OPELIKA CITY COUNCIL
" REGULAR MEETING MINUTES "
300 Martin Luther King Blvd.
December 1, 2020
TIME: 7:00 PM

1. Call to Order

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

2. Roll Call

The Mayor and all City Council members were present.

   1. George Allen, Erica Norris, Robert Lofton, Todd Rauch, Eddie Smith

3. Invocation

Mr. Dunbar provided the invocation.

   1. Paul Dunbar from First Baptist Church Opelika.

4. Pledge of Allegiance

The Opelika Dawg Pound Football 12U team/members led the Pledge of Allegiance. The team/members were then invited up front to take a picture with the Mayor and City Council members. Ms. Norris also spoke and asked the coaches to come to the front and be recognized as leaders in the community and also have their picture taken with the Mayor and City Council members.

   1. 2020 Carpet Capital Bowl Champions - Opelika Dawg Pound Football 12U Team/Members.

5. Reading of Minutes
   1. Minutes from the 11-17-20 council meeting.

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Todd Rauch, Council Member
SECONDER:	Erica Norris, President Pro-Tem
AYES:	Allen, Norris, Lofton, Smith, Rauch

6. Unfinished Business

7. Remarks By the Mayor
   1. City's Financial Summary Report for October 2020.

   Mayor Fuller asked if the council had any questions about the city's financial summary report to ask Cindy Boyd, Mr. Motley or himself about it. Mayor Fuller then announced he had named Assistant Police Chief Kasey Brown the interim Police Chief effective immediately and went over his qualifications as such.

8. Citizen Communications

None.

9. Report of Disbursements

10. Committee Reports

11. General Business

President Smith asked Mr. Jones to present the general business.

1. Public Hearing - Weed Abatement Assessment- 3900 Marvyn Pkwy.

Mr. Jones presented the public hearing. President Smith opened the public hearing and asked if anyone present would like to speak for or against said weed abatement. No one came forward to speak. President Smith closed the public hearing.

12. Awarding of Bids

13. Resolutions

President Smith asked Mr. Gunter to present the resolutions.

1. Resolution 312-20 Designate City Personal Property Surplus & Authorize Disposal.

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Todd Rauch, Council Member
SECONDER:	Robert Lofton, Council Member
AYES:	Allen, Norris, Lofton, Smith, Rauch

2. Resolution 313-20 Purchase - CivicClerk, Omnia Contract #2018011-02 - IT.

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Todd Rauch, Council Member
SECONDER:	Robert Lofton, Council Member
AYES:	Allen, Norris, Lofton, Smith, Rauch

3. Resolution 314-20 Approve Agreement with AVENU Insights & Analytics LLC - REV.

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Robert Lofton, Council Member
SECONDER:	Willie Allen, Council Member
AYES:	Allen, Norris, Lofton, Smith, Rauch

4. Resolution 315-20 Approve Agreement with Johnson Controls, Inc. - P&R.

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Todd Rauch, Council Member
SECONDER:	Willie Allen, Council Member
AYES:	Allen, Norris, Lofton, Smith, Rauch

5. Resolution 316-20 Approve Agreement with NRC, Inc. for Arborist Services.

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Todd Rauch, Council Member
SECONDER:	Willie Allen, Council Member
AYES:	Allen, Norris, Lofton, Smith, Rauch

6. Resolution 317-20 Approve Cumberland Plastic Systems, LLC Tax Abatements and Exemptions - ED.

Dr. Lofton asked how much the tax abatement would be worth over the 10 year term. Mr. Gunter answered the application would have that information. President Smith explained how they would still pay school taxes but be granted certain tax abatements in exchange for the investment and jobs created for the city. Dr. Lofton stated he understood that but would like to know exactly how much per year the tax abatements would be. President Smith asked the project manager from Economic Development John Sweatman if he had those numbers with him. Mr. Sweatman stated he did not have them present but he would be glad to provide them to the council for review as soon as possible. Ms. Norris asked Dr. Lofton his purpose for obtaining the information and if it was just to weigh the abatement versus the benefit. Dr. Lofton stated that was exactly his purpose to weigh what was being given versus what was being received by the city. Ms. Norris then asked if this was something that needed to be tabled until the information was given. President Smith stated he didn't believe there was a reason to table the resolution at this time but going forward the information would be provided to the council before the meeting. Ms. Norris stated that was a good agreement.

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Erica Norris, President Pro-Tem
SECONDER:	Todd Rauch, Council Member
AYES:	Allen, Norris, Lofton, Smith, Rauch

7. Resolution 318-20 Weed Abatement Assessment - 3900 Marvyn Pkwy.

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Erica Norris, President Pro-Tem
SECONDER:	Todd Rauch, Council Member
AYES:	Allen, Norris, Lofton, Smith, Rauch

8. Resolution 319-20 Approve Designation of Automobile Allowances.

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Todd Rauch, Council Member
SECONDER:	Robert Lofton, Council Member
AYES:	Allen, Norris, Lofton, Smith, Rauch

9. Resolution 320-20 Approve Agreement for N. Uniroyal Bridge Gas Line Relocation.

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Todd Rauch, Council Member
SECONDER:	Willie Allen, Council Member
AYES:	Allen, Norris, Lofton, Smith, Rauch

14. Ordinances

President Smith asked Mr. Gunter to present the ordinances.

1. Ordinance 030-20-ORD Amend Zoning Ordinance & Map; Rezone 89.5 Acres, 900 Block N. Uniroyal Road - 2nd Reading.

RESULT:	**SECOND READING AND APPROVED [UNANIMOUS]**
MOVER:	Erica Norris, President Pro-Tem
SECONDER:	Robert Lofton, Council Member
AYES:	Allen, Norris, Lofton, Smith, Rauch

2. Ordinance 031-20-ORD Lease Agreement with Level-Up Towers, LLC - 2nd Reading.

RESULT:	**SECOND READING AND APPROVED [UNANIMOUS]**
MOVER:	Todd Rauch, Council Member
SECONDER:	Willie Allen, Council Member
AYES:	Allen, Norris, Lofton, Smith, Rauch

3. Ordinance 032-20-ORD Conveyance of Real Property to SMB Land, LLC - 2nd Reading.

RESULT:	**SECOND READING AND APPROVED [UNANIMOUS]**
MOVER:	Robert Lofton, Council Member
SECONDER:	Erica Norris, President Pro-Tem
AYES:	Allen, Norris, Lofton, Smith, Rauch

15. Appointments

16. Executive Session

1. Motion to Move into Executive Session.

President Smith asked the council to move into an Executive Session meeting, outside the council chambers, to discuss the good name and character of an individual employee at 7:22 pm and stated the session would last at least two hours. Mr. Jones gave multiple updates to the length of time being taken during the entirety of the Executive Session meeting after the initial two hours had passed. The council ended the Executive Session meeting, and re-entered the council chambers at approximately 2:09 am.

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Erica Norris, President Pro-Tem
SECONDER:	Todd Rauch, Council Member
AYES:	Allen, Norris, Lofton, Smith, Rauch

17. Adjourn

The City Council meeting minutes of December 1, 2020 are hereby adopted and approved this the 15th day of December, 2020.

/s/ Eddie Smith

President of City Council

City of Opelika, Alabama

ATTEST:

/s/ Russell A. Jones

Russell A. Jones

City Clerk

1. Character Trait of the Month - Fairness, impartial and just treatment or behavior without favoritism or discrimination.
2. Motion to Adjourn.

The council meeting ended at 2:10 am.

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Todd Rauch, Council Member
SECONDER:	Willie Allen, Council Member
AYES:	Allen, Norris, Lofton, Smith, Rauch

City Council
204 South 7Th Street
Opelika, AL

ADOPTED

Meeting: 12/01/20 07:00 PM
Department: City Clerk
Category: CM Minutes
Prepared By: Russell Jones
Initiator: Russell Jones
Sponsors:
DOC ID: 4449

CM MINUTES (ID # 4449)

Minutes from the 11-17-20 council meeting.

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Todd Rauch, Council Member
SECONDER:	Erica Norris, President Pro-Tem
AYES:	Allen, Norris, Lofton, Smith, Rauch

OPELIKA CITY COUNCIL
" REGULAR MEETING MINUTES "
300 Martin Luther King Blvd.
November 17, 2020
TIME: 7:00 PM

1. Call to Order

President Smith called the council meeting to order at 7:01 pm and asked Mr. Jones to call the roll.

2. Roll Call

The Mayor and all City Council members were present.

1. George Allen, Erica Norris, Robert Lofton, Todd Rauch, Eddie Smith

3. Invocation

Mr. Bryant provided the invocation.

1. Scott Bryant from the Opelika First Assembly of God.

4. Pledge of Allegiance

The brownies and juniors from Girl Scout Troop 7283 led the Pledge of Allegiance.

1. Brownies and Juniors from Girl Scout Troop 7283.

5. Reading of Minutes

1. Minutes for the Organizational Meeting on 11-2-20.

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Todd Rauch, Council Member
SECONDER:	Willie Allen, Council Member
AYES:	Allen, Norris, Lofton, Smith, Rauch

2. Minutes for the Regular Council Meeting on 11-3-20.

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Todd Rauch, Council Member
SECONDER:	Robert Lofton, Council Member
AYES:	Allen, Norris, Lofton, Smith, Rauch

6. Unfinished Business

7. Remarks By the Mayor

Mayor Fuller first reminded everyone of the garbage pickup schedule for the week of Thanksgiving. Then Mayor Fuller also announced there would be a public meeting for Creekline Trails to be held in the Municipal Courtroom on Wednesday November 18 at 5:30 pm.

1. City's Preliminary FY2020 Financial Summary Report.

Mayor Fuller asked if the council had any questions about the city's financial summary report to ask Cindy Boyd, Mr. Motley or himself about it.

2. October 2020 Monthly Building Report.

Mayor Fuller asked Mr. Motley to the give the October 2020 monthly building report and Mr. Motley did so.

3. Proclamation for Small Business Saturday on 11-28-20.

Mayor Fuller and the council took a photo with the Girl Scouts from Troop 7283 that led the Pledge of Allegiance. Mayor Fuller then invited Ali Rauch, President and CEO of the Opelika Chamber of Commerce, Ken Ward, Executive Director of Opelika Main Street, and Bill Loosier, Chairman of the Board of the Opelika Chamber of Commerce, up to be presented with a proclamation for "Small Business Saturday" on November 28, 2020.

4. Recognize Robins & Morton for Construction Award (OPD).

Mayor Fuller then invited Richard Nelson and Jeffery Durrett, with Robins & Morton, Inc., Joey Motley, Chief John McEachern and Denise Rogers up to be presented an excellence in construction award from the Association of Builders and Contractors for the construction of the Opelika Police Department and Municipal Court building. Mr. Nelson then spoke on behalf of Robins & Morton and presented the award to Chief John McEachern and Denise Rogers. President Smith then commended Robins & Morton, Inc. for their work and partnership with the City of Opelika on many of the construction projects over the years including the Sportsplex, Opelika High School and the new Library currently and thanked them for their services.

8. Citizen Communications

None.

9. Report of Disbursements

10. Committee Reports

11. General Business

President Smith asked Mr. Jones to present the general business.

1. Request from Main Street / Chamber of Commerce for Snow Much Fun Christmas Extravaganza on 12-5-20.

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Erica Norris, President Pro-Tem
SECONDER:	Willie Allen, Council Member
AYES:	Allen, Norris, Lofton, Smith, Rauch

2. Request from Main Street for Christmas in a Railroad Town on 12-11-20.

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Todd Rauch, Council Member
SECONDER:	Erica Norris, President Pro-Tem
AYES:	Allen, Norris, Lofton, Smith, Rauch

3. Request Alcohol License - Brick and Spoon Restaurant Retail Liquor and Beer On-Premise License.

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Willie Allen, Council Member
SECONDER:	Robert Lofton, Council Member
AYES:	Allen, Norris, Lofton, Smith, Rauch

4. Public Hearing - Rezoning, 89.5 Acres, 900 Block N Uniroyal Road.

Mr. Jones presented the public hearing. President Smith opened the public hearing and asked if anyone present would like to speak for or against said zoning amendment. No one came forward to speak. President Smith closed the public hearing.

5. Public Hearing - Rezoning, 38.3 Acres, 3000 Block Columbus Pkwy.

Mr. Jones presented the public hearing. President Smith opened the public hearing and asked if anyone present would like to speak for or against said zoning amendment. No one came forward to speak. President Smith closed the public hearing.

6. Request from Main Street for La Cantina Sidewalk Closure on 11-28-20.

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Todd Rauch, Council Member
SECONDER:	Erica Norris, President Pro-Tem
AYES:	Allen, Norris, Lofton, Smith, Rauch

12. Awarding of Bids

President Smith asked Ms. Finley to present the bids.

1. Bids 299-20 Influent Sewer Rerouting for Eastside WWTP - PW.

Dr. Lofton asked if the bid was sent out to twenty vendors why only two bids were received back. Ms. Finley gave an explanation of how vendors may mark commodity codes on the application that do not fit the specific project being bid out. President Smith also explained why certain construction companies might not bid on this specific project.

