



OPELIKA CITY COUNCIL
“ REGULAR MEETING MINUTES “
204 South 7th Street
October 16, 2018
TIME: 7:00 PM

1. Call to Order

President Smith called the council meeting to order at 7:00pm and then asked Mr. Shuman to call the roll.

2. Roll Call

All city council members were present.

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

3. Invocation

Mr. Mark Gatlin provided the invocation.

1. Mark Gatlin from the Church of the Highlands.

4. Pledge of Allegiance

Akeila Driver lead the Pledge of Allegiance. Ryan Bellflower was not able to make it.

1. Ryan Bellflower and Akeila Driver from Northside Intermediate School.

5. Reading of Minutes

1. Minutes from the 10-02-18 city council meeting.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Dozier Smith T, 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 Matt Mosley, Lisa Thrift and the Opelika Historic Preservation Commission on a great 2018 report from the Alabama Historic Commission.

Mayor Fuller thanked the City Council and Todd Holt, CEO of Point Broadband for agreeing to take OPS One to the next level. Thanks to all the city staff that worked very hard in producing the legal documents covering this agreement. Point Broadband will do a terrific job.

1. September 2018 Monthly Building Inspection Reports

Mayor Fuller called on Joey Motley, City Administrator, to provide a summary of the September 2018 Building Inspection report.

8. Citizen Communications

(Limit comments to five minutes or less) No one came forward to speak.

9. Report of Disbursements

10. Committee Reports

11. General Business

1. Annual request for the Collinwood Christmas Lumninaries.

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

2. Annual request from EAMC, Fall Festival & Ham/Turkey day .

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

12. Awarding of Bids

1. Bids 257-18 Weed Abatement-Cancel & Award Bid-REV

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

13. Resolutions

1. Resolution 258-18 Expense report from Municipal Court.

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

2. Resolution 259-18 Designate City Personal Property Surplus and Authorize Disposal

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

3. Resolution 260-18 Purchase-Crash Data Retrieval Software-Sole Source-PD

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

4. Resolution 261-18 Purchase-Lexipol System-Sole Source-PD

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 262-18 Purchase-One (1) Nissan Frontier King Cab-Sourcewell Contract-
INSP

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

6. Resolution 263-18 Purchase-One (1) 2019 Ford Explorer XLT 4WD-State Contract-ENG

- RESULT:** **APPROVED [UNANIMOUS]**
MOVER: Tiffany Gibson-Pitts, Council Member
SECONDER: David Canon, Council Member
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith
7. Resolution 264-18 Purchase-Cisco Equipment-State Contract-IT
RESULT: **APPROVED [UNANIMOUS]**
MOVER: Dozier Smith T, Council Member
SECONDER: Patricia Jones, President Pro-Tem
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith
8. Resolution 265-18 Purchase-Directional and Overhead Signs for Andrews Road-ENG
RESULT: **APPROVED [UNANIMOUS]**
MOVER: David Canon, Council Member
SECONDER: Dozier Smith T, Council Member
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith
9. Resolution 266-18 Purchase-Microsoft Software-National IPA Contract-IT
RESULT: **APPROVED [UNANIMOUS]**
MOVER: David Canon, Council Member
SECONDER: Dozier Smith T, Council Member
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith
10. Resolution 267-18 Purchase-Five (5) Chevrolet Tahoes-State Contract-PD
RESULT: **APPROVED [UNANIMOUS]**
MOVER: Tiffany Gibson-Pitts, Council Member
SECONDER: Dozier Smith T, Council Member
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith
11. Resolution 268-18 Tansfer of Recycle Trailers to Smith Station
RESULT: **APPROVED [UNANIMOUS]**
MOVER: Patricia Jones, President Pro-Tem
SECONDER: Tiffany Gibson-Pitts, Council Member
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith
12. Resolution 269-18 Contract, annual appropriation Ala. Cooperative Extension.
RESULT: **APPROVED [UNANIMOUS]**
MOVER: Dozier Smith T, Council Member
SECONDER: Tiffany Gibson-Pitts, Council Member
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith
13. Resolution 270-18 Contract, annual appropriation J. W. Darden Foundation.
RESULT: **APPROVED [UNANIMOUS]**
MOVER: Patricia Jones, President Pro-Tem
SECONDER: David Canon, Council Member
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith
14. Resolution 271-18 Contract, annual appropriation with KOB.
RESULT: **APPROVED [UNANIMOUS]**
MOVER: Dozier Smith T, Council Member
SECONDER: David Canon, Council Member
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith
15. Resolution 272-18 Contract, annual appropriation, Lee Co. Youth Development.

- RESULT:** **APPROVED [UNANIMOUS]**
MOVER: Tiffany Gibson-Pitts, Council Member
SECONDER: David Canon, Council Member
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith
16. Resolution 273-18 Contract, annual appropriation, Opelika Downtown Redevelopment Auth.
- RESULT:** **APPROVED [UNANIMOUS]**
MOVER: David Canon, Council Member
SECONDER: Patricia Jones, President Pro-Tem
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith
17. Resolution 274-18 Contract, annual appropriation, Valley Haven School.
- RESULT:** **APPROVED [UNANIMOUS]**
MOVER: Patricia Jones, President Pro-Tem
SECONDER: Dozier Smith T, Council Member
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith
18. Resolution 275-18 Contract, annual appropriation, Christian Care Ministries.
- RESULT:** **APPROVED [UNANIMOUS]**
MOVER: Tiffany Gibson-Pitts, Council Member
SECONDER: Patricia Jones, President Pro-Tem
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith
19. Resolution 276-18 Contract, annual appropriation, East Ala. Health Care Authority.
- RESULT:** **APPROVED [UNANIMOUS]**
MOVER: David Canon, Council Member
SECONDER: Dozier Smith T, Council Member
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith
20. Resolution 277-18 Memorandum of Understanding EAHCA and AU - Mobile Health Clinic.
- RESULT:** **APPROVED [UNANIMOUS]**
MOVER: Dozier Smith T, Council Member
SECONDER: Tiffany Gibson-Pitts, Council Member
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith
21. Resolution 278-18 Asset purchase agreement with Point Broadband.
- RESULT:** **APPROVED [UNANIMOUS]**
MOVER: David Canon, Council Member
SECONDER: Patricia Jones, President Pro-Tem
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith
22. Resolution 279-18 Reduction in force, agreement with Point Broadband.
- RESULT:** **APPROVED [UNANIMOUS]**
MOVER: Dozier Smith T, Council Member
SECONDER: David Canon, Council Member
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith
23. Resolution 280-18 Engagement letter with Samford & Denson, Point Broadband.

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

24. Resolution 281-18 Engagement letter with Bradley Arant Boult Cummings, Point Broadband.

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

14. Ordinances

1. Ordinance 021-18-ORD Lease agreement for Headend, Point Broadband - 1st Reading. Mr. Canon introduced this ordinance for a first reading. Then Ms. Jones made the motion to suspend the rules to consider this ordinance for approval. Mr. Smith T provided the second to said motion. The following vote was recorded:

Ayes Jones, Pitts, Smith T, Canon, Smith.

Nays None.

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

2. Ordinance 022-18-ORD Sale of City's fibre-optic television & telecom system, Point Broadband - 1st Reading.

Mr. Smith T introduced this ordinance for a first reading. Then Ms. Jones made the motion to suspend the rules to consider this ordinance for approval. Mr. Canon provided the second to said motion. The following vote was recorded:

Ayes Jones, Pitts, Smith T, Canon, Smith.

Nays None.

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

3. Ordinance Grant a Franchise for Cable Television to Point Broadband - 2nd Reading. This ordinance was introduced by Ms. Jones.

RESULT: FIRST READING INTRODUCED

15. Appointments

1. Reappoint Raven Harvis to the LRCOG - MPO Citizen Advisory Committee. New term ends 11-05-20.

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

16. Adjourn

The City Council meeting minutes of October 16, 2018 are hereby adopted and approved this the 6th day of November, 2018.

/s/ Eddie Smith

President of City Council
City of Opelika, Alabama

ATTEST:

/s/ R. G. Shuman

R. G. "Bob" Shuman, CMC

City Clerk - Treasurer

1. Motion to adjourn.

This council meeting ended at 7:26 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

ADOPTED

CM MINUTES (ID # 3113)

Meeting: 10/16/18 07:00 PM
Department: City Clerk
Category: CM Minutes
Prepared By: Robert Shuman
Initiator: Robert Shuman
Sponsors:

DOC ID: 3113

Minutes from the 10-02-18 city council meeting.

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



OPELIKA CITY COUNCIL

“ REGULAR MEETING MINUTES “

204 South 7th Street

October 2, 2018

TIME: 7:00 PM

1. Call to Order

President Smith called the council meeting to order at 7:00pm and asked Mr. Shuman to call the roll.

2. Roll Call

All city council members were present.

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

3. Invocation

Pastor Henry Smith provide the invocation.

1. Pastor Henry Smith.

4. Pledge of Allegiance

Myles and Kevin lead the Pledge of Allegiance.

1. Myles Tatum and Kevin Carter from Northside Intermediate School.

5. Reading of Minutes

1. Minutes from the 9-18-18 City Council Meeting.

RESULT: APPROVED [UNANIMOUS]

MOVER: Tiffany Gibson-Pitts, Council Member

SECONDER: David Canon, Council Member

AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith

6. Unfinished Business

7. Remarks By the Mayor

Mayor Fuller shared with the audience that his new Commission on Crime and Violence consisting of 32 citizens has met. Four sub-committees have been formed with 8 members per committee. The four sub-committees are Family, Youth, Education and Resources. This will be a team effort and I will keep you informed as we move forward to stop the shootings, crime and violence in Opelika.

1. Recognition of Captian Bobby Kilgore by Lee Co. EMA, PIO Task Force.
Mayor Fuller and the Lee Co. EMA recognized Captian Bobby Kilgore for his leadership in pulling together the PIO Task Force.
2. Regonize the Opelika Track Team - State Champions.
Mayor Fuller and the Track coaches from P&R, recognized all the members of the Opelika P&R Track Team for being State Champions.
3. Employee service awards.
Mayor Fuller recognized city employees from various departments for their many year of service ranging from 5 years to 30 years.
4. Drawing of the annual Safety grand prize winners.

Mayor Fuller and President Smith pulled the winning names for the annual City safety awards. The winners were, T.J. White from IT, Michael Rogers from OPD and Michael Patterson from OFD.

8. Citizen Communications

(Limit comments to five minutes or less). No one came forward to speak.

9. Report of Disbursements

10. Committee Reports

11. General Business

1. Public Hearing - Weed Abatement Assessment - 12 E Johnson Ave

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

2. Public Hearing - Weed Abatement Assessment - 104 Cottage Ct.

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

3. Public Hearing - Weed Abatement Assessment - 106 Cottage Ct.

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

4. Public Hearing - Weed Abatement Assessment - 108 Cottage Ct.

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

5. Public Hearing - Weed Abatement Assessment - 3500 3Rd Ave

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

6. Public Hearing - Weed Abatement Assessment - 3501 Pepperell Pkwy

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

7. Public Hearing - Weed Abatement Assessment - 3502 3Rd Ave

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

8. Public Hearing, Fix Assessment for Demolition - 207 Raintree Street

President Smith opened the public hearing asking if there was anyone present that would like to speak for or against said demolition.

Jeffery Preston stated there is a company out of Birmingham that would have been cheaper to use for this demolition. Mr. Preston questioned the cost of the demolition and said it was excessive and asked if the City could work with him. Mr. Preston asked what his options were.

Guy Gunter, City Attorney, stated that Mr. Preston could appeal to Circuit Court. The City awards the demolition to the lowest bidder.

President Smith closed the public hearing.

9. Public Hearing, Fix Assessment for Demolition - 1106 Magnolia Street

President Smith asked for the minutes to reflect the same comments made for 207 Raintree Street since this property is owned by the same property owner.

President Smith opened the public hearing asking if there was anyone present that would like to speak for or against said demolition.

Jeffery Preston stated there is a company out of Birmingham that would have been cheaper to use for this demolition. Mr. Preston questioned the cost of the demolition and said it was excessive and asked if the City could work with him. Mr. Preston asked what his options were. Guy Gunter, City Attorney, stated that Mr. Preston could appeal to Circuit Court. The City awards the demolition to the lowest bidder. President Smith closed the public hearing.

12. Awarding of Bids

1. Bids Nine (9) Recycling Cardboard Trailers-OES

RESULT: **APPROVED [UNANIMOUS]**

MOVER: Patricia Jones, President Pro-Tem

SECONDER: David Canon, Council Member

AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith

13. Resolutions

1. Resolution Expense reports from various departments.

RESULT: **APPROVED [UNANIMOUS]**

MOVER: Tiffany Gibson-Pitts, Council Member

SECONDER: David Canon, Council Member

AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith

2. Resolution Designate City Personal Property Surplus and Authorize Disposal

RESULT: **APPROVED [UNANIMOUS]**

MOVER: Tiffany Gibson-Pitts, Council Member

SECONDER: Dozier Smith T, Council Member

AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith

3. Resolution Purchase-Animal Transport Van Conversion-Sole Source-OES

RESULT: **APPROVED [UNANIMOUS]**

MOVER: Dozier Smith T, Council Member

SECONDER: Patricia Jones, President Pro-Tem

AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith

4. Resolution Purchase-One (1) 2019 Chevrolet Express Cargo Van-State Contr-OES

RESULT: **APPROVED [UNANIMOUS]**

MOVER: David Canon, Council Member

SECONDER: Dozier Smith T, Council Member

AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith

5. Resolution Purchase-Six Hundred Twenty Four (624) Toter 96 Gal Carts-Sourcewell Contr-OES

RESULT: **APPROVED [UNANIMOUS]**

MOVER: Dozier Smith T, Council Member

SECONDER: Tiffany Gibson-Pitts, Council Member

AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith

6. Resolution Purchase-Three (3) Nissan Frontier King Cabs-Sourcewell Contr-
INSP/REV/PW

RESULT: **APPROVED [UNANIMOUS]**

MOVER: Dozier Smith T, Council Member

SECONDER: Patricia Jones, President Pro-Tem

AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith

7. Resolution Purchase-One (1) 2020 Peterbilt 348-Sourcewell Contr-OES

- RESULT:** APPROVED [UNANIMOUS]
MOVER: Patricia Jones, President Pro-Tem
SECONDER: David Canon, Council Member
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith
8. Resolution Purchase-One (1) 2019 Peterbilt 220 33K-Sourcewell Contr-OES
RESULT: APPROVED [UNANIMOUS]
MOVER: David Canon, Council Member
SECONDER: Patricia Jones, President Pro-Tem
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith
9. Resolution Purchase-One (1) 2019 Peterbilt 520 RH-Sourcewell Contr-OES
RESULT: APPROVED [UNANIMOUS]
MOVER: David Canon, Council Member
SECONDER: Dozier Smith T, Council Member
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith
10. Resolution Refund of Opening/Closing Fees of a Grave.
RESULT: APPROVED [UNANIMOUS]
MOVER: Patricia Jones, President Pro-Tem
SECONDER: Tiffany Gibson-Pitts, Council Member
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith
11. Resolution Weed Abatement Assessment - 12 E Johnson Ave
RESULT: APPROVED [UNANIMOUS]
MOVER: Tiffany Gibson-Pitts, Council Member
SECONDER: Dozier Smith T, Council Member
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith
12. Resolution Weed Abatement Assessment - 104 Cottage Ct.
RESULT: APPROVED [UNANIMOUS]
MOVER: David Canon, Council Member
SECONDER: Tiffany Gibson-Pitts, Council Member
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith
13. Resolution Weed Abatement Assessment - 106 Cottage Ct.
RESULT: APPROVED [UNANIMOUS]
MOVER: Dozier Smith T, Council Member
SECONDER: David Canon, Council Member
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith
14. Resolution Weed Abatement Assessment - 108 Cottage Ct
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 Weed Abatement Assessment - 3500 3Rd Ave
RESULT: APPROVED [UNANIMOUS]
MOVER: Tiffany Gibson-Pitts, Council Member
SECONDER: David Canon, Council Member
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith
16. Resolution Weed Abatement Assessment - 3501 Pepperell Pkwy

- RESULT:** APPROVED [UNANIMOUS]
MOVER: David Canon, Council Member
SECONDER: Dozier Smith T, Council Member
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith
17. Resolution Weed Abatement Assessment - 3502 3Rd Ave
RESULT: APPROVED [UNANIMOUS]
MOVER: Dozier Smith T, Council Member
SECONDER: Tiffany Gibson-Pitts, Council Member
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith
18. Resolution Fix Assessment for Demolition - 207 Raintree Street
RESULT: APPROVED [UNANIMOUS]
MOVER: Dozier Smith T, Council Member
SECONDER: Tiffany Gibson-Pitts, Council Member
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith
19. Resolution Fix Assessment for Demolition - 1106 Magnolia Street
RESULT: APPROVED [UNANIMOUS]
MOVER: David Canon, Council Member
SECONDER: Patricia Jones, President Pro-Tem
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith
20. Resolution Request from Sprint for a Special Use Permit for 3460 US Highway 280.
RESULT: APPROVED [UNANIMOUS]
MOVER: Patricia Jones, President Pro-Tem
SECONDER: David Canon, Council Member
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith
21. Resolution Annual Contract with Lee Co. Rabies Officer.
RESULT: APPROVED [UNANIMOUS]
MOVER: Patricia Jones, President Pro-Tem
SECONDER: David Canon, Council Member
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith
22. Resolution Annual Appropriation Contract with Humane Society.
RESULT: APPROVED [UNANIMOUS]
MOVER: Tiffany Gibson-Pitts, Council Member
SECONDER: David Canon, Council Member
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith
23. Resolution Annual Appropriation Contract with OIDA.
RESULT: APPROVED [UNANIMOUS]
MOVER: Dozier Smith T, Council Member
SECONDER: Tiffany Gibson-Pitts, Council Member
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith
24. Resolution Special Appropriation for the East Alabama Community Ballet.
RESULT: APPROVED [UNANIMOUS]
MOVER: David Canon, Council Member
SECONDER: Patricia Jones, President Pro-Tem
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith
25. Resolution Special Appropriation for Lee Co. Young Leaders.

- RESULT:** APPROVED [UNANIMOUS]
MOVER: Patricia Jones, President Pro-Tem
SECONDER: Tiffany Gibson-Pitts, Council Member
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith
26. Resolution Special Appropriation for 20 Under 40 Program.
RESULT: APPROVED [UNANIMOUS]
MOVER: Dozier Smith T, Council Member
SECONDER: David Canon, Council Member
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith
27. Resolution Alabama Recycling Fund Grant Agreement with ADEM.
RESULT: APPROVED [UNANIMOUS]
MOVER: Dozier Smith T, Council Member
SECONDER: Tiffany Gibson-Pitts, Council Member
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith
28. Resolution Annual appropriation contract with Envysion Opelika Foundation.
RESULT: APPROVED [UNANIMOUS]
MOVER: Tiffany Gibson-Pitts, Council Member
SECONDER: Dozier Smith T, Council Member
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith
14. Ordinances
1. Ordinance Amend Zoning Ord & Map, 1500 Block West Point Parkway, R-3 to PUD, 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 City Code, Chapter 16, Add Article XVI, Truck Routes - 2Nd Reading.
RESULT: SECOND READING AND APPROVED [UNANIMOUS]
MOVER: Dozier Smith T, Council Member
SECONDER: David Canon, Council Member
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith
3. Ordinance Amend City Code, Section 19-1, Offenses Under State Law; Penalties - 2Nd Reading.
RESULT: SECOND READING AND APPROVED [UNANIMOUS]
MOVER: David Canon, Council Member
SECONDER: Patricia Jones, President Pro-Tem
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith
15. Appointments
1. Nomination of the Honorable John Wesley McCollum, Jr. as a part-time Municipal Judge.
 President Smith stated, the Honorable John Wesley McCollum, Jr. has been nominated as a part-time Municipal Judge.
2. Resolution Appoint the Honorable John Wesley McCollum, Jr. as a part-time Municipal Judge.

Ms. Pitts stated Mr. McCollum lives in Auburn and asked in the future, we should make every effort to appoint a Judge that live in Opelika. President Smith stated Mr. McCollum owns property in Opelika and will be building a new home on that property. Mr. Canon stated for the record, the City has two part-time Municipal Judges. Mayor Fuller stated in the near future, he will designate Ben Hand as the senior presiding Municipal Judge. Guy Gunter stated that Mr. McCollum's appointment as Municipal Judge will be effective January 2, 2019 since the current Municipal Judge, Kenneth Wilkes, will be stepping down because of the State Law age requirements.

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

16. Adjourn

The City Council meeting minutes of October 2, 2018 are hereby adopted and approved this the _____ day of _____, 2018.

/s/

President of City Council
City of Opelika, Alabama

ATTEST:

/s/

R. G. "Bob" Shuman, CMC

City Clerk - Treasurer

1. Motion to adjourn.



City Council
204 South 7Th Street
Opelika, AL

SCHEDULED

Meeting: 10/16/18 07:00 PM
Department: Building Inspection
Category: Building Permit Report.
Prepared By: Tina Mnor
Initiator: Jeff Kappelman
Sponsors:

MAYOR'S REMARKS (ID # 3122)

DOC ID: 3122

September 2018 Monthly Building Inspection Reports

COMMENTS - Current Meeting:

Mayor Fuller called on Joey Motley, City Administrator, to provide a summary of the September 2018 Building Inspection report.

City of Opelika Building Inspections Department
September 2018 Monthly Building Detail Report

Issue Date	Company	Main Address	Work Class	Valuation
9/4/2018	RIDGE TOP ROOFING CO LLC	1204 WESTPOINT PKWY	Roofs	\$ 5,000.00
9/4/2018	RIDGE TOP ROOFING CO LLC	404 HALL AVE	Roofs	\$ 5,000.00
9/4/2018	HOSEY-LANCOUR CONSTRUCTION LLC	107 N 24TH ST	Alteration	\$ 27,500.00
9/4/2018	GOLD HILL CONSTRUCTION	615 M L KING BLVD	Alteration	\$ 5,825.00
9/4/2018	CONNER BROTHERS CONSTRUCTION	2108 QUAIL RDG	New Single Family Detached	\$ 190,190.00
9/5/2018	SUPERIOR ROOFING CO	2112 OAK BOWERY RD	Roofs	\$ 17,125.00
9/5/2018	Nichols Wideman	1914 CREEK STONE DR	Accessory Buildings	\$ 6,000.00
9/6/2018	SIMPSON ROOFING	206 CARVER AVE	Roofs	\$ 3,000.00
9/6/2018	MARK ALLEN CONSTRUCTION	503 M L KING BLVD A	Alteration	\$ 4,500.00
9/7/2018	SJ & CONSTRUCTION	1200 FOX TRL C	Alteration	\$ 30,000.00
9/10/2018	STANSELL PROPERTIES & DEVELOPMENT LLC	2900 PEPPERELL PKWY	Alteration	\$ 125,000.00
9/10/2018	CLAYTON PROPERTIES GROUP INC	2713 SPRING LAKES XING	New Single Family Detached	\$ 243,492.00
9/12/2018	GOLD HILL CONSTRUCTION	606 MCLURE AVE	Alteration	\$ 4,930.00
9/12/2018	SCHUMACHER HOMES LLC	2109 BEVERLY DR	New Single Family Detached	\$ 590,355.00
9/12/2018	Tahira Sohail	1812 RIDGE ST	Accessory Buildings	\$ 200.00
9/12/2018	RONNIE SMITH BUILDERS INC	2101 STONYBROOK RD	Roofs	\$ 11,333.00
9/13/2018	GOLD HILL CONSTRUCTION	615 M L KING BLVD	Accessory Buildings	\$ 2,000.00
9/13/2018	Neal Reynolds	2300 2ND AVE	Alteration	\$ 20,000.00
9/13/2018	SCF BUILDING A&O LLC	300 N UNIROYAL RD 96	Accessory Buildings	\$ 1,730.00
9/14/2018	CMC SIDING & CONTRACTING	3008 Frederick Rd A	Single Family Demolition	\$ 3,500.00
9/14/2018	CMC SIDING & CONTRACTING	3008 Frederick Rd B	Single Family Demolition	\$ 3,500.00
9/14/2018	DAWSON CONSTRUCTION	2100 S LONG ST	Roofs	\$ 3,500.00
9/17/2018	J MARSH ENTERPRISES INC	1102 AUBURN ST	Alteration	\$ 85,000.00
9/18/2018	WAYNES ROOFING	2314 ENTERPRISE DR	Roofs	\$ 9,200.00
9/18/2018	Builders Professional Group	409 MEGHAN CT	New Single Family Detached	\$ 248,456.00
9/18/2018	Builders Professional Group	3021 MCKINLEY DR	New Single Family Detached	\$ 311,856.00
9/18/2018	Builders Professional Group	500 MCKINLEY LN	New Single Family Detached	\$ 322,418.00
9/19/2018	SPENCER TECHNOLOGIES INC	1104 COLUMBUS PKWY	Signs	\$ 16,000.00

9/19/2018	HOM GROUP LLC	212 STEVENS ST	Alteration	\$	4,000.00
9/20/2018	COLUMBUS FOUR SEASONS SUNROOMS	3203 TIFTON LN	Alteration	\$	15,659.00
9/20/2018	Buddy Glidewell	2908 LONE EAGLE LN	Addition	\$	2,600.00
9/20/2018	J Manifold Const.	3018 OLD OPELIKA RD	Alteration	\$	30,000.00
9/24/2018	CONNER BROTHERS CONSTRUCTION	3709 QUAIL TRCE	New Single Family Detached	\$	256,615.00
9/24/2018	CONNER BROTHERS CONSTRUCTION	3608 QUAIL TRCE	New Single Family Detached	\$	251,349.00
9/26/2018	ALL-V ROOFING & RESTORATION LL	618 N 10TH ST	Roofs	\$	6,400.00
9/26/2018	Madison Real Property	2701 FREDERICK RD 304	Alteration	\$	4,400.00
9/26/2018	Ronie Lee	504 S 8TH ST	Alteration	\$	1,400.00
9/26/2018	SHINE CONSTRUCTION INC	2200 GATEWAY DR AA	Alteration	\$	27,500.00
9/27/2018	HOLLAND HOMES LLC	2302 3RD AVE	Roofs	\$	6,000.00
9/27/2018	ART SIGN COMPANY INC	2401 INTERSTATE DR	Signs	\$	8,898.00
9/27/2018	Corey Blair	1891 PALIN AVE	Accessory Buildings	\$	6,800.00
9/28/2018	WHATLEY CONSTRUCTION LLC	2401 INTERSTATE DR	Alteration	\$	57,282.00
9/28/2018	Dana Jackson	2906 ANDERSON LAKES CIR	Accessory Buildings	\$	5,000.00
9/28/2018	Effective Signs LLC	1906 PEPPERELL PKWY	Signs	\$	6,000.00
				\$	2,986,513.00


 Jeff Kappelman, Chief Building Official



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 September, 2018

Work & Repair On Buildings:

Building Repairs	Commercial	Residential
Buildings Condemned	0	0
Buildings Demolished	0	2
Building Repairs	6	10
Plumbing Upgrades	0	4
Electrical Upgrades	1	11
Mechanical Upgrades	2	3
Reroofs And Roof Repairs	0	9
Mobile Home Services	0	0
Building Additions/Accessory Structures	0	7

Monthly Totals For September 2009-2018

2009	\$2,274,539.00
2010	\$15,454,374.00
2011	\$2,746,405.00
2012	\$51,311,016.00
2013	\$3,666,190.00
2014	\$5,525,186.00
2015	\$5,632,291.00
2016	\$4,650,764.00
2017	\$6,360,684.00
2018	\$2,986,513.00

Total Permits Issued:

0	New Buildings: Commercial	\$0.00
6	Commercial Renovations And Repairs	\$271,682.00
3	Signs	\$30,898.00
8	New Single Family Homes	\$2,414,731.00
27	Residential Repairs And Renovations	\$269,202.00
0	New Apartment Units	\$0.00
0	New Duplex Residences	\$0.00
44	Total Building Permits Issued	\$2,986,513.00

44	Total Permits Issued For September, 2018	\$2,986,513.00
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TAKEN FROM THE RECORDS OF THE
BUILDING INSPECTOR


Jeff Kappelman
Chief Building Inspector

Attachment: September 2018 Monthly Building Inspection Reports (3122 : September 2018 Monthly Building Inspection Reports)



*Rich in heritage,
with a vision
for the future*

Planning Department - Building Inspections Division

Telephone 334-705-5420

Fax 334-705-5159

Fiscal Year To Date Report - 2018

Building Repairs	Commercial	Residential
Buildings Condemned	0	0
Buildings Demolished	0	5
Building Repairs	97	163
Plumbing Upgrades	36	147
Electrical Upgrades	54	204
Mechanical Upgrades	48	144
Reroofs And Roof Repairs	7	48
Mobile Home Services	0	24
Building Additions/Accessory Structures	1	52

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	\$166,673,506.00

Total Permits Issued:

22	New Buildings: Commercial	\$53,314,219.00
82	Commercial Renovations And Repairs	\$9,836,267.46
39	Signs	\$420,171.30
253	New Single Family Homes	\$60,737,938.05
235	Residential Repairs And Renovations	\$2,715,219.93
0	New Apartment Units	\$0.00
3	New Duplex Residences	\$596,540.00
590	Total Building Permits Issued	\$116,567,048.99

578	Total Issued for FY 2018	\$127,620,355.74
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JEFF KAPPELMAN
Building Official

Attachment: September 2018 Monthly Building Inspection Reports (3122 : September 2018 Monthly Building Inspection Reports)

**City Council**

204 South 7Th Street
Opelika, AL

ADOPTED**GENERAL BUSINESS (ID # 3111)**

Meeting: 10/16/18 07:00 PM

Department: City Clerk

Category: Request / Temp Street Closure

Prepared By: Robert Shuman

Initiator: Robert Shuman

Sponsors:

DOC ID: 3111

Annual request for the Collinwood Christmas Lumninaries.

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

October 1, 2018

To the Honorable Mayor Gary Fuller and the Opelika City Council:

Re: **The Collinwood Christmas Luminaries**

Collinwood residents are making plans for their 51st year of Luminaries scheduled on Friday, December 14th beginning at 5:00 p.m. We are grateful for the past assistance provided by the City of Opelika and again request your participation in this special Christmas event.

Listed below are the areas requiring the assistance of city workers:

CITY SHOPS

- Deposit sand at 2 designated areas one week prior to December 14th: (Dec 7th)
East Collinwood between 1115 (Jernigan) and 1119 (Elisabeth Griffin)
West Collinwood between 1116 (Stanley Drake) and 1120 (Will Blevins)
- Clean the streets the morning of the Luminaries, Friday, December 14th.
- Pick-up roadside trash (yard clippings/debris) on Friday, December 14th.
- Provide and deliver barricades to designated locations (***Special Note below) on the morning of the event.

POLICE DEPARTMENT

- Put up barricades at 5:00 p.m. and direct traffic flow until the route is established.
- Remove barricades around 9:30 p.m.

OPELIKA LIGHT AND POWER

- Turn all Collinwood street lights “off” on the morning of Friday, December 14th.
- Turn street lights back “on” anytime after 11:00 p.m. on Friday, December 14th.
- Request temporary power on the pole at the Entrance (901 Oak Bowery) to Collinwood to light the entrance sign.

FIRE DEPARTMENT

- The Opelika Fire Department will be notified of the date and time of the Luminaries.

*** Special Note:

The Luminaries follow a one-way route beginning on Collinwood Street at the intersection of North Tenth Street and Oak Bowery Road. Automobiles are routed left on West Collinwood Circle (requires 4 barricades on Collinwood Street), a right on Collinwood Street (requires 3 barricades on E Collinwood Cir), a left on East Collinwood Circle, ending at the Nativity Scene (requires 3 barricades on E Collinwood Circle), then a right on McLure Avenue (2 barricades to keep any traffic from entering there).

If you need additional information, please give me a call. The 58 residents of Collinwood thank you again for your time and efforts in working with us to make this a very special holiday event for our community. Merry Christmas from Collinwood!

Sincerely,

Ruth Torbert
2018 Co-Chairman
334-740-0005



City Council
204 South 7Th Street
Opelika, AL

ADOPTED

Meeting: 10/16/18 07:00 PM
Department: City Clerk
Category: Request / Temp Street Closure
Prepared By: Robert Shuman
Initiator: Robert Shuman
Sponsors:

GENERAL BUSINESS (ID # 3112)

DOC ID: 3112

Annual request from EAMC, Fall Festival & Ham/Turkey day .

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

Shuman, Robert

From: Craig Butts <craig.butts@eamc.org>
Sent: Monday, October 1, 2018 3:38 PM
To: Shuman, Robert
Subject: Road Closing.

Mr. Shuman

It is the time of Year again to request the closing of East Thomason Circle For East Alabama Medical Center. The request is for two dates. The first is 11/16/2018 from 8:00AM till 3:30 PM. This for our Fall Festival. The second date is 12/7/2018 from 6:00 AM till 5:00 PM. This for our annual Ham/Turkey day. The section of road needing to be closed is from Thomason Place to West Thomason Circle. This is the Road/Street in from on our H.R Building. In the past EAMC Maintenance and Security has handled the traffic and the setting up and removal of barriers for both events. Could you let me know if this is acceptable and that the City is OK with us closing this road for these events.

Thank you for Your help with this.

Craig Butts, Manager
Engineering and Maintenance Department
East Alabama Medical Center
Desk (334) 528-4752
Cell (334) 444-0548

Attachment: CM 10-16-18, Annual request from EAMC, Fall Festival & Ham-Turkey day. (3112 : Annual request from EAMC, Fall Festival &



City Council
204 South 7Th Street
Opelika, AL

ADOPTED

BIDS 257-18

Meeting: 10/16/18 07:00 PM
Department: Purchasing and Revenue
Category: Bid
Prepared By: Angela Norrell
Initiator: Lillie Finley
Sponsors:
DOC ID: 3125

Weed Abatement-Cancel & Award Bid-REV

RESOLUTION NO. _____

WHEREAS, the City Council awarded Bid #18020 for Weed Abatements for the Opelika Revenue Department to Opelika Lawn Care on Resolution 037-18 approved by Council on March 6, 2018; and

WHEREAS, the Contract with Opelika Lawn Care is being canceled due to the death of the owner; and

WHEREAS, Flora Terra, LLC was the next low bidder meeting specifications;

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

1. That Resolution 037-18 be rescinded and replaced with this Resolution.
2. That the Contract to Opelika Lawn Care be rescinded and that the Contract be awarded to Flora Terra, LLC on their bid meeting specifications.
3. That the Purchasing-Revenue Manager is hereby authorized to issue a purchase order to Flora Terra, LLC on an as needed basis.
4. That the Mayor be authorized to sign all documents pertaining to this Contract.

APPROVED AND ADOPTED this the _____ day of _____, 2018.

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

ATTEST:

Robert G. Shuman
City Clerk - Treasurer

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

FACT SHEET

SUBJECT: Sealed Bid 18020 – Contract – Weed Abatement Services

FACTS:

- Bid opening date – 02/19/18
- User department(s) – Revenue Department
- Mailed to 20 vendors
- Received 2 bids
- Contract was awarded to Opelika Lawn Care
 - ✓ The Contract with Opelika Lawn Care is being canceled due to the death of the owner
 - ✓ Flora Terra, LLC was the next lowest bidder that met the specifications
- Budgeted Contract
- Bid tabulation sheet attached

RECOMMENDATION:

- **Recommend the Council rescind Resolution 037-18 approved by Council on March 6, 2018 awarding the Contract Opelika Lawn Care and the Contract be awarded to Flora Terra, LLC on their next low bid meeting specifications.**

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943
RESOLUTION NO. 037-18

WHEREAS, the Purchasing Department opened sealed bids for a contract for Weed Abatement for the Revenue Department; and

WHEREAS, Opelika Lawn Care submitted the lowest bid meeting specifications; and

WHEREAS, this is a budgeted contract;

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

1. That the contract be awarded to Opelika Lawn Care on their low bid meeting specifications.
2. That the Purchasing-Revenue Manager be authorized to issue a purchase order to Opelika Lawn Care on an as needed basis.
3. That the Controller be authorized to adjust the budget as necessary for this contract.
4. That the Mayor is hereby authorized to sign all documents pertaining to this contract.

APPROVED AND ADOPTED this the 6th day of March, 2018.


 Patricia A. Jones
 President, Pro-tem
 of the City Council of
 the City of Opelika, Alabama

ATTEST:


 Robert G. Shuman, CMC
 City Clerk - Treasurer

RESOLUTION NO. 258-18

Expense report from Municipal Court.

RESOLUTION NO. _____

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

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

Employee	Department	\$ Amount
-----	-----	-----
Ashley Smith	Municipal Court	368.90

-) 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.
- 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(s) can be prepared covering the attached expense report(s).
- 5) That the City Treasurer is authorized to sign said check(s) so it can be delivered to the appropriate City employee or official.

ADOPTED and APPROVED this the ____ day of _____, 2018.

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

ATTEST:

Robert G. Shuman, CMC
City Clerk - City Treasurer

PERIOD ENDING

09.28.18

DAY	CITY AND STATE	LODGING	TRANSPORTATION				BUSINESS MEALS			ENTERTAIN- MENT Itemize Below	MISC. EXPENSES Itemize Below	DAILY TOT/
			AIR RAIL, ETC	RENTAL CAR LIMO ETC.	LOCAL TAXI, TOLLS & PUB- LIC TRANSIT	AUTO EXPENSES Itemize Below	Itemize Below					
							BREAKFAST	LUNCH	DINNER			
09.19.18	Opelika, AL to Orange Beach, AL					132.71						
09.19.19												
09.20.18									26.74			
09.21.18												
09.22.18							17.86	19.36				
09.23.18												
09.23.18									7.69			
09.23.18	Orange Beach, AL to Opelika, AL					132.71						
WEEKLY CATEGORY TOTALS \$		0.00	0.00	0.00	0.00	265.42	17.86	19.36	66.26	0.00	0.00	368.

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

[illegible][illegible]

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

NUMBER OF DAYS AWAY FROM HOME

0

NUMBER OF DAYS AWAY ON PERSONAL AFFAIRS

0

% OF TOTAL DAYS AWAY FOR PERSONAL AFFAIRS

0%

NATURE OR PURPOSE OF TRAVEL

personal vehicle travel to attend Magistrate School

METHOD OF REIMBURSEMENT

☐ DEDUCT FROM MY ADVANCE☒ MAIL: TO

APPROVED BY: _____

SIGNATURE: _____

UNIT 2 CORNER

Packet Pg. 3

RESOLUTION NO. 259-18

Designate City Personal Property Surplus and 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.	Recycle Trailer #846	87002822
2.	1	Ea.	Recycle Trailer #847	87002821
3.	1	Ea.	Recycle Trailer #820	87002795
4.	1	Ea.	Recycle Trailer #854	87002744
5.	1	Ea.	Recycle Trailer #853	87002665

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.

APPROVED AND ADOPTED this the _____ day of _____, 2018.

C.E. “Eddie” Smith, Jr.
President of the City Council
City of Opelika, Alabama

ATTEST:

Robert G. Shuman, CMC
City Clerk - Treasurer

RESOLUTION NO. 260-18

Purchase-Crash Data Retrieval Software-Sole Source-PD**RESOLUTION NO. _____**

WHEREAS, the Opelika Police Department desires to purchase Crash Data Retrieval (CDR) Software for police vehicles; and

WHEREAS, the software is used to collect crash data from a vehicle's computer system; and

WHEREAS, this is a sole source purchase; and

WHEREAS, Crash Data Group, Inc. is the sole vendor for the software; and

WHEREAS, funding for this purchase will come from the Police Department Small Tools and Minor Equipment account;

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

1. That the purchase be awarded to Crash Data Group, Inc.
2. That the Purchasing-Revenue Manager be authorized to issue a purchase order to Crash Data Group, Inc. not to exceed \$18,770.00 as a sole source purchase.
3. That the Controller is authorized to adjust the budget as necessary for this purchase.
4. That the Mayor is hereby authorized to sign all documents pertaining to this purchase.

APPROVED AND ADOPTED this the _____ day of _____, 2018.

C.E. “Eddie” Smith, Jr.

President of the City Council

City of Opelika, Alabama

ATTEST:

Robert G. Shuman, CMC

City Clerk - Treasurer

CRASH DATA GROUP INC.

800-280-7940 ext. 1

crash@crashdatagroup.com

Remit To:

PO Box 892885 | Temecula, CA 92589

**QUOTE**

QUOTE #		REV
Q9265		
E	REP	PREP BY
18	DW	

BILL TO		SHIP TO		
Opelika Police 501 South 10th Street Opelika, AL 36801		Opelika Police 501 South 10th Street Opelika, AL 36801		
ITEM	DESCRIPTION	QTY	RATE	TOTAL (USD\$)
F00E900038	CDR Software Subscription: One year - Electronic Delivery USER ID (to be assigned)	1	1,050.00	1,050.00
CDR-PRO	Bosch CDR Tool Package. Includes all hardware to perform a DLC download in a custom hard-shell carrying case.	1	6,050.00	6,050.00
CDR-SILVER	CDR Silver D2M Cable Package: Includes all currently available CDR direct-to-module (D2M) hardware cables & adapters (74 pieces), EXCEPT FlexRay equipment. All hardware is packaged in a custom case. Current through version 17.7.	1	11,600.00	11,600.00
SHIP	Shipping and Handling	1	70.00	70.00

Crash Data Group Inc / PO Box 892885 / Temecula / CA / 92589
 The sole source distributor for the Bosch CDR Tool in the U.S. & Canada.
 View our W9 & Sole Source letter at www.crashdatagroup.com/support

SUBTOTAL	\$18,770.00
SALES TAX (0.0%)	\$0.00
TOTAL (USD\$)	\$18,770.00

CITY OF OPELIKA
Sole Source Justification

DEPARTMENT Police

REQUISITION NUMBER _____

NAME OF REQUESTING EMPLOYEE Capt. Edward T. Clark

VENDOR Crash Data Group Inc.

PRODUCT/SERVICE Bosch crash data recorder kit

Estimated annual expenditure for the commodity or service \$ 18,770.00

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). X
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.) X
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

DEPARTMENT/DIVISION/DATE

John McE...
POLICE DEPT. 10/03/18

PURCHASING DEPARTMENT USE ONLY

PURCHASING AGENT APPROVAL
(SIGNATURE/DATE)

DISAPPROVAL/DATE

Lili Feng 10/9/18

COMMENTS

COUNCIL ACTION/DATE

Staff Services Division**Opelika Police
Department****Memo**

To: Purchasing
From: Captain Ed Clark
Date: October 3, 2018
Re: Sole Source

The purpose of this memo is to justify the purchase of the Bosch Crash Data Recorder from a sole source vendor. This is specialized equipment that is solely manufactured and sold by Crash Data Group Inc. The equipment is used for the purpose of collecting crash data from vehicle computer systems by providing speed, braking, seatbelt use and other important vehicle data following an accident. The information will then be able to be used by the Traffic Homicide Unit in their investigation to help determine factors and cause of the accident.

Captain Ed Clark

Attachment: 10-16-18 - OPD SOFTWARE- SOLE SOURCE - CNCL PKT (260-18 : Purchase-Crash Data Retrieval Software-Sole Source-PD)

Automotive Aftermarket Division



BOSCH

This letter valid through December 31, 2018

2018 CDR Source

Bosch Automotive Service
Solutions Inc
2030 Alameda Padre Serra
Santa Barbara, CA 93103
Telephone +1(805)880-9189
Fax +1(805)966-2000
Bill.Rose@us.bosch.com
www.Bosch.us

To whom it may concern,

Crash Data Retrieval (CDR) units, accessories and software are products of Bosch Automotive Service Solutions Inc. Bosch is the sole manufacturer of the Bosch Crash Data Retrieval Tool products. The CDR products are only available for retail purchase in the United States, Jamaica and Canada through our sole product distributor, Crash Data Group.

Sincerely,

Bill Rose
CDR Product Manager
Bosch Automotive Service Solutions Inc (AA-AS)
2030 Alameda Padre Serra
Santa Barbara, CA 93103-1716
www.bosch.com

Tel: +1 (805) 880-9189
Email : bill.rose@us.bosch.com

RESOLUTION NO. 261-18

Purchase-Lexipol System-Sole Source-PD**RESOLUTION NO. _____****RESOLUTION APPROVING SUBSCRIPTION AGREEMENT WITH LEXIPOL, LLC**

WHEREAS, Lexipol, LLC (hereinafter referred to as “Lexipol”) is America’s leading provider of risk management services and resources for public safety organizations; and

WHEREAS, Lexipol has established a unique set of risk management tools for public safety organizations by integrating agency-specified, customized policy manuals with a daily training bulletin accessed through a web browser; and

WHEREAS, the Lexipol system provides policy content and training materials delivered through an online platform developed by Lexipol staff and not available through other public or private resources or organizations; and

WHEREAS, the Opelika Police Department desires to subscribe to Lexipol’s online materials, including policy manuals and daily training bulletins; and

WHEREAS, a proposed Agreement for Use of Subscription Material (hereinafter the “Subscription Agreement”) has been prepared and presented to the City Council for approval; and

WHEREAS, the City Council has determined that it is now in the best interest of the City and its citizens to approve said Subscription Agreement.

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

1. That the proposed Subscription Agreement to be entered into by and between the City of Opelika (the “City”) and Lexipol, LLC, a copy of which is attached hereto and marked as Exhibit “A”, be and the same are 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 Subscription Agreement.

2. That the Mayor is hereby authorized and directed to execute and deliver said Subscription 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 Subscription Agreement.

4. That the Purchasing-Revenue Officer is hereby authorized to issue a purchase order to Lexipol for the provision of subscription services as outlined in the Subscription Agreement attached hereto at a cost not to exceed \$18,966.00.

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

ADOPTED AND APPROVED this the _____ day of _____, 2018.

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

ATTEST:

CITY CLERK

CITY OF OPELIKA
Sole Source Justification

DEPARTMENT Police

REQUISITION NUMBER _____

NAME OF REQUESTING EMPLOYEE Capt. Shane D. Healey

VENDOR Lexipol

PRODUCT/SERVICE Lexipol System (Policy and Procedures Manual)

Estimated annual expenditure for the commodity or service \$ 18,966.00

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). [Signature]
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.) [Signature]
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

DEPARTMENT/DIVISION/DATE

Police Department 10/01/2018

PURCHASING DEPARTMENT USE ONLY

PURCHASING AGENT APPROVAL
(SIGNATURE/DATE)

DISAPPROVAL/DATE

COMMENTS

COUNCIL ACTION/DATE



PREDICTABLE IS PREVENTABLE®

SOLE SOURCE SUPPORTING DOCUMENTATION

The following information is provided to assist you in completing your agency's required sole source procurement justification.

Company Description and Expertise

Lexipol provides state-specific policies and verifiable policy training for public safety organizations. The company has been in business since 2003 and the Lexipol system is currently in use in more than 2,400 public safety organizations. There is no other company providing the combination of state-specific policies, updates based on legislative and best practice changes, and daily training delivered via a web-based platform.

Additional details of Lexipol's unique qualifications and expertise include:

- Proven record of helping public safety agencies reduce risk and avoid litigation.
- In-house team of attorneys specializing in public safety law.
- In-house content developers with hundreds of years of collective experience as practitioners in law enforcement, custody and fire.
- Clients ranging from small to large agencies (2 sworn personnel to more than 2,500 sworn personnel), including municipal police departments, county sheriff's offices, county district/state's attorneys, port police, probation departments, school district and university police, tribal police, career and volunteer fire departments, and a diverse group of state regulatory agencies.
- Subscriber base of over 100,000 registered users, one of the largest private networks of law enforcement policy collaborators in the nation.

The Lexipol system is only available via direct purchase, and is not available for purchase from third-party distributors.

Unique Product Features

The Lexipol system combines policy content and training materials delivered through an online platform. This combination of services has been developed in-house by Lexipol staff and is not available through other public or private resources or organizations.

Specific unique features include:

- Copyrighted, state-specific policy content developed by Lexipol staff and subject matter experts.
- Copyrighted, state-specific Daily Training Bulletins developed by experienced public safety personnel and linked to policy content. Each Daily Training Bulletin includes real-time testing to verify end-user understanding.
- Copyrighted, state-specific policy updates and client alerts in response to changing state and federal laws and evolving industry best practices.
- Editing features that allow the agency to customize policy and training content.
- Electronic acknowledgement of policies and training completion.
- Electronic archiving of each version of the agency's policy manual.

LEXIPOL LLC

16755 Von Karman, Ste. 250 Irvine, CA 92606

949.484.4444 • Fax: 949.484.4443

www.lexipol.com

- Reports that show progress toward policy implementation and acknowledgement and facilitate the tracking of training completion.
- Mobile app that allows end users to access complete policy content, review policy updates and other alerts, and complete daily training.

These features are delivered via Lexipol's Knowledge Management System, a proprietary web-based delivery platform (software-as-a-service) that integrates policy issuance, policy updates, training, policy/training acknowledgement, and reporting.

Implementation/Management Services

(Applicable for agencies that are purchasing Lexipol's Implementation and/or Management Services)

Through its Implementation and Management Services, Lexipol provides personalized assistance to help agencies accelerate manual implementation and manage ongoing customization and issuance of Daily Training Bulletins and policy updates. The process of implementation and customization of Lexipol's state-specific master content can only be accomplished utilizing Lexipol copyrighted content on the proprietary Lexipol Knowledge Management System.

The above information justifies Lexipol as the sole source for a platform of policy, training, accountability tools, and implementation and management services.

Other Policy Management Options

An agency's other options for policy management and training include the following:

1. Use in-house resources
2. Contract with outside legal and policy development experts
3. Accept a less-than-optimum condition of policies and training

Options 1 and 2 nearly always cost more and are less effective, for the following reasons:

- The time commitment to develop a comprehensive, state-specific manual based on best practices is estimated at hundreds of hours. The time needed to create daily training scenarios is also significant. Unless the agency can devote full-time staff to policy management, success is doubtful.
- Agency personnel may lack the needed expertise to review the myriad pending and recently passed changes in legislation as well as to evaluate state and federal court decisions and determine how they affect agency policy. Outside resources will bill at rates that result in a total cost that is generally several times greater than the cost of a Lexipol subscription.
- Even if the agency is able to devote considerable resources to policy management and training, it can take away from core functions like patrol and community service.

Option 3, accepting a less-than-optimum condition of policies and training, can leave the agency open to considerable risk of expensive litigation and claims, and is generally not advisable.

For additional information or assistance please contact Lexipol at 949/484-4444 or visit www.lexipol.com.

LEXIPOL LLC

16755 Von Karman, Ste. 250 Irvine, CA 92606

949.484.4444 • Fax: 949.484.4443

www.lexipol.com

Rev. 1

Packet Pg. 47



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AGREEMENT FOR USE OF SUBSCRIPTION MATERIAL

Agency's Name: Opelika Police Department
Agency's Address: 501 S 10th Street
Opelika, AL 36803
Attention: Captain Shane Healey

Lexipol's Address: 16755 Von Karman Avenue, Suite 250
Irvine CA 92606-4918
Attention: Jeff Hopper

Effective Date: _____
(to be completed by Lexipol upon receipt of signed Agreement)

The Agreement for Use of Subscription Material is between Lexipol, LLC, a Delaware limited liability company ("**Lexipol**"), and the Agency identified above. The Agreement consists of (a) this cover sheet; (b) **Exhibit A** (Subscriptions Being Purchased and Subscription Fees) attached to this cover sheet (consisting of 1 page), and (c) **Exhibit B** (General Terms and Conditions) attached to this cover sheet (consisting of 5 pages). Capitalized terms that are used in Exhibit A and not defined therein shall have the respective meanings given to them in Exhibit B.

AGENCY

Signature: 
Print Name: GARY FULLER
Title: MAYOR
Date Signed: 9/13/18

LEXIPOL, LLC

Signature: _____
Print Name: Van Holland
Title: Chief Financial Officer
Date Signed: _____

EXHIBIT A**SUBSCRIPTIONS BEING PURCHASED AND SUBSCRIPTION FEES**

Agency is purchasing the following:

PRODUCT	TERM	PRICE
Law Enforcement Policy Manual & Daily Training Bulletins	Annual	\$18,966
Total Due Upon Execution		\$18,966

Pricing is based on:

☒ Law Enforcement – No. of Sworn: 86 FT

RESOLUTION NO. 262-18

Purchase-One (1) Nissan Frontier King Cab-Sourcewell Contract-INSP**RESOLUTION NO. _____**

WHEREAS, the Building Inspection Department desires to purchase one (1) 2019 Nissan Frontier King Cab with certain options utilizing the Sourcewell Contract; and

WHEREAS, National Auto Fleet Group is the Contract Vendor for the 2019 Nissan Frontier King Cab; and

WHEREAS, funding will come from Capital Outlay;

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

1. That the purchase be awarded to National Auto Fleet Group utilizing the Sourcewell Contract.
2. That the Purchasing-Revenue Manager is hereby authorized to issue a purchase order to National Auto Fleet Group in the amount of \$23,192.53.
3. That the Controller be authorized to adjust the budget as necessary for this purchase.
4. That the Mayor is hereby authorized to sign all documents pertaining to this purchase.

APPROVED AND ADOPTED this the _____ day of _____, 2018.

C.E. “Eddie” Smith, Jr.
President of the City Council
City of Opelika, Alabama

ATTEST:

Robert G. Shuman, CMC
City Clerk - Treasurer



National Auto Fleet Group

A Division of Chevrolet of Watsonville

490 Auto Center Drive, Watsonville, CA 95076

(855) 289-6572 • (831) 480-8497 Fax

Fleet@NationalAutoFleetGroup.com

10/4/2018

Quote ID: **8475**

Order Cut Off Date: **TBA**

Ms Lillie Finley
City of Opelika

Automotive Shop
700 Fox Tril

Opelika, Alabama, 36801

Dear Lillie Finley,

National Auto Fleet Group is pleased to quote the following vehicle(s) for your consideration.

One (1) New/Unused (2019 Nissan Frontier (31319) King Cab 4x2 SV-I4 Auto 6.1' Box,) and delivered to your specified location, each for

	One Unit
Contract Price	\$23,192.53
Tax (0.0000 %)	\$0.00
Tire fee	\$0.00
Total	\$23,192.53

- per the attached specifications.

This vehicle(s) is available under the **Sourcewell (Formerly Known as NJPA) 120716-NAF**. Please reference this Contract number on all purchase orders to National Auto Fleet Group. Payment terms are Net 30 days after receipt of vehicle.

Thank you in advance for your consideration. Should you have any questions, please do not hesitate to call.

Sincerely,

Jesse Cooper
Account Manager
Email: Fleet@NationalAutoFleetGroup.com
Office: (855) 289-6572
Fax: (831) 480-8497

Quoting Department
Account Manager
Fleet@NationalAutoFleetGroup.com
(855) 289-6572



GMC

2019 Fleet/Non-Retail Nissan Frontier King Cab 4x2 SV-I4 Auto 6.1' Box

WINDOW STICKER

2019 Nissan Frontier King Cab 4x2 SV-I4 Auto 6.1' Box

CODE	MODEL	MSRP
31319	2019 Nissan Frontier King Cab 4x2 SV-I4 Auto 6.1' Box	\$24,910.00
OPTIONS		
QAK	GLACIER WHITE	\$0.00
—	STANDARD PAINT	\$0.00
K	GRAPHITE, CLOTH SEAT TRIM	\$0.00
50S	[C03] 50 STATE EMISSIONS	\$0.00

Please note selected options override standard equipment

SUBTOTAL	\$24,910.00
Advert/ Adjustments	\$0.00
Manufacturer Destination Charge	\$995.00
TOTAL PRICE	\$25,905.00

Est City: 17 (2018) MPG
Est Highway: 24 (2018) MPG
Est Highway Cruising Range: 504.00 mi

Any performance-related calculations are offered solely as guidelines. Actual unit performance will depend on your operating conditions.

Attachment: 10-16-18 - ONE (1) 2019 NISSAN FRONTIER KING CAB - SOURCEWELL CONTRACT - CNCL PKT (262-18 : Purchase-One (1) Nissan



National Auto Fleet Group - Vehicles

Cars, Trucks, Vans, SUVs & Other Vehicles

#120716-NAF

Maturity Date: 01/17/2021

Product & Services

Pricing

The pricing for this contract is a discount off MSRP. Please contact the vendor for a customized price quote or see attachment document for instructions on accessing an online quote.

 [National Auto Fleet Group Pricing Sheet - Vehicles](#) (85.21 KB)

Contact Information

Become a Member

Simply complete the [online application](#) or contact the Membership Team at membership@sourcwell-mn.gov or 877-585-9706.

RESOLUTION NO. 263-18

Purchase-One (1) 2019 Ford Explorer XLT 4WD-State Contract-ENG**RESOLUTION NO.** _____

WHEREAS, the Engineering Department desires to purchase one (1) 2019 Ford Explorer XLT 4WD with certain options utilizing the State of Alabama Contract #T191; and

WHEREAS, Long-Lewis of the Shoals, Inc. is the State Contract Vendor for the 2019 Ford Explorer XLT 4WD; and

WHEREAS, this is a budgeted purchase;

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

1. That the purchase be awarded to Long-Lewis of the Shoals, Inc. utilizing the State of Alabama Contract.
2. That the Purchasing-Revenue Manager is hereby authorized to issue a purchase order to Long-Lewis of the Shoals, Inc. in the total amount of \$26,869.50.
3. That the Controller be authorized to adjust the budget as necessary for this purchase.
4. That the Mayor is hereby authorized to sign all documents pertaining to this purchase.

APPROVED AND ADOPTED this the _____ day of _____, 2018.

C.E. “Eddie” Smith, Jr.
President of the City Council
City of Opelika, Alabama

ATTEST:

Robert G. Shuman, CMC
City Clerk - Treasurer

Long Lewis Ford of the Shoals

2800 Woodward Ave , Muscle Shoals
Alabama 35661 / FLEET DEPARTMENT
256-386-7800

T191 Non Alternate Fuel Vehicles Commodity Code: 4012423 00009 071-802-50000
Commodity Description Vehicle Mid Size SUV Non Alternate Fuel - 4 Wheel Drive 7 Passenger

Minimum Wheel Base 105" - 115.9" Engine V6 4 Wheel ABS AC and Heat - Front and Rear AM-FM Radio Automatic Transmission Cruise Control Power Windows, Door Locks and Mirrors Tilt Steering Column

Unit Price: \$26,749.50

Christina Croteau

Christina.croteau@longlewis.net : 256-710-5229 (cell)

Base 26,749.50
+ Floorliners 120.00
002

26,869.50



Attachment: 10-16-18 - ONE (1) 2019 FORD EXPLORER XLT 4WD - STATE CONTRACT T191 - CNCL PKT (263-18 : Purchase-One (1) 2019 Ford

2019 EXPLORER XLT 4WD STANDARD EQUIPMENT

Includes all Base standard equipment, plus:

MECHANICAL

- Heavy-Duty Front Brake Calipers (Rear are Standard Duty)

EXTERIOR

- Door Handles – Body-Color
- Grille – Silver-Painted Mesh Insert with Chrome Bars
- Lower Bodyside Cladding – Black with Chrome Accent
- Roof-Rack Side Rails – Silver
- Skid Plate Elements, Front and Rear — Molded-in-Color Silver
- Wheels
 - 18" Five-Spoke Sparkle Silver-Painted Aluminum (FWD only)
 - 18" Five-Split-Spoke Sparkle Silver-Painted Aluminum (4WD only)

INTERIOR/COMFORT

- Galvano Instrument Panel and Appliqués, Door/Interior Trim and Appliqués
- Seats
 - Unique Cloth
 - 10-way Power Driver's (includes Power Lumbar and Recline)
 - 6-way Power Passenger (includes Manual Recline)
 - Second Row Armrest
- Steering Wheel – Leather-Wrapped

SAFETY/SECURITY

- Perimeter Alarm

DRIVER ASSIST TECHNOLOGY

- Hill Descent Control™ (4WD Only)
- Reverse Sensing System

FUNCTIONAL

- 72 AH Battery
- Audio – SiriusXM® Radio

Note: Includes a six (6)-month prepaid subscription. Service is not available in Alaska and Hawaii.

Note: SiriusXM audio and data services each require a subscription sold separately, or as a package, by Sirius XM Radio Inc. If you decide to continue service after your trial, the subscription plan you choose will automatically renew thereafter and you will be charged according to your chosen payment method at then-current rates. Fees and taxes apply. To cancel you must call SiriusXM at 1-866-635-2349. See SiriusXM Customer Agreement for complete terms at www.siriusxm.com. All fees and programming subject to change. Sirius, XM and all related marks and logos are trademarks of Sirius XM Radio Inc.

- Intelligent Access with Push-Button Start
- SecuriCode™ Keyless-Entry Keypad

□ = New for this model year

2019 EXPLORER XLT 4WD EQUIPMENT GROUP

Equipment Group	Option	200A	201A	202A
Contract price \$26,749.50 PLUS ADDITIONAL COST FOR PACKAGE UPGRADES		\$3,945	\$6,585	\$9,250
Included in Equipment Group				
Driver Connect Package ● SYNC® 3 – Enhanced Voice Recognition Communications and Entertainment System – 8" LCD Capacitive Touchscreen in Center Stack with Swipe Capability – Pinch-to-Zoom capability included when equipped with available Voice-Activated Touchscreen Navigation System (Navigation is included in the XLT Technology Feature Bundle (65T)) – Applink® – 911 Assist® – Apple CarPlay™ and Android Auto™ Compatibility – Smart-Charging Multimedia USB Ports – two (2) (one (1) Smart-Charging Multimedia USB Port replaces the Front Center Floor Console Powerpoint Port) ● FordPass™ Connect – Remotely start, lock and unlock vehicle¹ – Schedule specific times to remotely start vehicle¹ – Locate parked vehicle¹ – Check vehicle status¹ – Wi-Fi® hotspot connects up to 10 devices² Note: Ford Telematics™ Prep included for Fleet ONLY: FordPass™ Connect enables telematics services through authorized partners. Activate at www.fleet.ford.com or call 888-459-0255. ● Driver configurable 4.2" color LCD displays in instrument cluster – Two (2) ● Auto-Dimming Rearview Mirror				
LED Fog Lamps				
LED Signature Lighting				
Mirrors, Sideview ● Power and Heated Glass, Manual-Folding, LED Turn Signal Indicators, Security Approach Lamps and Black Molded-in-Color Caps				
BLIS® (Blind Spot Information System) with Cross-Traffic Alert (Replaces standard Integrated Blind Spot Mirrors feature)				

2019 EXPLORER BASE 4WD STANDARD EQUIPMENT

DRIVER ASSIST TECHNOLOGY

- Headlamps – Autolamp (Automatic On/Off)
- Hill Start Assist
- SYNC®
 - Enhanced Voice Recognition Communications and Entertainment System
 - 911 Assist®
 - 4.2" LCD Screen in Center Stack
 - AppLink®
 - Smart-Charging Multimedia USB Port in Media Hub – One (1)

FUNCTIONAL

- 3.39 Non-Limited-Slip Rear Axle (FWD)
- 58 AH Battery (72AH with 2.3L I-4 EcoBoost® Engine)
- Audio
 - AM/FM Stereo
 - MP3 Capable
 - Six (6) Speakers
 - Speed-Compensated Volume
- Battery Saver
- Compass
- Electric Power-Assisted Steering (EPAS)
- Front and Rear Stabilizer Bars
- Independent Front and Rear Suspension
- Intelligent Oil-Life Monitor®
- Keyless-Entry Integrated Key Transmitter Remotes – Two (2)

4WD MODELS INCLUDE:

- Hill Descent Control™
- Intelligent 4WD
- Terrain Management System™

□ = New for this model year

2019 EXPLORER BASE 4WD EQUIPMENT GROUP

Option		EXPLORER
Equipment Group		100A
Equipment Group Mix		100%
Free Standing Packages & Options (FSO)		
2.3 ECOBOOST ENGINE	99H	\$895
Class III Trailer Tow Package (AFTERMARKET) Note: Not available with FWD (K7B); 4WD (K8B) requires 3.5L Ti-VCT V6 Engine (998)	52T	\$399
Inflatable Rear Safety Belts, Second Row Outboard Seating Positions	90R	\$145
SiriusXM® Radio Note: Includes a six (6)-month prepaid subscription¹. Service is not available in Alaska and Hawaii.	58E	\$195
Floor Liners, Front and Second Rows	16N	\$120
Engine Block Heater	41H	\$90
Front License Plate Bracket Note: See "Emissions" section for additional information.	153	FREE
Fleet Only Options (Requires Valid FIN Code)		
Reverse Sensing System	76R	\$275
Daytime Running Lamps (DRL) (Non-Configurable) Note: Replaces the standard Configurable Daytime Running Lamps (DRL)	942	\$45
Ford Accessories		
Running Boards – Black	96R	\$595
Factory Invoiced Accessories (FIA) – Shipped separately from the vehicle for Dealer		
Cargo Mat	85W	\$130
Interior Cargo Cover	60T	\$130
Smoker's Package	60X	\$90
Splash Guards	50M	\$205



State of Alabama
Department of Finance
Division of Purchasing
Master Agreement
Modification

13.6.a

CONTRACT INFORMATION

MASTER AGREEMENT NUMBER: MA 999 16000000023.1

NOT TO EXCEED AMOUNT:

Begin Date: 02/12/2016

Procurement Folder: 89542

Expiration Date: 02/10/2019

Procurement Type: Master Agreement

Solicitation Number:

Replaces Award Document:

Award Date:

Replaced by Award Document:

Modification Date: 11/07/17

Version Number: 6

CONTACT INFORMATION

REQUESTOR:

Crist Watts

334-242-4291

crist.watts@purchasing.alabama.gov

ISSUER:

Crist Watts

334-242-4291

crist.watts@purchasing.alabama.gov

BUYER:

Patrick Hemme

334-242-7173

Pat.Hemme@purchasing.alabama.gov

CONTRACT DESCRIPTION

T191 NON-ALTERNATIVE FUEL VEHICLES

Ship To:

Bill To:

REASON FOR MODIFICATION

VENDOR INFORMATION

Name /Address:

Contact:

VC000055942: Long-Lewis Of The Shoals Inc

Christina Croteau

2563867800 EXT: 2258

2800 Woodward Av

Christina.Croteau@Linglewis.Net

Muscle Shoals AL 35661

COMMODITY / SERVICE INFORMATION

Line	Quantity	UOM	Unit Price	Service Amount	Service From	Service To	Line Sub Total	Line Total
1	0	EA	\$15,833.500000	\$0.00			\$0.00	\$0.00
07006410000 - DO NOT USE: Inactivated 3-22-17. Use Classes 071, 072, 073. DISCONTINUED- Ford Focus SE 4 door DISCONTINUED-VEHICLE, COMPACT SEDAN, NON-ALTERNATIVE FUELWHEELBASE: 101" - 105.9"ENGINE: 4-CYLINDER4 WHEEL ABSA AND HEATAM/FM RADIOAUTOMATIC TRANSMISSIONCRUISE CONTROLPOWER WINDOWS, LOCKS, AND MIRRORSTILT STEERINGMAKE: _____ Ford _____ MODEL: _Ford Focus SE 4 door_____								
2	0	EA	\$24,948.500000	\$0.00			\$0.00	\$0.00
07180400000 - DO NOT USE. Use 5- or 7-digit code. MID-SIZE SUV, Ford Explorer FWD VEHICLE, MID-SIZE SUV, NON-ALTERNATIVE FUEL, 2-WHEEL DRIVE, 7 PASSENGER MINIMUMWHEELBASE: 105" - 115.9"ENGINE: V64 WHEEL ABSA/C AND HEAT - FRONT AND REARAM/FM RADIOAUTOMATIC TRANSMISSIONCRUISE CONTROLPOWER WINDOWS, LOCK AND MIRRORSTILT STEERINGMAKE: _____ Ford _____ MODEL: _Explorer FWD_____								
3	0	EA	\$26,749.500000	\$0.00			\$0.00	\$0.00
07180250000 - DO NOT USE. Use 5- or 7-digit code. MID SIZE SUV, Ford Explorer AWD VEHICLE, MID-SIZE SUV, NON-ALTERNATIVE FUEL, 4-WHEEL DRIVE, 7 PASSENGER MINIMUMWHEELBASE: 105" - 115.9"ENGINE: V64 WHEEL ABSA/C AND HEAT - FRONT AND REARAM/FM RADIOAUTOMATIC TRANSMISSIONCRUISE CONTROLPOWER WINDOWS, LOCK AND MIRRORSTILT STEERINGMAKE: _____ Ford _____ MODEL: _____ Explorer AWD_____								
4	0	EA	\$23,207.500000	\$0.00			\$0.00	\$0.00
07201150000 - DO NOT USE. Use 5- or 7-digit code. MID-SIZE CREW CAB TRUCK 4X2 Ford F-150 VEHICLE, MID-SIZE TRUCK, NON-ALTERNATIVE FUEL, CREW CAB, 4 X 2GVWR: 4,900 MINIMUMENGINE: 4-CYLINDER4 WHEEL ABSA/C AND HEATAM/FM RADIOAUTOMATIC TRANSMISSIONTILT STEERINGMAKE: _____ Ford _____ MODEL: _____ MID-SIZE CREW CAB TRUCK 4X2 Ford F-150_____								
5	0	EA	\$20,724.500000	\$0.00			\$0.00	\$0.00
05520500751 - (Inventory) FUEL CONVERSION SYSTEM, PURCHASE AND INSTALLATIO Do Not Use This Line. Replaced by Line 10. Do not Use This Line. Replaced by line 10.								
6	0	EA	\$31,415.500000	\$0.00			\$0.00	\$0.00
07042870000 - DO NOT USE: To be deactivated. Use Classes 071, 072, 073. DISCONTINUED- Ford Expedition 4X4, 7-Passenger, DISCONTINUED 3/3/2017-VEHICLE, FULL-SIZE SUV, NON-ALTERNATIVE FUEL, 4-WHEEL DRIVE, 7 PASSENGER MINIMUMWHEELBASE: 116" MINIMUMENGINE: V6 MINIMUM4 WHEEL ABSA/C AND HEAT - FRONT AND REARAM/FM RADIOAUTOMATIC TRANSMISSIONCRUISE CONTROLPOWER WINDOWS, LOCKS, AND MIRRORSTILT STEERINGMAKE: _____ Ford _____ MODEL: _____ Expedition 4X4_____								
7	0	EA	\$22,372.500000	\$0.00			\$0.00	\$0.00
07192300000 - DO NOT USE. Use 5- or 7-digit code. MID-SIZE VAN, 7-Passenger, Ford Transit VEHICLE, MID-SIZE VAN, NON-ALTERNATIVE FUEL, 7 PASSENGERENGINE: 4-CYLINDER MINIMUM4 WHEEL ABSA/C AND HEATAM/FM RADIOAUTOMATIC TRANSMISSIONCRUISE CONTROLPOWER WINDOWS, LOCKS, AND MIRRORSTILT STEERINGMAKE: _____ Ford _____ MODEL: _____ Transit_____								
8	0		\$0.000000	\$0.00			\$0.00	\$0.00
06066200000 - DO NOT USE. Use 5- or 7-digit code.								

RESOLUTION NO. 264-18

Purchase-Cisco Equipment-State Contract-IT**RESOLUTION NO. _____**

WHEREAS, the Information Technology Department desires to purchase Cisco equipment utilizing State Contract #T637 for the technology refresh and wireless network refresh and rebuild for the city; and

WHEREAS, CDW Government LLC is the State Contract Vendor for the Cisco equipment; and

WHEREAS, funding for this purchase will come from Capital Outlay;

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

1. That the purchase be awarded to CDW Government LLC utilizing the State of Alabama Contract.
2. That the Purchasing-Revenue Manager is hereby authorized to issue a purchase order to CDW Government LLC in the total amount of \$103,649.78.
3. The Controller is authorized to adjust the budget as necessary for this purchase.
4. That the Mayor is hereby authorized to sign all documents pertaining to this purchase.

APPROVED AND ADOPTED this the _____ day of _____, 2018.

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

ATTEST:

Robert G. Shuman, CMC
City Clerk - Treasurer

QUOTE CONFIRMATION



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
KCWZ934	9/27/2018	KCWZ934	936449	\$103,649.78

IMPORTANT - PLEASE READ

Special Instructions: TAX: MULTIPLE TAX JURISDICTIONS APPLY
TAX: CONTACT CDW FOR TAX DETAILS

QUOTE DETAILS

ITEM	QTY	CDW#	UNIT PRICE	EXT. PRICE
Cisco Industrial Ethernet 1000 Series - switch - 10 ports - managed Mfg. Part#: IE-1000-8P2S-LM UNSPSC: 43222612 TAX: OPELIKA, AL .0000% \$.00 Contract: State of Alabama Networking-T637 (T637-4013346)	12	4244976	\$1,187.03	\$14,244.36
Cisco Smart Net Total Care Solution Support - extended service agreement Mfg. Part#: CON-SSSNT-IE002SLM UNSPSC: 81111812 Electronic distribution - NO MEDIA TAX: OPELIKA, AL .0000% \$.00 Contract: MARKET	12	5257010	\$213.69	\$2,564.28
Cisco AC-DC Power Module for POE solution - power adapter - 170 Watt Mfg. Part#: PWR-IE170W-PC-AC= UNSPSC: 39121006 TAX: OPELIKA, AL .0000% \$.00 Contract: State of Alabama Networking-T637 (T637-4013346)	12	3614122	\$981.75	\$11,781.00
Cisco Meraki MR52 - wireless access point Mfg. Part#: MR52-HW UNSPSC: 43223108 TAX: OPELIKA, AL .0000% \$.00 Contract: State of Alabama Networking-T637 (T637-4013346)	10	4136977	\$832.41	\$8,324.10
Cisco Meraki MR84 Cloud Managed - wireless access point Mfg. Part#: MR84-HW UNSPSC: 43223108 TAX: OPELIKA, AL .0000% \$.00 Contract: State of Alabama Networking-T637 (T637-4013346)	4	4298871	\$1,427.41	\$5,709.64
Cisco Meraki MR70 - wireless access point Mfg. Part#: MR70-HW UNSPSC: 43223108 TAX: OPELIKA, AL .0000% \$.00	4	4994360	\$696.60	\$2,786.40

QUOTE DETAILS (CONT.)

Contract: MARKET

<u>Cisco Meraki Enterprise Cloud Controller - subscription license (3 years) -</u>	18	3342939	\$178.50	\$3,213.00
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Mfg. Part#: LIC-ENT-3YR

UNSPSC: 43232901

Electronic distribution - NO MEDIA

TAX: OPELIKA, AL .0000% \$.00

Contract: State of Alabama Networking-T637 (T637-4013346)

<u>Meraki Dual-Band Omni Antenna (4/7 dBi Gain) Set - antenna</u>	8	3605173	\$118.41	\$947.28
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Mfg. Part#: MA-ANT-20

UNSPSC: 43221706

TAX: OPELIKA, AL .0000% \$.00

Contract: State of Alabama Networking-T637 (T637-4013346)

<u>Cisco Catalyst 9300 - Network Essentials - switch - 24 ports - managed - ra</u>	4	4708805	\$3,240.00	\$12,960.00
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Mfg. Part#: C9300-24P-E

UNSPSC: 43222612

TAX: OPELIKA, AL .0000% \$.00

Contract: MARKET

<u>Cisco SMARTnet Solution Support - extended service agreement</u>	4	5045842	\$1,482.38	\$5,929.52
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Mfg. Part#: CON-SSSNT-C93002PE

UNSPSC: 81111812

Electronic distribution - NO MEDIA

TAX: OPELIKA, AL .0000% \$.00

Contract: MARKET

<u>Cisco Config 1 Secondary Power Supply - power supply - hot-plug / redundant</u>	4	2966332	\$743.75	\$2,975.00
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Mfg. Part#: PWR-C1-715WAC/2

UNSPSC: 39121004

TAX: OPELIKA, AL .0000% \$.00

Contract: State of Alabama Networking-T637 (T637-4013346)

<u>Cisco Catalyst 9300 Series Network Module - expansion module</u>	4	4727526	\$1,500.00	\$6,000.00
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Mfg. Part#: C9300-NM-8X

UNSPSC: 43201404

TAX: OPELIKA, AL .0000% \$.00

Contract: MARKET

<u>Cisco StackWise 480 - stacking cable - 1.6 ft</u>	4	4752735	\$60.00	\$240.00
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Mfg. Part#: STACK-T1-50CM

UNSPSC: 26121609

TAX: OPELIKA, AL .0000% \$.00

Contract: MARKET

<u>Cisco StackPower - power cable - 1 ft</u>	4	4752739	\$57.00	\$228.00
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Mfg. Part#: CAB-SPWR-30CM

UNSPSC: 26121636

TAX: OPELIKA, AL .0000% \$.00

Contract: MARKET

<u>Cisco Digital Network Architecture Essentials - Term License (3 years) - 24</u>	4	4756239	\$366.10	\$1,464.40
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Mfg. Part#: C9300-DNA-E-24-3Y

UNSPSC: 43233204

Electronic distribution - NO MEDIA

TAX: OPELIKA, AL .0000% \$.00

Contract: MARKET

Attachment: 10-16-18 - CISCO EQUIPMENT TECHNOLOGY AND WIRELESS REFRESH - STATE CONTRACT T637 - CNCL PKT (264-18 :

QUOTE DETAILS (CONT.)

<u>Cisco Catalyst 9300 - Network Essentials - switch - 48 ports - managed - ra</u>	2	4708816	\$6,551.84	\$13,103.68
Mfg. Part#: C9300-48P-E UNSPSC: 43222612 TAX: OPELIKA, AL .0000% \$.00 Contract: MARKET				
<u>Cisco SMARTnet Solution Support - extended service agreement</u>	2	4727962	\$2,556.62	\$5,113.24
Mfg. Part#: CON-SSSNT-C93004PE UNSPSC: 81111812 Electronic distribution - NO MEDIA TAX: OPELIKA, AL .0000% \$.00 Contract: MARKET				
<u>Cisco Config 1 Secondary Power Supply - power supply - hot-plug / redundant</u>	2	2966332	\$743.75	\$1,487.50
Mfg. Part#: PWR-C1-715WAC/2 UNSPSC: 39121004 TAX: OPELIKA, AL .0000% \$.00 Contract: State of Alabama Networking-T637 (T637-4013346)				
<u>Cisco Catalyst 9300 Series Network Module - expansion module</u>	2	4727526	\$1,500.00	\$3,000.00
Mfg. Part#: C9300-NM-8X UNSPSC: 43201404 TAX: OPELIKA, AL .0000% \$.00 Contract: MARKET				
<u>Cisco StackWise 480 - stacking cable - 1.6 ft</u>	2	4752735	\$60.00	\$120.00
Mfg. Part#: STACK-T1-50CM UNSPSC: 26121609 TAX: OPELIKA, AL .0000% \$.00 Contract: MARKET				
<u>Cisco StackPower - power cable - 1 ft</u>	2	4752739	\$57.00	\$114.00
Mfg. Part#: CAB-SPWR-30CM UNSPSC: 26121636 TAX: OPELIKA, AL .0000% \$.00 Contract: MARKET				
<u>Cisco Digital Network Architecture Essentials - Term License (3 years) - 48</u>	2	4728329	\$672.19	\$1,344.38
Mfg. Part#: C9300-DNA-E-48-3Y UNSPSC: 43233204 Electronic distribution - NO MEDIA TAX: OPELIKA, AL .0000% \$.00 Contract: MARKET				

PURCHASER BILLING INFO	SUBTOTAL	\$103,649.78
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
	SALES TAX	\$0.00
	GRAND TOTAL	\$103,649.78
DELIVER TO	Please remit payments to: CDW Government 75 Remittance Drive Suite 1515 Chicago, IL 60675-1515	
Shipping Address: CITY OF OPELIKA STEPHEN DAWE 204 S 7TH ST OPELIKA, AL 36801 Shipping Method: DROP SHIP-GROUND		

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

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State of Alabama
Department of Finance
Division of Purchasing
Master Agreement

13.7.a

Modification

CONTRACT INFORMATION

MASTER AGREEMENT NUMBER: MA 999 T6374013346

NOT TO EXCEED AMOUNT:

Begin Date: 09/01/2015

Procurement Folder: 165311

Expiration Date: 08/31/2018

Procurement Type: Master Agreement

Solicitation Number:

Replaces Award Document:

Award Date:

Replaced by Award Document:

Modification Date: 07/26/17

Version Number: 4

CONTACT INFORMATION

REQUESTOR:

Jennifer Loretz
334-242-7370
jennifer.loretz@purchasing.alabama.gov

ISSUER:

Jennifer Loretz
334-242-7370
jennifer.loretz@purchasing.alabama.gov

BUYER:

Jennifer Loretz
334-242-7370
jennifer.loretz@purchasing.alabama.gov

CONTRACT DESCRIPTION

Ship To:

Bill To:

REASON FOR MODIFICATION

Contract Renewed.

ENDORSEMENT INFORMATION

Name /Address:

VC000004220: CDW GOVERNMENT INC

75 REMITTANCE DR
SUITE 1515

CHICAGO IL 60675-1515

Contact:

Brittany Logan
877-742-3146 EXT: 1421
britlog@cdwg.com

Attachment: 10-16-18 - CISCO EQUIPMENT TECHNOLOGY AND WIRELESS REFRESH - STATE CONTRACT T637 - CNCL PKT (264-18 :

Line	Quantity	UOM	Unit Price	Service Amount	Service From	Service To	Line Sub Total	13.7.a
1	0		\$0.000000	\$0.00			\$0.00	\$0.00

0540066697CNV - DO NOT USE: To be inactivated.

NETWORKING: CISCO PRODUCTS CATALOG PERCENT OFF

NETWORKING: CISCO PRODUCTS CATALOG PERCENT OFF: 1. SECURITY PRODUCTS: 40.5% (FIREWALLS AND SECURITY DEVI
2. NETWORKING PRODUCTS: 40.5% (ROUTERS, SWITCHES, ACCESS POINTS, VARIOUS NETWORK SUPPORT DEVICES) 3.
SMARTNET SERVICES: 14% 4. MISCELLANEOUS CATALOG: 40.5% (CABLES, CONNECTORS, GBICS)

Line	Quantity	UOM	Unit Price	Service Amount	Service From	Service To	Line Sub Total	Line Total
3	0		\$0.000000	\$0.00			\$0.00	\$0.00

2555071934CNV - DO NOT USE: Inactivated 3-24-17.

JSE LINE 5

TELEPHONY: CISCO PRODUCTS CATALOG PERCENT OFF 1. COLLABORATION & VOICE PRODUCTS: 40.5% (E.G. PHONES, VIDE
ENDPOINTS, VOICE GATEWAYS) 2. SOFTWARE & LICENSED PRODUCTS: 40.5% (E.G. LICENSING FOR VARIOUS VOICE PRODUCT
INES, UCC, UCM, UNITY, AND OTHER SUPPORT OPTIONS) 3. SMARTNET SERVICES: 14% 4. MISCELLANEOUS PARTS: 40.5%

Line	Quantity	UOM	Unit Price	Service Amount	Service From	Service To	Line Sub Total	Line Total
4	0		\$0.000000	\$0.00			\$0.00	\$0.00

3900 - TELEPHONE EQUIPMENT, ACCESSORIES AND SUPPLIES

JSE LINE 1

NETWORKING: CISCO PRODUCTS CATALOG PERCENT OFF: 1. SECURITY PRODUCTS: 40.5% (FIREWALLS AND SECURITY DEVI
2. NETWORKING PRODUCTS: 40.5% (ROUTERS, SWITCHES, ACCESS POINTS, VARIOUS NETWORK SUPPORT DEVICES) 3.
SMARTNET SERVICES: 14% 4. MISCELLANEOUS CATALOG: 40.5% (CABLES, CONNECTORS, GBICS)

Line	Quantity	UOM	Unit Price	Service Amount	Service From	Service To	Line Sub Total	Line Total
5	0		\$0.000000	\$0.00			\$0.00	\$0.00

3900 - TELEPHONE EQUIPMENT, ACCESSORIES AND SUPPLIES

TELEPHONY: CISCO PRODUCTS CATALOG PERCENT OFF

TELEPHONY: CISCO PRODUCTS CATALOG PERCENT OFF 1. COLLABORATION & VOICE PRODUCTS: 40.5% (E.G. PHONES, VIDE
ENDPOINTS, VOICE GATEWAYS) 2. SOFTWARE & LICENSED PRODUCTS: 40.5% (E.G. LICENSING FOR VARIOUS VOICE PRODUCT
INES, UCC, UCM, UNITY, AND OTHER SUPPORT OPTIONS) 3. SMARTNET SERVICES: 14% 4. MISCELLANEOUS PARTS: 40.5%

All terms, conditions, and any amendments to solicitation are part of this contract as if fully reproduced herein .

