



OPELIKA CITY COUNCIL
“ REGULAR MEETING AGENDA “
204 South 7th Street
December 4, 2018
TIME: 7:00 PM

1. CALL TO ORDER
2. ROLL CALL
 1. Patricia Jones, Tiffany Gibson-Pitts, Dozier Smith T, David Canon, Eddie Smith
3. INVOCATION
 1. Pastor Chris Duncan from the Trinity Presbyterian Church.
4. PLEDGE OF ALLEGIANCE
 1. Russell Robinson and Landon Davenport from Jeter Primary School.
5. READING OF MINUTES
 1. Minutes from the 11-20-18 city council meeting.
6. UNFINISHED BUSINESS
7. REMARKS BY THE MAYOR
8. CITIZEN COMMUNICATIONS (Limit comments to five minutes or less)
9. REPORT OF DISBURSEMENTS
10. COMMITTEE REPORTS
11. GENERAL BUSINESS
 1. Request by Sneak and Dawdle LLC for an Alcohol Beverage License.
 2. Request by Remedy Enterprises LLC Dba Resting Pulse Brewing Co. for a Brewpub License.
 3. Public Hearing - Weed Abatement Assessment - 105 Vaughan Ave
 4. Public Hearing - Weed Abatement Assessment - 204 1st Place.
 5. Public Hearing - Weed Abatement Assessment - 411 S 4Th St.
 6. Public Hearing - Weed Abatement Assessment - 504 S 4Th St.
 7. Public Hearing - Weed Abatement Assessment - 1109 Magnolia St.
12. AWARDING OF BIDS
13. RESOLUTIONS
 1. Resolution for Demolition, 112 N. 18Th Place - TABLED
 2. Expense report(s) from various departments.
 3. Designate City Personal Property Surplus and Authorize Disposal

4. Refund of funeral services.
 5. Purchase-Itron TPM Controllers-Sole Source-OPS
 6. Purchase-Itron Meters-Sole Source-OPS
 7. Weed Abatement Assessment - 105 Vaughan Ave
 8. Weed Abatement Assessment - 204 1St Place
 9. Weed Abatement Assessment - 411 S 4th St.
 10. Weed Abatement Assessment - 504 S 4Th St.
 11. Weed Abatement Assessment - 1109 Magnolia St.
 12. Second Amendment to Power Service Contract with AMEA.
 13. CDBG Reprogramming of Unused Funds.
 14. Agreement with Auburn for new Skatepark.
 15. Software & services agreement with Active Network - P/R.
 16. Engagement Letters with Baller Stokes & Lide and CTC Technology / Small Cell Wireless 5G.
-
14. ORDINANCES
 15. APPOINTMENTS
 16. ADJOURN

"In compliance with the Americans with Disabilities Act, the City of Opelika will make reasonable arrangements to ensure accessibility to this meeting. If you need special assistance to participate in this meeting, please contact the ADA Coordinator 72 hours prior to the meeting at (334)705-5130."



City Council
204 South 7Th Street
Opelika, AL

SCHEDULED

CM MINUTES (ID # 3198)

Meeting: 12/04/18 07:00 PM
Department: City Clerk
Category: CM Minutes
Prepared By: Robert Shuman
Initiator: Robert Shuman
Sponsors:

DOC ID: 3198

Minutes from the 11-20-18 city council meeting.



OPELIKA CITY COUNCIL “ REGULAR MEETING MINUTES “

204 South 7th Street

November 20, 2018

TIME: 7:00 PM

1. Call to Order

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

2. Roll Call

Mr. Shuman called the roll and all city council members were present.

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

3. Invocation

Mr. Haygood provided the invocation.

1. Mr. Wesley Haygood from the Pioneer Network.

4. Pledge of Allegiance

City Councilman Dozier Smith T lead the Pledge of Allegiance.

5. Reading of Minutes

1. Minutes from the 11-06-18 city council meeting.

RESULT: APPROVED [UNANIMOUS]

MOVER: David Canon, Council Member

SECONDER: Tiffany Gibson-Pitts, Council Member

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

6. Unfinished Business

7. Remarks By the Mayor

Mayor Fuller thanked Leigh Krehling and her team for the best ever Veterans Day celebration last Saturday in Courthouse Square.

Mayor Fuller presented a proclamation to Pam Powers-Smith, President of the Chamber of Commerce, recognizing small business Saturday on November 20, 2018.

Mayor Fuller also congratulated Leigh Krehling and her team for all the Christmas lighting and decorations in downtown. Opelika has never looked as good as it does right now.

1. October 2018 Monthly Building Report

Mayor Fuller called on Joey Motley, City Administrator, to provide a summary of the October 2018 Building Permit 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. Request by St. Mary Catholic Church for walk and use of parking lot at Floral Park.

RESULT: APPROVED [UNANIMOUS]

MOVER: Dozier Smith T, Council Member

SECONDER: Tiffany Gibson-Pitts, Council Member

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

2. Kabuki Japanese Steak House & Sushi Bar Request Alcohol Beverage License.

RESULT: APPROVED [UNANIMOUS]

MOVER: David Canon, Council Member

SECONDER: Dozier Smith T, Council Member

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

3. Public Hearing for Demolition - 9 Avenue B

President Smith opened the public hearing and asked if there was anyone present that would like to speak for or against said demolition. No one came forward to speak. President Smith closed the public hearing.

4. Public Hearing for Demolition - 112 N. 18Th Place

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

Janet Watson spoke on behalf of the property owner who speaks Spanish. They purchase the property in May 2018 along with the lot next to it. They want to put the two lots together and working on getting a survey.

Jeff Kappelman said they are making progress on renovating the building and recommended the resolution be Tabled.

President Smith closed the public hearing.

5. Public Hearing for Demolition - 206 Byrd Avenue

President Smith opened the public hearing and asked if there was anyone present that would like to speak for or against said demolition. No one came forward to speak. President Smith closed the public hearing.

6. Public Hearing for Demolition - 1003 Alton Court

President Smith opened the public hearing and asked if there was anyone present that would like to speak for or against said demolition. No one came forward to speak. President Smith closed the public hearing.

7. Public Hearing for Demolition - 1408 Monroe Avenue

President Smith opened the public hearing and asked if there was anyone present that would like to speak for or against said demolition. No one came forward to speak. President Smith closed the public hearing.

8. Public Hearing for Demolition - 1805 1St Avenue

President Smith opened the public hearing and asked if there was anyone present that would like to speak for or against said demolition. No one came forward to speak. President Smith closed the public hearing.

9. Request from Main Street - annual Christmas in a Railroad Town.

RESULT: APPROVED [UNANIMOUS]

MOVER: Tiffany Gibson-Pitts, Council Member

SECONDER: Patricia Jones, President Pro-Tem

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

12. Awarding of Bids

1. Bids 300-18 Three (3) 2019 SUVs Equal to Chevy Tahoe - PD

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 301-18 Expense reports from various departments.
RESULT: APPROVED [UNANIMOUS]
MOVER: Dozier Smith T, Council Member
SECONDER: Patricia Jones, President Pro-Tem
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith
2. Resolution 302-18 Designate City Personal Property Surplus and Authorize Disposal
RESULT: APPROVED [UNANIMOUS]
MOVER: David Canon, Council Member
SECONDER: Tiffany Gibson-Pitts, Council Member
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith
3. Resolution 303-18 Resolution for Demolition - 9 Avenue B
RESULT: APPROVED [UNANIMOUS]
MOVER: Tiffany Gibson-Pitts, Council Member
SECONDER: Dozier Smith T, Council Member
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith
4. Resolution Resolution for Demolition - 112 N. 18Th Place
RESULT: TABLED [UNANIMOUS]
MOVER: Patricia Jones, President Pro-Tem
SECONDER: Tiffany Gibson-Pitts, Council Member
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith
5. Resolution 304-18 Resolution for Demolition - 206 Byrd Avenue
RESULT: APPROVED [UNANIMOUS]
MOVER: Dozier Smith T, Council Member
SECONDER: David Canon, Council Member
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith
6. Resolution 305-18 Resolution for Demolition - 1003 Alton Court
RESULT: APPROVED [UNANIMOUS]
MOVER: Patricia Jones, President Pro-Tem
SECONDER: Tiffany Gibson-Pitts, Council Member
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith
7. Resolution 306-18 Resolution for Demolition - 1408 Monroe Avenue
RESULT: APPROVED [UNANIMOUS]
MOVER: David Canon, Council Member
SECONDER: Dozier Smith T, Council Member
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith
8. Resolution 307-18 Resolution for Demolition - 1805 1St Avenue

- RESULT:** **APPROVED [UNANIMOUS]**
MOVER: Dozier Smith T, Council Member
SECONDER: Tiffany Gibson-Pitts, Council Member
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith
9. Resolution 308-18 Designate Troy Bank & Trust as a City depository.
RESULT: **APPROVED [UNANIMOUS]**
MOVER: Patricia Jones, President Pro-Tem
SECONDER: David Canon, Council Member
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith
10. Resolution 309-18 Annual appropriation contract with American Red Cross.
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 310-18 Annual appropriation contract, Arts Association of East Alabama.
RESULT: **APPROVED [UNANIMOUS]**
MOVER: Dozier Smith T, Council Member
SECONDER: Tiffany Gibson-Pitts, Council Member
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith
12. Resolution 311-18 Memo of Understanding with CoachSafely Foundation.
RESULT: **APPROVED [UNANIMOUS]**
MOVER: Tiffany Gibson-Pitts, Council Member
SECONDER: Dozier Smith T, Council Member
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith
13. Resolution 312-18 Sportsplex Road Final Change Order
RESULT: **APPROVED [UNANIMOUS]**
MOVER: David Canon, Council Member
SECONDER: Patricia Jones, President Pro-Tem
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith
14. Resolution 313-18 Subdivision Infrastructure Acceptance
RESULT: **APPROVED [UNANIMOUS]**
MOVER: Dozier Smith T, Council Member
SECONDER: David Canon, Council Member
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith
15. Resolution 314-18 ALDOT Agreement for HSIP Project
Ms. Jones asked for the word "South" be added so it states South 4th, 6th and 7th Street.
RESULT: **APPROVED [UNANIMOUS]**
MOVER: Patricia Jones, President Pro-Tem
SECONDER: Tiffany Gibson-Pitts, Council Member
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith
16. Resolution 315-18 ALDOT Agreement for MPO Project

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

17. Resolution 316-18 Special appropriation, J.W. Darden - annual black tie gala.

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

14. Ordinances

1. Ordinance 025-18-ORD Amend Zoning Ord & Map, 2012 Frederick Road, R-5 to C-2, GC-P - 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 026-18-ORD Request Annexation, 19.9 Acres, 4100 Block Andrews Road, Robin Sanders - 2nd Reading.

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

3. Ordinance 027-18-ORD Change the January 1, 2019 council meeting date - 2nd Reading.

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

15. Appointments

16. Adjourn

The City Council meeting minutes of November 20, 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.

The council meeting ended at 7:33 pm.

RESULT: **APPROVED [UNANIMOUS]**

MOVER: Patricia Jones, President Pro-Tem

SECONDER: Dozier Smith T, Council Member

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



City Council
204 South 7Th Street
Opelika, AL

SCHEDULED

Meeting: 12/04/18 07:00 PM
Department: Purchasing and Revenue
Category: Business & Alcohol License
Prepared By: Martha Wright

Initiator: Lillie Finley

Sponsors:

GENERAL BUSINESS (ID # 3195)

DOC ID: 3195

Request by Sneak and Dawdle LLC for an Alcohol Beverage License.



City Council
204 South 7Th Street
Opelika, AL

SCHEDULED

Meeting: 12/04/18 07:00 PM
Department: Purchasing and Revenue
Category: Business & Alcohol License
Prepared By: Martha Wright

Initiator: Lillie Finley

Sponsors:

GENERAL BUSINESS (ID # 3199)

DOC ID: 3199

Request by Remedy Enterprises LLC Dba Resting Pulse Brewing Co. for a Brewpub License.



City Council
204 South 7Th Street
Opelika, AL

SCHEDULED

Meeting: 12/04/18 07:00 PM
Department: Purchasing and Revenue
Category: Public Hearing
Prepared By: Jerry Bush
Initiator: Lillie Finley
Sponsors:

GENERAL BUSINESS (ID # 3166)

DOC ID: 3166

Public Hearing - Weed Abatement Assessment - 105 Vaughan Ave

WEED ABATEMENT INVOICE

Date: 11/08/2018

**To: State of Alabama
PO Box 327210
Montgomery Al. 36132**

**Property Address:
105 Vaughan Ave
Opelika Al. 36801
Parcel # 10-04-18-1-001-077.000**

On October 10, 2018 in accordance with Opelika City Ordinance 110-12, a notice was sent informing the owner that of a weed violation at the above listed property address. After failing to correct the violation within the time specified in the notice, the City of Opelika abated the violation.

The following is a list of charges that City of Opelika incurred for the abatement:

Cost of Abatement:	<u>192.50</u>
Certified mail:	<u>13.34</u>
Misc.	<u> </u>
Total	<u>205.84</u>

Attachment: WEED INVOICE 105 Vaughan Ave (3166 : Public Hearing - Weed Abatement Assessment - 105 Vaughan Ave)

To: **State of Alabama**
PO Box 327210
Montgomery Al. 36132

**NOTICE OF PUBLIC HEARING ON COST OF
 ABATEMENT OF WEED NUISANCE LOCATED AT
 105 Vaughan Ave Parcel# 10-04-18-1-001-077.000**

=====

NOTICE IS HEREBY GIVEN that the weed nuisance growing upon or in front of the property located at 105 Vaughan Ave, Parcel No. 077.000 in the City of Opelika has been abated by the removal of the noxious or dangerous weeds, and the Mayor has therefore submitted to the City Council an itemized report (attached) in writing showing the cost of removing said nuisance. The total cost of abating such nuisance in front of or upon the above described property is \$205.84.

Notice is also given that the City Council of the City of Opelika will meet to hear and to determine any objections or defenses that may be raised by any of the property owners liable to be assessed of the work of abating such nuisance at 7:00 p.m. in the Council Chambers of the Municipal Building, 204 South 7th Street, Opelika, Alabama, on the 4th day of December, 2018.

You are further notified that the cost of abating such nuisance, if confirmed by the City Council, shall constitute a weed lien on said property and shall be turned over to the Revenue Commissioner of Lee County, Alabama to add the amount of such weed lien to the next regular bill of taxes levied against said property.

Dated this the 8th day of November, 2018.

 Jerry Bush
 Code Compliance Officer

Cc: Joey Motley – City Administrator
 Guy Gunter – City Attorney
 Lillie Finley – Revenue Manager



City Council
204 South 7Th Street
Opelika, AL

SCHEDULED

Meeting: 12/04/18 07:00 PM
Department: Purchasing and Revenue
Category: Public Hearing
Prepared By: Jerry Bush
Initiator: Lillie Finley
Sponsors:
DOC ID: 3168

GENERAL BUSINESS (ID # 3168)

Public Hearing - Weed Abatement Assessment - 204 1st Place.

WEED ABATEMENT INVOICE

Date: 11/8/2018

**To: Susan Sullivanne
1980 Canary Dr.
Auburn Al. 36830**

**Property Address:
204 S 1st. Place
Opelika, Al. 36801
Parcel #
10-03-08-2-002-094.001**

On October 10, 2018 in accordance with Opelika City Ordinance 110-12, a notice was sent informing the owner that of a weed violation at the above listed property address. After failing to correct the violation within the time specified in the notice, the City of Opelika abated the violation.

The following is a list of charges that City of Opelika incurred for the abatement:

Cost of Abatement:	<u>87.50</u>
Certified mail:	<u>13.34</u>
Misc.	<u> </u>
Total	<u>100.84</u>

Attachment: WEED INVOICE 204 1st PI (3168 : Public Hearing - Weed Abatement Assessment - 204 1St Place)

To: Susan Sullivanne
1980 Canary Dr.
Auburn Al. 36830

**NOTICE OF PUBLIC HEARING ON COST OF
ABATEMENT OF WEED NUISANCE LOCATED AT
204 S 1st Place, Parcel 43-10-03-08-2-002-094.001**

=====

NOTICE IS HEREBY GIVEN that the weed nuisance growing upon or in front of the property located at 204 1st Place, Parcel No. 094.001 in the City of Opelika has been abated by the removal of the noxious or dangerous weeds, and the Mayor has therefore submitted to the City Council an itemized report (attached) in writing showing the cost of removing said nuisance. The total cost of abating such nuisance in front of or upon the above described property is \$100.84.

Notice is also given that the City Council of the City of Opelika will meet to hear and to determine any objections or defenses that may be raised by any of the property owners liable to be assessed of the work of abating such nuisance at 7:00 p.m. in the Council Chambers of the Municipal Building, 204 South 7th Street, Opelika, Alabama, on the 4th day of December, 2018.

You are further notified that the cost of abating such nuisance, if confirmed by the City Council, shall constitute a weed lien on said property and shall be turned over to the Revenue Commissioner of Lee County, Alabama to add the amount of such weed lien to the next regular bill of taxes levied against said property.

Dated this the 8th day of November, 2018.

Jerry Bush
Code Compliance Officer

Cc: Joey Motley – City Administrator
Lillie Finley – Purchasing-Revenue Manger
Guy. F. Gunter, III – City Attorney



City Council
204 South 7Th Street
Opelika, AL

SCHEDULED

GENERAL BUSINESS (ID # 3175)

Meeting: 12/04/18 07:00 PM
Department: Purchasing and Revenue
Category: Public Hearing
Prepared By: Jerry Bush
Initiator: Lillie Finley
Sponsors:

DOC ID: 3175

Public Hearing - Weed Abatement Assessment - 411 S 4Th St.

WEED ABATEMENT INVOICE**Date: 11/14/2018****To: State of Alabama
PO Box 327210
Montgomery Al. 36132****Property Address:
411 S 4th St
Opelika Al. 36801
Parcel # 10-03-08-3-000-028.000**

On September 21, 2018 in accordance with Opelika City Ordinance 110-12, a notice was sent informing the owner that a weed violation at the above listed property address. After failing to correct the violation within the time specified in the notice, the City of Opelika abated the violation.

The following is a list of charges that City of Opelika incurred for the abatement:

Cost of Abatement:	<u>130.55</u>
Certified mail:	<u>13.34</u>
Misc.	<u> </u>
Total	<u>143.89</u>

Attachment: WEED INVOICE 411 S 4th St. (3175 : Public Hearing - Weed Abatement Assessment - 411 S 4Th St.)

To: State of Alabama
 PO Box 327210
 Montgomery Al 36132

**NOTICE OF PUBLIC HEARING ON COST OF
 ABATEMENT OF WEED NUISANCE LOCATED AT
 411 S 4th St. Parcel 10-03-08-3-000-028.000**

=====

NOTICE IS HEREBY GIVEN that the weed nuisance growing upon or in front of the property located at 411 S 4th St., Parcel No. 028.000 in the City of Opelika has been abated by the removal of the noxious or dangerous weeds, and the Mayor has therefore submitted to the City Council an itemized report (attached) in writing showing the cost of removing said nuisance. The total cost of abating such nuisance in front of or upon the above described property is \$143.89.

Notice is also given that the City Council of the City of Opelika will meet to hear and to determine any objections or defenses that may be raised by any of the property owners liable to be assessed of the work of abating such nuisance at 7:00 p.m. in the Council Chambers of the Municipal Building, 204 South 7th Street, Opelika, Alabama, on the 4th day of December, 2018.

You are further notified that the cost of abating such nuisance, if confirmed by the City Council, shall constitute a weed lien on said property and shall be turned over to the Revenue Commissioner of Lee County, Alabama to add the amount of such weed lien to the next regular bill of taxes levied against said property.

Dated this the 14th day of November, 2018.

 Jerry Bush
 Code Compliance Officer

Cc: Joey Motley – City Administrator
 Lillie Finley – Purchasing-Revenue Manger
 Guy. F. Gunter, III – City Attorney



City Council
204 South 7Th Street
Opelika, AL

SCHEDULED

GENERAL BUSINESS (ID # 3180)

Meeting: 12/04/18 07:00 PM
Department: Purchasing and Revenue
Category: Public Hearing
Prepared By: Jerry Bush
Initiator: Lillie Finley
Sponsors:
DOC ID: 3180

Public Hearing - Weed Abatement Assessment - 504 S 4Th St.

WEED ABATEMENT INVOICE**Date: 11/14/2018****To: State of Alabama
PO Box 327210
Montgomery Al. 36132****Property Address:
504 S 4th St
Opelika Al. 36801
Parcel # 10-03-08-3-000-104.000**

On September 21, 2018 in accordance with Opelika City Ordinance 110-12, a notice was sent informing the owner that a weed violation at the above listed property address. After failing to correct the violation within the time specified in the notice, the City of Opelika abated the violation.

The following is a list of charges that City of Opelika incurred for the abatement:

Cost of Abatement: 365.00Certified mail: 13.34Misc. Total 378.34

Attachment: WEED INVOICE 504 S 4th St. (3180 : Public Hearing - Weed Abatement Assessment - 504 S 4Th St.)

To: State of Alabama
 PO Box 327210
 Montgomery Al 36132

**NOTICE OF PUBLIC HEARING ON COST OF
 ABATEMENT OF WEED NUISANCE LOCATED AT
 504 S 4th St. Parcel 10-03-08-3-000-104.000**

=====

NOTICE IS HEREBY GIVEN that the weed nuisance growing upon or in front of the property located at 504 S 4th St., Parcel No. 104.000 in the City of Opelika has been abated by the removal of the noxious or dangerous weeds, and the Mayor has therefore submitted to the City Council an itemized report (attached) in writing showing the cost of removing said nuisance. The total cost of abating such nuisance in front of or upon the above described property is \$378.34.

Notice is also given that the City Council of the City of Opelika will meet to hear and to determine any objections or defenses that may be raised by any of the property owners liable to be assessed of the work of abating such nuisance at 7:00 p.m. in the Council Chambers of the Municipal Building, 204 South 7th Street, Opelika, Alabama, on the 4th day of December, 2018.

You are further notified that the cost of abating such nuisance, if confirmed by the City Council, shall constitute a weed lien on said property and shall be turned over to the Revenue Commissioner of Lee County, Alabama to add the amount of such weed lien to the next regular bill of taxes levied against said property.

Dated this the 14th day of November, 2018.

 Jerry Bush
 Code Compliance Officer

Cc: Joey Motley – City Administrator
 Lillie Finley – Purchasing-Revenue Manger
 Guy. F. Gunter, III – City Attorney



City Council
204 South 7Th Street
Opelika, AL

SCHEDULED

Meeting: 12/04/18 07:00 PM
Department: Purchasing and Revenue
Category: Public Hearing
Prepared By: Jerry Bush
Initiator: Lillie Finley
Sponsors:

GENERAL BUSINESS (ID # 3177)

DOC ID: 3177

Public Hearing - Weed Abatement Assessment - 1109 Magnolia St.

WEED ABATEMENT INVOICE

Date: 11/14/2018

**To: State of Alabama
PO Box 327210
Montgomery Al. 36132**

**Property Address:
1109 Magnolia St
Opelika Al. 36801
Parcel # 10-04-18-2-001-022.000**

On October 3, 2018 in accordance with Opelika City Ordinance 110-12, a notice was sent informing the owner that a weed violation at the above listed property address. After failing to correct the violation within the time specified in the notice, the City of Opelika abated the violation.

The following is a list of charges that City of Opelika incurred for the abatement:

Cost of Abatement: 203.70

Certified mail: 13.34

Misc.

Total 217.04

Attachment: WEED INVOICE 1109 Magnolia St (3177 : Public Hearing - Weed Abatement Assessment - 1109 Magnolia St.)

To: State of Alabama
 PO Box 327210
 Montgomery Al. 36132

**NOTICE OF PUBLIC HEARING ON COST OF
 ABATEMENT OF WEED NUISANCE LOCATED AT
 1109 Magnolia St. Parcel 10-04-18-2-001-022.000**

=====

NOTICE IS HEREBY GIVEN that the weed nuisance growing upon or in front of the property located at 1109 Magnolia St, Parcel No. 022.000 in the City of Opelika has been abated by the removal of the noxious or dangerous weeds, and the Mayor has therefore submitted to the City Council an itemized report (attached) in writing showing the cost of removing said nuisance. The total cost of abating such nuisance in front of or upon the above described property is \$217.04.

Notice is also given that the City Council of the City of Opelika will meet to hear and to determine any objections or defenses that may be raised by any of the property owners liable to be assessed of the work of abating such nuisance at 7:00 p.m. in the Council Chambers of the Municipal Building, 204 South 7th Street, Opelika, Alabama, on the 4th of day December, 2018.

You are further notified that the cost of abating such nuisance, if confirmed by the City Council, shall constitute a weed lien on said property and shall be turned over to the Revenue Commissioner of Lee County, Alabama to add the amount of such weed lien to the next regular bill of taxes levied against said property.

Dated this the 14th day of November, 2018.

 Jerry Bush
 Code Compliance Officer

Cc: Joey Motley – City Administrator
 Lillie Finley – Manager Revenue & Purchasing
 Guy. F. Gunter, III – City Attorney

RESOLUTION NO. (ID # 3102)

Resolution for Demolition, 112 N. 18Th Place - TABLED

RESOLUTION NO. _____

**RESOLUTION ORDERING THE DEMOLITION OF A BUILDING OR
STRUCTURE LOCATED AT 112 N. 18TH PLACE, OPELIKA, ALABAMA 36801,
PARCEL ID NO.: 43-09-06-13-2-000-093.000 IN COMPLIANCE WITH SECTIONS
11-40-30 THROUGH 11-40-36, SECTIONS 11-53B-1 THROUGH 11-53B-16,
INCLUSIVE, OF THE *CODE OF ALABAMA*, AND IN COMPLIANCE WITH
ORDINANCE NO. 116-15.
OF THE CITY OF OPELIKA, ALABAMA**

WHEREAS, the Building Official of the City of Opelika, Alabama, determined that the condition of the building or structure located at 112 N. 18th Place, Opelika, Alabama, 36801, Parcel I.D. Number: 43-09-06-13-2-000-093.000, (hereinafter the Subject Property”) is in such condition as to make it dangerous to the life, health, property, morals, safety or general welfare of the public or the occupants; and

WHEREAS, Ingrid Elizabeth Gomez Gramajo is the record owner of the above-described property as shown from a search of records of the Office of the Judge of Probate of Lee County, Alabama; and

WHEREAS, Ingrid Elizabeth Gomez Gramajo is the person last assessing the subject property for state taxes; and

WHEREAS, a “Notice of Dangerous Building, Finding of Public Nuisance and Order to Remedy” was sent via certified mail, properly addressed, and postage prepaid to Ingrid Elizabeth Gomez Gramajo, 1815 1st Avenue, Opelika, AL 36801; and

WHEREAS, contemporaneous with the filing of the “Notice of Dangerous Building, Finding of Public Nuisance and Order to Remedy”, a copy of the same was posted at or within three (3) feet of an entrance to the building on the subject property; and

WHEREAS, a Lis Pendens Notice was duly filed of record in the Office of the Judge of Probate of Lee County, Alabama, as required by Ordinance No. 116-15; and

WHEREAS, notice that the subject property is a dangerous building because it is unsafe to the extent that it is a public nuisance and is subject to demolition and that a public hearing would be held on a certain date was given to all interested parties as required by law; and

WHEREAS, Tuesday, November 20, 2018, at 7:00 p.m. in the City Council Chambers of the Municipal Building, 204 South 7th Street, Opelika, Lee County, Alabama, was fixed as the time and place when and where the City Council will meet to determine whether or not the building located at 112 N. 18th Place is unsafe to the extent that it creates a public nuisance; and

WHEREAS, the City Council of the City of Opelika met on Tuesday, November 20, 2018, at the aforesaid time and place for the purpose of conducting said public hearing; and

WHEREAS, the President of the City Council of the City of Opelika presided over said public hearing and opened the floor for comments from the public and any persons interested in the real property located at 112 N. 18th Place, Opelika, Alabama; and

WHEREAS, the City Council has considered all of the evidence and other matters in relation to said alleged public nuisance.

