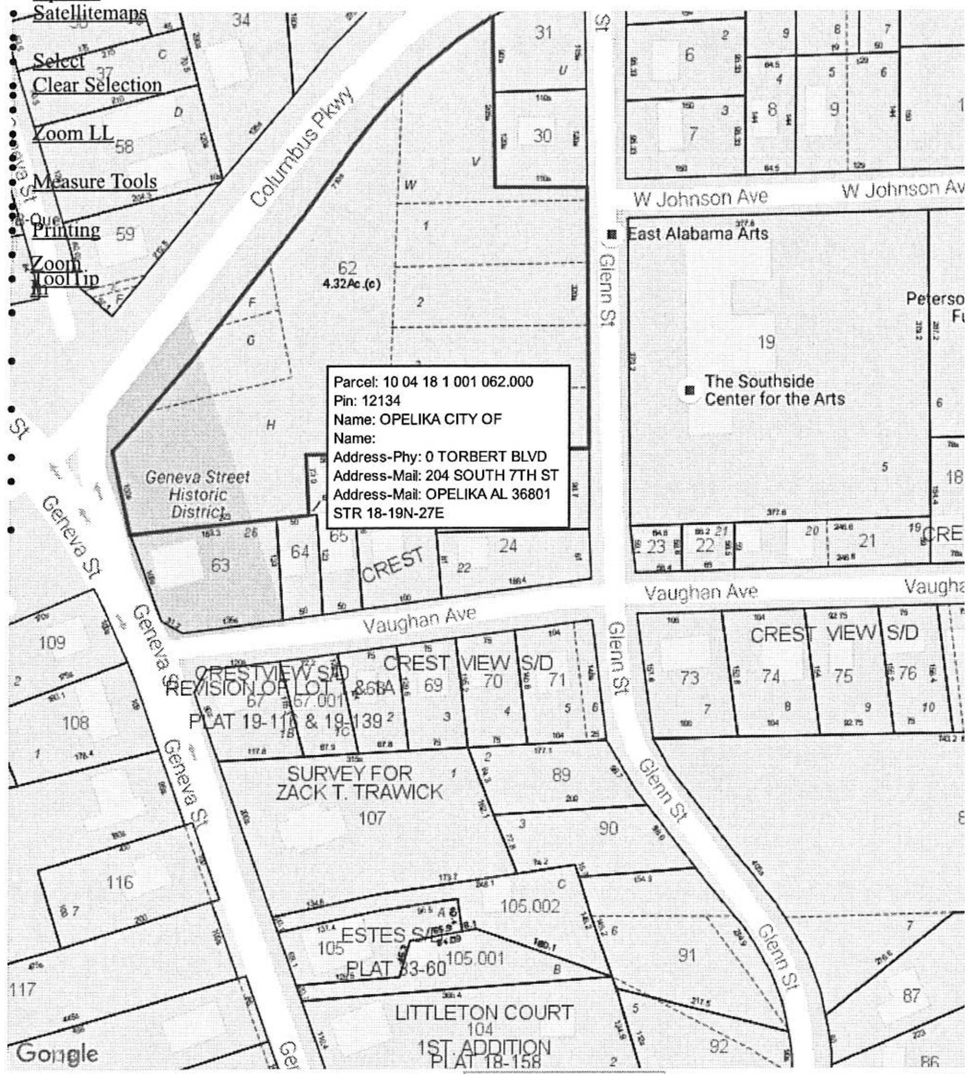
Tax History

Tax Year	Date Paid	Amount Paid
2016	//	$0.00
2015	//	$0.00
2014	//	$0.00
2013	//	$0.00

Basic | Parcel | Land | Bldg | Imp

Subscription Site has more data, features and high resolution aerials; Go to Subscription Website

Big Map | Big Results | County Overlays | Street View | Show L



1 feature(s) selected on 1 layer(s) 1: 2257 3031 x 1

LeeAL - 2016 - BASIC PARCEL SUMMARY - 1 Records				Subscription Site has more data and features; Go to Subscription Website					
Row	Info	Pin	Parcel	Name	Parcel Address	Land	Imp	TMkt	Acreage	Tax Dist
1		12134	43 10 04 18 1 001 062.000	OPELIKA CITY OF	0 TORBERT BLVD	$200,000	$0	$200,000	0	Opelika

RESOLUTION NO. 354-16

Reappoint Municipal Judge Kenneth Wilkes & Public Defender Joanne Camp.

RESOLUTION NO. _____________

RESOLUTION APPOINTING A MUNICIPAL JUDGE AND PUBLIC DEFENDER FOR THE MUNICIPAL COURT

WHEREAS, §12-14-30, *Code of Alabama,* 1975, provides that a municipal court shall have the number of judges specified by the municipal governing body; and

WHEREAS, §12-14-30, *Code of Alabama,* 1975 provides that the municipal court judges shall be appointed by a majority vote of the members of the municipal governing body, and

WHEREAS, the term of office for a part-time judge is two years; and

WHEREAS, Honorable H. Kenneth Wilkes has been serving as a part-time municipal judge and the City Council desires to reappoint Judge Wilkes; and

WHEREAS, §12-14-9, *Code of Alabama*, 1975, requires all municipalities which retain municipal courts to provide indigent defense services as authorized and provided by law; and

WHEREAS, §15-12-2, *Code of Alabama*, 1975, allows a municipal governing body to appoint public defenders; and

WHEREAS, M. Joanne Camp has been serving as the public defender of the Municipal Court of the City of Opelika, and the City Council desires to reappoint Ms. Camp as public defender.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Opelika, Alabama, as follows:

1. That Honorable H. Kenneth Wilkes is reappointed as part-time Municipal Judge of the Municipal Court of the City of Opelika for a two-year term beginning January 2, 2017 and ending January 2, 2019, upon the taking of the oath of office and the compensation affixed to his position is provided by separate resolution.

2. That M. Joanne Camp is reappointed as the Public Defender of the Municipal Court of the City of Opelika for a two-year term beginning January 2, 2017 and ending January 2, 2019, and the compensation affixed to her position is provided by separate resolution.

3. That this Resolution shall become effective after passage and approval.

ADOPTED AND APPROVED this the ______ day of ______________, 2016.

____

PRESIDENT OF THE CITY COUNCIL OF THE CITY OF OPELIKA, ALABAMA

ATTEST:

____

CITY CLERK