Approved:



Purchasing Director

APPROVALS

Date	Status Before	Status After	Approver

RESOLUTION NO. 265-18

Purchase-Directional and Overhead Signs for Andrews Road-ENG**RESOLUTION NO. _____**

WHEREAS, the Engineering Department desires to purchase directional and overhead signs for Andrews Road utilizing State Contract #TA677; and

WHEREAS, Ozark Safety Services, LLC is the State Contract Vendor for the signs; and

WHEREAS, funding for this purchase will come from the Economic Development Fund;

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

1. That the purchase be awarded to Ozark Safety Services, LLC utilizing the State of Alabama Contract.
2. That the Purchasing-Revenue Manager is hereby authorized to issue a purchase order to Ozark Safety Services, LLC in the total amount of \$117,037.89.
3. The Controller is authorized to adjust the budget as necessary for this purchase.
4. That the Mayor is hereby authorized to sign all documents pertaining to this purchase.

APPROVED AND ADOPTED this the _____ day of _____, 2018.

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

ATTEST:

Robert G. Shuman
City Clerk - Treasurer

OZARK SAFETY SERVICES, LLC
552 OLIVER ROAD
MONTGOMERY, AL 36117
PH# 334-277-6577 FAX# 334-277-6575

Permanent Sign Quo
Installed

City of Opelika

9/21/2018

Project: Andrews RD Exit Opelika, AL

<u>Item</u>	<u>Quantity</u>	<u>UNITS</u>	<u>Description</u>	<u>Unit Price</u>	<u>Total Price</u>
*0001	192	SQFT	Guide Sign (Fabricated & Installed)	\$ 29.92	\$ 5,744.
*00037	1	LS	60'1" to 70' Overhead Sign Bridge (80 MPH Wind Zone)	\$ 101,269.29	\$ 101,269.
*00021	46	LF	2 1/2" Square Tube Slip Base Assembly and Post	\$ 82.01	\$ 3,772.
*00029	320	SQFT	Construction Signs	\$ 9.91	\$ 3,171.
*00030	200	EA	Construction Channelization Drums	\$ 12.20	\$ 2,440.
*00031	25	EA	Construction Channelization Cones	\$ 6.10	\$ 152.
*00033	2	EA	Portable Sequential Arrow Board	\$ 243.90	\$ 487.
				TOTAL: \$	117,037.

NOTES CONCERNING SIGN STRUCTURES

QUOTE IS VALID FOR 30 DAYS

DOES NOT INCLUDE ANY APPLICABLE TAXES

CUSTOMER IS RESPONSIBLE FOR PROVIDING EXACT LOCATION OF SIGNS INSTALLATIONS

CUSTOMER MUST SIGN OFF ON SIGN DETAIL DRAWINGS PRIOR TO ANY FABRICATION

PLEASE ALLOW 8-10 WEEKS FOR SIGNS ,STRUCTURE & SCHEDULING

SIGNS AND STRUCTURES MEET ALL ALDOT SPECS

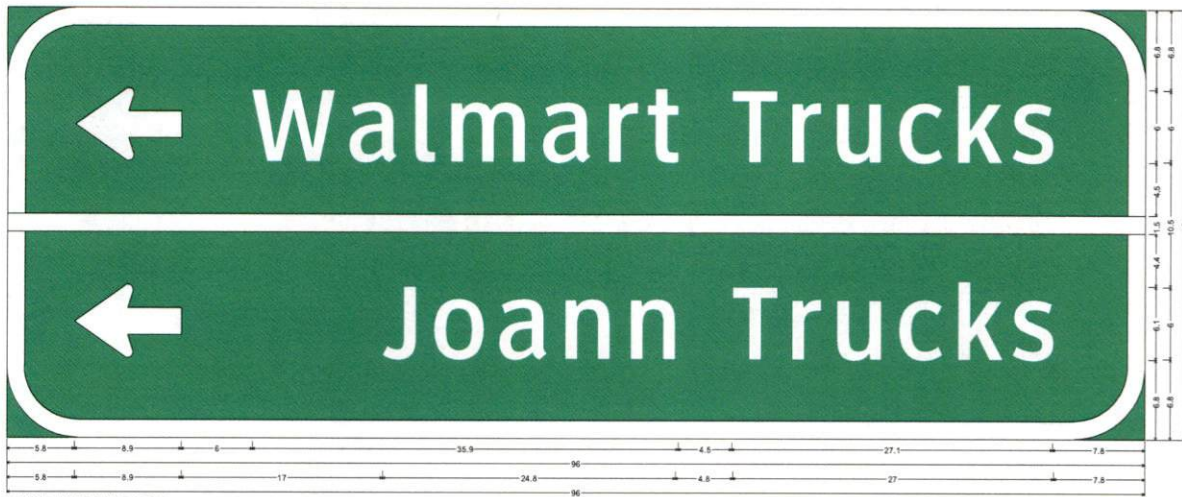
ALL SIGNS WILL BE INSTALLED AS TO MEET ALDOT SPECS ON ROADWAY

ALL PRICING IS BASED OF ALDOT STATE CONTRACT

Submitted by: Phillip Gray

Attachment: 10-16-18 - DIRECTIONAL AND OVERHEAD SIGNS FOR ANDREWS ROAD - STATE CONTRACT T677 - CNCL PKT (265-18 :

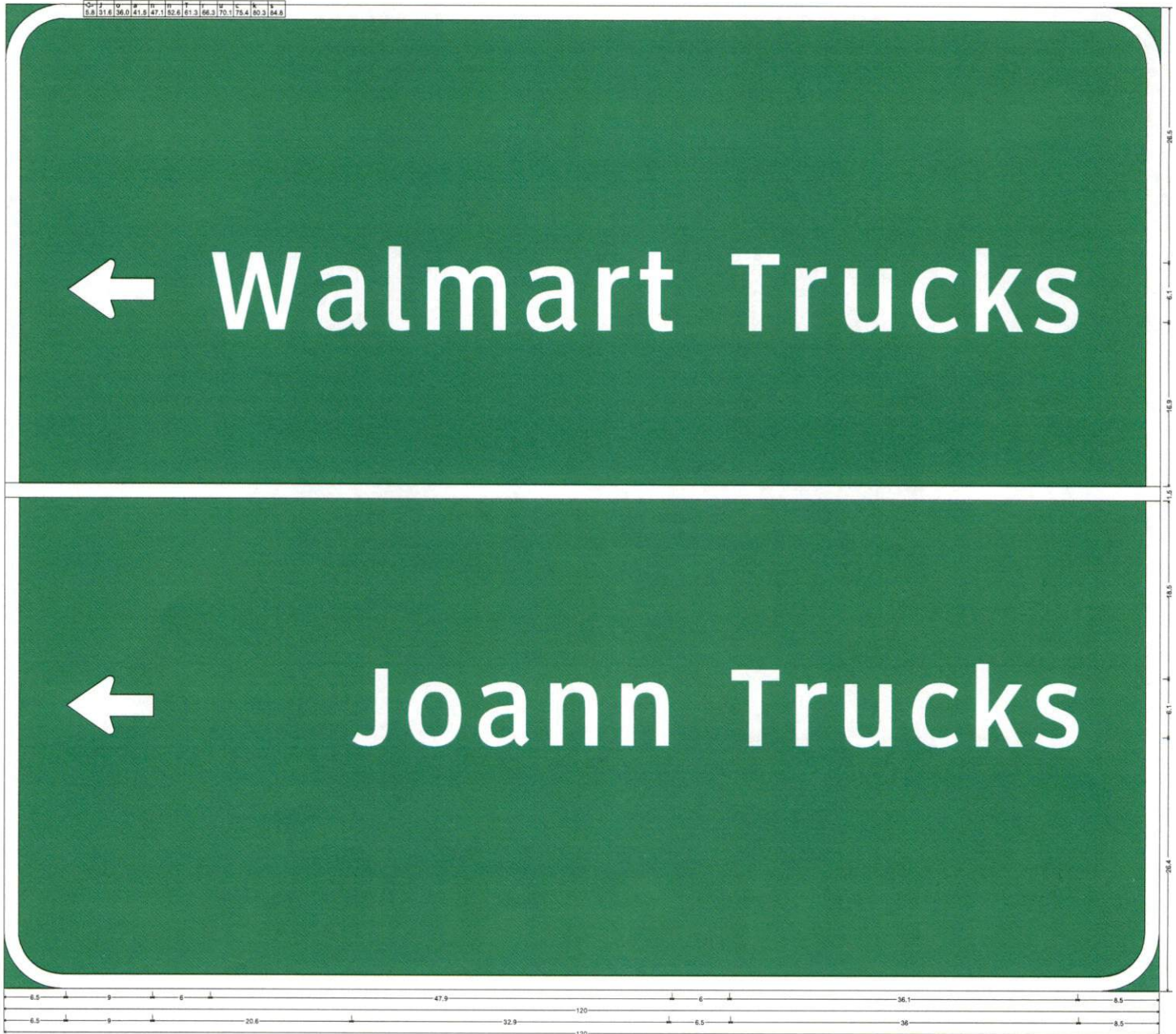




6.0" Radius, 1.5" Border, White on Green.
Standard Arrow Custom 9.0" X 6.1" 180°. "Walmart Trucks" Clearview-Hwy-3-W. Standard Arrow Custom 9.0" X 6.1" 180°. "Joann Trucks" Clearview-Hwy-3-W.
Table of letter and object lefts.

W	a	l	m	a	r	t	r	u	c	k	s
5.8	20.8	28.9	34.5	37.5	43.3	50.8	54.0	61.1	66.3	70.0	79.3
84.8											

-0.0												
	j	o	a	n	n	t	r	u	c	k	s	
	5.8	31.6	36.0	41.8	47.1	52.6	61.3	66.3	70.1	75.4	80.3	84.8



6.0" Radius, 1.5" Border, White on Green.
Standard Arrow Custom 9.0" X 6.1" 180°. "Walmart Trucks" Clearview-Hwy-3-W. Standard Arrow Custom 9.0" X 6.1" 180°. "Joann Trucks" Clearview-Hwy-3-W.
Table of letter and object lefts.

W	a	l	m	a	r	t	r	u	c	k	s
6.5	21.5	32.4	39.8	43.9	54.1	61.5	65.9	75.4	82.1	87.3	94.1
100.8											

-0.0											
	J	o	a	n	n	T	r	u	c	k	s
8.5	36.1	41.9	49.3	56.8	64.0	75.5	82.1	87.3	94.3	100.9	106.9



State of Alabama
Department of Finance
Division of Purchasing
Master Agreement

13.8.a

New

CONTRACT INFORMATION

MASTER AGREEMENT NUMBER: MA 012 TA6774013417

NOT TO EXCEED AMOUNT:

Begin Date: 07/18/2016

Procurement Folder: 211713

Expiration Date: 05/31/2017

Procurement Type: Master Agreement

Solicitation Number:

Replaces Award Document:

Award Date:

Replaced by Award Document:

Modification Date: 11/23/16

Version Number: 1

CONTACT INFORMATION

REQUESTOR:

Terri Hines
334-242-4610
terri.hines@purchasing.alabama.gov

ISSUER:

Terri Cole
334-242-4650
terri.cole@purchasing.alabama.gov

BUYER:

CONTRACT DESCRIPTION

Ship To:

Bill To:

REASON FOR MODIFICATION

ENDORSEMENT INFORMATION

Name /Address:

Contact:

VC000044583: Ozark Safety Services LLC

Bob Mallett
3342776577

552 Oliver Road

Bob@Ozarksafety.Net

Montgomery AL 36117

Attachment: 10-16-18 - DIRECTIONAL AND OVERHEAD SIGNS FOR ANDREWS ROAD - STATE CONTRACT T677 - CNCL PKT (265-18 :

Line	Quantity	UOM	Unit Price	Service Amount	Service From	Service To	Line Sub Total		13.8.a
1	0	SQFT	\$29.920000	\$0.00			\$0.00		\$0.00

6880085258CNV - TRAFFIC SIGN INSTALLATION PER PROVIDED
GUIDE SIGN
TRAFFIC SIGN INSTALLATION PER PROVIDED SPECIFICATIONS.

GUIDE SIGN, COMPLETE, FABRICATED, DELIVERED AND INSTALLED (POST NOT INCLUDED)

Line	Quantity	UOM	Unit Price	Service Amount	Service From	Service To	Line Sub Total	Line Total
2	0	SQFT	\$19.890000	\$0.00			\$0.00	\$0.00

6880085258CNV - TRAFFIC SIGN INSTALLATION PER PROVIDED
SIGN CLASS 4
TRAFFIC SIGN INSTALLATION PER PROVIDED SPECIFICATIONS.

SIGN CLASS 4, COMPLETE, FABRICATED, DELIVERED AND INSTALLED (POST NOT INCLUDED)

Line	Quantity	UOM	Unit Price	Service Amount	Service From	Service To	Line Sub Total	Line Total
3	0	SQFT	\$20.980000	\$0.00			\$0.00	\$0.00

6880085258CNV - TRAFFIC SIGN INSTALLATION PER PROVIDED
SIGN CLASS 7
TRAFFIC SIGN INSTALLATION PER PROVIDED SPECIFICATIONS.

SIGN CLASS 7, COMPLETE, FABRICATED, DELIVERED AND INSTALLED (POST NOT INCLUDED)

Line	Quantity	UOM	Unit Price	Service Amount	Service From	Service To	Line Sub Total	Line Total
4	0	SQFT	\$22.490000	\$0.00			\$0.00	\$0.00

6880085258CNV - TRAFFIC SIGN INSTALLATION PER PROVIDED
SIGN CLASS 8
TRAFFIC SIGN INSTALLATION PER PROVIDED SPECIFICATIONS.

SIGN CLASS 8, COMPLETE, FABRICATED, DELIVERED AND INSTALLED (POST NOT INCLUDED)

Line	Quantity	UOM	Unit Price	Service Amount	Service From	Service To	Line Sub Total	Line Total
5	0	LNFT	\$106.290000	\$0.00			\$0.00	\$0.00

6880085258CNV - TRAFFIC SIGN INSTALLATION PER PROVIDED
BEAM POST, W6 X 9
TRAFFIC SIGN INSTALLATION PER PROVIDED SPECIFICATIONS.

BEAM POST, W6 X 9, COMPLETE, FABRICATED AND INSTALLED, SATISFYING ALDOT STANDARD SPECIFICATIONS & DRAWINGS, TYPE 2

Line	Quantity	UOM	Unit Price	Service Amount	Service From	Service To	Line Sub Total	Line Total
6	0	LNFT	\$113.820000	\$0.00			\$0.00	\$0.00

6880085258CNV - TRAFFIC SIGN INSTALLATION PER PROVIDED
BEAM POST, W6 X 12
TRAFFIC SIGN INSTALLATION PER PROVIDED SPECIFICATIONS.

BEAM POST, W6 X 12, COMPLETE, FABRICATED AND INSTALLED, SATISFYING ALDOT STANDARD SPECIFICATIONS & DRAWINGS, TYPE 2

Line	Quantity	UOM	Unit Price	Service Amount	Service From	Service To	Line Sub Total	Line Total
7	0	LNFT	\$122.080000	\$0.00			\$0.00	\$0.00

6880085258CNV - TRAFFIC SIGN INSTALLATION PER PROVIDED
BEAM POST, W6 X 15
TRAFFIC SIGN INSTALLATION PER PROVIDED SPECIFICATIONS.

BEAM POST, W6 X 15, COMPLETE, FABRICATED AND INSTALLED, SATISFYING ALDOT STANDARD SPECIFICATIONS & DRAWINGS, TYPE 2

Line	Quantity	UOM	Unit Price	Service Amount	Service From	Service To	Line Sub Total	Line Total
21	0	LNFT	\$82.010000	\$0.00			\$0.00	\$0.00

6880085258CNV - TRAFFIC SIGN INSTALLATION PER PROVIDED
SIGN SUPPORT, SQUARE TUBE SLIP-BASE
TRAFFIC SIGN INSTALLATION PER PROVIDED SPECIFICATIONS.

SIGN SUPPORT, SQUARE TUBE SLIP-BASE SYSTEM, COMPLETE, FABRICATED AND INSTALLED

Line	Quantity	UOM	Unit Price	Service Amount	Service From	Service To	Line Sub Total	Line Total
22	0	LNFT	\$7.060000	\$0.00			\$0.00	\$0.00

6880085258CNV - TRAFFIC SIGN INSTALLATION PER PROVIDED
SIGN SUPPORT, SQUARE TUBE
TRAFFIC SIGN INSTALLATION PER PROVIDED SPECIFICATIONS.

SIGN SUPPORT, SQUARE TUBE 2-1/4" X 2-1/4", USED AS A STIFFENER (OR A STUB FOR DIRECT BURIAL) FOR POST INSTALLATION

Line	Quantity	UOM	Unit Price	Service Amount	Service From	Service To	Line Sub Total	Line Total
23	0	LNFT	\$11.940000	\$0.00			\$0.00	\$0.00

6880085258CNV - TRAFFIC SIGN INSTALLATION PER PROVIDED
SIGN SUPPORT, SQUARE TUBE
TRAFFIC SIGN INSTALLATION PER PROVIDED SPECIFICATIONS.

SIGN SUPPORT, SQUARE TUBE 2" USED FOR DIRECT BURIAL SIGN POST INSTALLATION (CORNER BOLT AND HARDWARE INCLUD

Line	Quantity	UOM	Unit Price	Service Amount	Service From	Service To	Line Sub Total	Line Total
24	0	LNFT	\$95.610000	\$0.00			\$0.00	\$0.00

6880085258CNV - TRAFFIC SIGN INSTALLATION PER PROVIDED
CHEVRON BRACKET (DOUBLE SIDED)
TRAFFIC SIGN INSTALLATION PER PROVIDED SPECIFICATIONS.

CHEVRON BRACKET (DOUBLE SIDED)

Line	Quantity	UOM	Unit Price	Service Amount	Service From	Service To	Line Sub Total	Line Total
25	0	LNFT	\$25.700000	\$0.00			\$0.00	\$0.00

6880085258CNV - TRAFFIC SIGN INSTALLATION PER PROVIDED
3" LINEAR DELINEATION SYSTEM PANEL
TRAFFIS SIGN INSTALLATION PER PROVIDED SPECIFICATIONS.

3" LINEAR DELINEATION SYSTEM PANEL (COLOR TO BE SPECIFIED AT TIME OR ORDER)

Line	Quantity	UOM	Unit Price	Service Amount	Service From	Service To	Line Sub Total	Line Total
26	0	LNFT	\$16.110000	\$0.00			\$0.00	\$0.00

6880085258CNV - TRAFFIC SIGN INSTALLATION PER PROVIDED
1-1/2" LINEAR DELINEATION SYSTEM PANEL
TRAFFIS SIGN INSTALLATION PER PROVIDED SPECIFICATIONS.

1-1/2" LINEAR DELINEATION SYSTEM PANEL (COLOR TO BE SPECIFIED AT TIME OR ORDER)

Line	Quantity	UOM	Unit Price	Service Amount	Service From	Service To	Line Sub Total	Line Total
27	0	SQFT	\$6.940000	\$0.00			\$0.00	\$0.00

6880085258CNV - TRAFFIC SIGN INSTALLATION PER PROVIDED
NEEDENDER
TRAFFIC SIGN INSTALLATION PER PROVIDED SPECIFICATIONS.

NEEDENDER

Line	Quantity	UOM	Unit Price	Service Amount	Service From	Service To	Line Sub Total	Line Total
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28	0	LNFT	\$114.790000	\$0.00			\$0.00		13.8.a
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6880085258CNV - TRAFFIC SIGN INSTALLATION PER PROVIDED
ROCK REMOVAL
TRAFFIC SIGN INSTALLATION PER PROVIDED SPECIFICATIONS.

ROCK REMOVAL, FOR INSTALLATION OF SIGN POST FOOTINGS AS REQUIRED, UP TO 2' DIA DRILL SHAFT, PER LINEAR FOOT OF DEPTH

Line	Quantity	UOM	Unit Price	Service Amount	Service From	Service To	Line Sub Total	Line Total
29	0	SQFT	\$9.910000	\$0.00			\$0.00	\$0.00

6880085258CNV - TRAFFIC SIGN INSTALLATION PER PROVIDED
CONSTRUCTION SIGN
TRAFFIC SIGN INSTALLATION PER PROVIDED SPECIFICATIONS.

CONSTRUCTION SIGN

Line	Quantity	UOM	Unit Price	Service Amount	Service From	Service To	Line Sub Total	Line Total
30	0	EA	\$12.200000	\$0.00			\$0.00	\$0.00

6880085258CNV - TRAFFIC SIGN INSTALLATION PER PROVIDED
CHANNELINZING DRUM
TRAFFIC SIGN INSTALLATION PER PROVIDED SPECIFICATIONS.

CHANNELINZING DRUM

Line	Quantity	UOM	Unit Price	Service Amount	Service From	Service To	Line Sub Total	Line Total
31	0	EA	\$6.100000	\$0.00			\$0.00	\$0.00

6880085258CNV - TRAFFIC SIGN INSTALLATION PER PROVIDED
CONSTRUCTION CONE
TRAFFIC SIGN INSTALLATION PER PROVIDED SPECIFICATIONS.

CONSTRUCTION CONE

Line	Quantity	UOM	Unit Price	Service Amount	Service From	Service To	Line Sub Total	Line Total
32	0	EA	\$487.800000	\$0.00			\$0.00	\$0.00

6880085258CNV - TRAFFIC SIGN INSTALLATION PER PROVIDED
PORTABLE MESSAGE BOARD
TRAFFIC SIGN INSTALLATION PER PROVIDED SPECIFICATIONS.

PORTABLE MESSAGE BOARD

Line	Quantity	UOM	Unit Price	Service Amount	Service From	Service To	Line Sub Total	Line Total
33	0	EA	\$243.900000	\$0.00			\$0.00	\$0.00

6880085258CNV - TRAFFIC SIGN INSTALLATION PER PROVIDED
PORTABLE SEQUENTIAL ARROW AND CHEVRON SIGN UNIT
TRAFFIC SIGN INSTALLATION PER PROVIDED SPECIFICATIONS.

PORTABLE SEQUENTIAL ARROW AND CHEVRON SIGN UNIT

Line	Quantity	UOM	Unit Price	Service Amount	Service From	Service To	Line Sub Total	Line Total
34	0	EA	\$609.760000	\$0.00			\$0.00	\$0.00

6880085258CNV - TRAFFIC SIGN INSTALLATION PER PROVIDED
TRUCK-TRAILER MOUNTED ATTENUATOR TL-3
TRAFFIC SIGN INSTALLATION PER PROVIDED SPECIFICATIONS.

TRUCK-TRAILER MOUNTED ATTENUATOR TL-3

Line	Quantity	UOM	Unit Price	Service Amount	Service From	Service To	Line Sub Total	Line Total
35	0	EA	\$90,176.400000	\$0.00			\$0.00	\$0.00

6880085258CNV - TRAFFIC SIGN INSTALLATION PER PROVIDED
OVERHEAD < 50' - 0" & MAXIMUM DESIGN SIGN AREA 300 SQ FT
TRAFFIC SIGN INSTALLATION PER PROVIDED SPECIFICATIONS.

OVERHEAD < 50' X 0" & MAXIMUM DESIGN SIGN AREA 300 SQ FT

BASED ON 80 MPH WIND LOAD DESIGN (NEW CONSTRUCTION)

Line	Quantity	UOM	Unit Price	Service Amount	Service From	Service To	Line Sub Total	Line Total
36	0	EA	\$95,279.130000	\$0.00			\$0.00	\$0.00

6880085258CNV - TRAFFIC SIGN INSTALLATION PER PROVIDED
OVERHEAD 50' - 1" TO 60' - 0" & MAX DESIGN SIGN AREA 350 SQF
TRAFFIC SIGN INSTALLATION PER PROVIDED SPECIFICATIONS.

OVERHEAD 50' - 1" TO 60' - 0" & MAXIMUM DESIGN SIGN AREA 350 SQ FT

BASED ON 80 MPH WIND LOAD DESIGN (NEW CONSTRUCTION)

Line	Quantity	UOM	Unit Price	Service Amount	Service From	Service To	Line Sub Total	Line Total
37	0	EA	\$101,269.290000	\$0.00			\$0.00	\$0.00

6880085258CNV - TRAFFIC SIGN INSTALLATION PER PROVIDED
OVERHEAD 60' - 1" TO 70' - 0" & MAX DESIGN SIGN AREA 400 SQF
TRAFFIC SIGN INSTALLATION PER PROVIDED SPECIFICATIONS.

OVERHEAD 60' - 1" TO 70' - 0" & MAXIMUM DESIGN SIGN AREA 400 SQ FT

BASED ON 80 MPH WIND LOAD DESIGN (NEW CONSTRUCTION)

Line	Quantity	UOM	Unit Price	Service Amount	Service From	Service To	Line Sub Total	Line Total
38	0	EA	\$106,815.740000	\$0.00			\$0.00	\$0.00

6880085258CNV - TRAFFIC SIGN INSTALLATION PER PROVIDED
OVERHEAD 70' - 1" TO 80' - 0" & MAX DESIGN SIGN AREA 450 SQF
TRAFFIC SIGN INSTALLATION PER PROVIDED SPECIFICATIONS.

OVERHEAD 70' - 1" TO 80' - 0" & MAXIMUM DESIGN SIGN AREA 450 SQ FT

BASED ON 80 MPH WIND LOAD DESIGN (NEW CONSTRUCTION)

Line	Quantity	UOM	Unit Price	Service Amount	Service From	Service To	Line Sub Total	Line Total
39	0	EA	\$119,017.930000	\$0.00			\$0.00	\$0.00

6880085258CNV - TRAFFIC SIGN INSTALLATION PER PROVIDED
OVERHEAD 80' - 1" TO 90' - 0" & MAX DESIGN SIGN AREA 550 SQF
TRAFFIC SIGN INSTALLATION PER PROVIDED SPECIFICATIONS.

OVERHEAD 80' - 1" TO 90' - 0" & MAXIMUM DESIGN SIGN AREA 550 SQ FT

BASED ON 80 MPH WIND LOAD DESIGN (NEW CONSTRUCTION)

Line	Quantity	UOM	Unit Price	Service Amount	Service From	Service To	Line Sub Total	Line Total
40	0	EA	\$135,657.270000	\$0.00			\$0.00	\$0.00

6880085258CNV - TRAFFIC SIGN INSTALLATION PER PROVIDED
OVERHEAD 90' - 1" TO 100' - 0" & MAX DESIGN SIGN AREA 650 SQ
TRAFFIC SIGN INSTALLATION PER PROVIDED SPECIFICATIONS.

OVERHEAD 90' - 1" TO 100' - 0" & MAXIMUM DESIGN SIGN AREA 650 SQ FT

BASED ON 80 MPH WIND LOAD DESIGN (NEW CONSTRUCTION)

Line	Quantity	UOM	Unit Price	Service Amount	Service From	Service To	Line Sub Total	Line Total
41	0	EA	\$142,717.380000	\$0.00			\$0.00	\$0.00



Kay Ivey
Governor

ALABAMA
DEPARTMENT OF TRANSPORTATION
MAINTENANCE BUREAU
1409 COLISEUM BOULEVARD
MONTGOMERY, ALABAMA 36110
PHONE (334) 242-6272 FAX (334) 242-6378



John R. Cooper
Transportation Director

October 10, 2018

Mr. Scott H. Parker, P.E.
City of Opelika Engineer
P.O. Box 390
Opelika, AL 36801

Dear Mr. Parker:

This letter is in reference to your request to use Master Agreement 012 TA6774013417, "Guide Sign Fabrication and Installation," for an upcoming sign installation project in your city. The Alabama Department of Transportation (ALDOT) is authorizing The City of Opelika to use the above referenced Master Agreement to complete your project.

If further information about this Master Agreement is needed please do not hesitate to contact this office. Andrew Harry is the State Traffic Operations Engineer and would be able to provide any assistance pertaining to this matter, he can be contacted at 334-242-6275.

Sincerely,

Stacey N. Glass, P.E.
State Maintenance Engineer

SNG/KCN/aoh

Attachment: 10-16-18 - DIRECTIONAL AND OVERHEAD SIGNS FOR ANDREWS ROAD - STATE CONTRACT T677 - CNCL PKT (265-18 :

RESOLUTION NO. 266-18

Purchase-Microsoft Software-National IPA Contract-IT**RESOLUTION NO. _____**

WHEREAS, the Information Technology Department desires to purchase a three (3) year contract for Microsoft software utilizing National IPA Contract #2018011-02; and

WHEREAS, SHI International Corp. is the National IPA Contract Vendor for the Microsoft software; and

WHEREAS, funding for this purchase will come from IT Equipment Repairs and Maintenance;

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

1. That the contract be awarded to SHI International Corp. utilizing the National IPA Contract.
2. That the Purchasing-Revenue Manager is hereby authorized to issue a purchase order SHI International Corp. in the amount of \$154,284.21 each year for a total amount of \$462,852.63.
3. The Controller is authorized to adjust the budget as necessary for this contract.
4. That the Mayor is hereby authorized to sign all documents pertaining to this contract.

APPROVED AND ADOPTED this the _____ day of _____, 2018.

C.E. “Eddie” Smith, Jr.
President of the City Council
City of Opelika, Alabama

ATTEST:

Robert G. Shuman
City Clerk - Treasurer



Pricing Proposal

Quotation #: 15928649

Created On: 9/11/2018

Valid Until: 10/26/2018

City of Opelika AL

Stephen Dawe

204 South 7th Street

Opelika, AL 36801

UNITED STATES

Phone: (334) 705-5140

Fax:

Email: SDawe@ci.opelika.al.us; lmalloy@opelika-al.gov

Sr. Inside Account
Executive

Bryan Hunt

290 Davidson Ave

Somerset, NJ 08873

Phone: 732-652-7651

Fax: 732-564-8224

Email: Bryan_Hunt@shi.com

All Prices are in US Dollar (USD)

Product	Qty	Your Price	Total
1 WINE3perDVC ALNG SA MVL Pltfrm Microsoft - Part#: KV3-00353 Coverage Term: 11/1/2018 – 10/31/2019 Note: Annual Payment - Year 1 of 3	305	\$51.46	\$15,695.30
2 Prjct ALNG SA MVL Microsoft - Part#: 076-01912 Coverage Term: 11/1/2018 – 10/31/2019 Note: Annual Payment - Year 1 of 3	2	\$119.01	\$238.02
3 VisioPro ALNG SA MVL Microsoft - Part#: D87-01159 Coverage Term: 11/1/2018 – 10/31/2019 Note: Annual Payment - Year 1 of 3	6	\$101.94	\$611.64
4 CISSteDCCore ALNG SA MVL 2Lic CoreLic Microsoft - Part#: 9GS-00135 Coverage Term: 11/1/2018 – 10/31/2019 Note: Annual Payment - Year 1 of 3	32	\$169.24	\$5,415.68
5 CISStdCore ALNG SA MVL 2Lic CoreLic Microsoft - Part#: 9GA-00313 Coverage Term: 11/1/2018 – 10/31/2019 Note: Annual Payment - Year 1 of 3	112	\$34.89	\$3,907.68
6 SQLSvrEntCore ALNG SA MVL 2Lic CoreLic Microsoft - Part#: 7JQ-00343 Coverage Term: 11/1/2018 – 10/31/2019 Note: Annual Payment - Year 1 of 3	4	\$2,288.91	\$9,155.64
7 SQLSvrStdCore ALNG SA MVL 2Lic CoreLic Microsoft - Part#: 7NQ-00292 Coverage Term: 11/1/2018 – 10/31/2019 Note: Annual Payment - Year 1 of 3	6	\$596.91	\$3,581.46

9	Microsoft Windows Server Datacenter Edition - License & software assurance - 2 cores - Enterprise - All Languages Microsoft - Part#: 9EA-00039	70	\$299.09	\$20,936.30
10	CoreCALBridgeO365 ALNG SubsVL MVL Pltfrm PerUsr Microsoft - Part#: AAA-12415 Coverage Term: 11/1/2018 – 10/31/2019 Note: Annual Payment - Year 1 of 3	395	\$19.05	\$7,524.75
11	O365GCCE3 ShrdSvr ALNG SubsVL MVL PerUsr Microsoft - Part#: AAA-11894 Coverage Term: 11/1/2018 – 10/31/2019 Note: Annual Payment - Year 1 of 3	395	\$217.73	\$86,003.35
12	VisioOnlnP2AddOnGCC ShrdSvr ALNG SubsVL MVL PerUsr Microsoft - Part#: 9K4-00003 Coverage Term: 11/1/2018 – 10/31/2019 Note: Annual Payment - Year 1 of 3	5	\$113.81	\$569.05
13	ProjOnlnProfAddOnGOV ShrdSvr ALNG SubsVL MVL AddOn toPrjctStd Microsoft - Part#: 7E4-00004 Coverage Term: 11/1/2018 – 10/31/2019 Note: Annual Payment - Year 1 of 3	2	\$103.67	\$207.34
				Subtotal \$154,284.21
				Total \$154,284.21

The Products offered under this proposal are resold in accordance with the [SHI Online Customer Resale Terms and Conditions](#), unless a separate resale agreement exists between SHI and the Customer.

0 *

154,284.21 x

3 =

462,852.63 *

0 *

Attachment: 10-16-18 - MICROSOFT AGREEMENT - CNCL PKT (266-18 : Purchase-Microsoft Software-National IPA Contract-IT)

Search Results

Search Within Results

2018011-02

[Reset search](#)

Filters

All States

All Current Contracts

All Lead Agencies

Contract Categories

Information Technology

Data Storage and Management

Hardware

Security

Software



SHI

Contract #: 2018011-02

Information Technology Solutions and Services

Competitively Solicited and Awarded by: City of Mesa, AZ

2018

2019

2020

2021

2022

2023

2024

2025

Hardware and Software IT Solutions

Memory and Storage Devices

Network Equipment

Media Supplies

100% minority owned company



Volume Licensing

Enterprise Enrollment

State and Local

Enterprise Enrollment number
(Microsoft to complete)

60110415

Framework ID
(if applicable)

Previous Enrollment number
(Reseller to complete)

9048019

This Enrollment must be attached to a signature form to be valid.

This Microsoft Enterprise Enrollment is entered into between the entities as identified in the signature form as of the effective date. Enrolled Affiliate represents and warrants it is the same Customer, or an Affiliate of the Customer, that entered into the Enterprise Agreement identified on the program signature form.

This Enrollment consists of: (1) these terms and conditions, (2) the terms of the Enterprise Agreement identified on the signature form, (3) the Product Selection Form, (4) the Product Terms, (5) the Online Services Terms, (6) any Supplemental Contact Information Form, Previous Agreement/Enrollment form, and other forms that may be required, and (7) any order submitted under this Enrollment. This Enrollment may only be entered into under a 2011 or later Enterprise Agreement. By entering into this Enrollment, Enrolled Affiliate agrees to be bound by the terms and conditions of the Enterprise Agreement.

All terms used but not defined are located at <http://www.microsoft.com/licensing/contracts>. In the event of any conflict the terms of this Agreement control.

Effective date. If Enrolled Affiliate is renewing Software Assurance or Subscription Licenses from one or more previous Enrollments or agreements, then the effective date will be the day after the first prior Enrollment or agreement expires or terminates. If this Enrollment is renewed, the effective date of the renewal term will be the day after the Expiration Date of the initial term. Otherwise, the effective date will be the date this Enrollment is accepted by Microsoft. Any reference to "anniversary date" refers to the anniversary of the effective date of the applicable initial or renewal term for each year this Enrollment is in effect.

Term. The initial term of this Enrollment will expire on the last day of the month, 36 full calendar months from the effective date of the initial term. The renewal term will expire 36 full calendar months after the effective date of the renewal term.

Terms and Conditions

1. Definitions.

Terms used but not defined in this Enrollment will have the definition in the Enterprise Agreement. The following definitions are used in this Enrollment:

"Additional Product" means any Product identified as such in the Product Terms and chosen by Enrolled Affiliate under this Enrollment.

"Community" means the community consisting of one or more of the following: (1) a Government, (2) an Enrolled Affiliate using eligible Government Community Cloud Services to provide solutions to a Government or a qualified member of the Community, or (3) a Customer with Customer Data that is subject to Government regulations for which Customer determines and Microsoft agrees that the use of Government Community Cloud Services is appropriate to meet Customer's regulatory requirements.

Membership in the Community is ultimately at Microsoft's discretion, which may vary by Government Community Cloud Service.

"Enterprise Online Service" means any Online Service designated as an Enterprise Online Service in the Product Terms and chosen by Enrolled Affiliate under this Enrollment. Enterprise Online Services are treated as Online Services, except as noted.

"Enterprise Product" means any Desktop Platform Product that Microsoft designates as an Enterprise Product in the Product Terms and chosen by Enrolled Affiliate under this Enrollment. Enterprise Products must be licensed for all Qualified Devices and Qualified Users on an Enterprise-wide basis under this program.

"Expiration Date" means the date upon which the Enrollment expires.

"Federal Agency" means a bureau, office, agency, department or other entity of the United States Government.

"Government" means a Federal Agency, State/Local Entity, or Tribal Entity acting in its governmental capacity.

"Government Community Cloud Services" means Microsoft Online Services that are provisioned in Microsoft's multi-tenant data centers for exclusive use by or for the Community and offered in accordance with the National Institute of Standards and Technology (NIST) Special Publication 800-145. Microsoft Online Services that are Government Community Cloud Services are designated as such in the Use Rights and Product Terms.

"Industry Device" (also known as line of business device) means any device that: (1) is not useable in its deployed configuration as a general purpose personal computing device (such as a personal computer), a multi-function server, or a commercially viable substitute for one of these systems; and (2) only employs an industry or task-specific software program (e.g. a computer-aided design program used by an architect or a point of sale program) ("Industry Program"). The device may include features and functions derived from Microsoft software or third-party software. If the device performs desktop functions (such as email, word processing, spreadsheets, database, network or Internet browsing, or scheduling, or personal finance), then the desktop functions: (1) may only be used for the purpose of supporting the Industry Program functionality; and (2) must be technically integrated with the Industry Program or employ technically enforced policies or architecture to operate only when used with the Industry Program functionality.

"Managed Device" means any device on which any Affiliate in the Enterprise directly or indirectly controls one or more operating system environments. Examples of Managed Devices can be found in the Product Terms.

"Qualified Device" means any device that is used by or for the benefit of Enrolled Affiliate's Enterprise and is: (1) a personal desktop computer, portable computer, workstation, or similar device capable of running Windows Pro locally (in a physical or virtual operating system environment), or (2) a device used to access a virtual desktop infrastructure ("VDI"). Qualified Devices do not include any device that is: (1) designated as a server and not used as a personal computer, (2) an Industry Device, or (3) not a Managed Device. At its option, the Enrolled Affiliate may designate any device excluded above (e.g., Industry Device) that is used by or for the benefit of the Enrolled Affiliate's Enterprise as a Qualified Device for all or a subset of Enterprise Products or Online Services the Enrolled Affiliate has selected.

"Qualified User" means a person (e.g., employee, consultant, contingent staff) who: (1) is a user of a Qualified Device, or (2) accesses any server software requiring an Enterprise Product Client Access License or any Enterprise Online Service. It does not include a person who accesses server software or an Online Service solely under a License identified in the Qualified User exemptions in the Product Terms.

"Reseller" means an entity authorized by Microsoft to resell Licenses under this program and engaged by an Enrolled Affiliate to provide pre- and post-transaction assistance related to this agreement;

"Reserved License" means for an Online Service identified as eligible for true-ups in the Product Terms, the License reserved by Enrolled Affiliate prior to use and for which Microsoft will make the Online Service available for activation.

"State/Local Entity" means (1) any agency of a state or local government in the United States, or (2) any United States county, borough, commonwealth, city, municipality, town, township, special purpose district, or other similar type of governmental instrumentality established by the laws of Customer's state and located within Customer's state's jurisdiction and geographic boundaries.

"Tribal Entity" means a federally-recognized tribal entity performing tribal governmental functions and eligible for funding and services from the U.S. Department of Interior by virtue of its status as an Indian tribe.

"Use Rights" means, with respect to any licensing program, the use rights or terms of service for each Product and version published for that licensing program at the Volume Licensing Site. The Use Rights supersede the terms of any end user license agreement (on-screen or otherwise) that accompanies a Product. The Use Rights for Software are published by Microsoft in the Product Terms. The Use Rights for Online Services are published in the Online Services Terms.

"Volume Licensing Site" means <http://www.microsoft.com/licensing/contracts> or a successor site.

2. **Order requirements.**

- a. **Minimum order requirements.** Enrolled Affiliate's Enterprise must have a minimum of 250 Qualified Users or Qualified Devices. The initial order must include at least 250 Licenses for Enterprise Products or Enterprise Online Services.
 - (i) **Enterprise commitment.** Enrolled Affiliate must order enough Licenses to cover all Qualified Users or Qualified Devices, depending on the License Type, with one or more Enterprise Products or a mix of Enterprise Products and the corresponding Enterprise Online Services (as long as all Qualified Devices not covered by a License are only used by users covered with a user License).
 - (ii) **Enterprise Online Services only.** If no Enterprise Product is ordered, then Enrolled Affiliate need only maintain at least 250 Subscription Licenses for Enterprise Online Services.
- b. **Additional Products.** Upon satisfying the minimum order requirements above, Enrolled Affiliate may order Additional Products.
- c. **Use Rights for Enterprise Products.** For Enterprise Products, if a new Product version has more restrictive use rights than the version that is current at the start of the applicable initial or renewal term of the Enrollment, those more restrictive use rights will not apply to Enrolled Affiliate's use of that Product during that term.
- d. **Country of usage.** Enrolled Affiliate must specify the countries where Licenses will be used on its initial order and on any additional orders.
- e. **Resellers.** Enrolled Affiliate must choose and maintain a Reseller authorized in the United States. Enrolled Affiliate will acquire its Licenses through its chosen Reseller. Orders must be submitted to the Reseller who will transmit the order to Microsoft. The Reseller and Enrolled Affiliate determine pricing and payment terms as between them, and Microsoft will invoice the Reseller based on those terms. Throughout this Agreement the term "price" refers to reference price. Resellers and other third parties do not have authority to bind or impose any obligation or liability on Microsoft.
- f. **Adding Products.**
 - (i) **Adding new Products not previously ordered.** New Enterprise Products or Enterprise Online Services may be added at any time by contacting a Microsoft Account Manager or Reseller. New Additional Products, other than Online Services, may be used if an order is placed in the month the Product is first used. For Additional Products that are Online Services, an initial order for the Online Service is required prior to use.

- (ii) **Adding Licenses for previously ordered Products.** Additional Licenses for previously ordered Products other than Online Services may be added at any time but must be included in the next true-up order. Additional Licenses for Online Services must be ordered prior to use, unless the Online Services are (1) identified as eligible for true-up in the Product Terms or (2) included as part of other Licenses.
- g. True-up requirements.** Enrolled Affiliate must submit an annual true-up order that accounts for any changes since the initial order or last order. If there are no changes, then an update statement must be submitted instead of a true-up order.
- (i) **Enterprise Products.** For Enterprise Products, Enrolled Affiliate must determine the number of Qualified Devices and Qualified Users (if ordering user-based Licenses) at the time the true-up order is placed and must order additional Licenses for all Qualified Devices and Qualified Users that are not already covered by existing Licenses, including any Enterprise Online Services.
- (ii) **Additional Products.** For Additional Products that have been previously ordered under this Enrollment, Enrolled Affiliate must determine the maximum number of Additional Products used since the latter of the initial order, the last true-up order, or the prior anniversary date and submit a true-up order that accounts for any increase.
- (iii) **Online Services.** For Online Services identified as eligible for true-up in the Product Terms, Enrolled Affiliate may place a reservation order for the additional Licenses prior to use and payment may be deferred until the next true-up order. Microsoft will provide a report of Reserved Licenses ordered but not yet invoiced to Enrolled Affiliate and its Reseller. Reserved Licenses will be invoiced retroactively to the month in which they were ordered.
- (iv) **Subscription License reductions.** Enrolled Affiliate may reduce the quantity of Subscription Licenses at the Enrollment anniversary date on a prospective basis if permitted in the Product Terms, as follows:
- 1) For Subscription Licenses that are part of an Enterprise-wide purchase, Licenses may be reduced if the total quantity of Licenses and Software Assurance for an applicable group meets or exceeds the quantity of Qualified Devices and Qualified Users (if ordering user-based Licenses) identified on the Product Selection Form, and includes any additional Qualified Devices and Qualified Users added in any prior true-up orders. Step-up Licenses do not count towards this total count.
 - 2) For Enterprise Online Services that are not a part of an Enterprise-wide purchase, Licenses can be reduced as long as the initial order minimum requirements are maintained.
 - 3) For Additional Products available as Subscription Licenses, Enrolled Affiliate may reduce the Licenses. If the License count is reduced to zero, then Enrolled Affiliate's use of the applicable Subscription License will be cancelled.
- Invoices will be adjusted to reflect any reductions in Subscription Licenses at the true-up order Enrollment anniversary date and effective as of such date.
- (v) **Update statement.** An update statement must be submitted instead of a true-up order if, since the initial order or last true-up order, Enrolled Affiliate's Enterprise: (1) has not changed the number of Qualified Devices and Qualified Users licensed with Enterprise Products or Enterprise Online Services; and (2) has not increased its usage of Additional Products. This update statement must be signed by Enrolled Affiliate's authorized representative.
- (vi) **True-up order period.** The true-up order or update statement must be received by Microsoft between 60 and 30 days prior to each Enrollment anniversary date. The third-year true-up order or update statement is due within 30 days prior to the Expiration Date, and any license reservations within this 30 day period will not be accepted. Enrolled Affiliate

may submit true-up orders more often to account for increases in Product usage, but an annual true-up order or update statement must still be submitted during the annual order period.

- (vii) **Late true-up order.** If the true-up order or update statement is not received when due, Microsoft will invoice Reseller for all Reserved Licenses not previously invoiced and Subscription License reductions cannot be reported until the following Enrollment anniversary date (or at Enrollment renewal, as applicable).
- h. **Step-up Licenses.** For Licenses eligible for a step-up under this Enrollment, Enrolled Affiliate may step-up to a higher edition or suite as follows:
 - (i) For step-up Licenses included on an initial order, Enrolled Affiliate may order according to the true-up process.
 - (ii) If step-up Licenses are not included on an initial order, Enrolled Affiliate may step-up initially by following the process described in the Section titled "Adding new Products not previously ordered," then for additional step-up Licenses, by following the true-up order process.
- i. **Clerical errors.** Microsoft may correct clerical errors in this Enrollment, and any documents submitted with or under this Enrollment, by providing notice by email and a reasonable opportunity for Enrolled Affiliate to object to the correction. Clerical errors include minor mistakes, unintentional additions and omissions. This provision does not apply to material terms, such as the identity, quantity or price of a Product ordered.
- j. **Verifying compliance.** Microsoft may, in its discretion and at its expense, verify compliance with this Enrollment as set forth in the Enterprise Agreement.

3. **Pricing.**

- a. **Price Levels.** For both the initial and any renewal term Enrolled Affiliate's Price Level for all Products ordered under this Enrollment will be Level "D" throughout the term of the Enrollment.
- b. **Setting Prices.** Enrolled Affiliate's prices for each Product or Service will be established by its Reseller. Except for Online Services designated in the Product Terms as being exempt from fixed pricing, As long as Enrolled Affiliate continues to qualify for the same price level, Microsoft's prices for Resellers for each Product or Service ordered will be fixed throughout the applicable initial or renewal Enrollment term. Microsoft's prices to Resellers are reestablished at the beginning of the renewal term.

4. **Payment terms.**

For the initial or renewal order, Enrolled Affiliate may pay upfront or elect to spread its payments over the applicable Enrollment term. If an upfront payment is elected, Microsoft will invoice Enrolled Affiliate's Reseller in full upon acceptance of this Enrollment. If spread payments are elected, unless indicated otherwise, Microsoft will invoice Enrolled Affiliate's Reseller in three equal annual installments. The first installment will be invoiced upon Microsoft's acceptance of this Enrollment and remaining installments will be invoiced on each subsequent Enrollment anniversary date. Subsequent orders are invoiced upon acceptance of the order and Enrolled Affiliate may elect to pay annually or upfront for Online Services and upfront for all other Licenses.

5. **End of Enrollment term and termination.**

- a. **General.** At the Expiration Date, Enrolled Affiliate must immediately order and pay for Licenses for Products it has used but has not previously submitted an order, except as otherwise provided in this Enrollment.

b. Renewal option. At the Expiration Date of the initial term, Enrolled Affiliate can renew Products by renewing this Enrollment for one additional 36-month term or by signing a new Enrollment. Microsoft must receive a Renewal Form, Product Selection Form, and renewal order prior to or at the Expiration Date. Microsoft will not unreasonably reject any renewal. Microsoft may make changes to this program that will make it necessary for Customer and its Enrolled Affiliates to enter into new agreements and Enrollments at renewal.

c. If Enrolled Affiliate elects not to renew.

(i) Software Assurance. If Enrolled Affiliate elects not to renew Software Assurance for any Product under its Enrollment, then Enrolled Affiliate will not be permitted to order Software Assurance later without first acquiring a new License with Software Assurance.

(ii) Online Services eligible for an Extended Term. For Online Services identified as eligible for an Extended Term in the Product Terms, the following options are available at the end of the Enrollment initial or renewal term.

1) Extended Term. Licenses for Online Services will automatically expire in accordance with the terms of the Enrollment. An extended term feature that allows Online Services to continue month-to-month ("Extended Term") for up to one year, unless designated in the Product Terms to continue until cancelled, is available. During the Extended Term, Online Services will be invoiced monthly at the then-current published price as of the Expiration Date plus a 3% administrative fee. If Enrolled Affiliate wants an Extended Term, Enrolled Affiliate must submit a request to Microsoft at least 30 days prior to the Expiration Date.

2) Cancellation during Extended Term. At any time during the first year of the Extended Term, Enrolled Affiliate may terminate the Extended Term by submitting a notice of cancellation to Microsoft for each Online Service. Thereafter, either party may terminate the Extended Term by providing the other with a notice of cancellation for each Online Service. Cancellation will be effective at the end of the month following 30 days after Microsoft has received or issued the notice.

(iii) Subscription Licenses and Online Services not eligible for an Extended Term. If Enrolled Affiliate elects not to renew, the Licenses will be cancelled and will terminate as of the Expiration Date. Any associated media must be uninstalled and destroyed and Enrolled Affiliate's Enterprise must discontinue use. Microsoft may request written certification to verify compliance.

d. Termination for cause. Any termination for cause of this Enrollment will be subject to the "Termination for cause" section of the Agreement. In addition, it shall be a breach of this Enrollment if Enrolled Affiliate or any Affiliate in the Enterprise that uses Government Community Cloud Services fails to meet and maintain the conditions of membership in the definition of Community.

e. Early termination. Any early termination of this Enrollment will be subject to the "Early Termination" Section of the Enterprise Agreement.

For Subscription Licenses, in the event of a breach by Microsoft, or if Microsoft terminates an Online Service for regulatory reasons, Microsoft will issue Reseller a credit for any amount paid in advance for the period after termination.

6. Government Community Cloud.

a. Community requirements. If Enrolled Affiliate purchases Government Community Cloud Services, Enrolled Affiliate certifies that it is a member of the Community and agrees to use Government Community Cloud Services solely in its capacity as a member of the Community and, for eligible Government Community Cloud Services, for the benefit of end users that are members of the Community. Use of Government Community Cloud Services by an entity that is not a member of the Community or to provide services to non-Community members is strictly

prohibited and could result in termination of Enrolled Affiliate's license(s) for Government Community Cloud Services without notice. Enrolled Affiliate acknowledges that only Community members may use Government Community Cloud Services.

- b. All terms and conditions applicable to non-Government Community Cloud Services also apply to their corresponding Government Community Cloud Services, except as otherwise noted in the Use Rights, Product Terms, and this Enrollment.
- c. Enrolled Affiliate may not deploy or use Government Community Cloud Services and corresponding non-Government Community Cloud Services in the same domain.
- d. **Use Rights for Government Community Cloud Services.** For Government Community Cloud Services, notwithstanding anything to the contrary in the Use Rights:
 - (i) Government Community Cloud Services will be offered only within the United States.
 - (ii) Additional European Terms, as set forth in the Use Rights, will not apply.
 - (iii) References to geographic areas in the Use Rights with respect to the location of Customer Data at rest, as set forth in the Use Rights, refer only to the United States.

Enrollment Details

1. Enrolled Affiliate's Enterprise.

- a. Identify which Agency Affiliates are included in the Enterprise. (Required) Enrolled Affiliate's Enterprise must consist of entire offices, bureaus, agencies, departments or other entities of Enrolled Affiliate, not partial offices, bureaus, agencies, or departments, or other partial entities. Check only one box in this section. If no boxes are checked, Microsoft will deem the Enterprise to include the Enrolled Affiliate only. If more than one box is checked, Microsoft will deem the Enterprise to include the largest number of Affiliates:

☒ Enrolled Affiliate only

☐ Enrolled Affiliate and all Affiliates

☐ Enrolled Affiliate and the following Affiliate(s) (Only identify specific affiliates to be included if fewer than all Affiliates are to be included in the Enterprise):

☐ Enrolled Affiliate and all Affiliates, with following Affiliate(s) excluded:

- b. Please indicate whether the Enrolled Affiliate's Enterprise will include all new Affiliates acquired after the start of this Enrollment: Exclude future Affiliates

2. Contact information.

Each party will notify the other in writing if any of the information in the following contact information page(s) changes. The asterisks (*) indicate required fields. By providing contact information, Enrolled Affiliate consents to its use for purposes of administering this Enrollment by Microsoft, its Affiliates, and other parties that help administer this Enrollment. The personal information provided in connection with this Enrollment will be used and protected in accordance with the privacy statement available at <https://www.microsoft.com/licensing/servicecenter>.

- a. **Primary contact.** This contact is the primary contact for the Enrollment from within Enrolled Affiliate's Enterprise. This contact is also an Online Administrator for the Volume Licensing Service Center and may grant online access to others. The primary contact will be the default contact for all purposes unless separate contacts are identified for specific purposes

Name of entity (must be legal entity name)* City of Opelika

Contact name* First Stephen Last Dawe

Contact email address* sdawe@opelika-al.gov

Street address* 204 South 7th Street

City* Opelika

State/Province* AL

Postal code* 36801-4904-

(For U.S. addresses, please provide the zip + 4, e.g. xxxxx-xxxx)

Country* United States

Phone* 334-705-5140

Tax ID

** indicates required fields*

- b. **Notices contact and Online Administrator.** This contact (1) receives the contractual notices, (2) is the Online Administrator for the Volume Licensing Service Center and may grant online access to others, and (3) is authorized to order Reserved Licenses for eligible Online Services, including adding or reassigning Licenses and stepping-up prior to a true-up order.

☐ Same as primary contact (default if no information is provided below, even if the box is not checked).

Contact name* First Lou Last Malloy

Contact email address* lmalloy@opelika-al.gov

Street address* 204 South 7th Street

City* Opelika

State/Province* AL

Postal code* 36801-4904-

(For U.S. addresses, please provide the zip + 4, e.g. xxxxx-xxxx)

Country* United States

Phone* 334-705-5140

Language preference. Choose the language for notices. English

☐ This contact is a third party (not the Enrolled Affiliate). Warning: This contact receives personally identifiable information of the Customer and its Affiliates.

** indicates required fields*

- c. **Online Services Manager.** This contact is authorized to manage the Online Services ordered under the Enrollment and (for applicable Online Services) to add or reassign Licenses and step-up prior to a true-up order.

☐ Same as notices contact and Online Administrator (default if no information is provided below, even if box is not checked)

Contact name*: First Lou Last Malloy

Contact email address* lmalloy@opelika-al.gov

Phone* 334-705-5140

☐ This contact is from a third party organization (not the entity). Warning: This contact receives personally identifiable information of the entity.

** indicates required fields*

- d. **Reseller information.** Reseller contact for this Enrollment is:

Reseller company name* SHI International Corp.

Street address (PO boxes will not be accepted)* 290 Davidson Ave

City* Somerset

State/Province* NJ

Postal code* 08873

Country* United States

Contact name* Caitlyn Matchick

Phone* 888-764-8888

Contact email address* Caitlyn_Matchick@shi.com

** indicates required fields*

By signing below, the Reseller identified above confirms that all information provided in this Enrollment is correct.

Signature* _____

Printed name*

Printed title*

Date*

** indicates required fields*

Changing a Reseller. If Microsoft or the Reseller chooses to discontinue doing business with each other, Enrolled Affiliate must choose a replacement Reseller. If Enrolled Affiliate or the Reseller intends to terminate their relationship, the initiating party must notify Microsoft and the

other party using a form provided by Microsoft at least 90 days prior to the date on which the change is to take effect.

- e. If Enrolled Affiliate requires a separate contact for any of the following, attach the Supplemental Contact Information form. *Otherwise, the notices contact and Online Administrator remains the default.*
- (i) Additional notices contact
 - (ii) Software Assurance manager
 - (iii) Subscriptions manager
 - (iv) Customer Support Manager (CSM) contact

3. **Financing elections.**

Is a purchase under this Enrollment being financed through MS Financing? ☐ Yes, ☒ No.

If a purchase under this Enrollment is financed through MS Financing, and Enrolled Affiliate chooses not to finance any associated taxes, it must pay these taxes directly to Microsoft.

Amendment to Contract Documents

Enrollment Number

275757

This amendment ("Amendment") is entered into between the parties identified on the attached program signature form. It amends the Enrollment or Agreement identified above. All terms used but not defined in this Amendment will have the same meanings provided in that Enrollment or Agreement.

Enterprise Enrollment (Indirect) Invoice for Quoted Price Amendment ID M97

Notwithstanding anything to the contrary or in addition to any terms in the Enrollment, the Enrollment is hereby amended to add the following paragraph:

The price quoted to Enrolled Affiliate's Reseller is a fixed price based on an estimated order submission date. Microsoft will invoice Enrolled Affiliate's Reseller based on this fixed price quote. If this order is submitted later than the estimated order submission date, Enrolled Affiliate's Reseller will be charged for net new Monthly Subscriptions (including Online Services) for the period during which these services were not provided. Pricing to Enrolled Affiliate is agreed between Enrolled Affiliate and Enrolled Affiliate's Reseller.

Except for changes made by this Amendment, the Enrollment or Agreement identified above remains unchanged and in full force and effect. If there is any conflict between any provision in this Amendment and any provision in the Enrollment or Agreement identified above, this Amendment shall control.

This Amendment must be attached to a signature form to be valid.

Microsoft Internal Use Only:

(M97)EnrAmend(Ind)(InvoiceforQuotedPrice)(WW)(ENG)(May2018)(IU).docx		M97	PLSS
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Program Signature Form

MBA/MBSA number

Agreement number

01E73377

275757

Note: Enter the applicable active numbers associated with the documents below. Microsoft requires the associated active number be indicated here, or listed below as new.

For the purposes of this form, "Customer" can mean the signing entity, Enrolled Affiliate, Government Partner, Institution, or other party entering into a volume licensing program agreement.

This signature form and all contract documents identified in the table below are entered into between the Customer and the Microsoft Affiliate signing, as of the effective date identified below.

Contract Document	Number or Code
Enterprise Enrollment (Indirect)	X20-10634
Product Selection Form	0769767.002_PSF
Enterprise Amendment	M97 (NEW)

By signing below, Customer and the Microsoft Affiliate agree that both parties (1) have received, read and understand the above contract documents, including any websites or documents incorporated by reference and any amendments and (2) agree to be bound by the terms of all such documents.

Customer
Name of Entity (must be legal entity name)* City of Opelika Signature* _____ Printed First and Last Name* _____ Printed Title _____ Signature Date* _____ Tax ID _____

* indicates required field

Microsoft Affiliate
Microsoft Corporation Signature _____ Printed First and Last Name _____ Printed Title _____ Signature Date _____ (date Microsoft Affiliate countersigns) Agreement Effective Date _____ (may be different than Microsoft's signature date)

Optional 2nd Customer signature or Outsourcer signature (if applicable)

Customer
Name of Entity (must be legal entity name)*
Signature* _____
Printed First and Last Name*
Printed Title
Signature Date*

* indicates required field

Outsourcer
Name of Entity (must be legal entity name)*
Signature* _____
Printed First and Last Name*
Printed Title
Signature Date*

* indicates required field

If Customer requires physical media, additional contacts, or is reporting multiple previous Enrollments, include the appropriate form(s) with this signature form.

After this signature form is signed by the Customer, send it and the Contract Documents to Customer's channel partner or Microsoft account manager, who must submit them to the following address. When the signature form is fully executed by Microsoft, Customer will receive a confirmation copy.

Microsoft Corporation

Dept. 551, Volume Licensing
6100 Neil Road, Suite 210
Reno, Nevada 89511-1137
USA

RESOLUTION NO. 267-18

Purchase-Five (5) Chevrolet Tahoes-State Contract-PD

RESOLUTION NO. _____

WHEREAS, the Police Department desires to purchase five (5) 2019 Chevrolet Tahoes with certain options utilizing the State of Alabama Contract #T191L; and

WHEREAS, Donohoo Chevrolet is the State Contract Vendor for the 2019 Chevrolet Tahoes; and

WHEREAS, this is a budgeted purchase;

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

1. That the purchase be awarded to Donohoo Chevrolet utilizing the State of Alabama Contract.
2. That the Purchasing-Revenue Manager is hereby authorized to issue a purchase order to Donohoo Chevrolet in the total amount of \$156,452.30.
3. That the Controller be authorized to adjust the budget as necessary for this purchase.
4. That the Mayor is hereby authorized to sign all documents pertaining to this contract.

APPROVED AND ADOPTED this the _____ day of _____, 2018.

C.E. "Eddie" Smith, Jr.

President of the City Council
City of Opelika, Alabama

ATTEST:

Robert G. Shuman
City Clerk - Treasurer



Donohoo Chevrolet LLC

Lisa Curtner | 256-845-3525 EXT 3 | lcurtner@donohoochevrolet.com

13.10.a

City of Opelika

Prepared For: Bobby Kilgore

bkilgore@opelika-al.gov

[Fleet] 2019 Chevrolet Tahoe (CC15706) 2WD 4dr (5)

Attachment: 10-16-18 - FIVE (5) CHEVROLET TAHOES - STATE CONTRACT T191L - CNCL PKT (267-18 : Purchase-Five (5) Chevrolet Tahoes-



Donohoo Chevrolet LLC

Lisa Curtner | 256-845-3525 EXT 3 | lcurtner@donohoochevrolet.com

13.10.a

[Fleet] 2019 Chevrolet Tahoe (CC15706) 2WD 4dr (5)

Price Summary

PRICE SUMMARY

	Invo
Base Price	\$30,739
Total Options*	\$551
Grand Total per unit	\$31,290

$\$31290.46 \times 5 = \text{(total)} \$156,452.30$

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Data Version: 6670. Data Updated: Sep 30, 2018 9:24:00 PM PDT.



Donohoo Chevrolet LLC

Lisa Curtner | 256-845-3525 EXT 3 | lcurtner@donohoochevrolet.com

13.10.a

[Fleet] 2019 Chevrolet Tahoe (CC15706) 2WD 4dr (5)

Selected Model and Options

MODEL

CODE	MODEL	Invo
CC15706	2019 Chevrolet Tahoe 2WD 4dr Commercial	\$30739.

COLORS

CODE	DESCRIPTION	Invo
GAZ	Summit White	\$0

OPTIONS

CODE	DESCRIPTION	Invo
—	Safety belts, 3-point, driver and front passenger in all seating positions (Included and only available with (9C1) Police Vehicle.)	Inc.
—	Capless fuel fill (Included and only available with (9C1) Police Vehicle only.)	Inc.
—	Door handles, body-color (Included and only available with (9C1) Police Vehicle only.)	Inc.
—	Instrumentation, analog with certified 150 mph speedometer (PPV), 140 mph speedometer (Special Service), odometer with trip odometer, engine hour meter, fuel level, voltmeter, engine temperature, oil pressure and tachometer (Included and only available with (9C1) Police Vehicle only.)	Inc.
—	Key, 2-sided (Included and only available with (9C1) Police Vehicle only.)	Inc.
—	Luggage rack, delete (Included and only available with (9C1) Police Vehicle only.)	Inc.
—	Exterior ornamentation delete (Included and only available with (9C1) Police Vehicle only.)	Inc.
—	Power outlets, 4 auxiliary, 12-volt includes 1 on the instrument panel, 1 in armrest, and 2 in the cargo area (Included and only available with (9C1) Police Vehicle.)	Inc.
—	Power supply, 100-amp, auxiliary battery, rear electrical center (Included and only available with (9C1) Police Vehicle only.)	Inc.

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Data Version: 6670. Data Updated: Sep 30, 2018 9:24:00 PM PDT.



Donohoo Chevrolet LLC

Lisa Curtner | 256-845-3525 EXT 3 | lcurtner@donohoochevrolet.com

13.10.a

[Fleet] 2019 Chevrolet Tahoe (CC15706) 2WD 4dr (5)

OPTIONS

CODE	DESCRIPTION	Invo
—	Power supply, 50-amp, power supply, auxiliary battery passenger compartment wiring harness (Included and only available with (9C1) Police Vehicle only.)	Inc.
—	Power supply, 120-amp, (4) 30-amp circuit, Primary battery relay controlled, passenger compartment harness wiring (Included and only available with (9C1) Police Vehicle only.)	Inc.
—	Theft-deterrent system, vehicle, PASS-Key III (Included and only available with (9C1) Police Vehicle only.)	Inc.
1FL	Commercial Preferred Equipment Group Includes Standard Equipment	\$0
6N5	Switches, rear window inoperative (rear windows can only operate from driver's position) (Requires (9C1) Police Vehicle.)	\$51
6N6	Door locks and handles, inside rear doors inoperative (doors can only be opened from outside) (Requires (9C1) Police Vehicle.)	\$53
7X6	Spotlamp, left-hand (Requires (9C1) Police Vehicle. Not available with (7X7) left and right-hand spotlamps.)	\$445
9C1	Identifier for PPV includes, (K47) high-capacity air cleaner, (KW7) 170 amp high output alternator, (K4B) 730 cold-cranking amps auxiliary battery, electrical power & vehicle signals for customer connection located at the center front floor. Auxiliary battery circuit for customer connection located in the rear cargo area, (Z56) heavy-duty, police-rated suspension, front independent torsion bar, and stabilizer bar and rear, multilink with coil springs, (QAR) P265/60R17 all-season, v-rated tires, (ZAK) P265/60R17 all-season, V-rated spare tire, Police brakes, (NZZ) underbody shield, (RAP) Black steel wheels w/bolt on center caps, Certified speedometer, delete roof rails, (ATD) third row seat delete, (NQH) active 2-speed transfer case (4WD only). *CREDIT*	Inc
ATD	Seat delete, third row passenger (Deletes rear storage compartment and (AP9) rear cargo net. Included with (9C1) Police Vehicle.) *CREDIT*	Inc.

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Donohoo Chevrolet LLC

Lisa Curtner | 256-845-3525 EXT 3 | lcurtner@donohoochevrolet.com

13.10.a

[Fleet] 2019 Chevrolet Tahoe (CC15706) 2WD 4dr (5)

OPTIONS

CODE	DESCRIPTION	Invo
AZ3	Seating, front 40/20/40 split-bench with Vinyl (1FL) or Premium Cloth (1FL and 1LS), 3-passenger, includes 6-way power driver and 2 way front passenger seat adjuster, driver and front passenger power lumbar control and power reclining, center fold-down armrest with storage (includes auxiliary power outlet, USB port and input jack for audio system), storage compartments in seat cushion, adjustable outboard head restraints and storage pockets (STD)	\$0
C5U	GVWR, 6800 lbs. (3084 kg) (2WD model only. Included and only available with (9C1) Police Vehicle.)	Inc.
FE9	Emissions, Federal requirements	\$0
GAZ	Summit White	\$0
GU4	Rear axle, 3.08 ratio (Not available with (NHT) Max Trailering Package.)	\$0
H0U	Jet Black, Cloth seat trim	\$0
IO5	Audio system, 8" diagonal color touch-screen with Chevrolet Infotainment AM/FM stereo with seek-and-scan and digital clock, includes Bluetooth streaming audio for music and select phones; voice-activated technology for radio and phone; and Shop with the ability to browse, select and install apps to your vehicle. You can customize your content with audio, weather and more; featuring Apple CarPlay and Android Auto capability for compatible phone; 5 USB ports and 1 auxiliary jack (STD)	\$0
K4B	Battery, Auxiliary, 730 CCA (Requires (RD6) 17" painted steel wheels or (PZX) 18" aluminum wheels with high-polished finish.)	Inc.
KW7	Alternator, 170 amps, high output (Included and only available with (9C1) Police Vehicle only.)	Inc.
L83	Engine, 5.3L EcoTec3 V8 with Active Fuel Management, Direct Injection and Variable Valve Timing includes aluminum block construction (355 hp [265 kW] @ 5600 rpm, 383 lb-ft of torque [518 N-m] @ 4100 rpm) (STD)	\$0

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Donohoo Chevrolet LLC

Lisa Curtner | 256-845-3525 EXT 3 | lcurtner@donohoochevrolet.com

13.10.a

[Fleet] 2019 Chevrolet Tahoe (CC15706) 2WD 4dr (5)

OPTIONS

CODE	DESCRIPTION	Invo
MYC	Transmission, 6-speed automatic, electronically controlled with overdrive and tow/haul mode (STD)	\$0
NZZ	Skid Plate Package with (9C1) Police Vehicle, includes frame-mounted shields, includes front underbody shield starting behind front bumper and running to first cross-member, protecting front underbody, oil pan, differential case and transfer case (Requires a Fleet or Government sales order type. Included and only available with (9C1) Police Vehicle.)	Inc.
QAR	Tires, P265/60R17 all-season, police, V-rated (Included and only available with (9C1) Police Vehicle.)	Inc.
RAP	Wheels, 17" x 8" (43.2 cm x 20.3 cm) steel, police, Black (Included and only available with (9C1) Police Vehicle.)	Inc.
RM7	Wheel, 17" x 8" (43.2 cm x 20.3 cm) full-size, steel spare includes P265/60R17 V-rated tire (Included and only available with (9C1) Police Vehicle.)	Inc.
VPV	Ship Thru, Produced in Arlington Assembly and shipped to Kerr Industries and onto Arlington Assembly	Inc.
Z56	Suspension Package, heavy-duty, police-rated front, independent torsion bar, and stabilizer bar and rear, multi-link with coil springs (Included and only available with (9C1) Police Vehicle only.)	Inc.
ZAK	Tire, spare, P265/60R17 all-season, police, V-rated (Included and only available with (9C1) Police Vehicle.)	Inc.
ZY1	Paint scheme, solid application	\$0
Options Total		\$551.46

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State of Alabama
Department of Finance
Division of Purchasing
Master Agreement
Modification

13.10.a

CONTRACT INFORMATION

MASTER AGREEMENT NUMBER: MA 999 16000000004

NOT TO EXCEED AMOUNT:

Begin Date: 11/16/2015

Procurement Folder: 4411

Expiration Date: 11/15/2018

Procurement Type: Master Agreement

Solicitation Number:

Replaces Award Document:

Award Date:

Replaced by Award Document:

Modification Date: 10/13/17

Version Number: 9

CONTACT INFORMATION

REQUESTOR:

Crist Watts
334-242-4291
cris.watts@purchasing.alabama.gov

ISSUER:

Crist Watts
334-242-4291
cris.watts@purchasing.alabama.gov

BUYER:

Patrick Hemme
334-242-7173
Pat.Hemme@purchasing.alabama.gov

CONTRACT DESCRIPTION

T191L - Vehicles & Motorcycles - Law Enforcement

Ship To:

Bill To:

REASON FOR MODIFICATION

ENDORSEMENT INFORMATION

Name /Address:

VC000049701: Donohoo Chevrolet
1000 Greenhill Blvd Nw
Port Payne AL 35967

Contact:

Chad Johnson
2568453525 EXT: 1
Cjohnson@Donohoochevrolet.Com

Attachment: 10-16-18 - FIVE (5) CHEVROLET TAHOES - STATE CONTRACT T191L - CNCL PKT (267-18 : Purchase-Five (5) Chevrolet Tahoes-

Line	Quantity	UOM	Unit Price	Service Amount	Service From	Service To	Line Sub Total	Line Total
1	0	EA	\$0.000000	\$0.00			\$0.00	\$0.00

13.10.a

17006310000 - DO NOT USE: To be deactivated. Use Classes 071, 072, 073.

No Longer Available

Line	Quantity	UOM	Unit Price	Service Amount	Service From	Service To	Line Sub Total	Line Total
2	0	EA	\$0.000000	\$0.00			\$0.00	\$0.00

17006310000 - DO NOT USE: To be deactivated. Use Classes 071, 072, 073.

No Longer Available

No Longer Available.

Line	Quantity	UOM	Unit Price	Service Amount	Service From	Service To	Line Sub Total	Line Total
3	0	EA	\$37,688.000000	\$0.00			\$0.00	\$0.00

17042760000 - DO NOT USE: To be deactivated. Use Classes 071, 072, 073.

/EHICLES,UTILITY,TWO&FOUR WHEEL DRIVE Chevrolet Suburban

/ehicle, Full-Size SUV, Law Enforcement (Severe Service, Not Pursuit Rated), Standard Specifications/Features, Make: _____ Model: _____
Chevrolet Suburban

Line	Quantity	UOM	Unit Price	Service Amount	Service From	Service To	Line Sub Total	Line Total
4	0	EA	\$30,739.000000	\$0.00			\$0.00	\$0.00

17042760000 - DO NOT USE: To be deactivated. Use Classes 071, 072, 073.

/EHICLES,UTILITY,TWO&FOUR WHEEL DR Chevrolet Tahoe PPV

/ehicle, Full-Size SUV, Law Enforcement, 2-Wheel Drive (Patrol Rated), Standard Specifications/Features, Make: _____ Model: _____
Chevrolet Tahoe PPV

Line	Quantity	UOM	Unit Price	Service Amount	Service From	Service To	Line Sub Total	Line Total
5	0	EA	\$32,969.000000	\$0.00			\$0.00	\$0.00

17042760000 - DO NOT USE: To be deactivated. Use Classes 071, 072, 073.

/EHICLES,UTILITY,TWO&FOUR WHEEL DR, Chevrolet Tahoe SSV

/ehicle, Full-Size SUV, Law Enforcement, 4-Wheel Drive (Not Pursuit Rated), Standard Specifications/Features, Make: _____ Model: _____
Chevrolet Tahoe SSV

Line	Quantity	UOM	Unit Price	Service Amount	Service From	Service To	Line Sub Total	Line Total
6	0	EA	\$18,876.000000	\$0.00			\$0.00	\$0.00

17048550000 - DO NOT USE: To be deactivated. Use Classes 071, 072, 073.

TRUCKS, PICKUP, 1/2 TON, Chevrolet Silverado 1500

/ehicle, Full-Size Truck, Law Enforcement (Not Pursuit Rated), Standard Specifications/Features, Make: _____ Model: _____
Chevrolet Silverado 1500

Line	Quantity	UOM	Unit Price	Service Amount	Service From	Service To	Line Sub Total	Line Total
7	0	EA	\$23,386.000000	\$0.00			\$0.00	\$0.00

17093290000 - DO NOT USE: To be deactivated. Use Classes 071, 072, 073.

/ANS, PASSENGER, Chevrolet Express

/ehicle, Transport Van, Minimum 12-Passenger Capacity, Law Enforcement (Not Pursuit Rated), Standard Specifications/Features, Make: _____ Model: _____
Chevrolet Express

Line	Quantity	UOM	Unit Price	Service Amount	Service From	Service To	Line Sub Total	Line Total
8	0		\$0.000000	\$0.00			\$0.00	\$0.00

16066200000 - DO NOT USE. Use 5- or 7-digit code.

MISCELLANEOUS PARTS, OPTIONS AND ACCESSORIES

Line	Quantity	UOM	Unit Price	Service Amount	Service From	Service To	Line Sub Total	Line Total
9	0		\$0.000000	\$0.00			\$0.00	\$0.00

Attachment: 10-16-18 - FIVE (5) CHEVROLET TAHOES - STATE CONTRACT T191L - CNCL PKT (267-18 : Purchase-Five (5) Chevrolet Tahoes-

RESOLUTION NO. 268-18

Transfer of Recycle Trailers to Smith Station

**RESOLUTION AUTHORIZING TRANSFER OF TWO (2) RECYCLE
TRAILERS TO THE CITY OF SMITH STATION, ALABAMA**

WHEREAS, the City of Opelika, Alabama, (the “City”) has items of tangible personal property, to-wit two (2) Recycle Trailers, Model # Pro-Bin, Serial # 1P9RB2423DA277465, Opelika Vehicle # 846, and Serial # 1P9RB2423DA277464, Opelika Vehicle # 847, which are no longer needed for public purposes; and

WHEREAS, §11-43-56 of the *Code of Alabama* of 1975 authorizes the governing body to dispose of unneeded personal property; and

WHEREAS, the City of Smith Station, Alabama, is in need of two (2) Recycle Trailers.

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

1. That the following items of personal property owned by the City of Opelika are not needed for public or municipal purposes:

One (1) Recycle Trailer, Model # Pro-Bin Serial # 1P9RB2423DA277465, Opelika Vehicle # 846

One (2) Recycle Trailer, Model # Pro-Bin Serial # 1P9RB2423DA277464, Opelika Vehicle # 847

2. That the Mayor and City Clerk are hereby authorized to transfer and convey said Recycle Trailers owned by the City of Opelika described in Section 1 above to the City of Smith Station, Alabama, without consideration.

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.

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

ADOPTED AND APPROVED this the _____ day of _____, 2018.

 PRESIDENT OF THE CITY COUNCIL
 OF THE CITY OF OPELIKA

ATTEST:

CITY CLERK

STATE OF ALABAMA)
 :
 COUNTY OF LEE)

BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS, that for the consideration of the sum of one dollar (\$1.00), the receipt of which is hereby acknowledged, the undersigned Seller, the City of Opelika, Alabama, a municipal corporation, does hereby transfer and deliver to the City of Smith Station, Alabama (the "Buyer"), one (1) Recycle Trailer, Model # Pro-Bin Serial # 1P9RB2423DA277464, Opelika Vehicle # 847.

TO HAVE AND TO HOLD unto Buyer and its successors and assigns forever.

The Seller warrants that the Seller is the true and lawful owner of the Recycle Trailer and that the trailer is free from any and all legal claims and encumbrances by others. Other than the Seller's warranty of ownership stated above, Seller disclaims all other warranties, either express or implied. The Buyer hereby accepts the Recycle Trailer in its present condition "AS-IS" and "WHERE IS" without any warranties, either express or implied, as to its condition. The Buyer acknowledges and agrees that the Recycle Trailer is being sold without any warranties of merchantability or fitness for a particular purpose.

IN WITNESS WHEREOF, each of the parties has caused this Bill of Sale to be duly executed and delivered on this the _____ day of October, 2018.

CITY OF OPELIKA, ALABAMA--SELLER
 a municipal corporation

BY: _____
 Its Mayor

THE CITY OF SMITH STATION, ALABAMA
BUYER

BY: _____

ITS _____

Attachment: BILL OF SALE Smith Station 847 (268-18 : Transfer of Recycle Trailers to Smith Station)

STATE OF ALABAMA)
 :
 COUNTY OF LEE)

BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS, that for the consideration of the sum of one dollar (\$1.00), the receipt of which is hereby acknowledged, the undersigned Seller, the City of Opelika, Alabama, a municipal corporation, does hereby transfer and deliver to the City of Smith Station, Alabama (the "Buyer"), one (1) Recycle Trailer, Model # Pro-Bin Serial # 1P9RB2423DA277465, Opelika Vehicle # 846.

TO HAVE AND TO HOLD unto Buyer and its successors and assigns forever.

The Seller warrants that the Seller is the true and lawful owner of the Recycle Trailer and that the trailer is free from any and all legal claims and encumbrances by others. Other than the Seller's warranty of ownership stated above, Seller disclaims all other warranties, either express or implied. The Buyer hereby accepts the Recycle Trailer in its present condition "AS-IS" and "WHERE IS" without any warranties, either express or implied, as to its condition. The Buyer acknowledges and agrees that the Recycle Trailer is being sold without any warranties of merchantability or fitness for a particular purpose.

IN WITNESS WHEREOF, each of the parties has caused this Bill of Sale to be duly executed and delivered on this the _____ day of October, 2018.

CITY OF OPELIKA, ALABAMA--SELLER
 a municipal corporation

BY: _____
 Its Mayor

THE CITY OF SMITH STATION, ALABAMA
BUYER

BY: _____

ITS _____

Attachment: BILL OF SALE Smith Station 846 (268-18 : Transfer of Recycle Trailers to Smith Station)



City of Opelika
REPORT OF CHANGE IN FIXED ASSETS

Date: 10/3/2018

Effective Date: _____

City Property Number: 87002822

Item Code: _____

Asset Description: Recycle Trailer

Serial/VIN Number: 1P9RB2423DA277465

Model Number: Pro- Bin

Color: Black White

VEH: # 846

Condition Code: EX GD FA PR NU XX
Circle One

Location: OES Department

Loc. Code: _____ Div. Assigned: _____

DESCRIPTION OF CHANGE IN STATUS:

Asset Transferred to (Dept. /Div.): _____ / _____

Asset Traded-in for: _____

Trade-In Allowance, allowed in the amount of \$ _____

Asset Worn / Damaged beyond repair / Obsolete

Asset Stolen / Missing

Date Reported to Mayor: _____

X Asset Sold to: City of Smith Station

Date: _____

For the amount of: \$ 1.00

Reference Receipt Number: _____

Other (Describe) _____

Will a new purchase be made to replace this item? _____ Yes _____ No (Must be checked)

MISCELLANEOUS ACQUISITION

Asset Donated By: _____ Est. Value: \$ _____

Asset Constructed By: _____ Est. Value: \$ _____

Asset Transferred From (Dept. /Div.): _____ / _____

Other Comments: _____

Recommended by [Signature]
Department Head

Approved by _____
City Administrator

Posted by _____
Accounting

_____ Copy to Purchasing
_____ Copy to Buyer

_____ Copy to Auto Shop
_____ Copy to Dept. Head

USE THIS FORM ONLY TO RECORD A CHANGE IN STATUS OR A MISCELLANEOUS ACQUISITION. PURCHASES
WILL BE RECORDED FROM YOUR PURCHASE ORDER.



City of Opelika
REPORT OF CHANGE IN FIXED ASSETS

Date: 10/3/2018 Effective Date: _____
 City Property Number: 87002821 Item Code: _____
 Asset Description: Recycle Trailer
 Serial/VIN Number: 1P9RB2421DA277464 Model Number: Pro-Bin
 Color: Black White VEH: # 847 Condition Code: EX GD FA PR NU XX
 Location: OES Department Loc. Code: _____ Div. Assigned: _____
 Circle One

DESCRIPTION OF CHANGE IN STATUS:

____ Asset Transferred to (Dept. /Div.): _____ / _____
 ____ Asset Traded-in for: _____
 Trade-In Allowance, allowed in the amount of \$ _____
 ____ Asset Worn / Damaged beyond repair / Obsolete
 ____ Asset Stolen / Missing Date Reported to Mayor: _____
☒ Asset Sold to: City Of Smith Station Date: _____
 For the amount of: \$ 1.00 Reference Receipt Number: _____
 ____ Other (Describe) _____
 Will a new purchase be made to replace this item? _____ Yes _____ No (Must be checked)

MISCELLANEOUS ACQUISITION

____ Asset Donated By: _____ Est. Value: \$ _____
 ____ Asset Constructed By: _____ Est. Value: \$ _____
 ____ Asset Transferred From (Dept. /Div.): _____ / _____
 ____ Other Comments: _____
 Recommended by [Signature] Department Head Approved by _____ City Administrator
 Posted by _____ Accounting _____ Copy to Purchasing _____ Copy to Auto Shop
 _____ Copy to Buyer _____ Copy to Dept. Head

USE THIS FORM ONLY TO RECORD A CHANGE IN STATUS OR A MISCELLANEOUS ACQUISITION. PURCHASES
 WILL BE RECORDED FROM YOUR PURCHASE ORDER.