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

1. The City Council hereby finds and determines that the building or structure located at 112 N. 18th Place, Opelika, Alabama, Parcel I.D. Number: 43-09-06-13-2-000-093.000, is unsafe to the extent that it creates a public nuisance to the citizens of Opelika, Alabama, and is due to be condemned and demolished in compliance with §§11-40-30 through 11-40-36 and §§11-53B-1 through 11-53B-16, inclusive of the *Code of Alabama*, and Ordinance No. 116-15 of the City of Opelika, Alabama, which Ordinance is codified at Sections 5-221 through 5-238, inclusive of the *Code of Ordinances* of the City of Opelika, Alabama. The property referred to above is more particularly described as follows:

Lots 69 and 70 in Five Points Subdivision, as shown by a map or plat of said Subdivision, recorded in the Office of the Judge of Probate of Lee County, Alabama, in Town Plat Book 3, Page 67; together with all improvements thereon and appurtenances thereunto appertaining; subject, however, to the existing right-of-way easements granted to Alabama Power Company for electric power lines, poles, appliances, which extends across the above-described property.

Also being further described as Parcel Number 43-09-06-13-2-000-093.000, according to records maintained in the Lee County Revenue Commissioner's Office.

2. The Mayor is hereby authorized and directed to cause said building or structure to be demolished and removed after the expiration of twenty (20) days from the date of this resolution if an appeal has not been taken to the Circuit Court. The demolition may be accomplished by the municipality by the use of its own forces, or it may be provided by contract for the demolition. The municipality may sell or otherwise dispose of salvaged materials resulting from the demolition. All employees, contractors and duly authorized agents of the City are authorized to enter upon said property for said purpose.

3. Any person aggrieved by the decision of the City Council may, within ten (10) days hereafter, appeal to the Circuit Court upon filing with the Clerk of the Court notice of appeal and a bond for security of costs in the form and amount approved by the Circuit Clerk.

4. Upon the demolition and removal of said building or structure, the Building Official shall make a report to the City Council of the cost. The City Council shall thereafter adopt a resolution fixing the costs which it finds were reasonably incurred in the demolition and removal of said building or structure and assess the costs against said property. The proceeds of any monies received from the sale of salvaged materials from the building or structure shall be used or applied against the cost of the demolition and removal. The fixing of costs by the City Council shall constitute a special assessment against the lot or lots, parcel, or parcels of land upon which the building or structure was located and shall constitute a lien on the property for the amount of the assessment.

5. The City Clerk is hereby directed to mail, by certified mail, a copy of this resolution to the owner of the property as the information appears on the records of the office of the Revenue Commissioner and in the Office of the Judge of Probate of Lee County, Alabama.

ADOPTED AND APPROVED this the ____ day of _____ 2018.

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

ATTEST:

CITY CLERK

Cc: Ingrid Elizabeth Gomez Gramajo
1815 1st Avenue
Opelika, AL 36801

RESOLUTION NO. 317-18

Expense report(s) from various departments.

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
-----	-----	-----
Lori Huguley	ED	367.50

-) 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

Department Econ Dev

11/20/2018

[illegible]

WEEKLY TOTAL EXPENSES

[illegible]

NUMBER OF DAYS AWAY FROM HOME

NUMBER OF DAYS AWAY ON PERSONAL AFFAIRS 0 Days

% OF TOTAL DAYS AWAY FOR PERSONAL AFFAIRS 0%

NATURE OR PURPOSE OF TRAVEL

flight for ED trip

METHOD OF REIMBURSEMENT

☐ DEDUCT FROM MY ADVANCE☒ MAIL: TO

ITEMIZED AUTOMOBILE EXPENSES		
DATE	MILEAGE, GAS, PARKING REPAIRS, ETC.	AMOUNT

ITEMIZED MISCELLANEOUS EXPENSES		
DATE	ITEMS	AMOUNT
	Agree To P.O. _____	
	Exds Verified _____	
	Footings Verified _____	
	Inv. Price Bto Price _____	

~~Agree To P.O.~~

Exts Verified

Footings Verified

Inv. Price Bio Price

~~Ok To Pay~~

A/C # Verified

SIGNATURE

APPROVED BY _____

RESOLUTION NO. 318-18

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.	2007 Freightliner Bucket Truck 1FVACXCS37HY89605	87002489

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. 319-18

Refund of funeral services.

Resolution No. _____

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

- 1) That Lillie Finley, Purchasing- Revenue Manager, has investigated and confirmed that said refund request is valid and recommends approval.
- 2) That the Purchasing-Revenue Manager is hereby authorized to prepare and process the appropriate documents so a refund check in the amount of \$600.00 can be printed payable to Winfred A. Madden, 2114 Henderson Drive, Opelika, AL 36801 for the cancellation of funeral services.
- 3) That the City Clerk is hereby authorized to sign, and mail said check to the address as detailed in number 2 above.
- 4) That a copy of the Purchasing-Revenue Manager's recommendation is hereto attached as Exhibit "A".

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

C.E. "Eddie" Smith, Jr.

President of the City Council of the

City of Opelika, Alabama

ATTEST:

Robert G. Shuman, CMC

City Clerk - Treasurer

RESOLUTION NO. 320-18

Purchase-Itron TPM Controllers-Sole Source-OPS**RESOLUTION NO. _____**

WHEREAS, the Opelika Power Services Department desires to purchase Itron TPM controllers and their related equipment for the Tantalus TUNet Smart Grid System; and

WHEREAS, this is a sole source purchase; and

WHEREAS, Tantalus Systems, Inc. is the sole vendor; 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 Tantalus Systems, Inc.
2. That the Purchasing-Revenue Manager be authorized to issue a purchase order to Tantalus Systems, Inc. as a sole source purchase not to exceed \$266,500.00.
3. The Controller is authorized to adjust the budget as necessary for 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

CITY OF OPELIKA
Sole Source Justification

DEPARTMENT Opelika Power Services

REQUISITION NUMBER _____

NAME OF REQUESTING EMPLOYEE Jessica Hodnett

VENDOR Tantalus 7560

PRODUCT/SERVICE Electric Metering System Used By OPS: TPM Control and Remote
Disconnect C2SXD-240V For Itron Meter

Estimated annual expenditure for the commodity or service \$ 266,500.00

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 OPS Metering Department or perform the intended function. (Attach memorandum with details of specialized function(s) or application.) _____
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

Debra S. Lee

DEPARTMENT/DIVISION/DATE

OPS11/28/2018**PURCHASING DEPARTMENT USE ONLY**PURCHASING AGENT APPROVAL
(SIGNATURE/DATE)[Signature] . 11/28/18

DISAPPROVAL/DATE

COMMENTS

COUNCIL ACTION/DATE



Tantalus Systems Inc. 1130 Situs Court, Situs 1, Suite 230 Raleigh, NC 27606 USA
P: 919.900.8970 | F: 919.900.8978 www.tantalus.com

November 20, 2018

City of Opelika - Light & Power Department
1010 Avenue C
Opelika, AL 36801

VIA ELECTRONIC MAIL ONLY TO: Stacey.Bryson@opelikapower.com
Brent.Poteet@opelikapower.com

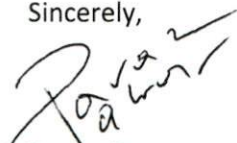
Re: Tantalus Systems Inc. ("Tantalus") - Sole Provider of TUNet®

To Whom It May Concern:

Please note that Tantalus, in cooperation with its partners, is the original manufacturer and sole provider of TUNet®, a multi-purpose Smart Grid solutions platform for Advanced Metering, Demand Response & Distribution Automation and its related software, hardware and meter communications modules. TUNet enables electric, water & gas municipal and cooperative utilities to automate processes, improve business operations and deliver top-tier customer service to the electric, water and gas utility market throughout North America and various world markets.

Should you require additional information or clarification, please do not hesitate to contact us.

Sincerely,



Param Pawar
VP, Finance

PP/etg

cc: Judy Ward, Account Manager – Tantalus Systems Inc.
Michael Grandis, General Counsel – Tantalus Systems Inc.

Attachment: 12-4-18 - TANTALUS TUNET SMART GRID SYS-ITRON TPM CONTROLLERS-SOLE SOURCE-CNCL PKT (320-18 : Purchase-Ittron



November 1, 2018

Brent Poteet
(334) 705-5572
brent.poteet@opelikapower.com

Opelika Light & Power
600 Fox Run Pkwy
Opelika, Alabama 36801
United States

Judy Ward
jforward@tantalus.com

Tantalus Systems
1130 Situs Ct
Suite 230
Raleigh, North Carolina 27606
United States

SUMMARY

PRODUCT	DESCRIPTION	SALES PRICE	QTY	TOTAL PRICE
TC-1216	TPM Controller - Itron CENTRON (240 V)	\$65.00	500	\$32,500.00
TC-1220-RD	TPM Controller - Itron CENTRON C2SXD - 240V	\$65.00	4,000	\$260,000.00
Total:				\$292,500.00
Discount:				<u>- \$26, 000.00</u>
Discount Total:				\$266,500.00

NOTES:

Tantalus agrees to a one time project discount for this order if places by 12/31/18

- Prices are in US Dollars and are exclusive of taxes, duties, freight, or insurance.
- Price does not include shipping. All products are shipped FOB Origin.
- Service time does not include installation of meters, collectors, repeaters, or other infrastructure equipment.
- Tantalus service time will be billed at actual. If additional days are necessary, Customer will be billed at the rate of \$1,500.00 per day.
- This quotation may contain allowances, discounts and/or promotional pricing. The prices quoted are valid for 30 days from the date of this quote.
- Additional equipment purchases and services shall be invoiced at Tantalus' then current List Price.
- Annual license and support and maintenance fees apply. Please work with your account representative to determine specific costs for your equipment.

The attached document Tantalus Systems Inc. Terms and Conditions of Sale is incorporated into and forms an integral part of this quotation.

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**TANTALUS SYSTEMS INC.
TERMS AND CONDITIONS OF SALE
(04152018)**

Purpose/Goal. These Terms and Conditions of Sale ("Terms") record the terms and conditions under which Customer agrees to purchase from Tantalus, and Tantalus agrees to sell to Customer, TUNet. Notwithstanding any other provision to the contrary, these Terms become a binding agreement between Tantalus Systems, Inc. (Tantalus) and the Customer when (a) Customer delivers a signed copy of this quotation to Tantalus, which shall be deemed a duly authorized Purchase Order (PO) for the Network Equipment and Services quoted therein; (b) Customer delivers a signed Purchase Order for all or any portion of the Network Equipment and Services or (c) Tantalus ships or provides all or any portion of the Network Equipment or Services covered by this quotation. Except as provided above, any provision in any acceptance or acknowledgment hereof, inconsistent with or in addition to these Terms and Conditions of Sale, are expressly rejected and shall have no force or effect, unless otherwise agreed in writing between the parties. Notwithstanding the foregoing, acceptance of these Terms indicates Customer's agreement to execute such additional documents, as required, including, without limitation, the terms, conditions and responsibilities of each party relating to the license and use of the Licensed Software prior to shipment of any Network Equipment to Customer, the provision of Technical Support and the deployment of TUNet.

Purchase Orders. Customer may purchase Network Equipment and Services by issuing properly authorized Purchase Orders to Tantalus. Each type of Network Equipment may have an economic order quantity or minimum order quantity, meaning that no Purchase Order may be placed for a quantity of those units of Network Equipment which is less than the minimum number of units specified on the then current Tantalus price list and designated as the "economic order quantity" or "minimum order quantity". Each Purchase Order issued by Customer shall have a lead-time of at least 90 days. Lead-time means the time extending from the date the Purchase Order is received by Tantalus to the specified delivery date. Each Purchase Order shall reference these Terms and shall state product description, quantity of Network Equipment and Services ordered, part number,

desired delivery date and Destination, method of shipment, unit price for each unit ordered and total purchase price. In the event of any inconsistency or conflict between any terms of a Purchase Order, order confirmation, invoice or any other commercial form used by the parties and these Terms, these Terms shall govern. No oral, electronic, or written additional or different provisions proposed by either party in any acceptance, confirmation, or acknowledgment shall apply. Purchase Orders, once accepted, may not be cancelled, except as outlined below.

Acceptance, Rejection or Changes to Purchase Orders. Tantalus will notify Customer of its acceptance or rejection of each Purchase Order as soon as practicable and notice of acceptance shall include confirmation of requested quantities and prices consistent with these Terms. Once a Purchase Order is accepted by Tantalus, the quantities and prices within that acceptance, unless otherwise noted on such acceptance, are committed to and cannot be changed without the consent of both Tantalus and Customer. If the parties agree to changes to a Purchase Order, those changes will be incorporated in a replacement Purchase Order, which will follow the same process outlined above referencing the Purchase Order to be replaced.

Pricing. The prices provided to Customer under this Quotation may contain promotional or one-time pricing. Future prices shall be as set forth on Tantalus' then current price list and do not include taxes. In addition, Tantalus shall bear the costs and charges to ensure that all Network Equipment purchased by Customer is cleared for importation into the United States, if applicable, and delivered to the Shipping Point. Customer will be responsible for and pay all applicable federal, state, municipal or other governmental sales use, excise, value-added taxes, occupational or other taxes, tariffs, duties and surcharges now in force or enacted in the future which are associated with the provision of Network Equipment and Services by Tantalus, excluding taxes on Tantalus' income generally.

Price Changes. Tantalus reserves the right, in its sole discretion, to revise the prices on thirty (30) days prior written notice to Customer by whichever of the following is greater: (i) the immediately preceding year's percentage increase in the Consumer Price Index For All Urban Customers, All Cities Average, All Items (CPI-U), as published by the Bureau of Labor Statistics, U.S. Department of Labor in the "Summary Data from the Consumer Price Index New Release" for the 12-month period ending at December 31st of the calendar year immediately preceding the adjustment date; or (ii) the average percentage change during the most recent 12-month period to Tantalus' published price list, or (iii) 3.5% per year. Notwithstanding the foregoing, the original price of any Network Equipment and Services covered by Purchase Orders issued by the Customer, and which Purchase Orders are confirmed and accepted by Tantalus prior to the Effective Date of such price revision, will not be changed for such Purchase Orders issued and accepted as of the Effective Date.

Payment. Customer agrees to pay an advance payment (the "Deposit") equal to twenty-five percent (25%) of the total purchase price of the Network Equipment and Services specified on each Purchase Order. The Deposit will be due and payable, notwithstanding the absence of the applicable Tantalus' invoice, within ten (10) days of the date of the Tantalus order acknowledgement issued in connection with an accepted Purchase Order. Failure to pay the Deposit by such due date shall result in the cancellation of the Purchase Order by Tantalus, without requirement for any further action, or notice to Customer, by Tantalus. Notwithstanding the foregoing, if Customer places a single blanket Purchase Order that is at least 12 months in duration and represents greater than thirty percent (30%) of their total customer base, the Deposit amount will be reduced to ten percent (10%) on that Purchase Order and subsequent Purchase Orders that are also at least 12 months in duration and represent greater than thirty percent (30%) of their total customer base.

Payment Terms. Tantalus shall invoice Customer for Network Equipment and Services purchased upon delivery of Services and such Network Equipment to Customer at the Shipping Point. Deposit amounts paid will be reflected as a credit to the total purchase price due and owing upon delivery completion of the total Purchase Order. Payment terms are net thirty (30) days from date of Tantalus' invoice. All payments shall be in U.S. dollars, unless otherwise agreed to between Tantalus and Customer. In addition to any other remedies Tantalus may have for late payments, Customer will be charged interest at 1½% per month (equivalent to an annual rate of interest of 18%), payable monthly on all overdue amounts. Customer shall also be responsible for collection costs associated with the late payment, if any, including reasonable attorney's fees. Payments will be applied first to interest payable and then principal owing. Tantalus may modify the preceding payment terms if, in its reasonable opinion, the payment record or financial condition of Customer so justifies.

Delivery and Risk of Loss. Tantalus shall deliver the Network Equipment to Customer at the Shipping Point (cleared for export, if applicable) and title (other than title to Licensed Software which shall remain with Tantalus) and risk of loss of Network Equipment shall pass from Tantalus to Customer at the Shipping Point. If any loss of or damage to the Network Equipment occurs prior to delivery to Customer, regardless of passage of title prior to such delivery, Tantalus shall without cost to the Customer, promptly make all repairs or replacements necessary to place the Network Equipment in the condition required by these Terms. Customer will notify Tantalus within five (5) days of delivery of any damage to Network Equipment and/or within 10 days of shipping should an order not be received. If the Shipping Point and Destination are not the same, Customer shall be responsible for and shall pay all transportation and insurance costs for Network Equipment from the Shipping Point to the Destination, provided however that upon request by Customer, Tantalus shall make the arrangements for such transportation and insurance and will invoice Customer for reimbursement at cost. The payment terms described herein shall apply to such invoices, *mutatis mutandis*. Delivery dates are approximate only. Tantalus shall notify Customer in writing, if Tantalus has knowledge of any event that is reasonably likely to materially delay any specified delivery date or change any specified delivery date.

Third Party Products, Services and Software. Customer may elect to use the Third Party Products, Third Party Services and/or Third Party Software. Unless otherwise specifically set forth in writing (and subject to applicable pass through terms and conditions) upon mutual agreement of all involved Parties, Tantalus does not warrant Third-party Products, Third-party Services and/or Third-party Software and disclaims all responsibility and liability for these items, their access to the Network Equipment and TUNet, including their modification, deletion, disclosure or collection of Customer information.

Insurance. During all times in which Customer has possession of Network Equipment for which Tantalus has not received payment in full, Customer shall ensure that comprehensive general liability insurance with limits at least equal to the total value of all such Network Equipment is obtained and, upon request, provide Tantalus with a certificate evidencing such coverage.

No Resell. Customer acknowledges and agrees that it has no rights to market and resell the Network Equipment. The purchase and sale of Network Equipment hereunder is solely for Customer and its Affiliates' requirements.

Confidentiality. Each party shall treat as confidential all Confidential Information of the other party, shall not use such Confidential Information except as expressly set forth herein or otherwise authorized in writing, shall implement reasonable procedures to prohibit the disclosure, unauthorized duplication, misuse or removal of the other party's Confidential Information and shall not disclose such Confidential Information to any third party except as may be necessary and required in connection with the rights and obligations of such party under these Terms, and subject to confidentiality obligations at least as protective as those set forth herein. Without limiting the foregoing, each of the parties shall use at least the same procedures and degree of care which it uses to prevent the disclosure of its own confidential information of like importance to prevent the disclosure of Confidential Information disclosed to it by the other party under these Terms and Conditions, but in no event less than reasonable care. The receiving party will not commingle or mix the other party's Confidential Information with other information.

Authorized Disclosure. In addition, each party shall be entitled to disclose the other party's Confidential Information to the extent such disclosure is necessary to comply with reporting requirements for public companies and as requested by the order or requirement of a court, administrative agency, or other governmental body; provided, that the party required to make the disclosure shall: (i) provide prompt, advance notice thereof to enable the other party to seek a protective order or otherwise prevent such disclosure; and (ii) seek treatment of the Confidential Information to the highest level of protection afforded under relevant laws and policies.

Remedies. If either party breaches any of its obligations with respect to confidentiality, or if such a breach is likely to occur, the other party shall be entitled to all relief, remedies and recourses available at law or in equity. In addition to all other remedies available at law and at equity, the other party shall be entitled to seek specific performance or a restraining order, decree or injunction.

Warranty. With respect to new equipment, for a period of one (1) year from the date of shipment of each unit of Network Equipment to Customer from Shipping Point, Tantalus warrants that: (i) each unit of Network Equipment will be free from defects in material, workmanship and manufacture under normal use and service, (ii) title to each unit of Network Equipment shall be free and clear of all liens, financial encumbrances and security interests, (iii) all materials, parts, components and other items initially incorporated in the Network Equipment will be new; and (iv) each unit of Network Equipment shall be compliant with, and perform in accordance with its Specifications. The warranty for replaced or repaired Network Equipment originally warranted under this paragraph shall be thirty (30) days from date of return to Customer or the balance of the original warranty period, whichever is greater. With respect to refurbished equipment, for a period of 30 days from the date of shipment of refurbished Network Equipment to Customer from Shipping Point, Tantalus warrants that: (i) each unit of refurbished Network Equipment will be free from defects in material, workmanship and manufacture under normal use and service, (ii) title to each unit of refurbished Network Equipment shall be free and clear of all liens, financial encumbrances and security interests; and (iii) each unit of refurbished Network Equipment shall be compliant with, and perform in accordance with its Specifications. The aforementioned warranties apply only when all three of the following conditions prevail: (i) the unit of Network Equipment is owned by the original Customer and not by an assignee; (ii) the Customer is not the subject of bankruptcy or comparable proceedings; and (iii) while Tantalus has not invoked a subsisting remedy in respect of Force Majeure. The aforementioned warranties will not apply to Licensed Software which is sold "as is" with no warranty, in accordance with the applicable End User License, will not cover any third party products provided by Tantalus or third party products or services provided to Customer by Third Party Suppliers. Any warranty for such products will be between Customer and the third party manufacturer or supplier. To the fullest extent allowed, Tantalus will assign all third party warranties to Customer.

Warranty Returns. For any breach of warranty, Tantalus' sole obligation shall be to, at its sole option and expense, repair or replace defective Network Equipment

or refund the purchase price thereof, within 60 days of receipt of such defective Network Equipment at its designated depot, provided that the Customer has returned the defective Network Equipment to Tantalus no later than four weeks after the expiry of the applicable warranty period set forth herein. Customer will be responsible for removing defective Network Equipment from the installation point and returning the defective Network Equipment, transportation charges prepaid by Customer, to Tantalus at its designated depot, together with Tantalus' return material authorization number ("RMA") and completed problem sheet. Tantalus will be responsible for paying all shipping and other costs incidental to the return of repaired or replacement Network Equipment to Customer. Customer will be responsible for re-installing such repaired or replacement Network Equipment. To the extent Tantalus determines that the Network Equipment returned under warranty is not defective (that is, no fault found), Customer will pay for the return of the Network Equipment and will pay Tantalus the fee of US\$150 per no fault found Network Equipment. Tantalus will make available out-of-warranty repairs in accordance with its programs in effect at the relevant time. Services for out-of-warranty repairs will be provided at Tantalus' then current time and materials fees and rates.

No Warranty. The warranties described herein will not cover Network Equipment: (i) units whose original bar code, copyright notices and proprietary legends, if any, have been spoiled or altered; (ii) units that were not installed or de-installed as per Tantalus' specifications or serviced by Tantalus or a person authorized by Tantalus to do so; (iii) units that were the subject of repair, modification or alteration without Tantalus' approval; (iv) units damaged or defective because of reasonable wear and tear; (v) units that were not operated in accordance with the Specifications; (vi) units damaged or defective because of problems with electrical power; (vii) units damaged or defective because of acts of God; (viii) units that in Tantalus' reasonable opinion have been misused, altered, abused or subject to abnormal conditions of operation or handling; and (ix) units damaged or defective due to an Excusing Event.

DISCLAIMER. TANTALUS DISCLAIMS ALL OTHER REPRESENTATIONS, WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED OR STATUTORY, INCLUDING ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF OTHER'S INTELLECTUAL PROPERTY RIGHTS AND DURABILITY.

Relief for patent and copyright matters. Tantalus, at its expense, shall defend any court suit brought against Customer by a third party alleging that units of Network Equipment purchased by Customer infringe US or Canadian patent or copyright. Tantalus's obligation to defend is effective only if Customer is not in breach of any of these Terms and of any other agreement between the parties, and if Tantalus is notified promptly and given complete information, assistance and authority by Customer to conduct the defense. If any unit of Network Equipment: (a) is adjudicated by a court of competent jurisdiction after appeals therefrom are exhausted, as infringing any US or Canadian patent or copyright or (b) has its use enjoined by such court, Tantalus will, at its election: (i) procure for the Customer the right to continue using said unit; (ii) replace it with non-infringing and functional equivalent; (iii) modify it to become non-infringing; or (iv) if none of the aforementioned options are reasonably available, refund to Customer all amounts paid for the infringing Network Equipment, depreciated on a straight line basis over a ten (10) year period. Tantalus's obligation to defend includes the sole right to settle. Tantalus's obligation to defend does not apply to the following: (A) Network Equipment based on a design, specifications or instructions supplied or requested by Customer; (B) use of Network Equipment in combination with any other hardware or software not provided by Tantalus, if infringement would not have occurred but for such combination; (C) use of any release of Licensed Software or any firmware other than the most current release made available to Customer; (D) use of Network Equipment other than as permitted under these Terms; or as intended by Tantalus, if the infringement would not have occurred but for such use; or (E) modifications made to Network Equipment not made by Tantalus or approved by Tantalus. The foregoing states Tantalus's entire liability with respect to intellectual property infringement by any unit of Network Equipment.

General Indemnity. Tantalus shall defend, indemnify and hold Customer harmless from all loss, expense or damages (including without limitation, reasonable attorney's fees) which may be incurred by Customer as a result of any claims or actions resulting from: (a) damage to tangible personal property owned by Customer and caused by the gross negligence of Tantalus; and (b) death of or bodily injury to a Customer employee or third party to the extent caused by Tantalus' gross negligence. Customer will provide Tantalus with prompt, written

notice of any claim covered by this indemnification. Unless Tantalus fails to defend Customer, Customer shall not undertake the defense of any such claim. Tantalus, at its sole expense, shall defend all such claims and actions against Customer, whether brought informally or through court or administrative procedures.

Customer Indemnity. The relationship of Tantalus and Customer established by these Terms are that of independent contractors and neither party is an employee agent or joint venture of the other. All financial obligations associated with Customer's business are the sole responsibility of Customer. Except for warranty claims under these Terms, Customer shall indemnify, defend and hold harmless Tantalus from and against any and all claims, liabilities, damages, debts, settlements, costs, attorneys' fees, expenses and liabilities of any type whatsoever that may arise on account of Customer's activities, or those of its employees or agents, including, without limitation, (i) all sales and use taxes and similar charges arising in connection with the purchase of Network Equipment and Services hereunder and all other federal, state and municipal taxes, interest, fines and penalties arising in connection with Customer's business activities and (ii) those relating to Customer's use of the Network Equipment or Customer's breach of any term, representation or warranty of these Terms.

Limitations. NOTWITHSTANDING ANY OTHER PROVISION TO THE CONTRARY, OTHER THAN FOR GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR FRAUD, NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY (I) SPECIAL, INDIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES OR LOSSES INCLUDING, WITHOUT LIMITATION, LOSS OR CORRUPTION OF DATA, LOSS OF REVENUE, SAVINGS OR PROFITS, CLAIMS BY USERS AND THIRD PARTIES, LOSS OF GOODWILL, BUSINESS INTERRUPTION OR OTHER PECUNIARY LOSS WHETHER ARISING FROM BREACH OF WARRANTY OR CONDITION, BASED ON CONTRACT, TORT, RELIANCE, FUNDAMENTAL BREACH, STATUTE, OR ANY OTHER THEORY, AND EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; OR (II) COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY OR SERVICES. NOTWITHSTANDING ANYTHING ELSE IN THESE TERMS AND WITHOUT LIMITING THE FOREGOING, TANTALUS WILL NOT BE LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THESE TERMS UNDER ANY CONTRACT, NEGLIGENCE, CIVIL LIABILITY, TORT, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR: (A) ANY AMOUNTS IN EXCESS OF THE AGGREGATE AMOUNTS PAID TO TANTALUS FOR NETWORK EQUIPMENT AND SERVICES GIVING RISE TO SUCH LIABILITY IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE CLAIM; (B) ANY FAILURE OR DELAY DUE TO FORCE MAJEURE; OR (C) ANY ALLOCATION OF NETWORK EQUIPMENT AND SERVICES AMONG ITS CUSTOMERS IN THE EVENT OF A SHORTAGE. LIMITATIONS OF LIABILITY WILL NOT BE ASSERTED TO THE EXTENT PROHIBITED BY RELEVANT LAWS AND POLICIES. TANTALUS' PRICING REFLECTS THIS ALLOCATION OF RISKS AND THE LIMITATION OF LIABILITY.