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Todd Rauch, Council Member
SECONDER:	Willie Allen, Council Member
AYES:	Allen, Norris, Lofton, Smith, Rauch

2. Bids 300-20 Bypass Pump Installation - Uniroyal Lift Station - PW.

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Todd Rauch, Council Member
SECONDER:	Robert Lofton, Council Member
AYES:	Allen, Norris, Lofton, Smith, Rauch

13. Resolutions

President Smith asked Mr. Gunter to present the resolutions.

1. Resolution 301-20 Designate City Personal Property Surplus & Authorize Disposal.

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Todd Rauch, Council Member
SECONDER:	Willie Allen, Council Member
AYES:	Allen, Norris, Lofton, Smith, Rauch

2. Resolution 302-20 Expense Reports from various departments.

Mr. Gunter explained due to a majority of the council being on the same expense report resolution and to not violate the ethics act, it was his recommendation to take an individual vote on each council members expenses.

Ms. Norris made a motion to approve Mr. Allen's expense report. Mr. Rauch seconded the motion.

The following vote was recorded:

Ayes: Norris, Lofton, Rauch, Smith
Abstain: Allen

Mr. Allen made a motion to approve Mr. Rauch's expense report. Dr. Lofton seconded the motion.

The following vote was recorded:

Ayes: Allen, Norris, Lofton, Smith
Abstain: Rauch

Mr. Rauch made a motion to approve Ms. Norris's expense report. Mr. Allen seconded the motion.

The following vote was recorded:

Ayes: Allen, Lofton, Rauch, Smith
Abstain: Norris

Mr. Rauch made a motion to approve Dr. Lofton's expense report. Ms. Norris seconded the motion.
The following vote was recorded:
Ayes: Allen, Norris, Rauch, Smith
Abstain: Lofton
President Smith then asked for a motion on the remaining expense reports for Mr. Gunter and Mr. Hand.

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Todd Rauch, Council Member
SECONDER:	Erica Norris, President Pro-Tem
AYES:	Allen, Norris, Lofton, Smith, Rauch

3. Resolution 303-20 Purchase - Platinum Hosting and Security - IT.

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Todd Rauch, Council Member
SECONDER:	Willie Allen, Council Member
AYES:	Allen, Norris, Lofton, Smith, Rauch

4. Resolution 304-20 Purchase - (8) 2021 Chevrolet Tahoes - PD.

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Robert Lofton, Council Member
SECONDER:	Todd Rauch, Council Member
AYES:	Allen, Norris, Lofton, Smith, Rauch

5. Resolution 305-20 Approve Mando Tax Abatement Extension - ED.

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Todd Rauch, Council Member
SECONDER:	Willie Allen, Council Member
AYES:	Allen, Norris, Lofton, Smith, Rauch

6. Resolution 306-20 Approve Service Agreement with Motorola Solutions, Inc. - PD.

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Willie Allen, Council Member
SECONDER:	Robert Lofton, Council Member
AYES:	Allen, Norris, Lofton, Smith, Rauch

7. Resolution 307-20 Approve Service Agreement with Gartner, Inc. - IT.

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Todd Rauch, Council Member
SECONDER:	Willie Allen, Council Member
AYES:	Allen, Norris, Lofton, Smith, Rauch

8. Resolution 308-20 Annual Appropriation Contract FY2021 with Alabama Council on Human Relations.

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Erica Norris, President Pro-Tem
SECONDER:	Todd Rauch, Council Member
AYES:	Allen, Norris, Lofton, Smith, Rauch

9. Resolution 309-20 Annual Appropriation Contract FY2021 with AO Discover!.

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Erica Norris, President Pro-Tem
SECONDER:	Robert Lofton, Council Member
AYES:	Allen, Norris, Lofton, Smith, Rauch

10. Resolution 310-20 Annual Appropriation Contract FY2021 with EAMC - EMS.

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Todd Rauch, Council Member
SECONDER:	Willie Allen, Council Member
AYES:	Allen, Norris, Lofton, Smith, Rauch

11. Resolution 311-20 Approve Contract with Seely & Long Associates, Inc. for YIPP Grant Administration Services.

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Erica Norris, President Pro-Tem
SECONDER:	Willie Allen, Council Member
AYES:	Allen, Norris, Lofton, Smith, Rauch

14. Ordinances

President Smith asked Mr. Gunter to present the ordinances.

1. Ordinance Amend Zoning Ordinance & Map; Rezone 89.5 Acres, 900 Block N. Uniroyal Road - 1st Reading.

President Smith asked for a member of the council to introduce the ordinance. Mr. Rauch introduced the ordinance.

RESULT:	**FIRST READING INTRODUCED**

2. Ordinance 028-20-ORD Amend Zoning Ordinance & Map: 38.3 Acres, 3000 Block Columbus Pkwy - 1st Reading.

President Smith asked for a member of the council to introduce the ordinance. Dr. Lofton introduced the ordinance. Then Dr. Lofton made a motion to suspend the rules and was seconded by Ms. Norris.

The following vote was recorded:

Ayes: Allen, Norris, Lofton, Rauch, Smith

Nays: None.

RESULT:	**FIRST READING AND APPROVED [UNANIMOUS]**
MOVER:	Erica Norris, President Pro-Tem
SECONDER:	Todd Rauch, Council Member
AYES:	Allen, Norris, Lofton, Smith, Rauch

3. Ordinance 029-20-ORD Annexation of 38.3 Acres, 3000 Block Columbus Pkwy - 1st Reading.

President Smith asked for a member of the council to introduce the ordinance. Ms. Norris introduced the ordinance. Then Mr. Allen made a motion to suspend the rules and was seconded by Ms. Norris.

The following vote was recorded:

Ayes: Allen, Norris, Lofton, Rauch, Smith

Nays: None.

RESULT:	**FIRST READING AND APPROVED [UNANIMOUS]**
MOVER:	Todd Rauch, Council Member
SECONDER:	Erica Norris, President Pro-Tem
AYES:	Allen, Norris, Lofton, Smith, Rauch

4. Ordinance Lease Agreement with Level-Up Towers, LLC - 1st Reading.

President Smith asked for a member of the council to introduce the ordinance. Mr. Allen introduced the ordinance.

RESULT:	**FIRST READING INTRODUCED**

5. Ordinance Conveyance of Real Property to SMB Land, LLC - 1st Reading.

President Smith asked for a member of the council to introduce the ordinance. Ms. Norris introduced the ordinance.

RESULT:	**FIRST READING INTRODUCED**

15. Appointments

President Smith presented the appointments.

1. Appoint Erica Norris to the Alabama Counicl on Human Relations. New Term ends 11-4-2024. (Tabled).

President Smith asked if there was a motion to remove the item from the table. Dr. Lofton made the motion to remove the item from the table and was seconded by Mr. Rauch.
The following vote was recorded:
Ayes: Allen, Norris, Lofton, Rauch, Smith
Nays: None.

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Todd Rauch, Council Member
SECONDER:	Willie Allen, Council Member
AYES:	Allen, Norris, Lofton, Smith, Rauch

2. Reappoint Marvin Bolinger to the Celebrate Alabama Improvement District Board. New Term ends 8-5-2026.

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Willie Allen, Council Member
SECONDER:	Robert Lofton, Council Member
AYES:	Allen, Norris, Lofton, Smith, Rauch

3. Reappoint Jervis Hairston to the Celebrate Alabama Improvement District Board. New Term ends 8-5-2026.

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Willie Allen, Council Member
SECONDER:	Robert Lofton, Council Member
AYES:	Allen, Norris, Lofton, Smith, Rauch

16. Adjourn

The City Council meeting minutes of November 17, 2020 are hereby adopted and approved this the ___ day of _______________, 2020.

____

President of City Council

City of Opelika, Alabama

ATTEST:

____

Russell A. Jones

City Clerk

1. Character Trait of the Month - Forgiveness, the action or process of forgiving or being forgiven.

President Smith explained the process of an employee's right to appeal to the city council regarding employment and there is an employee that has done so. President Smith then explained the council would need to adjourn into Executive Session to hear the employee's appeal and that was originally scheduled for the next council meeting on December 1, 2020 but the attorney representing the city would not be available on that date. President Smith went on to say that the council would be made aware soon of the timing of such a meeting and they would also have to give the media and public proper notice as well. President Smith then stated it would have to be on or before December 11, 2020 due to that being 30 days from the decision made by the Mayor. President Smith asked Mr. Gunter if he had anything to add and Mr. Gunter stated the only correction would be that the 30 day window starts when the employee gives notice of the appeal and not from when the Mayor upholds his decision, but that the date of December 11 was correct. President Smith then read the character trait of the month and asked if there was any other business to come before the council.

2. Motion to Adjourn.

The council meeting ended at 7:41 pm.

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Todd Rauch, Council Member
SECONDER:	Erica Norris, President Pro-Tem
AYES:	Allen, Norris, Lofton, Smith, Rauch

City Council
204 South 7Th Street
Opelika, AL

SCHEDULED

Meeting: 12/01/20 07:00 PM
Department: City Clerk
Category: Financial Statements
Prepared By: Russell Jones
Initiator: Russell Jones
Sponsors:
DOC ID: 4454

MAYOR'S REMARKS (ID # 4454)

City's Financial Summary Report for October 2020.

COMMENTS - Current Meeting:

Mayor Fuller asked if the council had any questions about the city's financial summary report to ask Cindy Boyd, Mr. Motley or himself about it. Mayor Fuller then announced he had named Assistant Police Chief Kasey Brown the interim Police Chief effective immediately and went over his qualifications as such.

PRELIMINARY

City of Opelika
Combined Balance Sheet - All Funds and Account Groups (Interim Report)
October 31, 2020
***Thousands of dollars**

	Governmental Funds									
	General Fund	Special Revenue Funds	Debt Service Funds	Capital Project Funds	Garden Hills Cemetery Permanent Fund	Internal Service Funds	Enterprise Funds	General Capital Assets	General Long Term Debt	Total
ASSETS										
Cash	$ 33,280	$ 15,752	$ 37	$ 1,418	$ -	$ 4,937	$ 42,123	$ -	$ -	$ 97,547
Certificates of deposit	21,987	5,000	-	-	-	-	7,579	-	-	34,566
Receivables:										
Accounts and unbilled service	-	-	-	180	-	-	5,225	-	-	5,405
Taxes	7,348	8,681	-	-	-	-	-	-	-	16,029
Licenses and fees	3,006	-	-	-	-	-	-	-	-	3,006
Fines and forfeitures	-	-	-	-	-	-	-	-	-	-
Assessments	207	-	-	-	-	-	-	-	-	207
Interest	(341)	-	-	-	3	-	(10)	-	-	(348)
Other	316	653	-	-	-	(1)	-	-	-	968
Due from other funds	30	-	-	-	8	-	8,537	-	-	8,575
Due from other governments	3,008	634	-	-	-	-	895	-	-	4,537
Inventories of supplies, at cost	90	-	-	-	-	-	1,071	-	-	1,161
Prepaid expenses	326	-	-	-	-	-	-	-	-	326
Investments	-	18	-	-	1,337	-	-	-	-	1,355
Investments with fiscal agent	-	-	3,642	-	-	-	1,104	-	-	4,746
Capital assets:										
Land	-	-	-	-	-	-	2,462	10,368	-	12,830
Buildings	-	-	-	-	-	-	13,666	63,073	-	76,739
Equipment	-	-	-	-	-	-	11,563	22,977	-	34,540
Utility systems	-	-	-	-	-	-	118,431	-	-	118,431
Infrastructure	-	-	-	-	-	-	-	123,014	-	123,014
Construction in progress	-	-	-	-	-	-	279	6,212	-	6,491
Total capital assets	-	-	-	-	-	-	146,401	225,644	-	372,045
Less: accumulated depreciation	-	-	-	-	-	-	(72,307)	(66,033)		(138,340)
Capital assets, net	-	-	-	-	-	-	74,094	159,611	-	233,705
Deposits	-	69	-	-	-	19	2	-	-	90
Amount to be provided for general long term debt									84,282	84,282
Total assets	69,258	30,806	3,679	1,598	1,348	4,955	140,620	159,611	84,282	496,158
DEFERRED OUTFLOWS OF RESOURCES										
Employer retirement contributions	-	-	-	-	-	-	1,528	-	-	1,528
Difference on projected OPEB earnings investments	-	-	-	-	-	-	638	-	-	638
Bond refunding costs	-	-	-	-	-	-	2,361	-	-	2,361
Total deferred outflows of resources	-	-	-	-	-	-	4,527	-	-	4,527

Attachment: OCTOBER 2020 PRELIM FIN STMTS (4454 : City's Financial Summary Report for October 2020.)