RESOLUTION NO. 269-18

Contract, annual appropriation Ala. Cooperative Extension.**RESOLUTION NO.** _____**BE IT RESOLVED** by the City Council of the City of Opelika as follows:

) That the proposed CONTRACT FOR SERVICES to be entered into between the City

of Opelika and the Alabama Cooperative Extension System, a copy of which is hereto attached

as Exhibit "A", be and the same is hereby approved, adopted, authorized, ratified and confirmed,

) That Gary Fuller, Mayor of the City of Opelika is hereby authorized and

empowered to execute the foregoing agreement in the name and on behalf of the City of Opelika

and the City Clerk is hereby authorized to affix the corporate seal of the City of Opelika thereto

and to attest the same, and the Mayor shall deliver one copy to the Alabama Cooperative

Extension System, and retain one copy.

ADOPTED and APPROVED this the _____ day of _____, 2018.

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

AGREEMENT

LEE COUNTY

THIS AGREEMENT made and entered into this 1st day of October 2018 by and between the City of Opelika, a Municipal Corporation, hereinafter called "CITY", as party of the first part, and Auburn University, by and through The Alabama Cooperative Extension System, hereinafter called "EXTENSION SYSTEM", as party of the second part.

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

1. The terms of this Agreement shall be for a period of One (1) year commencing on October 1, 2018 and ending September 30, 2019 at the end of each year, this Contract may be renewed by mutual agreement between the parties.
2. The Lee County Extension Office agrees to provide the City with Educational Resources that are Researched Based information that is accessible to all Opelika citizens. In addition, all citizens are invited to attend programs in the areas of financial money management, forestry, wildlife and natural resources, family and child development programs, horticulture, food safety, food preservation, human and diet nutrition, and forages. Programs are typically open to the public and or in partnership with local agencies. In addition the Opelika school systems receives Nutrition Education, 4-H and Youth Development, and access to any community or special interest 4-H clubs. Lastly, the Lee County office is the host site for Master Gardeners. MG's provide public programs and workshops, keep up community gardens, provide educational grants, garden tours, and host a course every year to educate new members.
3. The City agrees to pay to EXTENSION SYSTEM for term of lone (1) year the sum of \$10,000.00, payable in equal monthly installments of \$833.33 commencing on October 15, 2018 and continuing on the 15th day of each month thereafter.
4. Notwithstanding any of the provisions of this Agreement, it is agreed that the CITY has no financial interest in the business of EXTENSION SYSTEM, and shall not be liable for any debts or obligations by EXTENSION SYSTEM, nor shall the CITY be deemed or construed to be a partner joint venture, or otherwise interested in the assets of EXTENSION SYSTEM, nor shall EXTENSION SYSTEM at any time or times use the name or credit of the CITY in purchasing or attempting to purchase any equipment, supplies or things whatsoever.

5. EXTENSION SYSTEM in the performance of its operations and obligations hereunder shall not be deemed to be an agent of the CITY but shall be deemed an independent contractor in every respect and shall take all steps at its own expense. The CITY does and will not assume any responsibility for the means by which or the manner in which services by EXTENSION SYSTEM, provided for herein, are performed; but on the contrary, EXTENSION SYSTEM shall be wholly responsible therefore.
6. EXTENSION SYSTEM shall not transfer or assign this Agreement or license any rights or privileges granted herein without the prior written consent of the CITY.
7. EXTENSION SYSTEM agrees to comply with all local, state and federal laws while performing under the terms of this Agreement.
8. EXTENSION SYSTEM agrees that upon violation of any of the covenants and agreements herein contained, on account of any act of omission or commission of EXTENSION SYSTEM, the CITY may, at its option, terminate and cancel this agreement.
9. EXTENSION SYSTEM agrees that it shall not use any funds received from the CITY for political activity nor shall it endorse or promote the campaign of any person for political office in the City of Opelika.
10. This agreement supersedes any and all other Agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof, and no other Agreement, statement or promise relating to the subject matter of this Agreement which is not contained herein shall be valid or binding unless in writing signed by both parties.
11. Signed to the provisions regarding assignment, this Agreement shall be binding on the successors and assigns of the respective parties.
12. The validity of this Agreement and its terms, provisions, as well as the rights and duties of the parties hereunder shall be governed by the laws of the State of Alabama.

WITNESS OUR HAND AND SEALS THIS THE ____ day of _____, 2018.

BY: _____
ITS MAYOR

ATTEST:

CITY CLERK

AUBURN UNIVERSITY, BY AND THROUGH
THE ALABAMA COOPERATIVE EXTENSION SYSTEM

CARavall
BY: Contract Officer

ATTEST:

[Signature]
Contract Officer

RESOLUTION NO. 270-18

Contract, annual appropriation J. W. Darden Foundation.**RESOLUTION NO. _____****BE IT RESOLVED** by the City Council of the City of Opelika as follows:

) That the proposed CONTRACT FOR SERVICES to be entered into between the City

of Opelika and the J. W. Darden Foundation Inc., a copy of which is hereto attached as
Exhibit

“A”, be and the same is hereby approved, adopted, authorized, ratified and confirmed,

) That Gary Fuller, Mayor of the City of Opelika is hereby authorized and

empowered to execute the foregoing agreement in the name and on behalf of the City of Opelika

and the City Clerk is hereby authorized to affix the corporate seal of the City of Opelika thereto

and to attest the same, and the Mayor shall deliver one copy to the J. W. Darden Foundation Inc.,

and retain one copy.

ADOPTED and APPROVED this the _____ day of _____, 2018.

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
LEE COUNTY

CONTRACT FOR SERVICES BETWEEN THE CITY OF OPELIKA
AND THE J. W. DARDEN FOUNDATION, INC.

THE CONTRACT made and entered into by and between the City of Opelika, Alabama, a municipal corporation, herein after referred to as "City", and the J. W. Darden Foundation, Inc., a non-profit corporation, herein after referred to as the "Darden Foundation", as of this ____ day of _____, 2018

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

1. The term of the agreement shall be for a period of one (1) year commencing October 1, 2018 and ending September 30, 2019. At the end of each year this contract may be renewed by mutual agreement between parties.
2. The Darden Foundation agrees to provide the city with the following services:
 - a. Provide an organization through which the beautiful, historical home and the legacy of Dr. and Mrs. J. W. Darden can be preserved and maintained for the citizens of Opelika.
 - b. As a non-profit foundation and in keeping with the legacy of Dr. J. W. Darden, the first African American Physician in Opelika, provide the facility for a Wellness Clinic that is operational, at this time, under the supervision of the EAMC Parish Nurse Program and the Auburn University School of Nursing and is open once a week for health screenings and health monitoring.
 - c. As a non-profit, provide the facility and facilitate the programming for health education programs through the Parish Nurses and area physicians, thereby promote healthy life styles with the attempt to decrease health care costs in our community.
 - d. As a non-profit, maintain referral services for the people using the screening services.
 - e. As a non-profit, promote and instill the social graces and leadership characteristics in young people that were exemplified by Dr. and Mrs. J. W. Darden.
 - f. As a non-profit foundation, provide an organizational framework to assist donors in achieving their philanthropic goals directed toward the accomplishment of the Darden Foundation's mission and its goals.

3. As compensation for services rendered hereunder, the City agrees to pay or provide funds with which to pay the Darden Foundation for a term of one (1) year commencing October 1, 2018, the sum of five thousand (\$5,000) dollars (U.S.), payable in equal quarterly installments on or before the 10th day of the month in the months of December, March, June, and September.
4. Notwithstanding any of the provision of this agreement, it is agreed that the City has no financial responsibility in the business of the Darden Foundation, and shall not be deemed liable for any debts or obligations incurred by the Darden Foundation nor shall the City be construed to be a partner, joint venture, or otherwise interested in or with any of the indebtedness incurred by the Board in the assets of the Darden Foundation nor shall the Darden Foundation at any time or times use the name of the City in purchasing or attempting to purchase any equipment, supplies, or other items whatsoever.
5. The Darden Foundation, in the performance of its operations and obligation hereunder shall not be deemed to be the agent of the City, but shall be deemed to be an independent contractor in every respect and shall take steps at its own expense as the City may from time to time request to indicate that it is an independent contractor. The city does not and will not assume any responsibility for the means in which or manner in which services by the Darden Foundation, provided for herein, are performed, but on the contrary, the Darden Foundation shall be wholly responsible.
6. The Darden Foundation shall not transfer or assign this agreement or license of any of the rights or privileges granted herein without the prior written consent of the City.
7. The Darden Foundation agrees that upon violation of any of the covenants and agreements herein contained, on account of any act of omission or commission of the Darden Foundation, the City may at its option terminate and cancel this agreement.
8. The Darden Foundation agrees that it shall not use any of the funds received from the City for political activity, nor shall it endorse or promote the campaign of any person for public office. Prohibited political activities include:
 - a. Use of its influence for the purpose of interfering with or affecting the result of election or nomination for office.
 - b. Use of influence for the purpose of interfering with or affecting the results of partisan referendums.
 - c. Lobbying in support of, or otherwise promoting partisan legislation, except that nothing herein shall prohibit the Darden Foundation from attempting to secure

legislation solely to advance commercial and industrial development of the City of Opelika and the State of Alabama.

9. This agreement supersedes all other agreements, either oral or in writing, between the parties with respect to the subject matter of this agreement.

10. Subject to the provisions regarding assignment, this agreement shall be binding on the successors and assigns of the respective parties.

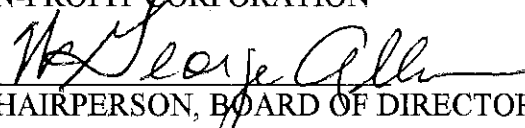
11. The validity of this agreement and of its terms, provision, as well as the rights and duties of parties hereunder, shall be governed by the laws of the State of Alabama.

WITNESS OUR HANDS AND SEALS THIS THE ____ DAY OF ____, 2018

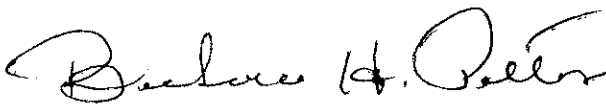
THE CITY OF OPELIKA

BY _____
ITS MAYOR

THE J.W. DARDEN FOUNDATION, INC.,
A NON-PROFIT CORPORATION

BY 
ITS CHAIRPERSON, BOARD OF DIRECTORS

ATTEST:


ITS TREASURER

RESOLUTION NO. 271-18

Contract, annual appropriation with KOB.**RESOLUTION NO.** _____**BE IT RESOLVED** by the City Council of the City of Opelika as follows:

) That the proposed CONTRACT FOR SERVICES to be entered into between the City

of Opelika and the Keep Opelika Beautiful, Inc., a copy of which is hereto attached as

Exhibit "A", be and the same is hereby approved, adopted, authorized, ratified and confirmed,

) That Gary Fuller, Mayor of the City of Opelika is hereby authorized and

empowered to execute the foregoing agreement in the name and on behalf of the City of Opelika

and the City Clerk is hereby authorized to affix the corporate seal of the City of Opelika thereto

and to attest the same, and the Mayor shall deliver one copy to the Keep Opelika Beautiful,

Inc., and retain one copy.

ADOPTED and APPROVED this the _____ day of _____, 2018.

C. E. “Eddie” Smith, Jr.
President City Council
City of Opelika, Alabama

Attest:

Robert G. Shuman, CMC
City Clerk - Treasurer

STATE OF ALABAMA
COUNTY OF LEE

CONTRACT FOR SERVICES BETWEEN THE CITY OF OPELIKA

AND

KEEP OPELIKA BEAUTIFUL, INC.

THIS CONTRACT made and entered into by and between the City of Opelika, Alabama, a municipal corporation, (hereinafter referred to as City), and Keep Opelika Beautiful, Inc., a non-profit, benevolent, corporation incorporated the eighth day of January, 1997, (hereinafter referred to as Keep Opelika Beautiful), as of this first day of October, 2018:

In consideration of the agreements herein contained, it is understood between the parties that the City will furnish funding and Keep Opelika Beautiful will provide the following services on behalf of the City:

1. The term of this agreement shall be for a period of one (1) year commencing October 1, 2018, and ending September 30, 2019; provided, however, that this agreement may be renewed hereafter by the mutual agreements of the parties for one year at a time.

2. Keep Opelika Beautiful agrees that it will provide the City the following services as to its part of the overall agreement between the City of Opelika:

- (a) Assist the Mayor, City Administrator, Members of the City Council and various city department heads in developing programs which stimulate all segments of the community to help improve Opelika's physical appearance.
- (b) Through its Beautification Committee recognize and award business and industry in the City of Opelika with Clean Business Awards. Continue to expand the number of sponsors in the Adopt-A-Program. The program is being used in streets and main thoroughfares throughout the City. Currently, 29 groups including businesses, civic clubs and neighborhood associations

Attachment: CM 10-16-18, contract, annual approp. KOB (271-18 : Contract, annual appropriation KOB.)

participate in the Adopt-A-Mile program. The goal for 2018-2019 is to add three more organizations to the program. Because of the focus on litter, KOB has requested all Adopt-A-Mile groups to clean their areas 6 times per year.

- (c) The Beautification Committee will also recognize 20 property owners (four per City Ward) each year with the Yard of the Quarter award. This year Keep Opelika Beautiful is focusing on the increasing participation in the Azalea & Dogwood Trail. Letters have been mailed to all residents on the Trail. Captains for each street will assist in maintaining and planting additional azaleas.
- (d) Keep Opelika Beautiful will coordinate all meetings and activities of the Opelika Tree Commission. Keep Opelika Beautiful will assist the city in maintaining Tree City status by coordinating Arbor Day, Earth Day and attending Alabama Urban Forestry Association annual conference.
- (e) Keep Opelika Beautiful will continue to coordinate the Opelika Recycle & Shred Day for all residents and businesses in Opelika.
- (f) In effort to fight the war on litter, Keep Opelika Beautiful will continue to educate at schools, civic clubs, non-profit summits public events and other gatherings. The annual Citywide Cleanup has become a large event with 262 volunteers in 2018.
- (g) Through its Education Committee Keep Opelika Beautiful will continue to expand its Clean Campus program, with involvement of all City schools during the 2018-2019 school year. Keep Opelika Beautiful will continue to closely with Opelika Environmental Services to provide recycling for all Opelika City Schools. Keep Opelika Beautiful also participates in school sponsored events such as America Recycled Day, Arbor Day and Earth Day.
- (h) Through its Executive Director assist the Mayor and City Council in public relations effort for the City insofar as it relates to environmental questions and citizen concerns in the City. The Executive Director will continue to speak to various businesses and civic organizations. Keep Opelika Beautiful will continue to assist the City Engineer and other staff with ADEM reports,

including Storm Water Management.

- (i) Keep Opelika Beautiful continues to assist City of Opelika Environmental Services Department in administering the 2018 ADEM Grant given to the East Alabama Recycling Partnership.
- (j) Keep Opelika Beautiful will continue to partner with Opelika City Schools, Auburn University and Food Bank of East Alabama in growing school gardens and donating produce to the Community Market.

3. As compensation for the services to be rendered by Keep Opelika Beautiful, the City of Opelika agrees to pay or provide funds with which to pay Keep Opelika Beautiful during the fiscal year commencing October 1, 2018 and ending September 30, 2019, the sum of thirty-eight thousand (\$38,000) dollars.

4. Notwithstanding any of the provisions of this agreement, it is understood and agreed that the City has no financial responsibility in the business or the affairs of Keep Opelika Beautiful, and the City shall not be liable for any debts or obligations incurred by Keep Opelika Beautiful, nor shall it deemed or construed to be a partner, joint venturer, or participate in or with any of the indebtedness incurred by Keep Opelika Beautiful.

5. Keep Opelika Beautiful shall comply strictly with the laws of the State of Alabama in performing its duties hereunder and in carrying out its activities.

6. Keep Opelika Beautiful agrees that it shall not use any funds received from the City for political activity nor shall it endorse or promote the campaign of any person for political office. Prohibited political activities shall include, but not be limited to, the following:

- (a) Use of its influence for the purpose of interfering with or affecting the results of elections or the nominations of persons for office.
- (b) Use of influence for the purpose of interfering with or affecting the results of partisan referendums.
- (c) Lobbying in support of, or otherwise promoting partisan legislation, except

that nothing herein shall prohibit Keep Opelika Beautiful from attempting to secure legislation to advance environmental education in the City of Opelika and the State of Alabama.

Subject to the provisions regarding assignment, this agreement shall be binding upon the parties and their respective successors and assigns.

8. This agreement shall be governed by the laws of the State of Alabama.

WITNESS OUR HANDS AND SEALS THIS _____ day of _____, 2018.

By _____

MAYOR OF THE CITY OF OPELIKA

SEAL

ATTEST:

By _____

CLERK OF THE CITY OF OPELIKA

By Raven

PRESIDENT, KEEP OPELIKA BEAUTIFUL, INC.

SEAL

ATTEST:

By Cathy

TREASURER, KEEP OPELIKA BEAUTIFUL, INC.

Attachment: CM 10-16-18, contract, annual approp. KOB (271-18 : Contract, annual appropriation KOB.)

RESOLUTION NO. 272-18

Contract, annual appropriation, Lee Co. Youth Development.**RESOLUTION NO. _____**

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

) That the proposed CONTRACT FOR SERVICES to be entered into between the City of Opelika and the Lee County Youth Development Center, Inc., a copy of which is hereto

attached as Exhibit "A", be and the same is hereby approved, adopted, authorized, ratified and

confirmed,

) That Gary Fuller, Mayor of the City of Opelika is hereby authorized and empowered to execute the foregoing agreement in the name and on behalf of the City of Opelika and the City Clerk is hereby authorized to affix the corporate seal of the City of Opelika thereto and to attest the same, and the Mayor shall deliver one copy to the Lee County Youth Development Center, and retain one copy.

ADOPTED and APPROVED this the _____ day of _____, 2018.

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

COUNTY OF LEE

AGREEMENT

THIS AGREEMENT made and entered into between the
CITY OF OPELIKA, ALABAMA, a municipal corporation, hereinafter referred to as "City"
and Lee County Youth Development Center, Inc., an Alabama non-profit corporation,
hereinafter referred to as "Agency".

Statement of Background Information

1. Agency is a non-profit corporation located in the City of Opelika, Alabama, currently performing services for certain citizens of the City of Opelika.
2. Agency has requested a budget appropriation in the amount of \$32,000 from the City to be used as specifically set forth on Exhibit "A" attached hereto and made a part hereof by reference.
3. City has informed Agency that said funds can only be used for those services set forth on Exhibit "A" and for no others and that in the event that Agency fails to comply with the terms and conditions of this Agreement, Agency shall refund to City all sums not spent in accordance with Exhibit "A" for approved services.

STATEMENT OF AGREEMENT

NOW, THEREFORE, for and in consideration of the above recitations, the mutual covenants and agreements contained herein, the parties do hereby agree as follows:

1. City shall pay to Agency the sum of \$ 32,000 for budget year October 1, 2018 through September 30, 2019 with said payments to be paid as follows:

Equal payments of \$8,000.00 to be made quarterly.

2. Agency shall spend said funds only as forth on Exhibit "A" attached hereto and made a part hereof by reference.

3. Agency shall keep and maintain accurate books and records of the funds spent under the terms of this contract and said books and records shall be made available for inspection by the City at all reasonable times and places.

4. City shall only be **conditionally** obligated (based on the City achieving the budgeted 2018-2019 revenue projections) to contribute said funds for the budget year set forth above; however, Agency may submit a written request to City for funding for subsequent budget years with said request to be submitted in writing to City no later than June 30 of each subsequent year. In no event shall City be obligated to appropriate additional monies to Agency.

5. This Agreement shall be binding upon the parties hereto, their successors and assigns.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and date first above written.

CITY OF OPELIKA, ALABAMA,
a municipal corporation

BY: _____
Its _____

ATTEST:

By: _____
Its _____

Lee County Youth Development Center
a non-profit corporation

BY: [Signature]
Its Executive Director

ATTEST:

BY: [Signature]
Its Emp. Coordinator

EXHIBIT A

Contract between the City of Opelika and Lee County Development Center, Inc.

Specific Services

1. Project Uplift Volunteer Mentor Program

Recruit, screen, train, place and supervise volunteers (primarily Auburn University students) to give structure and direction to troubled and/or disadvantaged youth in the City of Opelika

Promote reading by providing books to local hair care establishments serving at-risk populations through the Beauty-and-a-Book program

2. In-School Prevention

- a. Children in Self-Care - "Home Alone" Training for all 4th graders in the Opelika City Schools targeting those who have no adult supervision from 3:00 to 6:00 p.m.
- b. Provide abstinence/healthy decision-making for all 7th through 10th grade students in Opelika City Schools and students of LCYDC's Chanticleer Learning Center in Opelika, Alabama.

RESOLUTION NO. 273-18

Contract, annual appropriation, Opelika Downtown Redevelopment Auth.**RESOLUTION NO.** _____**BE IT RESOLVED** by the City Council of the City of Opelika as follows:

) That the proposed CONTRACT FOR SERVICES to be entered into between the City of Opelika and the Opelika Downtown Redevelopment Authority, a copy of which is hereto

attached as Exhibit “A”, be and the same is hereby approved, adopted, authorized, ratified and

confirmed,

) That Gary Fuller, Mayor of the City of Opelika is hereby authorized and empowered to execute the foregoing agreement in the name and on behalf of the City of Opelika and the City Clerk is hereby authorized to affix the corporate seal of the City of Opelika thereto and to attest the same, and the Mayor shall deliver one copy to the Downtown Redevelopment Authority, and retain one copy.

ADOPTED and APPROVED this the _____ day of _____, 2018.

C. E. “Eddie” Smith, Jr.
President City Council
City of Opelika, Alabama

Attest:

Robert G. Shuman, CMC
City Clerk - Treasurer

STATE OF ALABAMA)

: CONTRACT FOR SERVICES

COUNTY OF LEE)

THIS AGREEMENT is made and entered into between the City of Opelika, Alabama a municipal corporation, hereinafter referred to as the "CITY", and the Opelika Downtown Redevelopment Authority, a 501(c)(3) corporation, hereinafter referred to as "ODRA", on this the 12th day of Oct., 2018.

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

1. The term of this agreement shall be for a period of twelve (12) months commencing on the 1st day of October, 2018 and ending the 30th day of September, 2019.
2. During the term of this contract, ODRA agrees to provide the following services:
 - a. The aesthetic improvement of various downtown areas.
 - b. The equipping of these areas.
 - c. Providing educational materials for parking & business development in downtown.
 - d. Other services that be lawfully provided.
3. As compensation for the services rendered hereunder, the City agrees to pay to ODRA, for the term of this agreement the sum of \$10,000.00 payable in lump sum upon approval and execution of this contract.
4. In the performance of its obligation hereunder, ODRA shall not promote the beliefs of any religious sect or denomination or engage in impermissible religious activities under the First Amendment of the United States Constitution. All programs shall be open to qualifying participants regardless of race, national origin, gender or religious affiliation.
5. ODRA agrees to comply with all local, state and federal laws while performing under the terms of this Contract.
6. ODRA agrees that it will not use any funds received from the City for political activities nor shall it endorse or promote the campaign of any person for political office.
7. ODRA in the performance of its operations and obligations hereunder shall not be deemed to be an agent of the City, but shall be deemed to be an independent contractor in every respect. The City does not and will not assume any responsibility for the means by which or manner in which the services by ODRA are performed, but on the contrary, ODRA shall be wholly responsible for the payment of its operating expenses, which

includes, but not limited to, payroll expenses, taxes, maintenance expenses, supplies, utility charges, insurance premiums and governmental license fees.

8. ODRA agrees that upon the violation of any of the covenants and agreements herein contained, the City may, at its option, terminate and cancel this agreement.
9. ODRA shall not transfer or assign this contract or license any of the rights or privileges granted herein without the prior written consent of the City.
10. This contract supersedes any and all other agreements, either oral or written, between the parties hereto with respect to the subject matter hereof, and no other agreement, statement or promise relating to the subject matter of this contract which is not contained herein shall be valid or binding unless in writing signed by the parties.
11. Subject to the provisions regarding assignment, this contract shall be binding on the successors and assigns of the respective parties.
12. The validity of this contract and of any of its items, provisions, as well as the rights and duties of the parties hereunder, shall be governed by the laws of the State of Alabama.

IN WITNESS WHEREOF, the parties have hereunto signed their names and affixed their seals, this the _____ day of _____, 2018.

CITY OF OPELIKA, ALABAMA
A municipal corporation

BY: _____

Gary Fuller

Mayor

ATTEST:

Robert G. Shuman, CMC

City Clerk - Treasurer

Opelika Downtown Redevelopment
Authority (ODRA)

BY: _____

John Marsh

Chairman

ATTEST:

Witness

RESOLUTION NO. 274-18

Contract, annual appropriation, Valley Haven School.**RESOLUTION NO. _____****BE IT RESOLVED** by the City Council of the City of Opelika as follows:

) That the proposed CONTRACT FOR SERVICES to be entered into between the City

of Opelika and The ARC of the Chattahoochee Valley, Inc. (Valley Haven School), a
copy of

which is hereto attached as Exhibit "A", be and the same is hereby approved, adopted,

authorized, ratified and confirmed,

) That Gary Fuller, Mayor of the City of Opelika is hereby authorized and

empowered to execute the foregoing agreement in the name and on behalf of the City of Opelika

and the City Clerk is hereby authorized to affix the corporate seal of the City of Opelika thereto

and to attest the same, and the Mayor shall deliver one copy to the Valley Haven School, and

retain one copy.

ADOPTED and APPROVED this the _____ day of _____, 2018.

C. E. "Eddie" Smith, Jr.
President of the City Council1
City of Opelika, Alabama

Attest:

Robert G. Shuman, CMC
City Clerk - Treasurer

This contract is made and entered into by and between the City of Opelika, Alabama, a municipal corporation, hereinafter referred to as "City", and The Arc of the Chattahoochee Valley, Inc., hereafter referred to as "The Association", on this the 1st day of October, 2018. In consideration of the agreements herein contained, the parties agree as follows:

1. The term of this Agreement shall be for a period of one (1) year commencing October 1, 2018, and ending September 30, 2019. At the end of each year this contract may be renewed by mutual agreement between the parties.
2. For the 2018-2019 school term, The Association agrees to provide educational and training services and ordinary programmatic components to preschool and adult individuals with intellectual disabilities for the City of Opelika. The Association shall coordinate with the Alabama Department of Mental Health to serve individuals with intellectual disabilities who are not eligible for other services. Services and training for preschoolers and adults shall be offered by Valley Haven School, 6345 Fairfax By-pass (P.O. Box 416), Valley, Alabama, 36854.
3. As compensation for the services rendered hereunder, the City agrees to pay to The Association for a term of one (1) year commencing October 1, 2018, the sum of \$2,000.00, payable upon request by The Association.
4. Notwithstanding any of the provisions of this Agreement, it is agreed that the City has no financial interest on the business of The Association, and shall not be liable for any debts or obligations incurred by The Association, nor shall the City be deemed or construed to be a partner, joint ventures, or otherwise interested in the assets of The Association, nor shall The Association at any time or times use the name or credit of City in purchasing or attempting to purchase any equipment, supplies or any other thing or things whatsoever.
5. The Association in the performance of its operation and obligations here under shall not be deemed to be the agent of the City but shall be deemed to be an independent contractor in every respect and shall take all steps at its own expense. The City does not and will not assume any responsibility for the means by which or manner in which services by The Association provided for herein, are performed, but on the contrary, The Association shall be wholly responsible therefor.
6. The Association shall not transfer or assign this Agreement without the prior written consent of the city.
7. The Association agrees to comply with all Local, State, and Federal Laws while performing under the terms of this Agreement.
8. This Agreement may be terminated by either party upon six (6) months advance notice in writing to the other party.
9. This agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to subject matter hereof, and no other agreement, statement or promise relating to the subject matter of this agreement which is not contained herein shall be valid or binding unless in writing signed by both parties.
10. Subject to the provisions regarding assignment, this agreement shall be binding on the successors and assigns or the respective parties.
11. The validity of this Agreement and of any of its terms, provisions, as well as the rights and duties of the parties hereunder, shall be governed by the Laws of the State of Alabama.

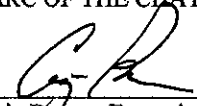
IN WITNESS THEREOF, the parties hereto have signed their names and affixed their seals, this the 1st day of October, 2018.

ATTEST:

CITY OF OPELIKA, ALABAMA

By: _____
Gary Fuller, Mayor

THE ARC OF THE CHATTAHOOCHEE VALLEY, INC.

By:  _____
Craig Brown, Executive Director of the Arc of the Chattahoochee Valley, Inc.

Attachment: CM 10-16-18, contract, annual approp. Valley Haven. (274-18 : Contract, annual appropriation, Valley Haven School.)

RESOLUTION NO. 275-18

Contract, annual appropriation, Christian Care Ministries.**RESOLUTION NO.** _____**BE IT RESOLVED** by the City Council of the City of Opelika as follows:

-) That the proposed CONTRACT FOR SERVICES to be entered into between the City of Opelika and the Christian Care Ministries (CCM), a copy of which is hereto attached as Exhibit "A", be and the same is hereby approved, adopted, authorized, ratified and confirmed,
-) That Gary Fuller, Mayor of the City of Opelika is hereby authorized and empowered to execute the foregoing agreement in the name and on behalf of the City of Opelika and the City Clerk is hereby authorized to affix the corporate seal of the City of Opelika thereto and to attest the same, and the Mayor shall deliver one copy to the Christian Care Ministries, and retain one copy.

ADOPTED and APPROVED this the _____ day of _____, 2018.

C. E. “Eddie” Smith, Jr.
President City Council
City of Opelika, Alabama

Attest:

Robert G. Shuman, CMC
City Clerk - Treasurer

STATE OF ALABAMA)
 :
 COUNTY OF LEE)

CONTRACT FOR SERVICES

THIS AGREEMENT is made and entered into between the City of Opelika, Alabama a municipal corporation, hereinafter referred to as the "CITY", and the Christian Care Ministries, a 501(c)(3) corporation, hereinafter referred to as "CCM", on this the _____ day of _____, 20____.

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

1. The term of this agreement shall be for a period of twelve (12) months commencing on the 1st day of October, 20 18 and ending the 30th day of September, 20 19.
2. During the term of this contract, CCM agrees to provide the following services:
 - Distribution of food and clothing.
 - Hot Meals through the Soup Kitchen.
3. As compensation for the services rendered hereunder, the City agrees to pay to CCM, for the term of this agreement the sum of \$ 2500, 00 payable in lump sum upon approval and execution of this contract.
4. All programs shall be open to qualifying participants regardless of race, national origin, gender or religious affiliation.
5. CCM agrees to comply with all local, state and federal laws while performing under the terms of this Contract.
6. CCM agrees that it will not use any funds received from the City for political activities nor shall it endorse or promote the campaign of any person for political office.
7. CCM in the performance of its operations and obligations hereunder shall not be deemed to be an agent of the City, but shall be deemed to be an independent contractor in every respect. The City does not and will not assume any responsibility for the means by which or manner in which the services by CCM are performed, but on the contrary, CCM shall be wholly responsible for the payment of its operating expenses, which includes, but not limited to, payroll expenses, taxes, maintenance expenses, supplies, utility charges, insurance premiums and governmental license fees.
8. CCM agrees that upon the violation of any of the covenants and agreements herein contained, the City may, at its option, terminate and cancel this agreement.
9. CCM shall not transfer or assign this contract or license any of the rights or privileges granted herein without the prior written consent of the City.

RESOLUTION NO. 276-18

Contract, annual appropriation, East Ala. Health Care Authority.**RESOLUTION NO. _____****BE IT RESOLVED** by the City Council of the City of Opelika as follows:

) That the proposed CONTRACT FOR SERVICES to be entered into between the City
of Opelika and the East Alabama Healthcare Authority d/b/a East Alabama EMS LLC, a
copy of

which is hereto attached as Exhibit "A", be and the same is hereby approved, adopted,
authorized, ratified and confirmed,

) That Gary Fuller, Mayor of the City of Opelika is hereby authorized and
empowered to execute the foregoing agreement in the name and on behalf of the City of Opelika
and the City Clerk is hereby authorized to affix the corporate seal of the City of Opelika thereto
and to attest the same, and the Mayor shall deliver one copy to the East Alabama Healthcare
Authority, and retain one copy.

ADOPTED and APPROVED this the _____ day of _____, 2018.

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

Attest:

Robert G. Shuman, CMC
City Clerk - Treasurer

STATE OF ALABAMA

COUNTY OF LEE
CITY OF OPELIKA
CITY OF AUBURN

EMERGENCY RESPONSE, RESCUE
AND AMBULANCE SERVICE AGREEMENT

THIS AGREEMENT is made and entered into by and between the **COUNTY OF LEE**, a Governmental Organization of Lee County, Alabama, hereinafter referred to as "**COUNTY**"; the **CITY OF OPELIKA**, a Municipal Corporation of Lee County, Alabama, hereinafter referred to as "**OPELIKA**"; the **CITY OF AUBURN**, a Municipal Corporation of Lee County, Alabama, hereinafter referred to as "**AUBURN**"; and the **EAST ALABAMA HEALTHCARE AUTHORITY d/b/a EAST ALABAMA EMS LLC**, an Alabama Corporation, hereinafter referred to as the "**HOSPITAL**". The **COUNTY, OPELIKA** and **AUBURN** collectively will hereinafter be referred to as the "**GOVERNMENTS**".

WITNESSETH

WHEREAS, the governing bodies of the **GOVERNMENTS** have determined that it is necessary for the protection of the health and welfare of the citizens of Lee County, Alabama, that "Emergency Response, "Routine Response", "Rescue Service" and "Ambulance Transport Services" be afforded, and in furtherance thereof they be desirous of providing prompt and adequate routine, convalescent and emergency ambulance service for the sick, lame and injured of Lee County; and

WHEREAS, "Emergency Response" is defined as: to answer a call for assistance with the needed personnel, equipment and transportation in an expeditious manner. This includes all types of calls from either E-911 dispatch and or other emergency personal calls; and

WHEREAS, "Routine Response" is defined as: to answer a call for assistance with the needed personnel, equipment and transportation in an expeditious manner. This includes all types of calls from regular dispatch and or other non-emergency personal calls; and

WHEREAS, "Rescue Service" is defined as: the primary "first responder unit" that arrives at the call location and renders needed first aid and extricates the patient from any entrapments. This includes all types of calls from either E-911 dispatch and or other emergency personal calls; and

WHEREAS, "Ambulance Transport Service" is defined as: the ability to respond, evaluate, transport and deliver the patient to a destination. This requires a vehicle equipped with

a patient compartment and stretcher and licensed by the State of Alabama; and

WHEREAS, "Ambulance" is defined as: a motor vehicle used for the transporting of persons who are wounded, injured, ill or sick. This motor vehicle will meet or exceed the Ambulance Vehicle Specifications as defined by the State of Alabama Bureau of Environmental and Health Service Standards. (Section 420-2-1-1.04); and

WHEREAS, HOSPITAL currently provides an Emergency Medical Service, hereinafter referred to as "EMS" which consists of Routine Response, Emergency Response, Rescue Service, and Ambulance Transport Service for the Cities of Auburn and Opelika, and Lee County; and

WHEREAS, the GOVERNMENTS are desirous of the HOSPITAL to provide the Emergency Response, Routine Response, Rescue Services, and Ambulance Transport Services for Lee County.

NOW, THEREFORE, in furtherance of the foregoing recitals and in consideration of the sum of money hereinafter stipulated to be paid by the GOVERNMENTS to HOSPITAL, the services to be rendered by HOSPITAL and in consideration of the mutual covenants and agreements of the parties herein contained, said parties do covenant, agree and contract as follows:

AGREEMENTS

SERVICES - HOSPITAL

1.1 SERVICES. HOSPITAL will provide Routine Response, Emergency Response, and Ambulance Transport Services for the GOVERNMENTS. HOSPITAL will also provide Rescue Service outside the police jurisdiction of Opelika. HOSPITAL will provide these services twenty-four (24) hours per day, 365 days per year.

1.2 PERSONNEL. HOSPITAL will provide Emergency Medical Technician(s) (EMT), sufficient to staff each ambulance, each of whom will be trained in accordance with the minimum training standards set forth by the State of Alabama, and will be so certified either as an EMT-Basic, EMT-Intermediate, or EMT-Paramedic.

1.3 AMBULANCES. HOSPITAL will have ambulances, staffed with appropriate levels of Emergency Medical Technicians available for the GOVERNMENTS service, twenty-four (24) hours per day, seven (7) days per week.

1.4 MANAGEMENT. Management of the Services will be handled by the HOSPITAL's Emergency Medical Services Department. Day to day operations will be supervised by the Director of the Emergency Medical Services Department along with shift supervisors.

1.5 WORKERS' COMPENSATION TRANSFERS. HOSPITAL will provide, at no charge to GOVERNMENTS, five (5) ambulance transports within Lee County. These transports will be used by each of the GOVERNMENTS to offset work related employee transports. This service is not transferable to other agencies and expires in conjunction with this Agreement.

SERVICES

2.1 AUTHORIZATION. The GOVERNMENTS do hereby authorize HOSPITAL as the sole provider of "EMS services" (Emergency Response and Rescue Services), except as noted in Section 5.1, within the Lee County limits. Moreover, the GOVERNMENTS do grant to HOSPITAL a non-exclusive license to provide Routine Response and Ambulance Transport Services within the Lee County limits.

REGULATIONS

3.1 TRAFFIC LAWS. HOSPITAL will at all times comply with the traffic laws and ordinances applicable to and which may be in force in Lee County.

3.2 911 RESPONSE. The GOVERNMENTS do hereby require HOSPITAL to respond to all 911 calls in Lee County with an Advanced Life Support (ALS) Ambulance.

3.3 EMS REGULATIONS. HOSPITAL will comply with all laws, rules and regulations applicable to Emergency Response, Routine Response, Rescue Services and Ambulance Transport Services of the City, County, State of Alabama, and United States and particularly the rules and regulations of the State of Alabama, Department of Public Health, as the same now exists or may hereafter be amended.

TERM

4.1 CONTRACT TERM. The term of this Agreement shall commence on the 1st day of October, 2018, and shall be effective for a period of one (1) year and shall terminate at midnight on the 30th day of September, 2019. This Agreement may also be terminated as follows:

4.2 TERMINATION DUE TO LEGISLATIVE OR ADMINISTRATIVE CHANGE.

Notwithstanding any other provision of this Agreement, in the event of enactment, adoption or promulgation of legislation, rules or regulations by the State, Local, or Federal government, or the Agencies or Departments of either of them which, during the term of this Agreement,

requires substantial increased expenditures by HOSPITAL in order to comply with such legislation, rules or regulations, HOSPITAL shall immediately notify GOVERNMENTS in writing of such legislation, rule or regulation, and provide information concerning the anticipated increased costs. The parties shall then, during a period of ninety (90) days after such notice, negotiate a new Agreement or an amendment to this Agreement to cover such increased costs. If the parties are unable to agree, either party may cancel this Agreement by giving ninety (90) days notice of cancellation in writing to the other party.

4.3 TERMINATION BY FAILURE TO PERFORM. Either party may terminate this Agreement upon the failure of the other party to comply with, or cure any breach or default of any material term, condition or covenant of this Agreement within thirty (30) days after written notice by the terminating party to the other specifying with particularity the specific material term, condition or covenant which has not been performed or has been breached by the other party.

4.4 GENERAL TERMINATION. Either party may terminate this Agreement at any time with or without cause and without penalty, by giving the other party one hundred twenty (120) days prior written notice at any time during the term of this Agreement or any extension or renewal. If the governments terminate this agreement, each agrees to compensate the Hospital based on the settling up process noted below in Section 5.1.

COMPENSATION AND FINANCIAL

5.1 OPERATIONS AMOUNT. GOVERNMENTS each agree to pay HOSPITAL \$261,036 payable in quarterly installments of \$65,259 for Emergency Response, Routine Response, Ambulance Transport Services, and Rescue Services, except Opelika who agrees to provide its own rescue services.

5.2 CAPITAL AMOUNT. GOVERNMENTS each agree to pay HOSPITAL \$58,440 payable in quarterly installments of \$14,610.

5.3 PAYMENT DATE. GOVERNMENTS agree to issue the above quarterly payment within ten (10) days following the end of each quarter, in a routine manner, without need for invoices.

5.4 REVENUE. The HOSPITAL will bill patients and insurance companies for Ambulance Transport Services. HOSPITAL will retain all monies collected from these billings.

5.5 ALLOCATION. Revenues, contractual discounts, subsidies, operational expenses and capital expenses shall be allocated to the GOVERNMENTS based on actual use of the Lee County EMS service, either direct or back-up calls. This allocation pertains to bookkeeping procedures only. It does not affect the amount payable from the GOVERNMENTS to HOSPITAL.

5.6 RECORDS. HOSPITAL shall keep and maintain records reflecting all calls made and received, and an accurate record of the costs and expenses in the operation of the EMS Service.

5.7 BUDGET. Within sixty (60) days prior to the termination of this Agreement, HOSPITAL shall provide to the GOVERNMENTS an operating and capital budget which accurately and fairly projects the financial operation of the EMS Service for the next fiscal year.

5.8 INCOME STATEMENT. HOSPITAL shall provide to the GOVERNMENTS an annual income statement, which accurately reflects the financial condition of the EMS Service at September 30th. This income statement shall be delivered to GOVERNMENTS within one hundred fifty (150) days after the year end.

INDEPENDENT CONTRACTOR

6.1 HOSPITAL. In the performance of the work, duties and obligations evolving upon it under this Agreement, it is mutually understood and agreed that HOSPITAL is at all times acting and performing as an independent contractor; that GOVERNMENTS, shall neither have nor exercise control or direction over the methods by which HOSPITAL provides the work and services except that HOSPITAL, by this Agreement, agrees to perform the said work and services at all times in strict accordance with currently approved methods and that the sole interest of the GOVERNMENTS is to assure that said services shall be performed and rendered in a competent, efficient, and satisfactory manner.

6.2 HOSPITAL EMPLOYEES. HOSPITAL's employees shall not be deemed to be employees of the GOVERNMENTS and shall not act in an Agency capacity for GOVERNMENTS and shall not be entitled to any benefits provided by GOVERNMENTS to its employees, including, but not limited to vacation pay, sick leave, retirement benefits, social security, workers' compensation, disability or unemployment insurance benefits of any kind.

INSURANCE

7.1 WORKERS' COMPENSATION INSURANCE. HOSPITAL will, at HOSPITAL's expense, obtain and maintain appropriate workers' compensation coverage for HOSPITAL's employed personnel.

7.2 PROFESSIONAL LIABILITY INSURANCE. HOSPITAL will, at HOSPITAL's expense carry professional and comprehensive general and liability insurance covering HOSPITAL, its employed personnel and vehicles, in the minimum amount of \$1,000,000 per occurrence and \$1,000,000 annual aggregate during the term of this Agreement and an appropriate term thereafter. The deductible for the ambulance liability is \$1,000 and the deductible for the professional liability is \$50,000. Failure to obtain or maintain coverage will be cause for immediate termination of this Agreement.

7.3 INSURANCE COPIES AND CERTIFICATES. HOSPITAL will furnish copies to GOVERNMENTS, if requested by GOVERNMENTS, of each insurance policy and shall furnish copies of all amendments and renewals to each policy so long as this Agreement is in effect. HOSPITAL will additionally cause to be issued by such insurer or insurers a certificate thereof reflecting such coverage and shall instruct and obtain the consent of such insurer or insurers to provide prior written notice to GOVERNMENTS of the cancellation or proposed cancellation thereof for any cause.

GENERAL

8.1 APPLICABLE LAW. This Agreement shall be governed and construed under the laws of the State of Alabama.

8.2 SEVERABILITY. In the event that any of the provisions or portions of this Agreement are held unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions, and portions thereof, shall not be affected thereby.

8.3 WAIVER. The failure by either party hereto to act with respect to any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition of this Agreement, regardless of the non-breaching party's knowledge of such preceding breach at the time of acceptance of such performance.

8.4 ASSIGNMENT. HOSPITAL will not assign or transfer its interest in this Agreement or delegate its duties and responsibilities hereunder without the written consent of the GOVERNMENTS.

8.5 COMPLETE AGREEMENT. This Agreement constitutes the complete understanding between the parties hereto with respect to the subject matter hereof, and no other agreement, statement or promise relating to the subject matter of this Agreement which is not contained herein shall be valid or binding.

8.6 AMENDMENT. This Agreement may be amended at any time upon mutual consent of both GOVERNMENTS and the HOSPITAL, notwithstanding that the failure of either party to concur with an amendment proposed by the other provides no cause for termination of the Agreement before the date of expiration. Furthermore, all amendments must be in writing and signed by both the GOVERNMENTS and the HOSPITAL.

8.7 FORCE MAJEURE. If either of the parties hereto is delayed or prevented from fulfilling any of its obligations under this Agreement by Force Majeure, said parties shall not be liable under this Agreement for said delay or failure. "Force Majeure" means any cause beyond the reasonable control of a party, including but not limited to act of God, act or omission of civil or military authorities of a state or nation, fire, strike, flood, riot, war, delay of transportation, or inability due to the aforementioned causes to obtain necessary labor, materials or facilities.

NOTICES

9.1 NOTICES. All notices hereunder shall be in writing, delivered personally or by certified or registered postal mails and shall be deemed given when delivered personally or when deposited in the United States Mail, addressed as below and with proper postage affixed.

TO HOSPITAL:

Laura Grill
President
The East Alabama Healthcare Authority
2000 Pepperell Parkway
Opelika, Alabama 36801

TO GOVERNMENTS:**LEE COUNTY:**

Bill English
Lee County Probate Judge
Lee County Court House
215 South 9th Street
Opelika, Alabama 36801

CITY OF OPELIKA:

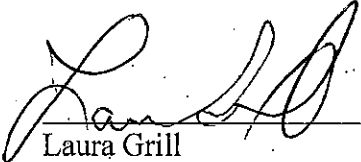
Gary Fuller
Mayor of Opelika
Opelika City Hall
204 South 7th Street
Opelika, AL 36801

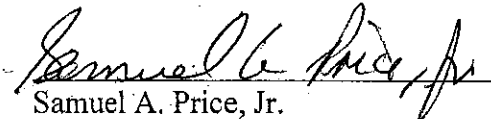
CITY OF AUBURN:

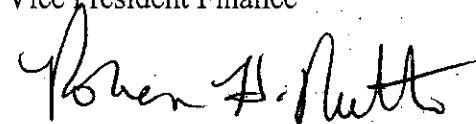
James C. Buston, III
City Manager
City of Auburn
144 Tichenor Ave., Suite 1
Auburn, Alabama 36830

IN WITNESS WHEREOF, the parties represent that they have full authority to execute this Agreement and have executed this Agreement in multiple originals (two) as of the _____ day of _____, 2018.

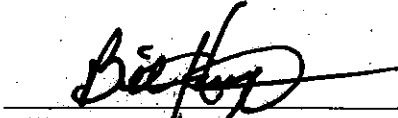
**THE EAST ALABAMA
HEALTHCARE AUTHORITY:**

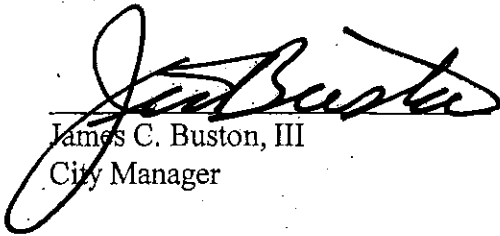

Laura Grill
President


Samuel A. Price, Jr.
Vice President Finance


Roben H. Nutter
General Counsel

CITY OF AUBURN:


Bill Ham
Mayor


James C. Buston, III
City Manager

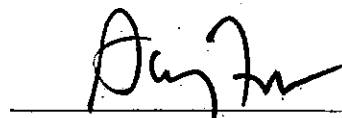
GOVERNMENTS:

LEE COUNTY:

Bill English
Probate Judge

Roger Rendleman
County Administrator

CITY OF OPELIKA:


Gary Fuller
Mayor


R. G. Shuman
City Clerk 10-17-18

RESOLUTION NO. 277-18

Memorandum of Understanding EAHCA and AU - Mobile Health Clinic.**RESOLUTION NO. _____****RESOLUTION APPROVING MEMORANDUM OF UNDERSTANDING BY AND
AMONG THE CITY OF OPELIKA, EAST ALABAMA HEALTH CARE AUTHORITY
AND AUBURN UNIVERSITY FOR MOBILE HEALTH CLINIC**

WHEREAS, mobile health clinics are increasing in use nationwide; and

WHEREAS, mobile health clinics typically deliver a variety of services including primary, preventive and specialty care; and

WHEREAS, mobile health clinics are staffed by community health workers and health educators and sometimes by physicians and nurses; and

WHEREAS, mobile health clinics provide an important safety net for disease prevention and management in urban communities with poor health status and high emergency department usage; and

WHEREAS, mobile health clinics represent a paradigm shift in healthcare delivery to bring care to underserved communities rather than waiting for patients to seek care; and

WHEREAS, mobile health clinics aim to eliminate financial and logistical barriers as well as barriers related to community members' lack of trust in healthcare providers; and

WHEREAS, the mission of these clinics is aligned with federal, state and local efforts to improve access to medical care and reduce disparities; and

WHEREAS, the City of Opelika (the "City") owns a forty-foot Bluebird bus (hereinafter

called the “Bus”); and

WHEREAS, the City proposes to redesign, retrofit and modify the Bus to serve as a mobile health clinic; and

WHEREAS, the City proposes to use charitable donations to fund the costs of redesigning, retrofitting, modifying and equipping the Bus; and

WHEREAS, East Alabama Health Care Authority (the “Hospital”) owns and operates a regional hospital and multiple clinic facilities throughout the Auburn-Opelika Metropolitan Area; and

WHEREAS, Auburn University (the “University”) has a nursing school and other health science-related programs that are involved in the clinical education of students; and

WHEREAS, the Carver and Jeter neighborhoods of Opelika are medically underserved areas with a lack of access to primary care services; and

WHEREAS, the City, the Hospital and the University desire to provide mobile health care services to the Carver and Jeter neighborhoods of Opelika; and

WHEREAS, a proposed Memorandum of Understanding by and among the City, the Hospital and the University (the “MOU”) 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 MOU.

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

1. That the proposed MOU to be entered into by and among the City, the Hospital

and the University, 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 MOU.

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

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 MOU.

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

ADOPTED AND APPROVED this the _____ day of _____, 2018.

 PRESIDENT OF THE CITY COUNCIL
 OF THE CITY OF OPELIKA

ATTEST:

CITY CLERK

**MEMORANDUM OF UNDERSTANDING BY AND AMONG
THE CITY OF OPELIKA, ALABAMA, THE EAST ALABAMA HEALTH
CARE AUTHORITY AND AUBURN UNIVERSITY**

THIS MEMORANDUM OF UNDERSTANDING is made and entered into this the _____ day of _____, 2018, by and among the City of Opelika, Alabama, a municipal corporation under the laws of the State of Alabama (herein called the “City”), The East Alabama Health Care Authority, d/b/a East Alabama Medical Center, a health care authority organized under the laws of the State of Alabama (herein called the “Hospital”) and Auburn University, a public corporation and instrumentality of the State of Alabama (herein called the “University”).

RECITALS

WHEREAS, mobile health clinics are increasing in use nationwide; and

WHEREAS, mobile health clinics typically deliver a variety of services including primary, preventative and specialty care; and

WHEREAS, mobile health clinics are staffed by community health workers and health educators and sometimes by physicians and nurses; and

WHEREAS, mobile health clinics provide an important safety net for disease prevention and management in urban communities with poor health status and high emergency department usage; and

WHEREAS, mobile health clinics represent a paradigm shift in healthcare delivery to bring care to underserved communities rather than waiting for patients to seek care; and

WHEREAS, mobile health clinics aim to eliminate financial and logistical barriers as well as barriers related to community members’ lack of trust in healthcare providers; and

WHEREAS, the mission of these clinics is aligned with federal, state and local efforts to improve access to medical care and reduce disparities; and

WHEREAS, the City owns a forty-foot Bluebird Bus (herein called the “Bus”); and

WHEREAS, the Hospital owns and operates a regional hospital and multiple clinic facilities throughout the Auburn-Opelika metropolitan area; and

WHEREAS, the University has a nursing school and other health-science related programs that are involved in the clinical education of students; and

WHEREAS, the Carver and Jeter neighborhoods of Opelika are medically underserved areas with a lack of access to primary care services; and

WHEREAS, the City, the Hospital and the University desire to provide mobile healthcare services to the Carver and Jeter neighborhoods of Opelika.

NOW, THEREFORE, in contemplation of the mutually beneficial relationships to be established and in consideration of the mutual promises and covenants contained herein, the sufficiency is hereby agreed to and accepted, the Parties agree as follows:

Section 1. **Recitals.** The foregoing recitals are an effective and operative part of this Agreement.

Section 2. **Purpose.** The purpose of this MOU is to encourage cooperation and resource sharing among the Parties. The goal of the MOU is to use the strengths and expertise of the Parties to deliver quality health care service and enhance the health of the residents of the Carver and Jeter neighborhoods of Opelika.

Section 3. **Agreements and Obligations of the City.**

(a) **Modification of Bus.** The City, through fundraising activities, will redesign, retrofit and modify the Bus to serve as a mobile medical clinic. The Bus will contain an interview or waiting room, one exam room, a lavatory area with a sink, a bathroom or changing room and a separate room where records are kept. The City will equip the Bus with the following equipment and medical devices: Wall mounted AED (automated external defibrillator), diagnostic (blood pressure monitor, thermometer, pulse oximeter, etc.), EKG equipment, scales, eye charts, otoscope, ophthalmoscope, glucometer,

fluorescein eye lamp, centrifuge, computers, printers, blood draw seating, exam room table with gyn ability, colposcope, office and filing space, waiting room furnishings, cabinetry and storage, adequate electrical outlets for, janitorial equipment, laboratory diagnostic equipment, refrigerator freezer, procedure tables, specialized lighting, water filtration system, hazardous waste disposal, wheelchair lift, oxygen, suction and other essential equipment to meet regulatory standards and/or any other equipment deemed necessary to provide proper medical services as defined by this Understanding.

The estimated cost of all modifications is \$200,000. The City proposes to use charitable contributions to fund the costs of redesigning, retrofitting, modifying and equipping the bus. The City agrees to initiate fundraising activities requesting donations from local businesses, organizations and individuals. This MOU is expressly conditioned upon the availability of donated funds. The City's obligation for performance of this Contract is contingent upon the availability of donated funds from which payment can be made to fund the cost of all modifications. No liability on the part of the City, the Hospital or the University shall arise until funds are made available to completely redesign, retrofit, modify and equip the bus.

(b) Lease of Bus. The Bus owned by the City to be utilized by the Hospital in providing mobile medical clinic services shall be leased by the City to the Hospital for the duration of this Agreement. The rent shall be \$1.00 per year.

(c) Maintenance of Bus. The City shall be responsible for maintaining the Bus in good working order and repair and shall conduct periodic, corrective and preventative maintenance of the Bus. In conjunction with the repair and maintenance of said Bus, the City shall adhere to all federal and state laws.

(d) Insurance. The City shall provide and maintain property damage coverage for the Bus for the duration of this Agreement. The City shall, at its expense, pay any amounts not covered by insurance to repair and replace the Bus. The City shall obtain and maintain insurance coverage of the types and amounts described in Section 8.

(e) Fuel. The City shall provide all fuel required to operate the Bus for the duration of this Agreement.

(f) Driver. The City shall provide a licensed CDL driver to operate the Bus. The City employee who operates the Bus and performs safety-sensitive functions are subject to the City's Rules and Regulations.

Section 4. **Agreements and Obligations of the Hospital.**

(a) Services. Utilizing the Bus, the Hospital shall provide mobile medical clinic services (the "Services") in the Carver and Jeter neighborhoods of Opelika. The routes and stops of the mobile health clinic will be established jointly by Hospital and City personnel. The clinic will typically operate 8 hours per week, subject to designated holidays.

(b) Personnel. The Bus will be staffed by the Hospital with, an intake worker or clerk, and a registered nurse, physician's assistant or nurse practitioner, each of whom shall be trained in accordance with the minimum standards set forth by the State of Alabama.

(c) Management. Management of the mobile medical services will be handled by the Hospital's Nursing Department. Day-to-day operations will be supervised by Jane Fullum.

(d) Medical Supplies. The Hospital will stock the Bus with medical supplies appropriate for primary health care services.

(e) Insurance. The Hospital shall obtain and maintain insurance coverage of the types and amounts described in Section 8.

Section 5. **Agreements and Obligations of the University.**

(a) Student Interns. The Bus shall be staffed by nursing school and other health-science related students assigned by the University.

(b) Supervision. The student interns shall be supervised by Eva Jean Dubois.

(c) Insurance. The University shall obtain and maintain insurance coverage of the types and amounts described in Section 8.

Section 7. **Term.** This Agreement shall be effective for a term of three (3) years beginning on _____, 20__. Any party may terminate this agreement with at least 90 (90) days' prior written notice of termination, with or without cause, at any time during the term of the Agreement.

Section 8. **Insurance.**

(a) City's Insurance Obligations. The City shall obtain and maintain the following types and amounts of insurance coverage:

- (1) Workers compensation coverage for the City's employed personnel as required under state law. Workers compensation coverage must provide statutory limits.
- (2) Property insurance for the Bus owned by the City and leased to the Hospital.
- (3) Comprehensive general liability insurance with limits of \$1,000,000 per occurrence/\$2,000,000 aggregate, bodily injury and property damage combined.

(b) The Hospital's insurance obligations. The Hospital shall obtain and maintain the following types and amounts of insurance coverage:

- (1) Workers compensation coverage for the Hospital's employed personnel as required under state law. Workers compensation coverage must provide statutory limits.

(2) Comprehensive automotive liability insurance with a combined single limit of not less than \$1,000,000. Coverage to include the Bus leased by the City to the Hospital.

(3) Professional liability insurance. Professional and comprehensive general and liability coverage covering the Hospital and its employed personnel, in the minimum amount of \$1,000,000 per occurrence and \$1,000,000 annual aggregate during the term of this Agreement.

(4) Comprehensive general liability insurance with limits of \$1,000,000 per occurrence/\$2,000,000 aggregate, bodily injury and property damage combined.

(5) Any insurance requirement herein may be satisfied by the Hospital's program of self-insurance.

(c) The University's insurance obligations. The University shall obtain and maintain the following types and amounts of insurance coverage:

(1) Workers compensation coverage for the University's employed personnel as required under state law. Workers compensation coverage must provide statutory limits.

(2) Comprehensive general liability insurance with limits of \$1,000,000 per occurrence/\$2,000,000 aggregate, bodily injury and property damage combined.

Section 9. **Indemnity.**

(a) City. The City agrees to defend, indemnify and hold harmless the Hospital and the University for any and all liability claims or liability costs and expenses which the Hospital or the University may incur where said liability is incurred as a result of the

negligence or malpractice of the City or its employees. The City shall not be liable for malfeasance by University.

(b) Hospital. The Hospital agrees to defend, indemnify and hold harmless the City and the University for any and all liability claims or liability costs and expenses which the City or the University may incur where said liability is incurred as a result of the negligence or malpractice of the Hospital or its employees. The Hospital shall not be liable for malfeasance by University.

The provisions of this Section shall survive the expiration or termination of this Agreement.

Section 10. **Medical Records.** The Hospital agrees to complete all required charting in the medical record in a prompt and timely manner and in accordance with any applicable policies and procedures of the Hospital. The ownership and right of control of all reports, records and supporting documents prepared in connection with the services contemplated herein shall vest exclusively with the Hospital. The Hospital agrees to maintain the security and privacy of all Protected Health Information in a manner consistent with Alabama and federal laws and regulations, including, but not limited to the HIPAA Privacy Regulations and the Security Regulations (45 C.F.R., Parts 160, 162 and 164).

Section 11. **Non-Discrimination.** The Parties agree to comply with all federal, state and local rules, regulations, executive orders and laws forbidding unlawful discrimination.

Section 12. **Relationship of Parties.** This MOU shall not be construed to create a relationship of a joint venture, partnership, brokers, employees, servants or agents between the Parties. The Parties to this MOU are acting as independent contractors representing their own respective independent institution, instrumentality or agency. With respect to any employee

compensation for services provided in connection with this MOU, each Party will be responsible for paying their own employees (including faculty), and properly withholding their own employees' taxes and other costs and fees as may be required.

Section 13. **Force Majeure.** A party shall not be liable for any failure of or delay in the performance of this MOU for the period that such failure or delay is due to causes beyond its reasonable control, including, but not limited to, acts of God, war, terrorist attacks, strikes, labor disputes, changes in law, government orders or any other Force Majeure event. Where a Force Majeure event gives rise to a failure or delay in the party performing its obligations under this MOU, those obligations will be suspended for the duration of the Force Majeure event. A party who becomes aware of a Force Majeure event which gives rise to or is likely to give rise to, any failure or delay in performing its obligations under this MOU will: (a) forthwith notify the other parties; and (b) inform the other parties of the period for which it is estimated that such failure or delay will continue. The affected parties will take reasonable steps to mitigate the effects of the Force Majeure event.

Section 14. **Further assurances.** The Parties agree to execute and deliver any additional papers, documents and other assurances, and take all acts that are reasonably necessary to carry out the intent of this Agreement.

Section 15. **Agreement Governed Alabama Law.** It is the intentions of the Parties hereto that this Agreement shall in all respects be governed by the laws of the State of Alabama.

Section 16. **Severability.** In the event that any provision hereof shall be held invalid or unenforceable by any court of competent jurisdiction, such holdings shall not invalidate or render unenforceable any other provisions hereof.

Section 17. **Notices.** All notices, requests and other communications to be given or made hereunder shall be deemed sufficient and properly given or made, if in writing and sent by United States registered or certified mail, postage prepaid, addressed, as follows:

If to the City:	Gary Fuller, Mayor Opelika City Hall 204 South 7 th Street P.O. Box 390 Opelika, AL 36803
If to the Hospital:	Laura Grill President 2000 Pepperell Parkway Opelika, AL 36801
If to the University:	Steven Leath President 107 Samford Hall Auburn University, AL 36849

The City, Hospital and University may, by like notice, designate any further or different addresses to which subsequent notices shall be sent. Any notice hereunder signed on behalf of the notifying party by a duly authorized attorney-at-law shall be valid and effective to the same extent as if signed by such party or on its behalf by a duly authorized officer or employee.

IN WITNESS WHEREOF, the City, Hospital and University have caused this Agreement to be executed in their respective corporate names and behalves by their duly authorized officers, have caused their corporate seals to be hereunto affixed and have caused this Agreement to be attested by their duly authorized officers, all in three counterparts, each of which shall be deemed an original, and the City, Hospital and University have caused this Agreement to be dated as of _____, 2018.

THE CITY OF OPELIKA, ALABAMA,
A MUNICIPAL CORPORATION

By: _____
ITS MAYOR

ATTEST:

CITY CLERK

THE EAST ALABAMA
HEALTH CARE AUTHORITY

By: _____
LAURA D. Grill,
ITS PRESIDENT

AUBURN UNIVERSITY

By: _____
ITS PRESIDENT

ATTEST:

SECRETARY OF ITS
BOARD OF TRUSTEES

RESOLUTION NO. 278-18

Asset purchase agreement with Point Broadband.

RESOLUTION NO. _____

**RESOLUTION APPROVING ASSET PURCHASE AGREEMENT BY AND BETWEEN
THE CITY OF OPELIKA AND POINT BROADBAND, LLC; AUTHORIZING THE
EXEUTUION OF ALL TRANSACTION DOCUMENTS; DESIGNATING THE
PURCHASED ASSETS AS SURPLUS PROPERTY AND AUTHORIZING THE MAYOR
TO DISPOSE OF SUCH SURPLUS PROPERTY ACCORDING TO THE TERMS OF
THE ASSET PURCHASE AGREEMENT**

WHEREAS, the City of Opelika, Alabama (the “City”) owns and operates a municipal fiber-to-the-premises network useful for smart grid applications and capable of providing cable television, high speed Internet and telecommunication services (the “Fiber Network”); and

WHEREAS, the City owns certain assets, described more fully as the “Purchased Assets” in the Asset Purchase Agreement attached as Exhibit “A” (the “Property”) which assets make up or are related to the Fiber Network; and

WHEREAS, the City desires to sell and Point Broadband, LLC, (“Point Broadband”), a Georgia limited liability company, desires to purchase substantially all of the assets of the Fiber Network (the “Purchased Assets”) upon the terms and conditions contained in the Asset Purchase Agreement attached hereto; and

WHEREAS, a proposed Asset Purchase Agreement (the “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.

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

1. That the proposed Asset Purchase Agreement (the “Agreement”) to be entered into between the City and Point Broadband, a copy of which is attached hereto and marked “Exhibit “A”, be and the same is 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 Asset Purchase Agreement in the name and on behalf of the City, and the City Clerk is hereby authorized to attest the same and affix the seal of the City thereto.

3. That the Mayor is hereby authorized to execute all Transaction Documents (except the Franchise Agreement and the Headend Lease Agreement, which shall be approved by separate ordinances) and any other documents necessary and convenient to accomplish the transaction described therein. To the extent any action relating to the transaction requires further approval or ratification, such action and said documents are hereby expressly approved and ratified. Transaction Documents shall mean the Asset Purchase Agreement, Bill of Sale, Assignment and Assumption Agreement, Intellectual Property Agreement, Assignment and Assumption of Real Estate Leases, the Transition Service Agreement, the OPS Essential Services Agreement, Escrow Agreement, Headend Lease Agreement, Franchise Agreement, Pole Attachment Agreement, OPS Managed Services Agreement, OPS Electric Company License Agreement, Closing Statement and the other agreements, instruments and documents required to be delivered at the Closing as set forth in the Asset Purchase Agreement.

4. That the property as described by the term “Purchased Assets” in the Asset Purchase Agreement is hereby declared to be surplus municipal property which is no longer

needed for public or municipal purposes, and the Mayor is hereby authorized to dispose of such surplus property by selling said surplus property to Point Broadband according to the terms of the Asset Purchase Agreement and related Transaction Documents.

5. That the City Council hereby authorizes the award of the OPS Managed Services Agreement (Exhibit I) to Point Broadband without competitive bids pursuant to Ala. Code, §41-16-51(15).

6. That the Mayor, City Clerk and any 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, permits, contracts, agreements, disclosures 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 Asset Purchase Agreement.

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

ADOPTED AND APPROVED this the _____ day of _____, 2018.

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

ATTEST:

CITY CLERK

CERTIFICATE

I, the undersigned qualified and acting Clerk of the City of Opelika, do certify and foregoing is a true and correct copy of the Resolution passed and adopted by the City Council of the City of Opelika, at a regular meeting of such Council held on the ____ day of _____, 2018, and such Resolution is on file in the City Clerk's office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City on this the ____ day of _____, 2018.

CITY CLERK

RESOLUTION NO. 278-18

RESOLUTION APPROVING ASSET PURCHASE AGREEMENT BY AND BETWEEN THE CITY OF OPELIKA AND POINT BROADBAND, LLC; AUTHORIZING THE EXECTUION OF ALL TRANSACTION DOCUMENTS; DESIGNATING THE PURCHASED ASSETS AS SURPLUS PROPERTY AND AUTHORIZING THE MAYOR TO DISPOSE OF SUCH SURPLUS PROPERTY ACCORDING TO THE TERMS OF THE ASSET PURCHASE AGREEMENT

WHEREAS, the City of Opelika, Alabama (the “City”) owns and operates a municipal fiber-to-the-premises network useful for smart grid applications and capable of providing cable television, high speed Internet and telecommunication services (the “Fiber Network”); and

WHEREAS, the City owns certain assets, described more fully as the “Purchased Assets” in the Asset Purchase Agreement attached as Exhibit “A” (the “Property”) which assets make up or are related to the Fiber Network; and

WHEREAS, the City desires to sell and Point Broadband, LLC, (“Point Broadband”), a Georgia limited liability company, desires to purchase substantially all of the assets of the Fiber Network (the “Purchased Assets”) upon the terms and conditions contained in the Asset Purchase Agreement attached hereto; and

WHEREAS, a proposed Asset Purchase Agreement (the “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.

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

1. That the proposed Asset Purchase Agreement (the “Agreement”) to be entered into between the City and Point Broadband, a copy of which is attached hereto and marked “Exhibit “A”, be and the same is 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 Asset Purchase Agreement in the name and on behalf of the City, and the City Clerk is hereby authorized to attest the same and affix the seal of the City thereto.

3. That the Mayor is hereby authorized to execute all Transaction Documents (except the Franchise Agreement and the Headend Lease Agreement, which shall be approved by separate ordinances) and any other documents necessary and convenient to accomplish the transaction described therein. To the extent any action relating to the transaction requires further approval or ratification, such action and said documents are hereby expressly approved and ratified. Transaction Documents shall mean the Asset Purchase Agreement, Bill of Sale, Assignment and Assumption Agreement, Intellectual Property Agreement, Assignment and Assumption of Real Estate Leases, the Transition Service Agreement, the OPS Essential Services Agreement, Escrow Agreement, Headend Lease Agreement, Franchise Agreement, Pole Attachment Agreement, OPS Managed Services Agreement, OPS Electric Company License Agreement, Closing Statement and the other agreements, instruments and documents required to be delivered at the Closing as set forth in the Asset Purchase Agreement.

4. That the property as described by the term "Purchased Assets" in the Asset Purchase Agreement is hereby declared to be surplus municipal property which is no longer needed for public or municipal purposes, and the Mayor is hereby authorized to dispose of such surplus property by selling said surplus property to Point Broadband according to the terms of the Asset Purchase Agreement and related Transaction Documents.

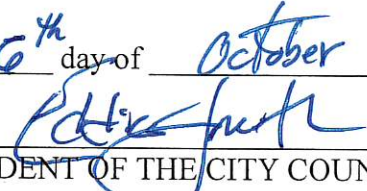
5. That the City Council hereby authorizes the award of the OPS Managed Services

Agreement (Exhibit I) to Point Broadband without competitive bids pursuant to Ala. Code, §41-16-51(15).

6. That the Mayor, City Clerk and any 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, permits, contracts, agreements, disclosures 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 Asset Purchase Agreement.

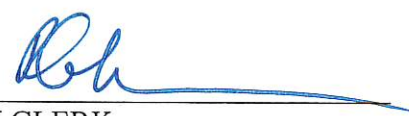
7. That this Resolution shall take effect upon its passage and adoption by the City Council.

ADOPTED AND APPROVED this the 16th day of October, 2018.



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

ATTEST:

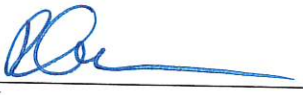


CITY CLERK

CERTIFICATE

I, the undersigned qualified and acting Clerk of the City of Opelika, do certify and foregoing is a true and correct copy of the Resolution passed and adopted by the City Council of the City of Opelika, at a regular meeting of such Council held on the 16th day of October, 2018, and such Resolution is on file in the City Clerk's office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City on this the 17th day of October, 2018.



CITY CLERK

ASSET PURCHASE AGREEMENT

between

THE CITY OF OPELIKA D/B/A OPELIKA POWER SERVICES,

and

**POINT BROADBAND, LLC,
or its affiliated designee and assignee**

dated as of

October 16, 2018

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ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Agreement"), dated as of October 16, 2018, is entered into between THE CITY OF OPELIKA d/b/a OPELIKA POWER SERVICES, an Alabama municipal corporation's Business (the "Seller") and POINT BROADBAND, LLC, a Georgia limited liability company, or its affiliated designee and assignee ("Buyer").

RECITALS

WHEREAS, the Seller is in the business of providing fiber-optic voice and information service (the "Business"); and

WHEREAS, Seller wishes to sell and assign to Buyer, and Buyer wishes to purchase and assume from Seller, the rights and obligations of Seller to the Purchased Assets and the Assumed Liabilities of the Business, subject to the terms and conditions set forth herein.

WHEREAS, all capitalized terms used in this Agreement have the meanings given to them in the attached **Exhibit A**.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I PURCHASE AND SALE

Section 1.01 Purchase and Sale of Assets. Subject to the terms and conditions set forth herein, at the Closing, the Seller shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase, acquire and accept from the Seller, free and clear of any Encumbrances other than Permitted Encumbrances, all of the Seller's right, title and interest in, to and under all of the assets, properties and rights of every kind and nature, whether real, personal or mixed, tangible or intangible (including goodwill), wherever located and whether now existing or hereafter acquired until the Closing, which relate to, or are used or held for use in connection with, the Business, except the Excluded Assets (collectively, the "Purchased Assets"), including, without limitation, the following assets:

(a) All the tangible assets, of any type, of the Business including those as shown on *Section 1.01(a)* of the Disclosure Schedules, (the "Balance Sheet Assets");

(b) All Licenses and approvals, necessary to operate the Business as it is currently being operated, but not including the Excluded Assets;

(c) An amount in cash equal to the amount of all advance payments to, or funds of third parties on deposit with, the Seller as of the Closing Date and primarily related to the Business, including advance payments and deposits by Subscribers and other Customers served by the Business for Equipment and services ("Restricted Cash");

(d) All accounts or notes receivable held by the Seller, and any security, claim, remedy or other right related to any of the foregoing related to the Business and solely arising from the Business (collectively, the "Accounts Receivable");

(e) All inventory related to the Business (including fiber, cable, switches, routers, and cable boxes or other tangible personal property) ("Inventory");

(f) All Contracts, including Intellectual Property Agreements, set forth on *Section 1.01(f)* of the Disclosure Schedules, (the "Assigned Contracts");

(g) All Intellectual Property Assets of the Business;

(h) All furniture, fixtures, Equipment, machinery, tools, vehicles, office equipment, supplies, computers, telephones and other tangible personal property related to the Business included in the Balance Sheet Assets (the "Tangible Personal Property");

(i) All Permits, including Environmental Permits, to the extent transferrable, which are held by the Seller and required for the conduct of the Business as currently conducted or for the ownership and use of the Purchased Assets, including, without limitation, those listed on *Section 3.08* of the Disclosure Schedules and except as specifically disclosed in *Section 1.02*;

(j) All rights to any Actions of any nature available to or being pursued by the Seller to the extent related to the Business, the Purchased Assets or the Assumed Liabilities, whether arising by way of counterclaim or otherwise;

(k) All rights to install, maintain and service fiber as necessary to conduct the Business;

(l) All prepaid expenses, credits, advance payments, claims, security, refunds, rights of recovery, rights of set-off, rights of recoupment, deposits, charges, sums and fees (including any such item relating to the payment of Taxes), other than Restricted Cash;

(m) All of the Seller's rights under warranties, indemnities and all similar rights against third parties to the extent related to any Purchased Assets;

(n) Originals, or where not available, copies, of all books and records, including, but not limited to, books of account, ledgers and general, financial and accounting records, machinery and equipment maintenance files, customer lists, correspondence related to any grant funds received by the Seller from any Governmental Authority agency (including all correspondence with any Governmental Authority of any type related to the Business), information related to customer histories, price lists, supplier lists, production data, customer complaints and inquiry files, research and development files, records and data, sales material and records (including pricing history, total sales, terms and conditions of sale, sales and pricing policies and practices), strategic plans, internal financial statements, marketing and promotional surveys, material and research and files relating to the Intellectual Property Assets and the Intellectual Property Agreements ("Books and Records");

(o) An amount of cash equal to Two Hundred Fifty-Thousand and No/100 Dollars (\$250,000.00); and

(p) All goodwill and the going concern value of the Business.

Section 1.02 Excluded Assets. Notwithstanding the foregoing, the Purchased Assets shall not include the following assets (collectively, the "Excluded Assets");

- (a) All Contracts of Seller except Assigned Contracts (the "Excluded Contracts");
- (b) Cash and cash equivalents in excess of the cash which is included in the Purchased Assets as set forth in Section 1.01(o).
- (c) The corporate seals, organizational documents, minute books, Tax Returns, books of account or other records having to do with the corporate organization of the Seller;
- (d) All Benefit Plans and assets attributable thereto;
- (e) Any Actions against present or former officers or directors of the Seller or Employees of the Business for or relating to acts or omissions prior to the Closing;
- (f) The OPS Essential Services, its business, operations, books, records, rights and assets;
- (g) All Real Property of the Seller on which OPS Essential Services conducts its business (whether owned, leased or in which Seller holds the right to use the real property such as a right of way or license agreement) including, without limitation, real property on which OPS Essential Services and the Business jointly use such property; provided Seller shall grant Buyer the non-exclusive right to use a portion of such real property pursuant to a license agreement on the economic terms set forth on **Exhibit G** attached hereto (the "OPS Electric Company License");
- (h) Fiber networks retained by Seller as set forth on *Section 1.02(h)* of the Disclosure Schedules; and
- (i) Seller's authority to provide resale service in accordance with section 63.18(e)(2) of the Commission's rules, 47 C.F.R. § 63.18(e)(2) under the name Opelika Power Services, City of Opelika, AL, FCC File No.: ITC-214-20121211-00318.

Section 1.03 Assumption of Liabilities. Subject to the terms and conditions set forth herein, the Buyer shall assume and agrees to pay, perform and discharge the following Liabilities of the Seller related to the Business or the Purchased Assets (collectively, the "Assumed Liabilities"), and no other Liabilities except as follows:

- (a) All Liabilities related to the Business or the Purchased Assets that are incurred on or after the Closing Date;
- (b) All trade accounts payable of the Seller to third parties in connection with the Business that arose in the Ordinary Course of Business consistent with past practice;
- (c) All Liabilities in respect of the Assigned Contracts for which Required Consents are required;
- (d) All Liabilities in respect of the Assigned Contracts for which Required Consents were not required, but only to the extent that such Liabilities thereunder do not relate to any failure to perform, improper performance, breach of warranty or other breach, default or violation by the Seller on or prior to the Closing, unless set forth on *Section 1.03(d)* of the Disclosure Schedules;

(e) Those Liabilities of the Seller set forth on *Section 1.03(e)* of the Disclosure Schedules.

Section 1.04 Excluded Liabilities. Buyer shall not assume and shall not be responsible to pay, perform or discharge any Liabilities of the Seller or any of its Affiliates of any kind or nature whatsoever other than the Assumed Liabilities (the "Excluded Liabilities"). The Seller shall pay and satisfy in due course all Excluded Liabilities which it is obligated to pay and satisfy. Without limiting the generality of the foregoing, the Excluded Liabilities shall include, but not be limited to, the following:

(a) Any Liabilities of the Seller arising or incurred in connection with the negotiation, preparation, investigation and performance of this Agreement, the other Transaction Documents and the transactions contemplated hereby and thereby, including, without limitation, fees and expenses of counsel, accountants, consultants, advisers and others;

(b) Any Liability for (i) Taxes of the Seller (or Affiliate of the Seller) or relating to the Business, the Purchased Assets or the Assumed Liabilities for any Pre-Closing Tax Period; (ii) Taxes that arise out of the consummation of the transactions contemplated; or (iii) other Taxes of the Seller (or Affiliate of the Seller) of any kind or description (including any Liability for Taxes of the Seller or Affiliate of the Seller) that becomes a Liability of Buyer under any common law doctrine of *de facto* merger or transferee or successor liability or otherwise by operation of contract or Law);

(c) Any Liabilities relating to or arising out of the OPS Essential Services;

(d) Any Liabilities relating to or arising out of the Excluded Assets;

(e) Any Liabilities in respect of any pending Action arising out of, relating to or otherwise in respect of the operation of the Business or the Purchased Assets to the extent such Action relates to Seller's operation of the Business on or prior to the Closing Date, except for the Liabilities assumed by Buyer under Section 1.03;

(f) Any Liabilities of the Seller arising under or in connection with any Benefit Plan;

(g) Liabilities of the Seller occurring prior to the Closing Date owed to any present or former employees, officers, managers, directors, retirees, independent contractors or consultants of the Seller, including, without limitation, any Liabilities associated with any claims for wages or other benefits, bonuses, accrued vacation, workers' compensation, guaranteed payments, severance, retention, termination, or other payments;

(h) Any Liabilities of Seller to indemnify, reimburse or advance amounts to any present or former officer, manager, director and Employee, agent or grantee of the Seller (including with respect to any breach of fiduciary obligations by same), except for indemnification by Buyer of same pursuant to Section 6.03 as the Seller Indemnitees;

(i) Any Liabilities associated with debt, loans or credit facilities of the Seller or the Business owing to financial institutions, except for the Equipment Leases; and

Section 1.05 Purchase Price.

(a) The consideration for the Purchased Assets shall be: (a) the assumption by the Buyer at the Closing of the Assumed Liabilities, and (b) the sum of Fourteen Million One Hundred Seventy-Five Thousand and no/100 Dollars (\$14,175,000.00) (the "Base Purchase Price"), plus the Estimated

Working Capital Adjustment (which number shall be subtracted if it is a negative number) as determined in accordance with Section 1.06 less the initial Pole Attachment Fees (the "Base Purchase Price," as so adjusted).

(b) In addition to the Base Purchase Price, beginning on the twenty-fifth (25th) month after the Closing Date and continuing for one hundred twenty (120) consecutive months, Buyer shall pay to Seller monthly, in one month arrears, an amount equal to Three and One Half Percent (3.5%) of the Applicable Gross Revenue, if any, less any amount due to Buyer from Seller for services rendered under the Network Monitoring Agreement to Seller ("Revenue Share"). Collectively, the Base Purchase Price and the Revenue Share are referred to as the "Purchase Price."

(c) At the Closing, Buyer shall pay the Purchase Price to Seller as follows: (a) the Debt Payoff Amount which shall be paid by Buyer to the Creditors set forth on the Closing Date Indebtedness Statement in cash by wire transfer of immediately available funds in accordance with the wire transfer instructions delivered to Buyer prior to the Closing; (b) One Million Four Hundred Seventeen Thousand Five Hundred and no/100 Dollars (\$1,417,500.00) of the Purchase Price (the "Escrow Amount") will be delivered to the Escrow Agent, on behalf of and at the direction of Seller, in accordance with the "Escrow Agreement" attached hereto as **Exhibit J** for a period of twelve (12) months to be released as set forth therein; and (c) the balance of the Purchase Price will be paid by the Buyer to the Seller, by wire transfer of immediately available funds in accordance with written instructions delivered by the Seller prior to Closing.

(d) The Parties agree that Accounts Receivable and all trade accounts payable of the Seller to third parties in connection with the Business that arose from the Ordinary Course of Business shall continue to accrue as an obligation of the Seller until October 31, 2018, after which, Buyer shall be responsible for such obligations; provided, however, that the revenue generated by the Seller shall accrue for the benefit of Buyer beginning October 31, 2018.

Section 1.06 Purchase Price Adjustment.

(a) At least ten (10) days prior to the Closing Date, Seller shall deliver to Buyer a good faith estimate of what the Business's Net Working Capital will be as of the Adjustment Time on the Closing Date (the "Seller's Estimated Working Capital"), together with supporting documentation for such estimate and any additional information relating thereto reasonably requested by Buyer. The Seller's Estimated Working Capital shall be prepared in good faith in a manner consistent with the calculation of the Average Working Capital and shall be certified by an authorized officer of Seller. Buyer and its accountants and advisors shall be given full access to all of Seller's books and records with respect to the Business for purposes of evaluating the accuracy and completeness of the Seller's Estimated Working Capital. If Buyer believes, in good faith, that the Seller's Estimated Working Capital is in error, Buyer may challenge the amount of the Seller's Estimated Working Capital within five (5) days following its receipt of the Seller's Estimated Working Capital by delivering a written notice of disagreement to Seller, which notice shall include an itemization of Buyer's objections and an explanation of such objections. If Buyer does not timely deliver a notice of disagreement to Seller, the amount of the Purchase Price to be paid at the Closing shall be based on the Seller's Estimated Working Capital as delivered to Buyer. If Buyer timely delivers a written notice of disagreement to Seller, Buyer and Seller shall use their good faith efforts to resolve any disputes with respect to the Seller's Estimated Working Capital prior to the Closing Date, and the amount of Closing Consideration to be paid at the Closing shall be based on the Estimated Working Capital (as defined below) as mutually agreed to in writing by Buyer and Seller. If Buyer timely delivers a notice of disagreement to Seller but Buyer and Seller are unable to resolve their dispute regarding the Seller's Estimated Working Capital within four (4) days of the delivery by Buyer to Seller of such notice of disagreement, then the Purchase Price to be paid at the Closing shall be based on the Seller's Estimated

Working Capital. "Estimated Working Capital" means the estimate of what Net Working Capital will be at the Adjustment Time on the Closing Date as determined by the Parties pursuant to this Section 1.06(a).