Ownership of Intellectual Property. Except for licenses otherwise expressly granted under these Terms, the sale of Network Equipment hereunder does not convey to Customer any Proprietary Rights in the Network Equipment and Customer acknowledges Tantalus's exclusive rights thereto. Neither the sale of Network Equipment nor any provision of these Terms will be construed to grant to Customer, either expressly, by implication or by way of estoppel, any license under any other Proprietary Rights of Tantalus covering or relating to any other product or invention of Tantalus, or any combination of the Network Equipment with any other product of Tantalus.

Term. Unless terminated earlier as provided herein, these Terms shall have an initial term of one (1) year commencing on the execution date of these Terms (Initial Term) and shall automatically renew for successive one (1) year periods thereafter, until terminated in accordance with these Terms.

Termination. Either party may terminate these Terms effective upon the delivery of written notice of such termination to the other party, if the other party: becomes insolvent, is generally not paying its debts as such debts become due, makes an assignment for the benefit of creditors, is the subject of any voluntary or involuntary case commenced under the federal bankruptcy laws, as now constituted or hereafter amended (which, in the case of involuntary bankruptcy, is not dismissed within 30 days), or of any other proceeding under other applicable laws of any jurisdiction regarding bankruptcy, insolvency, reorganization, adjustment of debt or other forms of relief for debtors, has a receiver, trustee, liquidator, assignee, custodian or similar official appointed for it or for any substantial part of its property, or is the subject of any dissolution or liquidation

proceeding; breaches its obligations related to confidentiality; or is in default in any material respect in the performance of any its obligations under of these Terms, provided that the party not at fault has given the other party forty five (45) days prior written notice of such default and such other party has not remedied the default; provided however if the defaulting party is Customer and such default is attributable to or includes Customer's failure to pay any amount when due, then the aforementioned 45 day cure period will be reduced to five (5) days. Either party may terminate these Terms, at any time and for any reason, on ninety (90) days' prior written notice to the other party, provided however that if terminated by Customer, Tantalus shall take commercially reasonable efforts to cancel any deliveries to Customer which are scheduled to be made after the termination date. Customer shall be responsible for actual costs reasonably incurred in performing before termination, including the cost of Network Equipment released or received by Customer, or that has been shipped within 45 days, prior to the date of the notice. Prior to the effective termination of these Terms, all of the terms and conditions of, and the respective rights and obligations of the parties to, these Terms will remain completely valid and enforceable; provided however that, in the event Tantalus terminates these Terms for cause, then any deliveries of Network Equipment and Services to Customer which are scheduled to be made subsequent to the effective date of termination shall be cancelled. Termination is not the sole remedy available under these Terms and, whether or not termination is effected; all other legal remedies will remain available. Notwithstanding anything to the contrary in these Terms, no expiration or termination of these Terms by either party shall affect any rights or obligations of either party: (i) which are vested pursuant to these as of the effective date of such expiration or termination, (ii) any other provisions intended by the parties to survive such expiration or termination including, but not limited to, Purchase Orders accepted pursuant to these Terms.

Dispute Resolution. Except for disputes related to nonpayment or as otherwise provided herein, neither party shall resort to formal litigation proceedings until the parties have attempted to resolve the Dispute through non-binding mediation. The party raising a Dispute shall submit to the other party a written notice and supporting material describing all issues and circumstances related to the Dispute (a "Dispute Notice"). A designated senior management representative of each party shall attempt to resolve the Dispute. If the parties' representatives fail to resolve the Dispute within thirty (30) days from receipt of a Dispute Notice, the Dispute shall be referred to a mediator in the jurisdiction set forth under the Governing Law section of these Terms, as mutually agreed between the parties. If the use of non-binding mediation is not successful, either party may commence formal litigation proceedings to resolve the Dispute. This Section shall not be construed to prevent a party from instituting litigation proceedings earlier than as indicated in this section to: (a) avoid the expiration of any applicable limitations period, (b) preserve a superior creditor position or (c) seek injunctive relief to prevent irreparable harm, including without limitation, harm caused by a breach of confidentiality obligations.

Notices. Any notification, notice, approval, confirmation or consent required or permitted to be given under these Terms must be in writing and signed by an authorized Representative of a party (whether a party hereto or a third party, as the case may be), and be either: (i) personally delivered, (ii) sent by prepaid, certified first class mail, return receipt requested, or (iii) sent by facsimile to (919) 900-8978 (provided confirmation of delivery is obtained at the time of transmission). Communications to Tantalus must be addressed to: Peter A. Londa, President & CEO, Tantalus Systems, Inc. 1130 Situs Court, Suite 230, Raleigh, NC 27606. Unless expressly set out to the contrary herein, consent or approval that is explicitly required herein of a party hereto will not be unreasonably delayed, withheld or withdrawn by it. Either party may change the address for service by giving 15 days advance written notice to the other party. All notices will be effective upon receipt and will be deemed received: (i) upon delivery, if personally delivered, (ii) upon signature by the receiving party, if sent by certified mail, or (iii) upon the date stated in the facsimile delivery confirmation, if sent by facsimile.

Severability. If any provision or term of these Terms is determined to be invalid or unenforceable, the invalidity or unenforceability of that provision or term will not affect the validity or enforceability of the remaining provisions and terms or the validity or enforceability of that provision or term in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify these Terms so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the extent possible.

Amendment and Waiver. No amendment or waiver of any provision of these Terms shall be effective unless it is in writing and signed by the party against which it is sought to be enforced. No waiver by any party or any breach or series of breaches in performance by the other party, and no failure, refusal or neglect to exercise any right, power or option given to either party to insist upon strict compliance with or performance of the obligations hereunder, will constitute a waiver of the provisions hereof with respect to any subsequent breach thereof or a waiver by such party of its right at any time thereafter to require strict compliance with the provisions hereof.

Governing Law. These Terms shall be governed by, and construed under, the laws of the State of Delaware without regard to conflicts of law provisions thereof and without regard to the United Nations Convention on Contracts for the International Sale of Goods. Tantalus and Customer waive a trial by jury in any such suit, action or proceeding.

Force Majeure. No default, delay or failure to perform on the part of either Party shall be considered a breach of these Terms where such default, delay or failure is due to a force majeure or to circumstances beyond its control. Such circumstances will include, without limitation, strikes, riots, civil disturbances, actions or inactions concerning government authorities, epidemics, war, terrorist acts, embargoes, severe weather, fire, earthquakes, acts of God or the public enemy or default of a common carrier or other disasters or events. Lack of funds or credit will not constitute a Force Majeure.

Successors and Assigns. These Terms bind, and inures to the benefit of, the parties and their respective successors. These Terms shall not be assigned by either party without the prior written consent of the other party, except that Customer agrees that Tantalus may assign, without notice to Customer, any account receivable arising under these Terms in connection with a factoring arrangement.

Definitions and Interpretation. "Affiliate" means, with respect to any Party, any legal entity that such Party owns, is owned by, or is under common control with such Party. For purposes of the foregoing definition of "Affiliate," the terms "control" and "own" mean possessing a 50% or greater interest in an entity or the right to direct the management of the entity. "Business Day" means any day that is not a Saturday, Sunday or a state or federal holiday. "Confidential Information" of a party is information (in tangible or intangible form) that it owns or has license for, and discloses to the other party, that: (i) derives economic value, actual or potential, from not being generally known to, and is not readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (ii) is the subject of efforts that are reasonable under the circumstances to maintain its confidentiality; and includes technical information (such as formulas, data, programs, methods, techniques and processes), business information (such as information about finances, customers and potential customers, marketing plans and business strategies), and the terms of these Terms; but Confidential Information does not include information that the receiving party establishes: (i) it developed independently; or (ii) was generally available to the public through no fault of its own; or (iii) was possessed by it before its receipt thereof from disclosing party; or (iv) was acquired from a third party without the breach of any confidentiality obligation; or (v) five (5) years after its disclosure, does not constitute a trade secret under relevant laws and policies. Confidential Information shall also include all notes, copies and summaries, in any media, and recollections of a receiving party of Confidential Information. "Destination" means Customer's designated destination point for the delivery of Network Equipment. "Dispute" means any dispute, controversy, difference or claim, arising under or in connection with these Terms, including its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims. "Excusing Event" means any (i) Force Majeure or other event outside of Tantalus' reasonable control; (ii) failure, act or omission of Customer or its agents, employees, suppliers, subcontractors or consultants, including without limitation improper performance of Customer's responsibilities under the Agreement, or unreasonable delay or failure of Customer to approve changes that are relevant to an applicable failure; (iv) failure, act or omission of any third party (including any Third Party Supplier) or its agents, employees, suppliers, subcontractors or consultants; or (v) failure of any components (hardware, software, network, maintenance) provided and/or maintained by Customer. "Licensed Software" means all Tantalus software and firmware residing on, or provided in connection with, each unit of Network Equipment purchased under these Terms, together with all software documentation related thereto and any and all updates thereto. The terms and conditions of EULA will apply to the Licensed Software provided to Customer. "Network Equipment"

means the equipment manufactured by or for Tantalus for use as part of TUNet and its associated Licensed Software that are or will be under these Terms physically deployed in the Customer's service territory. For clarity, Network Equipment does not include the system backhaul, network operations center, meters or any Third-Party Products, Third-Party Services, or Third-Party Software. **"Purchase Orders"** means purchase orders issued, from time to time, by Customer to Tantalus pursuant to which Customer will purchase Network Equipment and Services in accordance with these Terms and Conditions of Sale. Each Purchase Order will be deemed to include these Terms, even if not specifically stated on the Purchase Order. **"Services"** means deployment engineering support services as described on the price list that Tantalus provides from time to time. For clarity, Services do not include Technical Support; **"Shipping Point"** means the designated depot or depots in North America selected by Tantalus as its shipping point for Network Equipment. **"Specifications"** means the design, performance and regulatory requirements for each Network Equipment, as such may be amended from time to time by Tantalus. **"Third-Party Product"** means a product or application that is produced by a company other than Tantalus. Third-Party Products may have the benefit of a manufacturer's warranty provided by the product manufacturer. **"Third-Party Services"** means those services that are offered or provided by a company other than Tantalus. **"Third-Party Software"** means software that is licensed by a company other than Tantalus. Use of Third-Party Software is subject to end-user's acceptance of the third-party End User's License Agreement (EULA). Third-party software may have the benefit of warranties provided by the third-party software licensor. **"TUNet®"** means the TUNet smart grid network provided by Tantalus pursuant to these Terms and does not include Third-Party Products, Third-Party Services or Third-Party Software. **Interpretation Not Affected by Headings, etc.** The division of these Terms into sections and other portions and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation hereof. **Date For Any Action.** In the event that any date on which any action is required to be taken hereunder by any of the parties hereto is not a Business Day, such action shall be required to be taken on the next succeeding day which is a Business Day. **Authorship.** Authorship of these

Terms will have no bearing on the construction of any terms hereof or ambiguities thereof.

Quotation as Purchase Order. Signature below shall constitute submission by the Customer and acceptance by Tantalus of the foregoing quotation as an authorized Purchase Order for the equipment and services listed thereon, subject to the foregoing Terms and Purchase of Sale. The Purchase Order may not be modified, added to or rescinded except through mutual agreement and acceptance in writing by both Parties.

AGREED AND ACCEPTED:

Opelika Light & Power

BY: _____

Name: _____

Title: _____

Date: _____

RESOLUTION NO. 321-18

Purchase-Itron Meters-Sole Source-OPS

RESOLUTION NO. _____

WHEREAS, the Opelika Power Services Department desires to purchase Itron meters and their related equipment; and

WHEREAS, this is a sole source purchase; and

WHEREAS, Anixter Power Solutions is the sole vendor; 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 Anixter Power Solutions.
2. That the Purchasing-Revenue Manager be authorized to a purchase order to Anixter Power Solutions as a sole source purchase not to exceed \$292,000.00.
3. The Controller is authorized to adjust the budget as necessary for 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

CITY OF OPELIKA
Sole Source Justification

DEPARTMENT OPS

REQUISITION NUMBER _____

NAME OF REQUESTING EMPLOYEE STACEY A. BRYSON

VENDOR ANIXTER 3605

PRODUCT/SERVICE ELECTRIC METERING SYSTEM USED BY OPS. ITRON

METER WITH TANTALUS REMOTE DISCONNECT.

Estimated annual expenditure for the commodity or service \$ 292,000.00

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). _____
2. Sole Source Request is for the only the vendor who supplies this product/services within the State of Alabama (Franchised Protected Area). X
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 _____ Department or perform the intended function. (Attach memorandum with details of specialized function(s) or application.) _____
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

OPS

11/20/18

PURCHASING DEPARTMENT USE ONLYPURCHASING AGENT APPROVAL
(SIGNATURE/DATE)

11/20/18

DISAPPROVAL/DATE

COMMENTS

COUNCIL ACTION/DATE



Electric / Gas / Water
Information collection, analysis and application

2111 North Molter Road
Liberty Lake, Washington 99019
509.924.9900 Tel
509.891.3355 Fax
800.635.5461
www.itron.com

November 13, 2018

City of Opelika, AL
Attn: Stacey Bryson
600 Fox Run Parkway
Opelika, AL 36801

Mr. Bryson,

This letter is to inform you that Anixter Power Solutions is the only Electricity Distributor for Itron in Alabama. No other Itron Distributors are authorized to sell or quote Itron electric metering products in Alabama. Please feel free to contact myself if you have any questions or require further information.

Sincerely,

A handwritten signature in black ink, appearing to read "Alex Fosson", with a long horizontal flourish extending to the right.

Alex Fosson
Area Sales Manager, Distribution
Cell Phone : 859-806-8661
Email: alex.fosson@itron.com

Attachment: 12-4-18 - ITRON METERS WITH RELATED EQUIPMENT - SOLE SOURCE - CNCL PKT (321-18 : Purchase-Itron Meters-Sole Source-



5030 Commerce Park Circle
Suite B
Pensacola, FL 32505

Phone: 850.494.2117
Fax: 850.494.2754

ITRON QUOTE

www.anixterpowersolutions.com

Quotation: U00543579.01

To: **CITY OF OPELIKA**
CABLE SYSTEMS
600 FOX TRAIL
OPELIKA, AL 36801

Attn:
Phone:
Fax: **3347055588**

Issued Date: **Nov 05, 2018**

Expiration Date: **Dec 05, 2018**

Sales Contact: **Andy Staker**

(P) 404.223.1823

(F) 404.691.4736

andrew.staker@anixter.com

Item	CustLine	Product and Description	Quantity	Price	Unit	Extended
1		D820502 C2SXD- 2S CL200 W/ DISCONNECT TANTALUS INSTALLED PRICE GOOD FOR QUANTITY 4000 ON 1 PO. ANY OTHER AMOUNT AND THE PRICE IS \$74 EA DEL: 10-12 WKS * TANTALUS MODULE TO BE INSTALLED AT FACTORY	4000	73.000	EA	292,000.00

SECTION TOTAL: \$292,000.00

QUOTE TOTAL: **\$292,000.00**

Special Notes

- 1) All items are In Stock unless otherwise noted.
- 2) All item pricing on this quote is valid for thirty days unless otherwise specified.
- 3) All applicable taxes apply.

For the latest terms & conditions please visit: <https://www.anixterpowersolutions.com/site/legal/purchase-terms.html>

Anixter Power Solutions offers the industry's most extensive and dynamic portfolio of products, services and solutions for the Public Power, Investor-owned Utilities, Construction and Industrial markets.

RESOLUTION NO. 322-18

Weed Abatement Assessment - 105 Vaughan Ave

RESOLUTION NO. _____

**RESOLUTION FIXING AMOUNT OF ASSESSMENT
FOR WEED LIEN AGAINST PROPERTY LOCATED AT
105 Vaughan Ave, Parcel No. 077.000**

=====

WHEREAS, the weed nuisance growing upon or in front of the property located at 105 Vaughan Ave, parcel no. 077.000 has been removed as provided for and required by law: and

WHEREAS, the enforcing official has prepared and submitted to the City Council an itemized statement of the actual expenses incurred by the City for the abatement of the weed nuisance located at 105 Vaughan Avenue, a copy of said itemized statement being attached hereto as Exhibit "A"; and

WHEREAS, the 4th day of December, 2018 at 7:00 p.m. in the City Council Chambers in the

Municipal Building of Opelika, Alabama was the date, time and place heretofore established by the City

Council to hear and determine any objections or defenses which may be raised by any of the property

owners liable to be assessed for the work of abating said weed nuisance; and

WHEREAS, a copy of the itemized statement of expenses, together with the notice of the time when said statement shall be submitted to the City Council for confirmation, was sent to the property owner by certified mail at least five (5) days in advance of the time fixed by the City Council to consider the assessment of the cost against the property; and

WHEREAS, the Council met at the designated time and place for the purpose of receiving and

considering said statement of expenses and to pass upon all such objections to and protest against the proposed assessment for the work of abating said nuisance; and

WHEREAS, the President of the City Council presided over said public hearing and opened the

floor for comments from the public and any persons interested in said assessment or the amount thereof;

and

WHEREAS, the City Council has considered all evidence and other matters in relation to the

proposed assessment and the members of the Council are of the opinion that the amount to be assessed

against the property shall be in accordance with the amount shown on the statement of expenses heretofore delivered by the enforcing official to the City Council.

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

follows:

1. The itemized statement of expenses submitted by the enforcing official to the City Council is hereby affirmed.
2. The cost for abating such weed nuisance, in the amount of \$205.84 is hereby assessed against the parcel of land mentioned in said itemized statement, to wit: 105 Vaughan Ave., Parcel no. 077.000 Opelika, Alabama. The cost stated in this Resolution shall constitute a lien on the above referenced property.
3. The tax identification number for said parcel(s) of land is 43-10-04-18-1-001-077.000 according to the records of the Revenue Commissioner of Lee County Alabama.
4. The Purchasing-Revenue Manager shall cause a certified copy of this Resolution assessing the cost of abatement to be filed for recording in the Office of the Judge of Probate of Lee County, Alabama, and shall forward a copy to the Lee County Revenue Commissioner. Upon filing, the Lee County Revenue Commissioner

shall add the amount of the lien to the ad valorem tax bill on the property and shall collect the amount as if it were a tax, using all methods available for collecting ad valorem tax, and remit the amount to the City.

This Resolution and the weed lien assessed herein are adopted pursuant to Act No. 2012-366 of the 2012 Regular Session of the Legislature of Alabama and Article III of Chapter 18 of the Code of Ordinances of the City of Opelika, Alabama.

ADOPTED AND APPROVED this the 4th day of December, 2018.

C. E. "Eddie" Smith Jr.

President of the City Council

City of Opelika, Alabama

Attest:

R. G. "Bob" Shuman, CMC

City Clerk - City Treasurer

WEED ABATEMENT INVOICE**Date: 11/08/2018****To: State of Alabama
PO Box 327210
Montgomery Al. 36132****Property Address:
105 Vaughan Ave
Opelika Al. 36801
Parcel # 10-04-18-1-001-077.000**

On October 10, 2018 in accordance with Opelika City Ordinance 110-12, a notice was sent informing the owner that of a weed violation at the above listed property address. After failing to correct the violation within the time specified in the notice, the City of Opelika abated the violation.

The following is a list of charges that City of Opelika incurred for the abatement:

Cost of Abatement:	<u>192.50</u>
Certified mail:	<u>13.34</u>
Misc.	<u> </u>
Total	<u>205.84</u>

Attachment: WEED INVOICE 105 Vaughan Ave (322-18 : Weed Abatement Assessment - 105 Vaughan Ave)

RESOLUTION NO. 323-18

Weed Abatement Assessment - 204 1st Place

RESOLUTION NO. _____

**RESOLUTION FIXING AMOUNT OF ASSESSMENT
FOR WEED LIEN AGAINST PROPERTY LOCATED AT
204 S 1st Place, Parcel No. 094.001**

=====

WHEREAS, the weed nuisance growing upon or in front of the property located at 204 S 1st Place, parcel no. 094.001 has been removed as provided for and required by law; and

WHEREAS, the enforcing official has prepared and submitted to the City Council an itemized statement of the actual expenses incurred by the City for the abatement of the weed nuisance located at 204 S 1st Place, a copy of said itemized statement being attached hereto as Exhibit "A"; and

WHEREAS, the 4th day of December, 2018 at 7:00 p.m. in the City Council Chambers in the

Municipal Building of Opelika, Alabama was the date, time and place heretofore established by the City

Council to hear and determine any objections or defenses which may be raised by any of the property

owners liable to be assessed for the work of abating said weed nuisance; and

WHEREAS, a copy of the itemized statement of expenses, together with the notice of the time when said statement shall be submitted to the City Council for confirmation, was sent to the property owner by certified mail at least five (5) days in advance of the time fixed by the City Council to consider the assessment of the cost against the property; and

WHEREAS, the Council met at the designated time and place for the purpose of receiving and

considering said statement of expenses and to pass upon all such objections to and protest against the proposed assessment for the work of abating said nuisance; and

WHEREAS, the President of the City Council presided over said public hearing and opened the

floor for comments from the public and any persons interested in said assessment or the amount thereof;

and

WHEREAS, the City Council has considered all evidence and other matters in relation to the

proposed assessment and the members of the Council are of the opinion that the amount to be assessed

against the property shall be in accordance with the amount shown on the statement of expenses heretofore delivered by the enforcing official to the City Council.

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

follows:

1. The itemized statement of expenses submitted by the enforcing official to the City Council is hereby affirmed.
2. The cost for abating such weed nuisance, in the amount of \$100.84 is hereby assessed against the parcel of land mentioned in said itemized statement, to wit: 204 S 1st Place, Parcel no. 094.001 Opelika, Alabama. The cost stated in this Resolution shall constitute a lien on the above referenced property.
3. The tax identification number for said parcel(s) of land is 43-10-03-08-2-002-094.001 according to the records of the Revenue Commissioner of Lee County Alabama.
4. The Purchasing-Revenue Manager shall cause a certified copy of this Resolution assessing the cost of abatement to be filed for recording in the Office of the Judge of Probate of Lee County, Alabama, and shall forward a copy to the Lee County Revenue Commissioner. Upon filing, the Lee County Revenue Commissioner

shall add the amount of the lien to the ad valorem tax bill on the property and shall collect the amount as if it were a tax, using all methods available for collecting ad valorem tax, and remit the amount to the City.

This Resolution and the weed lien assessed herein are adopted pursuant to Act No. 2012-366 of the 2012 Regular Session of the Legislature of Alabama and Article III of Chapter 18 of the Code of Ordinances of the City of Opelika, Alabama.

ADOPTED AND APPROVED this the 4th day of December, 2018.

President of the City Council

City of Opelika, Alabama

Attest:

R. G. "Bob" Shuman, CMC

City Clerk - City Treasurer

WEED ABATEMENT INVOICE**Date: 11/8/2018****To: Susan Sullivanne
1980 Canary Dr.
Auburn Al. 36830****Property Address:
204 S 1st. Place
Opelika, Al. 36801
Parcel #
10-03-08-2-002-094.001**

On October 10, 2018 in accordance with Opelika City Ordinance 110-12, a notice was sent informing the owner that of a weed violation at the above listed property address. After failing to correct the violation within the time specified in the notice, the City of Opelika abated the violation.

The following is a list of charges that City of Opelika incurred for the abatement:

Cost of Abatement:	<u>87.50</u>
Certified mail:	<u>13.34</u>
Misc.	<u> </u>
Total	<u>100.84</u>

Attachment: WEED INVOICE 204 1st PI (323-18 : Weed Abatement Assessment - 204 1st Place)

RESOLUTION NO. 324-18

Weed Abatement Assessment - 411 S 4th St.

RESOLUTION NO. _____

**RESOLUTION FIXING AMOUNT OF ASSESSMENT
FOR WEED LIEN AGAINST PROPERTY LOCATED AT
411 S 4th St., Parcel No. 028.000**

=====

WHEREAS, the weed nuisance growing upon or in front of the property located at 411 S 4th St., parcel no. 028.000 has been removed as provided for and required by law; and

WHEREAS, the enforcing official has prepared and submitted to the City Council an itemized statement of the actual expenses incurred by the City for the abatement of the weed nuisance located at 411 S 4th St., a copy of said itemized statement being attached hereto as Exhibit "A"; and

WHEREAS, the 4th day of December, 2018 at 7:00 p.m. in the City Council Chambers in the

Municipal Building of Opelika, Alabama was the date, time and place heretofore established by the City

Council to hear and determine any objections or defenses which may be raised by any of the property

owners liable to be assessed for the work of abating said weed nuisance; and

WHEREAS, a copy of the itemized statement of expenses, together with the notice of the time when said statement shall be submitted to the City Council for confirmation, was sent to the property owner by certified mail at least five (5) days in advance of the time fixed by the City Council to consider the assessment of the cost against the property; and

WHEREAS, the Council met at the designated time and place for the purpose of receiving and

considering said statement of expenses and to pass upon all such objections to and protest against the proposed assessment for the work of abating said nuisance; and

WHEREAS, the President of the City Council presided over said public hearing and opened the

floor for comments from the public and any persons interested in said assessment or the amount thereof;

and

WHEREAS, the City Council has considered all evidence and other matters in relation to the

proposed assessment and the members of the Council are of the opinion that the amount to be assessed

against the property shall be in accordance with the amount shown on the statement of expenses heretofore delivered by the enforcing official to the City Council.

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

follows:

1. The itemized statement of expenses submitted by the enforcing official to the City Council is hereby affirmed.
2. The cost for abating such weed nuisance, in the amount of \$143.89 is hereby assessed against the parcel of land mentioned in said itemized statement, to wit: 411 S 4th St., Parcel no. 028.000 Opelika, Alabama. The cost stated in this Resolution shall constitute a lien on the above referenced property.
3. The tax identification number for said parcel(s) of land is 43-10-03-08-3-000-028.000 according to the records of the Revenue Commissioner of Lee County Alabama.
4. The Purchasing-Revenue Manager shall cause a certified copy of this Resolution assessing the cost of abatement to be filed for recording in the Office of the Judge of Probate of Lee County, Alabama, and shall forward a copy to the Lee County Revenue Commissioner. Upon filing, the Lee County Revenue Commissioner

shall add the amount of the lien to the ad valorem tax bill on the property and shall collect the amount as if it were a tax, using all methods available for collecting ad valorem tax, and remit the amount to the City.

This Resolution and the weed lien assessed herein are adopted pursuant to Act No. 2012-366 of the 2012 Regular Session of the Legislature of Alabama and Article III of Chapter 18 of the Code of Ordinances of the City of Opelika, Alabama.

ADOPTED AND APPROVED this the 4th day of December, 2018.

C. E. "Eddie" Smith, Jr.

President of the City Council

City of Opelika, Alabama

Attest:

R. G. "Bob" Shuman, CMC

City Clerk - City Treasurer

WEED ABATEMENT INVOICE**Date: 11/14/2018****To: State of Alabama
PO Box 327210
Montgomery Al. 36132****Property Address:
411 S 4th St
Opelika Al. 36801
Parcel # 10-03-08-3-000-028.000**

On September 21, 2018 in accordance with Opelika City Ordinance 110-12, a notice was sent informing the owner that a weed violation at the above listed property address. After failing to correct the violation within the time specified in the notice, the City of Opelika abated the violation.

The following is a list of charges that City of Opelika incurred for the abatement:

Cost of Abatement: 130.55

Certified mail: 13.34

Misc.

Total 143.89

Attachment: WEED INVOICE 411 S 4th St. (324-18 : Weed Abatement Assessment - 411 S 4th St.)

RESOLUTION NO. 325-18

Weed Abatement Assessment - 504 S 4Th St.