PRELIMINARY

City of Opelika
Combined Balance Sheet - All Funds and Account Groups (Interim Report)
October 31, 2020
Thousands of dollars

	Governmental Funds									
	General Fund	Special Revenue Funds	Debt Service Funds	Capital Project Funds	Garden Hills Cemetery Permanent Fund	Internal Service Funds	Enterprise Funds	General Capital Assets	General Long Term Debt	Total
LIABILITIES										
Accounts payable	1,170	46	-	-	-	21	5,292	-	-	6,529
Interest payable	-	-	-	-	-	-	191	-	-	191
Accrued payroll and benefits, due within one year	123	-	-	-	-	-	230	-	-	353
Due to other funds	8	30	-	-	-	-	8,537	-	-	8,575
Due to other governments	37	844	-	-	-	-	-	-	-	881
Claims and judgements, due within one year	-	-	-	-	-	312	-	-	-	312
Bonds payable due within one year	-	-	-	-	-	-	1,955	-	-	1,955
Claims and judgements, due in more than one year	-	-	-	-	-	136	-	-	-	136
Bonds payable, due in more than one year	-	-	463	-	-	-	26,972	-	84,282	111,717
Net pension liability	-	-	-	-	-	-	8,828	-	-	8,828
Accrued payroll & benefits, due in more than one year	-	-	-	-	-	-	1,687	-	-	1,687
Customer deposits held	-	-	-	-	-	-	3,151	-	-	3,151
Total liabilities	1,339	921	463	-	-	469	56,842	-	84,282	144,316
DEFERRED INFLOWS OF RESOURCES										
Net difference in earnings on retirement plan	-	-	-	-	-	-	418	-	-	418
Net change in OPEB assumptions	-	-	-	-	-	-	37	-	-	37
Unearned revenues	4,187	9,494	-	-	-	355	196	-	-	14,232
Total deferred inflows of resources	4,187	9,494	-	-	-	355	652	-	-	14,687
FUND BALANCES										
Nonspendable	107	69	-	-	1,230	-	-	-	-	1,406
Restricted	200	4,946	3,216	1,505	-	-	1,104	-	-	10,971
Committed	36	-	-	-	-	-	-	-	-	36
Assigned	11,790	14,148	-	-	-	2,940	-	-	-	28,878
Unassigned	25,368	40	-	-	117	1,172	-	-	-	26,697
Invested in capital assets, net of related debt	-	-	-	-	-	-	47,528	159,611	-	207,139
Unrestricted	-	-	-	-	-	-	35,659	-	-	35,659
Encumbrances	26,232	1,187	-	93	-	19	3,362	-	-	30,893
Total fund balances	63,732	20,391	3,216	1,598	1,348	4,131	87,653	159,611	-	341,682

PRELIMINARY

City of Opelika
Combined Statement of Revenues, Expenditures, and Changes in Fund Balance - All Governmental Funds and Account Groups (Interi
FYTD October 31, 2020
***Thousands of dollars**

	Governmental Funds					
	General Fund	**Special Revenue Funds**	**Debt Service Funds**	**Capital Project Funds**	**Garden Hills Cemetery Permanent Fund**	**Total**
REVENUES:						
Taxes	$ 3,793	$ 223	$ -	$ -	$ -	$ 4,015
Special assessments	-	-	-	-	-	-
Licenses and permits	2,028	33	-	-	-	2,060
Intergovernmental	40	54	-	10	-	104
Charges for services	70	-	-	-	-	70
Fines and forfeits	38	-	-	-	-	38
Grants	(1,463)	-	-	-	-	(1,463)
Contributions	-	-	-	-	-	-
Investment income	-	1	(1)	-	-	1
Miscellaneous	248	-	-	-	-	248
Total revenues	4,753	311	(1)	10	-	5,074
EXPENDITURES:						
General government	872	11	-	-	(1)	883
Public safety	1,233	12	-	-	-	1,245
Public works	406	-	-	-	-	406
Health	36	-	-	-	-	36
Education	284	-	-	-	-	284
Welfare	52	-	-	-	-	52
Culture and recreation	451	-	-	-	-	451
Economic development	67	65	-	-	-	132
Capital outlay	379	-	-	-	-	379
Debt service:						
Principal retirement	-	-	-	-	-	-
Interest and fees	-	-	(1)	-	-	-
Total expenditures	3,781	89	(1)	-	(1)	3,869
Excess of revenues over/(under) expenditures	972	222	(1)	10	(1)	1,204
Other financing sources/(uses):						
Proceeds from debt issuance	-	-	-	-	-	-
Proceeds used to refund bonds	-	-	-	-	-	-
Sale of capital assets	8	-	-	-	-	8
Transfers from other funds	250	439	2,285	-	-	2,975
Transfers to other funds	(2,725)	(43)	-	-	-	(2,767)
Total other financing sources/(uses)	(2,467)	397	2,284	-	-	215
Net change in fund balances	(1,494)	619	2,284	10	(1)	1,419
Fund balances, beginning of the year	64,305	20,672	931	1,587	1,348	88,843
Fund balances, end of period	$ 62,811	$ 21,290	$ 3,216	$ 1,597	$ 1,347	$ 90,263

Attachment: OCTOBER 2020 PRELIM FIN STMTS (4454 : City's Financial Summary Report for October 2020.)

PRELIMINARY

City of Opelika
Combined Balance Sheet (Interim Report)
Proprietary and Fiduciary Funds
October 31, 2020 Preliminary
***Thousands of dollars**

	Electric FYTD	Sewer FYTD	Solid Waste FYTD	Workmen's Comp. FYTD	Health Insurance FYTD
ASSETS					
Current assets:					
Cash	$ 28,916	$ 10,188	$ 2,989	$ 3,462	$ 1,474
Certificates of deposit	7,579	-	-	-	-
Receivables and prepaid expenses	4,557	365	292	-	(1)
Due from other funds and governments	8,537	895	-	-	-
Inventory	1,071	-	-	-	-
Total current assets	50,660	11,448	3,281	3,462	1,474
Restricted assets:					
Cash and investments with fiscal agent	1,083	21	-	-	-
Total restricted assets	1,083	21	-	-	-
Net capital assets	43,390	28,629	2,076	-	-
Other assets:					
Deposits	-	2	-	19	-
Total other assets	-	2	-	19	-
Total assets	95,133	40,099	5,357	3,482	1,474
DEFERRED OUTFLOWS OF RESOURCES					
Retirement contributions	1,004	-	374	-	-
Difference on projected OPEB earnings	450	-	169	-	-
Bond refunding costs	2,299	61	-	-	-
Total deferred outflows of resources	3,754	61	542	-	-
Total assets and deferred outflows of resources	98,887	$ 40,161	$ 5,899	$ 3,482	$ 1,474
LIABILITIES					
Current liabilities:					
Accounts and other payables	$ 5,632	$ 26	$ 54	$ 49	$ 284
Due to electric fund	-	-	-	-	-
Due to other funds	-	-	-	-	-
Bonds payable within one year	1,365	590	-	-	-
Unearned revenue	197	-	-	-	355
Total current liabilities	7,194	616	54	49	639
Noncurrent liabilities:					
Claims and employee benefits due in more than one year	1,223	-	445	136	-
Bonds payable, in more than one year, net	25,725	1,247	-	-	-
Net pension liability	5,484	-	1,885	-	-
Customer deposits held	2,981	-	170	-	-
Total noncurrent liabilities	35,414	1,247	2,500	136	-
Total liabilities	42,608	1,864	2,555	185	639
DEFERRED INFLOWS OF RESOURCES					
Difference on earnings on OPEB investments	21	-	8	-	-
Difference on earnings on plan investments	245	-	96	-	-
Total deferred inflows of resources	266	-	104	-	-
Total liabilities and deferred inflows of resources	42,874	1,864	2,659	185	639
NET POSITION					
Invested in capital assets, net of related debt	18,600	26,853	2,076	-	-
Restricted	1,083	21	-	2,972	(32)
Unrestricted	35,025	9,491	682	325	848
Encumbrances	1,304	1,527	530	-	19
Total net position	56,013	38,297	3,240	3,297	835
Total liabilities, deferred inflows, and net position	$ 98,887	$ 40,161	$ 5,899	$ 3,482	$ 1,474

PRELIMINARY

City of Opelika
Combined Summary Statement of Revenues, Expenses, and Changes in Net Position (Interim Report)
Proprietary and Fiduciary Funds
FYTD October 31, 2020 Preliminary
Thousands of dollars

	Electric 2021 FYTD	Sewer 2021 FYTD	Solid Waste 2021 FYTD	Workmen's Comp. 2021 FYTD	Health Insurance 2021 FYTD
Operating Revenues					
Charges for services	$ 3,649	$ 321	$ 319	$ 55	$ 352
Operating Expenses					
Purchases	-	-	3	-	-
Depreciation	4	-	-	-	-
Personnel services	289	-	78	-	-
Other	240	116	92	-	195
Total operating expenses	532	116	174	-	195
Operating income/(loss)	3,117	205	146	55	157
Nonoperating Revenues/(Expenses)					
Gain/(Loss) on sale of capital assets	-	-	-	-	-
Fiber optic line leases	-	-	-	-	-
Investment income	10	-	1	-	-
Grant income	-	-	-	-	-
Pole rental	-	-	-	-	-
Miscellaneous revenues	22	-	1	-	-
Interest expense and charges	(99)	(4)	-	-	-
Total nonoperating revenues/(expenses)	(66)	(4)	2	-	-
Other Revenues and Transfers In/(Out):					
Capital contributions	-	-	-	-	-
Transfers from other funds	-	-	-	-	-
Transfers to other funds	(250)	-	-	-	-
Total other revenues/(expenses)	(250)	-	-	-	-
Net Income/(loss)	2,801	200	148	55	157
Net position, beginning of year	50,647	37,691	3,140	3,241	678
Net position before encumbrances	53,448	37,892	3,288	3,297	835
Encumbrances	1,304	1,527	530	-	19
Net position, end of period	$ 52,144	$ 36,365	$ 2,758	$ 3,297	$ 816

Additional Information:

	Electric	Sewer	Solid Waste	Workmen's Comp.	Health Insurance
Cash position at September 30, 2020	$ 28,916	$ 10,188	$ 2,989	$ 3,462	$ 1,474
Cash position at September 30, 2019	28,895	9,947	2,929	3,413	1,460
Change in cash	$ 21	$ 241	$ 60	$ 50	$ 14

City of Opelika
General Fund Revenue and Expenditure Summary (Interim Report)
Comparison of Actual and Budget to Prior Year
FYTD October 2020 Preliminary
***Thousands of dollars**

	YTD Actual			Budget to Actual		
	FY 2020	**FY 2021**	**Variance**	**2021 Budget**	**2021 Actual**	**Variance**
Revenues:						
Taxes	$ 3,088	$ 3,793	$ 705	$ 3,197	$ 3,793	$ 596
Licenses and permits	2,535	2,028	(508)	1,511	2,028	517
Intergovernmental	36	40	4	54	40	(14)
Charges for services	168	70	(98)	167	70	(98)
Fines and forfeits	28	38	10	36	38	2
Grants	4	(1,463)	(1,467)	-	(1,463)	(1,463)
Contributions	38	-	(38)	-	-	-
Investment income	55	-	(55)	25	-	(25)
Miscellaneous	34	248	214	26	248	223
Total revenues	5,986	4,753	(1,233)	5,016	4,753	(263)
Expenditures:						
General government	619	872	253	717	872	156
Public safety	734	1,233	498	1,605	1,233	(372)
Public works	384	406	21	480	406	(74)
Culture and recreation	436	451	15	574	451	(123)
Economic development	26	67	40	152	67	(85)
Health	22	36	14	28	36	9
Education	277	284	7	278	284	7
Welfare	29	52	23	13	52	39
Capital outlay	(83)	379	462	685	379	(306)
Debt service	-	-	-	58	-	(58)
Total expenditures	2,446	3,781	1,335	4,588	3,781	(808)
Other financing sources/(uses)						
Sale of capital assets	-	8	8	-	8	8
Transfers in	255	250	(5)	(3,658)	250	3,908
Transfer out	(3,340)	(2,725)	615	(1,002)	(2,725)	(1,723)
Total other financing sources/(uses)	(3,085)	(2,467)	618	(4,660)	(2,467)	2,194
Net change in fund balance	455	(1,494)	(1,949)	(4,233)	(1,494)	2,739
Fund balance, beginning of year	66,652	63,398	(3,254)	66,652	63,398	(3,254)
Fund balance, year to date	$ 67,107	$ 61,904	$ (5,204)	$ 62,419	$ 61,904	$ (516)
Less:						
Nonspendable	100	93	(7)	-	93	-
Restricted	207	200	(7)	-	200	-
Committed	49	36	(14)	-	36	-
Assigned	17,442	11,790	(5,652)	-	11,790	-
Encumbrances	17,374	26,232	8,858	-	26,232	-
	35,173	38,351	3,178	-	38,351	-
Unassigned fund balance	31,935	23,553	(8,382)	62,419	23,553	(516)
20% budgeted revenues	1,003	1,003		1,003	1,003	
Available unassigned fund balance	$ 30,931	$ 22,550		$ 61,416	$ 22,550	

City of Opelika
General Fund Revenues (Interim Report)
Comparison of Actual and Budget to Prior Year
FYTD October 2020 Preliminary
Thousands of dollars