(b) "Average Working Capital" means Negative Four Hundred Seventy-Seven Thousand Eight Hundred Fifteen and No/Dollars (-\$477,815.00) in Net Working Capital calculated in the manner and methodology agreed to by Buyer and Seller as set forth on Section 1.06(b) of the Disclosure Schedules. "Target Working Capital Range" means a range between and including (i) an amount equal to the Average Working Capital less Seventy-One Thousand Six Hundred Seventy-Two and No/Dollars (\$71,672.00) (the "Working Capital Floor") and (ii) an amount equal to the Average Working Capital plus Seventy-One Thousand Six Hundred Seventy-Two and No/Dollars (\$71,672.00) (the "Working Capital Ceiling"). The "Estimated Working Capital Adjustment" shall be a dollar amount calculated as follows:

(i) If Estimated Working Capital is within the Target Working Capital Range, then the Estimated Working Capital Adjustment shall be zero; or

(ii) If Estimated Working Capital is less than the Working Capital Floor, then the Estimated Working Capital Adjustment shall be equal to (A) the amount of Estimated Working Capital calculated in accordance with Section 1.06(a) minus (B) the Working Capital Floor; or

(iii) If Estimated Working Capital is greater than the Working Capital Ceiling, then the Estimated Working Capital Adjustment shall be equal to (A) the amount of Estimated Working Capital calculated in accordance with Section 1.06(a) minus the Working Capital Ceiling.

(c) Within sixty (60) days following the Closing Date, Seller shall prepare and deliver to Buyer Seller's calculation of the actual Net Working Capital calculated in the manner and methodology agreed to by Buyer and Seller as set forth on Section 1.06(b) of the Disclosure Schedules as of the Adjustment Time on the Closing Date (the "Closing Working Capital") and a certificate, based on such statement, of Seller's calculation of the Closing Working Capital Adjustment (such statement of Net Working Capital and certificate, collectively, are referred to herein as, the "Closing Statement", a copy of which shall be attached hereto as **Exhibit B**). The Closing Statement shall be prepared consistently with the Average Working Capital and shall be certified by an authorized officer of Seller. Buyer shall have twenty (20) business days following its receipt of the Closing Statement (the "Review Period") to review the same. During the Review Period, Buyer and its accountants and advisors shall be given full access to all of Seller's books and records with respect to the Business for purposes of evaluating the accuracy and completeness of the Seller's calculation of Closing Working Capital. On or before the expiration of the Review Period, Buyer shall deliver to Seller a written statement accepting or objecting to the Closing Statement. If Buyer objects to the Closing Statement, such statement shall include an itemization of Buyer's objections and an explanation of the objections. If Buyer does not deliver such statement to Seller within the Review Period, Buyer shall be deemed to have accepted the Closing Statement.

(d) The "Closing Working Capital Adjustment" shall be a dollar amount calculated as follows

(i) If Closing Working Capital is within the Target Working Capital Range, then the Closing Working Capital Adjustment shall be zero, and any previously-made Estimated Working Capital Adjustment shall be reversed and, if applicable, refunded to the appropriate party (which amount will be paid directly by the parties without any deductions from the Escrow); or

(ii) If Closing Working Capital and Estimated Working Capital are both less than the Working Capital Floor, then the Closing Working Capital Adjustment shall be equal to (A) Closing Working Capital minus (B) Estimated Working Capital; or

(iii) If Closing Working Capital is less than the Working Capital Floor and Estimated Working Capital is within the Target Working Capital Range, then the Closing Working Capital Adjustment shall be equal to (A) Closing Working Capital minus (B) the Working Capital Floor; or

(iv) If Closing Working Capital is less than the Working Capital Floor and Estimated Working Capital is greater than the Working Capital Ceiling, then the Closing Working Capital Adjustment shall be equal to (A) Closing Working Capital minus (B) the Working Capital Floor minus (C) the Estimated Working Capital Adjustment; or

(v) If Closing Working Capital is greater than the Working Capital Ceiling and Estimated Working Capital is less than the Working Capital Floor, then the Closing Working Capital Adjustment shall be equal to (A) Closing Working Capital minus (B) the Working Capital Ceiling minus (C) the Estimated Working Capital Adjustment; or

(vi) If Closing Working Capital is greater than the Working Capital Ceiling and Estimated Working Capital is within the Target Working Capital Range, then the Closing Working Capital Adjustment shall be equal to (A) Closing Working Capital minus (B) the Working Capital Ceiling; or

(vii) If Closing Working Capital and Estimated Working Capital are both greater than the Working Capital Ceiling, then the Closing Working Capital Adjustment shall be equal to (A) Closing Working Capital minus (B) the Working Capital Ceiling minus (C) the Estimated Working Capital Adjustment.

(e) The Closing Working Capital Adjustment set forth on the Closing Statement, as accepted or deemed accepted under Section 1.06(c) or, if applicable, as determined in accordance with Section 1.06(f) below, shall constitute the "Final Closing Adjustment" for purposes of determining any adjustment to the Purchase Price and shall be binding and conclusive on the Parties and not subject to appeal.

(f) If Buyer objects to the Closing Statement within the Review Period, Buyer and Seller shall promptly and in good faith attempt to resolve such objections. Any such objections that cannot be resolved between Buyer and Seller within thirty (30) days following Seller's receipt of Buyer's statement of objections shall be resolved in accordance with this Section 1.06(f). Any such unresolved objections shall be submitted to Jackson & Thornton's Montgomery, Alabama offices (the "Accounting Referee") for review and resolution, with instructions to complete the same as promptly as practicable, but in any event within thirty (30) days of its engagement, and to make any calculations in accordance with the methodology specified above. Such Accounting Referee shall deliver a statement setting forth its own calculation of the Closing Working Capital Adjustment within thirty (30) days of the submission of the matter to such firm, which calculation, absent manifest error, shall be binding and conclusive on the Parties and not subject to appeal. The Accounting Referee will be directed to give to each of the Parties and their respective accountants and advisors access to all of the Accounting Referee's work papers for purposes of determining whether there is a manifest error. The determination of the Accounting Referee shall be accompanied by a certificate of the Accounting Referee that its determination was prepared in accordance with the methodology specified above with respect to such dispute. The fees and expenses (including any related indemnity obligation to the Accounting Referee) shall be borne one-half by Buyer and one-half by Seller.

(g) If the Final Closing Adjustment is a negative amount, Seller shall pay to Buyer an amount in cash equal to the Final Closing Adjustment. If the Final Closing Adjustment is a positive amount, then Buyer shall pay to Seller an amount in cash equal to the Final Closing Adjustment. Any payment

made under this Section 1.06(g) shall be made within fifteen (15) days of the final determination of the Final Closing Adjustment.

(h) Any payments made pursuant to this Section 1.06 shall be treated as an adjustment to the Purchase Price by the parties for Tax purposes, unless otherwise required by Law.

Section 1.07 Allocation of Purchase Price. Seller and Buyer agree that the Purchase Price and the Assumed Liabilities (plus other relevant items) shall be allocated among the Purchased Assets for all purposes (including Tax and financial accounting) as shown on Section 1.07 of the Disclosure Schedules, which shall be executed by the parties after the Closing as mutually agreed to by the parties hereto. The parties agree that \$480,000 of the Purchase Price is compensation from Buyer to Seller for the first thirty-six (36) months of pole attachment fees under the Pole Attachment Agreement.

Section 1.08 Withholding Tax. Buyer shall be entitled to deduct and withhold from the Purchase Price all taxes that Buyer may be required to deduct and withhold under any applicable tax law. All such withheld amounts shall be treated as delivered to Seller hereunder.

ARTICLE II **CLOSING**

Section 2.01 Closing. Upon the signing of this Agreement, the Parties acknowledge and agree to ensure that the consummation of the transactions contemplated by this Agreement (the "Closing") shall take place on or before November 8, 2018, unless otherwise agreed by the Parties (the "Closing Date"). The Closing shall take place at the offices of ITC Capital Partners, LLC in West Point, Georgia, or other designated location at 11:00 a.m. (EST) on the Closing Date. For purposes hereof (including the determination of Assumed Liabilities and Purchased Assets), the Closing shall be deemed effective at 11:59 p.m. (EST) on the Closing Date.

Section 2.02 Conditions to Obligations of All Parties. The obligations of each party to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment, at or prior to the Closing, of each of the following conditions:

(a) No Governmental Authority. No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any Governmental Order which is in effect and has the effect of making the transactions contemplated by this Agreement illegal, otherwise restraining or prohibiting consummation of such transactions or causing any of the transactions contemplated hereunder to be rescinded following completion thereof.

(b) Consents. The Seller shall have received all consents, authorizations, orders and approvals from the Governmental Authorities referred to in Section 3.03 and Buyer shall have received all consents, authorizations, orders and approvals from the Governmental Authorities referred to in Section 4.02, in each case, in form and substance reasonably satisfactory to Buyer and the Seller, and no such consent, authorization, order and approval shall have been revoked. Buyer's consents shall include the consent of Regions Bank to the extent required under the City of Opelika's bonds issued or administered by Regions Bank. The parties shall use Reasonable Efforts to secure consent hereunder that includes a waiver of any breach or default under the applicable agreement, but such waiver shall be required hereunder. Additionally, Seller shall have received all Required Consents of third parties, including those set forth on Section 3.03 of the Disclosure Schedules.

(c) Governmental Consents. All Required Consents other than those from Governmental Authorities shall have been received.

(d) Approval of City of Opelika. The Seller shall have obtained the consent to this Transaction and the Transaction Documents from the City Council of the City of Opelika, Alabama and any political subdivision thereof, including a franchise agreement to use the public rights-of-way substantially similar to the franchise agreements of Charter, AT&T and WOW (the "Franchise Agreement").

(e) No Actions or Proceedings. No Action shall have been commenced against Buyer or the Seller, or both, which would or could prevent the Closing.

Section 2.03 Conditions to the Obligations of Buyer. The obligations of Buyer to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment of Buyer's waiver, at or prior to the Closing, of each of the following conditions:

(a) Representations and Warranties of the Seller. Other than the representations and warranties of the Seller contained in Section 3.01 and Section 3.24, the representations and warranties of the Seller contained in this Agreement, the other Transaction Documents and any certificate or other writing delivered pursuant hereto shall be true and correct in all respects (in the case of any representation or warranty qualified by materiality or Material Adverse Effect) or in all material respects (in the case of any representation or warranty not qualified by materiality or Material Adverse Effect) on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects). The representations and warranties of the Seller contained in Section 3.01 and Section 3.24 shall be true and correct in all respects on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects).

(b) Agreements and Covenants. The Seller shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and each of the other Transaction Documents to be performed or complied with by it prior to or on the Closing Date; provided, that, with respect to agreements, covenants and conditions that are qualified by materiality, the Seller shall have performed such agreements, covenants and conditions, as so qualified, in all respects.

(c) Financing. Buyer shall have received the financing on the terms acceptable to Buyer in its sole discretion.

(d) Material Adverse Effect. From the date of this Agreement, there shall not have occurred any Material Adverse Effect, nor shall any event or events have occurred that, individually or in the aggregate, with or without the lapse of time, could reasonably be expected to result in a Material Adverse Effect.

(e) Bill of Sale. The Seller shall have executed and delivered a General Assignment and Bill of Sale, substantially in the form attached hereto as **Exhibit C** ("Bill of Sale").

(f) Assignment and Assumption Agreement. The Seller shall have executed and delivered an assignment and assumption agreement, substantially in the form attached hereto as **Exhibit D** ("Assignment and Assumption Agreement"), effecting the assignment to and assumption by Buyer of the Purchased Assets and the Assumed Liabilities.

(g) Intellectual Property Agreement. The Seller shall have executed and delivered an intellectual property assignment, substantially in the form attached hereto as **Exhibit E** ("Intellectual Property Assignments"), and duly executed by the Seller, transferring all of the Seller's right, title and interest in and to the Intellectual Property Assets to Buyer.

(h) Leases. With respect to each Equipment Lease, the Seller shall have executed and delivered an Assignment and Assumption of Lease, substantially in the form attached hereto as **Exhibit F** (each an "Assignment"), and duly executed by the Seller;

(i) Transition Services Agreement. If requested by the Buyer, the parties shall execute a Transition Services Agreement, substantially in the form attached hereto as **Exhibit H** (the "Transition Services Agreement"), and duly executed by the Seller.

(j) OPS Network Monitoring Agreement. The parties shall have executed a OPS Network Monitoring Agreement that shall include economic terms set forth on **Exhibit I** attached hereto.

(k) OPS Electric Company License. The parties shall have executed an OPS Electric Company License that shall include economic terms set forth on **Exhibit G** attached hereto.

(l) Pole Attachment Agreements. The parties shall have executed the Assignment of the Pole Attachment Agreements, substantially in the form attached hereto as **Exhibit K**.

(m) Permits, Franchises and Licenses. Buyer shall have received all Permits, Franchises, and Licenses that are necessary for it to conduct the Business as conducted by the Seller as of the Closing Date.

(n) Release of Liens; Release Letters. All Encumbrances relating to the Purchased Assets shall have been released in full, other than Permitted Encumbrances, and the Seller shall have delivered to Buyer Release Letters relating to the release of such Encumbrances.

(o) Seller Closing Certificate. Buyer shall have received a certificate, dated the Closing Date and signed by a duly authorized officer of the Seller, that each of the conditions set forth in Section 2.03(a) and Section 2.03(b) have been satisfied (the "Seller Closing Certificate").

(p) City Clerk Certificate. Buyer shall have received a certificate of the City Clerk (or equivalent officer) of the Seller certifying that attached thereto are true and complete copies of all resolutions adopted by the City Council of the Seller authorizing the execution, delivery and performance of this Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby and thereby.

(q) Seller's Execution of Transaction Documents. The Seller shall have executed and delivered all Transaction Documents.

(r) Incumbency Certificate. Buyer shall have received a certificate of the City Clerk (or equivalent officer) of the Seller certifying the names and signatures of the officers of the Seller authorized to sign this Agreement, the Transaction Documents and the other documents to be delivered hereunder and thereunder.

(s) Conduit and ROW Access Agreement. The parties shall have executed the Conduit and ROW Access Agreement, substantially in the form attached hereto as **Exhibit L**.

(t) Other Documents. The Seller shall have delivered to Buyer such other documents or instruments as Buyer reasonably requests and are reasonably necessary to consummate the transactions contemplated by this Agreement.

Section 2.04 Conditions to Obligations of the Seller. The obligations of the Seller to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or the Seller's waiver, at or prior to the Closing, of each of the following conditions:

(a) Representations and Warranties of Buyer. Other than the representations and warranties of Buyer contained in Section 4.01 and Section 4.04, the representations and warranties of Buyer contained in this Agreement, the other Transaction Documents and any certificate or other writing delivered pursuant hereto shall be true and correct in all respects (in the case of any representation or warranty qualified by materiality or Material Adverse Effect) or in all material respects (in the case of any representation or warranty not qualified by materiality or Material Adverse Effect) on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects). The representations and warranties of Buyer contained in Section 4.01 and Section 4.04 shall be true and correct in all respects on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date.

(b) Agreements and Covenants. Buyer shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and each of the other Transaction Documents to be performed or complied with by it prior to or on the Closing Date; provided, that, with respect to agreements, covenants and conditions that are qualified by materiality, Buyer shall have performed such agreements, covenants and conditions, as so qualified, in all respects.

(c) Buyer Closing Certificate. The Seller shall have received a certificate, dated the Closing Date and signed by a duly authorized officer of Buyer, that each of the conditions set forth in Section 2.04(a) and Section 2.04(b) have been satisfied (the "Buyer Closing Certificate").

(d) Secretary Certificate. The Seller shall have received a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of Buyer certifying that attached thereto are true and complete copies of all resolutions adopted by the board of directors of Buyer authorizing the execution, delivery and performance of this Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby and thereby.

(e) Incumbency Certificate. The Seller shall have received a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of Buyer certifying the names and signatures of the officers of Buyer authorized to sign this Agreement, the Transaction Documents and the other documents to be delivered hereunder and thereunder.

(f) Buyer's Execution of Transaction Documents. The Buyer shall have executed and delivered all Transaction Documents.

(g) Purchase Price. The Buyer shall have delivered the Purchase Price in accordance with Section 1.05.

(h) City Council Approval. This Agreement and the transactions contemplated by it shall have been approved by the City Council of the Seller.

Section 2.05 Closing Deliverables.

(a) The Seller shall deliver to the Buyer the various certificates, instruments, and documents referred to in Section 2.03 and Section 2.02(d).

(b) The Buyer shall deliver to the Seller the various certificates, instruments, and documents referred to in Section 2.04.

ARTICLE III **REPRESENTATIONS AND WARRANTIES OF SELLER**

Seller represents and warrants to Buyer that the statements contained in this Article III are true and correct as of the date hereof and shall be true on and as of the Closing Date with the same effect as though made at and as of such date. For purposes of this Article III, "Seller's knowledge," "knowledge of Seller" and any similar phrases shall mean the actual or constructive knowledge of any director or officer of Seller, after due inquiry, to the extent Seller is permitted by law to make such statements and as limited by this Article III.

Section 3.01 Organization and Qualification of the Seller. The Seller is a municipal corporation duly organized and validly existing under the Laws of the State of Alabama and has full corporate power and authority to own, operate or lease the properties and assets now owned, operated or leased by it and to carry on the Business as currently conducted. *Section 3.01* of the Disclosure Schedules sets forth each jurisdiction in which the Seller is licensed or qualified to do business.

Section 3.02 Authority of the Seller. The Seller has full corporate power and governmental authority to enter into this Agreement and the other Transaction Documents to which the Seller is a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by the Seller of this Agreement and any other Transaction Document to which the Seller is a party, the performance by the Seller of its obligations hereunder and thereunder and the consummation by the Seller of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate municipal authority on the part of the Seller. This Agreement has been duly executed and delivered by the Seller, and (assuming due authorization, execution and delivery by Buyer) this Agreement constitutes a legal, valid and binding obligation of the Seller enforceable against the Seller in accordance with its terms. When each other Transaction Document to which the Seller is or will be a party has been duly executed and delivered by the Seller (assuming due authorization, execution and delivery by each other party thereto), such Transaction Document will constitute a legal and binding obligation of the Seller enforceable against it in accordance with its terms.

Section 3.03 No Conflicts; Consents. The execution, delivery and performance by the Seller of this Agreement and the other Transaction Documents to which it is a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not: (a) conflict with or result in a violation or breach of, or default under any city ordinance of the Seller; (b) conflict with or result in a violation or breach of any provision of any Law or Governmental Order applicable to the Seller, the Business or the Purchased Assets; (c) except as set forth in *Section 3.03* of the Disclosure Schedules (the "Required Consents"), require the consent, notice or other action by any Person under, conflict with, result in a violation or breach of, constitute a default or an event that, with or without notice or lapse of time or both, would constitute a default under, result in the acceleration of or create in any party the right to accelerate,

terminate, modify or cancel any Contract, Permit, or License to which the Seller is a party or by which the Seller or the Business is bound or to which any of the Purchased Assets are subject (including any Assigned Contract); or (d) result in the creation or imposition of any Encumbrance other than Permitted Encumbrances on the Purchased Assets. No consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to the Seller in connection with the execution and delivery of this Agreement or any of the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby.

Section 3.04 Financial Statements.

(a) Complete copies of the audited financial statements for Seller related to the Business consisting of the Statement of Net Position of the Business as at September 30 in each of the years 2015, 2016 and 2017 and the related statements of income and retained earnings, and cash flow for the years then ended, respectively (the "Audited Financial Statements"), and unaudited financial statements consisting of the balance sheet of the Business as at September 30, 2018 and the related Statements of Revenues, Expenses, and Changes in Net Position for the twelve month period then ended (the "Interim Financial Statements" and together with the Audited Financial Statements, the "Financial Statements") are included on Section 3.04(a) of the Disclosure Schedules. Except as set forth on Section 3.04(a) of the Disclosure Schedules, the Financial Statements have been prepared in accordance with GAAP applied on a consistent basis throughout the period involved, subject, in the case of the Interim Financial Statements, to normal year-end adjustments (the effect of which will not be materially adverse). Except as set forth on Section 3.04(a) of the Disclosure Schedules, the Financial Statements are based on the books and records of the Business, and fairly present in all material respects the financial condition of the Business as of the respective dates they were prepared and the results of the operations of the Business for the periods indicated. The Statement of Net Position of the Business as of September 30, 2015, 2016 and 2017 are referred to herein as the "Statement of Net Position" and the date thereof as the "Statement of Net Position Date" and the Statement of Net Position of the Business as of September 30, 2018 is referred to herein as the "Interim Statement of Net Position" and the date thereof as the "Statement of Net Position Date". Except as set forth on Section 3.04(a) of the Disclosure Schedules, the Seller maintains a standard system of accounting for the Business established and administered in accordance with GAAP.

(b) *Section 3.04(b)* of the Disclosure Schedules contains a complete and accurate list of all Indebtedness of the Seller secured by any Encumbrance on any Purchased Assets.

(c) Seller has delivered to Buyer on or before the Closing, true and correct copies of the Seller's monthly reports showing Subscribers (categorized by Subscriber type) for the Business as of the end of each month from January 2016 through September of 2018.

Section 3.05 Undisclosed Liabilities. The Seller has no Knowledge of any material Liabilities with respect to the Business, except (a) those which are adequately reflected or reserved against in the Balance Sheet as of the Balance Sheet Date, and (b) those which have been incurred in the Ordinary Course of Business consistent with past practice since the Balance Sheet Date and which do not, individually or in the aggregate, have a Material Adverse Effect on the Business, except as set forth in *Section 3.05* of the Disclosure Schedules.

Section 3.06 Absence of Certain Changes, Events and Conditions. Since the Balance Sheet Date, and other than in the Ordinary Course of Business consistent with past practice or as set forth in *Section 3.06* of the Disclosure Schedules, there has not been any of the following with respect to the Business:

(a) Event, occurrence or development that has had, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect;

(b) Declaration or payment of any distributions by the Seller to any partners, jurisdictional affiliate, or strategic party not in the Ordinary Course of Business;

(c) Material change in any method of accounting or accounting practice for the Business, except as required by GAAP or as disclosed in the notes to the Financial Statements;

(d) Material change in cash management practices and policies, practices and procedures with respect to collection of Accounts Receivable, establishment of reserves for uncollectible Accounts Receivable, accrual of Accounts Receivable, inventory control, prepayment of expenses, payment of trade accounts payable, accrual of other expenses, deferral of revenue and acceptance of customer deposits;

(e) Entry into any Contract that would constitute a Material Contract other than in the Ordinary Course of Business; *provided, however*, a copy of any such Contract shall be immediately delivered to the Buyer within five (5) business days of receipt;

(f) Incurrence, assumption or guarantee of any indebtedness for borrowed money in connection with the Business except unsecured current obligations and Liabilities incurred in the Ordinary Course of Business consistent with past practice.

(g) Transfer, assignment, sale or other disposition of any of the Purchased Assets shown or reflected in the Balance Sheet, except for the sale of Inventory in the Ordinary Course of Business or transfer, assignment, sale or other disposition of any assets or properties used in, useful in, allocated to, necessary to, required for the conduct of, or generated for the operation of, or related to the Business, tangible or intangible, other than for fair market consideration in the Ordinary Course of Business;

(h) Cancellation, amendment, termination or waiver of any material rights constituting Purchased Assets other than of customer accounts in the Ordinary Course of Business;

(i) Transfer, assignment or grant of any license or sublicense of any material rights under or with respect to any Intellectual Property Assets or Intellectual Property Agreements, except in the Ordinary Course of Business;

(j) Damage, destruction or loss, or any interruption in use, of any Purchased Assets, whether or not covered by insurance to the extent it has a Material Adverse Effect on the Business;

(k) Acceleration, termination, material modification to or cancellation of any Assigned Contract or Permit other than in the Ordinary Course of Business;

(l) Material capital expenditures which would constitute an Assumed Liability unless reasonably required for operational or compliance purposes or the failure to incur necessary expenditures for and to undertake and complete projects, work, and investments; *provided, however*, such reasonably required expenditures shall be disclosed to the Buyer within five (5) business days of expending such funds;

(m) Imposition of any Encumbrance upon any of the Purchased Assets;

(n) (i) grant of any bonuses, whether monetary or otherwise, or increase in any wages, salary, severance, pension or other compensation or benefits in respect of any current or former employees, officers, directors, independent contractors or consultants of the Business, other than as provided for in any written agreements, required by applicable Law or salary and benefits increases in the Ordinary Course of Business not to exceed three percent (3%), (ii) material change in the terms of employment for any Employee of the Business other than in the Ordinary Course of Business, or (iii) action to accelerate the vesting or payment of any compensation or benefit for any current or former employee, officer, director, consultant or independent contractor of the Business;

(o) Hiring or promoting any person (as the case may be), except to fill a vacancy as or needed in the Ordinary Course of Business;

(p) Adoption, modification or termination outside the Ordinary Course of Business, of any: (i) employment, severance, retention or other agreement with any current or former employee, officer, director, independent contractor or consultant of the Business, (ii) Benefit Plan, or (iii) collective bargaining or other agreement with a Union, in each case whether written or oral;

(q) Any loan to (or forgiveness of any loan to), or entry into any other transaction with, any current or former directors, officers or Employees of the Business;

(r) Adoption of any plan of merger, consolidation, reorganization, liquidation or dissolution or filing of a petition in bankruptcy under any provisions of federal or state bankruptcy Law or consent to the filing of any bankruptcy petition against it under any similar Law;

(s) Purchase, lease or other acquisition of the right to own, use or lease any property or assets in connection with the Business for an amount in excess of Ten Thousand Dollars (\$10,000.00), individually (in the case of a lease, *per annum*) or One Thousand Dollars per month (\$1,000.00 / month), except for (i) purchases of Inventory or supplies in the Ordinary Course of Business consistent with past practice or (ii) purchases reasonably required for operational or compliance purposes; or

(t) Enter into or approve any Contract, arrangement, or understanding or acquiesced in respect of any arrangement or understanding to do, engage in, or cause or having the effect of any of the foregoing.

Section 3.07 Material Contracts.

(a) *Section 3.07(a)* of the Disclosure Schedules contains a complete list of contracts, licenses, agreements, or arrangements related to the Business that are described in one or more of the following categories ("Material Contracts"):

(i) All Contracts involving aggregate consideration in excess of Ten Thousand Dollars (\$10,000.00) or One Thousand Dollars per month (\$1,000.00 / month) and which, in each case, cannot be cancelled without penalty or without more than ninety (90) days' notice;

(ii) All Contracts related to the lease, provision of, or other disposition of, the Seller's dark fiber resources;

(iii) All Contracts with broadband wholesalers;

- (iv) All Contracts for indefeasible rights of use of dark fiber;
 - (v) All Contracts that require the Seller to purchase or sell a stated portion of the requirements or outputs of the Business or that contain "take or pay" (or similar) provisions;
 - (vi) All Contracts that provide for the indemnification of any Person or the assumption of any Tax, environmental or other Liability of any Person;
 - (vii) All Contracts that relate to the acquisition or disposition of any business, a material amount of ownership or assets of any other Person or any real property related to the Business (whether by merger, sale of ownership interests, sale of assets or otherwise);
 - (viii) All broker, distributor, dealer, franchise, agency, sales promotion, market research, marketing consulting and advertising Contracts;
 - (ix) All employment agreements and Contracts with independent contractors or consultants (or similar arrangements) related to the Business and which are not cancellable without material penalty or without more than thirty (30) days' notice;
 - (x) Except for Contracts relating to trade receivables, all Contracts relating to indebtedness (including, without limitation, guarantees) in excess of Ten Thousand Dollars (\$10,000.00);
 - (xi) All Contracts with any Governmental Authority related to the Business ("Government Contracts");
 - (xii) All Contracts that limit or purport to limit the ability of the Seller to compete in any line of business or with any Person or in any geographic area or during any period of time related to the Business;
 - (xiii) All joint venture, partnership, strategic relationship or similar Contracts;
 - (xiv) All Contracts for the sale of any of the Purchased Assets or for the grant to any Person of any option, right of first refusal or preferential or similar right to purchase any of the Purchased Assets;
 - (xv) All powers of attorney with respect to the Business or any Purchased Asset;
 - (xvi) All equipment leases as shown on *Section 3.07(a)(xvi)* of the Disclosure Schedules (the "Equipment Leases");
 - (xvii) and
 - (xviii) All other Contracts that are material to the Purchased Assets or the operation of the Business and not previously disclosed pursuant to this Section 3.07.
- (b) Except as set forth in *Section 3.07(b)* of the Disclosure Schedules, each Material Contract is valid and binding on the Seller in accordance with its terms and is in full force and effect. Except as set forth in *Section 3.07(b)* of the Disclosure Schedules, neither the Seller or, to the Seller's Knowledge,

any other party thereto is in breach of or default under (or is alleged to be in breach of or default under) in any material respect, or has provided or received any notice of any intention to terminate, any Material Contract. Except as set forth in *Section 3.07(b)* of the Disclosure Schedules, no event or circumstance has to Seller's Knowledge occurred that, with notice or lapse of time or both, would constitute an event of default under any Material Contract or result in a termination thereof or would cause or permit the acceleration or other changes of any right or obligation or the loss of any benefit thereunder. Complete and correct copies of each Material Contract (including all modifications, amendments and supplements thereto and waivers thereunder) have been made available to Buyer. There are to Seller's Knowledge no material disputes pending or threatened under any Contract included in the Purchased Assets, except as set forth in *Section 3.07(b)* of the Disclosure Schedules.

Section 3.08 Title to Purchased Assets. The Seller has good and valid title to Assets and Purchased Assets are free and clear of Encumbrances except for the following (collectively referred to as "Permitted Encumbrances"):

- (a) Those items set forth in *Section 3.08(a)* of the Disclosure Schedules;
- (b) Liens for Taxes not yet due and payable;
- (c) Mechanics', carriers', workmen's, repairmen's or other like liens arising or incurred in the Ordinary Course of Business consistent with past practice or amounts that are not delinquent and which do not, individually or in the aggregate, have a Material Adverse Effect on the Business or the Purchased Assets;
- (d) Easements, rights of way, zoning ordinances and other similar encumbrances affecting Real Property which do not, individually or in the aggregate, have a Material Adverse Effect on the Business or the Purchased Assets, and which do not prohibit or interfere with the current operation of any Real Property and which do not render title to any Real Property unmarketable; and
- (e) Other than with respect to Easements, liens arising under original purchase price conditional sales contracts and Equipment Leases with third parties entered into in the Ordinary Course of Business consistent with past practice.

Section 3.09 System Information.

(a) To the Seller's Knowledge, *Section 3.09(a)* of the Disclosure Schedules sets forth, in all material respects, and as of the dates set forth in such section of the Disclosure Schedules, a true and complete statement of the following information with respect to the Business's systems as of the Effective Date:

- (i) The total number of approximate number of RGU in each case showing whether a RGU is residential or commercial;
- (ii) The total number of residential and commercial customers served;
- (iii) The approximate number of homes passed;

(iv) The approximate fully completed and operational miles of Seller's two-way, aerial and underground cable, stated separately;

(v) The total number of telephone lines; and

(vi) A list of Seller's leased or operated network access points or data centers.

(b) *Section 3.09(b)* of the Disclosure Schedules contains a map or maps of the Business's systems and a description of the miles of such systems.

(c) *Section 3.09(c)* of the Disclosure Schedules sets forth a true and accurate description of the following information relating to the Business's systems: (i) a rate card describing the services available, and the standard rates charged by the Seller therefore, including all rates, tariffs and other charges for cable television, internet services, or other services provided; and (ii) a channel lineup which includes the stations and signals carried by the Business's systems and the channel position of each such signal and station.

(d) The areas and communities Seller provides services with respect to the Business are the Service Areas identified on *Section 3.09(d)* of the Disclosure Schedules.

(e) *Section 3.09(e)* of the Disclosure Schedules contains a complete listing of (i) all agreements, whether written or verbal, whereby Seller, as grantor, leases, licenses or transfers an interest to another party in certain fiber cables and (ii) all agreements, whether written or verbal, whereby another party, as grantor, leases, licenses or transfers an interest to Seller in certain fiber cables.

Section 3.10 Sufficiency of Assets. Except as set forth in *Section 3.10* of the Disclosure Schedules, the buildings, plants, structures, furniture, fixtures, machinery, Equipment, vehicles and other items of tangible personal property included in the Purchased Assets are all of the tangible personal property used by the Seller to conduct the Business as conducted by the Seller. Except as set forth in *Section 3.10* of the Disclosure Schedules, the Purchased Assets are sufficient for the continued conduct of the Business after the Closing in substantially the same manner as conducted prior to the Closing and constitute all of the rights, property and assets necessary to conduct the Business as currently conducted by the Seller. None of the Excluded Assets are material to the Business, except as described on *Section 3.10* of the Disclosure Schedules.

Section 3.11 Real Property.

The City does not own any real property or lease any real property in the Business. All of the Assets, including the fiber optic cable and network equipment, used in the Business are located in the City of Opelika rights-of-ways or on the Leased Property ("Real Property"). This Real Property is sufficient for the continued conduct of the Business after the Closing in substantially the same manner as conducted prior to the Closing and constitutes all the Real Property necessary to conduct the Business as it is currently being conducted.

Section 3.12 Intellectual Property.

(a) *Section 3.12(a)* of the Disclosure Schedules lists all Intellectual Property Assets. Seller owns or has adequate, valid and enforceable rights to use all the Intellectual Property Assets, free and clear of all Encumbrances. Seller is not bound by any outstanding judgment, injunction, order or decree restricting the use of the Intellectual Property Assets, or restricting the licensing thereof to any person or

entity. With respect to the Intellectual Property Registrations listed on *Section 3.12(a)* of the Disclosure Schedules, (i) all such Intellectual Property Assets are valid, subsisting and in full force and effect and (ii) Seller has paid all maintenance fees and made all filings required to maintain Seller's ownership thereof. For all such Intellectual Property Registrations, *Section 3.12(a)* of the Disclosure Schedules lists (A) the jurisdiction where the application or registration is located, (B) the application or registration number, and (C) the application or registration date.

(b) Seller's prior and current use of the Intellectual Property Assets has not and does not infringe, violate, dilute or misappropriate the Intellectual Property of any person or entity and there are no claims pending or threatened by any person or entity with respect to the ownership, validity, enforceability, effectiveness or use of the Intellectual Property Assets. No person or entity is infringing, misappropriating, diluting or otherwise violating any of the Intellectual Property Assets, and neither Seller nor any affiliate of Seller has made or asserted any claim, demand or notice against any person or entity alleging any such infringement, misappropriation, dilution or other violation.

Section 3.13 Inventory. All Inventory, whether or not reflected in the Balance Sheet, consists of a quality and quantity usable and salable in the Ordinary Course of Business consistent with past practice, except for obsolete, damaged, defective or slow-moving items that have been written off or written down to fair market value or for which adequate reserves have been established. Except as set forth in *Section 3.13* of the Disclosure Schedules, all Inventory is owned by the Seller free and clear of all Encumbrances, subject to Permitted Encumbrances, and no Inventory is held on a consignment basis.

Section 3.14 Accounts Receivable. The Accounts Receivable reflected on the Interim Balance Sheet and the Accounts Receivable arising after the date thereof have arisen from bona fide transactions entered into by the Seller involving the sale of goods or the rendering of services in the Ordinary Course of Business consistent with past practices and are collectible in full within ninety (90) days after billing.

Section 3.15 Customers and Suppliers.

(a) *Section 3.15(a)* of the Disclosure Schedules sets forth with respect to the Business (i) each customer who has paid aggregate consideration to the Seller for goods or services rendered in an amount greater than or equal to Twenty-Five Thousand Dollars (\$25,000.00) for each of the three (3) most recent fiscal years (collectively, the "Material Customers"); and (ii) the amount of consideration paid by each Material Customer during such periods. Except as set forth in *Section 3.15(a)* of the Disclosure Schedules, the Seller has not received any notice and to the Seller's Knowledge has no reason to believe that any of the Material Customers has ceased or the Seller's Knowledge intends to cease after the Closing to use the goods or services of the Business or to otherwise terminate or materially reduce its relationship with the Business.

(b) *Section 3.15(b)* of the Disclosure Schedules sets forth with respect to the Business (i) each supplier to whom the Seller has paid consideration for goods or services rendered in an amount greater than or equal to Twenty-Five Thousand Dollars (\$25,000) for each of the three (3) most recent fiscal years (collectively, the "Material Suppliers"); and (ii) the amount of purchases from each Material Supplier during such periods. Except as set forth in *Section 3.15(b)* of the Disclosure Schedules, the Seller has not received any notice that any of the Material Suppliers has ceased or intends to cease to supply goods or services to the Business or to otherwise terminate or materially reduce its relationship with the Business.

Section 3.16 Insurance. *Section 3.16* of the Disclosure Schedules sets forth (a) a true and complete list of all current policies or binders of fire, liability, product liability, umbrella liability, real and personal property, workers' compensation, vehicular, fiduciary liability and other casualty and property insurance maintained by the Seller or its Affiliates and relating to the Business, the Purchased Assets or the

Assumed Liabilities (collectively, the “Insurance Policies”); and (b) with respect to the Business, the Purchased Assets or the Assumed Liabilities, a list of all pending claims and the claims history for the Seller since the beginning of fiscal year 2014. Except as set forth on *Section 3.16* of the Disclosure Schedules, there are no material claims related to the Business, the Purchased Assets or the Assumed Liabilities filed or submitted by Seller pending under any such Insurance Policies as to which coverage has been questioned, denied or disputed or in respect of which there is an outstanding reservation of rights. Neither the Seller nor any of its Affiliates has received any written notice of cancellation of, premium increase with respect to, or alteration of coverage under, any of such Insurance Policies. All premiums due on such Insurance Policies have either been paid or, if not yet due, accrued. All such Insurance Policies (a) are in full force and effect and enforceable in accordance with their terms; and (b) have not been subject to any lapse in coverage. None of the Seller or any of its Affiliates is in default under, or has otherwise failed to comply with, in any material respect, any provision contained in any such Insurance Policy. The Insurance Policies are sufficient for compliance with all applicable Laws and Contracts to which the Seller is a party or by which it is bound. True and complete copies of the Insurance Policies have been made available to Buyer.

Section 3.17 Legal Proceedings; Governmental Orders.

(a) Except as set forth in *Section 3.17* of the Disclosure Schedules, there are no Actions pending or, to the Seller’s Knowledge, threatened against or by the Seller (a) relating to or affecting the Business, the Purchased Assets or the Assumed Liabilities; or (b) that challenge or seek to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement. No event has occurred or circumstances exist that may give rise to, or serve as a basis for, any such Action.

(b) Except as set forth in *Section 3.17* of the Disclosure Schedules, there are no outstanding Governmental Orders and no unsatisfied judgments, penalties or awards against, relating to or affecting the Business. The Seller is in material compliance with the terms of each Governmental Order set forth in *Section 3.17* of the Disclosure Schedules. No event has occurred or circumstances exist that may constitute or result in (with or without notice or lapse of time) to Seller’s Knowledge a material violation of any such Governmental Order.

Section 3.18 Compliance With Laws; Permits.

(a) Except as set forth in *Section 3.18(a)* of the Disclosure Schedules, the Seller has materially complied, and is now materially complying, with all Laws applicable to the conduct of the Business as currently conducted or the ownership and use of the Purchased Assets and neither the Seller nor to Seller’s Knowledge any officer of the Seller has received any notice of any material violation of any applicable Law or received any material inquiry from any Governmental Authority regarding such the Seller’s operations.

(b) All Permits and Licenses required for the Seller to conduct the Business as currently conducted or for the ownership and use of the Purchased Assets have been obtained by the Seller and are valid and in full force and effect. All fees and charges with respect to such Permits as of the date hereof have been paid in full. *Section 3.18(b)* of the Disclosure Schedules lists all current Permits and Licenses issued to the Seller which are related to the conduct of the Business as currently conducted or the ownership and use of the Purchased Assets by Seller, including the names of the Permits or Licenses and their respective dates of issuance and expiration. No event has occurred that, with or without notice or lapse of time or both, would reasonably be expected to result in the revocation, suspension, lapse or limitation of any Permit set forth in *Section 3.18(b)* of the Disclosure Schedules.

(c) *Section 3.18(b)* of the Disclosure Schedules sets forth a list of all Licenses, Permits, approvals, certificates, consents, waivers, concessions, exemptions, Governmental Orders, registrations, or

other authorizations of any Governmental Authority necessary for the Seller to operate the Business and to operate and provide the services available in the Business and, unless noted on the Disclosure Schedules, each are in full force and effect and constitute valid, legal, binding and enforceable obligations of the Seller. True and correct copies have been provided to the Buyer. Except as noted on *Section 3.18(b)* of the Disclosure Schedules, no suspension, request for stay of grant thereof (or any appeal thereof), modification, termination or cancellation of any of the above-mentioned arrangements is pending, or to the Knowledge of the Seller, threatened.

Section 3.19 Retransmission Consent and Must-Carry; Rate Regulation; Copyright Compliance.

(a) *Section 3.19(a)* of the Disclosure Schedules lists the television stations within the Business's television market (as defined by Federal Communication Commission ("FCC") regulation) that have elected "must-carry" or retransmission consent status pursuant to the Cable Act. Except as described on *Section 3.19(a)* of the Disclosure Schedules, each television station carried by the Business is carried in all material respects pursuant to a valid retransmission consent agreement, "must-carry" election or other programming agreement between the Seller and each broadcaster. Other than with respect to those must-carry election notices identified on *Section 3.19(a)* of the Disclosure Schedules and routine blackout requests submitted pursuant to FCC regulations, no written notices or demands have been received from the FCC, from any television station or from any other Person or Governmental Authority (i) challenging the right of the Business to carry any television broadcast station or deliver the same or (ii) claiming that the Seller failed to carry a television broadcast station on a channel designated as such station consistent with the requirements of the Communications Act (x) within the last twenty-four (24) months or (y) which the Person making such notice or demand has not acknowledged in writing to have been resolved.

(b) The Seller is permitted under the Communications Act and all applicable Laws to receive and retransmit the video programming or other information made available to the Subscribers of the Business presently being carried to the Subscribers of and by the Business and to utilize all carrier frequencies generated by the operations of the Business, and are licensed to operate all facilities required by Law to be licensed, including any business radio and any cable television relay service stations, being operated or authorized to be operated as part of or in conjunction with the Business. Except as provided in *Section 3.19(b)* of the Disclosure Schedules, the operation of the Business and of any FCC licensed or registered facility used in conjunction with the operation of the Business, is in material compliance with the Communications Act and all applicable Laws, and all required reports, fees, filings, applications, and other submissions of the Seller to any Governmental Authority, including the FCC, with respect to the Business are true and correct in all material respects and have been filed and the Seller has not received any written notice that the Business is not or has not been in compliance in all material respects with the Communications Act or other Laws. The Seller has provided all notice to Subscribers of the Business required under the Communications Act and other Laws. No deficiencies have been asserted by the FCC or any other Governmental Authority or any third party with respect to the Business that have not been timely cured.

(c) *Section 3.19(c)* of the Disclosure Schedules set forth: (i) all regulations and policy imposed on the Seller by a Governmental Authority or cable company, including any rate regulation; (ii) a list of all communities for which the Seller has obtained an FCC order of effective compliance; and (iii) a list of all communities for which a petition for effective competition is pending before the FCC. The Seller and the Business are in compliance in all material respects with the provisions of the Cable Act and any other relevant Laws relating to the rates and other fees charged to Subscribers of the Business. The Seller has established rates charged to Subscribers of the Business that are allowable under the Cable Act and any authoritative interpretation thereof, to the extent such rates are subject to regulation by and Governmental Authority, including but not limited to the FCC.

(d) The Business is in compliance in all material respects with the specifications set forth in the Communications Act; Section 111 of the Copyright Act of 1976 and the rules and regulations of the Copyright Office, the Register of Copyrights and the Cable Act. The Seller has filed with the Copyright Office all required statements of account and other documents and instruments with respect to the Business that were required to have been filed in accordance with the Copyright Act of 1976 and regulations promulgated pursuant thereof, and the Seller has paid all royalties, supplemental royalties, fees and other sums to the Copyright Office under the Copyright Act with respect to the Business. The Seller has not been notified or otherwise advised of any inquiry, Claim, action or demand pending before the Copyright Office or from any other Person that questions the copyright filings or payments made by the Seller with respect to the Business. The Seller has made all requisite filings and payments with the Register of Copyrights and is otherwise in compliance in all material respects with all applicable rules and regulations of the Copyright Office with respect to the Business. The Seller has not been notified or otherwise advised of any inquiry, Claim, action or demand regarding the failure of the Business or the Purchased Assets to comply with the Communications Act or the Cable Act.

Section 3.20 Environmental Matters.

(a) The operations of the Seller with respect to the Business and the Purchased Assets are, to the Knowledge of the Seller, currently and have been in material compliance with all applicable Environmental Laws. The Seller has not received from any Person, with respect to the Business or the Purchased Assets, any: (i) Environmental Notice or Environmental Claim; or (ii) written request for information pursuant to Environmental Law, which, in each case, either remains pending or unresolved, or is the source of ongoing obligations or requirements as of the Closing Date.

(b) The Seller has obtained and is in material compliance with all Environmental Permits (each of which is disclosed in *Section 3.20(b)* of the Disclosure Schedules) necessary for the conduct of the Business as currently conducted or the ownership, lease, operation or use of the Purchased Assets and all such Environmental Permits are in full force and effect in all material respects and shall be maintained in full force and effect by the Seller through the Closing Date in accordance with Environmental Law, and to the Seller's Knowledge, the Seller is not aware of any environmental condition, event or circumstance that might prevent or impede, after the Closing Date, the conduct of the Business as currently conducted or the ownership, operation or use of the Purchased Assets. With respect to any such Environmental Permits, the Seller will cooperate and assist the Buyer with respect to all reasonable measures necessary to facilitate the transfer or re-issue of the same to the Buyer. Seller has not received any Environmental Notice or written communication from the issuing Governmental Authority regarding any material adverse change in the status or terms and conditions of the same.

(c) Except as set forth in *Section 3.20(c)* of the Disclosure Schedules, there has been no Release of Hazardous Materials in contravention of Environmental Law with respect to the Business or the Purchased Assets or any real property currently or formerly owned, leased or operated by the Seller in connection with the Business, and the Seller has not received an Environmental Notice that any of the Business or the Purchased Assets (including soils, groundwater, surface water, buildings and other structure located thereon) has been contaminated with any Hazardous Material which has not be remediated and which could reasonably be expected to result in an Environmental Claim against, or a violation of Environmental Law or term of any Environmental Permit by, the Seller.

(d) *Section 3.20(d)* of the Disclosure Schedules contains a complete and accurate list of all active or abandoned aboveground or underground storage tanks owned or operated by the Seller in connection with the Business or the Purchased Assets.

(e) Except as set forth in *Section 3.20(e)* of the Disclosure Schedules, the Seller has not retained or assumed, by contract any liabilities or obligations of third parties under Environmental Law with respect to the Business.

Section 3.21 Employee Benefit Matters. With respect to the Business:

(a) *Section 3.21(a)* of the Disclosure Schedules contains a true and complete list of each Benefit Plan.

(b) Each Benefit Plan has been established, administered and maintained in accordance with its terms and in compliance with all applicable Laws and there are no unfunded liabilities with regard to each Benefit Plan. The Seller is responsible for any liability arising under each Benefit Plan, including liability for paid time off ("PTO"), sick leave or any unfunded liability under each Benefit Plan.

Section 3.22 Employment Matters. With respect to the Business:

(a) *Section 3.22(a)* of the Disclosure Schedules contains a list of all persons who are employees of the Business as of the date hereof, including any employee who is on a leave of absence of any nature, paid or unpaid, authorized or unauthorized, and sets forth for each such individual the following: (i) name; (ii) title or position (including whether full or part time); (iii) hire date; (iv) current annual base compensation rate; (v) commission, bonus or other incentive-based compensation; and (vi) a description of the fringe benefits provided to each such individual as of the date hereof. Except as set forth in *Section 3.22(a)* of the Disclosure Schedules, as of the date hereof, all compensation, including wages, commissions and bonuses payable to all employees, independent contractors or consultants of the Business for services performed on or prior to the date hereof have been paid in full and there are no outstanding agreements, understandings or commitments of the Seller with respect to any compensation, commissions or bonuses.

(b) Except as set forth in *Section 3.22(b)* of the Disclosure Schedules, the Seller is not, and has not been for the past five (5) years, a party to, bound by, or negotiating any collective bargaining agreement or other Contract with a union, works council or labor organization (collectively, "Union"), and there is not, and has not been for the past two (2) years, any Union representing or purporting to represent any employee of the Seller, and, to the Seller's Knowledge, no Union or group of employees is seeking or has sought to organize employees for the purpose of collective bargaining. There has never been, nor has there been any threat of, any strike, slowdown, work stoppage, lockout, concerted refusal to work overtime or other similar labor disruption or dispute affecting the Seller or any employees of the Business. The Seller has no duty to bargain with any Union.

(c) The Seller is and has been, to the Knowledge of the Seller, in compliance in all material respects with all applicable Laws pertaining to employment and employment practices to the extent they relate to employees of the Business, including all Laws relating to labor relations, equal employment opportunities, fair employment practices, employment discrimination, harassment, retaliation, reasonable accommodation, disability rights or benefits, immigration, wages, hours, overtime compensation, child labor, hiring, promotion and termination of employees, working conditions, meal and break periods, privacy, health and safety, workers' compensation, leaves of absence and unemployment insurance. All individuals characterized and treated by the Seller as consultants or independent contractors of the Business are properly treated as independent contractors under all applicable Laws. All employees of the Business classified as exempt under the Fair Labor Standards Act and state and local wage and hour laws are properly classified in all material respects. Except as set forth in *Section 3.22(c)* of the Disclosure Schedules, there are no Actions against the Seller pending, or to the Seller's Knowledge, threatened to be brought or filed, by or with any Governmental Authority or arbitrator against the Seller in connection with the employment of any current or former applicant, employee, consultant, volunteer, intern or independent contractor of the

Business, including, without limitation, any claim relating to unfair labor practices, employment discrimination, harassment, retaliation, equal pay, wages and hours or any other employment related matter arising under applicable Laws.

(d) The Seller will comply in all material respects with the WARN Act, and the Buyer will reasonably cooperate with Seller with respect to the Seller's compliance with any requirements of the WARN Act.

(e) With respect to each Government Contract, the Seller is and has been in compliance in all material respects with Executive Order No. 11246 of 1965 ("E.O. 11246"), Section 503 of the Rehabilitation Act of 1973 ("Section 503") and the Vietnam Era Veterans' Readjustment Assistance Act of 1974 ("VEVRAA"), including all implementing regulations. The Seller maintains and complies with affirmative action plans in compliance with E.O. 11246, Section 503 and VEVRAA, including all implementing regulations. The Seller is not, and has not been for the past three (3) years, the subject of any audit, investigation or enforcement action by any Governmental Authority in connection with any Government Contract or related compliance with E.O. 11246, Section 503 and VEVRAA. The Seller has not been debarred, suspended or otherwise made ineligible from doing business with the United States government or any government contractor.

Section 3.23 Taxes. With respect to the Business and except as set forth in *Section 3.23* of the Disclosure Schedules:

(a) All Tax Returns with respect to the Business required to be filed by the Seller for any Pre-Closing Tax Period have been, or will be, timely filed. Such Tax Returns are, or will be, true, complete and correct in all respects. All Taxes due and owing by the Seller (whether or not shown on any Tax Return) have been, or will be, timely paid.

(b) The Seller has withheld and paid each Tax required to have been withheld and paid in connection with amounts paid or owing to any Employee, independent contractor, creditor, customer, shareholder or other party, and complied with all information reporting and backup withholding provisions of applicable Law.

(c) No extensions or waivers of statutes of limitations have been given or requested with respect to any Taxes of the Seller.

(d) All deficiencies asserted, or assessments made, against the Seller as a result of any examinations by any taxing authority have been fully paid.

(e) The Seller is not a party to any Action by any taxing authority. There are no pending or threatened Actions by any taxing authority.

(f) There are no Encumbrances for Taxes upon any of the Purchased Assets nor, to the Seller's Knowledge, is any taxing authority in the process of imposing any Encumbrances for Taxes on any of the Purchased Assets (other than for current Taxes not yet due and payable).

(g) The Seller is not, and has not been, a party to, or a promoter of, a "reportable transaction" within the meaning of Section 6707A(c)(1) of the Code and Treasury Regulations Section 1.6011-4(b).

(h) None of the Purchased Assets is tax-exempt use property within the meaning of Section 168(h) of the Code.

Section 3.24 Brokers. No broker, finder or investment banker is entitled to any brokerage, finders or other fee or commission in connection with the transactions contemplated by this Agreement or any other Transaction Document based upon arrangements made by or on behalf of the Seller.

Section 3.25 Performance Guarantees. Except as set forth on *Section 3.25* of the Disclosure Schedules, there are no franchise, construction, fidelity, performance or other bonds, or letters of credit, posted or required to be posted by the Seller in connection with the Purchased Assets.

Section 3.26 Promotions and Discounts.

(a) *Section 3.26(a)* of the Disclosure Schedules sets forth a correct and complete list of all promotions, pricing discounts, bundling offers and other sales and marketing incentives made available by the Seller to or usable by customers or prospective customers during the period of January 1, 2018 through the date of this Agreement for any services provided by the Business.

(b) *Section 3.26(b)* of the Disclosure Schedules set forth the total approximate number of Subscribers that, as of the date of the Agreement, were receiving a service utilizing a promotion, pricing discount, bundling offer and other sale and marketing incentive.

Section 3.27 Full Disclosure. No representation or warranty by the Seller in this Agreement and no statement contained in the Disclosure Schedules to this Agreement or any certificate or other document furnished or to be furnished to Buyer pursuant to this Agreement contains any untrue statement of a material fact, or omits to state a material fact necessary to make the statements contained therein, in light of the circumstances in which they are made, not misleading.

Section 3.28 System Infrastructure Agreements.

(a) The Business Pole Attachment Agreements and the licenses and/or sublicenses included in the OPS Electric Company License constitute all the System Infrastructure Rights used by the Seller in the Business as of the Closing.

(b) *Section 3.28* of the Disclosure Schedules contains a complete list of all Pole Attachment Agreements.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller that the statements contained in this Article IV are true and correct as of the date hereof and shall be true on and as of the Closing Date with the same effect as though made at and as of such date. For purposes of this Article IV, "Buyer's knowledge," "knowledge of Buyer" and any similar phrases shall mean the actual or constructive knowledge of any director or officer of Buyer, after due inquiry.

Section 4.01 Organization and Authority of Buyer; Enforceability. Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of the state of Georgia. Buyer has full entity power and authority to enter into this Agreement and the documents to be delivered hereunder, to carry out its obligations hereunder and to consummate the transactions contemplated hereby. The execution, delivery and performance by Buyer of this Agreement and the documents to be delivered hereunder and the consummation of the transactions contemplated hereby have been duly authorized by all requisite entity action on the part of Buyer. This Agreement and the documents

to be delivered hereunder have been duly executed and delivered by Buyer, and (assuming due authorization, execution and delivery by Seller) this Agreement and the documents to be delivered hereunder constitute legal, valid and binding obligations of Buyer enforceable against Buyer in accordance with their respective terms.

Section 4.02 No Conflicts; Consents. The execution, delivery and performance by Buyer of this Agreement and the documents to be delivered hereunder, and the consummation of the transactions contemplated hereby, do not and will not: (a) violate or conflict with the certificate of formation, company or operating agreement or other organizational documents of Buyer; or (b) violate or conflict with any judgment, order, decree, statute, law, ordinance, rule or regulation applicable to Buyer. Except as set forth on *Section 4.02* of the Disclosure Schedules, no consent, approval, waiver or authorization is required to be obtained by Buyer from any person or entity (including any governmental authority) in connection with the execution, delivery and performance by Buyer of this Agreement and the consummation of the transactions contemplated hereby.

Section 4.03 Legal Proceedings. There is no Action of any nature pending or, to Buyer's knowledge, threatened against or by Buyer that challenges or seeks to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement. No event has occurred or circumstances exist that may give rise to, or serve as a basis for, any such Action.

Section 4.04 Brokers. No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Buyer.

ARTICLE V COVENANTS

Section 5.01 Public Announcements. Unless otherwise required by applicable law, neither party shall make any public announcements regarding this Agreement or the transactions contemplated hereby without the prior written consent of the other party (which consent shall not be unreasonably withheld or delayed).

Section 5.02 Transfer Taxes. All transfer, documentary, sales, use, stamp, registration, value added and other such taxes and fees (including any penalties and interest) incurred in connection with this Agreement and the documents to be delivered hereunder shall be borne and paid by Seller when due. Seller shall, at its own expense, timely file any tax return or other document with respect to such taxes or fees (and Buyer shall cooperate with respect thereto as necessary).

Section 5.03 Further Assurances. Following the Closing, each of the parties hereto shall execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement and the documents to be delivered hereunder.

Section 5.04 OPS Pole Attachment Agreements. In preparation of the OPS Electric Company License, the Seller will cooperate with the Buyer to identify and grant System Infrastructure Rights, including access to the power space on any utility pole, to the Buyer through OPS Electric Company License within the Seller's OPS Essential Services business at the market rate applicable from time to time to continue to operate the System within the City of Opelika as set forth on **Exhibit G**; provided OPS Essential Services shall not be obligated to obtain any new or additional agreements or erect any poles or the like, unless to the extent permitted under applicable law, for the replacement of any existing poles.

Section 5.05 Escrow Agreement. At Closing, Seller, Buyer and Southern States Bank as the escrow agent (the "Escrow Agent") shall execute and deliver an Escrow Agreement in the form attached hereto as **Exhibit J** (the "Escrow Agreement"). Upon the consummation of the Closing, the Escrow Agent shall place the Escrow Amount in a segregated account designated by the Escrow Agent (the Escrow Amount together with all interest, dividends and other amounts earned that accrue thereon from the Closing Date through and until the date upon which such escrowed funds are distributed in accordance with the Escrow Agreement, the "Escrow") to be held and disbursed pursuant to the Escrow Agreement. Subject to the Escrow Agreement, the Escrow shall be held for a period of twelve months after the Closing Date, which period is subject to increase as provided for in the Escrow Agreement (the "Holdback Period"). From time to time during the Holdback Period and upon the expiration of the Holdback Period, the Escrow Agent shall disburse the funds in the Escrow in accordance with the terms of the Escrow Agreement.

Section 5.06 Employees and Employee Benefits.

(a) At Closing, the Employees will remain on the Seller's payroll for seven (7) days and Buyer will reimburse Seller for its costs. At Closing, Buyer shall offer employment, on an "at-will" basis, to all or substantially all of the Employees, and give them seven (7) days to make their decision to accept the offer of employment.

(b) The Sellers shall be solely responsible, and Buyer shall have no obligations whatsoever for, any compensation or other amounts payable to any current or former employee, officer, director, independent contractor or consultant of the Business, including, without limitation, hourly pay, commission, bonus, salary, accrued vacation, fringe, pension or profit sharing benefits or severance pay, for any period relating to the service with the Sellers at any time on or prior to the Closing Date and the Sellers shall pay all such amounts to all entitled persons on or prior to the Closing Date. The Sellers shall pay, or cause to be paid, all such amounts to the appropriate persons as and when due.

(c) The Sellers and its insurers shall remain solely responsible for the satisfaction of all claims for medical, dental, life insurance, health accident or disability benefits brought by or in respect of current or former employees, officers, directors, independent contractors or consultants of the Business or the spouses, dependents or beneficiaries thereof, which claims relate to events occurring on or prior to the Closing Date. The Sellers also shall remain solely responsible for all worker's compensation claims of any current or former employees, officers, directors, independent contractors or consultants of the Business which relate to events occurring on or prior to the Closing Date.

(d) Each employee of the Business who becomes employed by Buyer in connection with the transactions contemplated by this Agreement shall be eligible to receive the salary and benefits maintained for employees of Buyer on substantially similar terms and conditions in the aggregate as are provided to similarly situated employees of Buyer.

(e) Each employee of the Business who becomes employed by Buyer in connection with the transaction shall be given service credit for the purpose of eligibility under the Buyer's group health plan and similar benefit plans and eligibility and vesting only under the Buyer defined contribution retirement plan for his or her period of service with the Sellers prior to the Closing Date pursuant to payroll records of the Sellers.

ARTICLE VI
INDEMNIFICATION

Section 6.01 Survival. All representations, warranties, covenants and agreements contained herein and all related rights to indemnification shall survive the Closing.

Section 6.02 Indemnification By Seller. Seller shall defend, indemnify and hold harmless Buyer, its affiliates and their respective stockholders, directors, officers and employees from and against all claims, judgments, damages, liabilities, settlements, losses, costs and expenses, including attorneys' fees and disbursements, arising from or relating to:

- (a) any inaccuracy in or breach of any of the representations or warranties of Seller contained in this Agreement or any document to be delivered hereunder;
- (b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Seller pursuant to this Agreement or any document to be delivered hereunder; or
- (c) any Excluded Asset or Excluded Liability.

Section 6.03 Indemnification By Buyer. Buyer shall defend, indemnify and hold harmless Seller, its affiliates and their respective stockholders, directors, officers and employees from and against all claims, judgments, damages, liabilities, settlements, losses, costs and expenses, including attorneys' fees and disbursements, arising from or relating to:

- (a) any inaccuracy in or breach of any of the representations or warranties of Buyer contained in this Agreement or any document to be delivered hereunder;
- (b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Buyer pursuant to this Agreement or any document to be delivered hereunder; or
- (c) any Assumed Liability.

Section 6.04 Certain Limitations. The indemnification provided for in Section 6.2 and Section 6.3 shall be subject to the following limitations:

(a) Seller shall not be liable to the Buyer Indemnitees for indemnification under Section 6.02(a) and (b) until the aggregate amount of all Losses in respect of indemnification under Section 6.02(a) and (b) exceeds One Hundred Thousand and No/100 Dollars (\$100,000.00) (the "Basket"), in which event the Seller shall be required to pay or be liable for all such Losses occurring from the first dollar. The aggregate amount of all Losses for which the Seller shall be liable pursuant to Section 6.02(a) and shall not exceed the amount of the Escrow, One Million Dollars Four Hundred Seventeen Thousand Five Hundred and No/100 Dollars (\$1,417,500.00) (the "Cap"). Notwithstanding anything to the contrary, nothing in this Agreement shall limit or restrict the early termination as fee set forth in the Network Monitoring Agreement, Exhibit I.

(b) The Buyer shall not be liable to the Seller Indemnitees for indemnification under Section 6.03(a) until the aggregate amount of all Losses in respect of indemnification under Section 6.03(a) exceeds the Basket, in which event Buyer shall be required to pay or be liable for all such Losses occurring from the first dollar. The aggregate amount of all Losses for which Buyer shall be liable pursuant to Section 6.03(a) shall not exceed the Cap.

(c) For purposes of this Article VI, the representations and warranties of the Buyer shall not be deemed qualified by any references to materiality or to Material Adverse Effect.

Section 6.05 Indemnification Procedures. The party making a claim under this Article VI is referred to as the "Indemnified Party," and the party against whom such claims are asserted under this Article VI is referred to as the "Indemnifying Party".

(a) Third Party Claims. If any Indemnified Party receives notice of the assertion or commencement of any Action made or brought by any Person who is not a party to this Agreement or an Affiliate of a party to this Agreement or a Representative of the foregoing (a "Third Party Claim") against such Indemnified Party with respect to which the Indemnifying Party is obligated to provide indemnification under this Agreement, the Indemnified Party shall give the Indemnifying Party reasonably prompt written notice thereof, but in any event not later than forty-five (45) calendar days after receipt of such notice of such Third Party Claim. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party forfeits rights or defenses by reason of such failure. Such notice by the Indemnified Party shall describe the Third Party Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have the right to participate in, or by giving written notice to the Indemnified Party, to assume the defense of any Third Party Claim at the Indemnifying Party's expense and by the Indemnifying Party's own counsel, and the Indemnified Party shall cooperate in good faith in such defense; *provided, that* if the Indemnifying Party is the Seller, such Indemnifying Party shall not have the right to defend or direct the defense of any such Third Party Claim that (i) is asserted directly by or on behalf of a Person that is a supplier or customer of the Business, or (ii) seeks an injunction or other equitable relief against the Indemnified Party. In the event that the Indemnifying Party assumes the defense of any Third Party Claim, subject to Section 6.05(b), it shall have the right to take such action as it deems necessary to avoid, dispute, defend, appeal or make counterclaims pertaining to any such Third Party Claim in the name and on behalf of the Indemnified Party. The Indemnified Party shall have the right to participate in the defense of any Third Party Claim with counsel selected by it subject to the Indemnifying Party's right to control the defense thereof. The fees and disbursements of such counsel shall be at the expense of the Indemnified Party, *provided, that* if in the reasonable opinion of counsel to the Indemnified Party, (i) there are legal defenses available to an Indemnified Party that are different from or additional to those available to the Indemnifying Party; or (ii) there exists a conflict of interest between the Indemnifying Party and the Indemnified Party that cannot be waived, the Indemnifying Party shall be liable for the reasonable fees and expenses of counsel to the Indemnified Party in each jurisdiction for which the Indemnified Party determines counsel is required. If the Indemnifying Party elects not to compromise or defend such Third Party Claim, fails to promptly notify the Indemnified Party in writing of its election to defend as provided in this Agreement, or fails to diligently prosecute the defense of such Third Party Claim, the Indemnified Party may, subject to Section 6.05(b), pay, compromise, defend such Third Party Claim and seek indemnification for any and all Losses based upon, arising from or relating to such Third Party Claim. The Seller and Buyer shall cooperate with each other in all reasonable respects in connection with the defense of any Third Party Claim, including making available (subject to the provisions of Section 6.07) records relating to such Third Party Claim and furnishing, without expense (other than reimbursement of actual out-of-pocket expenses) to the defending party, management employees of the non-defending party as may be reasonably necessary for the preparation of the defense of such Third Party Claim.

(b) Settlement of Third Party Claims. Notwithstanding any other provision of this Agreement, the Indemnifying Party shall not enter into settlement of any Third Party Claim without the prior written consent of the Indemnified Party, except as provided in this Section 6.05(b). If a firm offer is made to settle a Third Party Claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnified Party and provides, in customary form, for the unconditional release of each Indemnified Party from all liabilities and obligations in connection with such Third Party Claim and the Indemnifying Party desires to accept and agree to such offer, the Indemnifying Party shall give written notice to that effect to the Indemnified Party. If the Indemnified Party fails to consent to such firm offer within ten (10) days after its receipt of such notice, the Indemnified Party may continue to contest or defend such Third Party Claim and in such event, the maximum liability of the Indemnifying Party as to such Third Party Claim shall not exceed the amount of such settlement offer. If the Indemnified Party fails

to consent to such firm offer and also fails to assume defense of such Third Party Claim, the Indemnifying Party may settle the Third Party Claim upon the terms set forth in such firm offer to settle such Third Party Claim. If the Indemnified Party has assumed the defense pursuant to Section 6.05(a), it shall not agree to any settlement without the written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

(c) **Direct Claims.** Any Action by an Indemnified Party on account of a Loss which does not result from a Third Party Claim (a "Direct Claim") shall be asserted by the Indemnified Party giving the Indemnifying Party reasonably prompt written notice thereof, but in any event not later than forty-five (45) days after the Indemnified Party becomes aware of such Direct Claim. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party forfeits rights or defenses by reason of such failure. Such notice by the Indemnified Party shall describe the Direct Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have forty-five (45) days after its receipt of such notice to respond in writing to such Direct Claim. The Indemnified Party shall allow the Indemnifying Party and its professional advisors to investigate the matter or circumstance alleged to give rise to the Direct Claim, and whether and to what extent any amount is payable in respect of the Direct Claim and the Indemnified Party shall assist the Indemnifying Party's investigation by giving such information and assistance (including access to the Indemnified Party's premises and personnel and the right to examine and copy any accounts, documents or records) as the Indemnifying Party or any of its professional advisors may reasonably request. If the Indemnifying Party does not so respond within such forty-five (45) day period, the Indemnifying Party shall be deemed to have rejected such claim, in which case the Indemnified Party shall be free to pursue such remedies as may be available to the Indemnified Party on the terms and subject to the provisions of this Agreement.

Section 6.06 Payments. Once a Loss is agreed to by the Indemnifying Party or finally adjudicated to be payable pursuant to this Article VI, the Indemnifying Party shall satisfy its obligations within fifteen (15) Business Days of such final, non-appealable adjudication by wire transfer of immediately available funds. Seller shall be obligated to provide indemnification to Buyer from the Escrow, and to the extent the Escrow is insufficient, Seller shall be obligated to provide indemnification to Buyer directly, for all Indemnifiable Losses that are properly and timely asserted, subject to the terms and conditions hereof. The parties hereto agree that should an Indemnifying Party not make full payment of any such obligations within such fifteen (15) Business Day period, any amount payable shall accrue interest from and including the date of agreement of the Indemnifying Party or final, non-appealable adjudication to but excluding/and including the date such payment has been made at a rate per annum equal to five percent (5%). Such interest shall be calculated daily on the basis of a 365 day year and the actual number of days elapsed, without compounding.

Section 6.07 Tax Treatment of Indemnification Payments. As between Buyer and Seller, upon the settlement or resolution of any claim for indemnification while the Escrow Amount remains held by the Escrow Agent, Buyer and Seller agree to provide joint written instructions to the Escrow Agent regarding the disbursement of funds to the applicable Party, all in accordance with the Escrow Agreement. All indemnification payments made under this Agreement shall be treated by the parties as an adjustment to the Purchase Price for Tax purposes, unless otherwise required by Law.

Section 6.08 Scope of Indemnification Obligations. The right to indemnification, reimbursement or other remedies based upon any such representation or warranty will not be affected by any knowledge acquired (or capable of being acquired) at any time, whether before or after the execution

and delivery of this Agreement or the Closing Date, with respect to the accuracy or inaccuracy of such representation or warranty.

Section 6.09 Sole Remedy. The indemnification provisions of this Article VI provide and are the sole and exclusive remedies of the Seller and the Buyer for any and all Action and Losses arising under or pertaining to this Agreement after the Closing, except for (i) Fraud; or (ii) a misrepresentation, inaccuracy in or breach of the Seller Fundamental Representations and Warranties.

ARTICLE VII MISCELLANEOUS

Section 7.01 Expenses. All costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses.

Section 7.02 Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 7.02):

If to Buyer: Point Broadband of Opelika, LLC
1791 O.G. Skinner Drive,
West Point, Georgia 31833
E-mail: cwachter@itchold.com
Attn: Chad Wachter, General Counsel

With a copy to: Maynard, Cooper & Gale, P.C.
Attn: Michael P. Johnson
655 Gallatin Street SW
Huntsville, AL 35801

If to Seller: The City of Opelika d/b/a Opelika Power Services
600 Fox Run Pkwy _____
Opelika, AL 36801
Attn: Derek Lee, Director

Section 7.03 Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

Section 7.04 Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

Section 7.05 Entire Agreement. This Agreement and the documents to be delivered hereunder constitute the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein, and supersede all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this Agreement and the documents to be delivered hereunder, the Exhibits and Disclosure Schedules (other than an exception expressly set forth as such in the Disclosure Schedules), the statements in the body of this Agreement will control.

Section 7.06 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. Neither party may assign its rights or obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. No assignment shall relieve the assigning party of any of its obligations hereunder.

Section 7.07 No Third-party Beneficiaries. Except as provided in Article VI, this Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

Section 7.08 Amendment and Modification. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto.

Section 7.09 Waiver. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

Section 7.10 Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Alabama without giving effect to any choice or conflict of law provision or rule (whether of the State of Alabama or any other jurisdiction).

Section 7.11 Submission to Jurisdiction. Any legal suit, action or proceeding arising out of or based upon this Agreement or the transactions contemplated hereby may be instituted in the federal courts of the United States of America or the courts of the State of Alabama in each case located in the county of Lee, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

Section 7.12 Specific Performance. The parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity.

Section 7.13 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[Signature page to follow.]

[Signature page to Asset Purchase Agreement]

IN WITNESS WHEREOF, Buyer and Seller have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

BUYER:

POINT BROADBAND, LLC
a Georgia limited liability company

By: M. Todd Holt
Name: Todd Holt
Its: President

SELLER:

**THE CITY OF OPELIKA D/B/A OPELIKA
POWER SERVICES,**
an Alabama municipal corporation

By: Gary Fuller
Name: Gary Fuller
Its: Mayor

EXHIBIT A**GLOSSARY**

The following terms have the meanings specified or referred to herein:

"Accounts Receivable" has the meaning set forth in Section 1.01(d).

"Action" means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative, regulatory or otherwise, whether at law or in equity.

"Adjustment Time" means 12:01 a.m. on the Closing Date.

"Affiliate" of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"Agreement" has the meaning set forth in the preamble.

"Allocation Schedule" has the meaning set forth in Section 1.07.

"Applicable Gross Revenue" means all remuneration, in whatever form, derived by the Buyer from any data traffic to or from Opelika Power Services or facilities leased from Opelika Power Services, except for any revenue received from the City of Opelika, Alabama or any political subdivision or affiliate thereof for point-to-point services.

"Assigned Contracts" has the meaning set forth in Section 1.01(f).

"Assignment" has the meaning set forth in Section 2.03(h).

"Assignment and Assumption Agreement" has the meaning set forth in Section 2.03(f).

"Assumed Liabilities" has the meaning set forth in Section 1.03.

"Audited Financial Statements" has the meaning set forth in Section 3.04(a).

"Average Working Capital" has the meaning set forth in Section 1.06(b).

"Balance Sheet" has the meaning set forth in Section 3.04(a).

"Balance Sheet Assets" has the meaning set forth in Section 3.04(a).

"Balance Sheet Date" has the meaning set forth in Section 3.04(a).

"Basket" has the meaning set forth in Section 6.04(a).

“Benefit Plan” means each pension, benefit, retirement, compensation, employment, consulting, profit-sharing, deferred compensation, incentive, bonus, performance award, phantom equity, change in control, retention, severance, vacation, paid time off, welfare, fringe-benefit and other similar agreement, plan, policy, program or arrangement (and any amendments thereto), in each case whether or not reduced to writing and whether funded or unfunded, including each “employee benefit plan” within the meaning of Section 3(3) of ERISA, whether or not tax-qualified and whether or not subject to ERISA, which is or has been maintained, sponsored, contributed to, or required to be contributed to by the Seller for the benefit of any current or former employee, officer, director, retiree or consultant of the Business or any spouse or dependent of such individual, or under which the Seller or any of its ERISA Affiliates has or may have any Liability, or with respect to which Buyer or any of its Affiliates would reasonably be expected to have any Liability, contingent or otherwise.

“Bill of Sale” has the meaning set forth in Section 2.03(e).

“Books and Records” has the meaning set forth in Section 1.01(o).

“Business” has the meaning set forth in the recitals.

“Business Day” means any day except Saturday, Sunday or any other day on which commercial banks located in the City of Opelika, Alabama are authorized or required by Law to be closed for business.

“Buyer” has the meaning set forth in the preamble.

“Buyer Closing Certificate” has the meaning set forth in Section 2.04(c).

“Buyer Indemnitees” has the meaning set forth in Section 6.04(a).

“Cable Act” means Title VI of the Communications Act, the Cable Communications Policy of 1984, the Cable Television Consumer Protection and Competition Act of 1992 and the provisions of the Telecommunications Act of 1996 amending Title VI of the Communications Act, in each case as amended and in effect from time-to-time.

“Cap” has the meaning set forth in Section 6.04(a).

“Closing” has the meaning set forth in Section 1.01(a).

“Closing Date” has the meaning set forth in Section 1.01(a).

“Closing Date Indebtedness Statement” means the certificate delivered by the Seller to the Buyer setting forth the Debt Payoff Amount specified for each creditor together with pay-off letters containing wiring instructions for each creditor.

“Closing Statement” has the meaning set forth in Section 1.06.

“Closing Working Capital” means only those certain Current Assets and certain Current Liabilities as shown on **Exhibit B**. The Closing Working Capital shall include only those Current Assets and Current Liabilities as shown on **Exhibit B** and shall be determined as of the close of business on the Closing Date.

“Closing Working Capital Adjustment” has the meaning set forth in Section 1.06(d).

"Code" means the Internal Revenue Code of 1986, as amended.

"Contracts" means all contracts, leases, deeds, mortgages, licenses, instruments, notes, commitments, undertakings, indentures, joint ventures and all other agreements, commitments and legally binding arrangements, whether written or oral related solely to the Business.

"Current Assets" means the current assets of the Business included in the line items set forth on **Exhibit B** and only to the extent acquired pursuant to the terms of this Agreement.

"Current Liabilities" means the current liabilities of the Business included in the line items set forth on **Exhibit B** and only to the extent assumed pursuant to the terms of this Agreement.

"Debt Payoff Amount" means all Indebtedness of the Seller as of 11:59 p.m. (local time) on the Closing Date plus the Seller Transaction Expenses.

"Direct Claim" has the meaning set forth in Section 6.05(c).

"Disclosure Schedules" means the Disclosure Schedules delivered by the Seller to the Buyer with the draft due no later than three (3) Business Days prior to the execution of this Agreement and the final version due no later than five (5) Business Days prior to the Closing.

"Dollars" or "\$" means the lawful currency of the United States.

"(EST)" means Eastern Standard Time.

"Easements" has the meaning set forth in Section 3.11(a).

"Effective Date" has the meaning set forth in the preamble.

"Employees" means the individuals, as of the date of the Agreement, whether or not actually working on that date, who are employed by the Seller in the conduct of the Business, together with any individuals who may be hired in respect to the conduct of the Business subsequent to the Effective Date, and in each case who are the Employees of the Business as of the Closing Date as set forth on Section 3.22(a) of the Disclosure Schedules.

"Encumbrance" means any charge, claim, community property interest, pledge, condition, equitable interest, lien (statutory or other), option, claw back right, reversionary interest, security interest, mortgage, easement, encroachment, right of way, right of first refusal, or restriction of any kind, including any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership.

"Environmental Claim" means, as it pertains to the Business, any Action, Governmental Order, lien, fine, penalty, or, as to each, any settlement or judgment arising therefrom, by or from any Person alleging liability of whatever kind or nature (including liability or responsibility for the costs of enforcement proceedings, investigations, cleanup, governmental response, removal or remediation, natural resources damages, property damages, personal injuries, medical monitoring, penalties, contribution, indemnification and injunctive relief) arising out of, based on or resulting from: (a) the presence, Release of, or exposure to, any Hazardous Materials; or (b) any actual or alleged non-compliance with any Environmental Law or term or condition of any Environmental Permit.

"Environmental Law" means any applicable Law, and any Governmental Order or binding agreement with any Governmental Authority: (a) relating to pollution (or the cleanup thereof) or the

protection of natural resources, endangered or threatened species, human health or safety, or the environment (including ambient air, soil, surface water or groundwater, or subsurface strata); or (b) concerning the presence of, exposure to, or the management, manufacture, use, containment, storage, recycling, reclamation, reuse, treatment, generation, discharge, transportation, processing, production, disposal or remediation of any Hazardous Materials. The term “Environmental Law” includes, without limitation, the following (including their implementing regulations and any state analogs): the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 *et seq.*; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6901 *et seq.*; the Federal Water Pollution Control Act of 1972, as amended by the Clean Water Act of 1977, 33 U.S.C. §§ 1251 *et seq.*; the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. §§ 2601 *et seq.*; the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001 *et seq.*; the Clean Air Act of 1966, as amended by the Clean Air Act Amendments of 1990, 42 U.S.C. §§ 7401 *et seq.*; and the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. §§ 651 *et seq.*

“**Environmental Notice**” means any written directive, notice of violation or infraction, or notice respecting any Environmental Claim relating to actual or alleged non-compliance with any Environmental Law or any term or condition of any Environmental Permit relating to the Business.

“**Environmental Permit**” means any Permit, letter, clearance, consent, waiver, closure, exemption, decision or other action required under or issued, granted, given, authorized by or made pursuant to Environmental Law related to the Business.

“**Equipment**” means electronic devices, trunk and distribution coaxial and optical fiber cable, amplifiers, drops, power supplies, conduit, vaults and pedestals, grounding and pole hardware, Subscriber devices (including converters, encoders, transformers behind television sets and fittings), Headend hardware (including origination, earth stations, transmissions and distribution systems), test equipment, vehicles, computer equipment, network and communications equipment, any equipment or other asset associated with advertising, sales, billing equipment, towers, tower equipment and microwave equipment, high speed internet assets used to provide such service to customers of the Business, and any other tangible personal property owned or leased by the Seller and used or held for use in connection with the Business, including the items listed in the Balance Sheet Assets.

“**Equipment Leases**” has the meaning set forth in Section 3.07(a)(xvi).

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated thereunder.

“**ERISA Affiliate**” means all employers (whether or not incorporated) that would be treated together with the Seller or any of its Affiliates as a “single employer” within the meaning of Section 414 of the Code.

“**Escrow Agent**” has the meaning set forth in Section 5.05.

“**Escrow Agreement**” has the meaning set forth in Section 1.05(c).

“**Escrow Amount**” has the meaning set forth in Section 1.05(c).

“**Estimated Working Capital**” has the meaning set forth in Section 1.06(a).

“Estimated Working Capital Adjustment” has the meaning set forth in Section 1.06(b).

“Excluded Assets” has the meaning set forth in Section 1.02.

“Excluded Contracts” has the meaning set forth in Section 1.02(a).

“Excluded Liabilities” has the meaning set forth in Section 1.04.

“Final Closing Adjustment” has the meaning set forth in Section 1.06(e).

“Financial Statements” has the meaning set forth in Section 3.04(a).

“Franchise Agreement” has the meaning set forth in Section 2.02(d).

“Fraud” means, with respect to a party, an actual and intentional fraud with respect to the making of the representations and warranties pursuant to Article III or Article IV (as applicable).

“GAAP” means United States generally accepted accounting principles in effect from time to time.

“Government Contracts” has the meaning set forth in Section 3.07(a)(xi).

“Governmental Authority” means any federal, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law), or any arbitrator, court or tribunal of competent jurisdiction.

“Governmental Order” means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority.

“Hazardous Materials” means as it pertains to the Business: (a) any material, substance, chemical, waste, product, derivative, compound, mixture, solid, liquid, mineral or gas, in each case, whether naturally occurring or manmade, that is hazardous, acutely hazardous, toxic, or words of similar import or regulatory effect under Environmental Laws; and (b) any petroleum or petroleum-derived products, radon, radioactive materials or wastes, asbestos in any form, lead or lead-containing materials, urea formaldehyde foam insulation and polychlorinated biphenyls.

“Headend” means the facility that originates, transmits and facilitates two-way cable communications and internet-enabled services to Subscribers, including any computer systems, networks, Equipment, antenna, cables, wireless communications, satellite communications, etc.

“Indebtedness” means, with respect to the Seller and as it relates to the Business, (a) the principal of an, accreted value and accrued and unpaid interest, prepayment and redemption premiums or penalties (if any), unpaid fees or expenses and other monetary obligations in respect of, consent fees, breakage costs or other costs incurred in connection with the repayment or assumption of, (i) indebtedness of such Person for money borrowed, and (ii) obligations evidenced by notes, debentures, bonds or other similar instruments for the payment of which such Person is responsible or liable, (b) all obligations of such Person issued or assumed as the deferred purchase price of assets or property, all conditional sale obligations of such Person and all obligations of such Person under any title retention agreement (but excluding trade account payables and other accrued current liabilities), (c) bonds or letters of credit that have been drawn upon but have not yet been repaid, (d) any capital lease obligations, (e) all obligations of the type referred to in clauses (a)

through (d) of any Persons the payment of which such Person is responsible or liable, directly or indirectly, as obligor, guarantor, surety or otherwise, (f) all obligations of the type referred to in clauses (a) through (e) of other Person secured by any Encumbrance on any property or asset of such Person (whether or not such obligation is assumed by such Person).

"Indemnified Party" has the meaning set forth in Section 6.05.

"Indemnifying Party" has the meaning set forth in Section 6.05.

"Initial Pole Attachment Fees" means the fees paid by Buyer to Seller in consideration of the Pole Attachment Rights for the first thirty-six (36) months following the Closing Date.

"Insurance Policies" has the meaning set forth in Section 3.16.