RESOLUTION NO. _____

**RESOLUTION FIXING AMOUNT OF ASSESSMENT
FOR WEED LIEN AGAINST PROPERTY LOCATED AT
504 S 4th St., Parcel No. 104.000**

=====

WHEREAS, the weed nuisance growing upon or in front of the property located at 504 S 4th St., parcel no. 104.000 has been removed as provided for and required by law: and

WHEREAS, the enforcing official has prepared and submitted to the City Council an itemized statement of the actual expenses incurred by the City for the abatement of the weed nuisance located at 504 S 4th St., a copy of said itemized statement being attached hereto as Exhibit "A"; and

WHEREAS, the 4th day of December, 2018 at 7:00 p.m. in the City Council Chambers in the

Municipal Building of Opelika, Alabama was the date, time and place heretofore established by the City

Council to hear and determine any objections or defenses which may be raised by any of the property

owners liable to be assessed for the work of abating said weed nuisance; and

WHEREAS, a copy of the itemized statement of expenses, together with the notice of the time when said statement shall be submitted to the City Council for confirmation, was sent to the property owner by certified mail at least five (5) days in advance of the time fixed by the City Council to consider the assessment of the cost against the property; and

WHEREAS, the Council met at the designated time and place for the purpose of receiving and

considering said statement of expenses and to pass upon all such objections to and protest against the proposed assessment for the work of abating said nuisance; and

WHEREAS, the President of the City Council presided over said public hearing and opened the

floor for comments from the public and any persons interested in said assessment or the amount thereof;

and

WHEREAS, the City Council has considered all evidence and other matters in relation to the

proposed assessment and the members of the Council are of the opinion that the amount to be assessed

against the property shall be in accordance with the amount shown on the statement of expenses heretofore delivered by the enforcing official to the City Council.

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

follows:

1. The itemized statement of expenses submitted by the enforcing official to the City Council is hereby affirmed.
2. The cost for abating such weed nuisance, in the amount of \$378.34 is hereby assessed against the parcel of land mentioned in said itemized statement, to wit: 504 S 4th St., Parcel no. 104.000 Opelika, Alabama. The cost stated in this Resolution shall constitute a lien on the above referenced property.
3. The tax identification number for said parcel(s) of land is 43-10-03-08-3-000-104.000 according to the records of the Revenue Commissioner of Lee County Alabama.
4. The Purchasing-Revenue Manager shall cause a certified copy of this Resolution assessing the cost of abatement to be filed for recording in the Office of the Judge of Probate of Lee County, Alabama, and shall forward a copy to the Lee County Revenue Commissioner. Upon filing, the Lee County Revenue Commissioner

shall add the amount of the lien to the ad valorem tax bill on the property and shall collect the amount as if it were a tax, using all methods available for collecting ad valorem tax, and remit the amount to the City.

This Resolution and the weed lien assessed herein are adopted pursuant to Act No. 2012-366 of the 2012 Regular Session of the Legislature of Alabama and Article III of Chapter 18 of the Code of Ordinances of the City of Opelika, Alabama.

ADOPTED AND APPROVED this the 4th day of December, 2018.

C. E. "Eddie" Smith, Jr.

President of the City Council

City of Opelika, Alabama

Attest:

R. G. "Bob" Shuman, CMC

City Clerk - City Treasurer

WEED ABATEMENT INVOICE**Date: 11/14/2018****To: State of Alabama
PO Box 327210
Montgomery Al. 36132****Property Address:
504 S 4th St
Opelika Al. 36801
Parcel # 10-03-08-3-000-104.000**

On September 21, 2018 in accordance with Opelika City Ordinance 110-12, a notice was sent informing the owner that a weed violation at the above listed property address. After failing to correct the violation within the time specified in the notice, the City of Opelika abated the violation.

The following is a list of charges that City of Opelika incurred for the abatement:

Cost of Abatement:	<u>365.00</u>
Certified mail:	<u>13.34</u>
Misc.	<u> </u>
Total	<u>378.34</u>

Attachment: WEED INVOICE 504 S 4th St. (325-18 : Weed Abatement Assessment - 504 S 4Th St.)

RESOLUTION NO. 326-18

Weed Abatement Assessment - 1109 Magnolia St.

RESOLUTION NO. _____

**RESOLUTION FIXING AMOUNT OF ASSESSMENT
FOR WEED LIEN AGAINST PROPERTY LOCATED AT
1109 Magnolia St, Parcel No. 022.000**

=====

WHEREAS, the weed nuisance growing upon or in front of the property located at 1109 Magnolia St, parcel no. 022.000 has been removed as provided for and required by law; and

WHEREAS, the enforcing official has prepared and submitted to the City Council an itemized statement of the actual expenses incurred by the City for the abatement of the weed nuisance located at 1109 Magnolia St., a copy of said itemized statement being attached hereto as Exhibit "A"; and

WHEREAS, the 4th day of December, 2018 at 7:00 p.m. in the City Council Chambers in the

Municipal Building of Opelika, Alabama was the date, time and place heretofore established by the City

Council to hear and determine any objections or defenses which may be raised by any of the property

owners liable to be assessed for the work of abating said weed nuisance; and

WHEREAS, a copy of the itemized statement of expenses, together with the notice of the time when said statement shall be submitted to the City Council for confirmation, was sent to the property owner by certified mail at least five (5) days in advance of the time fixed by the City Council to consider the assessment of the cost against the property; and

WHEREAS, the Council met at the designated time and place for the purpose of receiving and

considering said statement of expenses and to pass upon all such objections to and protest against the proposed assessment for the work of abating said nuisance; and

WHEREAS, the President of the City Council presided over said public hearing and opened the

floor for comments from the public and any persons interested in said assessment or the amount thereof;

and

WHEREAS, the City Council has considered all evidence and other matters in relation to the

proposed assessment and the members of the Council are of the opinion that the amount to be assessed

against the property shall be in accordance with the amount shown on the statement of expenses heretofore delivered by the enforcing official to the City Council.

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

follows:

1. The itemized statement of expenses submitted by the enforcing official to the City Council is hereby affirmed.
2. The cost for abating such weed nuisance, in the amount of \$217.04 is hereby assessed against the parcel of land mentioned in said itemized statement, to wit: 1109 Magnolia St, Parcel no. 022.000 Opelika, Alabama. The cost stated in this Resolution shall constitute a lien on the above referenced property.
3. The tax identification number for said parcel(s) of land is 43-10-04-18-2-001-022.000 according to the records of the Revenue Commissioner of Lee County Alabama.
4. The Purchasing-Revenue Manager shall cause a certified copy of this Resolution assessing the cost of abatement to be filed for recording in the Office of the Judge of Probate of Lee County, Alabama, and shall forward a copy to the Lee County Revenue Commissioner. Upon filing, the Lee County Revenue Commissioner

shall add the amount of the lien to the ad valorem tax bill on the property and shall collect the amount as if it were a tax, using all methods available for collecting ad valorem tax, and remit the amount to the City.

This Resolution and the weed lien assessed herein are adopted pursuant to Act No. 2012-366 of the 2012 Regular Session of the Legislature of Alabama and Article III of Chapter 18 of the Code of Ordinances of the City of Opelika, Alabama.

ADOPTED AND APPROVED this the 4th day of December, 2018.

President of the City Council

City of Opelika, Alabama

Attest:

R. G. "Bob" Shuman, CMC

City Clerk - City Treasurer

WEED ABATEMENT INVOICE

Date: 11/14/2018

**To: State of Alabama
PO Box 327210
Montgomery Al. 36132**

**Property Address:
1109 Magnolia St
Opelika Al. 36801
Parcel # 10-04-18-2-001-022.000**

On October 3, 2018 in accordance with Opelika City Ordinance 110-12, a notice was sent informing the owner that a weed violation at the above listed property address. After failing to correct the violation within the time specified in the notice, the City of Opelika abated the violation.

The following is a list of charges that City of Opelika incurred for the abatement:

Cost of Abatement:	<u>203.70</u>
Certified mail:	<u>13.34</u>
Misc.	<u> </u>
Total	<u>217.04</u>

Attachment: WEED INVOICE 1109 Magnolia St (326-18 : Weed Abatement Assessment - 1109 Magnolia St.)

RESOLUTION NO. 327-18

Second Amendment to Power Service Contract with AMEA.

RESOLUTION NO. _____

**RESOLUTION APPROVING SECOND AMENDMENT TO AMENDED AND
RESTATED POWER SALES CONTRACT BETWEEN THE CITY OF OPELIKA,
ALABAMA AND ALABAMA MUNICIPAL ELECTRIC AUTHORITY**

WHEREAS, the City of Opelika, Alabama (the “City”) owns and operates an electric utility system, through which it distributes at retail electric power and energy; and

WHEREAS, the City is a member of the Alabama Municipal Electric Authority (the “Authority”), which provides a means for Alabama municipalities that operate electric utility systems to secure, through membership in the Authority, an adequate, dependable and economical supply of both electric power and energy; and

WHEREAS, the Authority currently purchases for resale to the City a portion of the City’s electric power and energy requirements; and

WHEREAS, the Authority and the City entered into that certain Amended and Restated Power Sales Contract dated as of May 1, 1986, as amended by that certain First Amendment to Amended and Restated Power Sales Contract dated as of July 1, 1996; and

WHEREAS, the Authority and the City wish to amend the Amended and Restated Power Sales Contract, as amended by the July 1, 1996 First Amendment, to extend the term of the Contract from December 31, 2035 to December 31, 2045, and beyond as provided in the Second Amendment to the Amended and Restated Power Sales Contract, attached hereto as Exhibit “A”; and

WHEREAS, a proposed Second Amendment to Amended and Restated Power Sales Contract (the “Second Amendment”) to be entered into between the City and the Authority has been 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 Second Amendment..

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

Section 1. That the Second Amendment to be entered into by and between the City and the Authority, 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 Second Amendment.

Section 2. That the Mayor is hereby authorized and empowered to execute the Second Amendment in the name and on behalf of the City, and the City Clerk is hereby authorized to affix the corporate seal of the City thereto and attest the same, and the Mayor shall deliver one (1) copy to the Authority.

Section 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 caused 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 or on behalf of the City such other notices, certificates, assurances or other instruments or other communications under the seal or otherwise, as they, or any of them deem necessary or advisable in order to carry into the provisions of this Resolution and the attached Second Amendment.

Section 4. That this Resolution shall take effect and be enforced immediately upon its passage and approval 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

**SECOND AMENDMENT
TO
AMENDED AND RESTATED POWER SALES CONTRACT**

THIS SECOND AMENDMENT (hereinafter referred to as this "Amendment") to that certain Amended and Restated Power Sales Contract dated as of May 1, 1986, as amended by that certain First Amendment to Amended and Restated Power Sales Contract dated as of July 1, 1996 (said Amended and Restated Power Sales Contract as so amended by said First Amendment thereto being hereinafter referred to as "the Contract"), between ALABAMA MUNICIPAL ELECTRIC AUTHORITY, a public corporation organized and existing under the laws of the State of Alabama ("the Authority"), and the CITY OF _____, a municipal corporation of the State of Alabama [UTILITIES BOARD OF THE CITY OF _____, a public corporation organized and existing under the laws of the State of Alabama and a member of the Authority ("the Member"), is entered into between the Authority and the Member for the purpose of amending certain provisions of the Contract as hereinbelow set forth. For purposes of this Amendment, the terms "Integrated Utility Systems," "Participating Members," and "Power Sales Contracts," as defined in Section 1 of the Contract and as used herein, shall have the same respective meanings as those assigned to them in said Section 1.

**RECITALS, FINDINGS
AND DETERMINATIONS**

WHEREAS, the Authority was organized pursuant to the provisions of Act No. 81-681 enacted at the 1981 Regular Session of the Legislature of Alabama, now codified as Sections 11-50A-1 *et seq.*, *Code of Alabama 1975*, as amended ("the Act"), to provide a means for those Alabama municipalities, utilities boards, and electric boards that own and operate electric utility systems or Integrated Utility Systems to secure, through membership in the Authority, an adequate, dependable and economical supply of bulk electric power and energy; and

WHEREAS, the Member and the Authority's other Participating Members (a) own and operate electric utility systems or Integrated Utility Systems, through which they each distribute at retail electric power and energy, and (b) are authorized under the laws of the State of Alabama, including specifically the Act, to contract for the purchase from the Authority of such quantity of bulk electric power and energy as may be required by them to meet their respective present and future retail electric power and energy distribution requirements; and

WHEREAS, in order to secure for the Member and the Authority's other Participating Members an adequate, dependable and economical supply of bulk electric power and energy, the Authority and the Participating Members have previously determined that the

Authority would sell to the Participating Members, and the Participating Members would purchase from the Authority, electric capacity, energy, transmission and other services on the terms and conditions set forth in the Power Sales Contracts, of which the Contract is one; and

WHEREAS, the Authority currently purchases for resale to the Member and the other Participating Members a portion of the Member's and the other Participating Members' electric power and energy requirements through and pursuant to that certain Amended and Restated Power Supply Agreement with Alabama Power Company, dated June 7, 2012, as amended pursuant to Amendment No. 1 thereto dated as of October 15, 2013, pursuant to which Alabama Power Company makes available partial requirements electric service and certain complementary services to the Authority for resale and provision to the Member and the other Participating Members, the supply term of which is subject to termination on December 31, 2025, and on any December 31 thereafter at the option of either party thereto upon not less than three years' written notice; and

WHEREAS, the Authority also currently purchases for resale to the Member and the other Participating Members electric power and energy from persons other than Alabama Power Company, pursuant to agreements and arrangements that are intended to reduce the Participating Members' power supply expenses and stabilize their costs of providing retail electric service; and

WHEREAS, the Power Sales Contracts, including in the case of the Member, the Contract, are dated as of May 1, 1986, and constitute amendments and restatements of those certain contracts respecting the sale of electric power and energy entered into by the Authority and the Participating Members and dated as of December 1, 1985, which contracts were supplemented by those certain Supplemental Power Sales Contracts entered into by the Authority and the Participating Members and dated as of March 28, 1986; and

WHEREAS, the Power Sales Contracts, including the Contract, have remained continuously in effect from the respective effective dates thereof, and neither the Authority nor any Participating Member, including the Member, is in default in respect of any of the provisions thereof; and

WHEREAS, the terms of the Power Sales Contract, including the amendments thereto, presently expire, unless earlier terminated by actions of the respective parties thereto as set forth therein, 1 minute after 11:59 p.m., Central Standard Time, on December 31, 2035; and

WHEREAS, the Authority and the Member, as well as the other Participating Members, have determined that the Power Sales Contracts, including the Contract, have proven to be mutually beneficial and satisfactory to the Authority, the Member and the other Participating Members,

NOW, THEREFORE, in order that the Authority may continue to provide an adequate, dependable and economical supply of bulk electric power and energy for the Member's and the other Participating Members' electric utility systems or Integrated Utility Systems after December 31, 2035, and in order to enable the Authority to engage effectively in long-range planning for the continued provision of an adequate, dependable and economical supply of bulk electric power and energy for the Member's and the other Participating Members' electric utility or Integrated Utility Systems, the Authority, the Member, and the other Participating Members have determined that it is mutually beneficial and in the best interests of the citizens of the State of Alabama in the areas in which the Participating Members distribute electric power and energy at retail to extend the terms of the Power Sales Contracts between the Authority and the Participating Members, including the Contract, through December 31, 2045, and beyond as described hereinafter.

WHEREFORE, for and in consideration of the mutual covenants and agreements herein contained, it is agreed by and between the parties hereto that the Contract shall be and hereby is amended and modified as follows, effective as of the date hereof:

AMENDMENT

1. Extension of Term of the Contract. In order to provide for extension of the term of the Contract, Section 2 of the Contract is amended and modified to read in its entirety as follows:

"SECTION 2. Term

"This Contract shall remain in effect until one minute after 11:59 p.m., Central Standard Time, on December 31, 2045, provided that, on January 1, 2036, and on each January 1 thereafter, the term hereof shall extend automatically for an additional one-year period (e.g., on January 1, 2036, the term of this Contract shall, without any further action of the parties hereto, be extended until and terminate one minute after 11:59 p.m., Central Standard Time, on December 31, 2046, and on January 1, 2037, the term of this Contract shall, without any further action of the parties hereto, be extended until and terminate one minute after 11:59 p.m., Central Standard Time, on December 31, 2047, etc.), provided however, notwithstanding the foregoing, if the Member shall provide written notice to the Authority, pursuant to the requirements of Section 22 of this Contract, not less than ten (10) years prior to the then current date of termination of this Contract, of the Member's intention to terminate this Contract pursuant to this sentence, this Contract may be terminated by the Member on the January 1 immediately following the then current date of termination of this Contract, or on any January 1 thereafter as may be specified by the Member in said written notice. In addition, this Contract may be terminated by either party to this Contract upon 180 days' written notice to the other party to this Contract given in accordance with the provisions of Section 22 of this Contract if (a) provision has been made by the Authority for the payment of all the Authority's payment obligations (including debt service in respect of all outstanding Bond and

other similar financial obligations of the Authority, within the meaning of Section 1201 of the Resolution, all fixed capacity payments to be made by the Authority in respect of its power purchase agreements, all the Authority's fixed natural gas payments, etc.), (b) all contractual obligations theretofore entered into by the Authority for the generation, purchase, transmission or transformation of electric power and energy shall have been terminated, and provision made for the payment of any residual costs or obligations of the Authority in respect of such obligations and for the satisfaction all regulatory requirements with respect thereto."

2 Contract as Amended to Remain in Effect. The Contract, as hereinabove amended and modified, shall remain in full force and effect in all respects and as to all matters not specifically changed by this Amendment.

3. Effective Date of Amendment. The changes to the Contract effected by this Amendment shall become effective upon the expiration of thirty (30) days following the submission of this Amendment to the Alabama Public Service Commission pursuant to the provisions of Section 25 of the Act, provided that the rates to be charged by the Authority pursuant to the Contract, as amended hereby, are not disapproved by the Commission within thirty (30) days after such submission.

IN WITNESS WHEREOF, the Authority and the Member have caused this Amendment to be executed in their respective names, have caused their respective seals to be hereunto affixed and attested, all by their respective duly authorized officers, in six (6) counterparts, each of which shall be deemed an original, and have caused this Amendment to be dated for convenience as of March 31, 2019, although actually executed by the Authority on _____, 2019, and actually executed by the Member on _____, 2019.

ALABAMA MUNICIPAL ELECTRIC AUTHORITY

(SEAL)

By _____
Chairman

Attest:

By: _____
Secretary

Attachment: AMEA (327-18 : Approving Second Amendment to Power Service Agreement)

[UTILITIES BOARD OF] THE CITY OF

(SEAL)

By _____
Its Mayor[Chairman]

Attest:

By: _____
Its Clerk[Secretary]

RESOLUTION NO. 328-18

CDBG Reprogramming of Unused Funds.

Request to move all unused funds from PY2016 to PY2017 so that staff may close out 2016 accounts. Public Service accounts will be reallocated to better utilize activities. All other funds will remain in the same activity but moved to the next program year (example: PY2016 Emergency Home Repairs to PY2017 Emergency Home Repairs).

RESOLUTION NO. _____

WHEREAS, the City of Opelika, an Entitlement City, receives U.S. Department of Housing and Urban Development (HUD) funds from the Community Development Block Grant (CDBG); and

WHEREAS, the City of Opelika desires to amend their Program Year 2016 and Program Year 2017 Action Plan to provide further public services and to re-allocate unspent CDBG funding amounting to \$94,519.78 from a variety of activities; and

WHEREAS, the City's Consolidated Plan delineates Housing Services and Rehabilitation programs as primary goals of the City to improve the quality of life for all citizens; and

WHEREAS, of the \$94,519.78 in unspent funding will be allocated to Program Year 2017 Action Plan budget as follows: \$48,215.23 to the Emergency Home Repair Loan Program, \$6,200.13 to the Homeownership Loan Program, \$26,259.82 to Main Street, and \$13,844.60 to Public Facility.

WHEREAS, the proposed amendment was advertised on November 16, 2018 in the Opelika -Auburn News to announce a public hearing on December 3, 2018 and the start of a minimum 15-day citizen comment period ending December 18, 2018; and

WHEREAS, these changes meet the threshold for a substantial amendment to the action plan and consolidated plan; and

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

1. That the City adopt the Action Plan amendments attached hereto.
2. That Gary Fuller, in his capacity as Mayor, be authorized to execute all agreements necessary to implement the amended Action Plans.

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

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

ATTEST:

R. G. Shuman, CMC
City Clerk - Treasurer

FACT SHEET

SUBJECT: Amend CDBG Action Plan PY 2016 and PY2017 Budgets

Community Development staff requests the City Council adopt a resolution to amend PY2016 and PY2017 Action Plan budgets as shown below. Staff proposes budget adjustment to transfer \$89,725.15 of PY2016 funds to PY2017 so that PY2016 can be closed out in IDIS. PY2016 Emergency Home Repairs, Homeownership, and Public Facility will be reallocated to the same activity for PY2017. Administration and Public Services for PY2016 will be reallocated to PY2017 Main Street. Staff proposes budget adjustments transferring \$4,794.63 PY2017 Administration and Public Services funds to Main Street to close out these activities.

Description	Current Budget	Increase	Decrease	Ending Budget
Administration (2016)	\$ 2,855.44		\$ 2,855.44	\$0.00
Emer Home Repair (2016)	\$ 48,215.23		\$ 48,215.23	\$0.00
Homeownership (2016)	\$ 6,200.13		\$ 6,200.13	\$0.00
Main Street (2016)	\$ 18,550.64		\$ 18,550.64	\$0.00
Public Facility (2016)	\$ 13,844.60		\$ 13,844.60	\$0.00
Unity Wellness (2016)	\$ 59.11		\$ 59.11	\$0.00
Administration (2017)	\$ 3,702.63		\$ 3,702.63	\$0.00
Child Advocacy (2017)	\$ 1,092.00		\$ 1,092.00	\$ 0.00
Emer Home Repair (2017)	\$ 5,188.00	\$48,215.23		\$ 53,403.23
Homeownership (2017)	\$ 3,452.00	\$ 6,200.13		\$ 9,652.13
Main Street (2017)	\$ 3,980.00	\$ 26,259.82		\$ 30,239.82
Public Facility (2017)	\$ 12,624.91	\$ 13,844.60		\$ 26,469.51

HUD requires a 15-day citizen comment period which commenced on November 16, 2018 and ends on December 3, 2018. As of this time, no comments have been received.

RESOLUTION NO. 329-18

Agreement with Auburn for new Skatepark.

RESOLUTION NO. _____

**RESOLUTION APPROVING INFRASTRUCTURE
DEVELOPMENT AGREEMENT FOR NEW SKATE PARK**

WHEREAS, the popularity of skateboarding has increased in recent years; and

WHEREAS, the City of Opelika (sometimes referred to as the “City” or “Opelika”) and the City of Auburn (“Auburn”) have been engaged in discussions concerning the construction, maintenance and operation of a new skate park; and

WHEREAS, the proposed skate park will be located at the Indian Pines Golf Authority, a facility jointly owned by Opelika and Auburn; and

WHEREAS, the proposed skate park will be suitable for both beginners working on basics and advanced skaters who want to improve their skills; and

WHEREAS, Opelika and Auburn have agreed to split equally the cost of construction of the new skate park and to each pay one-half of all maintenance and repair costs; and

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

2. That the Mayor is hereby authorized and empowered to execute said Agreement in the name and on behalf of the City, and the City Clerk is hereby authorized to affix the seal of the City and 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 Agreement.

4. That the City’s share of the cost of construction of the new skate park shall be paid from the Unassigned Fund Balance.

5. That the City’s share of maintenance and repair costs incurred in the current fiscal year shall be paid from the Unassigned Fund Balance.

6. 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)
Lee County)

INFRASTRUCTURE DEVELOPMENT AGREEMENT

This Construction and Maintenance Agreement made and entered into on this the ____ day of _____, 2018, by and between The City of Auburn, Alabama, a municipal corporation, hereinafter referred to as (“**Auburn**”) and The City of Opelika, Alabama, a municipal corporation, hereinafter referred to as (the “**Opelika**”).

Statement of Background Information

1. The Parties hereto have agreed to construct, maintain and operate a skate park for the benefit and enjoyment of their respective citizens, as further identified on **Exhibit A** attached hereto (the “Infrastructure”).
2. The Parties desire to reduce their agreement to writing.
3. NOW, THEREFORE, for and in consideration of the above recitations, and the mutual covenants of agreements contained herein, the parties do hereby agree as follows:

SECTION I CONSTRUCTION OF INFRASTRUCTURE

- 1.1 Auburn shall be responsible for supervising the construction of the Infrastructure and, if necessary, for securing all contractors and subcontractors.
- 1.2 The Parties shall split equally the \$300,000 cost of construction of the Infrastructure. Opelika’s payment of the construction costs shall be due and payable to Auburn at the time Auburn contracts for the construction of the skate park.
- 1.3 For other constructions costs above the \$300,000, the Parties shall pay their respective half as such costs are determined.
- 1.4 Should Auburn pay any portion of a cost or fee on behalf of Opelika, Auburn shall invoice Opelika for the amount of such payment.

SECTION II MAINTENANCE OF INFRASTRUCTURE

- 2.1 Auburn shall be responsible for regular daily maintenance and repair of the Skate Park. Opelika shall pay one half of all repair costs incurred by Auburn. The terms “maintenance” and “repair” shall include, work reasonably necessary to keep the Skate Park in good and safe operating

Attachment: Skatepark Agreement with Opelika (329-18 : Agreement with Auburn for Skatepark)

condition. The terms “maintenance” and “repair” shall not include upgrades and improvements to the Skate Park. Auburn may, in its sole discretion, perform any additional maintenance to the Skate Park but shall not be obligated to do so.

2.2 Any maintenance, repair, upgrade or improvement that exceeds \$1,000.00(not including those repairs necessitated by damage caused by any party), or is a single project with costs reasonably expected to exceed \$1,000.00, shall be considered a “**Major Project**” and must be agreed upon by both Parties, in writing. The cost of any Major Project approved by the Parties as required below shall be equally shared by the Parties. Written notice shall be provided by the initiating Party to the other Party no later than thirty (30) days prior to the commencement of the Major Project, and shall include all relevant documents, estimates, plans, and drawings to enable the other Party to evaluate the reasonableness of the Major Project. Each Party agrees to cooperate in good faith with the other Party in the review, discussion, and implementation of a Major Project, and no Party shall unreasonably object to any Major Project work. Consent to the Major Project shall be provided in writing.

SECTION III
LEGAL EFFECT
AND
LIMITATIONS OF THIS AGREEMENT

The parties hereto shall be bound by the following:

3.1 This Agreement shall be binding on the parties hereto, their successors and assigns.

3.2 All conditions, restrictions, stipulations, and safeguards contained in this Agreement may be enforced by either party hereto by action at law or equity, and all costs of such proceedings, including reasonable attorney fees, shall be paid by the defaulting party.

3.3 This Agreement shall become effective upon its adoption by the respective City Councils of the Parties.

3.4 In the event either party fails to cure (or, as appropriate, to commence and diligently pursue a cure of) any violation of the terms of this Agreement (“Defaulting Party”) within thirty (30) days after written notice from the other, the non-defaulting party (“Non-defaulting Party”) shall have the right to injunctive relief, to require specific performance of this Agreement, to collect damages from the Defaulting Party, and to take such actions as may be necessary in Non-defaulting Party’s discretion to cure such violation and charge the Defaulting Party with all reasonable costs and expenses incurred by the Non-defaulting Party as a result of such violation (including, without limitation, the Non-defaulting Party’s reasonable attorneys’ fees).

3.4 This Agreement shall be governed and interpreted by the laws of the State of Alabama. All legal actions associated with this Agreement shall be filed in the Circuit Court of Lee County, Alabama located in Opelika, Alabama or the Federal District Court for the Middle District of Alabama—Eastern Division located in Opelika, Alabama.

SECTION IV
SEVERABILITY

4.1 In the event that any portion or section of this Agreement is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or sections of this Agreement, which shall remain in full force and effect.