	YTD Actual			Budget to Actual		
	FY 2020	**FY 2021**	**Variance**	**2021 Budget**	**2021 Actual**	**Variance**
Taxes:						
Sales	$ 2,830	$ 3,532	$ 702	$ 2,725	$ 3,532	$ 807
Property:						
Property	97	139	42	342	139	(203)
Payments in lieu of taxes	18	-	(18)	-	-	-
Total property taxes	115	139	24	342	139	(203)
Other						
Gasoline	80	66	(14)	68	66	(3)
Cigarette	4	6	2	5	6	1
Wine and liquor	2	3	-	2	3	-
Rental	56	47	(9)	54	47	(7)
Total other taxes	142	121	(21)	130	121	(9)
Total taxes	3,088	3,793	705	3,197	3,793	596
Licenses and permits:						
Occupational license	2,256	1,809	(447)	1,050	1,809	759
Business:						
General	17	20	3	250	20	(230)
Lodging	128	81	(47)	77	81	4
Franchise fee	2	-	(2)	43	-	(43)
Miscellaneous	37	33	(4)	22	33	11
Total business	185	134	(51)	392	134	(257)
Telecommunications permits and fees	2	-	(2)	2	-	(2)
Permits and inspections	91	83	(8)	67	83	16
Other	1	1	-	1	1	-
Total licenses and permits	2,535	2,028	(508)	1,511	2,028	517
Intergovernmental:						
Shared county motor vehicle	11	12	1	11	12	1
Shared state:						
Bank excise tax	-	-	-	17	-	(17)
Business privilege tax	-	-	-	6	-	(6)
Liquor tax profits	12	16	3	12	16	4
State asset forfeiture	2	1	(1)	-	1	1
Total shared state	14	17	3	35	17	(18)
Shared federal asset forfeiture	-	-	-	-	-	-
Other	11	11	-	7	11	4
Total intergovernmental	36	40	4	54	40	(14)
Charges for services:						
General government - other	3	1	(2)	2	1	(1)
Public Safety:						
Fire training	-	1	1	-	1	1
City schools	-	-	-	13	-	(13)
Auburn University	-	-	-	-	-	-
EAMC	-	-	-	13	-	(13)
Other	2	1	(1)	-	1	1
Health - Graves and monuments	13	7	(5)	13	7	(6)
Public Works - Paving and plan review fe	8	5	(3)	3	5	3
Culture and Rec - Entry and concession f	142	54	(88)	124	54	(70)
Total charges for services	168	70	(98)	167	70	(98)
Fines and forfeits:						
Municipal Court	24	34	9	33	34	1
Other	4	5	1	4	5	1
Total fines and forfeits	28	38	10	36	38	2
Grant income	4	(1,463)	(1,467)	-	(1,463)	(1,463)
Contributions: Mobile Clinic	36	-	(36)	-	-	-
Contributions: Other	1	-	(1)	-	-	-
Investment income	55	-	(55)	25	-	(25)
Miscellaneous	34	248	214	26	248	223
Total revenues	5,986	4,753	(1,233)	5,016	4,753	(263)
Other financing sources						
Operating transfers from Electric fund	250	250	-	250	250	-
Other transfers	5	-	(5)	(3,908)	-	3,908
Sale of capital assets	-	8	8	-	8	8
Total other financing sources	255	258	3	(3,658)	258	3,916
Total revenue and other financing so	$ 6,241	$ 5,011	$ (1,230)	$ 1,357	$ 5,011	$ 3,654

City of Opelika
General Fund Expenditures (Interim Report)
Comparison of Actual and Budget to Prior Year
FYTD October 2020 Preliminary
Thousands of dollars

	YTD Actual			Budget to Actual		
	FY 2020	FY 2021	Variance	2021 Budget	2021 Actual	Variance
General government:						
Legislative	$ 39	$ 53	$ 14	$ 34	$ 53	$ 19
Executive	15	24	9	54	24	(29)
Legal	18	23	5	32	23	(9)
Administration	97	108	10	54	108	53
Accounting	13	26	13	50	26	(24)
Human resources	14	10	(4)	47	10	(37)
Information technology	282	381	99	224	381	157
Revenue	17	30	13	43	30	(14)
Municipal court	14	24	9	31	24	(7)
Purchasing	10	18	8	26	18	(9)
Community development	19	17	(1)	23	17	(6)
Planning	20	34	14	49	34	(15)
Other - nondepartmental	61	126	65	51	126	75
Total general government	619	872	253	717	872	156
Public safety:						
Police	489	806	317	1,029	806	(223)
Probation	4	8	4	13	8	(4)
Fire	241	407	166	527	407	(120)
Other - nondepartmental	-	11	11	35	11	(24)
Total public safety	734	1,233	498	1,605	1,233	(372)
Public works:						
Streets	118	117	(1)	99	117	18
Engineering	21	33	12	58	33	(25)
Administration	44	35	(9)	50	35	(15)
Cemetery	19	19	-	23	19	(5)
Auto shop	35	41	6	61	41	(20)
Building maintenance	46	46	-	52	46	(6)
Inspection	20	30	10	52	30	(22)
Grounds maintenance	81	84	3	84	84	-
Total public works	384	406	21	480	406	(74)
Culture and recreation:						
Parks and recreation	337	290	(46)	480	290	(190)
Library	49	67	18	84	67	(17)
Other - nondepartmental	51	94	44	10	94	84
Total culture and recreation	436	451	15	574	451	(123)
Economic development:						
Development	15	20	5	49	20	(29)
Other - nondepartmental	11	46	35	103	46	(56)
Total economic development	26	67	40	152	67	(85)
Health:						
Animal control	3	6	3	7	6	(1)
Mobile Clinic	-	-	-	-	-	-
Other	20	31	11	21	31	10
Total health	22	36	14	28	36	9
Education	277	284	7	278	284	7
Welfare	29	52	23	13	52	39
Capital outlay	(83)	379	462	685	379	(306)
Debt service						
Principal retirement	-	-	-	57	-	(57)
Interest and charges	-	-	-	1	-	(1)
Total debt service	-	-	-	58	-	(58)
Total expenditures	2,446	3,781	1,335	4,588	3,781	(808)
Other financing uses						
Transfers out:						
Transfers to PR/Jail construction fund	291	380	89	283	380	97
Transfers to other funds	3,049	2,345	(704)	719	2,345	1,626
Total transfers out	3,340	2,725	(615)	1,002	2,725	1,723
Total expenditures and other financing uses	$ 5,786	$ 6,505	$ 719	$ 5,590	$ 6,505	$ 915

PRELIMINARY

City of Opelika
Capital Outlay (Interim Report)
Comparison of Actual and Budget to Prior Year
FYTD October 2020 Preliminary

	FYTD Actual			Budget to Actual		
	FY 2020	**FY 2021**	**Variance**	**2021 Budget**	**2021 Actual**	**Variance**
GENERAL FUND						
General Government:						
Legislative	-	-	-	-	-	-
Executive	-	-	-	-	-	-
Legal	-	-	-	-	-	-
Adminstration	-	-	-	-	-	-
Accounting	-	-	-	156,548	-	156,548
Human Resources	-	-	-	-	-	-
Information Technology	-	398	398	17,305	398	16,907
Revenue	-	-	-	-	-	-
Municipal Court	-	-	-	-	-	-
Purchasing	-	-	-	-	-	-
Community Development	-	-	-	-	-	-
Planning	-	-	-	-	-	-
Health	-	-	-	0	-	-
Other	-	-	-	-	-	-
Total general government	$ -	$ 398	$ 398	$ 173,853	$ 398	$ 173,455
Public Safety:						
Police	(207,509)	-	207,509	27,118	-	27,118
Probation	-	-	-	-	-	-
Fire	-	-	-	29,219	-	29,219
Total public safety	$ (207,509)	$ -	$ 207,509	$ 56,337	$ -	$ 56,337
Public Works:						
Streets	-	184,226	184,226	167,262	184,226	(16,964)
Engineering	-	-	-	(230,132)	-	(230,132)
Administration	118,924	275,842	156,918	13,311	275,842	(262,531)
Cemetery	-	-	-	-	-	-
Auto Shop	-	-	-	-	-	-
Building Maintenance	-	-	-	-	-	-
Inspection	-	-	-	-	-	-
Grounds Maintenance	-	-	-	-	-	-
Total public works	$ 118,924	$ 460,068	$ 341,144	$ (49,559)	$ 460,068	$ (509,627)
Culture and Recreation:						
Parks and Recreation	5,850	(46,009)	(51,859)	6,931	(46,009)	52,940
Library	-	(35,000)	(35,000)	264,325	(35,000)	299,325
Total culture and recreation	$ 5,850	$ (81,009)	$ (86,859)	$ 271,256	$ (81,009)	$ 352,265
Economic development	$ -	$ -	$ -	$ -	$ -	$ -
Health, Education and Welfare	$ -	$ -	$ -	$ -	$ -	$ -
Total capital outlay expenditures	**$ (82,735)**	**$ 379,457**	**$ 462,192**	**$ 451,887**	**$ 379,457**	**$ 72,430**
PROPRIETARY FUNDS						
Electric	82,663	99,523	16,860	607,500	99,523	507,977
Telecommunications	-	-	-	0	-	-
Sewer	-	374	374	160,385	374	160,011
Solid Waste	-	-	-	53,157	-	53,157
Total Proprietary funds	$ 82,663	$ 99,897	$ 17,234	$ 821,042	$ 99,897	$ 721,145

City Council
204 South 7Th Street
Opelika, AL

SCHEDULED

Meeting: 12/01/20 07:00 PM
Department: Purchasing and Revenue
Category: Public Hearing
Prepared By: William May
Initiator: Lillie Finley
Sponsors:
DOC ID: 4440

GENERAL BUSINESS (ID # 4440)

Public Hearing - Weed Abatement Assessment- 3900 Marvyn Pkwy.

COMMENTS - Current Meeting:

Mr. Jones presented the public hearing. President Smith opened the public hearing and asked if anyone present would like to speak for or against said weed abatement. No one came forward to speak. President Smith closed the public hearing.

To: Cove Creek Development LLC
2055 County Road 237
Roanoke, Al 36274

NOTICE OF PUBLIC HEARING ON COST OF ABATEMENT OF WEED NUISANCE LOCATED AT 3900 Marvyn Parkway Parcel 10-09-30-4-000-029.000

==

NOTICE IS HEREBY GIVEN that the weed nuisance growing upon or in front of the property located at 3900 Marvyn Pkwy., Parcel No. 029.000 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 $1,068.34.

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 Municipal Court Building, 300 M L King Blvd, Opelika, Alabama, on the 1st day of December, 2020.

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 17th day of November, 2020.

____

William May
Code Compliance Officer

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

WEED ABATEMENT INVOICE

Date: November 16, 2020

To: Cove Creek Development LLC
2055 County Road 237
Roanoke, Al 36274

Property Address:
3900 Marvyn Parkway
Opelika Al. 36804
Parcel # 10-09-30-4-000-029.000

On October 21, 2020 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: 1,055.00

Certified mail: 13.34

Misc. ____________

Total 1,068.34

RESOLUTION NO. 312-20

Designate City Personal Property Surplus & Authorize Disposal.

RESOLUTION NO. ________

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

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

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

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

No.	Qty.	Unit	Item Description	Fixed Asset
1.	1	Ea.	Computer Equipment Information Repository	99002665
2.	1	Ea.	Software- Information Repository	99002692
3.	1	Ea.	Sofware - Information Repository	99002691
4.	1	Ea.	UPS System	87001703
5.	1	Ea.	UPS System	87002583
6.	1	Ea.	Generator	87001704
7.	1	Ea.	Metal Evidence Locker	87002532

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 _________________, 2020.

____

C.E. "Eddie" Smith, Jr.

President of the City Council

City of Opelika, Alabama

ATTEST:

____

Russell A. Jones

City Clerk

RESOLUTION NO. 313-20

Purchase - CivicClerk, Omnia Contract #2018011-02 - IT.

RESOLUTION NO. _______________

WHEREAS, the Information Technology Department desires to purchase CivicClerk utilizing Omnia Contract #2018011-02; and

WHEREAS, SHI International Corp. is the contract vendor for CivicClerk; and

WHEREAS, funds for this purchase are budgeted;

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

1. That the purchase be awarded to SHI International Corp. utilizing the Omnia contract.

2. That the Purchasing-Revenue Manager is hereby authorized to issue a purchase order to SHI International Corp. in the total amount of $25,965.79.

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

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

APPROVED AND ADOPTED this the ______ day of ________________, 2020.

____

C.E. “Eddie” Smith, Jr.