"Intellectual Property" means any and all of the following in any jurisdiction throughout the world: (i) trademarks and service marks, including all applications and registrations and the goodwill connected with the use of and symbolized by the foregoing; (ii) copyrights, including all applications and registrations related to the foregoing; (iii) trade secrets and confidential know-how; (iv) patents and patent applications; (v) websites and internet domain name registrations; and (vi) other intellectual property and related proprietary rights, interests and protections (including all rights to sue and recover and retain damages, costs and attorneys' fees for past, present and future infringement and any other rights relating to any of the foregoing).

"Intellectual Property Agreements" means all licenses, sublicenses, consent to use agreements, settlements, coexistence agreements, covenants not to sue, permissions and other Contracts (including any right to receive or obligation to pay royalties or any other consideration), whether written or oral, relating to any Intellectual Property that is used in or necessary for the conduct of the Business as currently conducted to which the Seller is a party, beneficiary or otherwise bound.

"Intellectual Property Assets" means all Intellectual Property owned or licensed by the Seller and used in or necessary for the conduct of the Business as shown on Section 3.12(a) of the Disclosure Schedules or included in the Balance Sheet Assets.

"Intellectual Property Assignments" has the meaning set forth in Section 2.03(g).

"Intellectual Property Registrations" means all Intellectual Property Assets that are subject to any issuance, registration, application or other filing by, to or with any Governmental Authority or authorized private registrar in any jurisdiction, including registered trademarks, domain names and copyrights, issued and reissued patents and pending applications for any of the foregoing.

"Interim Balance Sheet" has the meaning set forth in Section 3.04(a).

"Interim Balance Sheet Date" has the meaning set forth in Section 3.04(a).

"Interim Financial Statements" has the meaning set forth in Section 3.04(a).

"Inventory" has the meaning set forth in Section 1.01(e).

"Knowledge of the Seller" or "the Seller's Knowledge" or "Knowledge" or any other similar knowledge qualification, when used with respect to the Seller, means the actual knowledge of [] after such Person has made inquiry of relevant Employees, consultants, and advisors

of the Seller, to the extent practicable, who each such person should reasonably believe would have actual knowledge of the material matters represented.

“Law” means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any Governmental Authority.

“Leased Real Property” has the meaning set forth in Section 3.11.

“Liabilities” means liabilities, obligations or commitments of any nature whatsoever, asserted or un-asserted, known or unknown, absolute or contingent, accrued or unaccrued, matured or unmatured or otherwise.

“License” means any grant, permit or other authorization issued by any Governmental Authority, including the Federal Communication Commission, used in the operation of the Business.

“Losses” means losses, damages, liabilities, deficiencies, Actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys’ fees and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

“Material Adverse Effect” means any event, occurrence, fact, condition, or change that is, or could reasonably be expected to become, individually or in the aggregate, materially adverse to:

(a) The Business, results of operations, condition (financial or otherwise) or assets of the Business taken as a whole;

(b) The value of the Purchased Assets taken as a whole; or

(c) The ability of the Seller to consummate the transactions contemplated hereby on a timely basis; *provided, however*, that “Material Adverse Effect” shall not include any event, occurrence, fact, condition or change, directly or indirectly, arising out of or attributable to: (i) general national economic or political conditions not unique to the Seller or its region where it conducts the Business; (ii) conditions generally affecting the industries in which the Business operates; (iii) any changes in financial or securities markets in general; (iv) acts of war (whether or not declared), armed hostilities or terrorism, or the escalation or worsening thereof; (v) any changes in applicable Laws or accounting rules, including without limitation, GAAP; or (vii) the public announcement, pendency or completion of the transactions contemplated by this Agreement. *provided further, however*, that any event, occurrence, fact, condition or change referred to in clauses (i) through (iv) immediately above shall be taken into account in determining whether a Material Adverse Effect has occurred or could reasonably be expected to occur to the extent that such event, occurrence, fact, condition or change has a disproportionate effect on the Business compared to other participants in the industries in which the Business operates.

“Material Contracts” has the meaning set forth in Section 3.07(a).

“Material Customers” has the meaning set forth in Section 3.15(a).

“Material Suppliers” has the meaning set forth in Section 3.15(b).

“Net Working Capital” means the amount as of the Adjustment Time, of: (a) the value of all current assets of the Business (as agreed upon by the Buyer and Seller) less (b) the amount of all current liabilities of the Business (as agreed upon by Buyer and Seller), calculated in the manner provided in Section 1.06 and consistent with the calculation of the Estimated Working Capital Adjustment.

“OPS Electric Company License” has the meaning set forth in Section 2.03(k).

“OPS Essential Services” means the division of the Seller focused on providing electricity, water, wastewater and related services primarily in the city limits of Opelika, Alabama.

“OPS Network Monitoring Agreement” means the agreement between Seller and Buyer whereby Buyer shall provide to Seller network monitoring services after the Closing pursuant to Section 2.03(j).

“Ordinary Course of Business” means the ordinary business activities of the Seller with respect to the Business consistent with its past legal and authorized custom or practice, including with respect to quantity or frequency, and with respect to financial expenditures for the operations of the Business.

“Permits” means all permits, approvals, authorizations, registrations, certificates, variances and similar rights obtained, or required to be obtained, from Governmental Authorities.

“Permitted Encumbrances” has the meaning set forth in Section 3.08.

“Person” means an individual, corporation, partnership, joint venture, limited liability company, Governmental Authority, unincorporated organization, trust, association or other entity.

“Pole Attachment Agreements” means the OPS Pole Attachment Agreement and the OPS Conduit and ROW Agreement that OPS will enter into with the Buyer, as set forth on **Exhibits K and L**.

“Pole Attachment Rights” means the right of a provider of voice or videoservices to deploy a broadband network by placing and maintaining cables equipment and facilities on poles in the usable space, including the placement of cables, equipment and facilities on the poles.

“Post-Agreement Due Diligence” means that due diligence conducted by the Buyer following the execution of this Agreement.

“Pre-Closing Tax Period” means any taxable period ending on or before the Closing Date and, with respect to any taxable period beginning before and ending after the Closing Date, the portion of such taxable period ending on and including the Closing Date.

“Purchase Price” has the meaning set forth in Section 1.05.

“Purchased Assets” has the meaning set forth in Section 1.01.

“Real Estate In Leases” has the meaning set forth in Section 3.11(b).

“Real Estate Leases” has the meaning set forth in Section 3.11(b).

“Real Estate Out Leases” has the meaning set forth in Section 3.11(b).

“Real Property” means, collectively, the Easements and the Leased Real Property.

“Reasonable Efforts” means a party’s commercially reasonable efforts that are conducted in good faith and are in accordance with reasonable commercial practice; *provided, however*, that Reasonable Efforts shall not require (a) the expenditure of any sums of money or other resources other than *de minimis* expenditures of money or resources or (b) the initiation of a law suit against any Person.

"Release" means any actual or threatened release, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, abandonment, disposing or allowing to escape or migrate into or through the environment (including, without limitation, ambient air (indoor or outdoor), surface water, groundwater, land surface or subsurface strata or within any building, structure, facility or fixture) relating to the Business.

"Release Letters" means documentation in a form satisfactory to the Buyer providing evidence of the payment in full of an Indebtedness or the release of the Seller in favor of the Buyer from payment of such Indebtedness or the release of any Encumbrance related to such Indebtedness.

"Representative" means, with respect to any Person, its President and attorneys, as applicable, for pre-Closing matters and any and all directors, officers, Employees, consultants, financial advisors, counsel, and accountants of such party for post-Closing matters.

"Required Consents" has the meaning set forth in Section 3.03.

"Restricted Business" means the providing of broadband, telecommunication and information and television services to the public and, without limitation, does not include the provision of electric, water and sewer services and related services, activities and functions.

"Restricted Cash" has the meaning set forth in Section 1.01(c).

"Revenue Share" has the meaning set forth in Section 1.05(b).

"RGU" means revenue generating unit, as such term is used by the Seller to identify customers.

"Pole Attachment Agreement" means the (i) right of way agreements granted by third parties to Seller and used in the System for Business for location of underground or overhead cable on property owned by such third parties, and (ii) the agreement(s) for the attachment of cable or equipment to owners' poles or the use of their conduits (where such pole or conduit owner either owns such property, or has a lease, license or right of way agreement from the land owner) necessary or desirable for the delivery of the services provided by the Business by the Seller.

"ROW Rights" means an easement or other grant of access to lay, maintain, operate and improve, including the right of ingress and egress, if necessary, or any one or more of such actions.

"Seller" has the meaning set forth in the preamble.

"Seller Closing Certificate" has the meaning set forth in Section 2.03(p).

"Seller Fundamental Representations and Warranties" means those representations and warranties of the Seller in Section 3.01, Section 3.02, Section 3.21, Section 3.23, and Section 3.24.

"Seller Indemnitees" has the meaning set forth in Section 6.03.

"Seller's Estimated Working Capital" has the meaning set forth in Section 1.06(a).

"Subscriber" means a customer of the Business billed for its applicable services, but excluding (i) any customer who is more than sixty (60) days past due in the payment of any amount due to the Seller for such services or related fees, (ii) any customer who has not yet paid at least one full month's payment for

any services from the Business, (iii) any customer who is receiving free service for any reason, including as a result of a promotional offer or pursuant to a contractual arrangement, and (iv) any customer of the Seller with respect to a service of the Business that is pending disconnection due to nonpayment for such service or which service is subject to termination not to or from the customer.

“Tangible Personal Property” has the meaning set forth in Section 1.01(h).

“Target Working Capital Range” has the meaning set forth in Section 1.06(b).

“Taxes” means all federal, state, local, foreign and other income, gross receipts, sales, use, production, ad valorem, transfer, documentary, franchise, registration, profits, license, lease, service, service use, withholding, payroll, employment, unemployment, estimated, excise, severance, environmental, stamp, occupation, premium, property (real or personal), real property gains, windfall profits, customs, duties or other taxes, fees, assessments or charges of any kind whatsoever, together with any interest, additions or penalties with respect thereto and any interest in respect of such additions or penalties.

“Tax Return” means any return, declaration, report, claim for refund, information return or statement or other document relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

“Third Party Claim” has the meaning set forth in Section 6.05(a).

“Transaction Documents” means this Agreement, the Bill of Sale, the Assignment and Assumption Agreement, Intellectual Property Assignments, Assignment and Assumption of Real Estate Leases, the Transition Services Agreement, the OPS Essential Services Agreements, the Escrow Agreement, and the other agreements, instruments and documents required to be delivered at the Closing.

“Seller Transaction Expenses” means, collectively, the unpaid fees, commissions, bonuses, expenses and other amounts owed to any consultants, financial advisors, brokers, attorneys, accountants, management companies or other advisers engaged by the Seller or its Affiliates in connection with the preparation, negotiation and execution of this Agreement, the other Transaction Documents, or the consummation of the transactions contemplated by this Agreement and the other Transaction Documents, all as set forth on **Exhibit B** attached hereto.

“Transition Services Agreement” has the meaning set forth in Section 2.03(i).

“Union” has the meaning set forth in Section 3.22(b).

“WARN Act” means the federal Worker Adjustment and Retraining Notification Act of 1988, and similar state, local and foreign laws related to plant closings, relocations, mass layoffs and employment losses.

“Working Capital Ceiling” has the meaning set forth in Section 1.06(b).

“Working Capital Floor” has the meaning set forth in Section 1.06(b).

EXHIBIT B

Closing Statement

(See attached.)

{H0426396.13}

EXHIBIT C**Bill of Sale**

(See attached.)

EXHIBIT D**Assignment and Assumption Agreement**

(See attached.)

{H0426396.13}

Attachment: Res 278-18, Asset purchase agreement, Point Broadband, 10-16-18 (278-18 : Asset purchase agreement with Point Broadband.)

EXHIBIT E**Intellectual Property Assignments**

(See attached.)

EXHIBIT F**Headend Lease**

(See attached.)

EXHIBIT G**OPS Electric Company License**

(See attached.)

{H0426396.13}

Attachment: Res 278-18, Asset purchase agreement, Point Broadband, 10-16-18 (278-18 : Asset purchase agreement with Point Broadband.)

EXHIBIT H**Transition Services Agreement**

(See attached.)

{H0426396.13}

Attachment: Res 278-18, Asset purchase agreement, Point Broadband, 10-16-18 (278-18 : Asset purchase agreement with Point Broadband.)

EXHIBIT I**OPS Network Monitoring Agreement**

(See attached.)

EXHIBIT J**Escrow Agreement**

(See attached.)

{H0426396.13}

Attachment: Res 278-18, Asset purchase agreement, Point Broadband, 10-16-18 (278-18 : Asset purchase agreement with Point Broadband.)

EXHIBIT K**Pole Attachment Agreement**

(See attached.)

{H0426396.13}

Attachment: Res 278-18, Asset purchase agreement, Point Broadband, 10-16-18 (278-18 : Asset purchase agreement with Point Broadband.)

EXHIBIT L**Conduit and ROW Access Agreement**

(See attached.)

{H0426396.13}

Attachment: Res 278-18, Asset purchase agreement, Point Broadband, 10-16-18 (278-18 : Asset purchase agreement with Point Broadband.)

BILL OF SALE

This Bill of Sale (the "**Agreement**") made and entered into as of _____, 2018 (the "**Effective Date**"), by and between The City of Opelika d/b/a Opelika Power Services, an Alabama municipal corporation (the "**Seller**" or "**OPS**"), and Point Broadband, LLC, a Georgia limited liability company, (the "**Buyer**"), provides as follows:

WITNESSETH

WHEREAS, the parties entered into the certain Asset Purchase Agreement between The City of Opelika d/b/a Opelika Power Services and Point Broadband, LLC, executed as of October __, 2018 (the "**Asset Purchase Agreement**"), by which Seller agreed to sell and Buyer agreed to buy the assets used in OPS's telecommunication and advanced fiber-optic broadband division in the business of providing fiber-optic telecommunication and information services; and, pursuant to which, among other things, Seller has agreed to assign all of its rights, title and interests in, and Buyer has agreed to assume all of Seller's duties and obligations under, the Assigned Contracts, as defined in Section 1.01(f) of the Asset Purchase Agreement; and,

WHEREAS, as of the Effective Date, the Buyer desires to accept such Assets from the Seller on the terms and conditions set forth herein and in the Asset Purchase Agreement.

AGREEMENT

NOW THEREFORE, for and in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Certain Defined Terms. Each capitalized term in this Agreement that is used but not defined in this Agreement has the meaning given to it in the Asset Purchase Agreement.

Transfer. As of the Effective Date, the Seller, for and upon the consideration provided in the Asset Purchase Agreement, does hereby, sell, assign, transfer, and convey to the Buyer and the Buyer hereby accepts all of the Seller's right, title, and interest in and to the assets set forth in Schedule 1 attached hereto (the "**Assets**").

Terms of the Asset Purchase Agreement. The terms of the Asset Purchase Agreement, including, but not limited to, the representations, warranties, covenants, agreements and indemnities relating to the Assets are incorporated herein by this reference. The parties hereto acknowledge and agree that the representations, warranties, covenants, agreements and indemnities contained in the Asset Purchase Agreement shall not be superseded hereby but shall remain in full force and effect to the full extent provided therein. In the event of any conflict or inconsistency between the terms of the Asset Purchase Agreement and the terms hereof, the terms of the Asset Purchase Agreement shall govern.

Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

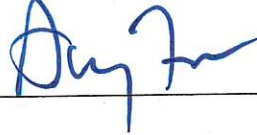
Further Assistance. Each of the parties hereto shall execute and deliver, at the reasonable request of the other party hereto, such additional documents, instruments, conveyances and assurances and take such further actions as such other party may reasonably request to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Bill of Sale to be executed by their authorized officers all as of the day and year first above written.

SELLER:

**THE CITY OF OPELIKA D/B/A OPELIKA
POWER SERVICES**

By: 

BUYER:

POINT BROADBAND, LLC

By: 

Attachment: Res 278-18, Asset purchase agreement, Point Broadband, 10-16-18 (278-18 : Asset purchase agreement with Point Broadband.)

SCHEDULE 1

ASSETS

ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement (the "**Agreement**"), effective as of _____, 2018 (the "**Effective Date**"), by and between The City of Opelika d/b/a Opelika Power Services, an Alabama municipal corporation's Business (the "**Seller**"), and Point Broadband, LLC, a Georgia limited liability company (the "**Buyer**"), provides as follows:

WHEREAS, the parties entered into the certain Asset Purchase Agreement dated October __, 2018 (the "Asset Purchase Agreement"), pursuant to which, among other things, Seller has agreed to assign all of its rights, title and interests in, and Buyer has agreed to assume all of Seller's duties and obligations under, the Assigned Contracts, as defined in Section 1.01(f) of the Asset Purchase Agreement; and,

WHEREAS, the parties agree to assign certain of the Assigned Contracts as more particularly set forth on Schedule 1 attached hereto (the "**Covered Contracts**") under the terms of this Agreement, and the remaining Assigned Contracts not included on Schedule 1 attached hereto shall be separately assigned under separate assignment agreement(s) acceptable to the parties;

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Definitions. All capitalized terms used in this Agreement but not otherwise defined herein are given the meanings set forth in the Asset Purchase Agreement.

2. Assignment and Assumption. Seller hereby sells, assigns, grants, conveys and transfers to Buyer all of Seller's right, title and interest in and to the Covered Contracts. Buyer hereby accepts such assignment and assumes all of Seller's duties and obligations under the Covered Contracts and agrees to pay, perform and discharge, as and when due, all of the obligations of Seller under the Covered Contracts accruing on and after the Effective Date.

3. Terms of the Asset Purchase Agreement. The terms of the Asset Purchase Agreement, including, but not limited to, the representations, warranties, covenants, agreements and indemnities relating to the Pole Attachment/Conduit Access Agreement are incorporated herein by this reference. The parties hereto acknowledge and agree that the representations, warranties, covenants, agreements and indemnities contained in the Asset Purchase Agreement shall not be superseded hereby but shall remain in full force and effect to the full extent provided therein. In the event of any conflict or inconsistency between the terms of the Asset Purchase Agreement and the terms hereof, the terms of the Asset Purchase Agreement shall govern.

4. Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Alabama.

5. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

6. Further Assurances. Each of the parties hereto shall execute and deliver, at the reasonable request of the other party hereto, such additional documents, instruments, conveyances and assurances and take such further actions as such other party may reasonably request to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement.

Subsequent to the date hereof, Buyer, as a part of the consideration for this Agreement, hereby assumes and agrees to pay as required and discharge all duties and obligations of the Covered Contracts as a result of the assignment or as set forth in Section 1.03 (c) and (d) of the Asset Purchase Agreement. Buyer further agrees to indemnify and hold harmless Assignor from any and all losses, damages, expenses, or other liabilities and obligations, including legal fees and costs, in the regard to any breach or default under by Buyer under this paragraph 6.

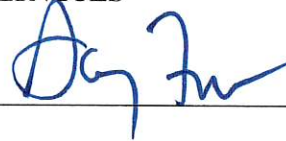
[Signature page for Assignment and Assumption Agreement]

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the date first above written.

SELLER:

THE CITY OF OPELIKA D/B/A OPELIKA
POWER SERVICES

By: _____



BUYER:

POINT BROADBAND, LLC

By: _____



Schedule 1
Covered Contracts

Attachment: Res 278-18, Asset purchase agreement, Point Broadband, 10-16-18 (278-18 : Asset purchase agreement with Point Broadband.)

INTELLECTUAL PROPERTY ASSIGNMENT AGREEMENT

This Intellectual Property Assignment Agreement (the "**IP Assignment**"), effective as of October __, 2018 (the "**Effective Date**"), by and between The City of Opelika d/b/a Opelika Power Services, an Alabama municipal corporation's Business (the "**Seller**"), and Point Broadband, LLC, a Georgia limited liability company (the "**Buyer**"), provides as follows:

WHEREAS, the parties entered into that certain Asset Purchase Agreement dated October __, 2018 (the "Asset Purchase Agreement"); and;

WHEREAS, under the terms of the Asset Purchase Agreement, Seller has contracted to convey, transfer and assign to Buyer, among other assets, the Intellectual Property Assets (as defined in the Asset Purchase Agreement), and has agreed to execute and deliver this IP Assignment, for recording, if applicable, with the United States Patent and Trademark Office and, the United States Copyright Office and corresponding entities or agencies in any applicable jurisdictions;

NOW THEREFORE, the parties agree as follows:

1. Assignment. For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller hereby irrevocably conveys, transfers and assigns to Buyer, and Buyer hereby accepts, all of Seller's right, title and interest in and to the following (the "**Assigned IP**");

(a) the patents and patent applications set forth on Schedule 1 hereto and all issuances, divisions, continuations, continuations-in-part, reissues, extensions, reexaminations and renewals thereof (the "**Patents**");

(b) the trademark registrations and applications set forth on Schedule 2 hereto and all issuances, extensions and renewals thereof (the "**Trademarks**"), together with the goodwill of the business connected with the use of, and symbolized by, the Trademarks;

(c) all rights of any kind whatsoever of Seller accruing under any of the foregoing provided by applicable law of any jurisdiction, by international treaties and conventions and otherwise throughout the world;

(d) any and all royalties, fees, income, payments and other proceeds now or hereafter due or payable with respect to any and all of the foregoing; and

(e) any and all claims and causes of action, with respect to any of the foregoing, whether accruing before, on, or after the date hereof, including all rights to and claims for damages, restitution and injunctive and other legal and equitable relief for past, present and future infringement, dilution, misappropriation, violation, misuse, breach or default, with the right but no obligation to sue for such legal and equitable relief and to collect, or otherwise recover, any such damages.

2. Recordation and Further Actions. Seller hereby authorizes the Commissioner for Patents and the Commissioner for Trademarks in the United States Patent and Trademark Office, and the Register of Copyrights in the United States Copyright Office, and the officials of corresponding entities or agencies in any applicable jurisdictions, to record and register this IP Assignment upon request by Buyer. Following the date hereof, upon Buyer's reasonable request, Seller shall take such steps and actions, and provide such cooperation and assistance to Buyer and its successors, assigns and legal representatives, including the

execution and delivery of any affidavits, declarations, oaths, exhibits, assignments, powers of attorney, or other documents, as may be reasonably necessary to effect, evidence or perfect the assignment of the Assigned IP to Buyer, or any assignee or successor thereto.

3. Terms of the Asset Purchase Agreement. The parties hereto acknowledge and agree that this IP Assignment is entered into pursuant to the Asset Purchase Agreement, to which reference is made for a further statement of the rights and obligations of Seller and Buyer with respect to the Assigned IP. The representations, warranties, covenants, agreements and indemnities contained in the Asset Purchase Agreement shall not be superseded hereby but shall remain in full force and effect to the full extent provided therein. In the event of any conflict or inconsistency between the terms of the Asset Purchase Agreement and the terms hereof, the terms of the Asset Purchase Agreement shall govern.

4. Counterparts. This IP Assignment may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this IP Assignment delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this IP Assignment.

5. Successors and Assigns. This IP Assignment shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

6. Governing Law. This IP Assignment and any claim, controversy, dispute, or cause of action (whether in contract, tort, or otherwise) based upon, arising out of, or relating to this IP Assignment and the transactions contemplated hereby shall be governed by, and construed in accordance with, the laws of the United States and the State of Alabama, without giving effect to any choice or conflict of law provision or rule (whether of the State of Alabama or any other jurisdiction).

[Signature Page Follows]

IN WITNESS WHEREOF, Seller has duly executed and delivered this IP Assignment as of the date first above written.

**THE CITY OF OPELIKA D/B/A OPELIKA
POWER SERVICES**

By: _____



AGREED TO AND ACCEPTED:

POINT BROADBAND, LLC

By: _____



Attachment: Res 278-18, Asset purchase agreement, Point Broadband, 10-16-18 (278-18 : Asset purchase agreement with Point Broadband.)

SCHEDULE 1**ASSIGNED PATENTS AND PATENT APPLICATIONS**

1. None.

SCHEDULE 2**ASSIGNED TRADEMARKS REGISTRATIONS AND TRADEMARK APPLICATIONS**

1. Registered Trademark for "OPS OPELIKA POWER SERVICES"
 - a. USPTO – U.S. Registration Number: 4353177
 - b. Principal Register
 - c. International Class 39
 - d. Affidavit of Continued Use due by June 18, 2019
 - e. Owner – City of Opelika, Alabama
 - f. Status - Live



2. Trademark for "Opelika Power Services"
 - a. State of Alabama – Trademark Number 112-905
 - b. Class 38 – Telecommunications
 - c. Status – Expired

3. Trademark for "OPS ONE ONE NETWORK EXPERIENCE"
 - a. USPTO – U.S. Registration Number 5262307
 - b. Principal Register
 - c. International Class 38
 - d. Owner – City of Opelika, Alabama
 - e. Status - Live



HEADEND LEASE AGREEMENT

THIS HEADEND LEASE AGREEMENT (this "Lease") is dated the ____ day of Opelika, 2018 (the "Effective Date"), by and between **THE CITY OF OPELIKA D/B/A OPELIKA POWER SERVICES**, a municipal corporation of the state of Alabama's Business (the "Landlord") and **POINT BROADBAND, LLC**, a Georgia limited liability company (the "Tenant").

WHEREAS, Landlord is the owner of certain commercial real property and improvements located in Opelika, Alabama and consisting of a Main Building – to include the Warehouse (600 Fox Run Parkway, Opelika, Alabama 36801) and a Headend Building (collectively referred to herein as the "Buildings"); and

WHEREAS, Tenant desires to lease approximately 2,231 rentable square feet of space in the Main Building, 3,240 rentable square feet of space in the Warehouse, and 4,800 rentable square feet of space in the Headend Building as more particularly described in the diagrams attached hereto as **Schedule A** (the "Premises").

NOW THEREFORE, Landlord and Tenant, for themselves, their legal representatives, successors and permitted assigns, intending to be legally bound, hereby agree to the terms and conditions of this Lease as follows:

1. **Granting Clause.** Landlord leases to Tenant, upon the terms and conditions herein stated, the Premises, which Premises the parties stipulate consist of a total of 10,271 square feet in the Buildings: 2,231 square feet of space in the Main Building, 3,240 rentable square feet of space in the Warehouse, and 4,800 rentable square feet of space in the Headend Building, together with the nonexclusive use of common space and parking areas in and appurtenant to the Buildings.
2. **Term.** The term of this Lease (the "Term") shall commence on November 8, 2018 (the "Commencement Date"), and shall expire ten (10) years following the Commencement Date (the "Expiration Date"), unless renewed or earlier terminated in accordance with the terms of this Lease.
3. **Rent.** Tenant agrees to pay a monthly rent during the Term in the amount of Five Thousand Dollars (\$5,000) (the "Rent"). The Rent shall be payable monthly in advance, commencing on the Commencement Date and continuing on or before the first (1st) day of each month thereafter during the Term. Without limiting the provisions of this Lease, if Tenant fails to pay any installment of Rent or other charge to be paid by Tenant pursuant to this Lease within five (5) business days after the same becomes due and payable, then Tenant shall pay a late charge equal to five percent (5%) of the amount of such payment. Rent shall be inclusive of all costs including, without limitation, taxes, insurance, utilities, and repair and maintenance expenses.
4. **Use of Premises.** Tenant may use the Premises for operation, maintenance, and storage of a headend, and any use ancillary thereto, or, upon prior written approval from Landlord, which approval shall not be unreasonably withheld, any other use. Tenant's use includes the list of offices in the Main Building and the Headend Building as described on **Schedule A**, multi-purpose rooms, conference rooms, common areas, furniture, fixtures, storage, and equipment.
5. **Quiet Enjoyment.** Landlord warrants that it owns the Premises, has full right and power to execute and perform this Lease and to grant the estate demised herein and that Tenant, on payment of Rent and performing the covenants herein contained, shall peaceably and quietly have, hold and enjoy the Premises during the full term of this Lease and any extensions or renewal hereof.

6. **Repair and Maintenance of Premises.** Landlord covenants and agrees, at its expense without reimbursement or contribution by Tenant, to keep, maintain and replace, if necessary, the Buildings and the Premises, including, without limitation, the foundation, floors, slabs, exterior walls, structural systems of the Buildings, load bearing walls, roof, roof structure, HVAC equipment, plumbing, gas, landscaping, parking lot and utility systems in good condition and repair, unless such repair or maintenance is made necessary by the negligence or intentional misconduct of Tenant. Landlord shall have the right to enter upon the Premises to make such repairs, and Landlord agrees to provide Tenant with prior notice of such entry, provided, however, in the event of emergency, Landlord shall not be required to provide notice to Tenant prior to entry upon the Premises.

7. **Utilities.** Landlord shall pay for all water, gas, electricity, heat, light, power, telephone, sewer, sprinkler services, refuse and trash collection and other utilities and services used on the Premises, all maintenance charges for utilities and any storm sewer charges or other similar charges for utilities imposed by any governmental entity or utility provider. Notwithstanding, Tenant will pay for electricity at the Headend Building.

8. **Taxes.** Landlord shall be responsible for and shall pay, prior to the due date, all real estate taxes levied upon the Premises, Buildings, and other improvements during the term of the Lease.

9. **Insurance.** Landlord shall maintain, at its cost, all risk property insurance covering the full replacement cost of the Buildings, less a commercially reasonable deductible if Landlord so chooses. Landlord also maintains, and shall continue to maintain, commercial liability coverage for the Buildings. Landlord may, but is not obligated to, maintain such other insurance and additional coverages as it may deem necessary, including, but not limited to, flood insurance and rent loss insurance. The Premises may be included in a blanket policy (in which case the cost of such insurance allocable to the Premises will be determined by Landlord based upon the insurer's cost calculations). Tenant shall procure and maintain appropriate policies of commercial liability and workman's compensation insurance to cover its respective liability exposures.

10. **Waiver of Subrogation.** Notwithstanding anything to the contrary contained in this Lease, Tenant and Landlord waive all rights to recover against each other for any loss or damage to their respective tangible personal or real property (whether owned or leased) from any cause covered by insurance maintained by each of them, including their respective deductibles or self-insured retentions. Tenant and Landlord will cause their respective insurers to issue appropriate waivers of subrogation rights endorsements to all property insurance policies maintained by each party. This provision shall survive the expiration or sooner termination of this Lease.

11. **Assignment or Subletting.** Tenant shall have the right to assign this Lease or sublet the Premises or any portion thereof without Landlord's consent, provided such assignment or subletting is expressly subject to the terms and provisions of this Lease.

12. **Emergency Generator.** Tenant shall have the right to access the emergency generator serving the Buildings at any and all times throughout this Lease.

13. **Notices.** Any notice or document required or permitted to be delivered hereunder may be delivered or shall be deemed to be delivered, whether actually received or not, when deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed to the parties at the addresses indicated below, or at such other addresses as may have thereto fore been specified by written notice delivered in accordance herewith:

If to Landlord: The City of Opelika
600 Fox Run Pkwy
Opelika, AL 36801
Attn: Derek Lee, Director

If to Tenant: Point Broadband, LLC
1791 O.G. Skinner Drive,
West Point, Georgia 31833
Attn: Todd Holt

With a copy to:

Maynard, Cooper & Gale, P.C.
655 Gallatin Street
Huntsville, Alabama 35803
Attn: Michael P. Johnson, Esq.

With a copy to:

Point Broadband, LLC
1791 O.G. Skinner Drive
West Point, Georgia 31833
Attn: Chad Wachter, General Counsel

14. **Default by Tenant.** The following events shall be an event of default ("Event of Default") by Tenant under this Lease:

(a) Failure of Tenant to pay any installment of Rent to Landlord on the date that the same is due and such failure shall continue for a period of fifteen (15) days after the date said Rent payment is due.

(b) Failure of Tenant to comply with any term, condition or covenant of this Lease, other than the payment of Rent or other sum of money, and such failure shall not be cured within thirty (30) days after written notice from Landlord to Tenant.

(c) Insolvency, the making of a transfer in fraud of creditors or the making of an assignment for the benefit of creditors by Tenant.

(d) Filing of a petition under any section or chapter of the United States Bankruptcy Code, as amended, or under any similar law or statute of the United States or any State thereof by Tenant or adjudication as a bankrupt or insolvent in proceedings filed against Tenant.

(e) Appointment of a receiver or trustee for all, or, substantially all of the assets of Tenant.

15. **Landlord's Remedies.** Upon the occurrence of any of the Events of Default listed in Section 14, Landlord shall have the option to pursue any one or more of the following remedies:

(a) Terminate this Lease, in which event Tenant shall immediately surrender the Premises to Landlord. If Tenant fails to surrender such Premises, Landlord may, without prejudice to any other remedy which it may have for possession of the Premises or arrearage in Rent, enter upon and take possession of the Premises and expel or remove Tenant and any other person who may be occupying such Premises or

any part thereof, by force if necessary, without being liable for prosecution or any claim for damages therefor. Tenant shall pay to Landlord on demand the amount of all loss and damage which Landlord may suffer by reason of such termination, whether through inability to relet the Premises on satisfactory terms or otherwise.

(b) Enter upon and take possession of the Premises, by force if necessary, without terminating this Lease and without being liable for prosecution or for any claim for damages therefor, and do whatever Tenant is obligated to do under the terms of this Lease. Tenant agrees to pay Landlord on demand for expenses which Landlord may incur in this affecting compliance with Tenant's obligations under this Lease, together with interest thereon at the rate of five percent (5%) per annum from the date expended until paid. Landlord shall not be liable for any damages resulting to the Tenant from such action, whether caused by negligence of Landlord or otherwise.

(c) Declare all Rent and other sums due hereunder, due and payable in full for the entire term of the Lease.

(d) Pursue any of its remedies at law or equity.

(e) Notwithstanding the foregoing, upon the occurrence of an Event of Default by Tenant, Landlord shall use commercially reasonable efforts to mitigate its damages.

16. **Default by Landlord.** The following events shall be an Event of Default by Landlord under this Lease:

(a) Failure of Landlord to maintain and repair the Premises or commence in good faith such repair or maintenance as provided for in Section 6 of the Lease and such failure shall continue for a period of ten (10) days after written notice thereof to Landlord.

(b) Failure of Landlord to comply with any term, condition or covenant of this Lease, other than maintenance and repair, and such failure shall not be cured within thirty (30) days after written notice thereof from Tenant to Landlord.

17. **Tenant's Remedies.** Upon the occurrence of any of the Events of Default listed in Section 16, Tenant shall have the option to pursue any one or more of the following remedies:

(a) In the event of a default by Landlord under Section 16(a), Tenant shall have the right, but not the obligation to cause the required maintenance and repair to be made. Landlord shall reimburse Tenant for the cost of the maintenance and repair within ten (10) days of receiving a copy of the paid invoice showing the amount of said repair. In the event Landlord fails to pay any such invoice when due, Tenant may deduct such amounts from Rent thereafter becoming due and payable hereunder.

(b) Terminate the lease.

(c) Any other recourse available under applicable law.

18. **Holding Over.** Should Tenant or any of its successors in interest fail to surrender the Premises, or any part thereof, on the expiration or termination of this Lease, without any agreement in writing between Landlord and Tenant with respect thereto then prior to acceptance of Rent by Landlord, Tenant shall be deemed a tenant month to month, subject to the provisions of this Lease insofar as the same may be made applicable to a tenancy from month-to-month; however, the rent due shall increase to \$5,250 per month. In the event of such holding over by Tenant, either Landlord or Tenant may terminate the monthly tenancy upon thirty (30) days' written notice to the other.

19. **Surrender of Premises.** At the expiration of the Lease term, Tenant shall, after removal of trade fixtures, equipment and other personal property, peaceably surrender the Premises broom clean and in good condition and repair, reasonable wear and tear and repairs which are Landlord's obligation hereunder excepted.

20. **Indemnification.** Landlord, to the extent allowed by law, hereby agrees to and shall indemnify Tenant and its successors and assigns and Tenant hereby agrees to and shall indemnify Landlord and its successors and assigns in respect of any liability, damage, cost, expense or deficiency resulting from any misrepresentations, breach of warranty or nonfulfillment of any representation or agreement of the indemnifying party made herein, and from any misrepresentation in or omission from any certificate or other instrument furnished or to be furnished to the indemnified party hereunder as well as against all actions, suits, process, demands, assessments, judgments, costs and expenses, including counsel fees, incident to any of the forgoing.

21. **Compliance with Laws.**

(a) Landlord represents and warrants to Tenant that to the best of Landlord's actual knowledge, as of the date hereof, Landlord and the Premises are in compliance with, and will continue to be in compliance with, all federal, state, county and municipal environmental laws, rules, regulations and statutes applicable to the Premises or the use thereof, and that there are no Hazardous Substances in or on the Premises other than in accordance with applicable law. Excluding any matters that result from the actions or omissions of Tenant after the effective date of this Lease, Landlord, to the extent allowable by law, shall defend, indemnify and hold harmless Tenant and its agents, employees, successors and assigns, from and against any and all claims, demands, penalties, fines, liabilities, settlements, damages, costs and expenses (including, without limitation, reasonable attorneys' fees, consultants' fees, court costs and litigation expenses) arising out of or in any way related to the presence of Hazardous Substances in or on the Premises.

(b) "**Hazardous Substances**" shall mean any substance, chemical, contaminant or waste that is designated or defined as hazardous, toxic or dangerous or as a pollutant or contaminant in any environmental law, including without limitation, asbestos, polychlorinated biphenyls (PCBs), pesticides, PCE and petroleum or its by-products.

(c) Tenant shall comply with all governmental laws, ordinances and regulations applicable to the Tenant's use of the Premises and shall promptly comply with all governmental orders and directives for the correction, prevention and abatement of nuisances in or upon, or connected with the Tenant's use of, the Premises, all at Tenant's sole expense. Landlord warrants that to the best of its actual knowledge, the Premises currently meets all applicable codes and ordinances of any governmental agency having jurisdiction over the Premises. Tenant hereby agrees that its use and alterations of the Premises shall comply with all environmental laws and regulations, including permits, during its possession; and Tenant will not store, release or dispose (or knowingly permit the storage, release or disposal of) a Hazardous Substance in the Premises. Tenant does hereby agree to indemnify and hold Landlord harmless of, from and against, all claims, actions, liens, demands, costs, expenses, fines, judgments and losses (including reasonable legal fees and costs) resulting from, or arising out of, Tenant's violation of this provision. Landlord and Tenant acknowledge and agree if Tenant violates this provision, upon the completion of Landlord's cure of such violation, Tenant shall reimburse Landlord in full the reasonable costs associated with such cure. In the event that Tenant is served with any notice regarding Hazardous Substances on or about the Premises, Tenant agrees to promptly provide Landlord with written notice thereof.

22. **Severability**. If any provision in this Lease should be held to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Lease shall not be affected thereby.

23. **Governing Law**. This Lease and the rights and obligations of the parties arising hereunder shall be construed in accordance with the laws of the State of Alabama.

24. **Section Headings**. The headings of sections in this Lease are inserted for convenience only and shall not be considered the provisions hereof if any question of intent should arise.

25. **Successors**. The terms, conditions and covenants contained in this Lease shall apply to, inure to the benefit of and be binding upon the parties hereto and their respective successors in interest and legal representatives, except as otherwise herein expressly provided. All rights, powers, privileges, immunities and duties of Landlord under this Lease, including, but not limited to, any notices required or permitted to be delivered by Landlord to Tenant hereunder, may, at Landlord's option, be exercised or performed by Landlord's agent or attorney.

26. **Attorney's Fees**. If either party to this Lease commences litigation, legal action or claim to protect its interest and/or to enforce any term or provision of this Lease, the losing party in the dispute shall indemnify and hold harmless the prevailing party from any and all reasonable costs, including without limitation reasonable attorneys' fees and court costs incurred by the prevailing party, including attorney's fees on appeal and in any bankruptcy proceedings, and this provision shall survive the expiration or termination of this Lease. Landlord's indemnity hereunder is subject to any limitations as provided by law.

27. **Condemnation**. If the whole or any material part of the Premises shall be taken by any public authority under the power of eminent domain, or conveyed by Landlord to such authority in lieu of condemnation, and by reason of such taking (a) Tenant determines in its reasonable business judgment that Tenant's business cannot be continued in operation on the portion of the Premises which remains, or (b) Landlord determines in its reasonable business judgment that Landlord's ownership and operation of the Buildings is commercially unreasonable, then Tenant, in the case of (a), and Landlord, in the case of (b), may terminate this Lease by notice to the other party within thirty (30) days after the terminating party receives a written notice of the portion to be taken or sold, to be effective. The termination of this Lease will be effective as of the date the Premises, or, portion thereof must be vacated pursuant to the condemnation order or the date of any conveyance in lieu of such condemnation. If, during the term of this Lease, Landlord receives notice from any public authority that the whole or any part of the Premises is being considered for taking by any public authority under the power of eminent domain, Landlord shall immediately provide Tenant with written notice of such action, including a copy of said notice. If, during the term of this Lease, a material portion of the Premises shall be taken by any public authority for any public use, or, any conveyance in lieu of such condemnation, and neither Tenant nor Landlord exercise the option to terminate this Lease granted in this section, then there shall be an equitable abatement or adjustment to the Rent due under this Lease and Landlord shall promptly restore the Premises and the Buildings, less the part so taken, to the condition which existed prior to such taking. It is expressly understood and agreed that Tenant shall have no claim or demand of any kind to any award made to Landlord, except as otherwise specifically provided herein. Notwithstanding anything to the contrary, Tenant shall be entitled to an award, if any, from such condemning authority for damages for loss of Tenant's trade fixtures or improvements. Tenant shall also be entitled to claim an award for damages from the condemning authority suffered by Tenant for loss of business or loss of "good will" and for moving and relocation expenses.

28. **Fire or Other Casualty**.

(a) In the event the Premises are totally destroyed by fire, rain, wind or other cause beyond the control of Landlord, or are condemned and ordered torn down by the properly constituted authorities of the State, County, City, or other authority, then in either of these events, at Landlord's or Tenant's option, the Lease shall cease and terminate as of the date of such destruction or condemnation. The rental shall then be accounted for between the Landlord and Tenant up to the time of such damage, taking or destruction of said Premises, the Tenant paying up to said date and the Landlord refunding the rents collected beyond said date.

(b) If the Premises are damaged by fire (through no fault of Tenant or Tenant's agents, employees, invitees or customers), rain or wind beyond the control of Tenant, so as to render the same untenantable or unfit for the use or purpose for which the same are hereby let, then in that event, at Tenant's option, this Lease shall cease and terminate as of the date of such damage.

(c) If the Premises are destroyed in whole or in part and neither party elects to terminate this Lease as aforesaid, then Landlord shall promptly restore the Buildings and the Premises to the condition which existed prior to such casualty, and Rent shall abate from the date of casualty until the Premises are restored.

29. **Landlord Lien.** Landlord hereby waives any statutory or common law so-called "landlord's lien" against the equipment, trade fixtures, machinery and other personal property of Tenant situated on the Premises.

30. **Counterpart Execution.** This Lease may be executed in one or more counterparts and by different parties hereto on separate counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same agreement.

[Signature page to follow.]

[Signature page to Headend Lease.]

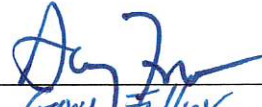
IN WITNESS WHEREOF, the parties hereto have executed this Lease Agreement as of the day and year first above written.

WITNESS:



LANDLORD:

THE CITY OF OPELIKA

By: 

Name: Gary Fuller

Its: Mayor

TENANT:

POINT BROADBAND, LLC

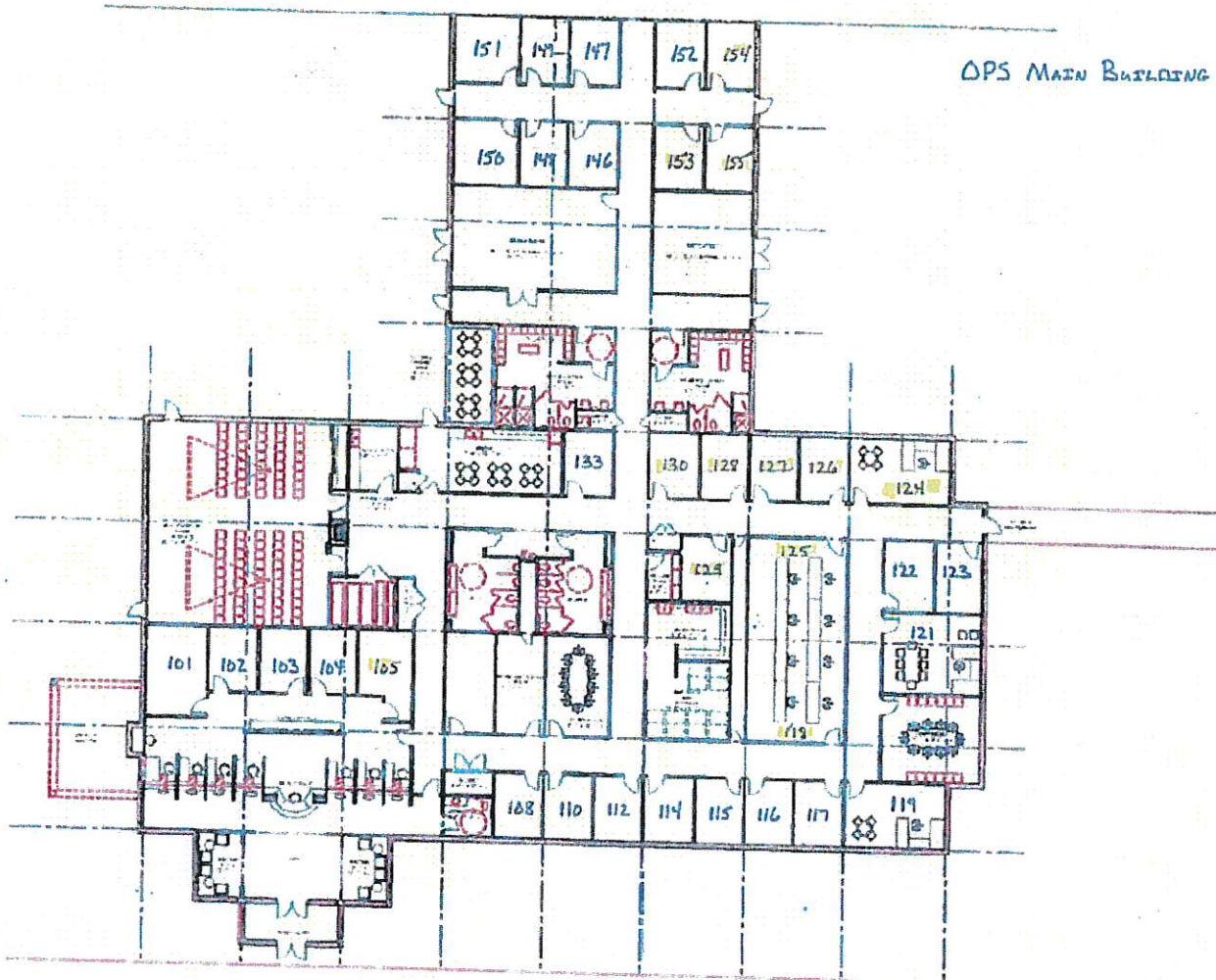
By: 

Name: Todd Holt

Its: President

Schedule A

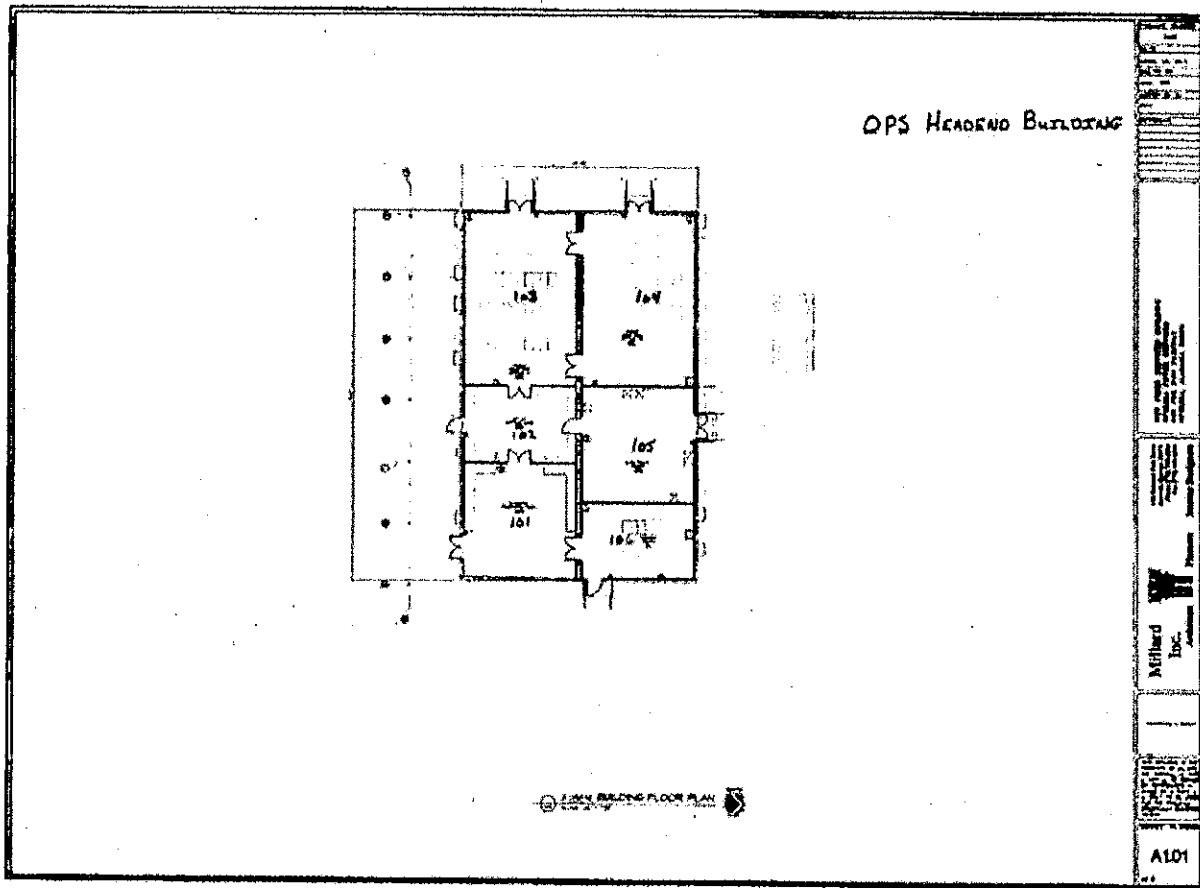
Diagram of Premises



Below is a list of offices in the main OPS building (map attached) that Point Broadband will lease:

Point Broadband Leased Space in OPS Main Building

Office No.	Sq. Footage	Description
105	116	Future
124	244	Fiber Services Manager
126	120	Marketing/Sales
127	120	Marketing/Sales
128	120	Sales Engineer
129	120	Fiber Engineer
130	120	Workflow Coordinator
153	125	FST Crew
154	125	FST Supervisor
155	125	FST Crew
118 / 125	775	Network Operations Center
Station 1	60.5	Customer Service Area
Station 2	60.5	Customer Service Area
Warehouse	3240	20% of 16,200 feet
Total Sq. Footage	5471	



Below is a breakdown of leased space in the headend building:

Point Broadband Leased Space in Headend Building

Office No.	Sq. Footage	Description
102	600	Office / Lab
103	1350	Video Head-End 1
104	1350	Video Head-End 2
105	900	Electrical Room / Storage
106	600	Server Room (OPS keeps space for 5 racks)
Total Sq. Footage	4800	

Notes:

1. Electricity is included in the Main Building and Point Broadband is responsible for the Headend Building.
2. Water is included for both buildings.
3. Furniture and fixtures are included with lease.
4. Warehouse includes shelving space, enclosed cage for high-dollar inventory items, use of forklift and other transport equipment and designated covered warehouse parking spaces.

OPS ELECTRIC COMPANY LICENSE AGREEMENT

This OPS Electric Company License Agreement (this "Agreement") made and entered into this ____ day of _____, 2018, between **THE CITY OF OPELIKA D/B/A OPELIKA POWER SERVICES**, an Alabama municipal corporation's Business (the "OPS"); and **POINT BROADBAND, LLC**, a Georgia limited liability company ("**Point Broadband**").

RECITALS

WHEREAS, the parties entered into the certain Asset Purchase Agreement between OPS and Point Broadband, executed as of _____, 2018 (the "**Asset Purchase Agreement**"), by which OPS agreed to sell and Point Broadband agreed to buy the assets used in OPS's telecommunication and advanced fiber-optic broadband division in the business of providing fiber-optic telecommunication and information services (the "**Business**"); and

WHEREAS, the assets used in OPS's business of providing electricity and solid waste disposal and related services are not being sold and will be retained by OPS; and

WHEREAS, pursuant to the Asset Purchase Agreement, OPS agreed to license to Point Broadband certain rights to use real property owned or leased by OPS and used by the Business; and

WHEREAS, pursuant to the Asset Purchase Agreement, OPS agreed to license to Point Broadband certain non-exclusive to use poles and conduits owned by OPS and used by the Business; and

WHEREAS, pursuant to the Asset Purchase Agreement, OPS agreed to sublicense to Point Broadband certain non-exclusive rights to attach to poles licensed by OPS from a third-party and used by the Business; and

WHEREAS, pursuant to the Asset Purchase Agreement, OPS agreed to provide non-metered electric service to certain Point Broadband ONT facilities; and

WHEREAS, capitalized terms used herein and not otherwise defined shall have the meaning ascribed to such terms in the Asset Purchase Agreement

AGREEMENT

NOW, THEREFORE, IN CONSIDERATION of the sum of [Ten Dollars (\$10.00)] paid by Point Broadband to OPS and the mutual covenants and agreements of the parties herein contained, the receipt and sufficiency of which are hereby acknowledged, OPS and Point Broadband agree as follows:

1. **Easement Sublicense.**

(a) OPS does hereby sublicense unto Point Broadband the limited non-exclusive right to occupy easements or rights-of-way granted to OPS under those agreements set forth on Exhibit E, for the purposes set forth therein and to the extent permitted thereunder (the "**Easement Sublicense**").

(b) The Easement Sublicense is subject and subordinate to all of the terms and conditions of the agreements sublicensed under the Easement Sublicense and to all matters to which the underlying agreements are or hereafter may become subordinate. Point Broadband agrees to be bound by and to perform and comply with all the terms and conditions of the sublicensed agreements. The terms and

conditions of the sublicensed agreements, as amended, shall be incorporated as if fully set forth herein, and any reference herein to this Agreement shall be deemed to include such terms and conditions.

(c) In the event that the grantor under any agreement underlying the Easement Sublicense fails or refuses to provide any required consent to the Easement Sublicense, the Easement Sublicense shall be null and void with respect to that underlying agreement, and Point Broadband shall be required to enter into a separate agreement with the non-consenting grantor.

2. **Notice**. Any notice by either party to the other shall be in writing and shall be deemed to be duly given if delivered personally or mailed by registered or certified mail in a postpaid envelope addressed to the other party as follows:

if to OPS:

The City of Opelika d/b/a Opelika Power Services
600 Fox Run Pkwy
Opelika, Alabama 36801
Attention: Derek Lee, Director

if to Point Broadband:

Point Broadband, LLC
1791 O. G. Skinner Drive
West Point, Georgia 31833
Attn: Todd Holt, CEO

With a copy to:

Maynard, Cooper & Gale, P.C.
655 Gallatin Street
Huntsville, Alabama 35803
Attention: Michael P. Johnson, Esq.

With an additional copy to :

Point Broadband, LLC
1791 O.G. Skinner Drive,
West Point, Georgia 31833
Attention: Chad Wachter, General Counsel

or such other address as any party may from time-to-time designate in writing. All such notices shall be effective when postmarked if sent by mail or when delivered if delivered personally.

3. **Controlling Law**. This Agreement shall be governed by the laws of the State of Alabama.

4. **Counterparts**. This Agreement may be executed in two or more written or electronic counterparts, each of which when executed and delivered shall be an original, but all such counterparts shall constitute one and the same instrument.

IN WITNESS WHEREOF, this OPS ELECTRIC COMPANY LICENSE AGREEMENT is executed on this the date and year first above written.

THE CITY OF OPELIKA D/B/A OPELIKA POWER SERVICES, an Alabama municipal corporation

By: *[Signature]*
MAYOR

POINT BROADBAND FIBER, LLC,
a Georgia limited liability company

By: *[Signature]*
PRESIDENT

STATE OF ALABAMA
COUNTY OF LEE, TO-WIT:

I, BARBARA ARRINGTON, a Notary Public of said County do hereby certify that
GARY FULLER, its MAYOR, who signed
the writing above, for OPS, an Alabama municipal corporation, has this day in my said County, before me
acknowledged the said writing to be the act and deed of said corporation.

Given under my hand and notarial seal this 17 day of OCTOBER, 2018.
My commission expires DEC 8, 2019

[Signature]
Notary Public

STATE OF ALABAMA
COUNTY OF LEE, TO-WIT:

I, BARBARA ARRINGTON, a Notary Public of said County do hereby certify that
TODD HOLT, its PRESIDENT, who signed
the writing above, for Point Broadband, LLC, a Georgia limited liability company, has this day in my said
County, before me acknowledged the said writing to be the act and deed of said limited liability company.

Given under my hand and notarial seal this 17 day of OCTOBER, 2018.

My commission expires Dec 8, 2019

[Signature]
Notary Public

TRANSITION SERVICES AGREEMENT**between****THE CITY OF OPELIKA D/B/A
OPELIKA POWER SERVICES****and****POINT BROADBAND, LLC
or its affiliated designee and assignee****Dated as of _____, 2018**

TRANSITION SERVICES AGREEMENT

This Transition Services Agreement (the "**Agreement**"), dated effective as of _____, 2018 (the "**Effective Date**"), entered into between The City of Opelika d/b/a Opelika Power Services, an Alabama municipal corporation's Business ("**Seller**"), and Point Broadband, LLC, a Georgia limited liability company ("**Point Broadband**" or the "**Buyer**"), provides as follows:

RECITALS

WHEREAS, the parties entered into that certain Asset Purchase Agreement dated as of _____, 2018 (the "**Asset Purchase Agreement**"), pursuant to which Seller has agreed to sell and assign to Buyer, and Buyer has agreed to purchase and assume from Seller, substantially all the assets, and certain specified liabilities, of the Business (as such term is defined in the Asset Purchase Agreement), all as more fully described therein; and,

WHEREAS, to ensure an orderly transition of the Business to Buyer and as a condition to consummating the transactions contemplated by the Asset Purchase Agreement, Buyer and Seller have agreed to enter into this Agreement, pursuant to which Seller will provide, or cause its Affiliates to provide, Buyer with certain services, in each case on a transitional basis and subject to the terms and conditions set forth herein; and,

WHEREAS, capitalized terms used herein and not otherwise defined shall have the meaning ascribed to such terms in the Asset Purchase Agreement;

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants and agreements contained in this Agreement and the Asset Purchase Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

TERMS AND CONDITIONS

1. PROVISION OF SERVICES

1.1 Agreement.

1.1.1 Seller agrees to provide, or to cause its Affiliates to provide, the services (the "**Services**") set forth on Annex A attached hereto, together with such schedules or exhibits enclosed therein (as such Annex A, as hereafter defined, may be amended or supplemented pursuant to the terms of this Agreement, collectively, the "**Transition Services**") to Buyer for the respective periods and on the other terms and conditions set forth in this Agreement and in the respective portion of Annex A.

1.1.2 Subject to Section 7.14, the obligations of Seller under this Agreement to provide Transition Services shall terminate with respect to each Service on the end date specified in the applicable portion of Annex A of the Initial Term, or at the election of Buyer in its sole discretion made no less than fourteen (14) days prior to the expiration of the Initial Term, on the end date specified in the applicable portion of Annex A of the Extended Term (such date, as applicable, the "**End Date**"). Notwithstanding the foregoing, the parties acknowledge and agree that Buyer may determine from time to time that it does not require any or all of the Services set out on one or more of the Annex A or that it does not require such Services for the entire period up to the applicable End Date. Accordingly, Buyer may terminate any Service, in whole and not in part, upon three (3) days advance notification to Seller in writing of any such determination.

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1.1.3 To enable the provision of the Services by Seller, Buyer agrees that it shall provide to Seller's and its Affiliates' employees and any third-party service providers or subcontractors who provide Services, at no cost to Seller, reasonable access to the facilities, assets of the Business, in all cases to the extent necessary for Seller to fulfill its obligations under this Agreement and upon reasonable advance notice.

1.1.4 Seller agrees that all of its and its Affiliates' employees and any third-party service providers and subcontractors, when on the property of Buyer or when given access to any equipment, computer, software, network or files owned or controlled by Buyer, shall conform to the policies and procedures of Buyer concerning health, safety and security which are made known to Seller in advance.

1.1.5 The Seller shall supervise its employees pursuant to this Agreement.

1.2 Standard of Service.

1.2.1 Seller agrees that the Services shall be provided in accordance with the same standard of care as historically provided.

1.2.2 Except as expressly set forth in this Agreement or in any contract entered into hereunder, Seller makes no representations and warranties of any kind, implied or expressed, with respect to the Services, including, without limitation, no warranties of merchantability or fitness for a particular purpose, which are specifically disclaimed. Buyer acknowledges and agrees that this Agreement does not create a fiduciary relationship, partnership, joint venture or relationships of trust or agency between the parties and that all Services are provided by Seller as an independent contractor.

1.3 Transition Period. The Seller shall provide the Transition Services to the Buyer during the period (the "**Transition Period**") that shall commence on the date hereof and shall, with respect to each particular Transition Service, continue for the period of time shown on Annex A for that particular Transition Service, unless earlier terminated in accordance with Section 1.4. The Transition Period shall conclude in one hundred twenty (120) days from the Effective Date; *provided, however*, at the conclusion of such one hundred twenty (120) day period the parties shall meet to discuss whether any of the Transition Services need to continue for an additional limited period of time. The Transition Period with respect to any specific Transition Service may be extended only by mutual written agreement of the Seller and the Buyer, which consent shall be in the sole discretion of each party.

1.4 Phase Out or Termination of Transition Services. The Buyer shall have the right, in its sole and absolute discretion, to direct that any or all of the Transition Services be (i) provided to one or more of the subsidiaries of the Buyer and (ii) terminated effective on a date established by the Buyer which is prior to the termination date for such Transition Service shown on Annex A. Such termination will be effective no earlier than three (3) business days after written notice of termination is received by the Seller, unless the Seller consents to a shorter period. The Buyer may direct that the level of any specific item of the Transition Services be reduced or phased out, subject to a mutually satisfactory fee arrangement for such particular Transition Service.

1.5 Modified Transition Services. If the Buyer requests a modification of any Transition Service, including the addition of any services, the Buyer shall make its request to the Seller in writing. Upon receipt by the Seller of a written modification request, the Seller shall use commercially reasonable efforts to evaluate the modification and develop changes in the cost-based rates for those Transition Services; provided, however, that the Seller may decline to modify any Transition Services. If the Seller agrees to the proposed modification to the Transition Service, the modification shall be set forth in a revised schedule signed by the parties hereto. A requested increase in the term of a particular Transition Service shall be deemed a modification of such

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Transition Service.

1.6 Certain Limitations. In performing the Transition Services, the obligations of the Seller are subject to the availability of resources, particularly personnel, and shall be limited to the systems, software, hardware and other information technology or management information systems technology platforms currently possessed by the Seller or its Affiliates and used in connection with services provided to the Business in the ordinary course of business prior to the closing of the transactions contemplated by the Asset Purchase Agreement. The Seller shall not be required to acquire new, additional, or different personnel, equipment, or resources, or to acquire or establish any separate hardware or software platforms to perform such services unless the Buyer shall agree to pay the entire cost thereof. The Seller shall not be obligated to provide Transition Services to the extent the employees of the Seller or any of its Affiliates who are providing such services are no longer available to the Seller or its Affiliate unless (and to the extent that) another employee or employees of the Seller or any of its Affiliates can reasonably provide such Transition Services. In the event the Seller becomes aware that an employee providing services is preparing to leave or does leave, the Seller shall immediately notify the Buyer and work with the Buyer to identify a temporary alternative solution to avoid the disruption of any affected Transition Services.

2. PAYMENT FOR SERVICES

2.1 Fees.

2.1.1 The Buyer shall pay the Seller the fees set forth opposite the applicable Transition Service on Annex A for the Transition Services rendered by the Seller hereunder. Unless the fee for a specific Transition Service is set forth on Annex A, then the fee for the Transition Services shall be the direct costs of providing the services internally (*i.e.*, the prorated wages and employee benefits of employees) at the Seller, plus reimbursement of out-of-pocket third-party costs and expenses, plus the fair and reasonable cost of supervision. The fees set forth on Annex A are exclusive of any applicable taxes (other than taxes based on the Seller's income) The Seller shall send the Buyer a single invoice for the fees payable to the Seller on a monthly basis, which invoice shall provide sufficient detail setting forth the fees per the Transition Service provided (the "**Monthly Invoice**"). The Buyer shall pay the Seller the amount set forth on each Monthly Invoice within thirty (30) days following the Buyer's receipt of the same (the "**Payment Deadline**"). Transition Services charged on a monthly basis which are provided for partial periods shall be charged for on a pro rata basis, based on a thirty (30)-day month.

2.1.2 As more fully provided in the Annex A and subject to the terms and conditions therein:

(a) Seller and Buyer shall develop a projected monthly budget of potential Out-of-Pocket Costs with respect to the provision of Transition Services.

(b) Seller shall provide Buyer with monthly invoices ("**Invoices**"), which shall set forth in reasonable detail, with such supporting documentation as Buyer may reasonably request with respect to Out-of-Pocket Costs, amounts payable under this Agreement, including but not limited to, who approved the time, the time requested, and work performed.

(c) Payments pursuant to this Agreement shall be made within thirty (30) days after the date of receipt of an Invoice by Buyer from Seller.

2.2 Charges for Modified Services. Any additional services that Seller agrees to provide, in its sole discretion, shall constitute Services under this Agreement and be subject in all respect to the provisions of this Agreement as if fully set forth on a Service Exhibit as of the date hereof and any Annex A amendment (H0428146.2)

that describes such services and costs. If modification of the Transition Services requires the hiring of additional employees or the procurement of additional equipment or services, the Seller shall notify the Buyer and, upon approval, may include in the charges for the modified Transition Services provisions for the recovery of (i) employee hiring expenses, and (ii) the cost of procuring additional equipment and services. If Buyer does not approve of Seller's proposed changes in the charges for the modified Transition Services, then the services shall continue without modification.

2.3 Disputed Invoice Charges.

(a) If the Buyer disputes a charge in good faith, it may withhold payment of that charge so long as the Buyer makes timely payment of all undisputed charges; and within thirty (30) days of receipt of the invoice, provides the Seller with a written explanation of the reasons for the Buyer's dispute of the charge.

(b) The Seller and the Buyer shall cooperate to promptly resolve any disputed charge. If within ten (10) business days

- (i) the Seller and the Buyer shall agree that the disputed charge is not valid, the Seller shall either (i) include a credit within the next invoicing cycle, to the extent the Buyer previously paid the disputed amount, or (ii) shall promptly issue an amended invoice; or
- (ii) the Seller and the Buyer shall agree that the disputed charge is valid, the Buyer shall pay the charge, plus interest on such charge accruing from the date that payment becomes due until payment thereof at a rate equal to ten percent (10%) per annum (or, if a lesser rate is required by law, then the maximum rate permitted by law), within the later of thirty (30) days from the date of the invoice or fifteen (15) days from the date of the resolution of the dispute; or,
- (iii) if the Seller and the Buyer are unable to resolve the billing dispute within thirty (30) days, the Seller and the Buyer shall submit the issue to senior officers of the Seller and the Buyer who shall cooperate in good faith to resolve the issue.

3. LIABILITY

3.1 Liability for Gross Negligence and Willful Misconduct. The obligation for damages, losses, and liabilities that arise in connection with the gross negligence or willful misconduct of any employee of the Seller or any of its Affiliates in connection with the provision of any Transition Service shall be indemnified by the Seller as permitted by law. The obligation for damages, losses and liabilities that arise in connection with the gross negligence or willful misconduct of any employee of the Buyer or any of its Affiliates in connection with the provision of any Transition Service shall be assumed by the Buyer and fully indemnified by the Buyer.

4. GOOD FAITH COOPERATION

4.1 Cooperation. Each party hereto shall act in good faith and cooperate with each other in order to achieve the benefits expected and to resolve any problems that may occur in a commercially reasonable way. As part of that cooperation, the parties hereto agree that they will ensure that all transactions and activities contemplated hereunder are conducted in compliance with all Applicable Law. The individual set forth

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opposite each party's name on Annex B shall be such party's coordinator with responsibility for ensuring that the overall intent of this Agreement is achieved. Buyer and Seller will cooperate in good faith to assure an orderly and efficient transition. Each party shall make available, as reasonably requested by the other party, sufficient resources and timely decisions, approvals and acceptances, in order that each party may perform its obligations under this Agreement in a timely and efficient manner.

4.2 Books and Records. Each party shall keep books and records of the Transition Services provided and reasonable supporting documentation of all charges and expenses incurred in providing such Transition Services and shall produce written records that verify the dates and times during which the Transition Services were performed. Each party shall make such books and records available to the other party. Buyer, upon reasonable notice, during normal business hours.

5. INDEMNIFICATION

5.1 Indemnification. To the extent allowed by law, the Seller shall indemnify, defend, and hold the Buyer, its respective directors, officers, equity holders, and employees and their heirs, successors and assigns, harmless from and against any and all claims, demands, suits, proceedings, judgments, losses, liabilities, damages, costs, and expenses (including, but not limited to, reasonable attorneys' fees and costs of enforcing the indemnification obligations hereunder) (collectively, "**Losses**") imposed or incurred as a result of or in connection with any breach by the Seller of any covenant, obligation, representation, or warranty hereunder. The Buyer shall indemnify, defend, and hold the Seller, its respective directors, officers, shareholders, and employees, and their heirs, successors and assigns, harmless from and against any and all Losses imposed or incurred as a result of or in connection with any breach by the Buyer of any covenant, obligation, representation, or warranty hereunder.

6. TERMINATION

6.1 Termination of Agreement. Subject to Section 6.5, this Agreement shall terminate in its entirety (i) automatically on the date upon which Seller and Buyer shall have no continuing obligation to perform any Transaction Services as a result of each of their expiration or termination in accordance with this Agreement or (ii) in accordance with Section 6.4.

6.2 Breach. Any party (the "**Non-Breaching Party**") may terminate this Agreement with respect to any Transition Service, in whole but not in part, at any time upon prior written notice to the other party (the "**Breaching Party**") if the Breaching Party has failed (other than pursuant to Section 6.5) to perform any of its material obligations under this Agreement relating to such Service. For the avoidance of doubt, non-payment by Buyer for a Service provided by Seller or by Seller for a service provided by Buyer in accordance with this Agreement and not the subject of a good faith dispute shall be deemed a breach for purposes of Section 6.2.

6.3 Insolvency. If either party hereto shall file a petition in bankruptcy, then the other party shall have the right to terminate this Agreement by providing written notice the party undergoing bankruptcy.

6.4 Effect of Termination. Upon termination of this Agreement in its entirety, all obligations of the parties hereto shall terminate, except for the provisions of Section 2.3, Section 3, and Section 5 which shall survive any termination or expiration of this Agreement.

6.5 Force Majeure. The obligations of Seller under this Agreement with respect to any Transition Services shall be suspended during the period and to the extent that Seller is prevented or hindered from providing or receiving such services, or Buyer is prevented or hindered from receiving or providing such services, due to any of the following causes beyond such party's reasonable control which cannot be overcome
(H0428146.2)

by the exercise of reasonable efforts (such causes, "**Force Majeure Events**"): (i) acts of God, (ii) flood, fire or explosion, (iii) war, invasion, riot or other civil unrest, (iv) Governmental Order or Law, (v) actions, embargoes or blockades in effect on or after the date of this Agreement, (vi) action by any Governmental Authority, (vii) national or regional emergency, (viii) strikes, labor stoppages or slowdowns or other industrial disturbances, or (ix) shortage of adequate power. The party suffering a *Force Majeure* Event shall give notice of suspension as soon as reasonably practicable to the other party stating the date and extent of such suspension and the cause thereof, and the affected party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. Neither Buyer nor Seller shall be liable for the nonperformance or delay in performance of its respective obligations under this Agreement when such failure is due to a *Force Majeure* Event. The applicable End Date for any Service or Buyer Service, as applicable, so suspended shall be automatically extended for a period of time equal to the time lost by reason of the suspension.

7. GENERAL PROVISIONS

7.1 Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the following addresses:

If to Seller: The City of Opelika d/b/a Opelika Power Services

Attn: Mayor Fuller

204 South 7th Street

Opelika, Alabama 36801

With copy to:

Opelika Power Service

Attn: Derek Lee

PO Box 2168

Opelika, Alabama 36801

E-mail: derek.lee@opelikapower.com

And a copy to:

The City of Opelika d/b/a Opelika Power Services

Attn: Guy Gunter, City Attorney

P. O. Box 390

Opelika, Alabama 36801

E-mail: _ggunter@opelika-al.gov

If to Buyer:

Point Broadband, LLC

Attn: Todd Holt

1791 O.G. Skinner Drive

West Point, Georgia 31833

E-mail: THolt@itchold.com

With copy to:

Maynard, Cooper & Gale, P.C.

Attn: Michael P. Johnson, Esq.

655 Gallatin Street

{H0428146.2}

Huntsville, Alabama 35801
E-mail: mjohnson@maynardcooper.com

Copy to: Chad Wachter, General Counsel
ITC Capital Partners, LLC
1791 O. G. Skinner Drive, Suite A
West Point, Georgia 31833
E-mail: cwachter@itchold.com

7.2 Entire Agreement. This Agreement, including all Annexes, and the Asset Purchase Agreement constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event and to the extent that there is a conflict between the provisions of this Agreement and the provisions of the Asset Purchase Agreement as it relates to the Services hereunder, the provisions of the Asset Purchase Agreement shall control.

7.3 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns, and nothing in this Agreement, express or implied, is intended to confer upon any other person any rights or remedies of any nature whatsoever under or by reason of this Agreement.

7.4 Assignment. This Agreement and each party's respective rights hereunder may not be assigned at any time except as expressly set forth herein without the prior written consent of the other parties.

7.5 Counterpart; Headings. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but such counterparts shall together constitute but one and the same Agreement. The section headings in this Agreement are inserted for convenience of reference only and shall not constitute a part hereof.

7.6 Amendment. This Agreement may not be amended except by an instrument in writing signed by all of the parties.

7.7 Severability. If any provision, clause or part of this Agreement, or the application thereof under certain circumstances, is held invalid, illegal or unenforceable, the remainder of this Agreement, or the application of such provision, clause or part under other circumstances, shall not be affected thereby. Further, such invalid, illegal or unenforceable provision or application thereof shall be modified to the extent necessary such that it, and the Agreement shall then be enforced to the maximum extent allowed by applicable law.

7.8 Specific Performance. The parties hereto agree that irreparable damage would occur in the event any of the provisions of this Agreement were not performed in accordance with the terms hereof and that the parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy at law or equity.

7.9 No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person any legal or equitable right, benefit or remedy of any nature whatsoever, under or by reason of this Agreement.

7.10 Governing Law. This Agreement shall be construed and interpreted according to the laws of

{H0428146.2}

the State of Alabama without giving effect to any choice or conflict of law provisions or rule (whether of the State of Alabama or any other jurisdiction).

7.11 Submission to Jurisdiction; Selection of Forum. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Alabama without giving effect to any choice or conflict of law provision or rule (whether of the State of Alabama or any other jurisdiction).

ANY LEGAL SUIT, ACTION OR PROCEEDING ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY MAY BE INSTITUTED IN THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA OR THE COURTS OF THE STATE OF ALABAMA IN EACH CASE LOCATED IN THE COUNTY OF LEE, ALABAMA, AND EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING. SERVICE OF PROCESS, SUMMONS, NOTICE OR OTHER DOCUMENT BY MAIL TO SUCH PARTY'S ADDRESS SET FORTH HEREIN SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY SUIT, ACTION OR OTHER PROCEEDING BROUGHT IN ANY SUCH COURT. THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR ANY PROCEEDING IN SUCH COURTS AND IRREVOCABLY WAIVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

7.12 Fulfillment of Obligations. Any obligation of any party to any other party under this Agreement, which obligation is performed, satisfied, or fulfilled by an Affiliate of such party, shall be deemed to have been performed, satisfied, or fulfilled by such party.

7.13 Interpretation. Unless the context requires otherwise, all words used in this Agreement in the singular number shall extend to and include the plural, all words in the plural number shall extend to and include the singular and all words in any gender shall extend to and include all genders.

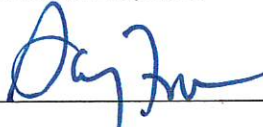
7.14 Insolvency. In the event that either party hereto shall file a petition in bankruptcy, then the other party shall have the right to terminate this Agreement by providing written notice in accordance with Section 7.1.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

BUYER:

POINT BROADBAND, LLC

By:  _____

SELLER:

THE CITY OF OPELIKA D/B/A OPELIKA POWER
SERVICES

By:  _____

[SIGNATURE PAGE TO TRANSITION SERVICES AGREEMENT]

ANNEX A
Transition Services
(Attached)

Attachment: Res 278-18, Asset purchase agreement, Point Broadband, 10-16-18 (278-18 : Asset purchase agreement with Point Broadband.)

ANNEX B

In accordance with Section 4.1, the following individuals shall be each party's coordinator with responsibility for ensuring that the overall intent of this Agreement is achieved:

Seller: _____
The City of Opelika d/b/a Opelika Power Services

Facsimile: _____

Email: _____

Buyer: Point Broadband, LLC
1791 O.G. Skinner Drive
West Point, Georgia 31833
Email: cwachter@itcholding.com
Attention: Chad Wachter, General Counsel

NETWORK MONITORING AGREEMENT

THIS NETWORK MONITORING AGREEMENT (this "Monitoring Agreement") is dated the ____ day of Opelika, 2018 (the "Effective Date"), by and between **THE CITY OF OPELIKA D/B/A OPELIKA POWER SERVICES**, a municipal corporation of the state of Alabama (the "OPSOPS") and **POINT BROADBAND, LLC**, a Georgia limited liability company (the "Buyer").

WHEREAS, Buyer, upon Closing, will own the Business; and

WHEREAS, OPS desires to obtain network monitoring services from the Buyer after Closing.

NOW THEREFORE, OPS and Buyer, for themselves, their legal representatives, successors and permitted assigns, intending to be legally bound, hereby agree to the terms and conditions of this Monitoring Agreement as follows:

1. **Services**. The OPS agrees to purchase unique and managed services from the Buyer after the Closing (the "Services"), as described in **Exhibit A**. The parties agree that the OPS or a third party would have to duplicate the network supporting the Business in order to provide the Services.

2. **Notices**. Any notice or document required or permitted to be delivered hereunder may be delivered or shall be deemed to be delivered, whether actually received or not, when deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed to the parties at the addresses indicated below, or at such other addresses as may have thereto fore been specified by written notice delivered in accordance herewith:

If to OPS: The City of Opelika
P.O. Box 390
Opelika, AL 36803
Attn: Gary Fuller, Mayor

With a copy to: Opelika Power Services
P.O. Box 2168
Opelika, AL 36803
Attn: Derek Lee, Director

If to Buyer: Point Broadband, LLC
1791 O.G. Skinner Drive,
West Point, Georgia 31833
Attn: Todd Holt

With a copy to:

Maynard, Cooper & Gale, P.C.
655 Gallatin Street
Huntsville, Alabama 35803
Attn: Michael P. Johnson, Esq.

With a copy to:

Point Broadband, LLC
1791 O.G. Skinner Drive
West Point, Georgia 31833
Attn: Chad Wachter, General Counsel

3. **Early Termination Charge.** OPS and Buyer agree that the OPS shall pay Buyer an early termination fee if the OPS fails to pay the Buyer the full amount set forth in **Schedule A**. The parties further agree that the amount of damages incurred by the Buyer shall equal to \$55,000 times the number of months remaining and unpaid under **Schedule A**.

4. **Counterpart Execution.** This Monitoring Agreement may be executed in one or more counterparts and by different parties hereto on separate counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same agreement.

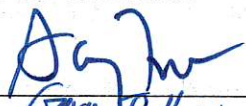
[Signature page to follow]

[Signature page to Headend Monitoring Agreement.]

IN WITNESS WHEREOF, the parties hereto have executed this Monitoring Agreement as of the day and year first above written.

OPS:

THE CITY OF OPELIKA

By: 
Name: Gary Palmer
Its: Mayor

BUYER:

POINT BROADBAND, LLC

By: 
Name: Todd Holt
Its: President

Services

Network Monitoring and managed point to point data services for 200 end points on the network used in the Business. Additional end points can be monitored for an additional \$200 per month. The parties have mapped the end points and agree that the network. OPS and Buyer acknowledge that OPS designed and built the network being sold the Buyer specifically to serve these endpoints. OPS will provide Buyer with a list of the endpoints within thirty (30) days of this Network Monitoring Agreement.

Buyer will provide disaster recovery and business continuity services to the endpoints.

Buyer will provide backup network services for the OPS to provide redundancy for the network the OPS is retaining.

They Buyer will provide, as additional services, 1 Gigabit of DIA internet services and 2 SIP trunks.

The OPS will pay the Buyer \$55,000 per month for 120 months from the date of this Agreement.

The service consists of the day-to-day system surveillance of the Seller's network, in terms of its operation and network performance reporting.

The scope of these services is to enable the Seller to maintain their network to the highest availability and resilience through constant supervision.

Constant supervision of the Seller's network is provided. This includes the continual monitoring of the network, focusing on its required functionality.

When multiple alarms occur, alarm and consolidation and prioritization is conducted, this determines the true causes of the alarms and overall impact.

NETWORK MONITORING AGREEMENT

THIS NETWORK MONITORING AGREEMENT (this "Monitoring Agreement") is dated the ____ day of Opelika, 2018 (the "Effective Date"), by and between **THE CITY OF OPELIKA D/B/A OPELIKA POWER SERVICES**, a municipal corporation of the state of Alabama' (the "OPSOPS") and **POINT BROADBAND, LLC**, a Georgia limited liability company (the "Buyer").

WHEREAS, Buyer, upon Closing, will own the Business; and

WHEREAS, OPS desires to obtain network monitoring services from the Buyer after Closing.

NOW THEREFORE, OPS and Buyer, for themselves, their legal representatives, successors and permitted assigns, intending to be legally bound, hereby agree to the terms and conditions of this Monitoring Agreement as follows:

1. **Services**. The OPS agrees to purchase unique and managed services from the Buyer after the Closing (the "Services"), as described in **Exhibit A**. The parties agree that the OPS or a third party would have to duplicate the network supporting the Business in order to provide the Services.

2. **Notices**. Any notice or document required or permitted to be delivered hereunder may be delivered or shall be deemed to be delivered, whether actually received or not, when deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed to the parties at the addresses indicated below, or at such other addresses as may have thereto fore been specified by written notice delivered in accordance herewith:

If to OPS: The City of Opelika
P.O. Box 390
Opelika, AL 36803
Attn: Gary Fuller, Mayor

With a copy to: Opelika Power Services
P.O. Box 2168
Opelika, AL 36803
Attn: Derek Lee, Director

If to Buyer: Point Broadband, LLC
1791 O.G. Skinner Drive,
West Point, Georgia 31833
Attn: Todd Holt

With a copy to:

Maynard, Cooper & Gale, P.C.
655 Gallatin Street
Huntsville, Alabama 35803
Attn: Michael P. Johnson, Esq.

With a copy to:

Point Broadband, LLC
1791 O.G. Skinner Drive
West Point, Georgia 31833
Attn: Chad Wachter, General Counsel

3. **Early Termination Charge.** OPS and Buyer agree that the OPS shall pay Buyer an early termination fee if the OPS fails to pay the Buyer the full amount set forth in **Schedule A**. The parties further agree that the amount of damages incurred by the Buyer shall equal to \$55,000 times the number of months remaining and unpaid under **Schedule A**.

4. **Counterpart Execution.** This Monitoring Agreement may be executed in one or more counterparts and by different parties hereto on separate counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same agreement.

[Signature page to follow]

[Signature page to Headend Monitoring Agreement.]

IN WITNESS WHEREOF, the parties hereto have executed this Monitoring Agreement as of the day and year first above written.