[The remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto in duplicate, each of which shall constitute an original on this the ____ day of _____, 2018.

CITY OF AUBURN, A MUNICIPAL CORPORATION,

BY: _____
BILL HAM
Its: MAYOR

SEAL AND ATTEST:

By: _____
JAMES C. BUSTON, III
Its: City Manager

CITY OF OPELIKA, A MUNICIPAL CORPORATION,

BY: _____
GARY FULLER
Its: MAYOR

SEAL AND ATTEST:

By: _____
ROBERT G. SHUMAN
Its: City Clerk - Treasurer

Attachment: Skatepark Agreement with Opelika (329-18 : Agreement with Auburn for Skatepark)

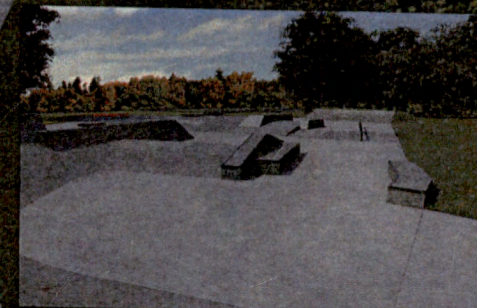
EXHIBIT A

Attachment: Skatepark Agreement with Opelika (329-18 : Agreement with Auburn for Skatepark)



DESIGN #22345

AUBURN/OPELIKA, AL



WWW.AMERICANRAMPCOMPANY.COM

RESOLUTION NO. 330-18

Software & services agreement with Active Network - P/R.

RESOLUTION NO. _____

RESOLUTION APPROVING SOFTWARE AND SERVICES
AGREEMENT WITH ACTIVE NETWORK, LLC

WHEREAS, Active Network, LLC (“Active Network”) is a multi-national corporation that provides software as a service for activity and participant management; and

WHEREAS, Swim Manager Software designed by Active Network provides coaches, parents and team administrators with a cloud-based, full solution team management software that helps coaches build a better swim program with a simple pricing structure for every level of competition; and

WHEREAS, Swim Manager Software provides coaches and parents with online tools for team registration, meet entries, payment submission, communications, results reporting and other administrative functions; and

WHEREAS, Active Network has agreed to waive the customary \$750.00 professional services fee provided its Swim Manager Software is used for event registrations; and

WHEREAS, the City’s Head Swim Coach desires to utilize the Swim Manager Software designed by Active Network; and

WHEREAS, a proposed Software and Services Agreement to be entered into between the City and Active Network 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 (the “City”), as follows:

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

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

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

4. That the Purchasing-Revenue Manager is authorized to issue all necessary and appropriate purchase orders to implement this Resolution.

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

ATTEST:

CITY CLERK



Schedule

Company Address 717 North Harwood Drive, Suite 2500
Dallas, TX 75201
US

Created Date 10/31/2018
Quote Number 00106338
Expiration Date 12/31/2018
Currency USD

Prepared By Spencer Canole
Email spencer.canole@activenetwork.com

Contact Name Tyler McGill
Phone (334) 750-5348
Email tmcgill@opelika-al.gov

Bill To Name City of Opelika Swim Team
Bill To Contact Tyler McGill
Bill To Address 1001 Andrews Rd.
Opelika, AL 36801 United States

Ship To Contact Tyler McGill
Ship To Address 1001 Andrews Rd.
Opelika, AL 36801 United States

First Year 100
Registrations
Average USD 1,500.00
Registration Cost
Total Processing Volume USD 150,000.00

Product	Product Type	Description	Quantity	UOM	Fee %
ACTIVEworks - Swimming Online Team Registration	SaaS		1	%	3.95
ACTIVEworks Swimming - SaaS					
Swim Manager - Professional Services - Standard Implementation	Service	USD \$750 Professional Services Fee waived assuming client's operational use of the software for event registrations. Failure to transact within 120 days from contract execution will result in an invoice in the full amount of the Professional Services Fee. Missed consulting engagements without 7 days prior notice will result in a USD \$150 cancellation fee.	1	Ea	

Annual Projected Contract Value USD 5,925.00

All fees described herein are in consideration of the Software and Services that Active provides. Active and Client acknowledge that certain credit card network rules and laws prohibit imposing a surcharge that is based on the type of payment method used (e.g., having a different fee for the use of a credit card vs. debit card), and therefore, each agree not to impose such a surcharge on any End User. The payment options we offer may include MasterCard, Visa, American Express and Discover.

*Sales tax and shipping not included in total price. Sales tax and shipping, where applicable, will be added to your invoice.

By signing this Schedule, you agree to the terms and conditions governing your use of the Software and Services as set forth at:
General Terms - <http://www.activenetwork.com/general-terms>
Endurance and Sports Product Terms - <http://www.activenetwork.com/sports-terms>

Quote Acceptance Information



Schedule

Client

Signature: _____

Name: Tyler McGill

Title: _____

Date: _____

PO# (if applicable): _____

Active Network, LLC

Signature: _____

Name: _____

Title: _____

Date: _____

GENERAL TERMS

Last Updated: October 29, 2013

Your use of Active's software as a solution product ("Software") and products, software, services and web sites (referred to collectively as the "Services") is subject to the terms set forth below (these "General Terms") and is between you and Active. "Active" means The Active Network, Inc. with a principal place of business is at 10182 Telesis Court, San Diego, CA 92121. In order to use the Software and Services, you must first agree to these General Terms. You represent and warrant that you have the necessary and full right, power, authority, and capability to accept these General Terms, to bind your organization, and to perform your obligations hereunder. You can accept these General Terms by: (i) clicking to accept or agree to these General Terms, where this option is made available to you by Active in the user interface for any Software or Service; (ii) where a link to these General Terms appears in an order form or other document provided to you by Active; (iii) by actually using the Software and/or Services. In the case of (iii), you understand and agree that Active will treat your use of the Software and/or Services as acceptance of these General Terms from that point onwards. You may not use the Software and/or Services and may not accept these General Terms if (a) you are not of legal age to form a binding contract with Active, or (b) you are a person barred from receiving the Software and/or Services under the laws of the United States or other countries including the country in which you are resident or from which you use the Software and Services. You may not use the Software or Services if you do not accept these General Terms. "Effective Date" means the date that you accept these General Terms. By accepting these General Terms, you agree as follows:

1. **Services.** Active will provide you access to its Software and Services related to your events, camps, licenses, classes, tickets, facility/equipment use, transactions, sales, memberships, reservations, donations, and/or activities (together, "Events"). The features, services, options, and fees may be described more fully in an applicable schedule, pricing form, order form, or similar document, referencing these General Terms (each, a "Schedule"). Each Schedule will reference this Agreement or Contract Number (if applicable), must be signed by you and will be governed by these General Terms and incorporated herein by reference. You agree to provide us with certain information relating to your organization as necessary for us to provide the Software and Services. Software provided under these General Terms is deemed delivered when made available to you.

2. **License to Intellectual Property/Promotion.** a) Active retains all right, title, and interest in and to its Software and Services and any underlying software subject to the limited license provided by these General Terms.

b) Active hereby grants to you a limited, non-exclusive, non-transferable license (i) to use the Software and Services solely in accordance with the Schedule and these General Terms, and (ii) to display, reproduce, distribute, and transmit in digital form Active's name and logo solely for the purposes set forth in this Section 2. You hereby grant to Active a limited license to use information provided by you relating to your organization, which may include your organization's name, trademarks, service marks, and logo, in connection with the promotion of your organization or Events.

c) You will make reasonable efforts to promote and encourage the use and availability of the Software in connection with the promotion of your Events for which you are using the Software and Services. You will include Active's name and logo in newsletters, printed registration forms or mailings provided by you to prospective participants (e.g., by inserting the following statement in any online or print media related to your Event: "Online Registration Powered by Active.com") Active will be the sole and exclusive provider of registration services similar to the Software and Services provided to you hereunder for each Event for which you are using Active's Software and Services during the term of these General Terms.

d) You agree to receive notifications regarding free product, promotional items, and giveaways at your Event(s) or facility(ies), but you may opt not to receive the items from Active. Registrants of your Events may opt-in to receive information, items, or promotions/deals from Active; we will be responsible for providing customer service for any such offers.

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e) Each party agrees to comply with all applicable laws, rules, and regulations relating to such party's obligations hereunder.

3. **Information Collection.** Active collects certain information from individuals as part of the registration process for your Events. You may login to our data management system to access this information. You are responsible for the security of your login information and for the use or misuse of such information by users authorized by you to use the Software and Services. You will immediately notify Active in writing if any such users are no longer authorized. Both parties agree to use the collected information in compliance with (i) all applicable laws, rules and regulations, including, without limitation, those governing online privacy and use of credit card data (i.e. using credit card information only for purposes authorized by the cardholder); (ii) applicable Payment Card Industry Data Security Standards; and (iii) Active's privacy policy as published on its website

4. **Fees.** a) You will pay the fees as more fully described in the applicable Schedule. For registration Software, unless otherwise set forth on the applicable Schedule, Active will collect registration fees charged by you from individuals who register for your Events online, for the purposes of card association rules, as a merchant of record but not a seller of record. Active will remit those sums to you, net of chargebacks and any other offsets, bi-weekly unless otherwise set forth in the applicable Schedule, less Active's service fees as set forth in the applicable Schedule. Active may suspend its performance hereunder, including remitting payments, in the event it reasonably believes that the Software or Services are being used for fraudulent or other suspect purposes. If you have agreed to a minimum volume commitment in a Schedule, Active also has the right to charge fees owed to it by you if your organization does not meet the agreed volume commitments and may collect those fees by issuing an invoice or by offsetting the deficiency from any account balance you maintain with Active. Any minimum volume commitment calculations will begin on the date that the Software is live for your Event(s). Active may also reimburse itself for any chargebacks, returned items or overdue fees owed by you out of the registration fees it collects on your behalf by offsetting your account. If the Schedule indicates that you are paying on a subscription basis, you will be invoiced for the first year of subscription fees upon the first live operational use of the Software ("Go-Live Date"), with subsequent annual subscription fees being invoiced upon each anniversary of Go-Live Date. Payment of subscription fees are due within thirty (30) days of your receipt of an invoice. All fees and prices are in United States Dollars unless otherwise specified.

b) All fees that are not directly collected by Active as part of registration fees will be due from you within thirty (30) days from the end of the remittance cycle during which the fees accrued. These fees are displayed on your account statement. Past due fees shall accrue interest at the annual rate of ten percent (10%) per annum. In the event of delay in paying a fee, you agree to reimburse Active for any fees incurred in its collection efforts. Active may suspend or deactivate your account if your account is more than thirty (30) days past due.

c) Active reserves the right to modify the fees once per calendar year, provided that any increase will not exceed twelve and a half percent (12.5%).

d) As the seller of record, you will be solely responsible for, and will pay, any and all use, excise, sales or privilege taxes, duties, value added taxes, fees, assessments, or similar liabilities, chargeable by a governmental authority as a result of any Software or Service provided under these General Terms. Taxes on Active's net income are excluded. All fees described in the applicable Schedule are in consideration of the Software and Services that Active provides. Each party acknowledges that certain credit card network rules and laws prohibit imposing a surcharge that is based on the type of payment method used (e.g., having a different fee for the use of a credit card vs. debit card), and therefore, each agrees not to impose such a surcharge on any end user.

e) In the event you are entering into these General Terms and seeking the Services for the benefit of a third-party event or organization ("Third Party Beneficiary"), you agree that we may send registration fees collected by us directly to the Third Party Beneficiary.

5. **Disclaimer of Warranty/Limitation of Liability.** ACTIVE expressly disclaims any warranty that the use of its Software or services will be uninterrupted or error free or that the Software or services will meet your requirements. Software and services are provided to you on an "as-is" basis without warranties of any kind, either express or implied, including without limitation warranties of merchantability or fitness for a particular purpose. ACTIVE shall not be liable for indirect, incidental, consequential, punitive, or lost profit damages. ACTIVE's total aggregate LIABILITY for any matter arising from or related to these General Terms is limited to the amount of fees actually paid by you as consideration for the Software and services giving rise to such claim during the twelve (12) month period preceding the date on which the cause of action arose.

6. **Indemnification.** a) Each party (the "Indemnifying Party") shall defend, settle, and pay damages (including reasonable attorneys' fees) ("Damages") relating to any third party claim, demand, cause of action or proceedings (whether threatened, asserted, or filed) ("Claims") against the other party hereto (the "Indemnified Party") to the extent that such Claim is based upon: (i) the Indemnifying Party's violation of any applicable law, rule, or regulation; and/or (ii) provision, by the Indemnifying Party, of materials, products, or services as part of such party's

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obligations hereunder that infringe the Intellectual property rights of any third party provided that such materials, products, or services are used in accordance with these General Terms.

b) You shall further defend, settle, and pay Damages relating to Claims to the extent based on (i) injury or death to a person or damage to property resulting from the participation in an Event operated by you in connection with the Software and/or Services; and/or (ii) brought by a Third Party Beneficiary that relate to or arise from your negligence, wrongdoing, or lack of authority to act on behalf of such third party. For the purposes of Sections 5 and 6, reference to Active shall also include its suppliers and licensors.

7. Term and Termination. The term of these General Terms shall be for three (3) years from the Effective Date with automatic renewals for three (3) year terms thereafter, unless either party gives written notice to the other party to terminate these General Terms no less than twelve (12) months prior to the expiration of the then-current term. Either party may terminate these General Terms: (a) upon a material breach by the other party, if such breach is not cured within thirty (30) days following written notice to the breaching party; or (b) where the other party is subject to a filed bankruptcy petition or formal insolvency proceeding that is not dismissed within thirty (30) days.

8. Miscellaneous. a) Any notices required to be given under these General Terms shall be in writing sent to the address set forth below for you or, in the case of Active, to the address set forth above to the attention of General Counsel. Notices will be deemed received the next day if sent via overnight mail or courier with confirmation of receipt, or three (3) days after deposited in the mail sent certified or registered.

b) These General Terms are non-assignable without the written consent of the other party, except that Active may assign without consent: (i) its rights to receive payments; or (ii) to an affiliate or in connection with any sale of or any other transaction involving the transfer of more than fifty percent of its voting securities or assets. Any assignment in violation of these General Terms will be void.

c) These General Terms shall be governed by the laws of the State of California, without giving effect to the conflict of laws provisions thereof. Neither the United Nations Convention of Contracts for the International Sale of Goods nor the Uniform Computer Information Transactions Act shall apply to these General Terms. Any legal action or proceeding relating to these General Terms shall be instituted only in any state or federal court in San Diego County, California. In any action or suit to enforce any right or remedy under these General Terms or to interpret any provision of these General Terms, the prevailing party shall be entitled to recover its costs, including reasonable attorneys' fees.

d) These General Terms contains the entire understanding of the parties regarding the subject matter hereof and can only be modified or amended by a subsequent written agreement executed by both parties.

e) Sections 2, 3, 5, 7, and 8 of these General Terms and any fees owed by you shall survive any termination or expiration of these General Terms.

f) If any provision of these General Terms is held unenforceable by a court of competent jurisdiction, that provision shall be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remainder of these General Terms shall continue in full force and effect.

g) No waiver of any provision of these General Terms or any attachment shall be effective unless it is in writing and signed by the party against which it is sought to be enforced.

h) Neither party will be deemed to be in default hereunder, or will be liable to the other, for failure to perform any of its obligations under these General Terms to the extent that such failure results from any event or circumstance beyond that party's reasonable control.

ACTIVE Network is on a mission to make the world a more active place. With deep expertise in activity and participant management™, our ACTIVE Works™ cloud technology and online event registration software powers the world's activities and connects people with the things they love, want and need to do.

Connect With Us

Twitter

Always ACTIVE Blog

LinkedIn

X YouTube

Quick Links

News & Announcements

Upcoming Events

Customer Support

Social Media Guidelines

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Our Story

Careers

Canada ADDA Policy

Affiliates Center

Properties

ACTIVE.com

ActivityCloud.com

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ACTIVE Network, LLC
717 North Harwood Street
Suite 2500
Dallas, TX 75201

AUSTRALIA FRANCE GERMANY HONG KONG ITALY NEW ZEALAND SINGAPORE SOUTH AFRICA UNITED KINGDOM US & CANADA

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TERMS OF USE

LANGUAGE

Effective Date: May 25, 2018

These Terms of Use are made and entered into by and between you and Active. "Active," "we," "us," or "our" means either (i) Active Network, LLC, with offices at 717 N. Harwood St., Suite 2500, Dallas, TX, 75201, or (ii) if your billing address is in Canada, The Active Network, Ltd., with offices at 2925 Virtual Way Unit 310, Vancouver BC V5M 4X5. "You," or "your," refers to you, a user of the Site or parent or legal guardian (over the age of 18) if such user is a minor in his or her state of residence. These Terms of Use shall apply to (a) all websites owned and/or operated by Active including without limitation the website on which these Terms of Use are posted and Active's subsidiary and/or affiliate entities, including but not limited to Maximum Solutions, LLC, JumpForward LLC, and Teampages Inc., whether or not referred to directly as Active, as well as mobile versions thereof and social networking service pages and applications (collectively, the "Site"), and (b) any and all services available on or through the Site (the "Services"). By accessing and/or using the Site, you are expressly agreeing to comply with and be bound by the following Terms of Use and any other policies, rules or guidelines that may be applicable to Services on the Site ("Additional Terms"), as well as all applicable laws and regulations. Further, you acknowledge that you have read and understood Active's Privacy Policy located at: <http://www.activenetwork.com/information/privacy-policy> (the "Privacy Policy"), which you understand will apply to the processing of your personal information in relation to the Site and the Services.

Active may revise and update these Terms of Use at any time; please periodically review them, because your continued usage of the Site indicates your agreement with any such changes. Any changes we make will be effective immediately upon notice, which we may provide by any means including, without limitation, posting a revised version of these Terms of Use on the Site. If we make any material changes to these Terms of Use, we will endeavor to notify you in advance of such change, by highlighting the change on the Sites or by sending an email to you at the email address that you have registered with us. You can determine when these Terms of Use were last revised by referring to the "Last Updated" legend at the top of these Terms of Use. You should return to this page periodically to ensure familiarity with the most current version of these Terms of Use.

To the extent that there is a conflict between these Terms of Use and the Additional Terms for an event, camp, license, class, ticket, contest, permit, facility/equipment reservation, transaction, sale, membership, reservation, donation, and/or activity for which you are using the Site to register or purchase (each, an "Event"), the Additional Terms of use shall govern. These Terms of Use will remain in full force and effect as long as you are a user of the Site and in the event of termination of any membership, service or feature, you will still be bound by your obligations under these Terms of Use, including any indemnification obligations, warranties, and limitations of liability.

By using or attempting to use the Site, you certify that (i) you are a resident of the United States and are at least 16 years of age or, if under the age of 18, your parent has consented to your use of the Site via our consent mechanism as provided to your parent, or (ii) you are not a resident of the United States and are at least 18 years of age or, if under the age of 18, you have the consent of your parent or guardian (over the age of 18) to use the Site. You also certify that you are not a person barred from receiving Services under the laws of the United States or other applicable jurisdiction. If you do not meet these requirements or, if for any reason, you do not agree with all of the terms and conditions contained in these Terms of Use, you must stop using the Site immediately.

1. Registration.

You may browse the Site and view content without registering, but as a condition to using certain aspects of the Site, you may be required to register with Active and select a password and screen name (your "registration"). You are responsible for maintaining the confidentiality of your registration, and you undertake that you shall not disclose your registration to any other person. You shall not (i) select or use as your registration a name of another person with the intent to impersonate that person; (ii) use as your registration a name subject to any rights of a person other than you without appropriate authorization; or (iii) use as your registration a name that is otherwise offensive, vulgar or obscene.

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You shall be responsible for all uses of your registration, whether or not authorized by you. You will immediately notify Active in writing of any unauthorized use of your account, or other account related security breach of which you are aware. You also agree to: (i) provide true, accurate, current and complete information about yourself as submitted to Active, and (ii) maintain and promptly update your registration information to keep it true, accurate, current and complete. If you provide any information that is untrue, inaccurate, not current or incomplete, or Active has reasonable grounds to suspect that such information is untrue, inaccurate, not current or incomplete, Active has the right to immediately suspend or terminate your account and refuse any and all current or future use of the Site or Services (or any portion thereof) in its sole discretion.

Active's use of your registration data, together with other personal information, is addressed in the Privacy Policy.

To the extent permissible by law, we are not liable for any harm caused or related to the theft or misappropriation of your user name or password due to your failure to take reasonable measures to maintain the confidentiality of your registration, your disclosure of your user name or password, or your authorization of anyone else to use your user name or password. If you have reason to believe that your registration is no longer secure, you must promptly change your password to the Site and immediately notify us of the problem by contacting us at support@active.com. In the event of any dispute between two or more parties as to account ownership, you agree that Active will be the sole arbiter of such dispute in its sole discretion and that Active's decision (which may include termination or suspension of any account subject to dispute) will be final and binding on all parties.

2. Code of Conduct.

In connection with User Content (as defined in Section 6 below) and your use of the Site, you agree that you will not, nor permit anyone else to, indirectly or directly:

- upload, post, email, transmit or otherwise make available any User Content that you do not have a right to make available under any law or under contractual or fiduciary relationships (such as proprietary or confidential information learned or disclosed as part of employment relationships or under nondisclosure agreements);
- submit information that includes non-public personal or identifying information (including personal data) about another person without that person's explicit consent, where that person is specifically aware that Active will process their information for the purposes envisaged by your disclosure;
- upload, post, email, transmit or otherwise make available any User Content that infringes any patent, trademark, trade secret, copyright or other proprietary rights of any party;
- restrict or inhibit any other visitor or member from using the Site, including, without limitation, by means of "hacking" or defacing any portion of the Site;
- access or attempt to access parts of the Site for which you are not authorized by Active, circumvent or attempt to circumvent any security or password protection on the Site, access the Site by any means other than through the interface that is provided and authorized by Active;
- modify any software for the Site in any manner or form, nor use modified versions of such software, including (without limitation) for the purpose of obtaining unauthorized access to the Site;
- use the Site or Materials (as defined in Section 3 below) for any unlawful purpose;
- express or imply that any statements you make are endorsed by us, without our prior written consent;
- impersonate any person or entity, whether actual or fictitious, including any employee or representative of Active;
- forge headers or otherwise manipulate identifiers in order to disguise the origin of any User Content transmitted through the Site;
- transmit (a) any content or information that is unlawful, fraudulent, threatening, abusive, libelous, defamatory, obscene, pornographic, hateful, vulgar or otherwise objectionable, or infringes our or any third party's intellectual property or other rights; (b) any material, non-public information about companies without the authorization to do so; (c) any trade secret of any third party; or (d) any advertisements, solicitations, chain letters, pyramid schemes, investment opportunities or other unsolicited commercial communication (except as otherwise expressly permitted by us);
- use the Site to harm minors in any way;
- engage in spamming or flooding;
- transmit any software or other materials that contain any viruses, worms, Trojan horses, defects, data bombs, time bombs or other items of a destructive nature;
- modify, adapt, sublicense, translate, sell, reverse engineer, decompile or disassemble any portion of the Site or otherwise attempt to derive any source code or underlying ideas or algorithms of any part of the Site;

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- remove any copyright, trademark or other proprietary rights notices contained on the Site;
- "frame" or "mirror" any part of the Site;
- "stalk" or otherwise harass another;
- link to any page of or content on the Site without written authorization;
- use any robot, bot, spider, offline reader, site search/retrieval application or other manual or automatic device or process to retrieve, index, data mine, scrape or in any way reproduce or circumvent the navigational structure or presentation of the Site or its contents without our prior written consent, including with respect to any CAPTCHA displayed on the Site. Notwithstanding the foregoing, Active grants the operators of public search engines permission to use spiders to copy materials from the site for the sole purpose of and solely to the extent necessary for creating publicly available searchable indices of the materials, but not caches or archives of such materials. Active reserves the right to revoke these exceptions either generally or in specific cases;
- harvest or collect information about Site visitors or members without Active's express consent (which may be contingent upon you obtaining the consent of any such Site visitors or members, in the terms stipulated by Active);
- take any action that imposes or may impose (in Active's sole discretion) an unreasonable or disproportionately large load of data, information, or queries on our (or our third party providers') infrastructure;
- share use of your password or use any passcode or password, regardless of whether or not such passcode or password is unique, to participate in any offer on the Site if you are not the original recipient of such passcode or password;
- provide material support or resources (or to conceal or disguise the nature, location, source, or ownership of material support or resources) to any organization(s) designated by the United States government as a foreign terrorist organization pursuant to Section 219 of the Immigration and Nationality Act; and/or
- violate any applicable local, state, national or international law, including, but not limited to, regulations promulgated by the U.S. Securities and Exchange Commission, any rules of any national or other securities exchange, including, without limitation, the New York Stock Exchange, the American Stock Exchange or the NASDAQ, and any regulations having the force of law.

The foregoing actions shall constitute a material breach of these Terms of Use.

You acknowledge, consent and agree that Active may access, preserve and disclose your account information and User Content if required to do so by law or in a good faith belief that such access preservation or disclosure is reasonably necessary to: (a) comply with laws, rules, regulations, or legal process; (b) enforce these Terms of Use; (c) respond to claims that any User Content violates the rights of third parties; (d) respond to your requests for customer service; or (e) protect the rights, property or personal safety of Active, its users and the public.

You understand that the technical processing and transmission of the Site, including your User Content, may involve (a) transmissions over various networks; and (b) changes to conform and adapt to technical requirements of connecting networks or devices.

You understand that the Site and software embodied within the Site may include security components that permit digital materials to be protected, and that use of these materials is subject to usage rules set by Active and/or content providers who provide content to the Site. You may not attempt to override or circumvent any of the usage rules embedded into the Site. Any unauthorized reproduction, publication, further distribution or public exhibition of the materials provided on the Site, in whole or in part, is strictly prohibited.

Should you choose to submit any ideas, suggestions, documents, and/or proposals ("Submissions") to Active through any of its media, you acknowledge and agree that: (a) your Submissions do not contain confidential or proprietary information; (b) Active is not under any obligation of confidentiality, express or implied, with respect to the Submissions; (c) Active shall be entitled to use or disclose (or choose not to use or disclose) such Submissions for any purpose, in any way, in any media worldwide; (d) Active may have something similar to the Submissions already under consideration or in development; (e) your Submissions shall automatically become the property of Active without any obligation of Active to you; and (f) you are not entitled to any compensation or reimbursement of any kind from Active under any circumstances.

3. Ownership and Restrictions on Use.

The information and materials provided on or through the Site, including any content, data, text, designs, graphics, images, photographs, illustrations, audio and video clips, logos, icons and links (collectively, the "Materials") are owned exclusively by Active or its licensors, and are intended to educate and inform you about the events and other products and services offered or described on the Site. Subject to your compliance with these Terms of Use, you may use the Materials solely for your personal, non-commercial use, provided that you do not remove any copyright or other proprietary notices contained therein. Subject to your compliance with these Terms of Use, we grant you a limited license to use the Site and Materials for your personal use only; provided that you may not use, reproduce, modify, display, publicly perform, distribute, create derivative works of or circumvent any technological measure that effectively controls access to the Site and/or Materials in any way.

including, without limitation, by manual or automatic device or process, for any purpose. Notwithstanding anything to the contrary herein, all rights not specifically granted in the license set forth above shall be reserved and remain always with Active. Use of the Site and Materials for any purpose other than as expressly authorized in these Terms of Use is a violation of our copyrights and other proprietary rights, and is strictly prohibited.

The Site, including all Site software, databases, proprietary information, documentation, software, contents, computer codes, ideas, know-how and Materials (and all modifications and derivative works thereof and any intellectual property and other rights relating thereto or contained therein) including, without limitation, the selection, compilations, sequence and "look and feel" and arrangement of items, is owned and operated by Active and will remain the exclusive property of Active. You acknowledge that the Site is protected by copyright, trademark and other laws. You further acknowledge that you do not acquire any ownership rights by using the Site or the Materials. You shall not challenge, contest or otherwise impair Active's ownership of the Site and the content therein.