President of the City Council

City of Opelika, Alabama

ATTEST:

____

Russell A. Jones

City Clerk

Pricing Proposal
Quotation #: 19672752
Created On: 11/9/2020
Valid Until: 12/9/2020

City of Opelika

Sr. Inside Account Exectuive

Lou Malloy
204 South 7th Street
Opelika, AL 36801
UNITED STATES
Phone: (334) 705-5140
Fax:
Email: lmalloy@opelika-al.gov

Bryan Hunt
290 Davidson Ave
Somerset, NJ 08873
Phone: 732-652-7651
Fax: 732-564-8224
Email: Bryan_Hunt@shi.com

All Prices are in US Dollar (USD)

	Product	Qty	Your Price	Total
1	CivicClerk - Total Investment Year 1 CivicPlus - Part#: NPN-CLERK-CIVIC-A Contract Name: Omnia Partners - IT Solutions Contract #: 2018011-02 **Note:** Year 1	1	$15,734.21	$15,734.21
2	CivicClerk - year 2 CivicPlus - Part#: NPN-CLERK-CIVIC-A Contract Name: Omnia Partners - IT Solutions Contract #: 2018011-02 **Note:** Recurring Services Year 2	1	$10,231.58	$10,231.58
			Subtotal	$25,965.79
			Total	$25,965.79

Additional Comments

Hardware items on this quote may be updated to reflect changes due to industry wide constraints and fluctuations.

Thank you for choosing SHI International Corp! The pricing offered on this quote proposal is valid through the expiration date set above. To ensure the best level of service, please provide End User Name, Phone Number, Email Address and applicable Contract Number when submitting a Purchase Order.

SHI International Corp. is 100% Minority Owned, Woman Owned Business.
TAX ID# 22-3009648; DUNS# 61-1429481; CCR# 61-243957G; CAGE 1HTF0

The products offered under this proposal are resold in accordance with the terms and conditions of the Contract referenced under that applicable line item.

(866)875-3299 | Contact Us

OMNIA® PARTNERS | Public Sector

MENU

REGISTER

SHI

Information Technology Solutions and Services

Competitively solicited and publicly awarded by: City of Mesa, AZ Contract #2018011-02

Contract Includes:

A wide variety of technology solutions broken down by category including but not limited to systems, input/output devices, memory, storage devices, network equipment, software, media supplies, collaboration & IP telephony, and other related products & services.

SHI is a 100% minority owned company and a Corporate Plus member of the National Minority Supplier Development Council (NMSDC). Certified by the New York & New Jersey Minority Supplier Development Council (NY/NJ MSDC) and recognized by the 22 other regional affiliates of the NMSDC.

REQUEST CONTRACT INFORMATION

RESOLUTION NO. 314-20

Approve Agreement with AVENU Insights & Analytics LLC - REV.

RESOLUTION NO. _____________

RESOLUTION APPROVING AGREEMENTS WITH

AVENU INSIGHTS & ANALYTICS, LLC

WHEREAS, AVENU Insights & Analytics, LLC, formerly PRA Government Services, LLC d/b/a RDS (hereinafter referred to as "AVENU") for more than thirty (30) years has provided revenue enhancement services to state and local governments; and

WHEREAS, AVENU offers a comprehensive compliance review process that preserves and enhances municipal tax and licensing revenues; and

WHEREAS, the City of Opelika, Alabama, a municipal corporation, (the "City") desires to contract with AVENU for revenue enhancement services; and

WHEREAS, four (4) agreements by and between the City and AVENU have been prepared and submitted to the City Council for approval as follows:

1. Tax Revenue Enhancement Agreement for Lodging Taxes (Exhibit "A");
2. Tax Revenue Enhancement Agreement for Sales and Use Taxes (Exhibit "B");
3. Tax Revenue Enhancement Agreement for Rental Taxes (Exhibit "C")
4. Tax Revenue Enhancement Agreement for Business License Fees (Exhibit "D")

Said documents being herein referred to collectively as the "Agreements"; and

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

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

1. That the proposed four (4) Tax Revenue Enhancement Agreements to be entered into between the City and AVENU for remittance, processing, discovery and recovery services with respect to lodging taxes, sales and use taxes, rental taxes and business license fees, copies of which is attached hereto and marked Exhibits "A", "B", "C" and "D", be and the same are hereby approved, authorized, ratified and confirmed in the form substantially submitted to the City Council with such changes thereto (by addition, deletion or substitution) as the Mayor shall approve.

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

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

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

ADOPTED AND APPROVED this the ______ day of __________________, 2020.

____

PRESIDENT OF THE CITY COUNCIL OF THE

CITY OF OPELIKA, ALABAMA

ATTEST:

____

CITY CLERK

Exhibit A

Tax Revenue Enhancement Agreement
Lodging Tax Revenue Administration

This agreement made by and between AVENU Insights & Analytics, LLC ("AVENU") and City of Opelika, an Alabama CITY ("CITY").

A. Remittance Processing Services

1. Taxes Processed: AVENU will perform remittance processing for lodging taxes as designated by CITY.

2. Taxpayer Notification and Remittance: AVENU will send individualized tax forms to all known taxpayers. Taxpayers will remit payments to the following Address: City of Opelika, P.O. Box 830725, Birmingham, AL 35283-0725. Upon reasonable notice to CITY, AVENU may change the Address for payments.

3. Deposit Process: Deposits are made to the extent that funds have been received, via Automated Clearing House of the amounts and to the designated recipients as instructed by the CITY for each type of tax collected, as shown in more detail on **Exhibit A**.

4. Posting Process: Taxpayer accounts are posted with payment information captured in the AVENU revenue system. Additional information such as net sales, deductions, credit sales, measure of tax, name change, and address change is captured and added to payment data and taxpayer master file (as determined necessary by AVENU). Late payments (postmarked by U.S. Postal Service after due date) are invoiced at penalty amounts required by State code. Under-payments are invoiced for remaining tax due plus any required penalties.

5. Changes to **Exhibit A**: CITY shall notify AVENU in writing immediately of all changes in amounts to be deposited into the accounts of designated recipients. An amended **Exhibit A** shall be prepared and executed by the Parties as soon as reasonably possible. In addition, AVENU shall provide documentation confirming each change under the preceding sentence with the first monthly report reflecting the applicable change. If the changes reflected in the monthly report do not properly reflect the intended changes of the CITY, then the CITY shall immediately notify AVENU and, thereafter, AVENU shall take the steps necessary to insure, designated recipients receive the amounts intended by CITY.

6. Notification, Reporting to CITY:

   i. AVENU will provide CITY with monthly reports including, but not limited to, payment listings showing all taxes received related to net receipts reported, a general ledger distribution that corresponds to CITY'S account numbers and all fees paid to AVENU. These reports will be provided by the 10th of the month following the tax month;

   ii. CITY AGREES TO EXAMINE THIS REPORT IMMEDIATELY. IF NO ERROR IS REPORTED BY THE CITY TO AVENU WITHIN 60 DAYS, THE STATEMENT WILL BE DEEMED ACCURATE;

   iii. All items credited will be subject to receipt of payment; and

   iv. AVENU will attend Council meetings at such times as may be reasonably requested by CITY.

B. Compliance Services

1. Taxes Reviewed: AVENU will perform compliance services for lodging and other taxes designated by CITY under Remittance Processing Services. AVENU will provide delinquency notification and follow-up. This includes correspondence, calls, and collection procedures and the related documentation. Delinquency policies and procedures will be applied consistently and within applicable tax laws. Unless otherwise directed by CITY, AVENU will make reasonable efforts to collect taxes designated by CITY hereunder. Where deemed reasonably appropriate, accounts may be turned over to audit or third-party collection. If CITY elects to have its attorney pursue collection of certain uncollected accounts, AVENU will assist CITY attorney as reasonably requested at its normal hourly rate as reflected herein.

2. Conduct of Compliance Services: To assure that all taxpayers are treated fairly, consistently and all compliance services are performed in a similar manner, AVENU representatives who perform compliance services will use a similar compliance plan for each compliance service conducted. All funds due from compliance services will be remitted to CITY in the same manner as provided for pursuant to *Section A,* above.

C. General Provisions

1. Information Provided: CITY represents that the information provided to AVENU in the performance of services hereunder shall be provided free and clear of the claims of third parties. CITY represents that it has the right to provide this information to AVENU and that said information shall not be defamatory or otherwise expose AVENU to liability to third parties.

2. Compliance with laws: Each Party accepts responsibility for its compliance with federal, state, or local laws and regulations.

3. Taxpayer service: AVENU will provide a taxpayer assistance number for taxpayer questions. AVENU will provide informational brochures for placement in CITY offices, Chamber of Commerce offices, libraries and any other facilities. This information may also be available on the Internet at www.avenuinsights.com.

4. Review and Appeal Process: AVENU has adopted and will use a review and appeals process which is based on the *Alabama Taxpayers' Bill of Rights Act* and *Uniform Revenue Procedures Act* codified as Title 40, Chapter 2A, Code of Alabama, 1975, as amended.

5. Consideration for Remittance Processing Services, Revenue Analysis Services and Compliance Services: AVENU shall be compensated for the services rendered under this agreement in accordance with the schedule of fees set forth in Exhibit "A".

6. Audit Services:

   i. AVENU Audit Services: Audit Services include all preparation for the performance of an audit, any research or statistical analysis performed in relation to an audit, in-house audit/collection efforts, examination of the books and records of the taxpayer, an assessment of the amount due (if any), and all services related to closing an audit.

   ii. AVENU Reciprocal Agreement: To the fullest extent allowed by law, CITY hereby authorizes AVENU to act as a facilitator with the Alabama Department of Revenue and other applicable jurisdictions to share audit findings on its behalf.

   iii. AVENU Fee: AVENU shall be compensated for audit services rendered under this agreement at the hourly rate set forth in Exhibit "A". There shall be no contingency fees.

1. If overnight travel or travel more than 25 miles beyond origination point is required, AVENU will pay the auditor and bill the CITY for its portion of travel expenses. CITY agrees to pay the amount of these fees when due, regardless of any recovery.

2. Billing Increment: Time will be recorded in 15-minute intervals (.25 hours);

3. Shared Audit Fees: When audits for CITY overlap with audits for other AVENU clients or clients of AVENU Affiliates, the fees will be shared as follows:

   a. Travel Time: travel time, expenses, and a daily per diem amount for each audit is distributed evenly among the clients reviewed for each audit.

   b. Interview Time: time billed during the initial interview of each audit is distributed evenly amongst the clients reviewed for each audit – during this process the auditor determines which clients will actually be audited for and billed Audit Time as follows;

      i. Audit Time: Time billed during the actual audit stage of each audit is billed according to actual time spent working for each client;

      i. No Double Billing: In no event will the overlapping audits combined require payment for more than 100% for any one AVENU representative.

7. Company Audit: Once a year AVENU will have an independent auditor prepare an SSAE 16, SOC 1, Type II Independent Service Auditor's Report on Controls Placed in Operation and Tests of Operating Effectiveness. This report will be made available upon request.

8. Effective Date: The effective date for the performance of services under the terms of this agreement shall commence _________ 1, 2020 with collection of ________ taxes to be remitted on or before ________20, 2020.

9. Term of the Agreement: This Agreement shall be for a term of three (3) years following the date of execution or the maximum period allowed by law, whichever is shorter. Either party shall have the right to terminate this Agreement in the event of a material breach by the other party. Any such termination may be made only by providing ninety (90) days written notice to the other party, specifically identifying the breach or breaches on which termination is based. Following receipt of such notice, the party in breach shall have thirty (30) days to cure such breach or breaches. In the event that such cure is not made, this Agreement shall terminate in accordance with the initial ninety (90) days notice.

10. Effect of Termination: Notwithstanding non-renewal or termination of this Agreement, CITY shall be obligated to pay AVENU for services performed through the effective date of termination for which AVENU has not been previously paid. In addition, because the services performed by AVENU prior to termination or non-renewal of this Agreement may result in the CITY's receipt of revenue after termination which are subject to AVENU's fee, the CITY shall remain obligated after termination or non-renewal to provide to AVENU such information as is necessary for AVENU to calculate compensation due as a result of the receipt of revenue by the CITY. The CITY shall remain obligated to pay AVENU's invoices therefore in accordance with the terms of this Agreement.

11. Indemnity: To the fullest extent allowed by law, AVENU hereby agrees to indemnify and hold CITY harmless from any claims and against all costs, expenses, damages, claims and liabilities based upon or arising solely out of a breach of this Agreement by AVENU. Except as set forth in the preceding sentence, to the full extent allowed by law, CITY hereby agrees to indemnify and hold AVENU harmless from any claims and against all costs, expenses, damages, claims and liabilities

relating in any way to lodging and other taxes of CITY, including, but not limited to, determination of taxes due from taxpayers, the collection thereof and any refunding related thereto.

12. Limitation of Liability: To the maximum extent permitted by law, in no event shall AVENU, its employees, contractors, directors, affiliates and/ or agents be liable for any special, incidental or consequential damages, such as, but not limited to, delay, lost data, disruption, and loss of anticipated profits or revenue arising from or related to the services, whether liability is asserted in contract or tort, and whether or not AVENU has been advised of the possibility of any such loss or damage. In addition, AVENU's total liability hereunder, including reasonable attorney's fees and costs, shall in no event exceed an amount equal to the fee paid by the CITY for the affected service to which the claim pertains. The foregoing sets forth the CITY'S exclusive remedy for claims arising from or out of this Agreement. The provisions of this section allocate the risks between AVENU and the CITY and AVENU's pricing reflects the allocation of risk and limitation of liability specified herein.