OPS:

THE CITY OF OPELIKA

By: 
Name: Gary Fuller
Its: Mayor

BUYER:

POINT BROADBAND, LLC

By: 
Name: Todd Holt
Its: President

Services

Network Monitoring and managed point to point data services for 200 end points on the network used in the Business. Additional end points can be monitored for an additional \$200 per month. The parties have mapped the end points and agree that the network. OPS and Buyer acknowledge that OPS designed and built the network being sold the Buyer specifically to serve these endpoints. OPS will provide Buyer with a list of the endpoints within thirty (30) days of this Network Monitoring Agreement.

Buyer will provide disaster recovery and business continuity services to the endpoints.

Buyer will provide backup network services for the OPS to provide redundancy for the network the OPS is retaining.

They Buyer will provide, as additional services, 1 Gigabit of DIA internet services and 2 SIP trunks.

The OPS will pay the Buyer \$55,000 per month for 120 months from the date of this Agreement.

The service consists of the day-to-day system surveillance of the Seller's network, in terms of its operation and network performance reporting.

The scope of these services is to enable the Seller to maintain their network to the highest availability and resilience through constant supervision.

Constant supervision of the Seller's network is provided. This includes the continual monitoring of the network, focusing on its required functionality.

When multiple alarms occur, alarm and consolidation and prioritization is conducted, this determines the true causes of the alarms and overall impact.

ESCROW AGREEMENT

THIS ESCROW AGREEMENT ("Escrow Agreement") is made and entered into as of this ____ day of October, 2018, by and among **THE CITY OF OPELIKA D/B/A OPELIKA POWER SERVICES**, an Alabama municipal corporation, (the "Seller") and **POINT BROADBAND, LLC**, a Georgia limited liability company (the "Buyer") and **SOUTHERN STATES BANK**] (the "Escrow Agent"). Each party hereto is referred to individually as "Party" and collectively as the "Parties."

W I T N E S S E T H

WHEREAS, there exists a certain Asset Purchase Agreement dated October __, 2018, by and between Seller and Buyer (the "APA" or "Asset Purchase Agreement").

WHEREAS, the Buyer and Seller desire to establish this Escrow Agreement to provide for the Escrow Fund, as defined in the Asset Purchase Agreement to be held for the benefit of Buyer and Seller all under the terms and conditions herein set forth.

NOW, THEREFORE, it is agreed by and among the parties hereto as follows:

1. **Defined Terms.** All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Asset Purchase Agreement.

2. **Establishment of Escrow Fund.** Escrow Agent hereby acknowledges and agrees that it has received One Million Four Hundred Seventy-Five Thousand and no/100 Dollars] (\$1,475,000) from Seller (the "Escrow Fund"), such fund to be held, invested, and disbursed for the benefit of Seller and Buyer and their respective successors and assigns, as provided herein. Escrow Agent shall hold the Escrow Fund deposited herein and such funds shall be available for distribution as provided herein.

3. **Investment of Escrow Funds.** Escrow Agent shall invest the fund in Permitted Investments. For purposes of this Agreement, "Permitted Investments" shall mean money market funds that are insured by the FDIC. All income earned and received from the investments shall be reinvested in the Escrow Fund and shall be held for distribution as provided herein.

4. **Application of Escrow Fund.**

(a) **Purpose.** This Escrow Fund is established for the purpose of providing security to Buyer for Seller's full, complete, and timely performance of its obligations under the Asset Purchase Agreement.

(b) **Claims by Buyer.**

(i) If on or prior to expiration of the Primary Term of the Escrow Agreement, Buyer claims to be entitled to indemnification, reimbursement, or payment from Seller under the provisions of the Asset Purchase Agreement, Buyer shall advise Escrow Agent and Seller of the claim(s) in writing, describing in such notice the nature of the claim(s), and the amount of such claims(s) if then determinable.

(ii) Unless Seller sends Escrow Agent a written objection to the claim(s), with a copy concurrently to Buyer, within fourteen (14) days after Seller receives Buyer's notice of claim(s), Seller shall be conclusively presumed to have approved the claim(s). In such case Escrow Agent shall, upon receipt of Joint Release Instructions, pay the claim(s) to Buyer. However, if the amount of the claim(s) is not then determinable, Escrow Agent shall set aside a reserve in an amount estimated by Buyer to cover the claim(s). Buyer shall use this procedure for each claim filed hereunder.

(iii) If Seller objects to any such claim(s) set out in Section 4(b), the Escrow Agent shall set aside a reserve in the amount estimated by Buyer to cover the claim subject to final determination of such claim as set out in Section 4(c) of this Escrow Agreement.

(c) If payment is not made under Section 4(b) above either due to Seller objecting to such claim or the amount of the claim(s) is not determinable, Escrow Agent shall hold the amount reserved from such claim(s), even if beyond the Primary Term of the Escrow Agreement, and may disburse escrowed funds upon receipt of, and in accordance with the terms of, any of the following:

(i) A copy of a certified court order approving a settlement of the action settling the applicable claim;

(ii) A copy of a certified court order representing a final non appealable judgment or order pertaining to the action involving such claim;

(iii) A Joint Release Instruction signed by Seller and Buyer pertaining to a disposition of the reserved funds held in the Escrow Fund for such claim.

Upon receipt of any of Joint Release Instructions thereby permitting Escrow Agent to disburse the reserves set up for such claim(s), then Escrow Agent shall pay to Buyer the total amount of such claim if it is determined that Seller is entitled to indemnification and/or reimbursement for the claim. If the amount finally determined for such claim exceeds the reserve, then Escrow Agent shall pay such deficiency out of any funds then remaining in the Escrow Fund. If the final amount of the claim is determined to be less than the reserve, then Escrow Agent shall pay Buyer the amount of such claim and any remaining portion of the reserve shall immediately be restored to the unreserved portion of the Escrow Fund.

(d) Notwithstanding anything to the contrary contained in this Agreement, Buyer and Seller may at any time execute and deliver a Joint Release Instruction instructing the Escrow Agent to release the Escrow Funds from the Escrow Account and pay such funds as set forth in such written instructions. "Joint Release Instruction" means the joint written instruction of

Buyer and Seller, which is executed by Buyer and Seller, to the Escrow Agent directing the Escrow Agent to disburse all or a portion of the Escrow Funds or otherwise terminate the Escrow Account, as applicable.

5. **Compensation and Indemnification.** The Escrow Agent shall be entitled to reasonable compensation as well as reimbursement for its reasonable costs and expenses incurred in connection with the performance by it of service under this Agreement (including reasonable fees and expenses of the Escrow Agent's counsel). The parties hereto agree that such costs and expenses shall be due and payable, such fees will be payable solely by Buyer upon the commencement of the escrow and on each anniversary, if any, of the date hereof.

To the extent allowed by law, the parties to this Agreement (other than Escrow Agent) hereby jointly and severally agree to indemnify and hold Escrow Agent, its affiliates and their officers, employees, successor, assigns, attorneys and agents (each an "Indemnified Party") harmless from all losses, costs, claims, demands, expenses, damages, penalties and attorney's fees suffered or incurred by any Indemnified Party or the Escrow Agent as a result of anything which it may do or refrain from doing in connection with this Agreement or any litigation or cause of action arising from or in conjunction with this Agreement or involving the subject matter hereof or the Escrow Funds; provided that the foregoing indemnification shall not extend to the gross negligence or willful misconduct of the Escrow Agent. In no event shall the Escrow Agent be responsible for any indirect or consequential damages that may result from its appointment or its actual or implied duties hereunder. This indemnity shall include, but not be limited to, all costs incurred in conjunction with any interpleader which the Escrow Agent may enter into regarding this Agreement.

6. **Termination of Escrow Fund - Primary Term.** The primary term of this Escrow Agreement shall be for a period commencing on the Closing Date under the Agreement and ending one (1) year from the Closing Date (the "Primary Term"), subject to extension as set out in Section 6 of this Escrow Agreement. If at the end of the Primary Term, Escrow Agent has not received a claim(s) from Buyer pursuant to Section 4(b) of this Agreement or has received claims with total reserves less than the Escrow Fund, the Escrow Agent shall disburse to Seller the Escrow Fund or the part of the Escrow Fund for which there is no reserve amount established as applicable within ten (10) days after expiration of the Primary Term.

7. **Extension Term.** If at the end of the Primary Term, the Escrow Agent continues to hold reserves for claims made by Buyer, then the terms of this Escrow Agreement shall be extended until all reserves for any claim(s) have finally been resolved and funds distributed pursuant to Section 4(c) (the "Extension Term"). When all monies held by the Escrow Agent have been finally distributed in accordance herewith, the Escrow Agreement shall terminate.

8. **Disbursement of Escrow Fund and Closing Documents.**

(a) Consistent with this Escrow Agreement, Escrow Agent shall proceed as follows:

- (i) For disbursement to Buyer, wire the applicable portion of the Escrow Fund to Buyer using the following wire instructions:

Bank: _____

ABA #: _____
 Acct #: _____

- (ii) For disbursement to Seller, wire the applicable portion of the Escrow Fund to Seller using the following wire instructions:

Bank: _____

ABA #: _____
 Acct #: _____

9. **Liability of Escrow Agent.**

(a) **Conflicting Demands.** Escrow Agent will be obligated to perform only the duties that are expressly set forth herein, and no implied duties or obligations shall be read into this Agreement against the Escrow Agent. This Agreement constitutes the entire agreement between the Escrow Agent and the other parties hereto in connection with the subject matter of the Escrow Account, and no other agreement entered into between the parties, or any of them, shall be considered as adopted or binding, in whole or in part, upon the Escrow Agent notwithstanding that any such other agreement may be referred to herein or deposited with Escrow Agent or the Escrow Agent may have knowledge thereof, and Escrow Agent's rights and responsibilities shall be governed solely by this Agreement and the capitalized terms used herein but defined in the Purchase Agreement. In case of conflicting demands upon Escrow Agent, it may (i) refuse to comply therewith as long as such disagreement continues and make no delivery or other disposition of any documents, funds or property then held (and Escrow Agent shall not be or become liable in any way for such failure or refusal to comply with such conflicting or adverse claims or demands); and (ii) continue to so refrain and so refuse to act until all differences have been adjusted by agreement and Escrow Agent has been notified thereof in writing signed jointly by the Seller and Buyer.

(b) No Obligation to Take Legal Action. Escrow Agent shall not be under any obligation to take any legal action in connection with this Escrow Agreement or for its enforcement, or to appear in, prosecute, or defend any action or legal proceeding which, in its opinion, would or might involve it in any costs, expense, loss, or liability, unless and as often as required by it, it is furnished with satisfactory security and indemnity against all such costs, expenses, losses, or liabilities.

(c) Status of Escrow Agent. Escrow Agent is to be considered and regarded as a depository only and its duties hereunder a purely ministerial in nature, and shall not be responsible or liable (except for its failure to exercise due care) for the sufficiency or correctness as to form, manner of execution, or validity of the documents to be executed or delivered in accordance with the Closing Statement, nor as to the identity, authority, or rights of any person executing the same. Escrow Agent's duties hereunder shall be limited to the safekeeping of the Escrow Fund received by it as Escrow Agent and for its delivery in accordance with the Closing Statement and this Escrow Agreement.

(d) Written Instructions of Parties. Notwithstanding any contrary provision contained herein, Escrow Agent shall, at all times, have full right and authority to deliver the Escrow Fund in accordance with any Joint Release Instructions signed by both Seller and Buyer.

(e) Resignation. The Escrow Agent may at any time resign hereunder by giving written notice of its resignation to the other parties hereto, at their address set forth in Section 9 hereof, at least ten (10) days prior to the date specified for such resignation to take effect, and upon the effective date of such resignation, the Escrow Fund shall be delivered by it to such person as may be designated in writing by the Seller and Buyer (the "Substituted Escrow Agent"), whereupon all the Escrow Agent's obligations hereunder shall cease and terminate. If no such person shall have been designated by such date, all obligations of the Escrow Agent hereunder shall, nevertheless, cease and terminate. The Escrow Agent's sole responsibility thereafter shall be to keep safely the Escrow Fund then held by it and to deliver the same to the person designated under the Closing Statement or in accordance with the directions of a final order of judgment of a court of competent jurisdiction. The Substituted Escrow Agent shall serve under the same terms and conditions as Escrow Agent.

10. Notices. Any required or permitted notice or other communication under this Escrow Agreement shall be in writing and addressed as follows (or to such other address as such Party shall indicate from time to time):

If to Seller:	The City of Opelika d/b/a Opelika Power Services Attn: Mayor Fuller 204 South 7 th Street Opelika, Alabama 36801
With copy to:	Opelika Power Service Attn: Derek Lee PO Box 2168 Opelika, Alabama 36801 E-mail: derek.lee@opelikapower.com

And a copy to: The City of Opelika d/b/a Opelika Power Services
Attn: Guy Gunter, City Attorney
P. O. Box 390
Opelika, Alabama 36801
E-mail: _ggunter@opelika-al.gov

If to Buyer: Point Broadband, LLC
Attn: Todd Holt
1791 O.G. Skinner Drive
West Point, Georgia 31833
E-mail: THolt@itchold.com

With copy to: Maynard, Cooper & Gale, P.C.
Attn: Michael P. Johnson, Esq.
655 Gallatin Street
Huntsville, Alabama 35801
E-mail: mjohnson@maynardcooper.com

Copy to: Chad Wachter, General Counsel
ITC Capital Partners, LLC
1791 O. G. Skinner Drive, Suite A
West Point, Georgia 31833
E-mail: cwachter@itchold.com

The failure or delay in sending any of the foregoing copies shall not affect the validity of any notice to Seller if delivered as provided in this Section 9.

If to Escrow Agent: Southern States Bank
Attn: Mark Chambers
2601 Fredrick Road
Opelika, Alabama 36801
E-mail: mchambers@ssbank.bank

Any such notice or other communication shall be deemed to have been delivered to a party:

- (a) If sent by registered or certified mail, return receipt requested, on the date specified on the return receipt; or
- (b) If sent by fax on the date of transmission; or
- (c) If personally delivered to the party shown above, when received by such party.
- (d) If sent by overnight delivery service, one day after the overnight delivery is sent.

Any person to whom copies of notices are to be sent may, at any one or more times, change its address for notice or person to receive notice by giving notice in the manner specified in this paragraph.

11. **Titles and Section Headings.** Titles of sections and subsections contained in this Escrow Agreement are inserted for convenience of reference only, and neither form a part of this Escrow Agreement or are to be used in its construction or interpretation.

12. **Counterparts; Facsimiles.** This Escrow Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. Facsimile signatures on this Escrow Agreement shall be as valid and effective for all purposes as an original signature.

13. **Non-wavier.** No waiver by any Party of any breach of any term or condition of this Escrow Agreement shall operate as a waiver of any other breach of such term or condition or of any other term or condition. No failure to enforce such provision shall operate as a waiver of such provision or of any other provision hereof, or constitute or be deemed a waiver or release of any other Party for anything arising out of, connected with, or based upon this Escrow Agreement.

14. **Binding Effect.** This Escrow Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective transferees, successors, and assigns. The Parties recognize and acknowledge that the powers and authority granted Escrow Agent herein are each irrevocable and coupled with an interest. Escrow Agent shall have no liability to the Parties for any mistakes in judgment in the performance of any function hereunder provided due care was exercised in taking any action related thereto.

15. **Governing Law.** This agreement shall be governed by and construed in accordance with the laws of the State of Alabama. The parties hereby agree and submit to the jurisdiction of the U.S. District Court for the Middle District of Alabama or the courts in Lee County, Alabama, for any dispute that may arise under this Escrow Agreement.

16. **Entire Agreement; Modification and Waivers.** This Escrow Agreement supersedes all prior agreements and constitutes the entire agreement with respect to the subject matter hereof. It may not be altered, amended or modified, and no waiver hereunder may be granted, without the written consent of both Seller, Buyer and Escrow Agent.

[Signatures on following page]

In witness whereof each of the parties hereto has caused this Escrow Agreement to be executed on its behalf by its duly authorized officers, all as of the day and year first above written.

**THE CITY OF OPELIKA D/B/A OPELIKA
POWER SERVICES**

By: 

Its: Mayor

POINT BROADBAND, LLC

By: 

Its: President

SOUTHERN STATES BANK

By: _____

Its: _____

**POLE ATTACHMENT LICENSE AGREEMENT
FOR DISTRIBUTION POLES**

BETWEEN

City of Opelika, Alabama

AND

Point Broadband Opelika, LLC

DATED November __, 2018

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POLE ATTACHMENT LICENSE AGREEMENT FOR DISTRIBUTION POLES

PREAMBLE

City of Opelika, Alabama, a municipal corporation organized under the laws of the State of Alabama, (hereinafter called the "Owner"), and Point Broadband Opelika, LLC, a Georgia limited liability company (hereinafter called the "Licensee"), desiring to cooperate in the joint use of Owner's poles, erected or to be erected within the areas in which both parties render service in the State of Alabama, whenever and wherever such use shall, in the estimation of both parties, be compatible with their respective needs and consistent with the terms of this Agreement, do hereby, in consideration of the premises and the mutual covenants herein contained, covenant and agree for themselves and their respective successors and assigns as follows, effective _____, 2018 ("Effective Date"):

ARTICLE 1 – SCOPE OF AGREEMENT

A. This Agreement shall be in effect in the areas in which both of the parties render service in the State of Alabama and shall cover all distribution poles now existing or hereafter erected in the above territories when said poles are brought under this Agreement in accordance with the procedure hereinafter provided.

B. Owner reserves the right for good cause to exclude from joint use any of its facilities for reasons of safety, reliability, capacity, generally applicable engineering standards, or any uncured Licensee Default for which the Licensee has been noticed as provided for in Article 12, Defaults. Owner may also exclude from joint use any of its facilities that occupy rights-of-way or other necessary privileges.

ARTICLE 2 – EXPLANATION OF TERMS

For the purpose of this Agreement, the following terms shall have the following meanings:

1. "Actual Costs" is defined as all costs including, but not limited to, the costs of materials, labor, engineering, supervision, overheads, transportation, contractors' fees when used in lieu of Owner labor, and tree trimming costs. Owner Actual Costs shall be verifiably comparable to the cost Owner pays for similar work to its own facilities. Engineering includes design, proper conductor spacing and bonding, calculations to determine proper ground clearances and pole down guy and anchor strength requirements for horizontal and transverse loading, and compliance with all applicable requirements.
2. "Actual Inventory" is defined in Article 11.A, Adjustment Payments.
3. "Adjustment Payment" is the actual rental rate paid the by the Licensee to the Owner for Attachments to Poles as provided for in Article 11, Adjustment Payments, of this Agreement.

4. "Application" is the process used by the Licensee to receive Owner's permission to install initial facilities to Owner's poles and to add additional facilities, including Over-Lashing of existing facilities, to modify mechanical loading of Owner's poles, or to otherwise alter the clearances of and/or separation between facilities attached to or in between Owner's poles. The form used for the Application process is identified as Appendix A and is included as a part of this Agreement.
5. "Attachment" is any wire, line or apparatus attached to a Pole owned by Owner, including, but not limited to, cables, service drops, power supplies, amplifiers, pedestals, bonding wires, Over-Lashings (defined below), guy wires and anchors that are required to support unbalanced loads. A single Attachment includes the vertical space consisting of a total of twelve inches (12") either above or below (but not both) the bolted Attachment. Any apparatus or facilities, except cable risers, pedestals, bonding wires and power supplies and associated with other aerial Attachments, located fully or partly outside this vertical space shall constitute an additional Attachment or Attachments. Each thru-bolt type Attachment where the Pole is drilled and bolted to support cable and messenger will count as a separate Attachment without respect to separation from an additional Attachment. Where only one bolted Attachment is affixed to the Owner's Pole, and Service Wires installed on "J-Hooks" are located within a space consisting of a total of twelve inches (12") either above or below (but not both) of the bolted Attachment, such locations shall be counted as a single Attachment.
6. "Contact Person" is defined in Article 18.A and 18.B, Notices.
7. "Cost in Place" is the cost of the bare pole, labor to install the pole and associated overheads, including engineering.
8. "Effective Date" is defined in the Preamble.
9. "Owner" is defined in the Preamble.
10. "Owner Rules and Practices for Attachments" means the general plan established for the orderly use of Poles by Owner and multiple parties and is attached to this Agreement as Appendix R.
11. "Initial Inventory" is an inventory of Licensee's Attachments completed within one (1) year of the Effective Date of this Agreement, which will confirm the total number of Licensee's Attachments, a summary of obvious non-conforming Attachments and any pending Licensee Transfers to Owner Poles.
12. "Initial Safety Inspection" is a survey of the Licensee's Attachments to Owner Poles to identify and remediate non-conforming Attachments (e.g. NESC violations) on Owner Poles.

13. "Joint Pole" is a pole for which joint use is established or continued pursuant to the terms of this Agreement.
14. "Joint User" is a person or entity that is currently occupying or reserving space on Owner's Poles, and may attach to a Pole or anchor owned by Owner in return for granting Owner equivalent rights of Attachment or occupancy to poles and/or anchors, which the Joint User owns.
15. "Licensee" is the party having the right under this Agreement to make and maintain Attachments on an Owner Joint Pole and defined in the Preamble.
16. "Licensee Transfer Date" is defined in Article 7.F, Maintenance of Poles and Attachments.
17. "Make-Ready" is all work necessary or appropriate to make space for or otherwise accommodate new, additional or changed Attachments, including, but not limited to, necessary or appropriate Rearrangements, removal and replacement of the Pole, Transfers and other work incident thereto.
18. "Make-Ready Costs" means all costs necessary for Owner, and other existing parties on the Pole, to prepare its Poles for Licensee's new, additional or modified Attachments, including, but not limited to, the costs of materials, labor, engineering, supervision, overheads and tree trimming costs. Engineering may include design, proper conductor spacing and bonding, calculations to determine proper ground clearances and pole down guy and anchor strength requirements for horizontal and transverse loading, and compliance with all applicable requirements. Also including among Make-Ready Costs are the costs of installing or changing out primary Poles, secondary Poles and Drop/Lift Poles, including the cost of installation and/or removal of guys, anchors, stub poles, materials and equipment, temporary construction and all other construction in accordance with the technical requirements and specifications as outlined in this Agreement. Owner Make-Ready Costs shall be verifiably comparable to the cost Owner pays for similar Make-Ready work to its own facilities. Make-Ready Costs do not include any costs associated with correcting violations of the Owner, or others attached to the Owner's Pole, that exist at the time that Licensee submits an Application.
19. "Make-Ready Estimate" means the estimate prepared by Owner for all Make-Ready Work that may be required by Owner to accommodate Attachment/Attachments by Licensee.
20. "Make-Ready Work" means all work required by Owner to accommodate Attachment/Attachments by Licensee.
21. "NESC" is defined in Article 3, Specifications.

22. "Non-Guyed Service Drop" is a Service Drop that requires no guys under standard industry design practices or the applicable specifications of Article 3, Specifications. (If, atypically, a wire used to connect to a customer's location were to require guying under the Licensee's design standards or the applicable specifications of Article 3, Specifications, then it would not be treated as a Non-Guyed Service Drop under this Agreement but would be treated as a cable.) Non-Guyed Service Drops are subject to all provisions of this Agreement, including rental and the provisions of Article 3, Specifications, but Non-Guyed Service Drops are not subject to the permit application process set forth at Article 4.B, Establishing Attachments to Poles, Licensee must provide a summary, at least quarterly, of all Non-Guyed Service Drops added or removed to/from Owner's Poles so that Owner may adjust the billing records for Licensee's joint use Attachments. As an alternative to quarterly reporting, Licensee may use a "Specified Percentage" to annually increase the number of service wire Attachments.
23. "Old Attachment Agreement" is defined in Article 21, Existing Contracts.
24. "Outside Party" is defined in Article 13.A, Rights of Other Parties.
25. "Over-Lashing" means affixing an additional cable or wire owned and operated by Licensee to a cable or wire owned and operated by Licensee already attached to a Pole. Any proposed Over-Lashing by Licensee is subject to the Application process as well as other applicable provisions of this Agreement. Notwithstanding the above, Licensee's Over-Lashing shall not be subject to a separate annual Attachment rental fee. Licensee shall not allow third party Over-Lashing without Owner's prior approval.
26. "Pole" or "Distribution Pole" is a wooden, concrete or steel structure owned by Owner, and normally used by Owner, to support distribution lines and related facilities of Owner, including drop and lift Poles, In the event the Owner installs a Pole larger than is initially required for Owner's and Licensee's use in anticipation of Owner's future requirements or additions, the additional space provided by Owner shall be reserved for Owner's sole use.
27. "Pole Attachment Rental Fee" means the annual amount per Attachment that Licensee must pay to Owner pursuant to this Agreement in order to affix each Attachment to Owner's Poles.
28. "Rearrangement" is the moving of Attachments from one position to another on the same Pole.
29. "Referee" is defined in Article 19.B, Resolution of Certain Disputes.
30. "Specified Percentage" is defined in Article 11.B, Adjustment Payments.

31. "Transfer" is the removal of Attachments from one Pole and the placement of them or substantially identical Attachments upon another.
32. "Unauthorized Attachment" means any affixation of any Licensee Attachment of any nature to any property of Owner, including Distribution Poles, which has not been previously authorized by Owner or authorized as required by this Agreement. Unauthorized Attachment may include, without limitation, any Attachment affixed to Owner's Poles without permission from Owner as provided for in Article 9, Unauthorized Attachments, of this Agreement. Over-Lashing of existing facilities without an approved Appendix A from the Owner shall also be considered an Unauthorized Attachment.
33. "Unauthorized Attachment Fee" means the fee to be paid by Licensee for each Unauthorized Attachment.

ARTICLE 3 – SPECIFICATIONS

Except as otherwise provided in Article 7.I, Maintenance of Poles and Attachments, referring to construction that has not yet been brought into conformity with the specifications mentioned herein, the use of the Poles covered by this Agreement shall at all times be in conformity with all applicable (1) RUS Standards as they apply to Licensee's Attachments; and subsequent revisions thereof; (2) requirements of the National Electrical Safety code and subsequent revisions thereof ("NESC"); (3) the Specifications found in Appendix R which is incorporated into and made a part of this Agreement and subsequent revisions thereof; (4) The Bellcore Manual of Construction Procedures (Blue Book) and subsequent revisions thereof; (5) the Society of Cable Television Engineer's (SCTE) Recommended Practices for Coaxial Cable Construction and Testing and subsequent revisions thereof; (6) the SCTE Recommended Practices for Optical Fiber Cable Construction and subsequent revisions thereof; and (7) the lawful requirements of public authorities. Where there is a disagreement between the above-referenced Specifications, the more stringent shall apply. It is understood by both parties that the requirements of the NESC are minimum requirements. Certain requirements of the Owner that exceed or supplement the NESC are identified in Appendix R to this Agreement. Modifications of, additions to, or construction practices supplementing wholly or in part the requirements of the NESC and Appendix R, shall, when accepted in writing by both parties hereto through their agents authorized to approve such changes, likewise govern the joint use of Poles, which acceptance shall not be unreasonably withheld.

ARTICLE 4 – ESTABLISHING ATTACHMENTS TO POLES

A. Before Licensee shall make use of the Owner Poles under this Agreement, including Over-Lashing, it shall comply with the requirements set forth herein. Appendix A shall be sent either (i) by electronic mail with electronic mail "read" receipt obtained, or (ii) by being deposited in the United States mail with proper postage and properly addressed to the person receiving he Appendix A. When transmittal by U.S. mail, the Licensee will also send an electronic mail message, return receipt requested, to Owner as notice that the permit information is being carried by the U.S. mail, and to notify the Owner of the impending fifteen (15) business

day interval to respond to Licensee's permit. This is to prevent disputes regarding the fulfillment of the fifteen (15) business day interval below, and to avoid imposition of the "Unauthorized Attachment Fee".

B. APPENDIX A PROCEDURE

1. Except in connection with (i) the placement of Non-Guyed Service Drops, (ii) Pole Transfers; or (iii) power supplies, amplifiers or risers, Licensee must submit to Owner an Appendix A for any Licensee construction on Owner Poles (including reconstruction of existing Pole lines, road improvement projects requiring the placement of new Poles and the Over-Lashing of Licensee's cables) in association with the placement of new Licensee Attachments, Over-Lashing existing Attachments, or removal of existing Licensee Attachment on Owner Poles. *(The intent of this procedure is for Licensee to provide notice to Owner for any Licensee construction resulting in a change in mechanical pole loading on Owner Poles due to Licensee's Attachments and also notice for the addition or removal of Licensee Attachments for tracking of the total number of Licensee Attachments.)*
2. Licensee shall submit a completed Application on the form, attached hereto and identified as Appendix A or such other form as may be mutually agreed upon, specifying fully, to the extent applicable, the information shown on Appendix A.
 - a. *Application Fee* – Except as to (1) installation of new Owner Poles where none currently exist, as provided for in Article 5.A, Placement of New Poles, and (2) road widening projects, each "Appendix A" submitted by Licensee, shall be accompanied with a check in the amount of fifty dollars (\$50.00) for Owner to process and log the Application. No Appendix A form shall include more than fifty (50) Poles unless prior permission is obtained from the Owner. Failure to include payment of the fees when submitted the Appendix A will result, at the Owner's option, in the returning of the Appendix A to Licensee unapproved or holding the Appendix A until payment is received. Appendix A is solely for the removal of Licensee's Attachments and are not subject to the Application Fee. With respect to (1) road widening projects and (2) installation of new Owner Poles where none currently exist, Licensee shall be required to submit an Appendix A, as provided for in other sections of this Agreement, but Application Fees shall not apply. Licensee shall be allowed to establish an "escrow account" with Owner for the Application Fees provided for herein. Licensee shall maintain the "escrow account" at a level that is mutually agreed upon by both Parties, but not to exceed an amount equivalent to six (6) months forecasted permit activity.
 - b. *Inspection Fee* – Licensee shall reimburse Owner the Actual Costs, except in the case of Transfers for road improvement projects and Owner's installation of new Poles where none currently exist, including all labor,

materials, transportation, normal overheads and appropriate and reasonable other costs incurred by Owner in performing necessary field inspections and preparation of an estimate of the Make-Ready Costs of each Pole covered in the Appendix A. The Owner will provide, as a deliverable for the above Inspection Fees, a Pole inspection report with appropriate data as the Parties may agree upon. Licensee shall reimburse Owner for such costs within forty-five (45) days of receipt of the invoice from Owner.

Within fifteen (15) business days after the receipt of such completed Application (or ten (10) business days if the only work being done by Licensee on the Appendix A is Over-Lashing and no Owner Make-Ready is required) the Owner shall notify the Licensee in writing whether the Application is approved or rejected, and if Make-Ready construction by the Owner is required, an estimate for such costs. If so approved or if not rejected within the fifteen (15) business day period the Application will be considered approved and the Licensee shall have the right to place Attachments on such Pole(s) as provide in this Agreement. If the Owner rejects the Application in whole or in part, the Owner will specify the reason(s). The Application shall be rejected only for good cause, as provided for in Article 1, Scope of Agreement.

3. The Make-Ready Estimate shall offer sufficient detail so that Licensee can readily identify the components of the proposed Make-Ready Work and shall reflect costs that are verifiably comparable with Owner Actual Costs. The Licensee may request clarification on the Make-Ready Cost before requesting the Owner to commence Make-Ready Work. The Owner's total charges shall not exceed 120% of the estimate and otherwise shall be consistent with Article 8(G), unless such additional costs are caused by changes in Licensee's plans from the original permit.
4. Owner shall normally commence Make-Ready Work within twenty (20) business days of receipt of Licensee's written acceptance of the Make-Ready Estimate and shall complete the Make-Ready Work consistent with its standard work order process. Licensee may request expedited handling of Owner's work, and Licensee shall be responsible for the additional Actual Costs incurred by Owner for such expedited processing. To the extent it has the authority to do so, owner shall cause all other Licensees or Joint users to similarly expedite the completion of all Make-Ready Work. Owner shall use its best efforts to complete all Make-Ready Work within sixty (60) business days of receipt of Licensee's written acceptance of the Make-Ready Estimate for the Make-Ready Work. Licensee shall make payment for Owner's Make-Ready Work within forty-five (45) days of the written acceptance.
5. Upon receipt of notice by Licensee from Owner that the Application has been approved or in the absence of rejection of the Application within fifteen (15) business days from the receipt of the completed Application, and after the

completion of any Transferring or rearranging which is required to permit the attaching of the Licensee's Attachments on such Poles, including any necessary Pole replacements, the Licensee shall have the right hereunder to place such Attachments on such Poles in accordance with the terms of the Application and of this Agreement (including Article 3, Specifications). The Owner's approval of an Appendix A Application shall be valid for one-hundred twenty (120) days. If the Licensee fails to (1) accept and make payment of Make-Ready Costs (if any) within one-hundred twenty (120) days of the Owner's acceptance, or (2) initiate construction within one (1) calendar year, the Owner may, in its sole discretion, deem the terms and conditions outlined in the Appendix A null and void, and require the submission of another Appendix A on the part of the Licensee, along with engineering fees necessary to reimburse the Owner for revised engineering and cost estimates. The Licensee must ensure that its new facilities can be constructed and maintained in accordance with Article 3, Specifications, of this Agreement. Where field conditions preclude such compliance, Licensee shall notify the Owner prior to construction.

C. An Appendix A that contains only removal of Attachments is not subject to any fees. Any Non-Guyed Service Drop that is placed by the Licensee on an Owner Pole shall be subject to all the terms and provisions of this Agreement, except as expressly provided in this Agreement. The placement of Non-Guyed Service Drops shall not alone create an absolute right to the space occupied by the Licensee.

D. Licensee, without following the Appendix A procedure, may utilize vertical unused space below its Attachment as defined in Article 2, Explanation of Terms, for terminals, risers, power supplies or other vertical Attachments if the existing Attachment on such Pole is authorized, such use does not interface with the Owner's operations or the operations of other Licensees or Joint Users presently attached to the Pole, and such use complies with the terms of this Agreement (including the provisions of Article 3, Specifications). Any such Attachment and Pole will be subject to all other provisions of this Agreement.

E. Both Licensee and Owner shall place, Transfer and rearrange its own Attachments, and shall place guys and anchors to sustain any unbalanced loads caused by its Attachments. On existing Poles, each party will perform any tree trimming or cutting necessary for their initial or additional Attachments. Required anchors and guys shall be in place and in effect prior to the installation of Attachments and cables. Each party shall, with due diligence, attempt at all times, to execute such work promptly and in such manner as not to interfere with the service of the other party.

F. The cost of making Attachments on existing Poles, as provided herein, including the making of any necessary Pole replacements, shall be borne by the parties hereto in the manner provided in Article 8, Division of Costs.

G. Licensee's Attachment shall automatically be continued under the terms of this Agreement if any one of the following circumstances applies:

1. Licensee's Attachment was licensed under the terms of a prior Pole Attachment Agreement; or
2. Licensee had Attachments on the Pole—either licensed or unlicensed—as of the Effective Date.

H. This Agreement may be used by the Licensee to install "wireless" equipment facilities to Owner Poles, so long as the equipment does not exceed Licensee's one-foot of space and does not interfere with the facilities of Owner or other Licensees attached to Owner's Poles.

I. Except as provided for in Articles 12, Defaults, and 20, Term of Agreement, the Licensee shall have the right to transfer its Attachments from an existing Pole to a new Pole installed as part of a road widening project and to continue joint use on such Pole. If the Licensee is materially breaching this Agreement or acting in bad faith or failing to cooperate or communicate as provided in this Agreement, the Owner may terminate the Licensee's rights under this Article 4.I, consistent with Article 12, Defaults. Furthermore, after any termination of the right to make Attachments to additional Poles, the Owner may terminate the Licensee's rights under this Article 4.I if three (3) or more Unauthorized Attachments (as defined in Article 9, Unauthorized Attachments) are found within any twelve (12) month period. The Owner may reinstate the Licensee's rights under this Article 4.I if the Owner deems it appropriate.

ARTICLE 5 – PLACEMENT OF NEW POLES

A. Whenever Owner requires new Pole facilities within the Licensee's service territory for any reason, including an additional Pole line, an extension of an existing Pole line, or in connection with the reconstruction of an existing Pole line, it will normally notify Licensee to that effect in writing (verbal notice subsequently confirmed in writing may be given in cases of emergency) stating the proposed location and character of the new Poles and the character of circuits it intends to use thereon and indicating whether or not such Pole facilities will be, in the estimation of the Owner, suitable for Licensee's Attachment. In case of emergency, the Licensee will preliminarily respond verbally on an expedited basis that it does or does not want to seek to attach facilities to the new Poles and will generally describe its planned initial Attachments. Within a reasonable period (not to exceed fifteen (15) business days) after the receipt of such written notice, the Licensee will submit an Appendix A, as such may be required by Article 4, Establishing Attachments to Poles, above; however, Licensee shall not be subject to Application or Inspection Fees for such Appendix A. Should the Licensee fail to submit an Appendix A within fifteen (15) business days, and subsequently wishes to attach to new Pole facilities, Licensee must submit an Appendix A in accordance with Article 4, Establishing Attachments to Poles, including the payment of all applicable Application Fees, Inspection Fees and Make-Ready Costs.

B. Each party shall place its own Attachments on the new Joint Poles and place guys and anchors prior to tensioning strand to sustain unbalanced loads caused by its Attachments. Owner shall provide its normal initial right-of-way clearance on each side of the center line to the extent practicable, all right-of-way in excess of the normal swath to be borne by the party requiring the

additional width. Each party shall, with due diligence, attempt to execute its work promptly and in such manner as not to interfere with the service of the other party.

ARTICLE 6 – RIGHT-OF-WAY FOR LICENSEE’S ATTACHMENTS

While the owner and Licensee will cooperate as far as may be practicable in obtaining rights-of-way for both parties on Joint Poles, the Owner does not warrant or assure to the Licensee any right-of-way privileges or easements on, over or across streets, alleys and public thoroughfares, and private or publicly owned property, and if the Licensee shall at any time be prevented from placing or maintaining its Attachments on the Owner’s Poles, no liability on account thereof shall attach to the owner of the Poles.

ARTICLE 7 – MAINTENANCE OF POLES AND ATTACHMENTS

A. The Owner shall maintain all Joint Poles in a safe and serviceable condition and in accordance with the Specifications mentioned in Article 3, Specifications, and shall replace, reinforce or repair such of these Poles as become defective. Licensee acknowledges that Poles and related items carry hazardous voltages, deteriorate over time, and may contain various hazardous chemicals or properties. Licensee shall instruct and equip its personnel, including its employees, contractors and other agents, of the hazards associated with working on Owner’s Poles and Licensee will provide necessary training and equipment for its representatives to safely execute their work on Owner’s Poles. Licensee shall, prior to working on a Pole that contains non-compliant or unsafe conditions, promptly notify Owner of any existing substandard condition (either physical, mechanical or electrical, etc.), that jeopardizes either the general public or workman safety and Owner will cause the existing condition to be promptly corrected. Licensee’s workmen will not subject themselves or others to an unsafe condition. Licensee shall become familiar with the terms of the appropriate material safety data sheet and comply with such terms and all directions contained therein or otherwise required by state and federal law regarding the maintenance, replacement and/or disposal of the Pole. Owner does not warrant, guarantee or imply that any Pole abandoned by Owner possesses sufficient mechanical strength as required by or for any use of Licensee.

B. When replacing a Pole carrying terminals of aerial cable, underground connection, or transformer equipment, the new Pole shall be set in the same hole which the replaced Pole occupied, or immediately adjacent, and in a manner to facilitate Transfer of Attachments, unless special conditions make it desirable to set it in a different location. Replacement Poles where risers (dips) are installed should be set as close as possible to the existing Pole. The Owner will make reasonable effort to conduct a joint field review or otherwise coordinate with Licensee to determine the location of the proposed Pole. Reasonable effort will be made to coordinate locations of risers and Non-Guyed Service Drops with the locations of the power facilities serving the customer.

C. Except during restoration efforts after natural disasters, such as hurricanes, ice storms, etc., whenever it is necessary to replace or relocate a Joint Pole, the Owner shall, before making such replacement or relocation give reasonable notice thereof in writing (except in case of emergency, when verbal notice will be given and subsequently confirmed

in writing) to the Licensee, specifying in such notice the time of such proposed replacement or relocation and the Licensee shall at the time so specified Transfer its Attachments to the new or relocated Pole. On highway relocation projects, the schedule for Transfers shall be consistent with the "utility adjustment schedule" and any subsequent revisions.

1. An alternate method of notification (as opposed to the above described written method of notification) may be used when mutually agreed upon by both parties. The electronic notification system of Pole Transfer request, provided by the National Joint Utilities Notification System ("NJUNS"), may be used as the notification required by this article. As a prerequisite for use of this system, both parties shall have and properly utilize the necessary electronic equipment and correct NJUNS member codes as provided by each party to the other and as required by NJUNS for this system and mutually agree to its use as a substitute for the written notice of Transfers required under this Article 7, Section C.

D. Transfer of Licensee's Attachments by the Owner - In any case where it is mutually beneficial and agreeable by both parties, the Owner or its Contractors may Transfer the Attachments of the Licensee and the Licensee will reimburse the Owner such costs the Owner incurs in making such Transfers on behalf of the Licensee. When the Transfer can be accomplished concurrently with other work that the Owner is undertaking on the same Pole, the charges for such Transfers will be in accordance with pricing detailed in Article 7.D.4, or such other amounts as may be agreed to by the parties. The Owner will use due diligence and care in making such Transfers so as not to damage or cause a disruption in the services provided by the Licensee. However, except in cases of gross negligence or willful misconduct, the Owner shall not be liable for any damages or disruptions in service that may occur as a result of Transfers made in behalf of the Licensee.

1. **Normally Scheduled Construction** - Approval for such Transfers made by the Owner on behalf of the Licensee during normally scheduled construction shall be obtained prior to making such Transfers and will be made on a project by project basis unless otherwise agreed upon.
2. **Emergency Construction** - In such cases, in the judgment of Owner, a Pole requires immediate replacement due to a dangerous condition or conditions, the Owner or its contractors will replace the Pole and may Transfer the Licensee's Attachments without prior permission. The Owner shall use reasonable care to avoid damage to Licensee's facilities and shall notify the Licensee of such Transfer after work is completed.
3. **Facility Types To Be Transferred** - The Owner or its contractors will only Transfer Attachments which require a bolt, clamp, or "J" hook either installed through the Pole or otherwise attached. All service wire Attachments to a single "J" hook shall be Transferred at the rate stated below. The hardware on the old Pole will be used to attach to the new

Pole. The Owner or its contractors shall not supply any additional material in making Transfers of Licensee's Attachments.

Pricing for Transfers - When the Owner Transfers the Attachments of the Licensee in accordance with the above provisions, the price per attachment transferred will be as detailed below. The pricing for Transfers shall be effective with the execution of this Agreement and will continue for 2018. The costs in subsequent years shall be adjusted in accordance with the Handy Whitman Index, South Atlantic Region, Account 364. Multiple Attachment Transfers on a Pole will be billed on a per Attachment basis, not on a per Pole basis. Transfers under this agreement only applies to cables attached in the communications zone. A separate contract is required for cable connected in the power zone of the pole.

4.

Costs to Transfer Licensee's Attachments Concurrently with Other Work by Owner

Duration	Cable Attachments	Service Drop
Contract start date to	\$52.98	\$31.78

E. Should (i) the Owner elect not to Transfer Licensee's facilities under the above terms, and (ii) Licensee fails to Transfer its Attachments to the new Joint Pole on the date specified for such Transfer of Attachments ("Licensee Transfer Date") and after all necessary third party and Owner responsible Transfers have been accomplished, the Owner may elect to relinquish the ownership of the old Pole from which it and all other Licensees and Joint Users have removed their Attachments with the giving of verbal notice to be subsequently followed in writing. If the Owner so elects, such old Pole shall, with the giving of ten (10) business days' notice as provided for above, at no cost to the Licensee, become the property of the Licensee, as is, and the Licensee shall save harmless the Owner from all obligations, liabilities, damages, costs, expenses or charges incurred thereafter, and not arising out of anything theretofore occurring because of, or arising out of, the presence or condition of such Pole or of any Attachments thereon. In instances where the Owner is the owner of such Pole, the unused portion of the Pole above the Licensee's Attachments shall be cut off and removed by the Owner before relinquishing ownership, if the Pole remains in structural conflict with the power route.

F. Should the Owner elect not to Transfer Licensee's facilities under the above terms, and should the Licensee fail to Transfer its Attachments to the new Joint Pole after the date specified for such Transfer of Attachments and after all third party and Owner responsible Transfers have been accomplished, whichever is later ("Licensee Transfer Date"), and if the Owner does not elect to relinquish the ownership of the old Pole from which it has removed its Attachments, the parties will have the following rights, in addition to any other rights and remedies available under this Agreement: The Licensee shall pay the Owner the following amounts until the Licensee has Transferred its Attachments and notified the Owner in writing or through NJUNS that the Transfer has been accomplished: (a) \$5.00 per Pole per month beginning with the 61st day after the Licensee Transfer Date and through and including the 240th day after the Licensee Transfer Date, (b) \$10.00 per Pole per month (instead of \$5.00) beginning with the 241st day

after the Licensee Transfer Date. In addition, the cost incurred by the Owner to return to the job site and remove the old Pole will be paid by the Licensee. Notwithstanding the above, Licensee shall not be subject to penalties where Owner has not used the correct NJUNS member code, as provided by the Licensee to notify Licensee of the clearance to Transfer Attachments. In cases of Transfer requests with incorrect NJUNS member codes, the Licensee shall make reasonable efforts to route to the appropriate party. In the event the Licensee notifies the Owner that the Transfer has been accomplished and the Owner returns to the job site to remove the old Pole and discovers that the Transfer has not been made, then the Licensee will pay the Owner's cost of the trip to and from the job site. *The intent of this paragraph is to ensure timely Transfers and minimize situations of two (2) or more Poles needlessly remaining at the same location for extended periods of time.* The aforementioned provisions of this paragraph will only apply when Poles are installed in a manner consistent with Article 7.B.

1. Transfer penalties shall not apply during the first six (6) months after the Effective Date of this agreement for outstanding Transfers for which Licensee has received appropriate notice prior to the Effective Date. Transfers identified during the Initial Inventory shall not be subject to the penalties above for the first six (6) months after notice to the Licensee.

Each party shall at all times maintain all of its Attachments in accordance with the Specifications mentioned in Article 3, Specifications, and shall keep them in safe condition and in thorough repair. Licensee's Attachments shall be identified and marking standards as approved by Owner. Attachments previously in place on Owner's Poles shall be so identified by Licensee as regular or emergency work occurs or at the next system rebuild opportunity, but not later than five (5) years from the Effective Date of this Agreement. Licensee shall be responsible for periodically inspecting its Attachments to ensure they have permanent identification markers. After the fifth year should Owner encounter any of Licensee's Attachments without permanent identification markers, Owner may notify Licensee provided that Owner can identify the Attachments as belonging to Licensee. If the markers are not placed within sixty (60) days of such notice, then Owner may install the necessary markers, and Licensee shall reimburse Owner for the cost of such work.

G. Each party shall be responsible for right-of-way maintenance for its own facilities at its own expense.

H. Any existing joint use construction of the parties hereto which does not conform to the Specifications mentioned in Article 3, Specifications, shall be brought into conformity therewith as soon as practicable. When such existing construction shall have been brought into conformity with said Specification, it shall at all times thereafter be maintained as provided in G of this Article.

I. The cost of maintaining Poles and Attachments and of bringing existing joint use construction into conformity with said Specifications shall be borne by the parties hereto in the manner provided in this Agreement.

J. Owner shall have the right to require the Licensee, within one hundred twenty (120) days

after the Licensee Transfer Date (as defined in Article 7.E), either (a) to Transfer its Attachments from an existing Pole to a new Pole that is erected to carry the same or a similar service or Attachments that are on the existing Pole, or (b) to remove its Attachments from the existing Pole and terminate joint use as to the existing Pole, and the choice of option (a) or (b) will be the Licensee's, Or, if neither the Owner nor the Licensee desires a Transfer, the Owner may elect to abandon the existing Pole to the Licensee as provided in Article 10, Abandonment of Joint Use Poles. In the case of any such Transfer, the costs of transferring the Licensee's Attachments will be paid by the Licensee.

ARTICLE 8 – DIVISION OF COSTS

A. NEW POLES INSTALLED WHERE NONE CURRENTLY EXIST. If joint use is established pursuant to Article 5.A, Placement of New Poles, above, the cost of erecting new Joint Poles coming under this Agreement, to construct new Pole lines, or to make extensions to existing Pole lines shall be borne by the parties as set forth in this Article 8.A. Poles installed to accommodate a road improvement project shall be administered in a manner consistent with this Article 8, Section A. If joint use is not established pursuant to Article 5.A, Placement of New Poles, above, the provisions of Article 8.J below will control.

1. In the case of a Pole larger than that required by the Owner, Licensee and the Joint User, the extra height or strength of which is due solely to the Licensee's requirements, the Owner shall pay all costs associated with the construction of a Pole satisfactory for the Owner and Joint User's needs (and the Licensee shall pay to the Owner the remaining costs of erecting the Pole larger than that required by the Owner and the Joint User. If in connection with the construction of a Pole the Licensee makes the payment required by this paragraph, then the Licensee shall in the future be entitled to attach on such Pole even if the Pole does not at that time become a Joint Pole; provided, however, if the Licensee does not attach to the Pole within one (1) year from the date the Pole was set, then the Licensee shall no longer be entitled to attach on such Pole.
2. In the case of a larger Pole, the extra height or strength of which is due to the requirements for additional space or the requirements for proper ground clearance or of public authorities or of property owners, necessary for all parties (other than requirements with regard to keeping the wires of one party only clear of trees), the difference between the Cost in Place of such Pole and the Cost in Place of a Pole solely satisfactory for the Owner shall be shared equally by the Licensee, any Joint User and the Owner, the rest of the cost of erecting such Pole to be borne by the Owner.
3. A Pole, including all appurtenances or fixtures, erected between Poles to provide sufficient clearance and furnish adequate strength to support the circuits of both the Owner and the Licensee, which it would have been unnecessary to erect if joint use had not been undertaken, shall be erected at the sole expense of the Licensee, or in the case on multiple Licensees and Joint Users on the Joint Pole, the cost shall be equally divided among all Licensees or Joint Users requiring the

midspan Pole.

B. **PAYMENTS DO NOT AFFECT OWNERSHIP.** Any payments for Poles made by the Licensee under any provisions of this Article shall not entitle the Licensee to the ownership of any part of said Poles for which it has contributed in whole or in part.

C. **REPLACEMENT OF EXISTING JOINT POLES.** Where an existing Joint Pole is replaced for reasons other than maintenance by a new one, the cost shall be divided as specified below. The replaced Pole shall be removed and retained by Owner.

1. A Pole satisfactory for the Owner's needs which can also accommodate the facilities of the Licensee shall be erected at the sole expense of the Owner. If without making proper application for attachments as specified in this Agreement, the Licensee places one or more Attachments on a Pole and thereby creates a violation of Article 3, Specifications, or otherwise renders the Pole unsuitable for joint use, or interferes with or causes violations of Article 3, Specifications, for the other attachers to the Pole, then the Licensee must pay the full cost of removing and replacing the Pole with a Pole of sufficient size to remedy the violation or render the Pole suitable for joint use, plus the cost of all Transfers and other work incident thereto.
2. A Pole larger than the existing Pole, which is installed to replace an existing Pole, the extra height or strength of which is due wholly to the Owner's requirements or requirements as to keeping the Owner's wires clear of trees or other obstructions shall be erected at the sole expense of the Owner. The Owner shall bear the full expense of replacing or Transferring all the Owner's Attachments and the Licensee shall bear the full expense of replacing or Transferring all the Licensee's Attachments.
3. In the case of a Pole larger than the existing Pole, the extra height or strength of which is due wholly to the Licensee's requirements including Licensee's requirements as to keeping the Licensee's wires clear of trees or other obstructions, the Licensee shall pay to the Owner the Make-Ready Cost of the new Pole.
4. Except as to existing contracts with other Licensees or joint users, in the case of a Pole larger than the existing Pole, which is installed to replace an existing Pole, the extra height or strength which is due to the requirements of both parties for additional space or the requirements for proper ground clearance or of public authorities or of property owners, (other than requirements with regard to keeping the wires of one party only clear of trees), the difference between the Cost in Place of such Pole and the Cost in Place of the existing Pole shall be shared equally by the Licensee and the Owner, the rest of the cost of erecting such Pole to be borne by the Owner. The Owner and Licensee shall replace or Transfer all Attachments at their own expense.
5. For purposes of this Article 8.C, any Pole on which the Licensee has placed or places an Attachment shall be deemed satisfactory to the Licensee whether or not the terms of this Agreement have been satisfied.

D. **RESPONSIBILITY FOR OWN ATTACHMENTS.** Each party shall place, maintain, rearrange, Transfer and remove its own Attachments at its own expense except as otherwise expressly provided herein.

E. **MAINTENANCE AND REPLACEMENT COSTS.** The expenses of maintaining Joint Poles shall be borne by the Owner thereof except that the cost of replacing Poles shall be borne by the parties hereto in the manner provided elsewhere in this Agreement.

F. **SERVICE DROPS.** Where an existing Pole is replaced by a taller one to provide the necessary clearance for the Licensee's Service Drop, the Licensee shall pay to the Owner the installed cost of the new Pole plus the labor costs of replacing or Transferring of the Attachments on the existing Pole and the cost to remove the existing Pole, minus any salvage value.

G. **PAYMENT BASIS.** Payments made under the provisions of this Article may be based on the estimated or actual cost as mutually agreed upon (including overhead) of making such changes but in no event, however, shall either party be required to pay for such changes more than 120% of the estimated cost supplied by the other if such cost estimate shall have been requested and furnished before the changes were made.

H. **CORRECTIVE MEASURES.** Subsequent to the Initial Inventory as specified in Article 11, Adjustment Payments, of this Agreement, within a reasonable time, not to exceed two (2) years after the Effective Date of this Agreement, the Owner may schedule, at its sole discretion and at a time convenient for both the Owner and the Licensee, a joint safety inspection to determine any Licensee-caused safety violations ("Initial Safety Inspection"). If the Owner and the Licensee cannot agree on a convenient schedule, the Owner may, at its sole discretion, proceed with the Initial Safety Inspection and the Licensee will be provided with the results and findings in a format to facilitate Licensee's verification of the findings. The parties will use their best efforts to involve third party attacher(s) of the Initial Safety Inspection and in the correction of existing violations, consistent with the terms of their respective agreements and at the third party attacher's expense. In the event a violation that poses an imminent danger to persons or property is discovered ("Imminent Danger Violation"), Licensee shall correct such violation immediately. Should Licensee fail to correct such violation after notice, the Owner may correct the violation and bill Licensee for the actual costs incurred. Licensee and Owner shall share equally in the Initial Safety Inspection cost, whether or not Licensee participates in such Initial Safety Inspection as discussed above. Licensee shall not be subject to any safety violation penalties pursuant to the Initial Safety Inspection provided that Licensee corrects any Non-Imminent Danger Violation discovered during the Initial Safety Inspection within eighteen (18) months of the documentation and reporting of the non-compliant conditions. Notwithstanding the foregoing grace period, in the event Owner or an Outside Party prevents Licensee from correcting a Non-Imminent Danger Violation, the timeframe for correcting such violation shall be extended to account for the time during which Licensee was unable to correct the violation due to such Owner or Outside Party's action. Licensee will not be responsible for the costs associated with violations caused by others. In all circumstances, the parties will work together to maximize safety while minimizing the cost of correcting any such deficiencies, but the Licensee shall be responsible for the full cost of any necessary or appropriate corrective measures associated with violations caused by Licensee's Attachments, including removal and

replacement of the Pole and all Transfers or other work incident thereto. Licensee shall ensure that its employees, agents, contractors or other Outside Parties, which Licensee causes to work on Owner Poles, will be notified of pending, unresolved Poles requiring corrective actions, prior to activities on such Poles, and Licensee shall not allow unqualified, or improperly equipped personnel to work on such Poles.

I. If the Owner and the Licensee have completed a joint safety inspection within two (2) years prior to the execution date of this Agreement, the Owner may consider, at its sole discretion, extending the schedule for the Initial Safety Inspection to commence on approximately the fifth anniversary of the initiation of the most recently completed joint safety inspection. Following the Initial Safety Inspection, and not more than once every five (5) years, Owner may perform periodic system-wide safety inspections of Licensee Attachments upon six (6) months advance written notice. Such notice shall describe the scope of the inspection and provide Licensee with an opportunity to participate. Licensee will pay a pro-rata share of the Owner's inspections costs and will incur its own costs to participate in such periodic safety inspections. The Licensee's pro-rata share of Owner's cost will be equal to the percentage of the total violations related to Licensee's Attachments as identified during the Safety Inspection unless Licensee can clearly demonstrate that they did not cause the violation. If any Attachment of the Licensee is found to be a Non-Imminent Danger Violation of Article 3, Specifications, and Licensee has caused the violation, Licensee shall have sixty (60) days to correct any such violation upon written notice from Owner, or within a longer, mutually agreed-to time to be not more than an additional sixty (60) days. Owner may impose a penalty in the amount of one hundred (\$100.00) dollars for any violation caused by the Licensee that is not corrected within sixty (60) days of written notice from the Owner or within the alternative time-frame agreed to by the parties. In the event an Imminent Danger Violation is discovered, Licensee shall correct such violation immediately, and in no case in more than twenty-four (24) hours. Should Licensee fail to correct such Imminent Danger Violation within twenty-four (24) hours after notice, the Owner may correct the violation and bill Licensee for the actual costs incurred. In all circumstances, the parties will work together to maximize safety while minimizing the cost of correcting any such deficiencies, but the Licensee shall be responsible for the full cost of any necessary or appropriate corrective measures associated with violations caused by Licensee's Attachment, including removal and replacement of the Pole and all Transfers or other work incident thereto. Licensee will not be responsible for the costs associated with violations caused by others. Licensee shall ensure that its employees, agents, contractors or other Outside Parties, which Licensee causes to work on Owner Poles, will be notified of pending, unresolved Poles requiring corrective actions, prior to activities on such Poles, and Licensee shall not allow unqualified, or improperly equipped personnel to work on such Poles.

1. If any Attachment of the Owner is found to be in violation of Article 3, Specifications, and Owner has caused the violation, then the parties will work together to minimize the cost of correcting any such deficiencies, but the Owner shall be responsible for the full cost of any necessary or appropriate corrective measures, including removal and replacement of the Pole and all Transfers or other work incident thereto.

2. If there exists a violation of Article 3, Specifications, and it cannot be determined whose Attachment has caused such violation or there is a mixture of the parties causing the violation, then the parties will work together to minimize the cost of correcting any such deficiencies, and all parties and Outside Parties whose Attachment may have caused such violation will share equally in such costs; provided, however, that if a party can modify its Attachments so that they no longer may be a cause of the violation or deficiency, then such party may elect to make such modification instead of otherwise sharing in such costs. Such a modification shall not relieve a party from sharing in such costs if the party making the modification could still have been a cause of any deficiency that remains.
3. if one or more Outside Party's Attachment cause the violation, then such Outside Party shall pay the corrective costs incurred by all who have Attachments on the Pole, including for the Licensee, Owner and any other attachees; and the Owner will make reasonable effort to cause the Outside Party to make such payment.

J. **WHEN EXISTING POLES NOT IN JOINT USE BECOME JOINT POLES.** When an existing Pole not in joint use becomes a Joint Pole, the Licensee shall pay all Make-Ready Costs associated with the Licensee attaching to the Pole.

K. **MAKE-READY WHEN APPENDIX A IS NOT REQUIRED.** The Owner shall not be obligated to pay Make-Ready Costs for any initial or additional Licensee Attachment for which an Appendix A is not required.

ARTICLE 9 – UNAUTHORIZED ATTACHMENTS

All attachments identified on the Initial Inventory which comply with the Specifications listed in Article 3, Specifications, shall be considered authorized. If any Attachment made after the Initial Inventory or Actual Inventory is identified for which the Appendix A requirements (as set forth herein) have not been satisfied ("Unauthorized Attachment"), or if Licensee is found making Attachments for which an Appendix A is required after the Effective Date but prior to the Initial Inventory, then the Licensee shall pay to the Owner a one-time fee of one hundred dollars (\$100.00) per Attachment plus a sum equal to the Adjustment Payments that would have been payable from and after the date the Attachment was first placed on the Owner's Pole as determined from Licensee's records or other evidence; provided, however, that if the date on which the Attachment was made cannot be determined, then the Licensee will pay a sum equal to the Adjustment Payments that would have been payable from and after the date the most recent Inventory (Initial or Actual) was conducted. In addition, the Owner, without prejudice to its other rights or remedies under this Agreement, may require the Licensee to submit within fifteen (15) business days of written notice from the Owner an Appendix A along with supporting engineering design data for each such Attachment, and upon review of such information, Owner may require the Licensee to (1) make or pay for such modifications as may be specified by mutual consent of the parties or, if the parties in good faith cannot agree, as determined by a Referee pursuant to Article 19, Resolution of Certain Disputes, to comply with applicable safety codes and the terms of this Agreement, or (2) if the Licensee has placed during the past twelve

(12) months Unauthorized Attachments at three (3) or more different Pole line locations or if non-approval of Appendix A is justified, Owner may declare the Licensee in Default of this Agreement and the provisions of Article 12, Defaults, shall apply. Nothing herein shall relieve the Licensee of its obligation to maintain Attachments at all times in conformity with Article 3, Specifications.

ARTICLE 10 – ABANDONMENT OF JOINT USE POLES

A. If the Owner desires at any time to abandon any Joint Pole, except as provided in Article 7.C, Maintenance of Poles and Attachments, it shall give the Licensee notice in writing to that effect at least sixty (60) days prior to the date on which it intends to abandon such Pole. If at the expiration of sixty (60) days from the date of the Licensee having all necessary clearances to Transfer its Attachments and the Owner shall have no Attachments thereon, but Licensee has not removed its Attachments, such Pole shall thereupon become the property of the Licensee, as is, and the Licensee shall save harmless the Owner from all obligation, liability, damages, cost, expenses or charges incurred thereafter, and not arising out of anything theretofore occurring because of or arising out of the presence or condition of such Pole to the Owner. Owner shall further evidence transfer of title to the Pole by appropriate means. Credit shall be allowed for any payments which the Licensee may have made under the provisions of Article 8, Division of Costs, when the Pole was originally set, provided the Licensee furnishes proof of such payment.

B. The Licensee may at any time abandon the use of a Joint Pole by removing any and all Attachments it may have thereon and by giving written notice thereof.

ARTICLE 11 – ADJUSTMENT PAYMENTS

A. The Initial Inventory shall commence within one year of the Effective Date of the Agreement. Additionally, not more often than once every five (5) years, unless otherwise mutually agreed by the parties, subsequent inventories of Attachments shall be made by representatives of the parties to determine the number of Licensee's Attachments to Owner Poles. Owner shall provide six (6) months advance written notice of any such inventory describing the scope of the Actual Inventory so that Licensee may plan and budget for such Actual Inventory.

B. Unless prevented by the provisions of a third-party agreement, Actual Inventories shall include all Outside Parties attached to Owner's Poles. Where multiple Outside Parties are included in the inventory, all participating Outside parties shall incur a prorated share of the cost of making the Actual Inventory. For a year in which there is no Actual Inventory, the number of Licensee's Attachments used in calculating the Adjustment Payments shall be based on the number of new Licensee Attachments which Licensee has placed during the year, in addition to the number of Licensee Attachments for which Licensee was charged Adjustment Payments in the previous year, less any removals reported by Licensee. Licensee shall also be invoiced for the rent due for the prior year's "Initial Attachments" under an Appendix A as a one-time charge. In addition to Appendix A Attachments, the Licensee will either report on a calendar quarterly basis the number of Attachments installed that are not subject to Appendix A, or the Licensee and Owner may agree to use a Specified Percentage adjustment in the number of Licensee's

Attachments. The "Specified Percentage" shall be 102% annually until the next Actual Inventory. After each Actual Inventory, beginning with the next Actual Inventory, the Specified Percentage shall be the average yearly percentage increase during the years since the previous Actual Inventory. The Specified Percentage will be used solely to adjust for Non-Guyed Service Drops-type Attachments where Appendix A is not required by the terms of this Agreement.

C. For a year for which there is an Actual Inventory, the Adjustment Payments provided for herein shall be based on the Actual Inventory; but there shall also be the adjustment provided for in the next section.

D. For a year for which there is an Actual Inventory, the following adjustment shall be made:

1. The difference between the number of Licensee Attachments found by the Actual Inventory for the year in question and the number of Attachments for which Licensee was most recently invoiced for Adjustment Payments, shall be prorated evenly based on the assumption that such Licensee Attachments were added evenly over the period since the last Actual Inventory, as provided in the Adjustment Chart below.
2. If the number of Licensee Attachments in the previous annual rental invoice is greater than the number of Joint Poles found by the Actual Inventory, then Licensee shall be entitled to a pro-rata refund from the Owner or a credit to the Licensee.

E. The applicable computation of payments and calculations as above provided shall be made on or about December 1st of each year for the next year's Adjustment Payments, each party acting in cooperation with the other.

F. Adjustment Payments per Licensee Attachment due from the Licensee to Owner shall be as indicated in the table below. The undisputed Adjustment Payment herein provided shall be paid within forty-five (45) days after Licensee's receipt of the invoice.

ANNUAL ADJUSTMENT PAYMENT PER ATTACHMENT (or "RATE")

Duration	Adjustment Payment Amount Paid in Advance	Payment Invoice Date
Jan. 1, 2022-Dec.31, 2022	\$19.07	Jan. 1, 2022

For years after 2022, the annual Adjustment Payment per Attachment shall be increased by applying the annual change for account 364 for the South Atlantic Region from the latest version of the Handy Whitman Index.

G. The parties acknowledge and agree that the above rates, and some of the terms and

conditions of this Agreement, are the result of a settlement between the parties. These rates are not necessarily a reflection of the actual costs of joint use to the parties.

ARTICLE 12 – DEFAULTS

A. In the event either party deems an event of default has taken place and prior to engaging in the formal default provisions in this Agreement, the system General Manager of the cable system and the President/CEO/General Manager of the Owner shall meet in person or on the telephone to attempt to resolve the matter in good faith within ten (10) business days of the initial request of either party to meet.

B. In the absence of resolution of the matter in accordance with Article 12, Section A, the aggrieved party may provide a notice of default to the other party in writing. Should such default continue for thirty (30) days after due notice thereof in writing describing the nature of the default, the rights under this Agreement may be suspended insofar as concerns the granting of future attachments or other joint use. Upon receipt of such notice of default, the party alleged to be in default shall either work diligently and cooperatively with the aggrieved party to correct such default or present sufficient evidence that a default does not exist or is not the fault of the party alleged to be in default. If such default is due or is alleged to be due to the Licensee's performance or non-performance and such default shall continue for a period of ninety (90) days after such suspension, Owner may, at its sole discretion and option, terminate this Agreement, deny future Attachments and/or remove the Attachments of Licensee at Licensee's expense, and no liability therefore shall be incurred by the Owner because of any or all such actions. Notwithstanding the foregoing, the cure periods may be extended upon mutual agreement of the parties if a cure is not reasonably possible within the time frames specified above.

C. Without limiting the effect of the provision of the immediately preceding paragraph, if after reasonable notice Licensee shall default in the performance of any work it is obligated to do under this Agreement, the Owner may elect to do such work, and the Licensee shall reimburse the Owner for the cost thereof. Owner shall notify the Licensee in advance of its intent to do the work and the approximate cost of doing such work. Failure on the part of the Licensee to make such a payment, as set forth in Article 17, Bills and Payment for Work, shall, at the election of the Owner, constitute a default under Section B of this Article 12.

ARTICLE 13 – RIGHTS OF OTHER PARTIES

A. If Owner, prior to the execution of this Agreement, conferred upon others, not parties of this Agreement ("Outside Parties"), by contract or otherwise, rights or privileges to attach to, and/or reserve space on any of its Poles covered by this Agreement, nothing herein contained shall be construed as affecting said rights or privileges with respect to existing Attachments of such Outside Parties, which Attachments shall continue in accordance with the present practice; all future Attachments of such Outside Parties shall be in accordance with the requirements of Section B below, except where such Outside Parties have by agreements entered into prior to the execution of this Agreement acquired enforceable rights or privileges to make Attachments which do not meet such space allocations. Owner shall derive all of the revenue accruing from such Outside Parties. Any contractual rights or privileges of Outside Parties recognized in this

paragraph shall include renewals of or extensions of the term (period) of such contracts.

B. In the event any Pole or Poles of Owner to which Licensee has made its Attachments would, but for the Attachments of Licensee, be adequate to support additional facilities desired by Owner, Owner's subsidiary or affiliate, or by a Joint User with whom Owner has a prior agreement and which Joint User is either occupying space or has requested to attach or reserve space on such Pole(s) prior to the placement of Licensee's Attachment on such Pole(s), then Owner shall notify Licensee of any changes necessary to provide an adequate Pole or Poles and the estimated costs thereof. Upon receipt of such notice, Licensee shall remove its Attachments at its sole expense or reimburse Owner, on demand, for all reasonable costs incurred by Owner in making such changes. Should Licensee submit a request to make a new Attachment on a Pole that a Joint User is not already attached to but on which the Joint User has reserved space, Owner will provide notice of such space reservation to Licensee, provided that Owner has such knowledge on or prior to the date of Licensee's Attachment request.

C. If Owner desires to confer upon others not parties to this Agreement ("Outside Parties"), by contract or otherwise, rights or privileges to attach to any of its Poles covered by this Agreement, it shall have the right to do so, provided all such Attachments of such Outside Parties are made in accordance with the following: (1) such Attachments shall be maintained in conformity with the requirements of Article 3, Specifications, and (2) such Attachments shall not be located within the space allocation of Licensee. Owner shall derive all of the revenue accruing from such Outside Parties.

D. Except as to Joint Users already attached to Owner's Poles, any rights and privileges granted under this Article to others not parties hereto, Owner shall make good faith efforts to assist the Licensee get paid by an Outside Party in connection with Outside Party Make-Ready.

E. Except as to Joint Users already attached to, or reserving space on, Owner's Poles, in no event will Licensee be responsible for any Make-Ready or other costs incurred for the benefit of an Outside Party and such costs shall immediately be reimbursed to Licensee from such Outside Party.

F. The Owner will make good faith efforts to have the Licensee paid by an Outside Party in connection with Outside Party Make-Ready.

ARTICLE 14 – ASSIGNMENT OF RIGHTS

A. Except as otherwise provided in this Agreement, Licensee shall not assign or otherwise dispose of this Agreement or any of its rights or interests hereunder, or in any of the Joint Poles, or the Attachments or rights-of-way covered by this Agreement, to any firm, corporation or individual, without the written consent of the Owner, which consent shall not be unreasonably withheld or delayed, except to the United States of America or any agency thereof; provided, however, that nothing herein contained shall prevent or limit the Licensee's right and obligation to assign the Agreement to Licensee's corresponding reorganized entity pursuant to the terms of a plan of reorganization in connection with a bankruptcy proceeding with respect to Licensee, and/or its affiliates, or to mortgage any or all of its property, rights, privileges and franchises, or

lease or transfer any of them to another Licensee corporation organized for the purpose of conducting a business of the same general character, or to enter into any merger or consolidation; and, in case of the foreclosure of such mortgage or in case of lease, transfer, merger or consolidation, its rights and obligations hereunder shall pass to, and be acquired and assumed by, the purchaser at foreclosure, the transferee, lessee, assignee, merging or consolidating company, as the case may be; and provided further that, subject to all of the terms and conditions of this Agreement, Licensee may permit any corporation conducting a business of the same general character as that of such party, and owned, operated, leased and controlled by it, the use of all or any part of the space reserved hereunder on any Pole covered by this Agreement for the Attachments used by such party in the conduct of its said business; and for the purpose of this Agreement, all such Attachments maintained on any such Pole by the permission as aforesaid of Licensee shall be considered as the Attachments of Licensee and the rights, obligations and liabilities of such party under this Agreement, with respect to such Attachments, shall be the same as if it were the actual owner thereof.

B. Written consent from the Owner may be made contingent upon prior receipt of:

- 1) New insurance certificates in the name assignee; and
- 2) New security bonds in the name of the assignee; and
- 3) Payment in full of all Licensee debts due to the Owner.

C. For any assignment request made after the initial seven (7) year term of this Agreement, the Owner may make consent conditional upon the prior execution of a replacement Agreement with the assignee.

ARTICLE 15 – WAIVER OF TERMS OR CONDITIONS

The failure of either party to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in full force and effect.

ARTICLE 16 – PAYMENT OF TAXES

Each party shall pay all taxes and assessments lawfully levied on its own property upon said Joint Poles, and the taxes and the assessments which are levied on said Joint Poles shall be paid by the owner thereof, but any tax, fee, or charge levied on Owner's Poles solely because of their use by the Licensee shall be paid by the Licensee.

ARTICLE 17 – BILLS AND PAYMENT FOR WORK

A. Upon the completion of work performed hereunder by either party, the expense of which is to be borne wholly or in part by the other party, the party performing the work shall present to the other party within ninety (90) days after the completion of such work an itemized statement of the costs and such other party shall within forty-five (45) days after such statement is presented pay to the party doing the work such other party's proportion of the cost of said work.

B. All amounts to be paid by either party under this Agreement shall be due and payable within forty-five (45) days after receipt of an itemized invoice. Except as provided in Article 17.C below, any payment not made within forty-five (45) days from the due date shall bear interest at the rate of 1.5% per month until paid, or if 1.5% exceeds the maximum rate allowed by law, then at the maximum rate allowed by law. If a party bills the interest provided for in this paragraph but then receives a payment showing that the payment was timely made, the billing party will write off and cancel the interest.

C. A party receiving a bill may, in good faith and for good cause, dispute the amount or adequacy of substantiation for the bill. In the event that a party so disputes only a portion of a bill, then such party shall promptly pay the undisputed amount. In the event of such dispute, the parties shall meet, by telephone or in person, within ten (10) business days of a dispute being raised to discuss the disputed item and establish a procedure for addressing the disputed amount in accordance with this Agreement. Upon resolution of the dispute, if the amount and substantiation were correct and sufficient, interest will be paid on the unpaid balance from the date of the initial bill at the rate of 1.5% per month until paid, or if 1.5% exceeds the maximum rate allowed by law, then at the maximum rate allowed by law; but, if the amount was not correct or substantiation was not sufficient, no interest will be payable unless the amount determined to be correct is not paid within forty-five (45) days of receipt of substantiation and determination of the correct amount.

D. The fees specified in this Agreement shall be subject to an annual escalator equal to the change in the most recent twelve (12) month's Handy Whitman Index for the South Atlantic Region, Account 364, Poles, Towers and Fixtures.

ARTICLE 18 – NOTICES

A. Except as otherwise provided in this Agreement, all notices and writings shall be made to the following people, who from time to time may be changed by written notice:

Licensee Contact Information:

Point Broadband, LLC
1791 O.G. Skinner Drive
West Point, GA 31833
Attn: Todd Holt, CEO

With a Copy To:

Maynard Cooper & Gale P.C.
Attn: Michael P. Johnson, Esq.
665 Gallatin Street SW
Huntsville, AL 35801

Owner Contact Information:

City of Opelika
 Attn: Mayor
 PO Box 390
 Opelika, AL 36803
 Phone: 334-705-5150
 Email: gfuller@opelika-al.gov

B. By written notice pursuant hereto a party may from time to time specify a person in lieu of the person designated in Section A above to receive notices or writings with respect to specified matter(s) and/or geographic area(s), in which case such notices or writings shall be sent to that person as to such matter(s) and area(s).

C. Response to any notice or Appendix A shall be made to the sender rather than to the person designated in Section A or B above.

D. Unless otherwise provided in this Agreement, any notice shall be in writing, which may, when mutually agreeable, include preservable and traceable electronic means, such as email or facsimile.

E. A second copy of any notice given under Article 12, Defaults, or Article 20, Term of Agreement, shall be given to the following persons, who may from time to time be changed by written notice:

Licensee:

Point Broadband, LLC
 1791 O.G. Skinner Drive
 West Point, GA 31833
 Attn: Chad Wachter, General Counsel

Owner:

Opelika Power Services
 PO Box 390
 Opelika, AL 36803
 600 Fox Run Parkway
 Opelika, AL 36801
 Attn: Derek Lee, Director of Opelika Power Services

City of Opelika
 P.O. Box 390
 Opelika, AL 36803
 Attn: Guy F. Gunter, III, City Attorney

F. The parties will develop and maintain a joint form designated the people to whom notices shall be given pursuant to the foregoing.

ARTICLE 19 – RESOLUTION OF DISPUTES REGARDING ENGINEERING AND CONSTRUCTION STANDARDS AND SAFETY VIOLATIONS

A. In the event of a dispute regarding any compliance or non-compliance with the provisions of Article 3, Specifications, of this Agreement, including which party is responsible for any non-compliance and what corrective action, if any, is necessary or appropriate to remedy any such non-compliance, then the parties shall each arrange for a representative to make a joint field visit to the Pole location to investigate whether a violation exists, and, if so, any corrective action needed and the party or parties responsible. The parties will make a diligent and good faith effort to resolve such disputes at the local level by the parties' respective local engineers and local managers.

B. If the parties are unable to resolve any such dispute at the local level, then either party may submit the matter for resolution to a Referee for binding resolution. A matter will be submitted to the Referee by sending a letter (by mail, hand-delivery or facsimile) to the Referee, with a copy provided to the other party's representative who was involved in the attempt to resolve the dispute and the other party's representative designated pursuant to Article 18.A or Article 18-B, Notices, before or concurrently with the transmission of the letter to the Referee. The letter will include a summary of the dispute and will designate the party's "Contact Person" for the dispute. The other party will promptly respond with a letter similarly sent and copied that provides such party's summary of the dispute and designates such party's Contact Person for the dispute.

C. If the parties mutually agree to do so, instead of proceeding under Section B above, the parties may submit any dispute to the Referee by jointly sending the Referee a letter that includes a summary of the dispute and designates each party's Contact Person for the dispute.

D. The Referee will make such investigation as deemed appropriate in his or her discretion, which will include hearing from each party's Contact Person. The Referee may, but is not required to, engage in such other procedures or hearing as the Referee deems appropriate. The parties will cooperate with the Referee.

E. The Referee will promptly issue a binding decision in writing to the parties, from which there will be no appeal. The party whose position is not upheld by the Referee (which determination may be made by the Referee if requested to do so) will be required to pay for the Referee's fees and expenses. If both parties' positions are upheld in part, they will share the Referee's fees and expenses equally. The parties agree to be bound to pay the Referee's fees and expenses as provided herein.

F. The Referee will be appointed as follows:

1. Each party will appoint an outside engineer and these two (2) engineers will appoint a third outside engineer or other qualified person to serve as the Referee.
2. In the event that the two (2) engineers so appointed are unable within fourteen (14) days to agree upon a third outside engineer or other qualified person who is willing and able to serve as the Referee, then the Referee will be appointed as follows: Three (3) names will be blindly drawn from the list of persons then comprising the NESC committee whose work is most closely related to the dispute (e.g., Clearances Committee or Strength and Loading Committee), or such other group as may be agreed upon. Each party will strike one such name and the remaining person will serve as the Referee. If the parties strike the same name, then the Referee will be selected from the remaining two (2) names by coin toss. If the NESC committee member so selected is unwilling or unable to serve as Referee, then this procedure will be repeated (starting with the blind drawing of three different names as provided above) as necessary until a Referee is selected who is willing and able to serve as Referee. If all committee member names of the NESC committee first selected are exhausted without a Referee being appointed who is willing and able to serve as Referee, then the parties will repeat the above-described procedure with the next NESC committee whose work is most closely related to the dispute, and so on until a Referee is selected who is willing and able to serve as Referee.

G. Nothing herein shall preclude the parties from entering into any other mutually agreeable dispute resolution procedure or from changing by written agreement any aspect of the foregoing procedure. Without limiting the generality of the foregoing, the parties may by written agreement remove, replace or appoint a Referee at any time.

H. The parties agree that, if any dispute or problem in connection with the administration of this Agreement cannot be resolved at lower levels, communications between the following will be permitted and engaged in, in good faith on an expedited basis. Between a district manager or person who reports to the President/CEO/General Manager of an Owner and a district general manager for Licensee; and, if not resolved by them, between the President/CEO/General Manager of an Owner and the General Manager for the Licensee. If either Owner or Licensee reorganizes or changes titles, the equivalent person for such party shall perform the above functions. Notwithstanding the foregoing, neither party shall be precluded from seeking any other available legal remedy at any time for any matter not subject to resolution by Referee as described in this Article.

ARTICLE 20 – TERM OF AGREEMENT

A. This Agreement shall continue in full force and effect for ten (10) years from the Effective Date (“Initial Term”) and shall automatically renew thereafter for successive one (1) year terms (“Renewal Term”). Either party may terminate the Agreement by giving to the other party six (6) months’ notice in writing of intention to terminate the Agreement six (6) months prior to the end of the Initial Term or any Renewal Term. Notwithstanding the foregoing, this

Agreement shall continue in full force and effect for all existing Attachments during any negotiations of the parties for a subsequent agreement.

B. Upon termination of this Agreement in accordance with any of its terms, Licensee shall within one hundred and eighty (180) days remove all of its Attachments owned by Licensee from all Poles of Owner. If not so removed, Owner shall have the right to remove and dispose of all of Licensee's Attachments without any liability or accounting therefore. Licensee shall reimburse Owner for any and all costs incurred by Owner in the removal of Licensee's Attachments as detailed above. In the event that Licensee has not reimbursed Owner within forty-five (45) days of invoicing following Owner's removal of said Attachments, then Owner may pursue, without notice or demand to Licensee, one or more of the remedies contained in Article 12, Defaults, including making demand on the Security Instrument described in Article 23.E, Liability and Indemnification.

C. Termination of this Agreement shall not relieve either party from fulfilling any and all of its obligations that accrued while the Agreement was in effect.

D. During the term of this Agreement or upon termination of this Agreement, each party shall have reasonable access to those portions of the other party's books, construction standards and records, as may be necessary to resolve a material issue or concern regarding the other party's compliance with its obligation under this Agreement. Such access will be granted upon reasonable notice and only during regular business hours.

ARTICLE 21 – EXISTING CONTRACTS

All existing joint use or Pole Attachment license agreements between the parties, and all amendments thereto (hereinafter "Old Attachment Agreement") are by mutual consent hereby abrogated and superseded by this Agreement. However, execution of this Agreement shall not be interpreted as settlement of any debt existing prior to execution.

Nothing in the foregoing shall preclude the parties to this Agreement from entering such supplemental operating routines or working practices as they agree to be necessary or desirable to effectively administer the provisions of this Agreement.

ARTICLE 22 – LIABILITY AND INDEMNIFICATION

A. The Owner expressly agrees to indemnify, defend and save harmless Licensee from all Claims arising or claimed to have arisen solely by, through or as a result of the Owner's negligent acts or omissions or the Owner's intentional or wanton misconduct. Except as set forth below, Licensee assumes sole responsibility for all injuries and damages arising, or claimed to have arisen, by, through or as a result of any of its cables, wires, appliances, equipment or facilities (or of a third-party over-lasher to Licensee's cables, wires, appliances, equipment or facilities or any assignee of Licensee's rights) attached to the Owner's Poles, equipment or facilities, it being understood, however, that Licensee shall have no liability to the Owner for injuries and damages (a) caused by, through or as a result of the sole negligence of the Owner; or (b) caused solely by, through or as a result of the wanton misconduct of the Owner; or (c) caused

solely by, through or as a result of the facilities or activities of any third party (or parties) .
 attachers whose cables, wires, appliances, equipment or facilities are attached to the same Poles
 as Licensee's cables, wires, appliances, equipment or facilities.