The trademarks, logos, and service marks displayed on the Site (collectively the "Trademarks") are the registered and unregistered trademarks of Active and Active's advertisers, licensors, suppliers and others. The Trademarks owned by Active, whether registered or unregistered, may not be used in connection with any product or service that is not offered by Active, in any manner that is likely to cause confusion with customers, or in any manner that disparages Active. Nothing contained on the Site should be construed as granting, by implication, estoppel or otherwise, any license or right to use any Trademark without the express written permission of Active, Active's licensors or suppliers, or the third party owner of any such Trademark. Misuse of any Trademarks is prohibited, and Active will aggressively enforce its intellectual property rights in such Trademarks, including via civil and criminal proceedings.

You may make comparative or other nominative fair use of Trademarks owned by Active in advertising and promotional materials, and in referring to Active's products and services (for example, in a magazine article) without Active's permission, provided you follow standard trademark usage practices and provide proper attribution to Active. Other uses that are not "fair use" require written permission from Active, and absent such express permission, you agree not to use or display the Trademarks owned by Active in any manner. Please make such requests by email to support@active.com; we will evaluate your request as soon as possible.

Trademarks owned by Active include, without limitation, those published and searchable on the United States Patent and Trademark Office located at <http://www.uspto.gov> at "Trademarks Search" and the Canadian Trademark Office at: http://strategis.gc.ca/sc_mrksv/cipo/welcome/welcome-e.html at "Trade-marks Database" indicating Active Network, LLC as the identified owner for conducting such search.

4. Making Purchases.

If you wish to purchase products or services or register for an Event described on the Site (each, a "Transaction"), you will be asked to supply certain information applicable to your Transaction, including, without limitation, credit card and other information. You understand that any such information will be treated by Active in the manner described in our Privacy Policy. You agree to pay all charges incurred by you or any users of your account and credit card (or other applicable payment mechanism) at the price(s) in effect when such charges are incurred. You will also be responsible for paying any applicable taxes relating to your Transactions. In addition to these Terms of Use, your Transaction shall be subject to any Additional Terms applicable to such services, features or purchases. Registration for Events may be regulated by certain state, county and city laws or regulations. You acknowledge that complying with any such laws is your responsibility, and YOU AGREE NOT TO HOLD US LIABLE FOR YOUR FAILURE TO COMPLY WITH ANY LAW OR OUR FAILURE TO NOTIFY YOU OF, OR PROPERLY APPLY, ANY LAW. WE WILL COMPLY WITH LAW ENFORCEMENT AND MAY PROVIDE THEM WITH ALL INFORMATION YOU SUBMIT TO US TO ASSIST IN ANY INVESTIGATION OR PROSECUTION THEY MAY CONDUCT. You represent and warrant that all information you provide, including but not limited to all information concerning your name, address, credit card number, and other identifying information of any nature will be true, complete and correct, and that you will update all information as it changes. You agree that you will only use credit cards belonging to you or for which you are expressly authorized to use. You further agree that you will not attempt to conceal your identity or location by using virtual private networks ("VPNs") multiple Internet Protocol ("IP") addresses or email addresses. You grant Active the right to provide any information you submit to third parties for purposes of facilitating the completion of Transactions initiated by you or on your behalf. Verification of information may be required prior to the acknowledgment or completion of any Transaction.

Descriptions or images of, or references to, third party products, services, or Events on the Site do not imply Active's endorsement of such products or services. We reserve the right, without prior notification, to change such descriptions or references; to honor, or impose conditions on the honoring of, any coupon, coupon code, promotional code or other similar promotions; to bar any user from making any or all Transaction(s); to limit the order quantity on any product or service; and/or to refuse to provide any user with any product or service. Verification of information applicable to a purchase may be required prior to Active's acceptance of any order. Price and availability of any product or service are subject to change without notice.

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payment or remittance process, or any other process, or if we are no longer able to verify or authorize your credit card or bank account information, your event registration may be cancelled, we may refuse to honor all pending and future purchases made on such credit card accounts and/or on any online accounts associated with such credit card accounts, and you may be prohibited from using the Site. Charges and Billing. The Site may require payment of access fees. By registering for the Site, you hereby authorize Active to charge your credit card in advance for all applicable fees incurred by you in connection with your chosen service, purchase or registration for your account. You hereby understand and agree that in most cases, Active will be charging your designated credit card in accordance with the payment schedule of the Transaction, Service or Event for which you have registered, but some service fees may accumulate on your credit card account before they are actually charged to your credit card. You further understand and agree that it is your responsibility to notify Active of any changes to your credit card or if your credit card has expired, otherwise your access to the Service may be disconnected or interrupted. You shall additionally be responsible for and shall immediately pay Active, on demand, any payments that are made to us that are subject to an unjustified, subsequent reversal. Unless indicated otherwise, all fees shall be paid in U.S. dollars.

Active reserves the right to change any fees (which includes but is not limited to, charging a fee for packages, options, upgrades and/or a Service for which Active does not currently charge a fee) or billing methods at any time, provided, however, that such modifications shall not take effect earlier than thirty (30) days after Active posts such modification on the Site. Active also has the right to collect applicable taxes and impose premium surcharges for some areas of the Service and these surcharges may apply immediately after you register for the associated service. You may cancel your account or any associated optional or upgraded services therefore at any time, but Active will not refund any remaining portion of your pre-paid fees and you may be charged an additional cancellation fee.

You agree to pay your account balance on time. You also agree to pay any taxes, including sales or use taxes, resulting from your Transaction or use of the Service. Amounts not paid by you to Active when due will be assessed an additional 1.5% (or the highest amount allowed by law, whichever is lower) per month if your payment is more than thirty (30) days past due. That amount is also due immediately. You are responsible and liable for any fees, including attorneys' and collection fees, that Active may incur in its efforts to collect any remaining balances due from you. These Terms of Use shall in no way limit any other remedies available to Active. You also understand and agree that you will be billed for and will pay any outstanding balances if you cancel your account or your account is terminated. You must notify Active of any billing problems or discrepancies within sixty (60) days after they first appear on your credit card account statement. If you do not notify Active within sixty (60) days, you waive any right to dispute such problems or discrepancies.

Parties other than Active provide services, or sell products or access to their Events on the Site. You may order services or merchandise through the Site from other parties not affiliated with Active ("Seller"). All matters concerning the merchandise and services desired from a Seller, including but not limited to purchase terms, payment terms, warranties, guarantees, maintenance and delivery, are solely between you and Seller. Active makes no warranties or representations whatsoever with regard to any goods or services provided by Sellers. You will not consider Active, nor will Active be construed as, a party to such transactions, whether or not Active may have received some form of revenue or other remuneration in connection with the transaction. You agree that Active will not be liable for any costs or damages arising out of such transactions, either directly or indirectly. We are not responsible for examining or evaluating, and we do not warrant the offerings of, any of these businesses or individuals. Active does not assume any responsibility or liability for the actions, product or content of all these and any other third parties. You should carefully review their privacy statements and other conditions of use. It is the responsibility of the Event organizer to communicate its refund policy to you and to issue refunds to you via the Site or otherwise. You understand and agree that Event organizers reserve the right to cancel Events for various reasons, including, without limitation, in the event of weather events (including, but not limited to, heat, tornadoes, earthquakes, fires, storms, lightning and floods), accidents, acts of war or terrorism, military conflicts or riots or for any reason that would affect the safety and security of Event participants and spectators. In the event of such cancellation, there will be no refund of your payment unless authorized by the Event organizer. If you want to request a refund, you must request the refund directly from the Event organizer. To the extent that an Event is cancelled or does not meet your expectations for any reason, you must contact the Event organizer and your sole and exclusive remedy with respect to the Event is with the Event organizer and not with Active. All communications or disputes regarding refunds are between the Event organizer and you. Active will not be responsible or liable in any way for refunds, errors in issuing refunds or lack of refunds in connection with an Event. In addition, Active is not responsible for the truth or accuracy of any listings by Event organizers or the ability of any Event organizer to perform, hold an Event, or complete a transaction. Notwithstanding the foregoing, you may report the misconduct of Event organizers and/or third parties in connection with the Site or any Services to us, and we, in our sole discretion, may investigate the claim and take action.

Donations. When you make a donation, Active receives a fee for the use of our technology without any additional charge to you. Donations collected by Active will be sent in regular intervals to the designated charitable organization in accordance with contract and applicable law, less Active's fee. Any refunds shall be exclusively and directly handled by the designated charitable organization. Active shall not be responsible for processing or making any refunds.

5. Information Provided by Active:

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are subject to frequent change. In addition, the facts and circumstances of every situation differ. Accordingly, although Active endeavors to use reasonable care in assembling the Materials, the Materials may not be up-to-date, accurate or complete.

In addition, portions of the Materials have been contributed to the Site by various artists, sports teams and other persons. The inclusion of such information does not indicate any approval or endorsement thereof, and Active expressly disclaims any liability with respect to the foregoing.

6. Forums and User Content.

Active and its designees may host message boards, blog feeds and other forums found on the Site (collectively, the "Forums"). and you may have the ability to provide or upload to the Site creative suggestions, ideas, notes, concepts, information, content, audio recordings, videos, . . . photographs, graphics, artwork or other copyrighted works and materials (collectively, "User Content").

By sending or transmitting User Content to Active, or by posting such User Content to any area of the Site, YOU GRANT US AND OUR DESIGNEES A PERPETUAL, WORLDWIDE, NON-EXCLUSIVE, UNLIMITED, TRANSFERABLE, FULLY SUBLICENSEABLE (THROUGH MULTIPLE TIERS), ASSIGNABLE, ROYALTY-FREE, FULLY PAID UP, IRREVOCABLE RIGHT AND LICENSE TO USE, REPRODUCE, DISTRIBUTE (THROUGH MULTIPLE TIERS), MODIFY, ADAPT, COMBINE WITH OTHER WORKS, CREATE DERIVATIVE WORKS OF, PUBLICLY PERFORM, DISPLAY, STORE, DIGITALLY PERFORM, PUBLISH (ON THE SITE, ON ANY OTHER WEBSITE(S), IN PRINT, RADIO, TELEVISION OR ELSEWHERE), MAKE, HAVE MADE, SELL, OFFER FOR SALE, IMPORT AND COMMERCIALIZE USER CONTENT, OR ANY PORTION THEREOF, IN ANY MANNER AND CONTEXT (INCLUDING BUT NOT LIMITED TO USAGE IN COMMERCIAL, ADVERTISING OR PROMOTIONAL MATERIALS), NOW KNOWN OR IN THE FUTURE DISCOVERED, IN ACTIVE'S SOLE DISCRETION, IN ANY WAY, IN ANY AND ALL MEDIA NOW KNOWN OR HEREINAFTER DISCOVERED, WITHOUT LIMITATION AND WITHOUT ANY COMPENSATION OR ACKNOWLEDGMENT TO YOU OR ANY THIRD PARTY. To the extent permitted by law, you specifically waive any "moral rights" in and to the User Content. The foregoing grant includes without limitation, any copyrights and other intellectual property in and to your User Content. To the extent permitted by law, none of the User Content will be subject to any obligation, whether of confidentiality, attribution or otherwise, on our part and we will not be liable for any use or disclosure of any User Content. If you have any User Content that you would like to keep confidential and/or do not want others to use, do not post it to the Site. ACTIVE IS NOT RESPONSIBLE FOR A USER'S MISUSE OR MISAPPROPRIATION OF ANY USER CONTENT YOU POST TO THE SITE.

If Active does decide, in its sole discretion, to attribute User Content to you, you hereby grant Active the right to use your member name with respect to such attribution, and hereby completely and irrevocably release and forever discharge us from and waive any claims (including, without limitation, any privacy or publicity rights claims) with respect to such use of your member name. For clarity, the foregoing license grant to Active does not affect your other ownership or license rights in your User Content, including the right to grant additional licenses to the material in your User Content, unless otherwise agreed in writing.

You further acknowledge that Active (a) is under no obligation to post, display or otherwise use any User Content, and (b) has no obligation whatsoever to pay you any royalty or other amounts on any revenues or other consideration that Active receives directly or indirectly from the use or display of your User Content or otherwise from the exercise of Active's rights granted under these Terms of Use. You hereby agree not to instigate, support, maintain, or authorize any action, claim, or lawsuit against Active or its owners/operators, affiliates, and/or licensors, or any other person, on the grounds that any use of User Content, or any derivative works thereof, infringe any of your rights as creator of the User Content, including, without limitation, trademark rights, copyrights, publicity rights, privacy rights and moral rights.

Information on our Forums may be provided by our staff and other contributors, some of whom use anonymous screen names and are people not otherwise connected with Active. You acknowledge that a large volume of information is available in our Forums and that people participating in such Forums occasionally post messages or make statements, whether intentionally or unintentionally, that are inaccurate, offensive, indecent, objectionable, obscene, threatening, harassing or encourages any such conduct, or that otherwise violate any of the Codes of Conduct, and you hereby completely and irrevocably release and forever discharge us from and waive, any legal or equitable rights or remedies you have or may have against Active with respect thereto. We neither endorse nor are responsible for such messages or statements, or for any opinion, advice, information or other utterance made or displayed on the Site or Forums by third parties, whether such third parties are visitors to the Site, members of the Active community or others. The opinions expressed in the Forums reflect solely the opinion(s) of the participants and may not reflect the opinion(s) of Active. We are not responsible for any errors or omissions in articles or postings, for hyperlinks embedded in messages or for any results obtained from the use of such information. Under no circumstances will we or our affiliates, suppliers or agents be liable for any loss or damage caused by your reliance on such information obtained through the Site. If notified by a user of User Content that allegedly does not conform to these Terms of Use, Active may in its sole discretion investigate the allegation and determine in good faith and in its sole discretion whether to remove the User Content.

You shall be solely responsible for your own User Content and the consequences of posting or publishing them. In connection with User Content, you affirm, represent and/or warrant that: (i) you own, or have the necessary licenses, rights, consents, and permissions to the User Content and

and to any and all User Content in the manner contemplated by the Site and these Terms of Use; and (11) you have the written consent, release, and/or permission of each and every identifiable individual person in the User Content to use the name or likeness of such person in the manner contemplated by the Site and these Terms of Use or, if such persons are minors, the written consent, release, and/or permission of such minor's parent or legal guardian. You further understand that the Internet has no geographical boundaries, and you therefore agree to comply with all local rules regarding online conduct and acceptable User Content. You also agree to comply with all applicable laws regarding the transmission of technical data exported from the United States or the country in which you reside. You acknowledge and agree that we have the right to disclose such User Content and the circumstances surrounding their transmission to any third party in order to operate the Site properly; to protect ourselves, our sponsors and our members and visitors; and to comply with legal obligations or governmental requests.

Active reserves the right to delete from the Site any User Content, postings or member names and will cooperate fully with any law enforcement officials and/or agencies in any investigation, up to and including complete and immediate termination of your registration and/or accounts with Active. You acknowledge that Active may or may not pre-screen User Content, but that Active and its designees shall have the right (but not the obligation) in their sole discretion to pre-screen, refuse, or remove any User Content that is available via the Site. Without limiting the foregoing, Active and its designees shall have the right to remove any User Content that violates these Terms of Use or is otherwise objectionable, as determined in their sole discretion. You agree that you must evaluate, and bear all risks associated with, the use of any User Content, including any reliance on the accuracy, completeness, or usefulness of such User Content. In this regard, you acknowledge that you may not rely on any User Content created by Active or submitted to Active, including without limitation information in Active's message boards and in all other parts of the Site.

7. Links.

As a convenience to our members, we may provide links to third-party web sites. If you use these links, you will leave the Site. Your dealings with third parties through links to such third party websites or applications are solely between you and such third party. Unless otherwise explicitly stated, Active is not responsible for the content, goods or services provided on or through such websites, any updates or changes to such sites, for your use or inability to use such sites, or the privacy or other practices of such sites, and the fact that Active offers such links does not indicate any approval or endorsement of any material contained on any linked site. The linked sites are not under our control, and we make no representations as to the quality, suitability, functionality or legality of any sites to which we may provide links. Active expressly disclaims any responsibility for the content, legality, decency or accuracy of any information, and for any products and services, that appear on any third party website or application. You hereby completely and irrevocably release and forever discharge us from and waive any claim you might have against Active with respect to such sites.

Active and/or third parties may, from time to time, send email messages to you containing advertisements, promotions, etc. pursuant to our Privacy Policy. Active makes no representation or warranty with respect to the content of any such email messages or any goods or services which may be obtained from such third parties, and you agree that, to the extent permitted by law, neither Active nor such third party shall have any liability with respect thereto. You agree not to forward or otherwise onwardly transmit any such email messages to other persons who are not named recipients of the original email.

YOU AGREE THAT YOUR USE OF INTERNET WEBSITES AND RESOURCES NOT CONTROLLED BY ACTIVE, INCLUDING WITHOUT LIMITATION, YOUR USE OF ANY CONTENT, INFORMATION, DATA, ADVERTISING, PRODUCTS, OR OTHER MATERIALS ON OR AVAILABLE THROUGH SUCH WEBSITES AND RESOURCES, IS AT YOUR OWN RISK AND IS SUBJECT TO THE TERMS AND CONDITIONS OF USE APPLICABLE TO SUCH SITES AND RESOURCES.

8. Access By Minors.

Active encourages parents to use appropriate parental discretion in determining whether to grant authorization to minor children to access the Site. Pursuant to 47 U.S.C. Section 230 (d), as amended, we hereby notify you that parental control protections (such as computer hardware, software or filtering services) are commercially available that may assist you in limiting access to material that is harmful to minors. Information identifying current providers of such protections is available on external websites, two of which include GetNetWise (<http://kids.getnetwise.org/>) and OnGuard Online (<http://onguardonline.gov/>). Please note that Active does not endorse any of the products or services listed at such websites.

9. Rules for Sweepstakes, Contests and Games.

In addition to these Terms of Use, any sweepstakes, contests, games or similar promotions (collectively, "Promotions") made available through the Site may be governed by specific rules that are separate from these Terms of Use. By participating in any such Promotion, you will become subject to those rules, which may vary from the terms and conditions set forth herein. Active urges you to review any specific rules applicable to a particular Promotion, which will be linked from such Promotion, and to review our Privacy Policy, which, in addition to these Terms of Use, is available at [Back to Top](#)

control with respect to the particular Promotion.

10. Termination.

These Terms of Use shall remain effective until terminated as set forth herein. We reserve the right to immediately terminate these Terms of Use, and/or your access to and use of the Site or any portion thereof, at any time and for any reason, with or without cause, including but not limited to repeated unauthorized postings of copyrighted works. Upon termination of these Terms of Use, your right to use the Site shall immediately cease, and you shall destroy all Materials obtained from the Site and all copies thereof. You agree that any termination of your access to or use of the Site may be affected without prior notice, and that Active may immediately deactivate or delete your password and user name, and all related information and files associated with them, and/or bar any further access to such information or files. You agree that Active shall not be liable to you or any third party for any termination of your access to the Site or to any such information or files, and shall not be required to make such information or files available to you after any such termination.

11. Suspected Violation of these Terms or Law; Injunctive, Equitable Relief, and Liquidated Damages.

Violations of these Terms of Use, including unauthorized use of the Site, may be investigated and appropriate legal action may be taken, including without limitation civil, criminal and injunctive redress. You understand and agree that in Active's sole discretion, and without prior notice, Active may terminate and block your access to the Site or to Active's other services, cancel your event registration, refuse to honor pending and future purchases made from all credit card accounts or online accounts Active believes may be associated with you, cancel an event registration associated with any person acting or believed to be acting in concert with you, remove any unauthorized User Content or exercise any other remedy available, if Active believes that your conduct or the conduct of any person with whom Active believes you act in concert, or the User Content you provide, or any resale of such event registrations purchased through Active, violates or is inconsistent with these Terms of Use or the law, or violates the rights of Active, a customer of Active or another user of the Site. Violating any limitations or terms on the Site, including but not limited to utilizing automated means to process or place event registrations that exceed the stated limit will be deemed to be a material violation of these Terms of Use.

You agree that monetary damages may not provide a sufficient remedy to Active for violations of these Terms of Use and you consent to injunctive or other equitable relief for such violations.

You agree that abusive use of the Site, as defined above, causes damage and harm to Active in the form of, among other things, impaired goodwill, lost sales, and increased expenses associated with responding to abusive use of the Site. You further agree that monetary damages for abusive use of the Site are difficult to ascertain and that proof of monetary damages for abusive use would be costly and difficult to calculate. Accordingly, you agree that liquidated damages are warranted for abusive use. Therefore, you agree that if you, or others acting in concert with you, alone or collectively request more than 1,000 pages of the Site in any twenty-four hour period, you, and those acting in concert with you, will be jointly and severally liable for liquidated damages in the amount of twenty-five cents (\$0.25) per page request each time that a page request is made after that first 1,000 during that twenty-four hour period. You acknowledge that: (a) Active has a valid interest in ensuring proper use of the Site; (b) this provision is reasonably tailored to that purpose; and (c) that the liquidated damages amount is a reasonable approximation of the costs and damages that Active would incur as a result of such action by you or others acting in concert with you.

Active is not required to provide any refund to you if it exercises any of its rights or remedies because you have violated these Terms of Use or any of Active's rights. Additionally, Active reserves the right, in its sole discretion, to modify, suspend or discontinue any part of this Site at any time, with or without notice to you. Active also reserves the right, in its sole discretion, to impose limits on certain features and services and to restrict access to the Site without notice to you. Active shall not be liable to you or any third party for any claim or cause of action arising out of its exercise of the foregoing rights.

12. Disclaimers

THE SITE, THE MATERIALS ON THE SITE, AND ANY PRODUCT OR SERVICE OBTAINED THROUGH THE SITE IS PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, TO THE FULLEST EXTENT PERMISSIBLE PURSUANT TO APPLICABLE LAW. ACTIVE DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE SITE, THE MATERIALS, AND ANY PRODUCT OR SERVICE OBTAINED THROUGH THE SITE, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, ACCURACY, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES THAT MAY ARISE FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE.

THE INFORMATION ON THE SITE OR OTHERWISE IS PROVIDED WITH THE UNDERSTANDING THAT NEITHER ACTIVE NOR MEMBERS OF THE SITE, WHILE SUCH MEMBERS ARE PARTICIPATING IN ACTIVITIES ON THE SITE, ARE ENGAGED IN RENDERING LEGAL, MEDICAL, COUNSELING OR OTHER PROFESSIONAL SERVICES OR ADVICE. ACTIVE ENCOURAGES YOU TO SEEK APPROPRIATE PROFESSIONAL ADVICE OR CARE FOR ANY SITUATION OR PROBLEM WHICH YOU MAY HAVE. IN PARTICULAR, THE ACTIVITIES AND

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OR DEATH, YOU SHOULD CONSULT WITH A LICENSED PHYSICIAN BEFORE PARTICIPATING IN ANY OF THE ACTIVITIES DESCRIBED ON THE SITE.

IN MOST INSTANCES, THE ABILITY OF ACTIVE TO PROVIDE SERVICES IS DEPENDENT UPON A TELECOMMUNICATIONS NETWORK OR THE INTERNET, WHICH MAY NOT BE FULLY SECURED, AS WELL AS GOODS AND SERVICES PROVIDED BY VARIOUS OTHER VENDORS AND THIRD PARTIES. ACTIVE DOES NOT WARRANT THAT YOUR USE OF THE SITE WILL BE UNINTERRUPTED, ERROR-FREE OR SECURE, THAT DEFECTS WILL BE CORRECTED, THAT THE SITE OR THE SERVER(S) ON WHICH THE SITE IS HOSTED IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS, THE SITE WILL MEET YOUR REQUIREMENTS, THE INFORMATION THAT MAY BE OBTAINED FROM THE USE OF THE SITE WILL BE ACCURATE OR RELIABLE, OR THE QUALITY OF ANY SERVICES, INFORMATION, OR OTHER MATERIAL OBTAINED BY YOU THROUGH THE SITE WILL MEET YOUR EXPECTATIONS. YOU ACKNOWLEDGE THAT YOU ARE RESPONSIBLE FOR OBTAINING AND MAINTAINING ALL CONNECTIVITY OR INTERNET SERVICE, COMPUTER HARDWARE AND OTHER EQUIPMENT NEEDED TO ACCESS AND USE THE SITE, AND ALL CHARGES RELATED THERETO. YOU ASSUME ALL RESPONSIBILITY AND RISK FOR YOUR USE OF THE SITE AND YOUR RELIANCE THEREON. NO OPINION, ADVICE OR STATEMENT OF ACTIVE, WHETHER MADE ON THE SITE OR OTHERWISE, SHALL CREATE ANY WARRANTY. ACTIVE DOES NOT WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY PRODUCT OR SERVICE ADVERTISED OR OFFERED BY A THIRD PARTY THROUGH THE SITE OR ANY HYPERLINKED SITE, OR FEATURED IN ANY BANNER OR OTHER ADVERTISING, AND ACTIVE WILL NOT BE A PARTY TO OR IN ANY WAY MONITOR ANY TRANSACTION BETWEEN YOU AND THIRD-PARTY PROVIDERS OF PRODUCTS OR SERVICES. YOUR USE OF THE SITE AND ANY MATERIALS PROVIDED THROUGH THE SITE ARE ENTIRELY AT YOUR OWN RISK. YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM ACTIVE AND/OR ITS AFFILIATED PARTIES OR ON OR THROUGH THE SITE SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THESE TERMS OF USE.

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13. Limitation of Liability.

TO THE GREATEST EXTENT PERMITTED BY LAW, YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT NEITHER ACTIVE NOR ANY OF ITS AFFILIATES, SHAREHOLDERS, LICENSORS, SUPPLIERS, ADVERTISERS OR SPONSORS, NOR ITS OR THEIR DIRECTORS, OFFICERS, EMPLOYEES, CONSULTANTS, AGENTS OR OTHER REPRESENTATIVES, ARE OR WILL BE RESPONSIBLE OR LIABLE TO YOU OR TO ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, PUNITIVE OR OTHER DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS, LOSS OF DATA OR LOST PROFITS), UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY ARISING OUT OF OR RELATING IN ANY WAY TO THE SITE AND/OR MATERIALS CONTAINED ON THE SITE, ANY LINKED SITE OR ANY PRODUCT OR SERVICE PURCHASED THROUGH THE SITE. WITHOUT LIMITING THE FOREGOING, TO THE GREATEST EXTENT PERMITTED BY LAW, YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT ACTIVE SHALL HAVE NO LIABILITY OR RESPONSIBILITY WHATSOEVER FOR (I) THE USE OR THE INABILITY TO USE THE SITE, PRODUCTS, SERVICES OR ANY LINKED SITE; (II) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES RESULTING FROM ANY GOODS, DATA, INFORMATION OR SERVICES PURCHASED OR OBTAINED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH OR FROM THE SITE OR ANY LINKED SITE; (III) USE BY YOU OF ANY TRAINING PROGRAM OR ANY OTHER PRODUCT PURCHASED THROUGH ACTIVE; (IV) YOUR PARTICIPATION IN ANY PROMOTION OR PROGRAM COORDINATED BY ACTIVE; (V) PERSONAL INJURY OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, WHETHER ARISING IN CONTRACT OR IN TORT WHETHER OR NOT ARISING FROM THE NEGLIGENCE OF ACTIVE; (VI) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA AND/OR ANY AND ALL PERSONAL INFORMATION AND/OR FINANCIAL INFORMATION STORED THEREIN; (VII) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON THE SITE OR ANY LINKED SITE; (VIII) ANY FAILURE OF ANOTHER USER TO THE SITE TO CONFORM TO THE CODE OF CONDUCT; (IX) ANY INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM OUR SITE; (X) ANY BUGS, VIRUSES, WORMS, TROJAN HORSES, DEFECTS, DATE BOMBS, TIME BOMBS, MALICIOUS SCRIPTS; OR OTHER ITEMS OF A DESTRUCTIVE NATURE WHICH MAY BE TRANSMITTED TO OR THROUGH OUR SITE BY ANY THIRD PARTY; (XI) ANY ERRORS, MISTAKES, INACCURACIES OR OMISSIONS IN ANY MATERIALS, OR FOR ANY LOSS OR DAMAGE OF ANY KIND INCURRED AS A RESULT OF THE USE OF ANY MATERIALS POSTED, EMAILED, TRANSMITTED OR OTHERWISE MADE AVAILABLE VIA THE SITE; (XII) ANY FAILURE OF AN EVENT ORGANIZER TO HONOR A REGISTRATION; (XIII) THE QUALITY, ^{Back to Top} SAFETY OR LEGALITY OF EVENTS ADVERTISED ON THE SITE; (XIV) THE TRUTH OR ACCURACY OF ANY CONTENT OR EVENT

MAXIMUM TOTAL AGGREGATE LIABILITY OF ACTIVE, ITS AFFILIATES, SHAREHOLDERS, LICENSORS, SUPPLIERS, ADVERTISERS AND SPONSORS, AND ITS OR THEIR DIRECTORS, OFFICERS, EMPLOYEES, CONSULTANTS, AGENTS AND OTHER REPRESENTATIVES. AND YOUR SOLE AND EXCLUSIVE REMEDY, FOR ALL DAMAGES, LOSSES SUFFERED BY YOU AND CAUSES OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE) OR OTHERWISE, SHALL BE THE GREATER OF THE TOTAL AMOUNT OF MONIES RECEIVED BY ACTIVE FROM YOU OR \$100 USD.