13. Equal Opportunity to Draft: The Parties have participated and had an equal opportunity to participate in the drafting of this Agreement. No ambiguity shall be construed against any Party upon a claim that that party drafted the ambiguous language.

14. Assignment: This Agreement shall be binding upon and inure to the benefit of the Parties, their successors; representatives and assigns. AVENU shall not assign this Agreement, or delegate its duties or obligations under this Agreement, without the prior written consent of CITY, which consent shall not be unreasonably withheld, delayed or conditioned. Notwithstanding the foregoing, AVENU may assign this Agreement, in whole or in part, without the consent of CITY to any corporation or entity into which or with which AVENU has merged or consolidated; any parent, subsidiary, successor or affiliated corporation of AVENU; or any corporation or entity which acquires all or substantially all of the assets of AVENU. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties and their successors or assigns.

15. Force Majeure: AVENU shall not be in default of its obligations hereunder to the extent that its performance is delayed or prevented by causes beyond its control, including but not limited to acts of God, government, weather, fire, power or telecommunications failures, inability to obtain supplies, breakdown of equipment or interruption in vendor services or communications.

16. Subcontractors: AVENU shall have the right to hire assistants as subcontractors or to use employees to provide the Services required by this Agreement. AVENU, in rendering performance under this Agreement shall be deemed an independent contractor and nothing contained herein shall constitute this arrangement to be employment, a joint venture, or a partnership. AVENU shall be solely responsible for and shall hold CITY harmless from any and all claims for any employee related fees and costs including without limitation employee insurance, employment taxes, workman's compensation, withholding taxes or income taxes.

17. Intellectual Property Rights: The entire right, title and interest in and to AVENU's database and all copyrights, patents, trade secrets, trademarks, trade names, and all other intellectual property rights associated with any and all ideas, concepts, techniques, inventions, processes, or works of authorship including, but not limited to, all materials in written or other tangible form developed or created in the course of this Agreement (collectively, the "Work Product") shall vest exclusively in AVENU. The foregoing notwithstanding, in no event shall any CITY-owned data provided to AVENU be deemed included within the Work Product.

18. Entire Agreement: This Agreement constitutes the entire agreement between the Parties hereto and supersedes any prior understandings or written or oral agreements between the Parties respecting the subject matter contained herein. Said Agreement shall not be amended, altered, or changed, except by a written Agreement signed by both Parties hereto.

19. Invalidity: If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability

shall not affect any other provision thereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained thereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

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

IN WITNESS WHEREOF, the parties hereto as of the date first above written have duly executed this Agreement.

AVENU INSIGHTS & ANALYTICS, LLC

By: ______________________________

Title:

City of Opelika

By: ______________________________

Title: ______________________________

Proposed pricing contained herein valid for 60 days from date of issuance. Issued 10/25/2020 (crg)

EXHIBIT A

DISTRIBUTION, RATE CONFIRMATION and SCHEDULE OF FEES

Date

Lillie Finley
City of Opelika
PO Box 390
Opelika, AL 36803

Dear Ms. Finley:

Funds will be distributed in the following accounts pursuant to this Agreement:

Agency	Routing #	Account #	Distribution %	Tax Type/Rate Code
Opelika	261170876	Xxxxx6545	100%	Lodging; all rates

Tax Types and Rate Codes will be administered at the following percentages:

Tax Type	Rate Type	Percentage
Lodging	General	7.00%

If at any time there are any discrepancies between the schedule set out above and your Municipality's records, please notify us in writing immediately.

IT IS YOUR RESPONSIBILITY TO PROVIDE NOTICE TO US OF ANY CHANGES IN TAX RATES OR IN THE DISTRIBUTION OF FUNDS. NOTICE MUST BE IN WRITING AND SENT, VIA CERTIFIED MAIL, TO:

AVENU Insights & Analytics, LLC (d/b/a AVENU)
600 Beacon Parkway West, Suite 900
Birmingham AL 35209
ATT: Daryl Savage, General Counsel

COMPENSATION

Compliance Services: AVENU will receive an amount equal 1.85% of gross revenues collected, for providing Remittance Processing Services and Revenue Analysis Services.

Audit Services: AVENU will receive an amount based on an hourly rate of seventy-three dollars ($73.00) for audit services. There shall be no contingent fees. Each year on the anniversary of the Effective Date of this Agreement, the hourly rate will increase by 3%.

Thank you for your assistance. If you have any questions, or if I may be of assistance, please let me know.

Sincerely Yours,

Connie Taylor
Client Relations Manager
AVENU
205-423-4144 direct dial
205-423-4097 direct fax

I have reviewed the above distribution and verify that it is correct.

By: ______________________ ______________________

Name: ______________________ (AVENU)

Title:

Exhibit B

Tax Revenue Enhancement Agreement
Revenue Administration

This agreement made by and between AVENU Insights & Analytics, LLC and City of Opelika, an Alabama CITY ("CITY").

A. Remittance Processing Services

1. Taxes Processed: AVENU will perform remittance processing for sales and use taxes as designated by CITY.

2. Taxpayer Notification and Remittance: AVENU will send individualized tax forms to all known taxpayers. Taxpayers will remit payments to the following Address: City of Opelika, P.O. Box 830725, Birmingham, AL 35283-0725. Upon reasonable notice to CITY, AVENU may change the Address for payments.

3. Deposit Process: Deposits are made to the extent that funds have been received, via Automated Clearing House of the amounts and to the designated recipients as instructed by the CITY for each type of tax collected, as shown in more detail on **Exhibit A**.

4. Posting Process: Taxpayer accounts are posted with payment information captured in the AVENU revenue system. Additional information such as net sales, deductions, credit sales, measure of tax, name change, and address change is captured and added to payment data and taxpayer master file (as determined necessary by AVENU). Late payments (postmarked by U.S. Postal Service after due date) are invoiced at penalty amounts required by State code. Under-payments are invoiced for remaining tax due plus any required penalties.

5. Changes to **Exhibit A**: CITY shall notify AVENU in writing immediately of all changes in amounts to be deposited into the accounts of designated recipients. An amended **Exhibit A** shall be prepared and executed by the Parties as soon as reasonably possible. In addition, AVENU shall provide documentation confirming each change under the preceding sentence with the first monthly report reflecting the applicable change. If the changes reflected in the monthly report do not properly reflect the intended changes of the CITY, then the CITY shall immediately notify AVENU and, thereafter, AVENU shall take the steps necessary to insure, designated recipients receive the amounts intended by CITY.

6. Notification, Reporting to CITY:

   i. AVENU will provide CITY with monthly reports including, but not limited to, payment listings showing all taxes received related to net receipts reported, a general ledger distribution that corresponds to CITY'S account numbers and all fees paid to AVENU. These reports will be provided by the 10th of the month following the tax month;

   ii. CITY AGREES TO EXAMINE THIS REPORT IMMEDIATELY. IF NO ERROR IS REPORTED BY THE CITY TO AVENU WITHIN 60 DAYS, THE STATEMENT WILL BE DEEMED ACCURATE;

   iii. All items credited will be subject to receipt of payment; and

   iv. AVENU will attend Council meetings at such times as may be reasonably requested by CITY.

B. Compliance Services

1. Taxes Reviewed: AVENU will perform compliance services for sales, use and other taxes designated by CITY under Remittance Processing Services. AVENU will provide delinquency notification and follow-up. This includes correspondence, calls, and collection procedures and the related documentation. Delinquency policies and procedures will be applied consistently and within applicable tax laws. Unless otherwise directed by CITY, AVENU will make reasonable efforts to collect taxes designated by CITY hereunder. Where deemed reasonably appropriate, accounts may be turned over to audit or third-party collection. If CITY elects to have its attorney pursue collection of certain uncollected accounts, AVENU will assist CITY attorney as reasonably requested at its normal hourly rate as reflected herein.

2. Conduct of Compliance Services: To assure that all taxpayers are treated fairly, consistently and all compliance services are performed in a similar manner, AVENU representatives who perform compliance services will use a similar compliance plan for each compliance service conducted. All funds due from compliance services will be remitted to CITY in the same manner as provided for pursuant to *Section A,* above.

C. General Provisions

1. Information Provided: CITY represents that the information provided to AVENU in the performance of services hereunder shall be provided free and clear of the claims of third parties. CITY represents that it has the right to provide this information to AVENU and that said information shall not be defamatory or otherwise expose AVENU to liability to third parties.

2. Compliance with laws: Each Party accepts responsibility for its compliance with federal, state, or local laws and regulations.

3. Taxpayer service: AVENU will provide a taxpayer assistance number for taxpayer questions. AVENU will provide informational brochures for placement in CITY offices, Chamber of Commerce offices, libraries and any other facilities. This information may also be available on the Internet at www.avenuinsights.com.

4. Review and Appeal Process: AVENU has adopted and will use a review and appeals process which is based on the *Alabama Taxpayers' Bill of Rights Act* and *Uniform Revenue Procedures Act* codified as Title 40, Chapter 2A, Code of Alabama, 1975, as amended.

5. Consideration for Remittance Processing Services, Revenue Analysis Services and Compliance Services: AVENU shall be compensated for the services rendered under this agreement in accordance with the schedule of fees set forth in Exhibit "A".

6. Audit Services:

   i. AVENU Audit Services: Audit Services include all preparation for the performance of an audit, any research or statistical analysis performed in relation to an audit, in-house audit/collection efforts, examination of the books and records of the taxpayer, an assessment of the amount due (if any), and all services related to closing an audit.

   ii. AVENU Reciprocal Agreement: To the fullest extent allowed by law, CITY hereby authorizes AVENU to act as a facilitator with the Alabama Department of Revenue and other applicable jurisdictions to share audit findings on its behalf.

   iii. AVENU Fee: AVENU shall be compensated for audit services rendered under this agreement at the hourly rate set forth in Exhibit "A". There shall be no contingency fees.

1. If overnight travel or travel more than 25 miles beyond origination point is required, AVENU will pay the auditor and bill the CITY for its portion of travel expenses. CITY agrees to pay the amount of these fees when due, regardless of any recovery.

2. Billing Increment: Time will be recorded in 15-minute intervals (.25 hours);

3. Shared Audit Fees: When audits for CITY overlap with audits for other AVENU clients or clients of AVENU Affiliates, the fees will be shared as follows:

   a. Travel Time: travel time, expenses, and a daily per diem amount for each audit is distributed evenly among the clients reviewed for each audit.

   b. Interview Time: time billed during the initial interview of each audit is distributed evenly amongst the clients reviewed for each audit – during this process the auditor determines which clients will actually be audited for and billed Audit Time as follows;

      i. Audit Time: Time billed during the actual audit stage of each audit is billed according to actual time spent working for each client;

      i. No Double Billing: In no event will the overlapping audits combined require payment for more than 100% for any one AVENU representative.

7. Company Audit: Once a year AVENU will have an independent auditor prepare an SSAE 16, SOC 1, Type II Independent Service Auditor's Report on Controls Placed in Operation and Tests of Operating Effectiveness. This report will be made available upon request.

8. Effective Date: The effective date for the performance of services under the terms of this agreement shall commence _________ 1, 2020 with collection of ________ taxes to be remitted on or before ________20, 2020.

9. Term of the Agreement: This Agreement shall be for a term of three (3) years following the date of execution or the maximum period allowed by law, whichever is shorter. Either party shall have the right to terminate this Agreement in the event of a material breach by the other party. Any such termination may be made only by providing ninety (90) days written notice to the other party, specifically identifying the breach or breaches on which termination is based. Following receipt of such notice, the party in breach shall have thirty (30) days to cure such breach or breaches. In the event that such cure is not made, this Agreement shall terminate in accordance with the initial ninety (90) days notice.

10. Effect of Termination: Notwithstanding non-renewal or termination of this Agreement, CITY shall be obligated to pay AVENU for services performed through the effective date of termination for which AVENU has not been previously paid. In addition, because the services performed by AVENU prior to termination or non-renewal of this Agreement may result in the CITY's receipt of revenue after termination which are subject to AVENU'S fee, the CITY shall remain obligated after termination or non-renewal to provide to AVENU such information as is necessary for AVENU to calculate compensation due as a result of the receipt of revenue by the CITY. The CITY shall remain obligated to pay AVENU'S invoices therefore in accordance with the terms of this Agreement.

11. Indemnity: To the fullest extent allowed by law, AVENU hereby agrees to indemnify and hold CITY harmless from any claims and against all costs, expenses, damages, claims and liabilities based upon or arising solely out of a breach of this Agreement by AVENU. Except as set forth in the preceding sentence, to the full extent allowed by law, CITY hereby agrees to indemnify and hold AVENU harmless from any claims and against all costs, expenses, damages, claims and liabilities

relating in any way to sales, use and other taxes of CITY, including, but not limited to, determination of taxes due from taxpayers, the collection thereof and any refunding related thereto.