B. Accordingly, without limiting the effect of the provision of the immediately preceding paragraph, and except as set forth below, Licensee expressly agrees to indemnify, defend and save harmless the Owner from all claims, demands, actions, judgments, loss, costs and expenses (collectively, "Claims") arising or claimed to have arisen by, through or as a result of Licensee's cables, wires, appliances, equipment or facilities attached to the Owner's Poles, equipment or facilities, or as a result of the negligent acts or omissions, or the intentional or wanton misconduct of the Licensee or any of its contractors, agents, over-lashers or assignees, in respect to (a) damage to or loss of property (including but not limited to property of the Owner or Licensee); (b) injuries or death to persons (including but not limited to injury to or death of any Licensee employees, contractors or agents, or members of the public); (c) any interference with the television or radio reception of, or with the transmission or receipt of telecommunications by, any person which may be occasioned by the installation or operation of Licensee's cables, wires, appliances, equipment or facilities; (d) the proximity of Licensee's cables, wires, appliances, equipment or facilities to the wires and other facilities of the Owner; (e) any claims upon the Owner for additional compensation for use of its distribution rights-of-way for a use of the Licensee; and (f) any injuries sustained and/or occupational diseases contracted by any of the Licensee's employees, contractors or agents of such nature and arising under such circumstances as to create liability therefore by Licensee or the Owner under any applicable Worker's Compensation law, including also all claims and causes of actions of any character which any such contractors, employees, the employers of such employees or contractors, and all persons or concerns claiming by, under or through them or either of them may have or claim to have against the Owner resulting from or in any manner growing out of any such injuries sustained or occupational diseases contracted; it being understood, however, that Licensee shall have no liability to the Owner for injuries and damages (a) caused by, through or as a result of the sole negligence of the Owner; or (b) caused solely by, through or as a result of the wanton misconduct of the Owner; or (c) caused solely by, through or as a result of the facilities or activities of any third party (or parties) whose cables, wires, appliances, equipment or facilities are attached to the same Poles as Licensee's cables, wires, appliances, equipment or facilities. In any matter in which Licensee shall be required to indemnify the Owner hereunder, Licensee shall control the defense of such matter in all respects, and the Owner may participate, at its sole cost, in such defense. The Owner shall not settle or compromise any matter in which Licensee is required to indemnify the Owner without the prior consent of Licensee.

C. Owner shall have no liability to the Licensee for injuries and damages (a) caused by, through or as a result of the negligence of the Licensee or its contractors or agents; or (b) caused through or as a result of the wanton misconduct of the Licensee or any of its contractors, agents, representatives or assignees. In any matter in which the Owner shall be required to indemnify Licensee hereunder, the Owner shall control the defense of such matter in all respects, and Licensees may participate, at its sole cost, in such defense. Licensee shall not settle or compromise any matter in which the Owner is required to indemnify Licensee without the prior written consent of the Owner.

D. Insurance

Licensee, and any contractors of Licensee, shall contract for and maintain in effect throughout the period during which Licensee maintains Attachments on any Poles owned by owner, insurance which meets or exceeds the amounts set forth in subsections (1) through (3) below. Failure to provide and maintain the required insurance coverage shall constitute a Default under this Agreement, in which event Owner shall have the right to pursue any and all of the remedies set forth in this Agreement. Licensee shall provide copies of the required insurance policies to the Owner upon request.

1. Worker's compensation insurance, with minimum limits of \$1,000,000 per employee, covering all employees of Licensee who shall perform any work on Poles or property owned or controlled by Owner, including easements and rights-of-way, whether or not such insurance is required by law. If any employee is not subject to the worker's compensation laws of the state wherein work is performed, Licensee shall extend said insurance to such employee as though said employee were subject to such laws.
2. Commercial general liability insurance covering all operations under this Agreement, including erection, installation, maintenance, Rearrangement and removal of Licensee's Attachments, in an amount for bodily injury of not less than \$2,000,000 for one person and \$2,000,000 for each accident or occurrence and for property damage of not less than \$2,000,000 for each accident or occurrence.
3. Automobile liability insurance on all self-propelled vehicles which may be used in connection with this Agreement, whether owned, non-owned or hired, in an amount for bodily injury of not less than \$1,000,000 for one person and \$1,000,000 for each accident or occurrence and for property damage of not less than \$1,000,000 for each accident or occurrence.
4. The policies hereunder shall be in such form and issued by such carrier authorized to write policies in the State of Alabama as shall be reasonably acceptable to Owner.
 - a. Owner, its board of directors, officers, employees and agents shall be shown as additional insured on each policy only with respect to liability arising from Licensee's operation in conjunction with this Agreement; and
 - b. Licensee agrees to release and will require its insurers (by policy endorsement) to waive their rights of subrogation against Owner, its board of directors, officers, employees and agents for loss under the policies of insurance described herein; and
 - c. Licensee shall provide Owner with at least thirty (30) days written notice before any such insurance shall lapse, or any coverage is reduced; and each policy shall state that the insurance carrier will mail a notice to the

Owner at the address provided in Article 25 at least thirty (30) days before any such insurance shall lapse; and

- d. Licensee shall furnish Owner certificates evidencing such insurance within thirty (30) days of the Effective Date of this Agreement and shall provide Owner with copies of any renewal or replacement certificates promptly after they become available.
5. Notwithstanding the above, if Licensee is authorized to operate as a self-insured entity under the laws of the State of Alabama, Licensee may provide self-insurance to meet the requirements of this Article 23, upon terms and conditions satisfactory to Owner.

E. Security Instrument

Licensee shall furnish and maintain throughout the term of this Agreement, and thereafter until all of the obligations of Licensee have been fully performed, a bond, or other Security Instrument satisfactory in form and content to Owner in substitution therefore, to guarantee the payment of any sums which may become due to Owner or an Owner Agent for Pole Attachment Rental Fees, inspections, inventories, Make-Ready Costs, Unauthorized Attachment Fees, for work performed for the benefit of Licensee under this Agreement, including the removal of Attachments upon termination of this Agreement, for any expense that may be incurred by Owner or an Owner Agent because of any Default of Licensee, or for any other expense that is to be borne by Licensee under this Agreement. This Security Instrument shall be renewed annually and shall be furnished to the Owner at the time of payment of the annual Pole rental invoice. The amount of said Security Instrument, which amount shall be maintained throughout the term of the Agreement and thereafter until all of the obligations of Licensee have been fully performed, shall be equal to ten thousand US dollars (\$10,000), or twenty-five dollars (\$25.00) per Attachment based on the most recent pole rental invoice, whichever is larger. The amount of the Security Instrument may, in Owner's discretion, be adjusted if Licensee purchases, acquires or obtains a controlling interest in additional broadband or other facilities within Owner's service territory not currently covered by this Agreement which results in a significant increase in the number of Attachments. Any such adjustment shall not exceed twenty-five dollars (\$25.00) per new Attachment. Failure to provide and maintain the aforementioned Security Instrument shall be deemed a Default under this Agreement, in which event Owner shall have the right to pursue any and all remedies set forth in this Agreement and at law or equity. The furnishing of such Security Instrument shall not affect, limit, diminish or otherwise reduce any obligations of Licensee under this Agreement.

Following the completion of the Initial Safety Inspection, the correction of the identified violations, and if the Licensee is in material compliance with all other terms and conditions of the Agreement, the amount of the Security Instrument shall be adjusted annually to an amount not to exceed the last annual Pole rental invoice by the Licensee.

ARTICLE 23 – CONSTRUCTION

This Agreement was drafted by all parties to it and is not to be construed against any party. Neither the negotiations of the language of this Agreement nor any prior drafts of this Agreement or the inclusion or exclusion of any language from prior drafts shall be admissible or probative as to the meaning of this Agreement. The execution, interpretation, construction, performance and enforcement of this Agreement and the rights and obligations of the parties shall be governed by Alabama law, without regard to principles of conflict of laws. Any disputes arising out of this Agreement shall be resolved in the state and federal courts of Alabama.

ARTICLE 24 – REMEDIES CUMULATIVE

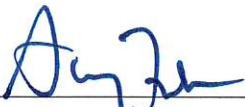
Unless otherwise provided in this Agreement, all remedies set forth in this Agreement are cumulative and in addition to any other remedies that may be available herein or at law or in equity, if any.

ARTICLE 25 – PREPAYMENT OF POLE ATTACHMENT FEES

Pursuant to the Asset Purchase Agreement dated October 16, 2018, heretofore entered into between the parties, \$480,000 of the Purchase Price was allocated as compensation from the Licensee to the Owner for the first thirty-six (36) months of Pole Attachment Fees under this Agreement. Accordingly, no additional Pole Attachment Fees shall be due from the Licensee to the Owner during the first thirty-six (36) months of this Agreement. Beginning the thirty-seventh (37th) month, the Licensee shall be obligated to pay Pole Attachment Fees to the Owner for access to space or the Owner's utility poles based on the market rates applicable from time-to-time in accordance with the provisions of this Agreement.

IN WITNESS WHEREOF the parties hereto have caused these presents to be executed in two counterparts, each of which shall be deemed an original and their corporate seals to be affixed thereto by their respective officers thereunto duly authorized, as of the Effective Date.

CITY OF OPELIKA, ALABAMA

Signed: 
 Name: Gary Fulker
 Title: MAYOR
 Date: 10-17-18

POINT BROADBAND, LLC

Signed: 
 Name: Todd Holt
 Title: President
 Date: 10-17-18

APPENDIX A- ATTACHMENT REQUEST FORM

Licensee hereby requests permission pursuant to its Pole Attachment License Agreement to make new Attachment(s) to poles, remove Attachment(s) to poles and/or Over-lash cables affixed to poles, all as shown on the attached construction plans and drawings. The attached plans and drawings show the Poles Licensee desires to attach to or Over-lash, the number and character of Attachments proposed, any Rearrangements requested with respect to existing wires, fixtures or apparatus, any relocations or replacements of existing Poles requested, the heights of all points of attachment, all mid-span clearances, and any new Pole placement requested. Should additional information be required by the Owner for verification of compliance with the NESC or other applicable standards, the Licensee will provide such information. Licensee certifies that all rights-of-way, easements, permits, and consents have been obtained from the owner(s) of the property(ies) on which the Poles being attached to are currently located or will be located. Payment for the fees is included with this request. The table below provides detailed information regarding this request.

LICENSEE				
Company		Poles with Attachments	Added	
Project			Removed	
Request #			Overlashed	
Request Date		Estimated Construction Dates	Start	
Name			Completion	
Signature		fees	Application	\$
Phone			Inspection	\$
Fax			Design	
Email			Total	\$

Please advise Licensee as to whether or not these Attachments will be permitted and if necessary provide an estimate for any additional costs that Licensee may be required to pay as Make Ready Work. If Make Ready Work is required, upon receipt of Owner supplied Make Ready Estimate the Licensee shall provide notice to Owner of either approval of the cost estimate or that Licensee will not undertake to make these Attachments. Upon receipt by Owner of Licensee's notice of estimate approval of Make Ready Costs, the Owner will proceed with Make Ready Work.

Owner					
Response Date			Owner Make Ready Construction Required?	Yes	
Name				No	
Signature			Owner Make Ready Construction Estimate	\$	
Phone			Permit#		
Fax					
Email					
Request Response	Approved		Reason for denial		
	Denied				

APPENDIX R- OWNER RULES AND PRACTICES FOR ATTACHMENTS

1. Licensee shall install and maintain its Attachments at its own expense.
2. Any unbalanced loading of Owner's Distribution Poles caused by the placement of Licensee's circuits shall be properly guyed and anchored by Licensee with a guy and anchor provided by Licensee, at no expense to Owner. Licensee may not place new guy attachments on Owner's anchors without Owner's prior consent. If mutually agreed between the Licensee and the Owner, Owner may install anchors and anchor rods, at Licensee's expense, with sufficient capacity for the Owner's and Licensee's guying attachments. When the parties agree to use a common anchor, Licensee shall re-install Owner's anchor rod bonding clamps on Owner anchors after installing guy attachments to the anchor.
3. A preliminary "ride through" of the proposed route of Licensee's communications facility shall be made by representatives of Owner and Licensee when necessary.
4. Licensee shall check and verify the condition of any Pole prior to climbing or performing work on it. If a Pole is deemed unsafe, Licensee must immediately cease all work on said Pole and notify Owner by telephone and in writing as soon as practicable.
5. All Attachments shall be located on the same side of each Pole as any existing telephone or communications cable, or as otherwise designated by Owner.
6. On Attached Poles where Owner has secondary conductors, all Attachments shall be located on the same side of the Pole as the secondary conductors, or as otherwise designated by Owner.
7. Licensee shall cause all cabinets, enclosures, and messengers to be effectively grounded in accordance with the NESC and all revisions thereof. Licensee shall instruct its employees, contractors, and other representatives working on Owner's poles of the dangers associated with bonding its facilities to the Owner "vertical ground wire" and associated dangers thereof and shall provide adequate training and protective equipment so as to protect its employees, contractors, and other representatives from bodily harm. The Owner assumes no responsibility either for instructing Licensee's personnel or furnishing equipment to Licensee's personnel, or for any liability for Licensee's personnel working on Owner poles, except as provided for in the indemnity provisions of the Agreement.
8. Licensee shall install no power supply on any of Owner's Poles on which underground electric services, capacitor banks, sectionalizing equipment or voltage regulators are already installed.

9. No electrical service connection to a communications power supply shall be made or installed by Licensee until after Owner shall have completed inspection of an approved fused service disconnect switch or circuit breaker.
10. No bolt used by Licensee to attach its facilities shall extend or project more than one (1) inch beyond its nut.
11. All Attachments of Licensee shall have at least two (2) inches clearance from unbonded hardware such as pedestals and any other enclosures containing equipment.
12. All of Licensee's Attachments shall comply with the more stringent of either Owner's or NESC clearance and separation requirements and shall be located on all new or transferred attachments a minimum of forty (40) inches below Owner's lowest attached facilities. On Owner Poles supporting streetlights, Licensee's Attachments may be installed to comply with the NESC clearance requirements for the street light "drip loop", as long as Licensee's Attachment also maintains forty (40) inches from other Owner facilities on the Pole. All mid-span clearances between Licensee's facilities and Owner's lowest conductors shall comply with NESC clearance requirements.
13. Licensee may, with prior approval of Owner, install cross arms, alley arms, or cable extension arms for the support of any of its facilities. However, Licensee shall not use any cross arm or alley arm brace above the arm that it supports.
14. Licensee shall install and maintain any and all of its facilities in a neat and workmanlike manner consistent with the maintenance of the overall appearance of the jointly used Pole and subject to the standards set forth in Article 3. Where a disparity exists between Owner's standards, Governmental requirements, the NESC, this Appendix R, or other written requirements in this Agreement, the most stringent shall apply.
15. In the event that any of Licensee's proposed Attachments are to be installed upon Poles already jointly used by Owner and another party(ies), Licensee shall negotiate with such other party/parties to determine clearances between its facilities and those of Owner and such other party/parties, except that Licensee may not in any way modify the clearance requirements set forth in this Agreement.
16. Guy markers shall be installed and maintained on all guys.
17. Where, at the sole discretion of the Owner, the future installation of a transformer, underground cable riser, or other similar Owner equipment is likely, all new attachments will be made at least seventy-two (72) inches under the primary neutral. Clearances not specified in this rule shall be determined by reference to the National Electrical Safety Code. Licensee shall be notified of this possibility in the Appendix A application process.
18. All anchors and guys shall be installed and in effect prior to the installation of any of the Licensee's messenger wires or cables. All anchors and rods shall be in line with the strain and shall be installed so that approximately six (6) inches of the rod remains out of

the ground. Cutting of anchor rods to reduce anchor rod extension above the ground line is not permitted. The entire length of the anchor rod should be set in a straight line between the Pole attachment and the point where the rod attaches to the anchor. In cultivated fields or other locations, the projection of the anchor rod above earth may be increased to a maximum of twelve (12) inches to prevent burial of the rod eye. The backfill of all anchor holes must be thoroughly tamped the full depth.

19. Sidewalk guys shall be permitted by special exception only.

20. No Licensee guys may be attached to Owner guys (except grounding connections). Attachment of Licensee guys to Owner anchors shall be permitted only with approval by the Owner.

21. With respect to all communications-protective devices, Licensee agrees that Owner may construct all its facilities in accordance with "Grade C" construction as applicable under NESC Rule 242, Table 242-1, Footnote 7.

CONDUIT AND RIGHT-OF-WAY ACCESS AGREEMENT

THIS CONDUIT AND RIGHT-OF-WAY USE AGREEMENT (this "Agreement"), dated as of October 16, 2018, is entered into between THE CITY OF OPELIKA d/b/a OPELIKA POWER SERVICES, an Alabama municipal corporation's Business (the "Seller") and POINT BROADBAND, LLC, a Georgia limited liability company, or its affiliated designee and assignee ("Buyer").

RECITALS

WHEREAS, the Seller is in the business of providing fiber-optic telecommunication and information service (the "Business"); and

WHEREAS, Seller wishes to enter into this Agreement and grant Buyer access to its conduit and rights-of-way.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1) Definitions

- a) Conduit - A structure, usually underground, containing one or more ducts for fiber optic or broadband network facilities.
- b) "Rights-of-Way" means the area on, below, and above an existing or proposed public roadway, highway, street or sidewalk, and associated adjacent land, in which the City has a property interest, whether by easement or fee and regardless of how acquired or established, for utility, data or telecommunications purposes.

2) License for Use of Conduit and Rights-of-Way

Buyer will receive a franchise to provide cable service from the Seller. During the term of the Franchise, and any subsequent renewal or extension of the franchise, Seller hereby grants and licenses to Buyer the right to use the Conduit as currently put in place by the Seller for the Business and Seller's non-exclusive Rights-of-Way used in the Business.

3) Notice.

Any notice by either party to the other shall be in writing and shall be deemed to be duly given if delivered personally or mailed by registered or certified mail in a postpaid envelope addressed to the other party as follows:

if to OPS:

The City of Opelika d/b/a Opelika Power Services
600 Fox Run Pkwy
Opelika, Alabama 36801
Attention: Derek Lee, Director

if to Point Broadband:

Point Broadband, LLC
1791 O. G. Skinner Drive
West Point, Georgia 31833
Attn: Todd Holt, CEO

With a copy to:

Maynard, Cooper & Gale, P.C.
655 Gallatin Street
Huntsville, Alabama 35803
Attention: Michael P. Johnson, Esq.

With an additional copy to :

Point Broadband, LLC
1791 O.G. Skinner Drive,
West Point, Georgia 31833
Attention: Chad Wachter, General Counsel

or such other address as any party may from time-to-time designate in writing. All such notices shall be effective when postmarked if sent by mail or when delivered if delivered personally.

3. **Controlling Law.** This Agreement shall be governed by the laws of the State of Alabama.

4. **Counterparts.** This Agreement may be executed in two or more written or electronic counterparts, each of which when executed and delivered shall be an original, but all such counterparts shall constitute one and the same instrument.

IN WITNESS WHEREOF, this **CONDUIT AND RIGHT-OF-WAY USE** is executed on this the date and year first above written.

THE CITY OF OPELIKA D/B/A OPELIKA POWER SERVICES, an Alabama municipal corporation

By: _____

POINT BROADBAND FIBER, LLC,
a Georgia limited liability company

By: _____

DISCLOSURE SCHEDULES

to the

ASSET PURCHASE AGREEMENT

by and among

THE CITY OF OPELIKA D/B/A OPELIKA POWER SERVICES,
an Alabama municipal corporation's Business,

as Seller,

and

POINT BROADBAND, LLC,
a Georgia limited liability company,
or its affiliated designee and assignee

as Buyer,

dated as of

October 16, 2018

DISCLOSURE SCHEDULES

Reference is made hereby to that certain Asset Purchase Agreement, by and among The City of Opelika d/b/a Opelika Power Services, an Alabama municipal corporation's Business ("Opelika") (the "Seller"), and Point Broadband, LLC, a Georgia limited liability company, or its affiliated designee and assignee (the "Buyer"), dated as of October 16, 2018 (the "Agreement"). Unless the context otherwise requires, all capitalized terms used in these Disclosure Schedules and not otherwise defined herein shall have the meanings ascribed to them in the Agreement.

These Disclosure Schedules are qualified in their entirety by reference to specific provisions of the Agreement, and are not intended to constitute, and shall not be construed as constituting, representations or warranties of the Seller, except as and to the extent provided in the Agreement.

Matters reflected in these Disclosure Schedules are not necessarily limited to matters required by the Agreement to be reflected in these Disclosure Schedules. Such additional matters are set forth for informational purposes and do not necessarily include other matters of a similar informational nature. The information in these Disclosure Schedules is being provided solely for the purpose of making disclosure to Buyer under the Agreement and is subject to the terms of that certain Non-Disclosure and Confidentiality Agreement by and between the parties dated as of September 2018. In disclosing this information, Seller expressly does not waive any attorney-client privilege associated with such information or any protection afforded by the work-product doctrine with respect to any of the matters disclosed or discussed in these Disclosure Schedules.

The inclusion of any fact, item, matter, circumstance, transaction or event in these Disclosure Schedules is not deemed to be an admission or representation that the fact, item, matter, circumstance, transaction or event has a value above or below any dollar thresholds set forth in the Agreement or that any change of control, merger or similar provision in the item is triggered and such inclusion shall not be deemed an acknowledgment that such fact, item, matter, circumstance, transaction or event is required to be so disclosed pursuant to the Agreement. No disclosure in these Disclosure Schedules relating to any possible breach or violation of any agreement, law, regulation or other matter shall be construed as an admission or indication that any such breach or violation exists or has actually occurred.

The section headings in these Disclosure Schedules are for convenience of reference only and shall not be deemed to alter or affect the express description of the sections of these Disclosure Schedules as set forth in the Agreement. References herein to, and summaries or descriptions herein of, documents are qualified by such documents in their entirety. All disclosures contained herein are made as of the date of the Agreement, and their accuracy is confirmed only as of that date and not at any other time, except as set forth in the Agreement.

Disclosure Schedule
Section 1.01(a) Balance Sheet Assets

CITY OF OPELIKA
STATEMENT OF NET POSITION
PROPRIETARY FUNDS
SEPTEMBER 30, 2017

ASSETS	ELECTRIC UTILITY	SEWER SYSTEM	TELE- COMMUNICATIONS	SOLID WASTE COLLECTION	TOTALS	GOVERNMENTAL ACTIVITIES - INTERNAL SERVICE FUNDS
Current assets						
Cash	\$ 10,892,032	\$ 7,732,576	\$ 1,094,637	\$ 1,042,474	\$ 20,761,719	\$ 3,183,338
Certificates of deposit	8,453,583	-	-	-	8,453,583	-
Accounts and unbilled service receivable, net	4,860,572	307,390	322,765	230,197	5,720,924	11,063
Accrued interest	31,380	-	-	-	31,380	-
Due from other funds	6,935,338	46,946	-	-	6,982,284	104,432
Due from other governments	-	983,276	-	4,024	987,300	-
Prepaid insurance and other assets	-	-	2,299	-	2,299	-
Supplies	1,931,095	-	-	-	1,931,095	-
Total current assets	33,104,000	9,070,188	1,419,701	1,276,695	44,870,584	3,298,833
Restricted assets						
Cash and investments with fiscal agent	2,642,037	41,957	-	-	2,683,994	-
Total restricted assets	2,642,037	41,957	-	-	2,683,994	-
Capital assets						
Land	2,091,639	149,370	-	229,547	2,470,556	-
Building	13,689,850	21,823	-	43,806	13,755,479	-
System	63,833,800	44,861,976	10,117,892	17,540	118,831,208	-
Equipment	7,977,636	1,849,441	4,696,130	3,102,141	17,625,348	-
Total original cost	87,592,925	46,882,610	14,814,022	3,392,034	152,682,591	-
Less accumulated depreciation	(41,806,752)	(20,306,005)	(6,477,926)	(1,798,987)	(70,389,680)	-
Capital assets, net	45,786,173	26,576,605	8,336,096	1,594,037	82,292,911	-
Other assets						
Deposits	-	2,431	10,000	-	12,431	19,229
Total other assets	-	2,431	10,000	-	12,431	19,229
Total assets	81,532,210	35,691,181	9,765,797	2,870,732	139,859,920	3,318,062
DEFERRED OUTFLOWS OF RESOURCES						
Employer retirement contributions	605,879	-	144,276	226,945	977,100	-
Net difference between projected and actual earnings on plan investments	299,651	-	90,846	120,277	510,774	-
Bond refunding costs, net	-	139,167	-	-	139,167	-
Total deferred outflows of resources	905,530	139,167	235,122	347,222	1,627,041	-
Total assets and deferred outflows of resources	\$ 82,437,740	\$ 35,830,348	\$ 10,000,919	\$ 3,217,954	\$ 131,486,961	\$ 3,318,062

CITY OF OPELIKA
STATEMENT OF NET POSITION
PROPRIETARY FUNDS
SEPTEMBER 30, 2017

	ELECTRIC UTILITY	SEWER SYSTEM	TELE- COMMUNICATIONS	SOLID WASTE COLLECTION	TOTALS	GOVERNMENTAL ACTIVITIES - INTERNAL SERVICE FUNDS
LIABILITIES						
Current liabilities						
Accounts payable	\$ 4,480,731	\$ 44,617	\$ 320,454	\$ 65,748	\$ 4,911,550	\$ 109,900
Retainage payable	23,212	-	-	-	23,212	-
Current portion of bonds payable	-	610,000	-	-	610,000	-
Accrued payroll and benefits	269,591	-	48,309	80,572	398,472	-
Due to other funds	115,416	-	7,438,022	2,482	7,555,920	-
Interest payable	118,778	86,393	150	-	205,321	-
Liability for unpaid claims	-	-	-	-	-	254,427
Unearned revenue	23,256	-	501,490	4,024	528,770	96,591
Total current liabilities	5,030,984	741,010	8,308,425	152,826	14,233,245	460,918
Noncurrent liabilities						
Bonds payable, net of current portion and discount	28,159,463	6,030,749	13,500,000	-	47,690,212	-
Accrued employee benefits	304,015	-	81,428	130,248	515,691	-
Net pension liability	5,347,700	-	1,466,986	1,909,893	8,924,585	-
Liability for unpaid claims	-	-	-	-	-	101,259
Customer deposits	2,795,422	-	53,450	62,190	3,011,062	-
Total noncurrent liabilities	36,806,600	6,030,749	15,101,864	2,202,331	60,141,550	101,259
Total liabilities	41,837,590	6,771,759	23,410,289	2,355,157	74,374,795	562,177
DEFERRED INFLOWS OF RESOURCES						
Net difference between projected and actual earnings on plan investments	3,115	-	15,599	(2,112)	16,602	-
Total deferred inflows of resources	3,115	-	15,599	(2,112)	16,602	-
NET POSITION						
Invested in capital assets, net of related debt	17,626,710	20,075,023	(5,163,904)	1,594,037	34,131,866	-
Restricted	2,642,037	41,957	-	-	2,683,994	146,487
Unrestricted	20,328,288	8,941,609	(8,261,065)	(729,128)	20,279,704	2,609,398
Total net position	\$ 40,597,035	\$ 29,058,589	\$ (13,424,969)	\$ 864,909	\$ 57,095,564	\$ 2,755,885

Disclosure Schedule

Section 1.01(f)

Assigned Contracts, Including Intellectual Property

General

1. Master Carrier Agreement by and between AT&T and The City of Opelika aka Opelika Power Services dated July 2013.
2. Technical Support Services Agreement by and between the Electric Power Board of Chattanooga and The City of Opelika, Alabama dated December 19, 2012.
3. First Amendment dated May 8, 2013 to the Technical Support Services Agreement by and between the Electric Power Board of Chattanooga and The City of Opelika, Alabama dated December 19, 2012.
4. Second Amendment dated April 1, 2014 to the Technical Support Services Agreement by and between the Electric Power Board of Chattanooga and The City of Opelika, Alabama dated December 19, 2012.
5. Professional Services Agreement by and between the Electric Power Board of Chattanooga and The City of Opelika, Alabama dated September 12, 2012.
6. First Amendment dated March 12, 2013 to the Professional Services Agreement by and between the Electric Power Board of Chattanooga and The City of Opelika, Alabama dated September 12, 2012.
7. First Amendment dated April 1, 2014 to the Non-Exclusive Sublicense Agreement by and between Chattanooga Fiber Company and the City of Opelika, Alabama dated February 1, 2013.
8. Interconnection Agreement between Bellsouth Telecommunications, LLC d/b/a AT&T Alabama and The City of Opelika, Alabama aka Opelika Power Services dated December 2016.
9. Amendment dated December 12, 2016 to the Interconnection Agreement between Bellsouth Telecommunications, LLC d/b/a AT&T Alabama and The City of Opelika, Alabama aka Opelika Power Services dated December 2016.
10. Affiliation Agreement by and between CSTV Networks, Inc. d/b/a CBS Sports Network and the City of Opelika dated November 1, 2012.
11. Wholesale Services Agreement by and between EarthLink Carrier, LLC and The City of Opelika aka Opelika Power Services dated April 3, 2013.
12. Master Purchase Agreement by and between Ericsson Inc. and the City of Opelika dated December 31, 2016.

13. License Agreement by and between Ericsson and Opelika Power Services.
14. Internet Services Agreement by and between Hurricane Electric, Inc. and the City of Opelika.
15. Master Service Agreement by and between ATX Networks Corp. and the City of Opelika.
16. Support Service Level Agreement by and between Metaswitch and the City of Opelika dated August 8, 2017.
17. Master Services Agreement by and between Data Solutions Services, LLC, a NeuStar company and the City of Opelika d/b/a Opelika Power Services dated December 27, 2017.
18. Master Services Agreement by and between NeuStar, Inc. and the City of Opelika d/b/a Opelika Power Services dated October 21, 2013.
19. Contract for Administrative Operating (AOCN) Services by and between the City of Opelika aka Opelika Power Services and NeuStar, Inc. dated March 20, 2013.
20. Numbering Portability Administration Center/Service Management System Southeast User Agreement by and between NeuStar, Inc. and the City of Opelika d/b/a Opelika Power Services dated March 5, 2013.
21. Contract for Customer Installation Services by and between the City of Opelika, Alabama and On Trac, Incorporated dated June 11, 2013.
22. Amended Contract for Installation Services by and between On Trac, Incorporated and the City of Opelika, Alabama dated October 2, 2013.
23. Extension of Contract Agreement dated July 2, 2014 for the Contract for Customer Installation Services by and between the City of Opelika, Alabama and On Trac, Incorporated dated June 11, 2013.
24. Contract for Customer Installation Services by and between On Trac, Incorporated and the City of Opelika, Alabama effective August 11, 2016.
25. Operator Service Agreement by and between Rentrak Corporation and the City of Opelika, Alabama dated December 18, 2013.
26. Amendment dated February 17, 2017 to the On Demand Essentials Operator Service Agreement by and between the City of Opelika, Alabama d/b/a Opelika Power Services and Rentrak Corporation (ComScore) dated December 18, 2013.
27. Network Usage Agreement by and between Toly Digital Networks, Inc. and The City of Opelika, Alabama d/b/a Opelika Power Services dated March 2013.

28. VOD Services Agreement by and between Vubiquity, Inc. and the City of Opelika d/b/a Opelika Power Services dated May 1, 2014.
29. Master Service Agreement for Number Portability Administration Center/Service Management System by and between Telcordia Technologies, Inc., and North American Portability Management, LLC.
30. Number Portability Administration Center/Service Management System User Agreement by and between City of Opelika d/b/a Opelika Power Services and Telcordia Technologies, Inc. d/b/a iconectiv dated December 27, 2017.
31. Number Portability Administration Center/Service Management System User Agreement by and between City of Opelika d/b/a Opelika Power Services and Telcordia Technologies, Inc. d/b/a iconectiv dated January 2, 2018.
32. Agreement for Services by and between Intrado Inc. and the City of Opelika a/k/a Opelika Power Services dated March 28, 2013.
33. Licensed Data Agreement by and between Tribune Media Services, Inc. (now Gracenote Media Services, LLC) and the City of Opelika Opelika Light and Power Department dated August 15, 2011.
34. Business Fiber Internet Service Agreement by and between Marcus Cable of Alabama, L.L.C. (Charter Business) and the City of Opelika dated June 21, 2012.
35. Amendment dated September 4, 2012 to the Business Fiber Internet Agreement by and between Marcus Cable of Alabama, LLC (Charter) and the City of Opelika dated June 21, 2012.
36. Business Internet Access Service Agreement by and between Marcus Cable of Alabama, L.L.C. and the City of Opelika dated January 11, 2012.
37. Distribution Agreement by and between Tower Distribution Company and the City of Opelika dated December 1, 2011.
38. USA Supply & Services Agreement by and between Alcatel-Lucent (Nokia) and the City of Opelika dated December 21, 2010.

Retransmission Consent Agreements

39. Services Agreement by and between Opelika Power Services and WSFA, LLC dated October 2016.
40. Retransmission Consent Agreement by and between American Spirit Media, LLC and The City of Opelika, Alabama d/b/a Opelika Power Services dated January 1, 2018.
41. Retransmission Consent Agreement by and between Raycom Media, Inc. and the City of Opelika, Alabama, a municipal corporation, d/b/a Opelika Power Services dated February 1, 2013.
42. Amendment to Retransmission Consent Agreement by and between Raycom Media, Inc. and The City of Opelika d/b/a Opelika Power Services effective December 31, 2017.

- 43. Retransmission Consent Agreement by and between WLTZ and Opelika Power Services dated January 1, 2018.
- 44. Retransmission Consent Agreement by and between Nexstar Broadcasting, Inc. and The City of Opelika d/b/a Opelika Power Services dated December 21, 2017.

Pole Attachment Agreements

- 45. Pole Attachment License Agreement for Distribution Poles between Tallapoosa River Electric Cooperative and City of Opelika, Opelika Light & Power Department dated May 3, 2011.
- 46. Pole License Agreement by and between City of Opelika, Alabama d/b/a Opelika Power Services and Alabama Power Company dated February 28, 2012.

Equipment

- 47. Equipment Purchase Agreement by and between Vubiquity, Inc. and the City of Opelika d/b/a Opelika Power Services dated April 1, 2014.

Service Orders

- 48. Service Order Lease by and between Interstate FiberNet, Inc. d/b/a EarthLink Carrier and the City of Opelika aka Opelika Power Services dated March 2014.
- 49. Service Order Lease by and between Interstate FiberNet, Inc. d/b/a EarthLink Carrier and the City of Opelika aka Opelika Power Services dated September 18, 2013.
- 50. Service Order Lease by and between Interstate FiberNet, Inc. d/b/a EarthLink Carrier and the City of Opelika aka Opelika Power Services dated April 5, 2013.
- 51. Service Order Lease by and between Interstate FiberNet, Inc. d/b/a EarthLink Carrier and the City of Opelika aka Opelika Power Services dated April 8, 2013.
- 52. Service Order Lease by and between Interstate FiberNet, Inc. d/b/a EarthLink Carrier and the City of Opelika aka Opelika Power Services dated April 8, 2013.
- 53. Service Order Lease by and between Interstate FiberNet, Inc. d/b/a EarthLink Carrier and the City of Opelika aka Opelika Power Services dated April 8, 2013.
- 54. Service Order Lease by and between Interstate FiberNet, Inc. d/b/a EarthLink Carrier and the City of Opelika aka Opelika Power Services dated April 8, 2013.
- 55. Service Order Lease by and between Interstate FiberNet, Inc. d/b/a EarthLink Carrier and the City of Opelika aka Opelika Power Services dated April 11, 2013.
- 56. Service Order Lease by and between Interstate FiberNet, Inc. d/b/a EarthLink Carrier and the City of Opelika aka Opelika Power Services dated September 18, 2013.

57. Service Order Lease by and between Interstate FiberNet, Inc. d/b/a EarthLink Carrier and the City of Opelika aka Opelika Power Services dated February 19, 2014.
58. Service Order by and between Data Solutions Services, LLC, a Neustar company and the City of Opelika d/b/a Opelika Power Services effective January 1, 2018.
59. Business Service Order by and between WOW business and the City of Opelika d/b/a Opelika Power Services dated October 10, 2016.
60. Data Storage Service Order Attachment by and between the City of Opelika, Alabama aka Opelika Power Services and AT&T Diversified Group dated July 8, 2013.
61. Gateway Service Order Attachment by and between the City of Opelika, Alabama aka Opelika Power Services and AT&T Diversified Group dated July 8, 2013.
62. Service Order dated February 20, 2013 under the Business Internet Service Agreement by and between Marcus Cable of Alabama, L.L.C. (Charter Business) and the City of Opelika dated June 21, 2012.
63. Service Order dated June 1, 2012 under the Business Internet Service Agreement by and between Marcus Cable of Alabama, L.L.C. (Charter Business) and the City of Opelika dated January 11, 2012.
64. MMI Change Request Form for Signal Acquisition Re-Spin by and between Alcatel-Lucent and the City of Opelika dated October 5, 2011.

Miscellaneous

65. General Membership Agreement by and between Alabama Line Location Center, Inc. d/b/a Alabama 811 and Opelika Power Services dated November 1, 2011.
66. Mutual Confidentiality Agreement by and between Neustar Information Services, Inc. and the City of Opelika dated December 8, 2017.
67. Hold Harmless and Indemnification Agreement by and between the City of Opelika, Alabama and On Trac, Inc. dated February 22, 2018.
68. Compliance Reporting Agreement by and between the City of Opelika d/b/a Opelika Power Services and Technologies Management, Inc. dated January 1, 2014.
69. Online Escrow Agreement by and between Technologies Management, Inc. and the City of Opelika d/b/a Opelika Power Services dated January 1, 2014.
70. Underground Facilities Locating and Marking Service Agreement by and between USIC Locating Services, Inc. and the City of Opelika d/b/a Opelika Power Services dated January 3, 2013.
71. Non-Disclosure Agreement by and between the City of Opelika, Alabama d/b/a Opelika Power Services and V3 Media Group, LLC dated March 31, 2017.

Disclosure Schedule**Section 1.02(h) Retained Fiber Networks**

1. To be supplied prior to closing.

Disclosure Schedule**Section 1.03(d)****Assumed Contractual Liabilities**

1. See Disclosure Schedule Section 3.03.

Disclosure Schedule

Section 1.03(e)

Assumed Liabilities of Seller

1. None.

Disclosure Schedule

Section 1.06(b)

Working Capital

Working Capital Assets

Customer A/R	\$ 548,000
Allowance - Customer A/R	(158,500)
Misc Other A/R	13,109
Allowance - Misc Other A/R	(5,419)
Deposits	10,000
Prepaid Expenses	46,594
Total Working Capital Assets	\$ 453,784

Working Capital Liabilities

A/P and Accrued Expenses	\$ 252,623 (1)
Other Accrued Misc Expenses	25,000
Unearned Revenue	597,000
Customer Deposits	56,976
Total Working Capital Liabilities	\$ 931,599

Average Working Capital = Working Capital Assets - Working Capital Liabilities

Average Working Capital:

Working Capital Assets	\$ 453,784
Less: Working Capital Liabilities	(931,599)
Average Working Capital	\$ (477,815)

Target Working Capital Range \$ 71,672 Plus or Minus

Working Capital Ceiling \$ (406,143)

Working Capital Floor \$ (549,487)

Note:

(1) Excludes payroll and warrant related liabilities

Disclosure Schedule**Section 1.07****Allocation Schedule**

1. Total of \$160,000 per year for poles for three (3) years.

Disclosure Schedule

Section 3.01

Organization and Qualification of the Seller

1. State of Alabama

Disclosure Schedule

Section 3.03

Required Consents

Required Consents

1. Technical Support Services Agreement by and between the Electric Power Board of Chattanooga and The City of Opelika, Alabama dated December 19, 2012.
2. Interconnection Agreement between Bellsouth Telecommunications, LLC d/b/a AT&T Alabama and The City of Opelika, Alabama aka Opelika Power Services dated December 2016. (See POC in Notice section of Amendment dated December 12, 2016)
3. Wholesale Services Agreement by and between EarthLink Carrier, LLC and The City of Opelika aka Opelika Power Services dated April 3, 2013.
4. Master Purchase Agreement by and between Ericsson Inc. and the City of Opelika dated December 31, 2016.
5. License Agreement by and between Ericsson and Opelika Power Services.
6. Master Service Agreement by and between ATX Networks Corp. and the City of Opelika.
7. Contract for Customer Installation Services by and between the City of Opelika, Alabama and On Trac, Incorporated dated June 11, 2013.
8. Contract for Customer Installation Services by and between On Trac, Incorporated and the City of Opelika, Alabama effective August 11, 2016.
9. Network Usage Agreement by and between Toly Digital Networks, Inc. and The City of Opelika, Alabama d/b/a Opelika Power Services dated March 2013.
10. Retransmission Consent Agreement by and between American Spirit Media, LLC and The City of Opelika, Alabama d/b/a Opelika Power Services dated January 1, 2018.
11. Retransmission Consent Agreement by and between Raycom Media, Inc. and the City of Opelika, Alabama, a municipal corporation, d/b/a Opelika Power Services dated February 1, 2013.
12. Amendment to Retransmission Consent Agreement by and between Raycom Media, Inc. and The City of Opelika d/b/a Opelika Power Services effective December 31, 2017.
13. Retransmission Consent Agreement by and between WLTZ and Opelika Power Services dated January 1, 2018.
14. Retransmission Consent Agreement by and between Nexstar Broadcasting, Inc. and The City of Opelika d/b/a Opelika Power Services dated December 21, 2017.

15. Pole License Agreement by and between City of Opelika, Alabama d/b/a Opelika Power Services and Alabama Power Company dated February 28, 2012.
16. General Membership Agreement by and between Alabama Line Location Center, Inc. d/b/a Alabama 811 and Opelika Power Services dated November 1, 2011.
17. Compliance Reporting Agreement by and between the City of Opelika d/b/a Opelika Power Services and Technologies Management, Inc. dated January 1, 2014.
18. Number Portability Administration Center/Service Management System User Agreement by and between City of Opelika d/b/a Opelika Power Services and Telcordia Technologies, Inc. d/b/ iconectiv dated December 27, 2017.
19. Number Portability Administration Center/Service Management System User Agreement by and between City of Opelika d/b/a Opelika Power Services and Telcordia Technologies, Inc. d/b/ iconectiv dated January 2, 2018.
20. Licended Data Agreement by and between Tribune Media Services, Inc. (now Gracenote Media Services, LLC) and the City of Opelika Opelika Light and Power Department dated August 15, 2011.
21. Distribution Agreement by and between Tower Distribution Company and the City of Opelika dated December 1, 2011.
22. USA Supply & Services Agreement by and between Alcatel-Lucent (Nokia) and the City of Opelika dated December 21, 2010.

Notices

23. Master Carrier Agreement by and between AT&T and The City of Opelika aka Opelika Power Services dated July 2013.
24. Affiliation Agreement by and between CSTV Networks, Inc. d/b/a CBS Sports Network and the City of Opelika dated November 1, 2012.
25. Short Form Tower License Agreement by and between Crown Castle PT, Inc. and the City of Opelika, Alabama dated March 2014.
26. Services Agreement by and between Opelika Power Services and WSFA, LLC dated October 2016.

Disclosure Schedule

Section 3.04(a) Financial Statements

CITY OF OPELIKA
STATEMENT OF REVENUES AND EXPENSES - PROPRIETARY FUNDS
SEPTEMBER 30, 2017

	ELECTRIC UTILITY	SEWER SYSTEM	TELE- COMMUNICATIONS	SOLID WASTE COLLECTION	TOTALS	GOVERNMENTAL ACTIVITIES - INTERNAL SERVICE FUNDS
Operating revenues	\$ 41,395,734	\$ 4,765,395	\$ 5,421,309	\$ 2,865,189	\$ 54,447,627	\$ 2,864,278
Charges for services, net	28,043,694	-	-	-	28,043,694	-
Operating expenses	3,042,504	3,744	899,893	1,278,037	5,224,178	-
Power purchased	53,885	4,645	32,980	41,771	133,281	3,858,076
Personnel services	2,043,919	2,213,049	3,495,905	963,411	8,716,284	18,119
Insurance claims and expenses	3,166,749	1,009,671	2,111,817	248,967	6,537,204	-
Other	36,350,751	3,231,109	6,540,595	2,532,186	48,654,641	3,876,195
Depreciation	5,044,983	1,534,286	(1,119,286)	333,003	5,792,986	(1,011,917)
Total operating expenses						
Operating income (loss)						
Nonoperating revenues (expenses)	31,781	-	-	-	31,781	-
Fiber optic line leases	217,003	13,576	3,284	3,460	297,323	4,968
Investment revenue	-	-	-	24,961	24,961	-
Grant income	1,921,714	4,711	73,829	70,359	2,070,613	-
Miscellaneous revenue	(1,435,652)	(211,938)	(527,416)	-	(2,175,006)	-
Interest expense and fiscal charges	35,773	-	-	-	35,773	-
(Loss) gain on sale of capital assets	830,619	(193,651)	(450,303)	13,393	49,166	-
Total nonoperating revenues (expenses)	5,875,602	1,340,635	(1,569,589)	112,173	298,838	4,968
Income (loss) before other revenues and transfers				445,176	6,091,824	(1,006,949)
Other revenues and transfers in (out)	477,770	-	20,888	-	498,658	-
Capital contributions from developers and others	(3,000,000)	-	-	-	(3,000,000)	1,330,321
Operating transfers in	(2,522,230)	-	-	-	(2,522,230)	(182,000)
Operating transfers (out)						1,157,331
Total other revenues and transfers						
Changes in net position	3,353,372	1,340,635	(1,548,701)	445,176	3,590,482	150,372
Net position, beginning of year	38,864,140	27,717,954	(7,626,682)	419,733	-	2,605,513
Prior period adjustment	(1,620,477)	-	(4,249,586)	-	-	-
Net position, beginning of year, restated	37,243,663	27,717,954	(11,876,268)	419,733	-	2,605,513
Net position, end of year	\$ 40,597,035	\$ 29,038,589	\$ (13,424,969)	\$ 864,909	\$ -	\$ 2,755,885
Adjustment to reflect reversal of losses in Internal Service Funds						(195,906)
Change in net position of business-type activities						3,304,576

CITY OF OPELIKA
STATEMENT OF CASH FLOWS
PROPRIETARY FUNDS
FOR THE YEAR ENDED SEPTEMBER 30, 2017

	ELECTRIC UTILITY	SEWER SYSTEM	TELE- COMMUNICATIONS	SOLID WASTE COLLECTION	TOTALS	GOVERNMENTAL ACTIVITIES - INTERNAL SERVICE FUNDS
Cash flows from operating activities:						
Receipts from customers	\$ 41,148,608	\$ 4,718,520	\$ 5,461,369	\$ 2,853,678	\$ 54,182,175	\$ -
Receipts from other funds for premiums	-	-	-	-	-	2,614,250
Customer deposits	251,027	-	7,650	(6,099)	252,578	-
Payments to suppliers for goods and services	(29,816,190)	(2,259,177)	(3,442,433)	(928,950)	(36,446,750)	(3,872,227)
Payments to employees for services	(2,710,482)	(3,744)	(869,006)	(1,195,573)	(4,778,805)	-
Claims paid	(53,855)	(4,645)	(32,980)	(41,771)	(133,251)	(56,067)
Internal activity - payments (to)/from other funds	(583,489)	(36,640)	771,687	(208,896)	(57,338)	-
Net cash provided by operating activities	8,235,589	2,414,314	1,896,287	472,389	13,018,579	(1,314,064)
Cash flows from noncapital financing activities:						
Other receipts	1,953,495	4,711	73,829	95,320	2,127,355	-
Operating transfers (to other funds)	(3,090,000)	-	-	-	(3,090,000)	1,157,321
Net cash provided by/(used in) noncapital financing activities	(1,046,505)	4,711	73,829	95,320	(872,645)	1,157,321
Cash flows from capital and related financing activities:						
Acquisition and construction of capital assets	(1,188,244)	(23,475)	(847,232)	(343,763)	(2,402,714)	-
Principal paid on debt maturities	-	(600,000)	-	-	(600,000)	-
Interest and fiscal fees paid on debt maturities	(1,435,652)	(202,184)	(527,416)	-	(2,165,252)	-
Proceeds from sale of assets	101,971	-	-	228,614	330,585	-
Net cash used in capital and related financing activities	(2,521,925)	(825,859)	(1,374,648)	(115,149)	(4,837,581)	-
Cash flows from investing activities:						
Proceeds invested in certificates of deposit	(10,356)	-	-	-	(10,356)	-
Restricted cash used/(deposited)	(7,245)	5,269	-	-	(1,976)	-
Interest on investments	263,163	13,576	3,284	3,460	283,483	4,968
Net cash provided by investing activities	245,562	18,845	3,284	3,460	271,151	4,968
Net increase/(decrease) in cash and cash equivalents	4,912,721	1,612,011	598,752	456,920	7,579,504	(151,775)
Cash and cash equivalents at beginning of year	5,979,311	6,120,565	495,885	586,454	13,182,215	3,315,113
Cash and cash equivalents at end of year	\$ 10,892,032	\$ 7,732,576	\$ 1,094,637	\$ 1,042,474	\$ 20,761,719	\$ 3,163,338

CITY OF OPELIKA
STATEMENT OF CASH FLOWS
PROPRIETARY FUNDS
FOR THE YEAR ENDED SEPTEMBER 30, 2017

	ELECTRIC UTILITY	SEWER SYSTEM	TELE- COMMUNICATIONS	SOLID WASTE COLLECTION	TOTALS	GOVERNMENTAL ACTIVITIES- INTERNAL SERVICE FUNDS
Reconciliation of operating income (loss) to net cash provided by operating activities:						
Operating income (loss)	\$ 5,044,983	\$ 1,534,286	\$ (1,119,286)	\$ 333,003	\$ 5,792,986	\$ (1,011,917)
Adjustment to reconcile operating income (loss) to net cash provided by operating activities:						
Depreciation	3,166,749	1,009,671	2,111,817	248,967	6,537,204	-
Change in assets and liabilities:						
(Increase) decrease in accounts receivable and unbilled service receivable	(247,129)	20,439	(27,593)	(11,511)	(265,794)	40,250
(Increase) decrease in due from other funds	(697,382)	(21,947)	(151,346)	-	(870,675)	(84,728)
(Increase) decrease in prepaid insurance	-	-	94,071	-	94,071	-
(Increase) decrease in due from other governments	-	(67,314)	-	(4,024)	(71,338)	-
(Increase) decrease in inventories	69,782	-	-	-	69,782	-
Increase (decrease) in accounts payable	201,641	146,128	(40,599)	34,461	140,375	3,968
Increase (decrease) in accrued payroll and benefits	732,022	-	30,887	82,464	445,373	-
Increase (decrease) in liability for unpaid claims	-	-	-	-	-	(96,317)
Increase (decrease) in due to other funds	113,893	(14,693)	923,033	(208,896)	813,337	-
Increase (decrease) in unearned revenue	3	-	67,653	4,024	71,680	(165,320)
Increase (decrease) in customer deposits	251,027	-	7,650	(6,099)	252,578	-
Net cash provided by operating activities	\$ 8,235,589	\$ 2,414,314	\$ 1,896,287	\$ 472,389	\$ 13,018,579	\$ (1,314,064)
Non-cash investing, capital and financing activities						
Capital assets (transferred to)/acquired from other funds	\$ (3,119,348)	-	\$ 3,119,348	-	-	-
Capital assets contributed by developers and others	\$ 477,770	-	\$ 20,888	-	\$ 498,658	-
Reconciliation of cash and cash equivalents to the continuing balance sheet						
Total cash and certificates of deposit	\$ 19,345,615	\$ 7,732,576	\$ 1,094,637	\$ 1,042,474	\$ 20,215,302	\$ 3,183,338
Less: deposits not meeting the definition of cash equivalents	8,453,583	-	-	-	8,453,583	-
Cash and cash equivalents at end of year	\$ 10,892,032	\$ 7,732,576	\$ 1,094,637	\$ 1,042,474	\$ 20,761,719	\$ 3,183,338

Disclosure Schedule**Section 3.04(b)****Indebtedness Secured by Encumbrance on any Purchased Assets**

1. None. See the UCC and Judgment Liens Search entitled "Result Report ID No: 227172" conducted by Triad Professional Services dated October 11, 2018.

Disclosure Schedule

Section 3.05 Undisclosed Liabilities

Potential Material Adverse Effect

1. None.

Disclosure Schedule**Section 3.06 Absence of Certain Changes, Events and Conditions**

1. None.

Disclosure Schedule

Section 3.07(a)

Material Contracts

1. National Cable Television Corp.
2. Electric Power Board of Chattanooga
3. EarthLink Carrier, LLC
4. Ericsson, Inc.
5. Hurricane Electric, Inc.
6. Metaswitch
7. OnTrac, Incorporated
8. Toly Digital Networks, Inc.
9. Data Solutions Services, LLC
10. Neustar, Inc.
11. AT&T Diversified Group, LLC
12. Bellsouth Communications, LLC
13. Rentrak Corporation
14. Vubiquity, Inc.
15. American Spirit Media, LLC
16. Raycom Media, Inc.
17. WLTZ
18. WSFA
19. Nexstar Broadcasting, Inc.
20. USIC Locating Services, Inc.
21. V3 Media Group, LLC.

Disclosure Schedule

Section 3.07(a)(xvi)

Equipment Leases

1. None.

Disclosure Schedule

Section 3.07(b)

Material Contract Defaults

1. None.

Disclosure Schedule

Section 3.08(a)

Permitted Encumbrances

1. None.

Disclosure Schedule

Section 3.09(a)

Telecommunications Systems Information

(i) RGU

Residential	3406
Commercial	381
Total	3787

(ii) Total Customers

Residential	3406
Commercial	381
Total	3787

(iii) Capacity Issues

We currently have no backbone capacity issues that are < 20%.

We have 3 LCPs out of 63 that are at 66% capacity

For the headend, we are running at 25% capacity on the 10G links going towards the core routers to each of the OLTs.

For internet, we are running at 5Gbps out of the 12Gbps (burstable to 20Gbps)

(iv) Approximate number of homes passed – 12,500

(v) Total number of phone lines

2000 native numbers in our system that were assigned

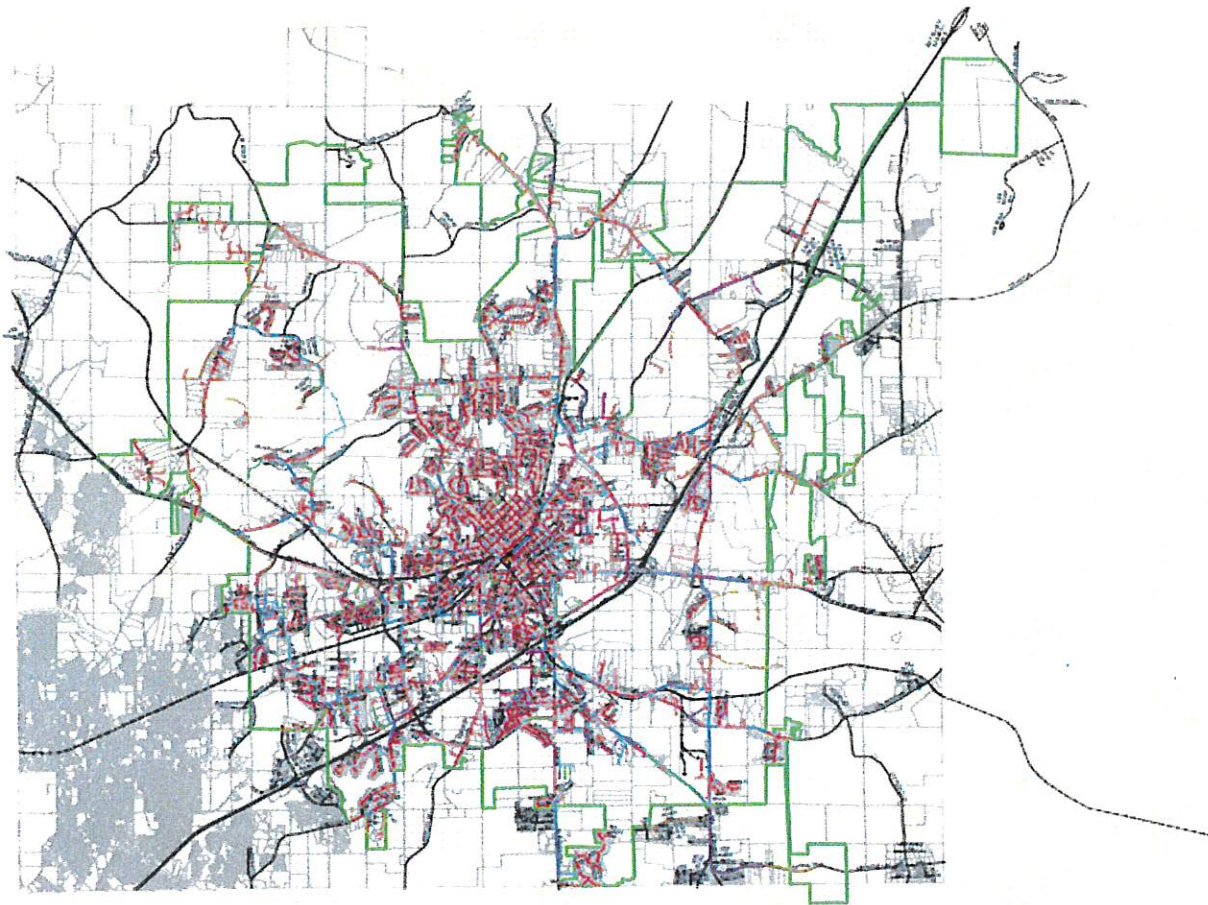
- 334-203 has 736 numbers in use
- 334-203 has 105 admin numbers (assigned for switch use and services)
- 334-203 has 22 numbers ported out
- 334-203 has 3 blocked numbers (reserved and in use)
- 334-203 has up to 133 available numbers (these are reusable after the 180 window for reuse expires)
- 334-748 has 937 available numbers
- 334-748 has 63 numbers in use

Ported in approximately 1,815 numbers including DIDs

Disclosure Schedule

Section 3.09(b)

Telecommunication Systems Maps



See document entitled "OPS ONE Serviceable Addresses" containing the following -

- FA Internal Service Type
- Service Point Status
- Service Address Status
- Connection Date
- Disconnection Date
- Tax Zone
- Wire Center
- Service Point Description
- Service Point Remarks

Disclosure Schedule**Section 3.09(c)****Rate Card and Channel Lineup**

1. See document entitled "ChoiceChannel" rate card and channel lineup.
2. See document entitled "EssentialChannels" rate card and channel lineup.
3. See document entitled "UltraChanneloptions2" rate card and channel lineup.
4. See document entitled "OPS One Brochure 092118" rate card and channel lineup.

Disclosure Schedule

Section 3.09(d)

Areas and Communities Served

1. City of Opelika.

Disclosure Schedule

Section 3.09(e)

Fiber Agreements

1. See Disclosure Schedule 1.01(f).

Disclosure Schedule

Section 3.10

Sufficiency of Assets

1. [To be discussed].

Disclosure Schedule**Section 3.12(a)****Intellectual Property Registrations/Assets**

1. Registered Trademark for "OPS OPELIKA POWER SERVICES"
 - a. USPTO – U.S. Registration Number: 4353177
 - b. Principal Register
 - c. International Class 39
 - d. Affidavit of Continued Use due by June 18, 2019
 - e. Owner – City of Opelika, Alabama
 - f. Status - Live
2. Trademark for "Opelika Power Services"
 - a. State of Alabama – Trademark Number 112-905
 - b. Class 38 – Telecommunications
 - c. Status – Expired
3. Trademark for "OPS ONE ONE NETWORK EXPERIENCE"
 - a. USPTO – U.S. Registration Number 5262307
 - b. Principal Register
 - c. International Class 38
 - d. Owner – City of Opelika, Alabama
 - e. Status - Live

Disclosure Schedule

Section 3.13

Inventory Encumbrances

1. None.

Disclosure Schedule

Section 3.15(a)

Material Customers

For Year 2018

Opelika Power Services		Revision: 14173
10/10/2018 9:34:47 am	HIGH REVENUE REPORT	Page: 1

Customer	Name	LYTD Billed Revenue
3107	INFORMATION TRANSPORT SOLU	126,300.00
2292	EAMC	60,679.01
3004	LEE CO YOUTH DEVELOPMENT C	58,358.90
1296	CITY OF OPELIKA-PUR	42,386.45
459	ARBOR SPRINGS HEALTH & REH	38,640.17
1242	WATER WORKS BOARD	21,873.08
1259	EAST ALABAMA MENTAL HEALT	20,844.88
31	BRADFORD HEALTH SERVICES (R	19,735.10
4086	SCOTT BRIDGE COMPANY	19,583.49
2527	GLYN SMITH CHEVROLET	17,350.33
2489	PACKAGING CORP OF AMERICA	15,853.02
4045	EAST ALABAMA EAR NOSE & TH	15,809.03
4133	FIRST BAPTIST CHURCH OPELIKA	15,025.14
5024	INTERNAL MEDICINE ASSOCIATE	13,380.05
3058	ADAMS BEVERAGES INC	12,966.99
4482	EAST ALABAMA UROLOGY ASSO	12,642.05
5151	HANWHA ADVANCED MATERIAL	11,204.07
1759	CASTONE CORP	10,555.34
1368	INTERCONTINENTAL PKG CO	8,943.73
1295	FIRST UNITED METHODIST CHUR	8,901.77
5153	ACHIEVEMENT CENTER-EASTER	8,752.24
4476	TRINITY UNITED METHODIST CH	8,621.66
244	OPELIKA CARDIO & ASSOC PC	8,492.17
5194	WILD WING CAFE-OPELIKA	8,463.12
3028	HANS AMERICA	8,454.67

This report shows the 25 customers with the highest total FY 2018 telecom revenue billed for the period of October 1, 2017 through September 30, 2018.

The City was also billed \$660,480 for point-to-point services in FY 2018. We back-billed for the whole year in Sept., which is why it doesn't show on this report. This is the only customer where that would happen for the year.

Opelika Power Services		Revision: 14173
10/10/2018 9:34:47 am	HIGH REVENUE REPORT	Page: 2

PARAMETERS ENTERED:

Number Of Customers To Select: 25
 YTD, LYTD, CC, Local Revenue: LYTD
 Patronage Type: 0
 Patronage Year: 0
 Period: 0
 GL Class: All
 Bus Rev: Both

Disclosure Schedule

Section 3.15(b) Material Suppliers

For Year 2018

VENDOR	VENDOR NAME	ORG	ORG DESC	YEAR	PERIOD	TYPE	STATUS	AMOUNT	WARRANT
8336 Total	911							37,525.07	
6993 Total	ADVANCED MEDIA TECHN							158,433.50	
84 Total	AL							49,843.95	
7951 Total	AMERICAN SPIRIT MEDI							75,500.90	
3605 Total	ANI							52,427.80	
5244 Total	CHA							94,600.00	
7691 Total	EARTHLINK CARRIER LL							277,140.00	
7497 Total	ELECTRIC POWER BOARD							236,500.00	
7590 Total	FOX SPORTS NET SOUTH							135,608.28	
6270 Total	GRAYBAR ELECTRIC CO							61,006.30	
7227 Total	HDD INC							35,059.50	
7839 Total	HURRICANE ELECTRIC L							37,800.00	
7870 Total	METASWITCH NETWORKS							88,591.00	
7486 Total	NATIONAL CABLE TELEV							1,282,346.02	
8374 Total	NBI							61,242.00	
7953 Total	NISC							142,334.43	
7723 Total	ON TRAC INC							222,042.95	
302 Total	OPE							110,788.29	
7627 Total	RAYCOM MEDIA INC							79,241.70	
4330 Total	REGIONS BANK							358,612.50	
7591 Total	SPORTSOUTH							78,416.60	
8084 Total	TV2 CONSULTING LLC							78,692.00	
7910 Total	USAC							42,176.50	
8453 Total	VOIP							50,709.51	
7864 Total	VUBIQUITY ENTERTAINM							27,491.68	
7980 Total	WLTZ							84,958.45	

For Year 2017

VENDOR	VENDOR NAME	ORG	ORG DESC	YEAR	PERIOD	TYPE	STATUS	AMOUNT	WARRANT
84 Total	AL							39,374.84	
302 Total	OPE							74,830.49	
4330 Total	REGIONS BANK							358,612.50	
5244 Total	CHA							94,600.00	
5270 Total	GRAYBAR ELECTRIC CO							57,490.16	
6993 Total	ADVANCED MEDIA TECHN							165,438.66	
7003 Total	ALCATEL-LUCENT USA I							136,255.30	
7227 Total	HDD INC							76,925.50	
7486 Total	NATIONAL CABLE TELEV							1,292,233.83	
7497 Total	ELECTRIC POWER BOARD							258,645.00	
7590 Total	FOX SPORTS NET SOUTH							125,108.46	
7591 Total	SPORTSOUTH							72,248.50	
7619 Total	V3 MEDIA GROUP LLC							37,617.50	
7627 Total	RAYCOM MEDIA INC							64,427.95	
7691 Total	EARTHLINK CARRIER LL							277,140.00	
7723 Total	ON TRAC INC							173,449.90	
7839 Total	HURRICANE ELECTRIC L							34,650.00	
7864 Total	VUBIQUITY ENTERTAINM							43,245.66	
7870 Total	METASWITCH NETWORKS							110,893.00	
7910 Total	USAC							42,061.73	
7951 Total	AMERICAN SPIRIT MEDI							45,774.20	
7953 Total	NISC							150,603.49	
7980 Total	WLTZ							54,214.05	
8046 Total	DUK							32,371.00	
8084 Total	TV2 CONSULTING LLC							128,648.00	
8374 Total	NBI							35,744.00	
Grand Total								3,982,603.72	

For Year 2016

VENDOR	VENDOR NAME	ORG	ORG DESC	YEAR	PERIOD	TYPE	STATUS	AMOUNT	WARRANT
84 Total	AL							38,187.25	
7003 Total	ALCATEL-LUCENT USA I							617,308.01	
7951 Total	AMERICAN SPIRIT MEDI							34,401.00	
5244 Total	CHA							121,346.99	
7691 Total	EARTHLINK CARRIER LL							277,140.00	
7497 Total	ELECTRIC POWER BOARD							279,822.50	
7237 Total	FIVE, INC							100,882.50	
7590 Total	FOX SPORTS NET SOUTH							109,950.69	
7839 Total	HURRICANE ELECTRIC L							40,982.62	
8006 Total	MEDIA GENERAL OPERAT							45,662.40	
7486 Total	NATIONAL CABLE TELEV							1,021,223.01	
7953 Total	NISC							266,947.71	
7723 Total	ON TRAC INC							165,117.26	
9999 Total	ONE TIME PAY							36,189.11	
49 Total	OPE							157,542.91	
302 Total	OPE							111,063.99	
7627 Total	RAYCOM MEDIA INC							44,820.50	
4330 Total	REGIONS BANK							364,668.75	
7591 Total	SPORTSOUTH							63,712.82	
8084 Total	TV2 CONSULTING LLC							92,000.00	
7910 Total	USAC							38,416.69	
7619 Total	V3 MEDIA GROUP LLC							29,824.50	
7864 Total	VUBIQUITY ENTERTAINM							26,214.84	
7980 Total	WLTZ							46,853.60	

Disclosure Schedule**Section 3.16****Insurance Policies**

1. To be provided prior to closing.

Disclosure Schedule

Section 3.17

Legal Proceedings; Government Orders

3.17(a) Pending Litigation

1. Per various correspondence from Kelly Curenton to numerous recipients, regarding telecom warrants of Opelika, Alabama.

3.17(b) Government Orders or Unsatisfied Judgments, Penalties, or Awards

1. None.

Disclosure Schedule

Section 3.18(a)

Compliance with Laws

1. None.

Disclosure Schedule

Section 3.18(b)

Permits and Licenses

1. None.

Disclosure Schedule

Section 3.19(a)

Retransmission Consents

1. See Disclosure Schedule Section 1.01(f).

Disclosure Schedule

Section 3.19(b)

Communications Act Compliance

1. None.

Disclosure Schedule**Section 3.19(c)****Rate Regulation, Compliance, and Competition**

1. See document entitled "OPS ONE Residential Rate Ordinance."
2. See document entitled "OPS ONE Business Pricing Ordinance."
3. See document entitled "129-17."

Disclosure Schedule

Section 3.20(b)

Environmental Permits

1. None.

Disclosure Schedule

Section 3.20(c)

Release of Hazardous Materials

1. None.

Disclosure Schedule

Section 3.20(d)

Storage Tanks

1. None.

Disclosure Schedule

Section 3.20(e)

Environmental Law Liabilities

1. None.

Disclosure Schedule

Section 3.21(a) Benefit Plans

BLUE CROSS BLUE SHIELD HEALTH INSURANCE

- Employee portion paid at 100%, benefit of \$355.00 per month
- Family coverage price of \$400.00 per month paid by employee @ \$200.00 per pay period pre-taxed.

MAGELLAN RX- prescription drug coverage included with health insurance

BLUE CROSS BLUE SHIELD DENTAL INSURANCE

- Employee voluntary contribution
- Employee pay per pay period
 - Employee- 9.46 = 18.92 mo.
 - Employee/Spouse - 20.18= 40.36 mo.
 - Employee-Children - 24.00 = 48.00 mo.
 - Family - 34.73 = 69.46 mo.

VISION INSURANCE

- Employee voluntary contribution
- Employee pay per pay period
 - Employee-\$3.62= \$7.23 mo.
 - Employee/Spouse \$6.60= \$13.19 mo.
 - Employee/Family \$11.43=\$22.86 mo.

LIFE INSURANCE

- Premium paid by employer
- \$25,000 Life, \$25,000 Accidental Death & Dismemberment

ALABAMA STATE RETIREMENT SYSTEM

- Employee contribution Tier I 7.5% pre-tax (8.5% pre-tax for Public Safety)
- Employee contribution Tier II 6.0% pre-tax (7.0% pre-tax for Public Safety)
- Employer contributions – per RSA standards (13% +/-)

CREDIT UNION

- East Alabama Medical Center – Christmas club, loan payments direct debited from paychecks

457 PLANS

- Employee voluntary election Nationwide, Empower Retirement, VALIC and RSA1 pretax contributions.

VACATION

- 1st year - 10 days (80) hours
- After 5 years - 12 days (96) hours
- After 10 years - 15 days (120) hours
- After 15 years - 17 days (136) hours
- After 20 years - 20 days (160) hours
- Vacation hours are accrued per pay period.

HOLIDAYS

- 10 paid holidays per year

SICK LEAVE

- 8 hours each month after 1 month, 480 cap
- 240 cap paid at time of Retirement.

EMPLOYEES

THERE ARE 346 FULL-TIME AND REGULAR PART-TIME EMPLOYEE'S.

THE CITY OF OPELIKA IS AN AFFIRMATIVE ACTION, EQUAL OPPORTUNITY EMPLOYER AND APPLICANTS WILL BE CONSIDERED WITHOUT REGARD TO THEIR RACE, COLOR, RELIGION, SEX NATIONAL ORIGIN, AGE, VETERANS STATUS, OR DISABILITY.

ALL EMPLOYEES SERVE A PROBATION PERIOD OF 6 MONTHS, (12 MONTHS FOR PUBLIC SAFETY EMPLOYEES). AFTER SUCCESSFUL COMPLETION OF A PROBATION PERIOD, EMPLOYEES ARE GRANTED NON-PROBATIONARY STATUS.

Disclosure Schedule

Section 3.22(a) Employees

Employee Number	Last Name	First Name	Preferred Name	Hire Date	Department	Job Class Code	Job Class Code Desc
<u>200211</u>	ASH	DAVID	MICHAEL	06/17/2002	Opelika Power	<u>3094</u>	SENIOR ELECTRONICS TECHNICIAN
<u>201321</u>	BASS	JAMES	MICHAEL	03/25/2013	Opelika Power	<u>3087</u>	FIELD SERVICES TECH II
<u>200714</u>	BOYD	JAMES	DON	09/04/2007	Opelika Power	<u>3085</u>	FIELD SERVICES SUPERVISOR
<u>201322</u>	HALLMARK	JAMES	MIKEY	05/06/2013	Opelika Power	<u>3087</u>	FIELD SERVICES TECH II
<u>201438</u>	JOHNSON	JEFFERY	JEFF	12/29/2014	Opelika Power	<u>3083</u>	SALES ENGINEER
<u>201320</u>	JONES	THADDEUS	THAD	03/18/2013	Opelika Power	<u>3087</u>	FIELD SERVICES TECH II
<u>201816</u>	KIRKPATRICK	SHAWN		06/04/2018	Opelika Power	<u>3117</u>	MANAGER OF MARKETING/COMM
<u>201650</u>	MCCARD	JAMES	ALLEN	09/06/2016	Opelika Power	<u>3086</u>	FIELD SERVICES TECH I
<u>201718</u>	PRUETT	CASSIE		05/01/2017	Opelika Power	<u>3118</u>	SALES AND MARKETING REP
<u>201642</u>	TATUM	LAKIRAH		07/23/2016	Opelika Power	<u>1050</u>	CUSTOMER SERVICE REP
<u>200713</u>	WALLS	REBECCA		08/27/2007	Opelika Power	<u>3096</u>	WORKFLOW COORDINATOR
<u>200825</u>	WHITE	BENJAMIN	BEN	09/27/2008	Opelika Power	<u>3092</u>	NETWORK ENGINEER

Disclosure Schedule**Section 3.22(b) Collective Bargaining, Union, Works Council, or Labor Organization Contracts**

1. None.

Disclosure Schedule

Section 3.22(c)

Litigation based on Employment Practices

1. None.

Disclosure Schedule

Section 3.23

Taxes

- 1. None.

Disclosure Schedule

Section 3.25 Performance Guarantees

1. None.

Disclosure Schedule

Section 3.26(a)

Promotions, Pricing Discounts, Bundling Offers and Other Incentives

1. None.

Disclosure Schedule

Section 3.26(b)

Approximate Number of Subscribers Receiving a Service Utilizing an Incentive

1. None.

Disclosure Schedule**Section 3.28****Pole Attachment Agreements**

1. See Disclosure Schedule Section 1.01(f).

Disclosure Schedule

Section 4.02

No Conflicts; Consents

1. None.

RESOLUTION NO. 279-18

Reduction in force, agreement with Point Broadband.

RESOLUTION NO. _____

**RESOLUTION APPROVING REDUCTION-IN-FORCE
AND ELIMINATION OF CERTAIN POSITIONS**

WHEREAS, the City of Opelika, Alabama (the “City”) owns and operates a municipal fiber-to-the-premises network useful for smart grid applications and capable of providing cable television, high speed Internet and telecommunication services (the “Fiber Network”); and

WHEREAS, the City Council heretofore approved an Asset Purchase Agreement by and between the City and Point Broadband, LLC, a Georgia limited liability company (“Point Broadband”); and

WHEREAS, pursuant to said Asset Purchase Agreement, the City will sell to Point Broadband and Point Broadband will purchase from the City substantially all of the assets of the Fiber Network; and

WHEREAS, effective November 9, 2018, the City will cease to operate the Fiber Network and Point Broadband will take over the operation and management of the Fiber Network; and

WHEREAS, it has become necessary and imperative in order to address the impact of the sale of the Fiber Network to decrease the total number of staff members employed by the Opelika Power Services Department; and

WHEREAS, the Mayor has recommended the implementation of a reduction-in-force in accordance with Section 7.2.2 of the City's Personnel Policies and Procedures; and

WHEREAS, the City Council has determined that certain positions in the Opelika Power Services Department are no longer needed in the City's service; and

WHEREAS, Point Broadband has agreed to offer all of the affected City employees a job; and

WHEREAS, the City Council has determined that the following reduction-in-force action is in the best interest of the City and its citizens.

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

1. That effective as of November 9, 2018 at midnight, the following positions in the Opelika Power Services Department are hereby eliminated from the City's service:

Job Title	Number of Eliminated Employees
Senior Electronics Technician	1
Field Services Technician I	1
Field Services Technician II	3
Field Services Supervisor	1
Headend Technician	1
Manager of Marketing and Communications	1
Sales and Marketing Representative	1
Customer Service Representative	1
Workflow Coordinator	1
Network Engineer	1

Total Number of Eliminated Employees

12

2. That the Human Resources Department shall process all separations in accordance with the City's Personnel Policies and Procedures.

3. That the Mayor, City Administrator, Director of Human Resources and other appropriate officers of the City are hereby authorized to do and perform and cause to be done and performed in the name and on behalf of the City such acts and to execute and deliver or cause to be executed or delivered in the name and on behalf of the City such other notices, requests, directions, requests, approvals, applications, assurances or other instruments or communications as they or any of them may deem necessary, advisable or appropriate in order to carry into effect the intent of the provisions of this resolution.

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

ADOPTED AND APPROVED this the _____ day of _____, 2018.

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

ATTEST:

CITY CLERK

RESOLUTION NO. 280-18

Engagement letter with Samford & Denson, Point Broadband.

RESOLUTION NO. _____

RESOLUTION APPROVING AND AUTHORIZING
AN ENGAGEMENT LETTER BY AND BETWEEN
THE CITY OF OPELIKA AND SAMFORD & DENSON, LLP
FOR LEGAL SERVICES

WHEREAS, the City of Opelika, Alabama (the “City”) has been engaged in discussions with Point Broadband, LLC, regarding the sale of substantially all of the assets related to the City’s telecom/fiber business (the “Transaction”); and

WHEREAS, the City desires to retain the services of Samford & Denson, LLP (“Samford & Denson”) to provide legal services in connection with the Transaction; and

WHEREAS, Samford & Denson is qualified and capable of providing said legal services; and

WHEREAS, the City Council has been furnished an Engagement Letter between the City and Samford & Denson, and the City Council has determined that the terms of said Engagement Letter are acceptable to the City; and

WHEREAS, the City Council has determined that it is in the public interest and necessity to enter into said Engagement Letter with Samford & Denson.

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

1. That the City Council of the City of Opelika finds and determines that the above recitals are true and correct.
2. That the City Council hereby approves the Engagement Letter (the “Agreement”) with Samford & Denson, LLP, in substantially the same form as the copy of which is attached hereto as Exhibit “A”.
3. That the City Council ratifies and approves the payment of compensation for legal services performed prior to the date of this resolution provided such services are related to the Transaction.
4. That the City Council hereby authorizes the Mayor to execute the Agreement for and on behalf of the City.
5. That the City Council hereby directs the City Clerk to send one (1) executed Agreement to Samford & Denson.
6. That the Controller is hereby authorized to make the appropriate budget adjustments to implement this Resolution.
7. 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.

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

ADOPTED AND APPROVED this the _____ day of _____, 2018.

PRESIDENT OF THE CITY COUNCIL
OF THE CITY OF OPELIKA

ATTEST:

CITY CLERK

SAMFORD & DENSON, LLP
ATTORNEYS AT LAW

13.23.a

John V. Denson, II
W.F. Horsley
Robert H. Pettey†
Joshua J. Jackson
Andrew D. Stanley
Jennifer M. Chambliss*
Adam Leavitt Sanders*
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pettey@samfordlaw.com

Direct Dial - (334) 364-0275

October 16, 2018

N.D. Denson (1856-1927)
John V. Denson (1885-1940)
N.D. Denson, Jr. (1887-1958)
Yetta G. Samford, Jr. (1923-2013)

†Also admitted in Georgia

*Also admitted in Florida

*Also admitted in South Carolina and Tennessee

Hon. Guy F. Gunter, III

VIA Email

RE: The City of Opelika D/B/A Opelika Power Services

Dear Guy:

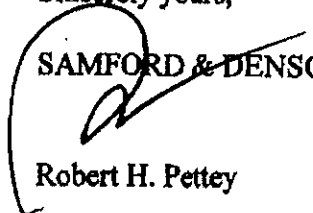
Thank you for your confidence in selecting our firm to work with the City by performing legal services in regard to the sale of the fiber-optic telecommunication and information service owned by the city.

We will be provide legal services in regard to the negotiation of the sale, drafting and reviewing contract documents through to the final closing documents and the closing of the sale.

We propose to bill by the hour at a rate of \$300.00 per hour. We will also bill for out-of-pocket expenses.

Thank you for allowing us to assist you.

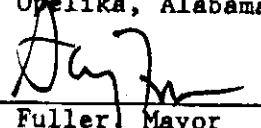
Sincerely yours,


SAMFORD & DENSON, LLP

Robert H. Pettey

RHP/bh

Accepted:
City of Opelika, Alabama

By: 
Gary Fuller, Mayor

Attachment: CM 10-16-18, engagement letter Samford & Denson (280-18 : Engagement letter with Samford & Denson, Point Broadband.)

RESOLUTION NO. 281-18

Engagement letter with Bradley Arant Boult Cummings, Point Broadband.

RESOLUTION NO. _____

RESOLUTION APPROVING AND AUTHORIZING AN ENGAGEMENT LETTER

BY AND BETWEEN THE CITY OF OPELIKA AND

BRADLEY ARANT BOULT CUMMINGS, LLP FOR LEGAL SERVICES

WHEREAS, the City of Opelika, Alabama (the “City”) has been engaged in discussions with Point Broadband, LLC, regarding the sale of substantially all of the assets related to the City’s telecom/fiber business (the “Transaction”); and

WHEREAS, the City desires to retain the services of Bradley Arant Boult Cummings, LLP (“Bradley Arant”) to provide legal services in connection with the Transaction; and

WHEREAS, Bradley Arant is qualified and capable of providing said legal services; and

WHEREAS, the City Council has been furnished an Engagement Letter between the City and Bradley Arant, and the City Council has determined that the terms of said Engagement Letter are acceptable to the City; and

WHEREAS, the City Council has determined that it is in the public interest and necessity to enter into said Engagement Letter with Bradley Arant.

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

1. That the City Council of the City of Opelika finds and determines that the above recitals are true and correct.

2. That the City Council hereby approves the Engagement Letter (the “Agreement”) with Bradley Arant Boult Cummings, LLP, in substantially the same form as the copy of which is attached hereto as Exhibit “A”.

3. That the City Council hereby authorizes the Mayor to execute the Agreement for and on behalf of the City.

4. That the City Council ratifies and approves the payment of compensation for legal services performed prior to the date of this resolution provided such services are related to the Transaction.

5. That the City Council hereby directs the City Clerk to send one (1) executed Agreement to Bradley Arant.

6. That the Controller is hereby authorized to make the appropriate budget adjustments to implement this Resolution.

7. 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.

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

ADOPTED AND APPROVED this the _____ day of _____, 2018.

PRESIDENT OF THE CITY COUNCIL
OF THE CITY OF OPELIKA

ATTEST:

CITY CLERK

W. Stanley Gregory
wgregory@bradley.com
334.956.7604 direct

Bradley

September 25, 2018

City of Opelika, Alabama
Attention: Mayor Gary Fuller
Post Office Box 390
Opelika, Alabama 36803

Re: *Sale of Telecommunications Fiber System by City of Opelika*

Dear Mayor Fuller:

Thank you for asking Bradley Arant Boulton Cummings LLP ("Bradley") to assist in the representation the City of Opelika (the "City") in connection with the sale by the City to a private entity of certain property owned by the City and constituting a telecommunications/fiber cable system. This letter confirms our engagement and describes the basis on which we will provide our legal services. If at any time you have questions or there is some action on our part that will better suit your needs, please let us know. We want you to be fully satisfied with the legal services we provide.

Client. Our client in this matter will be the "City". Unless we agree otherwise in writing, persons and entities sharing the City's interests will not be our clients.

Scope of Engagement. The scope of our engagement and duties will relate solely to the sale of a telecommunications system by the City of Opelika. Our acceptance of this engagement does not mean we represent the City or its interests in other matters. Any expansion of our scope of work in this matter, and any representation of the City in other matters, will be set forth in a separate letter or agreement. If we undertake to represent the City in other matters without specific terms of engagement, the terms of this letter will apply.

What we need from you. Please keep us informed of developments that may affect the work we are doing for the City. Also, we expect that the City will commit sufficient resources to meet the demands of the matter and be available to attend meetings and necessary legal proceedings. We expect that you will provide us all documents and other information necessary for us to perform our work for you that we request. We also ask that you promptly review and pay our invoices. Please feel free to ask us any questions you may have about our services or charges.

Advice about Possible Outcomes. During the course of our representation, we may advise you about various courses of action or results that might be obtained. That advice will be based on the information and circumstances known to us at the time. You should not regard our advice as a promise of what may happen in the future or a guarantee of future results.

Attachment: CM 10-16-18, engagement letter Bradley Arant (281-18 : Engagement letter with Bradley Arant Boulton Cummings, Point Broadband.)

Fees, Costs and Staffing. Our fees are based on hourly rates that vary depending on the lawyer or legal assistant involved. They are also subject to periodic adjustment. My hourly rate is currently \$450.00.

In addition to our legal fees, we will bill you for costs and expenses we incur on your behalf or in the course of our representation. These may include items such as document reproduction, computer-assisted research, delivery and courier services, filing fees, travel expenses and other costs reasonably incurred.

Invoicing and Payment for our Services. We expect to send our bills to you monthly. Unless you instruct otherwise, the billing address we use will be the same address used to send you this letter. Our bills are due upon receipt. If we are not promptly paid, we reserve the right to suspend further service to the City until such time as we reach a resolution regarding payment.

Digital Tools. We may find it useful to use or create digital tools in this representation. For example, we may allow you access to our computer system via an extranet or create databases for use in this matter. The use of certain of these tools may require you to sign additional documents to confirm responsibility for password protection and to address other appropriate concerns. We will not be required to maintain these tools beyond the termination of this engagement absent a written agreement to the contrary.