CERTAIN U.S. STATE AND NON-U.S. NATIONAL LAWS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY TO YOU, SOME OR ALL OF THE ABOVE DISCLAIMERS, EXCLUSIONS, OR LIMITATIONS MAY NOT APPLY TO YOU, AND YOU MIGHT HAVE ADDITIONAL RIGHTS.

14. Indemnification.

You agree to indemnify, defend and hold Active and its affiliates, licensors, suppliers, advertisers and sponsors, and their respective directors, officers, employees, consultants, agents and other representatives, harmless from and against any and all claims, damages, losses, costs (including reasonable attorneys' fees) and other expenses that arise directly or indirectly out of or from (a) your breach of these Terms of Use, including any violation of the Code of Conduct, above; (b) any allegation that any User Content or other materials you submit to us or transmit to the Site infringe or otherwise violate the copyright, trademark, trade secret or other intellectual property or other rights of any third party; (c) your activities in connection with the Site; and/or (d) termination of your access to the Site.

15. Arbitration Agreement.

(a) Except as prohibited by law, each party to these Terms of Use agrees that any claim, controversy or legal dispute arising out of or relating to these Terms of Use (hereinafter, a "Dispute") will be resolved through binding arbitration administered by JAMS. If JAMS is not available in the state or jurisdiction in which you reside, then the Dispute will be resolved through binding arbitration administered by the American Arbitration Association (the "AAA"). This arbitration agreement is intended to be broadly interpreted and includes claims, controversies or disputes arising out of or relating to any aspect of the relationship between you and us, whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory, all of which shall be considered within the definition of "Dispute." THE PARTIES UNDERSTAND THAT, EXCEPT AS EXPLICITLY SET FORTH TO THE CONTRARY HEREIN, THEY ARE WAIVING ANY RIGHT TO A JURY TRIAL WITH RESPECT TO DISPUTES. However, Active may not invoke its right to arbitrate any individual claim that you bring in small claims court, as long as it is brought and maintained as an individual claim. Notwithstanding the above, we both agree that you or we may bring suit in court to enjoin infringement or other misuse of intellectual property rights. Each party agrees that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Site or these Terms of Use must be filed within two (2) years after such claim or cause of action arose or be forever barred.

(b) A party who intends to seek arbitration must first send to the other, by certified mail, a written Notice of Dispute ("Notice"). Any Notice to us should be addressed to: Chief Legal Officer, c/o Active Network, LLC, 717 North Harwood Street, Suite 2500, Dallas, TX 75201 ("Notice Address"). The Notice must (i) describe the nature and basis of the claim or dispute; and (ii) set forth the specific relief sought ("Demand"). If we and you do not reach an agreement to resolve the claim within thirty (30) days after the Notice is received, either party may commence an arbitration proceeding. During the arbitration, the amount of any settlement offer made by you or us shall not be disclosed to the arbitrator until after the arbitrator determines the amount, if any, to which you or we are entitled. After we receive notice at the Notice Address that you have commenced arbitration, we will promptly reimburse you for your payment of the filing fee up to \$350, unless your claim is for greater than \$50,000 (as described further below).

(c) The arbitration will be conducted under and governed by the Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes of the AAA (collectively, the "AAA Rules"), except as specified in or modified by these Terms of Use. The AAA Rules are available online at adr.org, by calling the AAA at 1-800-778-7879, or by writing to the Notice Address. The arbitrator is bound by the terms of this Section 15. All issues are for the arbitrator to decide, except that issues relating to the scope of the arbitration provision are for the court to decide (as described further in subsection (d) below). The rules promulgated by the AAA concerning class arbitration shall not apply. For any non-frivolous claim that does not exceed \$50,000, we will pay all costs of the arbitration (i.e. the JAMS filing and administration fee and the arbitrator's fee) up to \$350 for an arbitration initiated in accordance with this arbitration agreement. If, however, the arbitrator finds that either the substance of your claim or the relief sought is frivolous or brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), then the payment of all such fees will be governed by the AAA Rules. In such case, you agree to reimburse us for all monies we previously disbursed that are otherwise your obligation to pay under the AAA Rules. In addition, if you initiate an arbitration in which you seek more than \$50,000 in damages, the payment of these fees will be governed by the AAA rules.

(d) Notwithstanding the AAA Rules, the foregoing or any other provision of these Terms of Use (including the arbitration agreement), any disagreement or dispute concerning arbitrability (whether a particular Dispute is arbitrable) or the scope of this arbitration agreement shall be

federal district in which you reside; provided that if that United States District Court lacks subject matter jurisdiction, then any such disagreement or dispute shall be resolved by the state court of general jurisdiction embracing the area in which you reside. By way of example only (and not by limitation), if the parties do not agree on whether a particular Dispute is subject to arbitration under this arbitration agreement, the proper tribunal to decide such Dispute is the United States District Court (for the appropriate district, as provided above) or, absent subject matter jurisdiction in that United States District Court, in the appropriate state court (as described above). The arbitrator shall stay all arbitration proceedings pending a decision from the appropriate court on disputes under this subsection (d). The arbitrator shall follow, adhere to and defer to the decision, order, decree or judgment of the court following the court's decision of any such dispute under this subsection (d). Any action, award or partial award of the arbitrator in contravention of this limitation may be the subject of court appeal by the aggrieved party. No other aspect of any ruling by the arbitrator shall be appealable, and all other aspects of the arbitrator's ruling shall be final and non-appealable, except as set forth herein.

(e) **WAIVER OF CLASS-WIDE PROCEEDINGS:** You agree that, by entering into these Terms of Use, you and we are each waiving the right to participate in a class action or class arbitration. Each party to these Terms of Use agrees and covenants that it will not initiate any class-wide proceedings, including class actions or class arbitrations, against another party, and will not act as a class representative or class member. This provision constitutes an agreement that any Dispute will be resolved exclusively on a bilateral basis between the parties, with each party acting in his/her/its individual capacity. Further, unless both parties agree otherwise, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding. The arbitrator may award relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim. If for any reason the prohibition on class arbitration in this subsection (e) is not or cannot be enforced, then the agreement to arbitrate will not apply.

(f) These Terms of Use evidence a transaction in interstate commerce, and thus the Federal Arbitration Act (the "FAA") governs the interpretation and enforcement of this provision. Texas state law and procedures concerning arbitration shall apply to these Terms of Use only to the extent that they do not conflict with and are not inconsistent with the FAA. This arbitration agreement shall survive termination of these Terms of Use.

(g) Unless both parties agree otherwise, any arbitration hearings will take place in the Dallas, Texas, or another location mutually agreeable to the parties. Subject to the terms of this arbitration agreement, all Disputes shall be decided by a single arbitrator, who shall be either: (1) a retired federal judge; (2) a retired state court judge who sat on a trial court or appellate court for at least five (5) years; or (3) an attorney admitted to practice in the state in which the Dispute will be resolved for at least twenty-five (25) years with no disciplinary history. The arbitrator shall be selected by mutual agreement of the parties within thirty (30) days of the effective date of the notice initiating the arbitration. If the parties cannot agree on an arbitrator, then the complaining party shall notify JAMS (or the AAA, as applicable) and request selection of an arbitrator in accordance with the applicable AAA Rules. The arbitrator shall have only such authority to award equitable relief, damages, costs, and fees as a court would have for the particular claim(s) asserted.

(h) This arbitration agreement is not intended to modify or limit the remedies available to either party, including the right to seek interim relief, such as injunction or attachment, through judicial process, which will not be deemed a waiver of the right to demand and obtain arbitration. Any Dispute that is not arbitrated, including any judicial action to enforce this arbitration provision will be litigated exclusively in, if you reside in Canada, the Supreme Court of British Columbia, or otherwise in the United States District Court for the federal district in which you reside, and the parties hereby consent and submit to the jurisdiction and venue of such court; provided that if that United States District Court lacks subject matter jurisdiction, then any such disagreement or dispute shall be resolved by the state court of general jurisdiction embracing the area in which you reside.

(i) The arbitrator shall have the authority to compel adequate discovery for the resolution of the dispute and to award such relief as would otherwise be permitted by law; provided, however, that in no event shall the right to discovery granted to the parties to these Terms of Use exceed ten (10) interrogatories, twelve (12) documents requests, two third-party subpoenas, and one deposition (of not more than four hours), per side. The parties may submit such pre-arbitration and post-arbitration briefs (including briefs during arbitration) as they choose, provided that no party shall submit briefing exceeding a reasonable page limitation to be set by the arbitrator. In the event any party submits a motion, the arbitrator shall consider the motion and either deny it or request opposition briefing by the non-moving party, which shall not be required until requested by the arbitrator. The arbitrator may not grant a motion without allowing the opposing party an opportunity to oppose. The total length of the arbitration hearings on the merits shall not exceed 10 hours of hearing time, to be divided equally between the opposing sides. All discovery shall be completed no later than sixty (60) days after appointment of the arbitrator. The hearing shall be concluded no later than one hundred eighty (180) days after appointment of the arbitrator, unless the arbitrator's schedule requires a later hearing. The arbitrator may only extend these limits at the request of a party when the arbitrator finds exceptional cause for the extension. The parties may extend these limits by mutual agreement.

(j) The arbitrator shall be required to issue a written arbitration decision including the arbitrator's essential findings, conclusions and a statement of award. Except as set forth herein, the arbitrator shall have exclusive authority to resolve all Disputes.

16. Connectivity; Mobile.

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from your cell phone or internet service provider as a result of the use of the Site. With respect to mobile versions or applications, your carriers' normal rates and fees, including text messaging and data fees may apply to your use of the Site or Services. In the event you change or deactivate your mobile telephone number, you will endeavor to update your account information within 48 hours to ensure that your messages are not sent to the person who acquires your old number.

17. Applicable Law.

You and Active agree that (i) for users in Canada, the statutes and the laws of British Columbia, without regard to the conflict of laws principles thereof, will apply to all matters relating to the use of the Site and (ii) for all other users, the statutes and laws of the State of Texas, without regard to the conflict of laws principles thereof, will apply to all matters relating to use of the Site.

18. U.S. Export Controls.

This Site and software derived from this Site is further subject to United States export controls. No software from this Site may be downloaded or otherwise exported or re-exported: (i) into (or to a national or resident of) Cuba, Iraq, Libya, North Korea, Iran, Syria, or any other country to which the U.S. has embargoed goods; or (ii) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Deny Orders. By downloading or using the Site or any software derived therefrom, you represent and warrant that you are not located in, under the control of, or a national or resident of any such country or on any such list.

19. Privacy.

We believe that your privacy and the privacy of all our users are important. These Terms of Use should be read alongside our Privacy Policy, which is a non-contractual document providing important information about how your personal information is used. Please carefully review our Privacy Policy. Whilst the Privacy Policy does not create contractual obligations for either Active or you, you acknowledge and agree that, to the extent permitted by law, any disputes related to our Privacy Policy, including any breaches in security or privacy (and statutory obligations relating to security or privacy), will be subject to the limitations on liability contained in these Terms of Use. By registering for and participating in a sports Event, you understand and agree that your activity or event, or other results may be posted by the Event organizer. If you would prefer that your results not be posted or be taken down, you must contact the organizer of the Event directly, and Active is not responsible for the posting or removal of such information. Active will not be responsible or otherwise liable for any use or disclosure of your contact information, or financial information, by a third party to whom Active is allowed to disclose your contact information under the Privacy Policy. If you post any User Content to the Site, by email or otherwise, we will treat it as non-confidential and non-proprietary to you. When we say in these Terms of Use "post" we mean the provision of information to the Site through features of the Site that are used to make information available to other members of the public (e.g., user reviews, bulletin/message boards, chat rooms, etc.). User Content is outside of the scope of the Privacy Policy and may be publicly displayed and disclosed and otherwise used by Active or any third party in any way. By posting User Content to the Site, you authorize us to use or allow others to distribute, reproduce or otherwise use such User Content. You should not post information about yourself on the Site that can be used to identify or contact you, including, but not limited to, your name, home or work address, phone numbers, email address or other such information. If you post such information, Active cannot prevent it from being used in a manner that violates these Terms of Use, the law, or your personal privacy and safety. By posting such information on the Site, you violate these Terms of Use, and you assume the risks and sole liability for the results of such posting.

20. Questions.

If you have any questions, comments or complaints regarding these Terms of Use or the Site, feel free to contact us at: support@active.com

21. Notice Regarding Electronic Commercial Services for California Users.

Under California Civil Code Section 1789.3, California Site users are entitled to the following specific consumer rights notice: The Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs may be contacted in writing at 1625 North Market Blvd., Sacramento, CA 95834, or by telephone at (916) 445-1254 or (800) 952-5210.

22. Notice.

Active may provide you with notices, including those regarding breaches of security, by email, regular mail or postings on the Site. All notices from you to Active must be sent to Active Network, LLC, 717 North Harwood Street, Suite 2500, Dallas, TX 75201 or support@active.com and such notices will be deemed received the next day if sent via email overnight mail or courier or three (3) days after deposited in the mail sent certified or registered.

23. Miscellaneous.

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obligation hereunder. You may not assign any of your rights or obligations under these Terms of Use. Any assignment in violation of these terms is void.

Rights and obligations under these Terms of Use which by their nature should survive will remain in full effect after termination or expiration of the Terms of Use.

You represent to Active that you have the authority to register with Active according to these Terms of Use. The failure of Active to exercise or enforce any right or provision of these Terms of Use shall not constitute a waiver of such right or provision. The section titles in these Terms of Use are for convenience only and have no legal or contractual effect. Active may provide you with notices, including those regarding changes to these Terms of Use and notices regarding breaches of security, by email, regular mail or postings on the Site. Except for certain Active licensors, or as may be otherwise expressly provided herein, there are no third-party beneficiaries to these Terms of Use. If any provision of these Terms of Use is held to be unenforceable by a court of competent jurisdiction for any reason whatsoever, (i) the validity, legality, and enforceability of the remaining provisions of these Terms of Use (including without limitation, all portions of any provisions containing any such unenforceable provision that are not themselves unenforceable) shall not in any way be affected or impaired thereby, and (ii) to the fullest extent possible, the unenforceable provision shall be deemed modified and replaced by a provision that approximates the intent and economic effect of the unenforceable provision and these Terms of Use shall be deemed amended accordingly. We may translate these Terms of Use, our Privacy Policy or any other operating rules, policies and procedures that may be published from time to time on the Site into other languages for your convenience. The English language version of each of these documents is the version that governs your use of the Site and in the event of any conflict between the English language version and a translated version, the English language version will control. A printed version of these Terms of Use and of any notices given in electronic form shall be admissible in judicial or administrative proceedings based upon or relating to these Terms of Use to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form.

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AUSTRALIA FRANCE GERMANY HONG KONG ITALY NEW ZEALAND SINGAPORE SOUTH AFRICA UNITED KINGDOM US & CANADA [Back to Top](#)

RESOLUTION NO. 331-18

Engagement Letters with Baller Stokes & Lide and CTC Technology / Small Cell Wireless 5G.

RESOLUTION NO. _____

RESOLUTION APPROVING ENGAGEMENT LETTERS
WITH BALLER STOKES & LIDE AND CTC TECHNOLOGY AND ENERGY

WHEREAS, on September 26, 2018, the Federal Communications Commission (the “FCC”) approved sweeping regulations that restrict state and local regulation of small cell wireless deployment (5G infrastructures); and

WHEREAS, the FCC small cell order will

- Place limits on application fees. The FCC determined small cell wireless application fees in excess of \$500 for up to five sites and \$100 for each site thereafter are presumed unreasonable. Fees above that amount could be challenged forcing the City to justify the costs.
- Limit recurring fees (rent). The FCC will only allow a “reasonable approximation of a city’s objectively reasonable cost” for maintaining the rights-of-way or a structure within the right-of-way. What is presumptively reasonable is a recurring fee of \$270.00 per site per year. Cities are prohibited from recovering any cost not directly related to rights-of-way maintenance, charging fees above cost recovery, or recovering “unreasonable” costs such as excessive consultant fees.
- Create a federal time frame (shot clock) for small cell wireless facility review. Cities have 60 or 90 days to process small cell wireless applications, depending on whether they are being mounted on existing or new structures. The new federal shot clocks apply equally regardless of how many applications are received at one time.
- Limit aesthetic requirements. The FCC Order limits aesthetic review and requirements (including undergrounding and historic/environmental requirements) to

what is reasonable, comparable to other right-of-way users, and published in advance. Cities have 180 days from the publication in the Federal Register to enact and publish aesthetic requirements.

- Create a new time frame to process microcell applications. Despite the focus on small cell facilities, the FCC ruling also creates a 90- or 150-day shot clocks for microcell facilities on city structures. “Microcell” is the traditional wireless coverage model on which antennae are placed on very tall structures with coverage for several miles. For example, this typically includes antennae on water towers; and

WHEREAS, the City of Opelika (the “City”) needs legal and engineering assistance in developing a small cell wireless ordinance and related legal tools and in helping the City devise effective strategies that comport with applicable federal and state law; and

WHEREAS, in the face of new requirements for shot clocks and stricter tests on aesthetic requirements, it is extremely important that the City hire outside consultants to establish specific requirements for small cell deployment; and

WHEREAS, the City will require highly specialized legal and engineering skills; and

WHEREAS, Baller Stokes & Lide (“Baller”) has a national reputation in federal communications law; and

WHEREAS, Baller has often represented clients before Congress, the FCC, the FTC and various other state and federal agencies; and

WHEREAS, Baller can provide the best possible legal advice in this highly developed complex area of law and matters associated with telecommunications and small cell pole

attachments; and

WHEREAS, Baller has recommended that the City retain CTC Technology and Energy (“CTC”) to develop technical engineering standards, drawing, forms and processes for wireless attachments; and

WHEREAS, CTC can also advise Opelika regarding the technical portions of the new small cell ordinance and changes to its zoning ordinance; and

WHEREAS, CTC has more than thirty (30) years of experience as a consulting firm in the telecommunications industry; and

WHEREAS, Baller and CTC have the experience and expertise to meet the City’s needs; and

WHEREAS, the City Council has been furnished an Engagement Letter between the City and Baller and the City Council has determined that the terms of said Engagement Letter are acceptable to the City; and

WHEREAS, the City Council has been furnished an Engagement Letter between the City and CTE 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 Letters with Baller and CTC.

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 with Baller Stokes & Lide, in substantially the same form as the copy of which is attached hereto as Exhibit “A”.

3. That the City Council hereby approves the Engagement Letter with CTC Technology and Energy, in substantially the same form as the copy of which is attached hereto as Exhibit “B”.

4. That the City Council hereby authorizes the Mayor to execute the Engagement Letters with Baller and CTC for and on behalf of the City.

5. That compensation for legal and engineering services to be performed by Baller and CTE shall be paid from the Unassigned Fund Balance.

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 Engagement Letters.

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

EXHIBIT "A"

BALLER STOKES & LIDE

A PROFESSIONAL CORPORATION

2014 P STREET, N.W.

SUITE 200

WASHINGTON, D.C. 20036

(202) 833-5300

FAX: (202) 833-118

www.baller.com*Jim Baller**(202) 833-1144 (o)**(202) 441-3663 (m)**Jim@Baller.com*

September 29, 2018

Guy F. Gunter, III
 City Attorney
 City of Opelika, Alabama
 608 Avenue A
 P.O. Box 390
 Opelika, AL 36803-0390

Re: Engagement to Provide Legal Services

Dear Guy:

This responds to your letter of request September 17, requesting our firm's assistance in developing a small cell wireless ordinance and related legal tools and in helping the City devise effective strategies that comport with applicable federal and state law. Working with CTC Technology & Energy, whose detailed proposal is attached, we will gladly assist the City and Opelika Power Services with these matters.

More specifically, we will do the following:

- Prepare for and participate in a kick-off meeting in Opelika or Washington, DC, among CTC, our firm, and the City's key internal stakeholders (including OPS and other departments that may be affected by small cell deployments. At the meeting, we will interactively review and discuss (a) current and probable future technological, business, and legal issues surrounding the deployment of small cell wireless facilities; (b) the City's goals, needs, and priorities in the light of these developments; and (c) the City's existing legal instruments and practices that may affect small cell deployments, including ordinances, pole attachment agreements, application processes, and forms.
- After the kickoff meeting, we will work closely with CTC and the City to help the City decide, in a timely and well-informed manner, among the lawful options available to it and to develop all of the legal documents, policy statements, etc. that it will need to implement these decisions.

Until we meet with the City, we will not have a full picture of the City's circumstances and needs. At the same time, substantial questions currently surround the legality of all or critical portions of the Federal Communications Commission's recent small cell wireless orders. As a result, we cannot yet provide the City a meaningful estimate of our total legal fees and costs for this engagement. We will do so as soon as possible, and in the meanwhile, we will invoice the City monthly for legal fees and associated out-of-pocket expenses, including CTC's fees and costs, without markup. Our hourly billing rates for this engagement will be as follows: Jim Baller, \$450; Sean Stokes, \$375; Casey Lide, \$350; and

Attachment: Exhibit A (331-18 : Engagement Letters / Small Cell Wireless)

BALLER STOKES & LIDE

A PROFESSIONAL CORPORATION

September 29, 2018

Page 2

Associates, \$250. For litigation, if any, our rates will be \$25 per hour higher. These rates will remain in effect for one year. CTC's rates are included in its attached proposal.

We will try to keep our fees as low as reasonably possible. Among other things, with your prior approval, we will allocate responsibilities within our firm so as to take advantage of the special expertise of our lawyers on particular issues affecting the City. At the same time, we will avoid duplication of efforts to the maximum extent possible.

As reflected in the attached Statement of Qualifications, our firm has extensive experience with federal communications and related laws and has been involved in scores of advanced communications projects across the United States, including Opelika's fiber project. We are not licensed to practice Alabama law, so on matters of state and local law, we must work closely with you or your choice of other in-house or outside Alabama counsel. On matters of Alabama and local law, the City must ultimately rely on your advice or that of other Alabama counsel.

We are unaware of any conflict of interest that would prevent us from providing the legal services in question. If a potential conflict arises in the future, we will promptly notify the City and attempt to work out a mutually satisfactory solution. During the time that this agreement is in effect, it is remotely possible that a current or future client may have a dispute or transaction with the City that is unrelated to this engagement. By signing this agreement, the City consents to our firm's representation of existing or new clients in matters, including matters that may be adverse to the City, if such matters are not substantially related to this engagement and we have not obtained confidential information from the City that could adversely affect it.

We treat client communications, including electronic communications over the Internet, as privileged and confidential. We and our clients do not routinely communicate through encrypted electronic communications. If the City requests, however, either now or in the future, we will undertake to do so. By signing this Agreement, the City signifies that it does not presently wish us to communicate with it through encrypted communications.

If the terms of this engagement agreement are satisfactory the City, please execute it and return a copy to me by email, fax, U.S. mail, or overnight delivery. By signing this agreement, you certify that you have authority to do so and that the City approves of its terms and conditions.

City of Opelika, Alabama

Sincerely,



James Baller

By:

Gary Fuller
Mayor

Date

Attachment: Exhibit A (331-18 : Engagement Letters / Small Cell Wireless)

ctc technology & energy

engineering & business consulting

CTC Technology & Energy is pleased to present this proposal as a subcontractor to Baller, Stokes, & Lide. We understand that the City of Opelika and its municipally-owned utility, Opelika Power Services, seeks processes for coordinating, reviewing, and acting on third-party applications to site wireless attachments within the City rights-of-way, on utility poles, and potentially on private property. (For the purposes of this document, "City" will refer both to OPS and the larger City government.) CTC proposes to perform the following tasks as an independent adviser to the City (we have no affiliation or contracts with telecommunications or internet providers).

Task 1: Facilitate Strategic Kickoff Meeting and Project Discovery

To initiate the project, CTC will facilitate an on-site kickoff meeting at a City facility. Our team will deliver an interactive presentation on the various types of attachments that applicants nationwide are seeking to place on buildings, light poles, utility poles, and other structures. These include wireline facilities; wireless technologies; hybrid wireline and wireless facilities; and other advanced technologies.

CTC will provide illustrations and photos of different attachments and will answer both technical questions related to the attachments and process-oriented questions related to third-party attachment agreements we have developed on behalf of other public-sector clients. Our team will also share its experience and knowledge in developing and implementing wireless and wireline siting processes. The intention of these processes is to protect public safety, avoid creating conflicts with utility operations, protect utility worker safety, generate revenue, and help localities explore options for installations that may be smaller or more aesthetically pleasing while ensuring that residents and businesses enjoy the benefits of improved wireless services.

We view this meeting as a critical opportunity for our team to hear from City's stakeholders—to develop an understanding of both their needs and any potential hurdles to meeting them.

In addition to introducing the project teams and confirming the City's goals and timelines, our expected agenda will include the following items:

1. Discussing the City's (notably including OPS's) current administrative processes related to wireless siting.
2. Documenting roles and responsibilities of City stakeholders.
3. Defining communication processes for the engagement.
4. Transferring documents from the City to CTC, including any existing third-party attachment and wireless siting agreements, relevant ordinances, application documents, forms, databases of existing attachments (wireline and wireless), and lists of known

Columbia Telecommunications Corporation10613 Concord Street • Kensington, MD 20895 • Tel: 301-933-1488 • Fax: 301-933-3340 • www.ctcnet.us

companies who are attaching equipment to poles or installing equipment elsewhere on City or private property.

Task 2: Prepare Gap Analysis of Third-Party Wireless Attachment Process

Drawing on our experience and expertise in developing attachment processes and agreements, CTC will develop a gap analysis of the City's wireless attachment processes. As noted above, the City will provide us with any existing and draft practices, requirements, wireless attachment guidelines, ordinances, workflows, applications, and other relevant guidelines and documentation.

Through this evaluation, we will develop a full understanding of City's current state, identify gaps or potential process improvements, and begin to document a new process that would meet the City's administrative needs, enable a clear and transparent process for the public and potential third-party attachers, and ensure compliance with FCC requirements. Crucially, this process will also provide for a review of existing means of coordination between the City and OPS.

Task 2 Deliverable: We will deliver a written gap analysis report.

Task 3: Develop Technical Standards, Forms and Processes for Wireless Attachments

Drawing on our findings from previous Tasks—coupled with our experience, input from City stakeholders, and relevant industry standards—we will collaborate with the City to document and refine a third-party attachment process geared to preparing the City for small cell and other wireless attachments.