12. Limitation of Liability: To the maximum extent permitted by law, in no event shall AVENU, its employees, contractors, directors, affiliates and/ or agents be liable for any special, incidental or consequential damages, such as, but not limited to, delay, lost data, disruption, and loss of anticipated profits or revenue arising from or related to the services, whether liability is asserted in contract or tort, and whether or not AVENU has been advised of the possibility of any such loss or damage. In addition, AVENU'S total liability hereunder, including reasonable attorney's fees and costs, shall in no event exceed an amount equal to the fee paid by the CITY for the affected service to which the claim pertains. The foregoing sets forth the CITY'S exclusive remedy for claims arising from or out of this Agreement. The provisions of this section allocate the risks between AVENU and the CITY and AVENU'S pricing reflects the allocation of risk and limitation of liability specified herein.

13. Equal Opportunity to Draft: The Parties have participated and had an equal opportunity to participate in the drafting of this Agreement. No ambiguity shall be construed against any Party upon a claim that that party drafted the ambiguous language.

14. Assignment: This Agreement shall be binding upon and inure to the benefit of the Parties, their successors; representatives and assigns. AVENU shall not assign this Agreement, or delegate its duties or obligations under this Agreement, without the prior written consent of CITY, which consent shall not be unreasonably withheld, delayed or conditioned. Notwithstanding the foregoing, AVENU may assign this Agreement, in whole or in part, without the consent of CITY to any corporation or entity into which or with which AVENU has merged or consolidated; any parent, subsidiary, successor or affiliated corporation of AVENU; or any corporation or entity which acquires all or substantially all of the assets of AVENU. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties and their successors or assigns.

15. Force Majeure: AVENU shall not be in default of its obligations hereunder to the extent that its performance is delayed or prevented by causes beyond its control, including but not limited to acts of God, government, weather, fire, power or telecommunications failures, inability to obtain supplies, breakdown of equipment or interruption in vendor services or communications.

16. Subcontractors: AVENU shall have the right to hire assistants as subcontractors or to use employees to provide the Services required by this Agreement. AVENU, in rendering performance under this Agreement shall be deemed an independent contractor and nothing contained herein shall constitute this arrangement to be employment, a joint venture, or a partnership. AVENU shall be solely responsible for and shall hold CITY harmless from any and all claims for any employee related fees and costs including without limitation employee insurance, employment taxes, workman's compensation, withholding taxes or income taxes.

17. Intellectual Property Rights: The entire right, title and interest in and to AVENU'S database and all copyrights, patents, trade secrets, trademarks, trade names, and all other intellectual property rights associated with any and all ideas, concepts, techniques, inventions, processes, or works of authorship including, but not limited to, all materials in written or other tangible form developed or created in the course of this Agreement (collectively, the "Work Product") shall vest exclusively in AVENU. The foregoing notwithstanding, in no event shall any CITY-owned data provided to AVENU be deemed included within the Work Product.

18. Entire Agreement: This Agreement constitutes the entire agreement between the Parties hereto and supersedes any prior understandings or written or oral agreements between the Parties respecting the subject matter contained herein. Said Agreement shall not be amended, altered, or changed, except by a written Agreement signed by both Parties hereto.

19. Invalidity: If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability

shall not affect any other provision thereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained thereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

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

IN WITNESS WHEREOF, the parties hereto as of the date first above written have duly executed this Agreement.

AVENU INSIGHTS & ANALYTICS, LLC dba AVENUE	**City of Opelika**
By: ______________________	By: ______________________
Title:	Title: ______________________

Proposed pricing contained herein valid for 60 days from date of issuance. Issued 10/25/2020 (crg)

EXHIBIT A

DISTRIBUTION, RATE CONFIRMATION and SCHEDULE OF FEES

October 25, 2020

Lillie Finley
City of Opelika
PO Box 390
Opelika, AL 36803

Dear Ms. Finley:

Funds will be distributed in the following accounts pursuant to this Agreement:

Agency	Routing #	Account #	Distribution %	Tax Type/Rate Code
Opelika	261170876	Xxxxx6545	100%	Sales/Use; all rates

Tax Types and Rate Codes will be administered at the following percentages:

Tax Type	Rate Type	Percentage
Sales/Use	General	4.00%
Sales/Use	Mfg Machine	1.38%
Sales/Use	Farm	1.38%
Sales/Use	Auto	0.88%
Sales/Use	Amusement	4.00%
Sales/Use	Vending	4.00%

If at any time there are any discrepancies between the schedule set out above and your Municipality's records, please notify us in writing immediately.

IT IS YOUR RESPONSIBILITY TO PROVIDE NOTICE TO US OF ANY CHANGES IN TAX RATES OR IN THE DISTRIBUTION OF FUNDS. NOTICE MUST BE IN WRITING AND SENT, VIA CERTIFIED MAIL, TO:

AVENU Insights & Analytics, LLC
600 Beacon Parkway West, Suite 900
Birmingham AL 35209
ATT: Daryl Savage, General Counsel

COMPENSATION

Compliance Services: AVENU will receive an amount equal to Two Dollars and Seventy-Six Cents ($2.76) per account per transaction OR 1.85% of gross revenues collected, whichever is lower, for providing Remittance Processing Services and Revenue Analysis Services.

Audit Services: AVENU will receive an amount based on an hourly rate of seventy-three dollars ($73.00) for audit services. There shall be no contingent fees. Each year on the Anniversary date of the Effective Date of this Agreement the hourly rate will increase by 3%.

Thank you for your assistance. If you have any questions, or if I may be of assistance, please let me know.

Sincerely Yours,

Connie Taylor
Client Relations Manager
AVENU
205-423-4144 direct dial
205-423-4097 direct fax

I have reviewed the above distribution and verify that it is correct.

By: ____________________ ____________________
Name: ____________________ (AVENU)
Title:

Please delete this line, insert necessary information and print on Jurisdiction letterhead.

[date]

RE: Letter of Introduction

Dear Taxpayer:

Request is hereby made to examine all books of account, invoices, sales receipts and working papers necessary to ascertain the correct amount of applicable taxes being administered by the City of Opelika.

Please note that under authority granted by Section 11-3-11.2 and Sections 11-51-200 through 11-51-206 of the Code of Alabama 1975, City of Opelika has contracted with AVENU to act as our duly authorized agent in order to perform taxpayer audit examination services for our jurisdiction. Therefore, AVENU is hereby authorized to examine and/or audit the records, books, or other relevant information maintained by you for the purpose of computing and determining the correct amount of any applicable tax, license, or fee assessed by our taxing jurisdiction.

At or before the beginning of this audit, AVENU will provide to you the current version of the State of Alabama Publication 1A which provides, in simple and non-technical terms, a statement of your rights. Those rights include the right to be represented during an examination, a written description of the basis for any assessments, and an explanation of your appeal rights. Please read this material carefully and contact your professional advisors for tax or legal advice.

Please contact us directly if at any time you have any questions or complaints or if you are unable to obtain a reasonable response after several attempts to communicate with the person assigned to your case. For verification of the identity of an auditor, you may contact the audit department of AVENU at 205-423-4126.

Your cooperation is greatly appreciated during this process.

Sincerely,

__________________________ Date: ________________

Lillie Finley
City Clerk
City of Opelika

Exhibit C

Tax Revenue Enhancement Agreement
Rental Tax Revenue Administration

This agreement made by and between AVENU Insights & Analytics, LLC and City of Opelika, an Alabama CITY ("CITY").

A. Remittance Processing Services

1. Taxes Processed: AVENU will perform remittance processing for rental taxes as designated by CITY.

2. Taxpayer Notification and Remittance: AVENU will send individualized tax forms to all known taxpayers. Taxpayers will remit payments to the following Address: City of Opelika, P.O. Box 830725, Birmingham, AL 35283-0725. Upon reasonable notice to CITY, AVENU may change the Address for payments.

3. Deposit Process: Deposits are made to the extent that funds have been received, via Automated Clearing House of the amounts and to the designated recipients as instructed by the CITY for each type of tax collected, as shown in more detail on **Exhibit A**.

4. Posting Process: Taxpayer accounts are posted with payment information captured in the AVENU revenue system. Additional information such as net sales, deductions, credit sales, measure of tax, name change, and address change is captured and added to payment data and taxpayer master file (as determined necessary by AVENU). Late payments (postmarked by U.S. Postal Service after due date) are invoiced at penalty amounts required by State code. Under-payments are invoiced for remaining tax due plus any required penalties.

5. Changes to **Exhibit A**: CITY shall notify AVENU in writing immediately of all changes in amounts to be deposited into the accounts of designated recipients. An amended **Exhibit A** shall be prepared and executed by the Parties as soon as reasonably possible. In addition, AVENU shall provide documentation confirming each change under the preceding sentence with the first monthly report reflecting the applicable change. If the changes reflected in the monthly report do not properly reflect the intended changes of the CITY, then the CITY shall immediately notify AVENU and, thereafter, AVENU shall take the steps necessary to insure, designated recipients receive the amounts intended by CITY.

6. Notification, Reporting to CITY:

   i. AVENU will provide CITY with monthly reports including, but not limited to, payment listings showing all taxes received related to net receipts reported, a general ledger distribution that corresponds to CITY'S account numbers and all fees paid to AVENU. These reports will be provided by the 10th of the month following the tax month;

   ii. CITY AGREES TO EXAMINE THIS REPORT IMMEDIATELY. IF NO ERROR IS REPORTED BY THE CITY TO AVENU WITHIN 60 DAYS, THE STATEMENT WILL BE DEEMED ACCURATE;

   iii. All items credited will be subject to receipt of payment; and

   iv. AVENU will attend Council meetings at such times as may be reasonably requested by CITY.

B. Compliance Services

1. Taxes Reviewed: AVENU will perform compliance services for rental and other taxes designated by CITY under Remittance Processing Services. AVENU will provide delinquency notification and follow-up. This includes correspondence, calls, and collection procedures and the related documentation. Delinquency policies and procedures will be applied consistently and within applicable tax laws. Unless otherwise directed by CITY, AVENU will make reasonable efforts to collect taxes designated by CITY hereunder. Where deemed reasonably appropriate, accounts may be turned over to audit or third-party collection. If CITY elects to have its attorney pursue collection of certain uncollected accounts, AVENU will assist CITY attorney as reasonably requested at its normal hourly rate as reflected herein.

2. Conduct of Compliance Services: To assure that all taxpayers are treated fairly, consistently and all compliance services are performed in a similar manner, AVENU representatives who perform compliance services will use a similar compliance plan for each compliance service conducted. All funds due from compliance services will be remitted to CITY in the same manner as provided for pursuant to *Section A,* above.

C. General Provisions

1. Information Provided: CITY represents that the information provided to AVENU in the performance of services hereunder shall be provided free and clear of the claims of third parties. CITY represents that it has the right to provide this information to AVENU and that said information shall not be defamatory or otherwise expose AVENU to liability to third parties.

2. Compliance with laws: Each Party accepts responsibility for its compliance with federal, state, or local laws and regulations.

3. Taxpayer service: AVENU will provide a taxpayer assistance number for taxpayer questions. AVENU will provide informational brochures for placement in CITY offices, Chamber of Commerce offices, libraries and any other facilities. This information may also be available on the Internet at www.avenuinsights.com.

4. Review and Appeal Process: AVENU has adopted and will use a review and appeals process which is based on the *Alabama Taxpayers' Bill of Rights Act* and *Uniform Revenue Procedures Act* codified as Title 40, Chapter 2A, Code of Alabama, 1975, as amended.

5. Consideration for Remittance Processing Services, Revenue Analysis Services and Compliance Services: AVENU shall be compensated for the services rendered under this agreement in accordance with the schedule of fees set forth in Exhibit "A".

6. Audit Services:

   i. AVENU Audit Services: Audit Services include all preparation for the performance of an audit, any research or statistical analysis performed in relation to an audit, in-house audit/collection efforts, examination of the books and records of the taxpayer, an assessment of the amount due (if any), and all services related to closing an audit.

   ii. AVENU Reciprocal Agreement: To the fullest extent allowed by law, CITY hereby authorizes AVENU to act as a facilitator with the Alabama Department of Revenue and other applicable jurisdictions to share audit findings on its behalf.

   iii. AVENU Fee: AVENU shall be compensated for audit services rendered under this agreement at the hourly rate set forth in Exhibit "A". There shall be no contingency fees.

1. If overnight travel or travel more than 25 miles beyond origination point is required, AVENU will pay the auditor and bill the CITY for its portion of travel expenses. CITY agrees to pay the amount of these fees when due, regardless of any recovery.

2. Billing Increment: Time will be recorded in 15-minute intervals (.25 hours);

3. Shared Audit Fees: When audits for CITY overlap with audits for other AVENU clients or clients of AVENU Affiliates, the fees will be shared as follows:

   a. Travel Time: travel time, expenses, and a daily per diem amount for each audit is distributed evenly among the clients reviewed for each audit.

   b. Interview Time: time billed during the initial interview of each audit is distributed evenly amongst the clients reviewed for each audit – during this process the auditor determines which clients will actually be audited for and billed Audit Time as follows;

      i. Audit Time: Time billed during the actual audit stage of each audit is billed according to actual time spent working for each client;

      i. No Double Billing: In no event will the overlapping audits combined require payment for more than 100% for any one AVENU representative.