Conflicts of Interest. We have evaluated this engagement for conflicts of interest on the basis that we represent only the City in this matter. We are not presently aware of any conflicts that have not been resolved. As you know, we currently represent Sunset Digital Communications, Inc., an affiliate of the ITC companies, in connection with certain telecommunication facilities located in Tennessee, and we have obtained appropriate waivers of potential conflicts of interest from the City and said company. As we have discussed, we are a large law firm that represents many other entities, companies and individuals in a variety of matters. It is possible that during the time we are representing you, some of our present or future clients may have transactions or disputes with the City. You have agreed that we may continue to represent or may undertake in the future to represent other clients in any matter not substantially related to our work for the City, even if the interests of such clients in those other matters are directly adverse to the City or a related entity, and even if such representations would be simultaneous. We agree, however, that the City's prospective consent to conflicting representations will not apply in an instance where, as the result of our representation of the City, we have obtained sensitive, proprietary or other confidential or non-public information that, if known to any such other client of ours, could be used in any such other matter by such other client to the City's material disadvantage, and if screening procedures and similar measures would be insufficient to protect and maintain the confidentiality of that information. Please know that, in similar engagement letters with many of our other clients, we have asked for similar agreements to preserve our ability to represent the City.

Termination of Engagement. The City may terminate our engagement at any time by written notice. Likewise, we may also terminate this engagement at any time by written notice, subject to applicable rules of professional conduct. In the event we terminate our representation,

we will take such steps as are reasonably practicable to protect your interests in the above matter, and you agree to take all steps necessary to free us of any obligation to perform further. The City will be responsible for our fees and expenses for our entire engagement, through and including any termination.

Conclusion of Representation; Retention and Disposition of Documents.

Unless previously terminated, our representation will conclude when we complete the specific services the City has retained us to perform. At your request, we will return the City's papers and property upon our receipt of final payment. We will retain our own files pertaining to the matter, including, for example, firm administrative records, internal lawyers' work product such as drafts, notes, internal memoranda and legal and factual research.

Please retain all documents that we send you in accordance with the City's own records retention practices. All documents we retain will be transferred to the person responsible for administering our records retention program at the end of our representation. Unless we agree otherwise, documents and other materials we retain may be destroyed or disposed of within a reasonable time after termination or conclusion of this engagement.

Post-Engagement Matters. You are engaging us to provide legal services in connection with a specific matter. After the matter concludes, we may inform you from time to time of developments and changes in the law that might interest you, by newsletter or otherwise. These communications, however, do not create a new attorney-client relationship.

After this matter is concluded, changes in law or circumstances may occur that could impact the City's future rights and liabilities. Unless we are specifically engaged to provide advice on matters arising in the future, we have no continuing obligation to advise the City with respect to future developments.

If the foregoing is satisfactory, please sign a copy of this letter and return it to me. While we prefer to have a signed copy of this letter in our file before beginning work on this matter, we will begin work earlier as circumstances require. Accordingly, our performance of services with your knowledge will be deemed your consent to the terms of the letter unless we hear from you to the contrary. We look forward to working with you and other representatives of the City on this matter.

BRADLEY ARANT BOULT CUMMINGS LLP

By: _____

W. Stanley Gregory

CITY OF OPELIKA, ALABAMA

By: _____

Gary Fuller, Mayor

ORDINANCE NO. 021-18-ORD

Lease agreement for Headend, Point Broadband - 1st Reading.

ORDINANCE NO. _____

AN ORDINANCE APPROVING HEADEND LEASE
AGREEMENT WITH POINT BROADBAND, LLC

WHEREAS, the City of Opelika, Alabama (the “City”) is the owner of certain real property and improvements located at 600 Fox Run Parkway commonly known as the Opelika Power Services facility (the “Facility”); and

WHEREAS, Point Broadband, LLC, (“Point Broadband”) desires to lease approximately 2,231 rentable square feet of office space in the Main Building, 4,800 rentable square feet of space in the Headend Building and 3,240 rentable square feet of space in the Warehouse (collectively referred to as “Buildings”) in the Facility, as more particularly described in the diagram attached hereto as Exhibit “A”; and

WHEREAS, the City is willing to lease said space in the Buildings to Point Broadband in accordance with the terms and conditions of a Headend Lease Agreement attached hereto as Exhibit “B”.

NOW, THEREFORE, 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 rentable space in the Buildings, as described above, is not needed for public or municipal purposes.

Section 2. The City having received an offer from Point Broadband to lease said rentable space in the Buildings, it is hereby declared to be in the best interest of the public and the City to lease said space to Point Broadband at a monthly rental of \$5,000 for a term of ten (10) years commencing on November 8, 2018 and ending on November 7, 2028.

Section 3. The proposed Headend Lease Agreement to be entered into between the City of Opelika, as Landlord, and Point Broadband, as Tenant, a copy of which is attached hereto as Exhibit "B", be and the same is hereby approved, authorized, ratified and confirmed in substantially the form 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 Headend Lease Agreement.

Section 4. The Mayor and the City Clerk are hereby authorized and directed to execute, attest and deliver said Headend Lease Agreement in the name of and on behalf of the City.

Section 5. This ordinance shall become effective immediately upon its adoption and publication as required by law.

Section 6. 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 _____, 2018.

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

ATTEST:

CITY CLERK

TRANSMITTED TO MAYOR this the ____ day of _____, 2018.

CITY CLERK

ACTION BY MAYOR

APPROVED this the ____ day of _____, 2018.

MAYOR

ATTEST:

CITY CLERK

ORDINANCE NO. 022-18-ORD

Sale of City's fibre-optic television & telecom system, Point Broadband - 1st Reading.

ORDINANCE NO. _____-18

AN ORDINANCE AUTHORIZING THE SALE OF THE CITY'S FIBRE-OPTIC CABLE TELEVISION AND TELECOMMUNICATIONS SYSTEM TO POINT BROADBAND, LLC, AND DIRECTING THE EXECUTION OF ALL AGREEMENTS NECESSARY IN CONNECTION THEREWITH, AND CALLING FOR REDEMPTION AND PAYMENT CERTAIN WARRANTS OF THE CITY RELATED TO SAID SYSTEM

WHEREAS, the City has heretofore issued its \$13,500,000 principal amount Taxable Telecommunications System Revenue Warrant dated January 27, 2011 (the "Telecomm Warrant") to Regions Bank in order to finance the acquisition and construction of a fiber-optic cable television and telecommunications and information system (collectively the "System") in the City.

WHEREAS, the City has heretofore issued its \$28,590,000 Electric System Revenue Refunding Warrant, Series 2017, dated December 27, 2017 (the "2017 Warrant"), payable to Regions Capital Advantage, Inc., a portion of the principal amount of which is referable to those Warrants of the City that were refunded by the 2017 Warrant issued in order to finance a portion of the costs of acquiring and constructing components of the System.

WHEREAS, the City's Light and Power Department has operated the System since its inception.

WHEREAS, following a period of due deliberation and diligence, the City has determined that (i) it is in the best public and financial interest of the City to sell the System to Point Broadband, LLC (the "Company"), pursuant to an Asset Purchase Agreement with the Company (the "Asset Purchase Agreement") and to (ii) apply the proceeds of such to (1) the redemption of the Telecomm Warrant and the (2) redemption of such portion of the 2017 Warrant as funds remaining from the sale shall permit.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL (the “City Council”) OF THE CITY OF OPELIKA (the “City”) AS FOLLOWS:

Section 1. The City Council hereby determines and declares that it is in the City’s best interest to sell the System to the Company for the price provided for in the Asset Purchase Agreement, viz., the sum of \$14,175,000. The City negotiated the terms of the sale and the sales price with the Company in an arm’s length transaction and believes that such sales price represents the fair market value for the System. The City is not granting anything of value or in any way lending its aid or credit to the Company as part of the sale.

Section 2. The sale of the System is necessary, advantageous, and in the best interest of the City and is hereby approved and authorized. The Mayor and the City Clerk/Treasurer are therefore authorized to execute and deliver the Asset Purchase Agreement between the City and the Company in substantially the form of such agreement presented to the meeting of the Council at which this Ordinance is adopted and approved by the Mayor, whose final approval of such document shall be evidenced by his execution thereof. The Mayor and the City Clerk/Treasurer are further authorized and directed to deliver such other closing documents, certificates, and agreements as are necessary in conjunction with the sale, including a tri-party Escrow Agreement among the City, the Company, and Southern States Bank (the “Escrow Agreement”). Any prior execution of any documents on behalf of the City by City officials in connection with the sale of the System are hereby approved and confirmed.

Section 3. The proceeds from the sale pursuant to the Asset Purchase Agreement received by the City shall be used to retire the Telecomm Warrant and, with any such remaining funds, provide for an escrow deposit pursuant to the Escrow Agreement to be disbursed as provided therein; all funds paid to the City upon termination of the Escrow Fund provided for in the Escrow Agreement shall be used by the City to redeem and pay such portion of the 2017 Warrant as such funds shall be sufficient therefor.

Section 4. The City hereby calls for redemption the Telecomm Warrant on November 8, 2018, or such other date promptly following the “Closing Date” as provided for in the Asset Purchase Agreement, and authorizes and directs the Mayor to coordinate with and provide such notice and information to Regions Bank as shall be necessary to effect such redemption on such date. The City Clerk/Treasurer is authorized to transfer to Regions Bank on such date the sum of \$13,536,352.50 from proceeds of the sale of the System realized by the City pursuant to the Asset Purchase Agreement in order to retire and pay in full the Telecomm Warrant and the interest due and unpaid thereon, to which sum shall be added any additional interest on the Telecomm Warrant that may accrue should the said Closing Date occur after November 8, 2018.

Section 5. Upon release of funds to the City as provided for pursuant to the Escrow Agreement, the City will call for redemption such portion of the 2036 principal payment due on the 2017 Warrant maturing on March 1, 2025, as the amount of such funds shall permit (the “Refunded Portion of the 2017 Warrant”), at and for a redemption price equal to the principal amount thereof to be redeemed, plus accrued interest thereon to the date fixed for redemption, without premium or penalty. The City will also at that time direct Regions Bank to disseminate a notice of redemption to Regions Capital Advantage, Inc., in accordance with the terms of the 2017 Warrant, and to take such other action as shall be necessary to effect the refunding of the Refunded Portion of the 2017 Warrant on said date.

Section 6. The City hereby approves a form of Refunding Trust Agreement with Regions Bank, the trustee for the 2017 Warrant, in connection with the escrow deposit for the Refunded Portion of the 2017 Warrant. Upon finalization of said form of Refunding Trust Agreement the Council will authorize the Mayor and the City Clerk/Treasurer to execute and deliver such agreement when funds are received from the aforesaid Escrow Fund as described hereinabove.

Section 7. A portion of the City’s proceeds from the sale of the System will remain in escrow for approximately 12 months pursuant to the Escrow Agreement. When such funds are released to the City, they will be transferred to Regions Bank without the need for any additional Council action to provide for a deposit into the Escrow Fund for the 2017 Warrant established by the Refunding Trust Agreement hereinabove referred to.

Section 8. The Mayor and the City Clerk/Treasurer are authorized to take all such action as is necessary to complete the transactions described hereinabove. The City has no obligation to proceed to effect the retirement of the Telecomm Warrant or the Refunded Portion of the 2017 Warrant unless and until the sale of the System actually occurs and funds are thereby provided to the City for such purpose.

Section 9. The City Clerk/Treasurer shall publish this ordinance in accordance with the procedures required by state law and the customs of the City.

ADOPTED AND APPROVED this the ____ day of October, 2018.

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

ATTEST:

CITY CLERK/TREASURER

TRANSMITTED TO MAYOR on this the ____ day of October, 2018.

CITY CLERK/TREASURER

ACTION BY MAYOR

APPROVED this the ____ day of October, 2018.

MAYOR

ATTEST:

CITY CLERK/TREASURER

ORDINANCE NO. (ID # 3140)

Grant a Franchise for Cable Television to Point Broadband - 2nd Reading.

CABLE TELEVISION FRANCHISE ORDINANCE

FOR THE

CITY OF OPELIKA, ALABAMA

AND

POINT BROADBAND OF OPELIKA, LLC

EFFECTIVE DATE _____

ORDINANCE NO. _____

AN ORDINANCE GRANTING A FRANCHISE TO POINT BROADBAND OF OPELIKA, LLC, TO CONSTRUCT, OPERATE, AND MAINTAIN A CABLE SYSTEM IN THE CITY OF OPELIKA, ALABAMA SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; PROVIDING FOR REGULATION AND USE OF THE SYSTEM AND THE PUBLIC RIGHTS-OF-WAY; AND PRESCRIBING PENALTIES FOR THE VIOLATION OF THE PROVISIONS HEREIN;

The City Council of the City of Opelika, Alabama ordains:

STATEMENT OF INTENT AND PURPOSE

City intends, by the adoption of this Franchise, to bring about the further development of a Cable System, and the continued operation of it. Such development can contribute significantly to the communication needs and desires of the residents and citizens of City and the public generally. Further, City may achieve better utilization and improvement of public services and enhanced economic development with the development and operation of a Cable System.

Adoption of this Franchise is, in the judgment of the City Council, in the best interests of City and its residents. This Franchise is in accordance with Ordinance No. 101-00, the Wireline Telecommunications System Ordinance (WTS Ordinance) for the City of Opelika, Alabama.

FINDINGS

In the review of the request for renewal by Grantee and negotiations related thereto, and as a result of a public hearing, the City Council makes the following findings:

1. Grantee's technical ability, financial condition, legal qualifications, and character were considered and approved in a full public proceeding after due notice and a reasonable opportunity to be heard;
2. Grantee's plans for constructing, upgrading, and operating the Cable System were considered and found adequate and feasible in a full public proceeding after due notice and a reasonable opportunity to be heard;
3. The Franchise granted to Grantee by City complies with the existing applicable state statutes and federal laws and regulations; and
4. The Franchise granted to Grantee is nonexclusive.

Section 1. Title.

This Ordinance shall be known and cited as the Point Broadband Wireline Telecommunications System Ordinance (PBWTSO) for the City of Opelika, Alabama.

Section 2. Construction.

This Ordinance is granted pursuant to the terms and conditions contained herein. Failure of Grantee to provide a System as described herein or meet the obligations and comply with all provisions herein, shall be deemed in violation of this Franchise.

Section 3. Scope

This Ordinance is granted for the corporate boundaries of City, as they exist from time to time. Access to Cable Service shall not be denied to any group of potential residential cable Subscribers because of the income of the potential cable Subscribers or of the area in which such group resides.

Section 4. Severability.

If any term, condition or provision of this Franchise or the application thereof to any Person or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder thereof and the application of such term, condition or provision to Persons or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Franchise and all the terms, provisions and conditions hereof shall, in all other requests, continue to be effective and complied with provided the loss of the invalid or unenforceable clause does not substantially alter the agreement between the parties. In the event such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision, which had been held invalid or modified is no longer in conflict with the law, rules and regulations then in effect, said provision shall thereupon return to full force and effect and shall thereafter be binding on Grantee and City.

Section 5. Definitions.

For the purposes of this Ordinance, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words in the singular number include the plural number, and words in the plural number include the singular number. The word “shall” is always mandatory and not merely directory. The word “may” is directory and discretionary and not mandatory. Words not defined shall be given their common and ordinary meaning.

- A. “Applicable Laws” means any law, statute, charter, ordinance, rule, regulation, code, license, certificate, franchise, permit, writ, ruling, award, executive order, directive, requirement, injunction (whether temporary, preliminary or permanent), judgment, decree or other order issued, executed, entered or deemed applicable by any governmental authority.

- B. “Basic Cable Service” means any Service tier which includes the lawful retransmission of local television broadcast signals and any public, educational, and governmental access programming required by the Franchise to be carried on the basic tier. Basic Cable Service as defined herein shall not be inconsistent with 47 U.S.C. § 543(b)(7).
- C. “Cable Service” or “Service” means (A) the one-way transmission to Subscribers of (i) Video Programming or (ii) Other Programming Service, and (B) Subscriber interaction, if any, which is required for the selection or use of such Video Programming or Other Programming Service. Cable Service as defined herein shall not be inconsistent with the definition set forth in 47 U.S.C. § 522(6).
- D. “Cable System” or “System” means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes Video Programming and which is provided to multiple Subscribers within a community, but such term does not include:
1. a facility that serves only to retransmit the television signals of one (1) or more television broadcast stations;
 2. a facility that serves Subscribers without using any public Right-of-Way;
 3. a facility of common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. § 201 et seq., except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of Video Programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services;
 4. an open video system that complies with 47 U.S.C. § 573; or
 5. any facilities of any electric utility used solely for operating its electric utility systems.
- Cable System as defined herein shall not be inconsistent with the definition set forth in 47 U.S.C. § 522(7).
- E. “Channel” or “Cable Channel” means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television channel as defined by the FCC. Cable Channel as defined herein shall not be inconsistent with the definition set forth in 47 U.S.C. § 522(4).
- F. “City” means City of Opelika, Alabama, a municipal corporation, in the State of Alabama, acting by and through its City Council, or its lawfully appointed designee.

- G. “City Council” means the governing body of the City of Opelika, Alabama.
- H. “Converter” means an electronic device, which converts signals to a frequency acceptable to a television receiver of a Subscriber.
- I. “Drop” means the cable that connects the ground block on the Subscriber’s residence to the nearest feeder cable tap of the System.
- J. “FCC” means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.
- K. “Franchise” or “Cable Franchise” or “Ordinance” means this franchise ordinance and the regulatory and contractual relationship established hereby.
- L. “Franchise Fee” includes any tax, fee, or assessment of any kind imposed by the City or other governmental entity on Grantee or Subscriber, or both, solely because of their status as such. It does not include any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their services but not including a tax, fee, or assessment which is unduly discriminatory against cable operators or cable Subscribers); capital costs which are required by the Franchise to be incurred by Grantee for public, educational, or governmental access facilities; requirements or charges incidental to the awarding or enforcing of the Franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or any fee imposed under Title 17 of the United States Code. Franchise fee defined herein shall not be inconsistent with the definition set for in 47 U.S.C. § 542(g).
- M. “Grantee” is Point Broadband of Opelika, LLC, its lawful successors, transferees or assignees.
- N. “Gross Revenue” means all revenue derived by Grantee from the operation of its Cable System to provide Cable Service within City including, but not limited to: (1) all Cable Service fees; (2) Franchise Fees; (3) late fees; (4) Installation and reconnection fees; (5) upgrade and downgrade fees; (6) local, state, and national advertising revenue; (7) home shopping commissions; (8) equipment rental fees; and (9) written or electronic Channel guide revenue. The term “Gross Revenue” shall not include launch fees, bad debts or any taxes or fees on Services furnished by Grantee imposed upon Subscribers by any municipality, state or other governmental unit, including the FCC regulatory fee, credits, refunds and any amounts collected from Subscribers for deposits, PEG fees or PEG support. City and Grantee acknowledge and agree that Grantee will maintain its books and records in accordance with generally accepted accounting principles (GAAP).
- O. “Installation” means the connection of the System from distribution cable tap point to the point of connection including Standard Installations and custom Installations with the Subscriber Converter or other terminal equipment.

- P. “Lockout Device” means an optional mechanical or electrical accessory to a Subscriber’s terminal, which inhibits the viewing of a certain program, certain Channel, or certain Channels provided by way of the Cable System.
- Q. “Normal Business Hours” means those hours during which most similar businesses in City are open to serve customers. In all cases, “Normal Business Hours” must include some evening hours, at least one (1) night per week and/or some weekend hours. Normal Business Hours as defined herein shall not be inconsistent with the definition set forth in 47 C.F.R. § 76.309.
- R. “Normal Operating Conditions” means those Service conditions which are within the control of Grantee. Those conditions which are not within the control of Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System. Normal Operating Conditions as defined herein shall not be inconsistent with the definition set forth in 47 C.F.R. § 76.309.
- S. “Other Programming Service” means information that a cable operator makes available to all Subscribers generally. Other Programming Services as defined herein shall not be inconsistent with the definition set forth in 47 U.S.C. § 522(14).
- T. “PEG” means public, educational and governmental. A PEG channel may be placed on any tier of service available to subscribers.
- U. “Person” is any Person, firm, partnership, association, corporation, company, limited liability entity or other legal entity.
- V. “Right-of-Way” or “Rights-of-Way” means the area on, below, or above any real property in City in which the City has an interest including, but not limited to, any street, road, highway, alley, sidewalk, parkway, utility easements, or any other place, area, or real property owned by or under the control of City which are dedicated for compatible use.
- W. “Right-of-Way Ordinance” means any ordinance or other applicable code requirements regarding regulation, management and use of Rights-of-Way in City, including registration and permitting requirements.
- X. “Service Area” or “Franchise Area” means the entire geographic area within the City as it is now constituted or may in the future be constituted.
- Y. “Service Interruption” means the loss of picture or sound on one (1) or more Cable Channels. Service Interruption as defined herein shall not be inconsistent with the definition set forth in 47 C.F.R. § 76.309.
- Z. “Standard Installation” means any residential or commercial Installation which can be completed using a Drop of one hundred twenty-five (125) feet or less.

- AA. “Subscriber” means any Person who receives broadcast programming distributed by a Cable System and does not further distribute it. Subscriber as defined herein shall not be inconsistent with the definition set forth in 47 C.F.R. § 76.5(ee).
- BB. “Video Programming” means programming provided by, or generally considered comparable to programming provided by, a television broadcast station. Video Programming as defined herein shall not be inconsistent with the definition set forth in 47 U.S.C. § 522(20).

Section 6. Failure of the City to Enforce this Ordinance.

Grantee shall not be relieved of its obligations to comply with any of the provisions of this Franchise by reason of any failure or delay of City to enforce prompt compliance. City may only waive its rights hereunder by expressly so stating in writing. Any such written waiver by City of a breach or violation of any provision of this Franchise shall not operate as or be construed to be a waiver of any subsequent breach or violation.

Section 7. Subject to Present and Future Laws, Ordinances and Regulations.

- A. The terms of this Franchise shall define the contractual rights and obligations of Grantee with respect to the provision of Cable Service and operation of the System in City. However, Grantee shall at all times during the term of this Franchise be subject to all lawful exercise of the police power, statutory rights, and local ordinance-making authority of the City related to such police power and statutory rights. This Franchise may also be modified or amended with the written consent of City and Grantee as provided herein.
- B. Grantee shall comply with the terms of any City ordinance or regulation of general applicability which addresses usage of the Rights-of-Way within City, which may have the effect of superseding, modifying or amending the terms herein, except that Grantee shall not, through application of such City ordinance or regulation of Rights-of-Way, be subject to additional burdens with respect to usage of Rights-of-Way which exceed burdens on similarly situated Rights-of-Way users.
- C. In the event of any conflict between this Franchise and any City ordinance or regulation which addresses usage of the Rights-of-Way, the conflicting terms of this Franchise shall be superseded by such City ordinance or regulation, except that Grantee shall not, through application of such City ordinance or regulation of Rights-of-Way, be subject to additional burdens with respect to usage of Rights-of-Way which exceed burdens on similarly situated Rights-of-Way users.

Section 8. Prior Inconsistent Resolutions, Ordinances, and Local Laws.

If any prior resolution, ordinance, or local law, is, in part or in whole, directly inconsistent with this Ordinance, the terms of this Ordinance control and prevail to the extent of this inconsistency.

Section 9. Ownership of Grantee.

Grantee represents and warrants to City that the names of the shareholders, partners, members or other equity owners of the Grantee and any of the shareholders, partners, members and/or other equity owners of Grantee are as set forth in Exhibit A hereto.

Section 10. Lease or Assignment Prohibited.

No Person may lease Grantee's System for the purpose of providing Cable Service until and unless such Person shall have first obtained and shall currently hold a valid franchise or other lawful authorization containing substantially similar burdens and obligations to this Franchise. Any assignment of rights under this Franchise shall be subject to and in accordance with the requirements of Section 9.5 of this Franchise. This provision shall not prevent Grantee from complying with any commercial leased access requirements or any other provisions of Applicable Law.

Section 11. Penalties and Sanctions for Violation of this Ordinance

- A. For the violation of any of the following provisions of this Franchise, liquidated damages shall be paid by the Grantee to the City, subject to the due process provisions of this Ordinance. Any such liquidated damages shall be assessed as of the date the Grantee received the Alleged Default Notice.
1. For failure to provide documents, reports, maps or information required by the terms of this Franchise, One Hundred and No/100 Dollars (\$100.00) for each day that such failure occurs or continues.
 2. For failure to provide the Cable Services Grantee has agreed to provide, including the requirements to maintain and operate the Cable System, One Hundred and No/100 Dollars (\$100.00) per day for each day that such failure occurs or continues.
 3. For failure to materially comply with Customer Service Standards set forth in Section 5 herein, Two Hundred and No/100 Dollars (\$200.00) per day for each day that such failure occurs or continues, except where compliance is measured quarterly, in which case liquidated damages shall be as follows: (a) Grantee shall be liable for liquidated damages in the amount of Two Thousand and No/100 Dollars (\$2,000.00) for the first offence for each quarter in which such standards are not met; Four Thousand and No/100 Dollars (\$4,000.00) for the second offence for each quarter in which such standards are not met; and Six Thousand and No/100 Dollars (\$6,000.00) for the third offence and each offence thereafter for each quarter in which such standards were not met.
 4. The amount of liquidated damages shall not exceed Ten Thousand and No/100 Dollars (\$10,000.00) in any calendar year.

- B. Each of the above-mentioned cases of non-compliance result in damage to the City, its residents, businesses and institutions, compensation for which will be difficult or impossible to ascertain. The Grantee agrees that the liquidated damages in the amounts set forth above are fair and reasonable compensation for such damage. The Grantee agrees that said foregoing amounts are liquidated damages and not a penalty or forfeiture and are within one (1) or more exclusions to the term Franchise Fee provided by Section 622(g)(2)(A)-(D) of the Cable Act.
- C. Payment of liquidated damages mandated by the City in accordance with the terms of this Franchise shall be considered a cure and full and final resolution of the alleged violation for the time period specified and shall not thereafter be considered, for any purpose, as an event of noncompliance for such specified period. Nothing herein shall prevent the City from initiating another violation proceeding pursuant to the terms of this Franchise in the event another alleged violation of such provision of the Franchise should arise.

Section 12. Force Majeure.

Neither party shall be liable for any failure of performance hereunder due to causes beyond its reasonable control including but not limited to: acts of God; fire; explosion; vandalism; storm or other similar catastrophes; national emergencies; insurrection; riots or wars. This provision includes work delays caused by waiting for utility providers to service or monitor their utility poles to which Grantee's Cable System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

Section 13. Notices.

All notices, reports, or demands required to be given in writing under this Franchise shall be sent via registered or certified mail or shall be deemed to be given when delivered personally to any officer of Grantee, postage prepaid thereon, addressed to the party to whom notice is being given, as follows:

If to City:	City of Opelika P.O. Box 390 Opelika, Alabama 36803
If to Grantee:	Point Broadband of Opelika, LLC Attn: Chad Wachter 1791 O.G. Skinner Drive West Point, GA 31833

Such addresses may be changed by either party upon notice to the other party given as provided in this section.

Section 14. Indemnity.

- A. Grantee shall indemnify, defend and hold City, its officers, boards, commissions, agents and employees (collectively the Indemnified Parties) harmless from and against any and all lawsuits, claims, causes or action, actions, liabilities, demands, damages, judgments, settlements, disability, losses, expenses (including attorney's fees and disbursements of counsel) and costs of any nature that any of the Indemnified Parties may at any time suffer, sustain or incur arising out of, based upon or in any way connected with the Grantee's operations, the exercise of the Franchise, the breach of Grantee of its obligations under this Franchise and/or the activities of Grantee, its subcontractors, employees and agents hereunder. Grantee shall be solely responsible for and shall indemnify, defend and hold the Indemnified Parties harmless from and against any and all matters relative to payment of Grantee's employees, including compliance with Social Security and withholdings. Grantee shall not be required to provide indemnification to City for programming cablecast over any PEG access Channels administered by City. Grantee shall not be required to indemnify City for negligence or misconduct on the part of City or its officials, boards, commissions, agents or employees.
- B. The indemnification obligations of Grantee set forth in this Franchise are not limited in any way by the amount or type of damages or compensation payable by or for Grantee under Workers' Compensation, disability or other employee benefit acts, acceptance of insurance certificates required under this Franchise or the terms, applicability or limitations of any insurance held by Grantee.
- C. City does not, and shall not, waive any rights against Grantee which it may have by reason of the indemnification provided for in this Franchise, because of the acceptance by City, or the deposit with City by Grantee, of any of the insurance policies described in this Franchise.
- D. The indemnification of City by Grantee provided for in this Franchise shall apply to all damages and claims for damages of any kind suffered by reason of any of the Grantee's operations referred to in this Franchise, regardless of whether or not such insurance policies shall have been determined to be applicable to any such damages or claims for damages.
- E. The City, the City Council and the Mayor shall have the right to retain counsel of their own choice, at their own expense.
- F. If Grantee obtains counsel for the City, City Council or the Mayor, then any one of them shall have the right to approve counsel. However, neither the City, City Council, nor the Mayor shall unreasonably withhold its approval of counsel, provided such counsel is qualified and reasonably experiences in defending against such claims or actions.

Section 15. Liability Insurance.

- A. Upon the effective date, Grantee shall, at its sole expense, take out and maintain during the term of this Franchise commercial general liability insurance with a company licensed to do business in the state of Alabama that shall protect the Grantee, City and its officials, officers, directors, employees and agents from claims which may arise from operations

under this Franchise, whether such operations be by the Grantee, its officials, officers, directors, employees and agents or any subcontractors of Grantee. This liability insurance shall include, but shall not be limited to, protection against claims arising from bodily and personal injury and damage to property resulting from Grantee's vehicles, products and operations. Grantee shall maintain, throughout the term of the Franchise, liability insurance insuring Grantee and the City in the minimum amounts of:

1. One Million and No/100 Dollars (\$1,000,000.00) for bodily injury or death to any one (1) Person;
 2. One Million and No/100 Dollars (\$1,000,000.00) for bodily injury or death resulting from any one accident;
 3. Three Million and No/100 Dollars (\$3,000,000.00) in the form of an umbrella policy.
- B. The following endorsements shall be attached to the liability policy:
1. The policy shall provide coverage on an occurrence basis.
 2. The policy shall cover personal injury as well as bodily injury.
 3. The policy shall cover blanket contractual liability subject to the standard universal exclusions of contractual liability included in the carrier's standard endorsement as to bodily injuries, personal injuries and property damage.
 4. Broad form property damage liability shall be afforded.
 5. City shall be named as an additional insured on the policy.
 6. Standard form of cross-liability shall be afforded.
 7. An endorsement stating that the policy shall not be canceled without thirty (30) days notice of such cancellation given to City.
- C. Grantee shall submit to City documentation of the required insurance, including a Certificate of Insurance showing that the City is an additional insured, as well as all properly executed endorsements, within thirty (30) days from the effective date of this Franchise.
- D. Grantee's Insurance. Grantee shall not commence any Cable System reconstruction work or permit any subcontractor to commence work until all insurance required under this Franchise has been obtained. Said insurance shall be maintained in full force and effect until the expiration of this Franchise.
1. In order for City to assert its rights to be indemnified, defended, and held harmless, City must, with respect to each claim:

- a. Promptly notify Grantee in writing within thirty (30) days of any claim or legal proceeding which gives rise to such right;
- b. Afford Grantee the opportunity to participate in and fully control any compromise, settlement or other resolution or disposition of any claim or proceeding; and
- c. Fully cooperate with reasonable requests of Grantee, at Grantee's expense, in its participation in, and control, compromise, settlement or resolution or other disposition of such claim or proceeding subject to paragraph (ii) above.

Section 16. Performance and Completion Bond.

- A. In the event the City has reason to believe that the Grantee has defaulted in the performance of any provision of this Franchise, except as excused by force majeure or otherwise, the City shall notify the Grantee in writing, by certified mail, of the provision or provisions of which the City believes Grantee to be in default and the details relating thereto (Alleged Default Notice).
- B. Within ten (10) business days of receipt of an Alleged Default Notice from the City, Grantee shall provide the City with a performance bond in the sum of Twenty-Five Thousand and No/100 Dollars (\$25,000.00). The performance bond shall insure the faithful performance by the Grantee of all the provisions of this Franchise, and compliance with all orders, permits and directions of the City, and the payment by Grantee of any claim, penalties, damages, liens and taxes due the City related thereto or which arise by reason of the construction, operation or maintenance of the Cable System. The performance bond shall be provided by Grantee regardless of whether Grantee disputes the alleged violation. Any failure by Grantee to provide performance bond as required herein shall constitute a separate breach of this Franchise. Once the proceeding addressing the alleged violation has been completed, the Grantee shall be relieved of maintaining the performance bond until such time as another alleged violations notification is received by Grantee as which time the process shall begin again.
- C. The Grantee shall have thirty (30) days from the receipt of the Alleged Default Notice to:
 1. Respond to the City in writing, contesting the City's assertion of default and providing such information or documentation as may be necessary to support the Grantee's position; or
 2. Cure any such default. The time for Grantee to correct any violation or liability shall be extended by City if the necessary action to correct such violation or liability is of such a nature or character as to require more than thirty (30) days within which to perform, provided Grantee provides written notice that it requires more than thirty (30) days to correct such violations or liability, commences the corrective

action within the thirty (30) day period and thereafter uses reasonable diligence to correct the violation or liability.

- D. In the event that the City finds that Grantee failed to respond to such an Alleged Default Notice to cure the default or to take reasonable steps to cure the default, the City shall promptly schedule a public hearing to consider that matter. The City shall provide written notice at least fifteen (15) business days prior to the date of the hearing. The Grantee shall be provided reasonable opportunity to offer evidence and be heard at such public hearing.
- E. In the event that the City, after public hearing, determines that a continuing state of default exists and that its cure is unlikely, the City may determine to pursue one (1) of the following:
 - 1. Access liquidated damages in accordance with the schedule set forth in this Ordinance;
 - 2. Determine the amount of actual damages to the City of the Default and draw upon all or any appropriate part of the performance bond provided herein;
 - 3. Seek specific performance of any provision in this Franchise which reasonably lends itself to such remedy, as an alternative to damages;
 - 4. Pursue a separate action for damages in a court of competent jurisdiction;
 - 5. Pursue the procedures for revocation of the Franchise; or
 - 6. Invoke any other lawful remedy available to the City.
- F. If the City draws upon the performance bond or any subsequent performance bond delivered pursuant hereto, in whole or in part, the City shall provide written notice of such draw to Grantee and Grantee shall replace or replenish to its full amount the same within thirty (30) days after such notice.
- G. If the City determines that a default exists after a public hearing, the Grantee shall have the right to a de nova review of such decision in any court of competent jurisdiction.

Section 17. Other Types of Insurance and Bonds.

Notwithstanding other insurance and bond requirements, Grantee shall obtain and maintain other required types of insurance and bonds, including, but not limited to, workers compensation insurance and automobile liability insurance, that are mandated by either federal or State law, rule or regulation in at least the required minimum amounts, and according to the minimum terms and provision mandated by either the federal or State law, rule or regulation.

Section 18. Public Inspection File.

A. To the extent required by federal and/or State law, rule or regulation, Grantee shall maintain records and reports and assure that they are available upon request for inspection by the following:

1. The general public;
2. Subscribers and Users of the Service or System, and
3. the City Council, the Administrator or other City officials, or the designee of such.

B. Grantee shall maintain a public inspection file which shall include at least the following:

1. ownership records;
2. Equal Employment Opportunity (EEO) data;
3. Testing data and records pursuant to the FCC's rules, if applicable;
4. Records of System maintenance and repair activities; and
5. any other records or information required to be contained in a public inspection file by federal or State law, rule or regulation.

Section 19. Retention and Submission of Reports and Records.

- A. Grantee shall file with the City, at the time of payment of the Franchise Fee, a report of all Gross Revenues in form and substance as Exhibit E attached hereto.
- B. If requested by City, Grantee shall provide City a written or computer stored record of all service calls and interruptions or degradation of Service experienced for the preceding 12-month period, provided such complaints result in or require a service call, subject to the Subscriber's right of privacy as required by Federal Law.
- C. City and Grantee shall mutually agree, at the times and in the form prescribed, such other reasonable reports with respect to grantee's operations pursuant to this Franchise.
- D. If requested by the City, Grantee shall furnish to and file with City Administrator the maps, plats, and permanent records of the location and character of all facilities constructed, including underground facilities, and Grantee shall file with City updated of such maps, plats and permanent records annually if changes have been made in the System.
- E. If requested by the City, Grantee shall furnish a list of all addresses for which Cable Service is available within the Service Area, but which will not include specific Subscriber information.

Section 20. Inspection and Review of Books, Records and Other Data.

The City shall have the right to inspect, upon reasonable notice and during Normal Business Hours, or require Grantee to provide within a reasonable time copies of any records maintained by Grantee which relate to System operations including specifically Grantee's accounting and financial records. City acknowledges that some of the records which may be provided by Grantee may be classified as confidential and therefore may subject Grantee to competitive disadvantage if made public. City shall therefore maintain the confidentiality of any and all records provided to it by

Grantee which are not required to be made public pursuant to Applicable Laws. Grantee shall produce such books and records for City's inspection at Grantee's local office within the Service Area or at such other mutually agreed upon location within the City. If a request from an outside party to have access to the records, then Grantee will be immediately notified of such request in order for Grantee to take any immediate legal action or determination to release such information. To the extent it is necessary for City to send representatives to a location outside of the City to inspect Grantee's books and records, Grantee shall be responsible for all reasonable travel costs incurred by City representatives.

Section 21. Billing Credit or Refunds for Service Outages, Interruptions; Substandard Signal or Picture Quality or Unsolicited Service.

- A. If a Subscriber's Cable Service is interrupted or discontinued without cause for twenty-four (24) or more consecutive hours, the Grantee shall, upon request by Subscriber, credit such Subscriber pro rata for such interruption.
- B. Refunds: Refund checks will be issued promptly, but no later than either:
 - 1. The Subscriber's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or
 - 2. The return of the equipment supplied by Grantee if Service is terminated.
- C. Credits: Credits for Service will be issued no later than the Subscriber's next billing cycle following the determination that a credit is warranted.
- D. In the case of a charge for unsolicited service, Grantee shall provide a subscriber with an adjustment or billing credit on the next available periodic invoice. Moreover, in such a case, Grantee shall not consider a subscriber delinquent for failure to pay a charge for unsolicited service.

Section 22. Customer Service Hours; Capabilities of Customer Service Office; and Telephones.

- A. Cable System office hours and telephone availability.
 - 1. Grantee will maintain a local, toll-free or collect call telephone access line which will be available to its Subscribers twenty-four (24) hours a day, seven (7) days a week.
 - (a) Trained Grantee representatives will be available to respond to customer telephone inquiries during Normal Business Hours.
 - (b) After Normal Business Hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after Normal Business Hours must be responded to by a trained Grantee representative on the next business day.

2. Under Normal Operating Conditions, telephone answer time by a customer service representative, including wait time shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety percent (90%) of the time under Normal Operating Conditions, measured on a quarterly basis.
 3. Grantee shall not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.
 4. Under Normal Operating Conditions, the customer will receive a busy signal less than three percent (3%) of the time.
 5. Customer service center and bill payments locations will be open at least during Normal Business Hours and will be conveniently located.
- B. Installations, Outages and Service Calls. Under Normal Operating Conditions, each of the following standards will be met no less than ninety-five percent (95%) of the time measured on a quarterly basis.
1. Standard Installations will be performed within seven (7) business days after an order has been placed. Standard Installations are those that are located up to one hundred twenty-five (125) feet from the existing distribution system tap point.
 2. Excluding conditions beyond the control of Grantee, Grantee will begin working on Service Interruptions promptly and in no event later than twenty-four (24) hours after the interruption becomes known. Grantee must begin actions to correct other Service problems the next business day after notification of the Service problem.
 3. The appointment window alternatives for Installations, Service calls, and other Installation activities will be either a specific time or, at maximum, a four (4) hour time block during Normal Business Hours. Grantee may schedule Service calls and other Installation activities outside of Normal Business Hours for the express convenience of the customer.
 4. Grantee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.
 5. If Grantee's representative is running late for an appointment with a customer and will no be able to keep the appointment as scheduled, the customer shall be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.
- C. Communications between Grantee and Subscribers.

1. Notifications to Subscribers:

- (a) Grantee will provide written information on each of the following areas at the time of Installation of Service, at least annually to all Subscribers, and at any time upon request:
 - (i) Products and Services offered;
 - (ii) Prices and options for programming Services and conditions of subscription to programming and other Services;
 - (iii) Installation and Service maintenance policies;
 - (iv) Instructions on how to use the Cable Service;
 - (v) Channel positions of programming carried on the System; and
 - (vi) Billing and complaint procedures, including the address and telephone number of the City's cable office.
- (b) Subscribers will be notified of any changes in rates, programming Services or Channel positions as soon as possible in writing. Notice must be given to Subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the Grantee. In addition, the Grantee shall notify Subscribers thirty (30) days in advance of any significant changes in the other information required by Section 5.4(c)(i)(1).
- (c) In addition to the requirement of subparagraph (2) of this section regarding advance notification to Subscribers of any changes in rates, programming services or Channel positions, Grantee shall give thirty (30) days written notice to both Subscribers and the City before implementing any rate or Service change. Such notice shall state the precise amount of any rate change and briefly explain in readily understandable fashion the cause of the rate change (e.g., inflation, change in external costs or the addition/deletion of Channels). When the change involved the addition or deletion of Channels, each Channel added or deleted must be separately identified. For purposes of the carriage of digital broadcast signals, the Grantee need only identify for Subscribers the television signal added and not whether that signal may be multiplexed during certain dayparts.
- (d) To the extent Grantee is required to provide notice of Service and rate changes to Subscribers, the Grantee may provide such notice using any reasonable written means at its sole discretion.
- (e) Notwithstanding any provision of this section, Grantee shall not be required to provide prior notice of any rate change that is the result of a regulatory

fee, Franchise Fee, or any other fee, tax, assessment, or charge of any kind imposed by any federal agency, state, or City on the transaction between the Grantee and the Subscriber.

2. Billing:

- (a) Consistent with 47 C.F.R. § 76.1619, bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, Basic Cable Service and premium Service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.
- (b) In case of a billing dispute, the Grantee must respond to a written complaint from a Subscriber within thirty (30) days.

Section 23. Grantee CSR and Service Technician Personnel.

A. Grantee shall annually certify to the City Council that each CSR has taken and passed a Grantee-implemented course or on-going class designed to train CSRs to handle their jobs in a courteous, efficient, knowledgeable and responsive manner. Also, the course or class shall be designed to provide continuing education to CSRs concerning changes in Federal, State, or local law, as well as changes in Grantee's customer service policies and practice.

B. Grantee shall annually certify to City Council that each service technician has taken and passed a Grantee-implemented course or on-going class designed to train service technicians to handle their jobs in a courteous, efficient, and responsive manner. Also, the course or class shall be designed to provide continuing education to service technicians in changes in technology, repair/maintenance procedures and related matters.

C. Grantee shall maintain records on the certification for every CSR and service technician and shall provide such certification records to the City upon seven (7) days request.

D. Every CSR and service technician of Grantee shall note his or her name (as well as badge or identification number if one is supplied) on each service request or work order that is furnished to a customer. Further, every CSR and service technician of Grantee shall identify him or herself to a customer at the outset of a phone conference or service call to the residence or business.

E. The provisions and requirements of this Section extend to all full-time and part-time employees as well as any subcontractors and independent contractors who perform the tasks of CSRs or service technicians.

Section 24. Service Inquiry Logs.

A. Grantee shall be required to keep and maintain service inquiry logs, subject to any limitations imposed by the State or federal law, including any subscriber privacy limitations imposed by the Cable Act.

B. The purpose of the service inquiry logs is to assist the City in assessing (in the aggregate) the type, degree, and resolution of customer service requests, inquiries, and complaints.

C. At a minimum, the service inquiry logs shall contain the following:

- 1) the time and date of initial receipt of any service request, inquiry, or complaint, together with the time and date of the initial response to that service request, inquiry or complaint;
- 2) the nature of the service request, inquiry or complaint;
- 3) the precise action taken by Grantee in order to resolve the service inquiry, request, or complaint;
- 4) whether the service request, inquiry, or complaint was resolved by allowing a credit or refund of some sort; and
- 5) the area, location, or quadrant of the City where the service request, inquiry, or request was generated.

D. In addition to any other right of inspection that the City may possess, it shall have the right to review and inspect a compilation of such logs. However, the City shall not have the right of access, review, or inspection for any service inquiry logs or any information contained within service inquiry logs that are otherwise protected from access, review, or inspection by Federal or State law.

E. The term “service inquiry logs” as used in this Section shall not include data or entries placed in logs related to scheduled installations.

Section 25. Restoration of Property.

Any and all Rights-of-Way, or public or private property, which are disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance, expansion, extension or reconstruction of the System by the Grantee shall be promptly and fully restored by Grantee, at its expense, to a condition as good as that prevailing prior to Grantee’s work, as determined by City. If Grantee shall fail to promptly perform the restoration required herein, after written request of City and a thirty (30) day period, unless agreed to by the City and Grantee differently, to satisfy that request, City shall have the right to put the Rights-of-Way back into condition as good as that prevailing prior to Grantee’s work. In the event City determines that Grantee is responsible for such disturbance or damage, Grantee shall be obligated to fully reimburse City for such restoration within thirty (30) days after its receipt of City’s invoice thereof.

Section 26. Service Inquiries, Requests, Complaints and Response Times; Credits and/or Rebates for Unexcused Cancellations of Service Calls.

A. Except in the case of force majeure, or an appointment scheduled with the mutual consent of a subscriber, Grantee shall respond to the service inquiries, requests, and complaints of subscribers within Grantee’s normal business or service hours, and within the time schedules detailed in subsections (B) through (G) of this Section. The Grantee shall be considered in

compliance by the City if the standards of service outlines in subsections (B) through (G) are met or exceeded at least 97.5% of the time over a calendar month. Conversely, the Grantee shall be considered in major non-compliance (absent force majeure or mutually scheduled appointments) if the standards of service outlines in subsections (B) through (G) of this Section are not met or exceeded at least 97.5% of the time over any four (4) calendar months within a calendar year, or any five (5) months within a fifteen (15) month period.

B. Moreover, under normal operating conditions, Grantee shall inform the customer that there is a choice as to whether the service call is scheduled at a specific time during normal business hours or, at a maximum, a four-hour time block during normal business hours. The Grantee may schedule the service call outside of normal business hours for the express convenience of the customer for the morning (8 a.m. to noon), afternoon (noon to 4 p.m.), (or) evening (4 p.m. to 8 p.m. or later) hours. If the service call has to be cancelled or rearranged by the Grantee, then the Grantee shall make every effort to notify the customer as soon as possible, and shall re-schedule the service call, as necessary, at a time that is convenient for the customer for a time within twenty-four (24) hours of the cancellation if desired by the subscriber. If the Grantee cancels a scheduled service call without prior notification to the subscriber, or fails to re-schedule the service call within forty-eight (48) hours of the cancellation (except upon mutual agreement with the subscriber), then Grantee shall credit the affected subscriber on the next available billing cycle or refund the subscriber within sixty (60) days an amount equivalent to the amount charged by the Grantee to a subscriber for a normal service call, or where no such charge exists, then the amount equivalent to one (1) month's charge for basic multi-channel service.

C. In the case of a service outage or a "blank" or "no-picture" situation at any given level of billing or service (except for pay-per-view events), Grantee shall respond to, and make repairs as are necessary to return the multi-channel service within six (6) hours from the time the Grantee first received notification of the "blank" or "no-picture" situation.

D. In the case of a signal or service interruption (such being defined as a visually discernable degradation in picture or sound), Grantee shall make its best efforts to respond and remedy the problem the same day, but in no case later than twenty-four (24) hours or one (1) working day from the time the Grantee first received notification of the signal or service interruption.

E. In the case of a defective, improperly operating, or non-operating piece of equipment, Grantee shall make its best efforts to respond and remedy the problem the same day, but in no case will the response be later than twenty-four (24) hours or one (1) working day, and shall make the repairs as are necessary to correct the problem with thirty-six (36) hours from the time Grantee first received notification of the defective, improperly operating, or non-operating piece of equipment.

F. In no case shall subscriber's service request or inquiry go unresponded or unattended to for more than twelve (12) hours from the time Grantee first receives notification of the service inquiry or request. Moreover, except in force majeure situations, all requests and inquiries shall be handled or corrected within thirty-six (36) hours from the time the Grantee first receives notification. If a cancellation of a service call occurs, then the Grantee shall re-schedule the call in a manner consistent with the guidelines expressed in subsection (A) of this Section.

G. In case of a dispute concerning the precise time that the Grantee received notification, or the precise circumstances surrounding the grantee's receiving the notification, or whether notification was received at all, the City reserves the right and authority to settle such dispute.

Section 27. Protection of Subscriber or User Privacy.

All subscriber privacy rights shall be in accordance with federal law. Subscribers and non-Subscribers may request to be put on a list to prevent solicitations from Grantee.

Section 28. Resolution of Complaints/Inquiries.

A. Grantee is required to develop a comprehensive complaint/inquiry resolution policy which adheres to this Ordinance and any rules or regulations promulgated hereto.

B. Grantee's complaint/inquiry resolution policy shall be reduced to writing and such policy shall be available upon request to any person. In any event, a subscriber shall receive notice of such policy in the manner that is prescribed by this ordinance and any State rules and regulations.

C. Grantee's complaint/inquiry resolution policy shall contain at least the following minimum standards:

1. the initial response to a complaint/inquiry shall occur no later than twenty-four (24) hours after receipt of the complaint/inquiry;
2. Grantee shall use its best efforts to resolve the complaint/inquiry within twenty-four (24) hours after receipt of the complaint/inquiry;
3. complaints/inquiries relating to service changes or additions shall be responded to in accordance with this Ordinance;
4. informing subscribers of the credit/refund policy which is consistent with this Ordinance, and any applicable State regulations; and
5. informing subscribers of the billing disputes policy which is consistent with this Ordinance, and any applicable State regulations.

Section 29. Policy with Respect to Continuity of Service.

A. Grantee may not abandon the System or any portion thereof without having first given three (3) months written notice to City.

B. In the event of abandonment of the System, City shall have the right to require Grantee to remove all or any portion of the System from all Rights-of-Way and public property within City.

C. If Grantee has failed to commence removal of System, or such part thereof as was designated by City, within thirty (30) days after written notice of City's demand for removal is given, or if Grantee has failed to complete such removal within twelve (12) months after written notice of City's demand for removal is given, City shall have the right

to apply funds secured by the performance bond to remove the System or purchase the system at fair market value.

Section 30. Construction and Construction-Related Requirements.

A. Registration, Permits, Construction Codes, and Cooperation.

1. Grantee shall comply with all non-discriminatory construction requirements of local, state and federal laws.
2. Grantee agrees to obtain a permit as required by City prior to removing, abandoning, relocating or reconstructing, if necessary, any portion of its facilities. Notwithstanding the foregoing, City understands and acknowledges there may be instances when Grantee is required to make repairs, in compliance with federal or state laws, that are of an emergency nature. Grantee will notify City prior to such repairs, if practicable, and will obtain the necessary permits in a reasonable time after notification to City.
3. Reimbursement paid through the permitting process is separate and in addition to any other fees included in the Franchise. Grantee, at the time of or prior to submitting construction plans, shall provide City with a description of the type of Service to be provided by the Grantee in sufficient detail for City to determine compliance with the Franchise and Applicable Law.
4. City may issue reasonable policy guidelines to all grantees to establish procedures for determining how to control issuance of engineering permits to multiple grantees for the use of the same Rights-of-Way for their facilities. Grantee shall cooperate with City in establishing such policy and comply with the procedures established by the City Administrator or his or her designee to coordinate the issuance of multiple engineering permits in the same Rights-of-Way segments.
5. Grantee shall first obtain the written approval of City prior to commencing any construction or reconstruction on the Rights-of-Way and public places of City.
6. Failure to obtain permits or comply with non-discriminatory permit requirements shall subject Grantee to all enforcement remedies available to City under Applicable Laws or this Franchise.
7. Grantee shall be notified in writing and meet with developers and be present at pre-construction meetings to ensure that the newly constructed Cable System facilities are installed in new developments within City in a timely manner. City will make provisions in new development permits to require developer or contractor to notify Grantee ten (10) days in advance of open utility trenches for the opportunity of Grantee's cables to be placed within such trenches at the same time as other utilities.
8. Grantee, upon written request, shall hold an annual meeting with City to coordinate construction plans of both parties for the upcoming year.

- B. Ongoing Construction. Grantee shall notify City at least ten (10) days prior to the commencement of any construction in any Rights-of-Way. Grantee shall provide to City a detailed site plan of any proposed construction or excavation. Grantee shall not open or disturb the surface of any Rights-of-Way or public place for any purpose without first having obtained a permit to do so in the manner provided by law. All excavation shall be coordinated with other utility excavation or construction so as to minimize disruption to the public. Any excavation shall be backfilled without delay and lawns, gardens, shrubs, and flower beds returned and restored in as good a condition as before work involving such disturbance was done. Any excessive or loose dirt, gravel, mud or sand shall be removed from the property and deposited at an approved disposal site.
- C. Use of existing poles or conduits.
1. Grantee shall utilize existing poles and/or replacement poles, conduits and other facilities whenever commercially reasonable and shall not construct or install any new, different or additional poles, conduits or other facilities on public property until the written approval of the City is obtained. No location or any pole or wire-holding structure of Grantee shall be a vested interest, and such poles or structures shall be removed or modified by Grantee at its own expense whenever City determines that the public convenience would be enhanced thereby.
 2. The facilities of Grantee shall be installed underground in those areas of City where existing telephone and electric services are both underground at the time of construction by Grantee. In areas where either telephone or electric utility facilities are installed aerially at the time of System construction, Grantee may install its facilities aerially; however, at such time as the existing aerial facilities are placed underground, Grantee shall likewise place its facilities underground at its sole cost. If City requires utilities to bury lines which are currently overhead, and the City financially participates in said undergrounding, then the City will provide the same reimbursement to the Grantee as other utilities.
- D. Minimum Interference.
1. Grantee shall use its best efforts to give reasonable prior notice to any adjacent private property owners who will be negatively affected or impacted by Grantee's significant work in the Rights-of-Way.
 2. All transmission and distribution structures, lines and equipment erected by Grantee shall be located so as to cause minimum interference with the unencumbered use of Rights-of-Way and other public places and minimum interference with the rights and reasonable convenience of property owners who adjoin any of the Rights-of-Way and public places at the time of placement.
- E. Temporary Relocation.
1. At any time during the Term of the Franchise, Grantee shall, at its own expense, protect, support, temporarily disconnect, relocate or remove any of its property

when, in the opinion of the City, (i) the same is required by reason of traffic conditions, alteration to or establishment of any Rights-of-Way construction, alteration to or establishment of any Rights-of-Way or any facility within the Rights-of-Way, sidewalk, or other public place, including but not limited to, installation of sewers, drains, waterlines, power lines, traffic signal lines or transportation facilities; or (ii) a City project or activity makes disconnection, removal, or relocation necessary or less expensive for City. Notwithstanding the above, if City has funds, or can obtain funds, to reimburse other utilities for temporary or permanent relocation, then Grantee will be reimbursed in the same manner as other utilities.

2. Grantee shall, on request of any Person holding a permit to move a building, temporarily raise or lower its wires to permit the movement of such buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by the Person requesting the same, and Grantee shall have the authority to require such payment in advance. Grantee shall be given not less than ten (10) days advance notice to arrange such temporary wire alterations under normal operating conditions.
- F. Emergency. Whenever, in case of fire or other emergency, it becomes necessary in the judgment of the City Administrator, police chief, fire chief, or their delegates, to remove or damage any of Grantee's facilities, no charge shall be made by Grantee against City for restoration, repair or damages.
 - G. Tree Trimming. Grantee shall comply with all applicable provisions of the Code of Ordinances of the City regarding the trimming of any trees on public property or in the Rights-of-Way.
 - H. Protection of facilities. Nothing contained in this section shall relieve any Person from liability arising out of the failure to exercise reasonable care to avoid damaging Grantee's facilities while performing any work connected with grading, regrading or changing the line of any Rights-of-Way or public place or the construction or reconstruction of any sewer or water system.
 - I. Installation records. Grantee shall keep accurate Installation records of the location of all facilities in the Rights-of-Way and public ways and furnish them to City upon request. Grantee shall cooperate with City to furnish such information in an electronic mapping format, if possible compatible with the then current City electronic mapping format. Upon completion of new or relocation construction of underground facilities in the Rights-of-Way and public ways, Grantee shall provide City with Installation records in an electronic format, if possible compatible with the then current City electronic mapping format, showing the location of the underground and above ground facilities.
 - J. Locating facilities.

1. If, during the design process for public improvements, City discovers a potential conflict with proposed construction, Grantee shall either: (a) locate and, if necessary, expose its facilities in conflict or (b) use a location service under contract with City to locate or expose its facilities. Grantee is obligated to furnish the location information in a timely manner, but in no case longer than thirty (30) days.
2. City reserves the prior and superior right to lay, construct, erect, install, use, operate, repair, replace, remove, relocate, regrade, widen, realign, or maintain any Rights-of-Way and public ways, aerial, surface, or subsurface improvement, including but not limited to water mains, traffic control conduits, cable and devices, sanitary or storm sewers, subways, tunnels, bridges, viaducts, or any other public construction within the Rights-of-Way of City limits.

K. City's rights.

1. When City uses its prior superior right to the Rights-of-Way and public ways, Grantee shall move its property that is located in the Rights-of-Way and public ways, at its own cost unless the relocation is for beautification purposes or utility relocation funds are available, to such a location as City directs. In such instance Grantee will be reimbursed in such a manner as other utilities.
2. Nothing in this Franchise shall be construed to prevent City from constructing, maintaining, repairing or relocating sewers; grading, paving, maintaining, repairing, relocating and/or altering any Right-of-Way; constructing, laying down, repairing, maintaining or relocating any water mains; or constructing, maintaining, relocating, or repairing any sidewalk or other public work.

L. Relocation delays.

1. Subject to Grantee's compliance with Section 3.12 above, if Grantee's relocation effort so delays construction of a public project causing City to be liable for delay damages, Grantee shall reimburse City for those damages attributable to the delay created by Grantee. In the event Grantee should dispute the amount of damages attributable to Grantee, the matter shall be referred to the City engineer for a decision. In the event that Grantee disagrees with the City engineer's decision, the matter shall be submitted to the Mayor for determination, whose decision shall be final and binding upon Grantee as a matter of City review, but nothing herein waives any right of appeal to the courts.
2. In the event City becomes aware of a potential delay involving Grantee's facilities, City shall promptly notify Grantee of this potential delay.

M. Interference with City Facilities. The Installation, use and maintenance of the Grantee's facilities within the Rights-of-Way and public ways authorized herein shall be in such a manner as not to interfere with City's placement, construction, use and maintenance of its Rights-of-Way and public ways, Rights-of-Way lighting, water pipes, drains, sewers,

traffic signal systems or other City systems that have been installed, maintained, or used by City.

- N. **Interference with Utility Facilities.** Grantee agrees not to install, maintain or use any of its facilities in such a manner as to damage or interfere with any existing facilities of any utility located within the Rights-of-Way and public ways of City and agrees to relocate its facilities, if necessary, to accommodate another facility relocation. Nothing in this section is meant to limit any rights Grantee may have under Applicable Laws or this Franchise to be compensated for the cost of relocating its facilities from the utility that is requesting the relocation.
- O. **Collocation.** To maximize public and employee safety, to minimize visual clutter of aerial plant, and to minimize the amount of trenching and excavation in and along City Rights-of-Way and sidewalks for underground plant, Grantee shall make every commercially reasonable effort to collocate compatible facilities within the Rights-of-Way subject to the engineering requirements of the owners of utility poles and other facilities.
- P. **Safety Requirements.**
 - 1. Grantee shall at all times employ ordinary and reasonable care and shall install and maintain in use nothing less than commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage or injuries.
 - 2. Grantee shall install and maintain its System and other equipment in accordance with City's codes and the requirements of the National Electric Safety Code and all other applicable FCC, state and local regulations, and in such manner that they will not interfere with City communications technology related to health, safety and welfare of the residents at the time of Grantee's placement of facilities.
 - 3. Cable System structures, and lines, equipment and connections in, over, under and upon the Rights-of-Way of City, wherever situated or located, shall at all times be kept and maintained in good condition, order, and repair so that the same shall not menace or endanger the health, safety or property of City or any Person.

Section 31. Design Provisions

- A. **System Upgrade/Construction: Minimum Channel Capacity.**
 - 1. Grantee shall operate and maintain for the term of this Franchise a System providing a minimum of 150 channels (750 MHz). Design specifications found in Exhibit D attached hereto are hereby incorporated as part of this Franchise.
 - 2. All final programming decisions remain the discretion of Grantee in accordance with this Franchise, provided that Grantee notifies City and Subscribers in writing thirty (30) days prior to any Channel additions, deletions, or realignments, and further subject to Grantee's signal carriage obligations hereunder and pursuant to

47 U.S.C. § 531-536, and further subject to City's rights pursuant to 47 U.S.C. § 545.

- B. **System Construction.** On or about ten (10) days prior to any system construction, except for maintenance, affected Subscribers will receive a notification, which notification shall include Grantee's telephone number that Subscribers can use to contact Grantee with any questions or concerns they may have. No less than forty-eight (48) hours before construction, all affected houses will receive written notification regarding Grantee's construction schedule which will also include the scope of work to be performed and Grantee's telephone number. Nothing shall prohibit Grantee from consolidating the notices required in this subparagraph.
- C. **Interruption of Service.** Grantee shall interrupt Service only for good cause and for the shortest time possible. Such interruption shall occur during periods of minimum use of the System. If Service is interrupted for a total period of more than twenty-four (24) continuous hours in any thirty (30) day period, Subscribers shall be credited pro rata for such interruption upon request.
- D. **Emergency Alert Capability.** Grantee shall at all times comply with the Emergency Alert System standards pursuant to Title 47, Section 11, Subpart A-E of the Code of Federal Regulations, as may be amended or modified from time to time.
- E. **Technical Standards.** The technical standards used in the operation of the System shall comply, at minimum, with the technical standards promulgated by the FCC relating to Cable Systems pursuant to Title 47, Section 76, Subpart K of the Code of Federal Regulations, as may be amended or modified from time to time, which regulations are expressly incorporated herein by reference. In addition, Grantee is subject to the technical standards outlined in Exhibit D attached hereto.
- F. **Special Testing.**
 - 1. City shall have the right to inspect and test all construction or Installation work performed pursuant to the provisions of the Franchise. In addition, City may require special testing of a location or locations within the System as desired at any time during the term of this Franchise. Demand for such special tests may be made on the basis of complaints received or for routine verification of Grantee's compliance with FCC technical standards. City shall endeavor to so arrange its request for such special testing so as to minimize hardship or inconvenience to Grantee or to the Subscribers caused by such testing
 - 2. Before ordering such tests, Grantee shall be afforded thirty (30) days advance written notice. City shall meet with Grantee prior to requiring special tests to discuss the need for such and, if possible, visually inspect those locations which may be the focus of concern. If, after such meetings and inspections, City wishes to require special tests and the thirty (30) days have elapsed, the tests shall be conducted by Grantee at the party requesting such testing and may be observed by a qualified engineer agreed upon by the Grantee and City. Grantee shall participate

and cooperate in such testing and Grantee's employees shall be the only persons allowed to manipulate the plant for testing.

- G. **FCC Reports.** The results of any tests required to be filed by Grantee with the FCC shall, upon request of the City, also be filed with City or its designee within ten (10) days of the date of request.
- H. **Interconnection.** At the request of the City, Grantee shall make commercially reasonable efforts to interconnect with adjacent Cable Systems to facilitate the two-way distribution of PEG Access Channels and/or Institutional Network. All decisions regarding whether to interconnect and the terms and conditions of any such interconnect shall be a matter of agreement between the cable/video operators involved to include technical and financial feasibility.
- I. **Annexation.** Upon the annexation of any additional land area by the City, if the annexed area is not currently served by a cable operator it will be subject to the other provisions of this Section 4. If the annexed area is served by a cable operator, Grantee has the option to extend its Cable System to the newly annexed area if Grantee determines that it is economically feasible to do so. Upon the annexation of any additional land area by the City, the annexed area shall be subject to all the terms of this Franchise upon ninety (90) days of written notification by the City to Grantee. A cable operator other than Grantee whose Cable System already passes homes in an annexed area shall not extend its Cable System beyond those homes which it passes at the time the annexation occurs unless it otherwise obtains a franchise from the City.
- J. **Lockout Device.** Upon the request of a Subscriber, Grantee shall make available, by sale or lease, a Lockout Device allowing Channels on the System to be blocked.

Section 32. Description of System

- A. The Cable System shall be designed, constructed, routinely inspected, and maintained to guaranty the Cable System meets or exceeds the requirements of the most current additions of the National Electrical Code (NFPA 70) and the National Electrical Safety Code (ANSI C2).
- B. **General Requirements.** Grantee shall use equipment used in high-quality, reliable, modern Cable System of similar design.
- C. **General Description.** The Cable System shall provide Subscribers with a technically advanced and reliable Cable System. The System shall operate with the capability of delivering a minimum of one hundred fifty (150) Channels of programming. The design will provide the benefits of proven one hundred fifty (150) Channel electronics while positioning the System for expansion of Channel capacity as technology and future services develop.

- D. Technical Specifications. The system shall meet or exceed FCC requirements. In no event shall the System fall below the following standards:
1. The System shall be designed such that at a minimum all technical specifications of this Franchise Agreement are met.
 2. The System shall be designed such that no noticeable degradation in signal quality will appear at the Subscriber terminal.

Section 33. Extent of Grant of Franchise; Wireline System and Service.

- A. The Grantee shall have the right and privilege, subject to the permitting and other lawful requirements of City ordinance, rule or procedure, which does require a separate pole attachment agreement for attaching to any City owned poles, to construct, erect, and maintain, in, upon, along, across, above, over and under the Rights-of-Way in City a Cable System and shall have the right and privilege to provide Cable Service. The System constructed and maintained by Grantee or its agents shall not interfere with other uses of the Rights-of-Way. Grantee shall make use of existing poles and other above and below ground facilities available to Grantee to the extent it is technically and economically feasible to do so.
- B. Notwithstanding the above grant to use Rights-of-Way, no Right-of-Way shall be used by Grantee if City determines, in its sole discretion, that such use is inconsistent with the terms, conditions, or provisions by which such Right-of-Way was created or dedicated, or with the present use of the Right-of-Way.
- C. This Franchise shall be nonexclusive, and City reserves the right to grant use of said Rights-of-Way to any Person at any time during the period of this Franchise for the provision of Cable Service.
- D. The Grantee acknowledges and agrees that the City reserves the right to grant one (1) or more additional franchises or other similar lawful authorization to provide Cable Services within the City; provided, If the City enters into any such contract, license, agreement, or similar authorization with a cable or video system operator (without regard to the technology used to deliver such services), which is not an affiliate of Grantee, the terms of that contract, license or agreement shall be on substantially equivalent terms and conditions contained in this agreement or such terms and conditions equitably modified to reflect any differences between the License and any additional license, contract or agreement in terms of benefit to the respective cable or video system, including, but not limited to, such considerations as (i) length of term; (ii) extent of service area; (iii) system design and construction specifications; (iv) the payment of any franchise fees; (v) any payments for the support PEG access programming; (vi) any grants for capital equipment for PEG access programming; (vii) the provision of any service or service connections to schools or public buildings; (viii) the construction of an I-Net; and (ix) customer service standards. To the extent that the terms of the License are less favorable and more burdensome to the Grantee than those of the provision of such subsequent or additional license, contract, or agreement

when such terms are taken as a whole, the City, upon written request of the Grantee, after providing public notice, shall hold a public hearing to afford Grantee the opportunity to demonstrate the disparate nature of the terms of the additional license(s) and, following said hearing, the City shall take actions to rectify said differences, including, but not limited to, amending the additional license, contract, or agreement so that they are not on more favorable or less burdensome terms than the terms of the License or amending this License so that its terms are not less favorable or more burdensome than those of any additional license, contract, or agreement when taken as a whole. In devising an appropriate remedy, the City shall consider that, in certain instances, eliminating ongoing obligations after the implementing construction has been undertaken may be inadequate to provide meaningful relief.

- E. If the Grantor fails to make modifications consistent with this requirement, Grantee's Franchise shall be deemed so modified thirty (30) days after the Grantee's initial written notice. As an alternative to the Franchise modification request, the Grantee shall have the right and may choose to have this Franchise with the Grantor be deemed expired thirty (30) days after written notice to the Grantor. Nothing in this Franchise shall impair the right of the Grantee to terminate this Franchise under the terms of this Section and, at Grantee's option, negotiate a renewal or replacement franchise, license, consent, certificate or other authorization with any appropriate government entity.
- F. Notwithstanding any provision to the contrary, should any non-wireless facilities based entity provide Cable Service within the Franchise Area during the term of this Franchise without a Franchise granted by the City and the City has the legal authority under State and Federal law to impose a Franchise on such entity, then Grantee shall have all rights which may be available to assert, at Grantee's option, that this Franchise is rendered "commercially impracticable," and invoke the modification procedures set forth in Section 625 of the Cable Act.

Section 34. Term of Franchise.

This Franchise shall be in effect for a period of ten (10) years from the date of execution by City, unless sooner extended, renewed, revoked or terminated as herein provided.

Section 35. Franchise Renewal.

Any renewal of this Franchise shall be performed in accordance with Applicable Laws. The term of any renewed Franchise shall be limited to a period not to exceed ten (10) years.

Section 36. Amendment of Franchise Ordinance.

Grantee and City may agree, from time to time, to amend this Franchise. Such written amendments may be made subsequent to a review session pursuant to Section 7 or at any other time if City and Grantee agree that such an amendment will be in the public interest or if such an amendment is

required due to changes in federal, state or local laws; provided, however, nothing herein shall restrict City's exercise of its police powers.

Section 37. System or Service Expansion.

- A. Grantee shall construct and operate its Cable System so as to provide Service to any area of the City where the housing density is thirty (30) housing units or more per mile of cable plant. City Council may grant relief from this requirement for one or more unserved areas within the City if the Grantee provides an explanation acceptable to the City as to why a particular area can not be served.
- B. Where the density is less than that specified above, Grantee shall inform Persons requesting Service of the possibility of paying for Installation or a line extension and shall offer to provide them with a free written estimate of the cost, which shall be provided within fifteen (15) working days of such a request. The charge for Installation or extension for each Person requesting Service shall not exceed a pro rata share of the actual cost of extending the Service.
- C. Any residential and/or commercial unit located within one hundred twenty-five (125) feet of the Grantee's System shall be connected to the System at no charge other than the Standard Installation charge. Grantee shall, upon request by any potential Subscriber residing in City beyond the one hundred twenty-five (125) foot limit, extend Service to such Subscriber provided that the Subscriber shall to pay the net additional Drop costs.
- D. Under Normal Operating Conditions, if Grantee cannot perform Installation within the times specified in applicable customer standards, the Subscriber may request and is entitled to receive a credit equal to the charge for a Standard Installation. For any Installation that is not a free Installation or a Standard Installation, Grantee shall provide the Subscriber with a written estimate of all charges within seven (7) days of a request by the Subscriber. Failure to comply will subject Grantee to appropriate enforcement actions. This section does not apply to the introduction of new products and services when Grantee is utilizing a phased introduction.

Section 38. Occupational Tax.

- A. If the Grantee's office is not located in the City, the Grantee agrees to pay to the City an additional payment which shall be determined by multiplying the City's occupational tax rate by the wages of employees who work in the office and who do not pay the City occupational tax. The base wage used in calculating this payment shall be the same base wage used by the City in calculating its occupational tax.
- B. This payment shall be made on a quarterly basis. The City reserves the right to audit Grantee's books, if City deems it necessary.

Section 39. Franchise Fees.

- A. During the term of the Franchise, Grantee shall pay quarterly to City a Franchise Fee in an amount equal to five percent (5%) of its quarterly Gross Revenues or such other amount allowable by federal law.
- B. Any payments due under this provision shall be payable quarterly. The payment shall be made within forty-five (45) days of the end of each of Grantee's fiscal quarters together with a report showing the basis for the computation in form and substance substantially the same as Exhibit E attached hereto. In the event that a Franchise Fee payment or other sum due is not received by the City on or before the date due, or is underpaid, Grantee shall pay in addition to the payment, or sum due, interest from the due date at an annual rate of prime plus one percent (1%).
- C. All amounts paid shall be subject to audit and recomputation by City and acceptance of any payment shall not be construed as an accord that the amount paid is in fact the correct amount. In the event the City should conduct a review of Grantee's books and records pursuant to Section 7.6 of this Franchise and such review indicates a Franchise Fee underpayment of five percent (5%) or more in an annual period, the Grantee shall assume all reasonable documented costs of such audit and pay same upon demand by the City. City also agrees that an audit of Franchise Fees shall not be conducted more than for a latest five (5) year period from the date of the request by the City as per state law.
- D. Discounted Rates. If Grantee's Subscribers are offered what is, in effect, a discount for bundled services (i.e. Subscribers obtain Cable Services and some other, non-cable goods or services) then, for the purpose of calculated Gross Revenues, the discount shall be applied proportionately to cable and non-cable goods and services subject to the limitations of the billing system employed by Grantee, in accordance with the following example:

Assume a Subscriber's charge for a given month for Cable Service alone would be \$40, for local telephone alone would be \$30, and for high-speed service alone would be \$30, for a total of \$100. In fact, the three (3) services are offered in effect at a combined rate where the Subscriber receives what amounts to a twenty percent (20%) discount from the rates that would apply to a service is purchased individually (i.e. \$80 per month for all three (3) services). This discount (here, \$20) for Gross Revenue computation purposes would be applied pro rata so that Gross Revenues for Cable Service are deemed to be \$32 (\$40 less 20% of \$40). The result would be the same if the Subscriber received a \$20 discount for telephone service on the condition that he or she also subscribes to Cable Service at standard rates.

In no event shall Grantee be permitted to evade or reduce the applicable Franchise Fee payments required to be made to City due to discounted bundled services.

- E. Not Franchise Fees.

1. Grantee acknowledges and agrees that the Franchisee fees payable by Grantee to City pursuant to this section shall take precedence over all other payments, contributions, services, equipment, facilities, support, resources or other activities to be provided or performed by Grantee pursuant to this Franchise and that the Franchise Fees provided for in this section of this Franchise shall not be deemed to be in the nature of a tax, and shall be in addition to any and all taxes of general applicability and other fees and charges which Grantee shall be required to pay to City and/or to any other governmental authority, all of which shall be separate and distinct obligations of Grantee.
2. Grantee shall not apply or seek to apply or make any claim that all or any part of the Franchise Fees or other payments or contributions to be made by Grantee to City pursuant to this Franchise shall be deducted from or credited or offset against any taxes, fees or assessments or general applicability levied or imposed by City or any other governmental authority, including any such tax, fee or assessment imposed on both utilities and cable operators or their services.
3. Grantee shall not apply or seek to apply all or any part of any taxes, fees or assessments of general applicability levied or imposed by the City or any other governmental authority (including any such tax, fee or assessment imposed on both utilities and cable operators or their services) as a deduction or other credit from or against any of the Franchise Fees or other payments or contributions to be paid or made pursuant by Grantee to City under this Franchise which shall be deemed to be separate and distinct obligations of Grantee.

Section 40. Assignment, Transfer or Sale.

- A. The Franchise granted hereunder shall not be assigned, other than to an entity controlling, controlled by, or under common control with the Grantee, without the prior consent of the Grantor, such consent not to be unreasonably withheld or delayed. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or Cable System to secure indebtedness. Within thirty (30) days of receiving a request for transfer, the Grantor shall notify the Grantee in writing of any additional information it reasonably requires to determine the legal, financial and technical qualifications of the transferee. If the Grantor has not taken action on the Grantee's request for transfer within one hundred twenty (120) days after receiving such request, consent by the Grantor shall be deemed given.
- B. In no event shall a sale, transfer, corporate change, or assignment of ownership or control pursuant to subparagraph (a) or (b) of this section be approved without the transferee becoming a signatory to this Franchise and assuming all rights and obligations hereunder, and assuming all other rights and obligations of the Grantee to the City including, but not limited to, any adequate guarantees or other security instruments required by the City.

- C. No Franchise may be transferred if City determines Grantee is in noncompliance of the Franchise unless an acceptable compliance program as been approved by the City. The approval of any transfer of ownership pursuant to this section shall not be deemed to waive any rights of City to subsequently enforce noncompliance issues relating to this Franchise even if such issues predated the approval, whether known or unknown to City.

Section 41. Default of Franchise; Revocation, Termination or Cancellation of Franchise.

- A. In addition to all other rights which City has pursuant to law or equity, City reserves the right to commence proceedings to revoke, terminate or cancel this Franchise, and all rights and privileges pertaining thereto, if it is determined by City that after notice and an opportunity to cure as reordered herein;
1. Grantee has violated material provisions(s) of this Franchise and has not cured; or
 2. Grantee has attempted to evade any of the provisions of this Franchise; or
 3. Grantee has practiced fraud or deceit upon City.
- B. City may revoke this Franchise without the hearing otherwise required herein if Grantee is adjudged a bankrupt.

Section 42. Notice of Violation or Failure to Comply; Hearing.

- A. City shall provide Grantee with written notice of a Franchise violation consistent with Section 8 of this Franchise and shall allow Grantee thirty (30) days subsequent to receipt of the notice in which to correct the violation or to provide adequate assurance of performance in compliance with the Franchise.
- B. Should City determine to proceed with a revocation proceeding, Grantee shall be provided the right to a public hearing affording due process before the City Council prior to the effective date of revocation. City shall provide Grantee with written notice of its decision together with written findings of fact supplementing said decision.
- C. Only after the public hearing and upon written notice of the determination by City to revoke the Franchise may Grantee appeal said decision with an appropriate state or federal court or agency *de novo*.
- D. During the appeal period, the Franchise shall remain in full force and effect unless the term thereof sooner expires or unless continuation of the Franchise would endanger the health, safety and welfare of any Person or the public.

Section 43. Compliance and Performance Evaluations.

- A. City may require evaluation sessions at any time during the term of this Franchise upon fifteen (15) days written notice to Grantee.

- B. Topics which may be discussed at any evaluation session may include, but are not limited to, application of new technologies, System performance, programming offered, access Channels, facilities and support, municipal uses of cable, Subscriber rates, customer complaints, amendments to this Franchise, judicial rulings, FCC rulings, line extension policies and any other topics City deems relevant.
- C. As part of any periodic evaluation proceeding, the City shall have the right to visit and/or inspect the Grantee's headend facility, customer service center and any other facilities of Grantee whether or not located in the City to the extent such facilities are in any way related to Grantee's ability to provide Cable Services to the City.
- D. As a result of a periodic review or evaluation session, upon written notification from City, Grantee shall meet with City and undertake good faith efforts to reach agreement on changes and modifications to the terms and conditions of this Franchise which are both economically and technically feasible as measured over the remaining life of the Franchise.

Section 44. Specific Public, Educational, and Governmental Access Channel Rules for Grantee.

- A. Grantee shall provide to the City at its own expense:
 - 1. one dedicated twelve (12) hour public access channel; and
 - 2. one dedicated twelve (12) hour educational access channel; and
 - 3. one dedicated twelve (12) hour governmental channel.
- B. The requirements detailed in subsection (A) of this Section do not require either separate channels or a specific channel for the City, rather only sufficient channel capacity to accommodate the minimal requirements for PEG access, so long as there is no substantial or on-going scheduling conflict due to lack of capacity or available channel time. In the event there develops such a conflict, Grantee shall provide suitable capacity to alleviate such conflict within sixty (60) days notification.
- C. Both City and Grantee shall review use after every twenty-four (24) months, including the percentage of use of every PEG channel. At the end of each twenty-four (24) month period, the City shall evaluate the response and actual use of such channels. If, after any twenty-four (24) month period, the percentage for use for any required PEG channel drops below twenty-five percent (25%) of the total time allocated, then the required number of hours may be reduced to a number that most closely approximates the average hours of use per day.
- D. If, at any time, seventy-five percent (75%) of the total time allocated for any required PEG channel is consistently used five (5) days a week for a period of three (3) months, then the cable operator shall provide an additional PEG channel if so requested by the City.
- E. Grantee may be required to provide mobile, portable, and stationary equipment dedicated for PEG access, together with the aid of technical and production assistance provided by

Grantee. Grantee shall provide equipment that can store programs for delayed cablecasting. Moreover, the cost of maintenance of such PEG access studio, and equipment required to run the studio, and other PEG access facilities, shall be borne by the Grantee.

- F. For this purposes of this Section, PEG means public, educational, and governmental, and public, educational or governmental access facilities mean channel capacity designated for public, educational or governmental use and facilities and equipment for the use of such channel capacity.

Section 45. Service to Designated Buildings.

- A. Grantee shall provide free of charge throughout the term of this Franchise, Installation of one (1) network Drop, one (1) cable outlet, and one (1) Converter, if necessary, and expanded basic Cable Service offered by Grantee without charge to the institutions identified and such other public institutions subsequently designated by City as determined in City's sole discretion. City acknowledges that cable service shall not be placed in locations for general public viewing and is for the purpose for monitoring the cable service by city employees or for educational use by state accredited schools. Grantee shall be responsible for the costs of extension to subsequently designated institutions for the first one hundred twenty-five (125) feet as measured from Grantee's nearest active distribution connection point. The institution may pay the net additional Drop or extension costs beyond the one hundred twenty-five (125) feet.

City Hall
204 South 7th Street

Opelika Fire Dept. (Headquarters)
604 Avenue B

Opelika Police Department
501 South 10th Street

Opelika Fire Dept. Station 2
1990 Pepperell Parkway

Opelika Public Works
700 Fox Trail

Opelika Fire Dept. Station 3
1900 Palin Avenue

Opelika Parks & Recreation
Sportsplex
1001 Andrews Road

Opelika Fire Dept. Station 4
200 Lake Condry Road

Opelika Parks & Recreation
Covington Center
213 Carver Avenue

City Hall Annex Building
608 Avenue B

Opelika Parks & Recreation
Calhoun Tennis Center
Calhoun Drive

Opelika Parks & Recreation
1102 Denson Drive

Opelika Power Services

Opelika Eastside Treatment Facility

600 Fox Run Parkway

3010 Columbus Parkway

Opelika Westside Treatment Facility
1017 Grand National Parkway

Lewis Cooper Library
200 6th Street

- B. Grantee shall provide the state accredited public schools (K-12) and the library (and its branches) with free cable modem, free Installation and free monthly cable modem/high-speed data of one outlet of service throughout the term of this Franchise.
- C. Additional Subscriber network Drops and/or outlets in any of the locations identified on Exhibit C will be installed by Grantee at the lowest actual cost of Grantee's time and material. Alternatively, said institutions may add outlets at their own expense, as long as such Installation meets Grantee's standards and approval which shall not be unreasonably withheld. Grantee shall have three (3) months from the date of City designation of additional state accredited school or public institutions or relocations to complete construction of the Drop and the outlet unless weather or other conditions beyond the control of Grantee requires more time.

Section 46. Effective Date.

This Ordinance shall become effective upon adoption, approval, and publication as required by law and shall be codified in the Code of Ordinances of the City of Opelika. Upon these requirements being met, the Effective Date shall be specifically added to this Ordinance as the ____ day of _____, 20____.

Section 47. Publication.

This ordinance shall be published in synopsis form in a newspaper of general circulation published in the City of Opelika, Lee County, Alabama, pursuant to §11-45-8(b)(2), *Code of Alabama*. Grantee shall reimburse the City for the cost of publication as it is required by State law.

ADOPTED AND APPROVED this the ____ day of _____, 20____.

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

ATTEST:

CITY CLERK

TRANSMITTED TO MAYOR on this the ____ day of _____, 20____.

CITY CLERK

ACTION BY MAYOR

APPROVED this the ____ day of _____, 20__.

MAYOR

ATTEST:

CITY CLERK

ACCEPTED: This Franchise is accepted, and we agree to be bound by its terms and conditions.

POINT BROADBAND of OPELIKA, LLC

Date: _____

By: _____

Its: _____

SWORN TO BEFORE ME this ____ day of _____, 20__.

NOTARY PUBLIC