CTC will make technical and process-related recommendations concerning appropriate placement of wireless or wireline infrastructure on City light poles and other City structures, OPS utility poles, other City property, and private property. We will assess the relative impact of various options with respect to the City's use of poles, pole capacity, impact on customers and existing third-party attachers and future scalability of the electric distribution plant in the case of OPS utility poles.

Public safety considerations will be considered in this task. CTC will provide technical guidance on matters of safety and interference related to placement of infrastructure on light poles and other City property. CTC will make recommendations concerning the potential for interference with any existing City wireless systems and among different parties on poles or other structures, limitations that placement would impose on future use, and potential safety risks to the City and its workers.

This task will include technical and policy analysis related to how existing attaching entities may attempt to leverage their existing leased space on poles or other structures to attach wireless devices. If existing equipment has been proposed for City, we will review the capabilities of proposed equipment and whether equipment with smaller form factors or more aesthetically

pleasing designs may be available. CTC will assist in revising and refining policy options with the goal of meeting the City's long-term business objectives.

Task 3 Deliverable: We will deliver a report on our recommendations and provide draft and final versions of technical standards, forms and processes.

Task 4: Develop Typical Drawings for Standards

In this task, we will provide up to 10 typical drawings for the third-party attachment standards. Existing typical drawings will be provided by the City. CTC will collaborate with the City to develop the necessary typical drawings for both wireline and wireless third-party attachments. CTC will prepare draft typical drawings that meet the City's design requirements; City stakeholders will provide relevant technical feedback and CTC will finalize the drawings. All drawings will be drafted in AutoCAD and/or MicroStation and then delivered in CAD formats (DWG and DGN) as well as in PDF.

Task 4 Deliverable: Up to 10 typical drawings for third-party standards.

Task 5: Advise Regarding Technical Portions of New City Ordinance and Zoning Ordinance

CTC engineers will provide to Baller, Stokes, & Lide technical language that may be required for a new City ordinance governing wireless facilities placement on City poles or property and a zoning ordinance governing placement on private property.

Then, on an as-needed basis, CTC will work with BSL and the City's legal department to advise on any revisions needed. CTC's technical guidance on the development of ordinances and attachment agreements will refer to the standards, forms, and processes developed in this task.

Task 5 Deliverable: Draft technical language for City ordinance and zoning ordinance.

Task 6: Provide an Overview and High-Level Strategy regarding Possible Business Models

The proliferation of small cell infrastructure represents a business opportunity, particularly for the City's electric utility. In this task, we propose to develop a high-level strategy for how the utility can leverage the current opportunity as a means of supporting community broadband goals and maximizing the value of utility assets and capabilities. Among other areas, there exist opportunity for public utilities to lease fiber and other assets to wireless carriers involved in deployment of small cells, or to enter the business of DAS and/or small cell antenna implementation themselves.

As part of this task, our senior business planning team (led by president Joanne Hovis) will lead a two-hour, interactive conference call with City stakeholders, including, ideally, leadership of the utility, to discuss possible business models and opportunities as small cells are developed.

This discussion will provide an overview of key considerations for a business strategy, and will introduce stakeholders to such matters as potential business models, technical considerations, and market dynamics. Following the interactive workshop, Joanne will develop an analysis of the business opportunity for the City and will make recommendations of a range of opportunities, and of next steps in business planning, for City review.

Task 6 Deliverable: Based on input from the call, our review of the City market environment, and our experience in other jurisdictions, we will provide a report summarizing possible business models, discussing key considerations, and providing our recommendations.

CTC proposes to perform Tasks 1-6 for the not-to-exceed cost of \$59,000, per the approximate breakdown below.

Task	Cost
Task 1	\$7,500
Task 2	\$15,000
Task 3	\$10,000
Task 4	\$12,000
Task 5	\$7,500
Task 6	\$7,000

We bill our work at the following hourly rates:

Labor Category	Rate
Subject Matter Expert	\$200
Director of Engineering/Business Consulting	\$175
Principal Engineer/Analyst	\$165
Telecommunications Engineer III/Analyst III	\$145
Telecommunications Engineer II/Analyst II	\$130
Telecommunications Engineer I/Analyst I	\$115
Telecommunications Technician	\$95
Senior Inspector	\$80
Engineer Aide II/Staff Inspector	\$70
Engineer Aide I	\$60

CTC's billing rates are inclusive of all expenses, including travel.

Project Team

CTC Chief Technology Officer Andrew Afflerbach, Ph.D., P.E., will lead this engagement. In addition to Dr. Afflerbach, our senior team for this engagement will include Jay O'Neill, PMP, Senior Engineer, and Shawn Thompson, Principal Engineer and Wireless SME. Complete resumes for these staff members are below.

Andrew Afflerbach, Ph.D., P.E. | CEO and Chief Technology Officer

Dr. Andrew Afflerbach specializes in the planning, designing, and implementation oversight of broadband communications networks, smart cities strategies, and public safety networks. His expertise includes state-of-the-art fiber and wireless technologies, the unique requirements of public safety networks, and the ways in which communications infrastructure enables smart and connected applications and programs for cities, states, and regions.

Andrew has planned and designed robust and resilient network strategies for dozens of clients, including state and local governments and public safety users. He has delivered strategic technical guidance on wired and wireless communications issues to cities, states, and national governments over more than 20 years. He has advised numerous cities and states, including New York City, San Francisco, Seattle, Atlanta, Washington, D.C., and Boston, and served as a senior adviser to Crown Fibre Holdings, the public entity directing New Zealand's national fiber-to-the-home project.

In addition to designing networks, Andrew testifies as an expert witness on broadband communications issues. And he is frequently consulted on critical communications policy issues through technical analyses submitted to the Federal Communications Commission (FCC) and policymakers. He has prepared white papers on:

- Estimating the cost to expand fiber to underserved schools and libraries nationwide
- Conducting due diligence for the IP transition of the country's telecommunications infrastructure
- Developing technical frameworks for wireless network neutrality
- Streamlining deployment of small cell infrastructure by improving wireless facilities siting policies
- Limiting interference from LTE-U networks in unlicensed spectrum

As CTC's Chief Technology Officer, Andrew oversees all technical analysis and engineering work performed by the firm. He has a Ph.D. and is a licensed Professional Engineer.

Fiber Network Planning and Engineering

Andrew has architected and designed middle- and last-mile fiber broadband networks for the District of Columbia (Washington, D.C.); the city of San Francisco; the Delaware Department of Transportation; the Maryland Transportation Authority; and many large counties.

He oversaw the development of system-level broadband designs and construction cost estimates for the cities of Atlanta, Boston, Boulder, Palo Alto, Madison, and Seattle; the states of

Connecticut and Kentucky; and many municipal electric providers and rural communities. He is overseeing the detailed design of the city-built fiber-to-the-premises (FTTP) networks in Westminster, Maryland; Alford, Massachusetts; and Holly Springs and Wake Forest, North Carolina.

In Boston, Andrew led the CTC team that developed a detailed RFP, evaluated responses, and participated in negotiations to acquire an Indefeasible Right of Use (IRU) agreement with a fiber vendor to connect schools, libraries, public housing, and public safety throughout the City. This approach was designed to allow the City to oversee and control access and content among these facilities.

Wireless Network Planning and Engineering

Applying the current state of the art—and considering the attributes of anticipated future technological advancements such as “5G”—Andrew has developed candidate wireless network designs to meet the requirements of clients including the cities of Atlanta, San Francisco, and Seattle. In a major American city, Andrew led the team that evaluated wireless broadband solutions, including a wireless spectrum roadmap, to complement potential wired solutions.

In rural, mountainous Garrett County, Maryland, Andrew designed and oversaw the deployment of an innovative wireless broadband network that used TV white space spectrum to reach previously unserved residents. To enhance public internet connectivity, Andrew provides technical oversight on CTC’s Wi-Fi-related projects, including the design and deployment of Wi-Fi networks in several parks in Montgomery County, Maryland.

Andrew also advises local and state government agencies on issues related to wireless attachments in the public rights-of-way; he leads the CTC team that supports the Texas Department of Transportation (TxDOT) and many large counties on wireless attachment policies and procedures.

Public Safety Networking

Andrew leads the CTC team providing strategic and tactical guidance on FirstNet (including agency adoption and other critical decision-making) for the State of Delaware and Onondaga County, New York. In the District of Columbia, he and his team evaluated the financial, technical, and operational impact of building the District’s own public safety broadband network, including the design of an LTE system that provided public-safety-level coverage and capacity citywide. This due diligence allowed the District to make an informed decision regarding opting in or out of the National Public Safety Broadband Network.

Andrew currently is working with the State of Delaware to evaluate LTE coverage gaps throughout the state to assist agencies in their choice of public safety broadband networks. On the state’s behalf, he and his team are also conducting outreach to AT&T and other carriers to evaluate their public safety offerings. He is performing similar work as part of CTC’s engagement

with El Paso County, Colorado.

Earlier, Andrew led the CTC team that identified communications gaps and evaluated potential technical solutions for the Baltimore Urban Area Security Initiative (UASI), a regional emergency preparedness planning effort funded by the U.S. Department of Homeland Security (DHS).

He previously served as lead engineer and technical architect for planning and development of NCRnet, a regional fiber optic and microwave network that links public safety and emergency support users throughout the 19 jurisdictions of the National Capital Region (Washington, D.C. and surrounding jurisdictions), under a DHS grant. He wrote the initial feasibility studies that led to this project for regional network interconnection.

Smart Grid

Andrew and the CTC team provided expert testimony and advisory services to the Public Service Commission of Maryland regarding Advanced Metering Infrastructure (AMI). CTC provided objective guidance to the staff as it evaluated AMI applications submitted by three of the state's investor-owned utilities (IOUs). This contract represented the first time the PSC staff had asked a consultant to advise them on technology—a reflection of the lack of standards in the Smart Grid arena.

Broadband Communications Policy Advisory Services

Andrew advises public sector clients and a range of policy think tanks, U.S. federal agencies, and non-profits regarding the engineering issues underlying key communications issues. For example, he:

- Provided expert testimony to the FCC in the matter of the preparation of the **national broadband plan** as a representative of the National Association of Counties (NACo) and the National Association of Telecommunications Officers & Advisors (NATOA).
- Served as expert advisor regarding broadband deployment to the U.S. Conference of Mayors, NACo, National League of Cities, Public Knowledge, New America Foundation Open Technology Institute, and NATOA in those organizations' filings before the FCC in the matter of determination of the deployment of a **national, interoperable wireless network in the 700 MHz spectrum**.
- In connection with the FCC's ongoing **Open Internet proceeding**, advised the New America Foundation regarding the technical pathways by which "any device" and "any application" regimes could be achieved in the wireless broadband arena as they have been in the wireline area.
- Provided expert technical advice on the **700 MHz broadband and AWS-3 proceedings** at the FCC for the Public Interest Spectrum Coalition (including Free Press, the New America Foundation, Consumers Union, and the Media Access Project).
- Served as technical advisor to the **U.S. Naval Exchange** in its evaluation of vendors' broadband communications services on U.S. Navy bases worldwide.
- Advised the **U.S. Internal Revenue Service** regarding the history of broadband and cable deployment and related technical issues in that agency's evaluation of appropriate

regulations for those industries.

- Advised the Stanford Law School Center for Internet and Society on the technical issues for their briefs in the ***Brand X* Supreme Court appeal** regarding cable broadband.

Broadband Communications Instruction

Andrew has served as an instructor for the U.S. Federal Highway Association/National Highway Institute, the George Washington University Continuing Education Program, the University of Maryland Instructional TV Program, ITS America, Law Seminars International, and the COMNET Exposition. He developed curricula for the United States Department of Transportation.

He taught and helped develop an online graduate-level course for the University of Maryland. He developed and taught communications courses and curricula for ITS America, COMNET, and the University of Maryland. His analysis of cable open access is used in the curriculum of the International Training Program on Utility Regulation and Strategy at the University of Florida.

Andrew has also prepared client tutorials and presented papers on emerging telecommunications technologies to the National Fire Protection Association (NFPA), NATOA, the National League of Cities (NLC), the International City/County Management Association (ICMA), and the American Association of Community Colleges (AACC). He taught college-level astrophysics at the University of Wisconsin.

EMPLOYMENT HISTORY

1995–Present	CEO/Chief Technology Officer, CTC Previous positions: Director of Engineering, Principal Engineer, Senior Scientist
1990–1996	Astronomer/Instructor/Researcher University of Wisconsin–Madison, NASA, and Swarthmore College

EDUCATION

Ph.D., Astronomy, University of Wisconsin–Madison, 1996

- NASA Graduate Fellow, 1993–1996. Research fellowship in astrophysics
- Elected Member, Sigma Xi Scientific Research Honor Society

Master of Science, Astronomy, University of Wisconsin–Madison, 1993

Bachelor of Arts, Physics, Swarthmore College, 1991

- Eugene M. Lang Scholar, 1987–1991

PROFESSIONAL CERTIFICATIONS/LICENSES

Professional Engineer, Commonwealth of Virginia and states of Delaware, Maryland, and Illinois

HONORS/ORGANIZATIONS

- Association of Public-Safety Communications Officials (APCO)
- Board of Visitors, University of Wisconsin Department of Astronomy
- National Association of Telecommunications Officers and Advisors (NATOA) Technology and Public Safety Committees
- Armed Forces Communications and Electronics Association (AFCEA)
- Society of Cable and Telecommunications Engineers (SCTE)
- Institute of Electrical and Electronic Engineers (IEEE)
- Charleston Defense Contractors Association (CDCA)

SELECTED PUBLICATIONS, PRESENTATIONS, and COURSES

- "A Model for Understanding the Cost to Connect Anchor Institutions with Fiber Optics" (co-author), prepared for the Schools, Health & Libraries Broadband Coalition, Feb. 2018
- "How Localities Can Prepare for—and Capitalize on—the Coming Wave of Public Safety Network Construction," Feb. 2018
- "Network Resiliency and Security Playbook" (co-author), prepared for the National Institute of Hometown Security, Nov. 2017
- "Mobile Broadband Service Is Not an Adequate Substitute for Wirelines" (co-author; addressing the limitations of 5G), prepared for the Communications Workers of America, Oct. 2017
- "Technical Guide to Dig Once Policies," April 2017
- "Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies," prepared for the Smart Communities Siting Coalition, filed with the FCC, March 2017
- "How Localities Can Improve Wireless Service for the Public While Addressing Citizen Concerns," Nov. 2016
- "LTE-U Interference in Unlicensed Spectrum: The Impact on Local Communities and Recommended Solutions," prepared for WifiForward, Feb. 2016
- "Mobile Broadband Networks Can Manage Congestion While Abiding by Open Internet Principles," prepared for the New America Foundation's Open Technology Institute – Wireless Future Project, filed with the FCC, Nov. 2014
- "The State of the Art and Evolution of Cable Television and Broadband Technology," prepared for Public Knowledge, filed with the FCC, Nov. 2014
- "A Model for Understanding the Cost to Connect Schools and Libraries with Fiber Optics," prepared for the Schools, Health & Libraries Broadband Coalition, filed with the FCC, Oct. 2014
- "The Art of the Possible: An Overview of Public Broadband Options," prepared jointly with the New America Foundation's Open Technology Institute, May 2014
- "Understanding Broadband Performance Factors," with Tom Asp, *Broadband Communities* magazine, March/April 2014
- "Engineering Analysis of Technical Issues Raised in the FCC's Proceeding on Wireless Facilities Siting," filed with the FCC (<http://apps.fcc.gov/ecfs/document/view?id=7521070994>), Feb. 2014

- "A Brief Assessment of Engineering Issues Related to Trial Testing for IP Transition," prepared for Public Knowledge and sent to the FCC as part of its proceedings on Advancing Technology Transitions While Protecting Network Values, Jan. 2014
- "Gigabit Communities: Technical Strategies for Facilitating Public or Private Broadband Construction in Your Community," prepared as a guide for local government leaders and planners (sponsored by Google), Jan. 2014
- "Critical Partners in Data Driven Science: Homeland Security and Public Safety," submitted to the *Workshop on Advanced Regional & State Networks (ARNs): Envisioning the Future as Critical Partners in Data-Driven Science*, Internet2 workshop chaired by Mark Johnson, CTO of MCNC, Washington, D.C., April 2013
- "Connected Communities: How a City Can Plan and Implement Public Safety & Public Wireless," submitted to the International Wireless Communications Exposition, Las Vegas, March 2013
- "Cost Estimate for Building Fiber Optics to Key Anchor Institutions," prepared for submittal to the FCC by NATOA and SHLB, Sept. 2009
- "Efficiencies Available Through Simultaneous Construction and Co-location of Communications Conduit and Fiber," prepared for submittal to the FCC by the National Association of Telecommunications Officers and Advisors and the City and County of San Francisco, 2009, referenced in the National Broadband Plan
- "How the National Capital Region Built a 21st Century Regional Communications Network" and "Why City and County Communications are at Risk," invited presentation at the FCC's National Broadband Plan workshop, Aug. 25, 2009

Shawn Thompson / Principal Engineer and Wireless SME

Shawn Thompson is a recognized expert in indoor wireless engineering and radio propagation. He has overseen the design and implementation of more than 1,000 distributed antenna systems nationwide, and has advised wireless carriers such as Sprint, Verizon, and AT&T in solving their indoor coverage and capacity needs.

Among his recent client engagements, Mr. Thompson led the CTC team that designed a neutral-host distributed antenna system (DAS) network to enable the government of the **District of Columbia** to use its citywide fiber to distribute wireless signals. He then worked with the District to develop a program for installing commercial, public safety, and Wi-Fi wireless systems in its key facilities. This \$10 million, five-year program will improve wireless communications in as many as 60 city-owned buildings.

Additionally, Mr. Thompson assisted the District in developing a strategy for the use of small-cell technology, in which cellular carriers use poles and rooftops owned by municipalities to increase the density of their high-speed 4G LTE networks and deliver better service. This sector promises to be a growth area, as more and more carriers approach municipalities to negotiate terms of usage. Mr. Thompson helped the District move to the forefront of cellular deployment technology by developing a plan for standardizing equipment and space utilization for hundreds of proposed tower sites. Mr. Thompson's plan will allow the city to maximize profits, reuse sites efficiently, and maintain sites more easily. His work will also benefit the area's cellular carriers and citizens by paving the way for streamlined cooperation between the municipal government and the carriers to maximize tower deployments and create denser coverage.

Mr. Thompson provided strategic and technical guidance to the **City of San Antonio's Aviation Department** on the design of a neutral host DAS and Wi-Fi implementation in the San Antonio International Airport. He conducted a high-level analysis of strengths and weaknesses (particularly with regard to public safety communications), prepared technical questions focused on gaps and other issues identified during his review of the airport's existing environment, and conducted a detailed project review.

Mr. Thompson helped the **cities of Boulder, Colorado, and Newark, Delaware**, evaluate technical and operational options for deploying an outdoor Wi-Fi network in the downtown area and parks. His goals in those engagements were to ensure that the Wi-Fi design and components:

- Enable roaming between the outdoor areas and nearby governmental buildings
- Provide public Wi-Fi connectivity within a defined area
- Are interoperable with the City's existing infrastructure and current processes
- Are scalable for future outdoor Wi-Fi expansion
- Provide the necessary capacity and coverage
- Have sufficient backhaul connectivity

And in **Garrett County, Maryland**, Mr. Thompson designed a TV White Spaces (TVWS) solution for broadband service to rural unserved areas, including RF models and spectrum planning.

Technical Background

Indoor Propagation Theory

Mr. Thompson was an early pioneer (2003-2005) in educating the industry against the use of coffee cup design (i.e., the idea that RF travels a uniform distance from a radiating point). Rather the partitions within buildings greatly affect the propagation patterns, and therefore RF power levels, antenna types, and intended density need to be considered in each building.

He collected data from multiple types of indoor environments to improve the published equations for indoor RF propagation. Specifically, he has made improvements to modeling RF propagation in environments such as industrial, retail, hospital, and airport venues.

Mr. Thompson has also furthered the understanding of antenna density and types within different types of environments. He has shown that the typical omni-directional antenna may not be appropriate for many newer high-capacity wireless systems. Mr. Thompson has demonstrated through various stadium designs that precisely controlling the antenna beam-width patterns can have dramatic impact on throughput because of the antennas' sensitivity to noise and unwanted signals.

High-Capacity Design

Mr. Thompson has developed solutions for the ever-growing capacity needs in public venues such as stadiums, arenas, and airports. Working with manufacturers and carriers, he has participated in developing solutions that deliver high-speed data to users in these ultra-dense environments. In particular, Mr. Thompson's innovative sector-driven design approach using distributed antenna systems is driving a complete revamping of the existing systems in stadiums across the country. Among the stadiums on which Mr. Thompson has worked are First Energy Stadium and Progressive Field in Cleveland; PNC Park in Pittsburgh; the Verizon Center in Washington, D.C.; and stadiums at the University of Montana and the University of Wyoming.

Program/Project Management

As an early leader in distributed antenna system design, Mr. Thompson has collaborated with industry groups, wireless carriers, and manufacturers to develop several industry best practices. He assisted industry manufacturers in developing a grounding methodology that could be used as a template for the installation of DAS systems. The solution needed to be vetted and agreed upon by installation contractors, manufacturers, and carriers.

In 2012, working with Verizon Wireless on LTE DAS upgrades, Mr. Thompson developed a system through which Verizon could easily collect information across a region (usually several states) at existing sites, to determine a rough order of magnitude to upgrade these sites with 4G LTE service. This was executed in blocks of 100 projects. Also in 2012, he developed methodologies to use "The Last Planner" project management system across large DAS deployments.

Most recently, Mr. Thompson contributed to the understanding and practicality of passive intermodulation (PIM) testing within low-power RF antenna systems. Mr. Thompson successfully

negotiated compromise between construction-side concerns and carrier-demanded closeout policies by assembling leaders across various disciplines, resulting in a white paper outlining a compromise for all parties.

EMPLOYMENT HISTORY

Henkels & McCoy

2011 – 2013

Associate Director, Wireless Solutions

- Managed profit and loss of \$18 million wireless division
- Responsible for doubling revenue from \$9 million in FY12 to \$18 million in FY13
- Oversaw several major wireless projects, such as NFL and MLB stadiums

Manager, Engineering and Design

- Directed the development of an effective team of qualified RF engineers, engineering assistants, and engineering managers in accordance with the business plan's budget and staffing goals
- Acted as senior technical resource for the company-wide wireless business

In-Building-Wireless, Co-Founder and CEO

2004 – 2011

- Named to 2007 and 2008 *Inc. Magazine* list of fastest growing private companies
- Developed and executed all facets of the core business plan and marketing plan that led to 100 percent growth year-over-year from 2004 to 2007
- Developed the firm's project management process and best practices
- Orchestrated acquisition of In-Building-Wireless by Henkels & McCoy

Applied Communications Technology, Inc., Founder and President

1999–2004

- Initiated government sales efforts and built \$2 million in volume in 3 years
- Developed proprietary project management software

EDUCATION

Bachelor of Science, Computer and Information Science, University of Maryland University College, 2016

PROFESSIONAL CERTIFICATION

- BICSI
- Corning MobileAccess
- Anritsu, Spectrum Analyzers

Jay O'Neill | Senior Engineer, PMP

Jay O'Neill is a highly qualified telecommunications engineer and a certified project management professional. He has more than 20 years of progressive experience planning and implementing complex networks. His project expertise includes outside plant (OSP) fiber infrastructure design and deployment, middle-mile and long-haul optical applications, fiber-to-the-premises (FTTP) implementation, and wireless site development. Jay's wireless project expertise includes architecture and engineering design for communications towers, site acquisition, line-of-sight microwave application, zoning and permitting, regulatory compliance, in-building construction, distributed antenna system (DAS) deployment and small cell deployment.

Current/Recent CTC Projects:

- **Anne Arundel County, Maryland:** Anne Arundel County operates a middle-mile broadband network providing lit services to a wide array of municipal facilities. Current efforts include engineering 90 miles of new outside plant and construction oversight. Past efforts include engineering 120 miles of fiber connecting over 60 facilities.
- **Montgomery County, Maryland:** Montgomery County operates a middle-mile broadband network providing lit services to a wide array of municipal facilities. Current efforts include expanding the network and improving data center resiliency. Past efforts include engineering of 90 miles of fiber connecting over 90 facilities.
- **CPS Energy, San Antonio, Texas:** CPS Energy is the largest electric and gas provider in the U.S. Past efforts include providing technical guidance for wireless attachment policies and standards.
- **Transmissions Facility Coordination Group (TFCG), Montgomery County, Maryland:** Ongoing effort include providing technical review and recommendations for antenna attachment and wireless facility siting guidelines.
- **Los Angeles Department of Water and Power (LADWP):** LADWP, the electric provider of L.A. County, is modernizing its processing and reviewing procedures for approval of third-party attachment to its utility poles. Recent efforts include evaluation of current procedure and consulting on best practices for future enhancement to the third-party attachment workflow.
- **Bloomfield Township, MI:** Ongoing efforts include providing technical review and recommendations for wireless siting, including small cells / DAS, within public rights-of-way.
- **Huntsville Utilities, Huntsville, AL:** Ongoing efforts include efforts include technical guidance for attachment policies and standards, including the evaluation of small cell / DAS deployments.

KNOWLEDGE AND EXPERIENCE

Project Management – Skillfully applies the five knowledge areas of project management per PMBOK standards. Consistently delivers, on time and within budget, projects that meet or exceed stakeholders’ expectations. Meets and exceeds project goals and aggressive deadlines. Understands and focuses on the “people side” of project management, balancing the intangible with effective methodology and project management tools. Anticipates problems that can jeopardize milestones, budgets and user acceptance. From project sponsors to project team members, inspires motivation and confidence as an effective leader.

Outside Plant Engineering – Directs and oversees the following OSP activities as needed: Field surveys, desktop designs, attachment licenses, ROW permits, material specifications, rake-off sheets, drafting, professional engineering review, environmental permits, railroad permits, GIS data integration, utilities locating, as-built verification, GPS mapping, and bridge attachment design. Solves complex right-of-way and existing utilities conflicts. Creatively directs staff when involving existing networks to minimize outages and optical degradation for clients.

Contracts Management – Contributes and manages to both the upstream and downstream activities of the contract life cycle. Ensures that KPIs are proportionate, fit for purpose, easily identified for evidence, and accepted by stakeholders. Manages contract changes in a manner of transparency and stewardship.

Construction Management – Coordinates build-outs and work schedules. Ensures SLAs for construction contracts are followed. Adheres to construction designs, local building codes, permitting, and zoning requirements. Complies with applicable safety regulations. Coordinates with stakeholders on drawing review and version control.

Quality Assurance – Ensures that network construction complies with industry standards for work completed and materials installed. Conducts internal and external audits to ensure outlined standards are met.

Wireless Site Development – Identifies and works multiple candidates per search ring, from ring issue to site on air. Provides a detailed scope of work and site candidate packages. Consults on wireless site policies.

Budgeting and Expenditures – Meets project cost and labor budgets and seeks to identify possible cost over-runs in advance. Monitor project margins and expenditures to keep within set profitability ranges.

RF Principles – Understands antenna characteristics, interference, and wireless protocols. Strong familiarity with antenna manufacturer designs and products.

PRIOR TO JOINING CTC IN 2016

Advantage Engineers, Senior Project Manager, 2011 – 2016

Sprint, Project Manager, Real Estate/Special Projects, 2006 – 2011

T-Mobile, Construction Manager, 2005 – 2006

MCI/Skytel, Operations Manager, 1998 – 2005

Preferred Technical Services, Integrations Manager, 1998 (9 months)

SERVICE

United States Army, Honorably Discharged

- 4 years of active duty service – Signal Corps

CERTIFICATION

Project Management Institute – Project Management Professional

- Active certification (2018 to 2021)

CTC TECHNOLOGY AND ENERGY

BY: _____

Date: _____

CITY OF OPELIKA, ALABAMA

BY: _____
Gary Fuller
Mayor

Date: _____