7. Company Audit: Once a year AVENU will have an independent auditor prepare an SSAE 16, SOC 1, Type II Independent Service Auditor's Report on Controls Placed in Operation and Tests of Operating Effectiveness. This report will be made available upon request.

8. Effective Date: The effective date for the performance of services under the terms of this agreement shall commence _________ 1, 2020 with collection of ________ taxes to be remitted on or before ________20, 2020.

9. Term of the Agreement: This Agreement shall be for a term of three (3) years following the date of execution or the maximum period allowed by law, whichever is shorter. Either party shall have the right to terminate this Agreement in the event of a material breach by the other party. Any such termination may be made only by providing ninety (90) days written notice to the other party, specifically identifying the breach or breaches on which termination is based. Following receipt of such notice, the party in breach shall have thirty (30) days to cure such breach or breaches. In the event that such cure is not made, this Agreement shall terminate in accordance with the initial ninety (90) days notice.

10. Effect of Termination: Notwithstanding non-renewal or termination of this Agreement, CITY shall be obligated to pay AVENU for services performed through the effective date of termination for which AVENU has not been previously paid. In addition, because the services performed by AVENU prior to termination or non-renewal of this Agreement may result in the CITY's receipt of revenue after termination which are subject to AVENU' fee, the CITY shall remain obligated after termination or non-renewal to provide to AVENU such information as is necessary for AVENU to calculate compensation due as a result of the receipt of revenue by the CITY. The CITY shall remain obligated to pay AVENU' invoices therefore in accordance with the terms of this Agreement.

11. Indemnity: To the fullest extent allowed by law, AVENU hereby agrees to indemnify and hold CITY harmless from any claims and against all costs, expenses, damages, claims and liabilities based upon or arising solely out of a breach of this Agreement by AVENU. Except as set forth in the preceding sentence, to the full extent allowed by law, CITY hereby agrees to indemnify and hold AVENU harmless from any claims and against all costs, expenses, damages, claims and liabilities

relating in any way to rental and other taxes of CITY, including, but not limited to, determination of taxes due from taxpayers, the collection thereof and any refunding related thereto.

12. Limitation of Liability: To the maximum extent permitted by law, in no event shall AVENU, its employees, contractors, directors, affiliates and/ or agents be liable for any special, incidental or consequential damages, such as, but not limited to, delay, lost data, disruption, and loss of anticipated profits or revenue arising from or related to the services, whether liability is asserted in contract or tort, and whether or not AVENU has been advised of the possibility of any such loss or damage. In addition, AVENU' total liability hereunder, including reasonable attorney's fees and costs, shall in no event exceed an amount equal to the fee paid by the CITY for the affected service to which the claim pertains. The foregoing sets forth the CITY'S exclusive remedy for claims arising from or out of this Agreement. The provisions of this section allocate the risks between AVENU and the CITY and AVENU' pricing reflects the allocation of risk and limitation of liability specified herein.

13. Equal Opportunity to Draft: The Parties have participated and had an equal opportunity to participate in the drafting of this Agreement. No ambiguity shall be construed against any Party upon a claim that that party drafted the ambiguous language.

14. Assignment: This Agreement shall be binding upon and inure to the benefit of the Parties, their successors; representatives and assigns. AVENU shall not assign this Agreement, or delegate its duties or obligations under this Agreement, without the prior written consent of CITY, which consent shall not be unreasonably withheld, delayed or conditioned. Notwithstanding the foregoing, AVENU may assign this Agreement, in whole or in part, without the consent of CITY to any corporation or entity into which or with which AVENU has merged or consolidated; any parent, subsidiary, successor or affiliated corporation of AVENU; or any corporation or entity which acquires all or substantially all of the assets of AVENU. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties and their successors or assigns.

15. Force Majeure: AVENU shall not be in default of its obligations hereunder to the extent that its performance is delayed or prevented by causes beyond its control, including but not limited to acts of God, government, weather, fire, power or telecommunications failures, inability to obtain supplies, breakdown of equipment or interruption in vendor services or communications.

16. Subcontractors: AVENU shall have the right to hire assistants as subcontractors or to use employees to provide the Services required by this Agreement. AVENU, in rendering performance under this Agreement shall be deemed an independent contractor and nothing contained herein shall constitute this arrangement to be employment, a joint venture, or a partnership. AVENU shall be solely responsible for and shall hold CITY harmless from any and all claims for any employee related fees and costs including without limitation employee insurance, employment taxes, workman's compensation, withholding taxes or income taxes.

17. Intellectual Property Rights: The entire right, title and interest in and to AVENU' database and all copyrights, patents, trade secrets, trademarks, trade names, and all other intellectual property rights associated with any and all ideas, concepts, techniques, inventions, processes, or works of authorship including, but not limited to, all materials in written or other tangible form developed or created in the course of this Agreement (collectively, the "Work Product") shall vest exclusively in AVENU. The foregoing notwithstanding, in no event shall any CITY-owned data provided to AVENU be deemed included within the Work Product.

18. Entire Agreement: This Agreement constitutes the entire agreement between the Parties hereto and supersedes any prior understandings or written or oral agreements between the Parties respecting the subject matter contained herein. Said Agreement shall not be amended, altered, or changed, except by a written Agreement signed by both Parties hereto.

19. Invalidity: If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability

shall not affect any other provision thereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained thereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

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

IN WITNESS WHEREOF, the parties hereto as of the date first above written have duly executed this Agreement.

AVENU INSIGHTS & ANALYTICS, LLC D/B/A AVENU	**City of Opelika**
By: ______________________	By: ______________________
Title: ______________________	Title: ______________________

Proposed pricing contained herein valid for 60 days from date of issuance. Issued 10/25/2020 (crg)

EXHIBIT A

DISTRIBUTION, RATE CONFIRMATION and SCHEDULE OF FEES

October 25, 2020

Lillie Finley
City of Opelika
PO Box 390
Opelika, AL 36803

Dear Ms. Finley:

Funds will be distributed in the following accounts pursuant to this Agreement:

Agency	Routing #	Account #	Distribution %	Tax Type/Rate Code
Opelika	261170876	Xxxxx6545	100%	Rental; all rates

Tax Types and Rate Codes will be administered at the following percentages:

Tax Type	Rate Type	Percentage
Rental	General	2.50%
Rental	Automotive	2.50%
Rental	Linen	2.50%

If at any time there are any discrepancies between the schedule set out above and your Municipality's records, please notify us in writing immediately.

IT IS YOUR RESPONSIBILITY TO PROVIDE NOTICE TO US OF ANY CHANGES IN TAX RATES OR IN THE DISTRIBUTION OF FUNDS. NOTICE MUST BE IN WRITING AND SENT, VIA CERTIFIED MAIL, TO:

AVENU Insights & Analytics, LLC (d/b/a AVENU)
600 Beacon Parkway West, Suite 900
Birmingham AL 35209
ATT: Daryl Savage, General Counsel

COMPENSATION

Compliance Services: AVENU will receive an amount equal to 1.85% of gross revenues collected, for providing Remittance Processing Services and Revenue Analysis Services.

Audit Services: AVENU will receive an amount based on an hourly rate of seventy-three dollars ($73.00) for audit services. There shall be no contingent fees. Each year on the Anniversary date of the Effective Date of this Agreement, the hourly rate will increase by 3%.

Thank you for your assistance. If you have any questions, or if I may be of assistance, please let me know.

Sincerely Yours,

Connie Taylor

Client Relations Manager

AVENU

205-423-4144 direct dial

205-423-4097 direct fax

I have reviewed the above distribution and verify that it is correct.

By: ______________________ ______________________

Name:

______________________ (AVENU)

Title:

Exhibit D

Tax Revenue Enhancement Agreement
Business License Discovery/Recovery Administration

This agreement made by and between AVENU Insights & Analytics, LLC and City of Opelika, an Alabama CITY ("CITY").

A. Discovery/Recovery Services

1. Discovery/Recovery Services include:
   i. Analysis of two or more municipal lists. These lists could include: current discovery/recovery license data, sales tax data, property tax lists and telephone directories at least once a year.
   ii. Properties/entities that are not in one or all of the databases are presumed unregistered.
   iii. AVENU will generate a letter requiring payment, proof of payment, or documented response for all properties/entities presumed unregistered. If no response, AVENU may mail additional letters and contact the property/entity via phone call before proceeding with additional collection procedures.

2. Taxpayer Remittance: Taxpayers will remit payments to City of Opelika, P.O. Box 830725, Birmingham, AL 35283-0725. Upon reasonable notice to CITY, AVENU may change the P.O. Box for City of Opelika payments. CITY will be responsible for renewals. AVENU will provide a list to CITY.

3. Deposit Process: Deposits are made to the extent that funds have been received, via Automated Clearing House of the amounts and to the designated recipients as instructed by the CITY for each type of tax collected, as shown in more detail on **Exhibit A**.

4. Posting Process: Taxpayer accounts are posted with payment information captured in the AVENU revenue system. Additional information such as net sales, deductions, credit sales, measure of tax, name change, and address change is captured and added to payment data and taxpayer master file (as determined necessary by AVENU). Late payments (postmarked by U.S. Postal Service after due date) are invoiced at penalty amounts required by State code. Under-payments are invoiced for remaining tax due plus any required penalties.

5. Changes to **Exhibit A**: CITY shall notify AVENU in writing immediately of all changes in amounts to be deposited into the accounts of designated recipients. An amended **Exhibit A** shall be prepared and executed by the Parties as soon as reasonably possible. In addition, AVENU shall provide documentation confirming each change under the preceding sentence with the first monthly report reflecting the applicable change. If the changes reflected in the monthly report do not properly reflect the intended changes of the CITY, then the CITY shall immediately notify AVENU and, thereafter, AVENU shall take the steps necessary to insure, designated recipients receive the amounts intended by CITY.

6. Notification, Reporting to CITY: AVENU will provide CITY with timely reports including, but not limited to, payment listings showing all monies received, a detail and summary reconciliation report that corresponds to CITY'S account numbers and all fees paid to AVENU.

B. General Provisions

1. Taxpayer service: AVENU will provide a taxpayer assistance number for taxpayer questions.

2. AVENU, in collecting any fee, tax, interest, court cost, or penalty shall have no authority to determine the amount of fee, tax, interest, court cost, or penalty owed the state, county, or municipal governing authority.

3. Consideration for Discovery/Recovery Services:
   i. AVENU Fee for Discovery/Recovery Services: AVENU will receive fifty percent (50%) of discovery/recovery revenue collected by AVENU.
   ii. AVENU fee for copies of forms: AVENU will receive an amount equal to $3.00 per form mailed or faxed to the CITY per the request of the CITY. AVENU will provide at no additional cost a detailed payment listing that includes taxpayer name, address, schedule number, and remittance information.
   iii. AVENU fee for Direct Payments: AVENU will receive fifty percent (50%) of discovery/recovery revenue received and deposited by the City, which is a result of AVENU collection efforts.

4. Company Audit: Once a year AVENU will have an independent auditor prepare an SSAE 16, SOC 1, Type II Independent Service Auditor's Report on Controls Placed in Operation and Tests of Operating Effectiveness. This report is will be made available upon request.

5. Effective Date: The effective date for the performance of services under the terms of this agreement shall commence __________ 1, 2020.

6. Term of the Agreement: This Agreement shall be for a term of three (3) years following the date of execution. Either party shall have the right to terminate this Agreement in the event of a material breach by the other party. Any such termination may be made only by providing ninety (90) days written notice to the other party, specifically identifying the breach or breaches on which termination is based. Following receipt of such notice, the party in breach shall have thirty (30) days to cure such breach or breaches. In the event that such cure is not made, this Agreement shall terminate in accordance with the initial ninety (90) day notice.

7. Effect of Termination: Notwithstanding non-renewal or termination of this Agreement, CITY shall be obligated to pay AVENU for services performed through the effective date of termination for which AVENU has not been previously paid. In addition, because the services performed by AVENU prior to termination or non-renewal of this Agreement may result in the CITY's receipt of revenue after termination which are subject to AVENU'S fee, the CITY shall remain obligated after termination or non-renewal to provide to AVENU such information as is necessary for AVENU to calculate compensation due as a result of the receipt of revenue by the CITY. The CITY shall remain obligated to pay AVENU'S invoices therefore in accordance with the terms of this Agreement.

8. Indemnity: To the fullest extent allowed by law, AVENU hereby agrees to indemnify and hold CITY harmless from any claims and against all costs, expenses, damages, claims and liabilities based upon or arising solely out of a breach of this Agreement by AVENU. Except as set forth in the preceding sentence, to the full extent allowed by law, CITY hereby agrees to indemnify and hold AVENU harmless from any claims and against all costs, expenses, damages, claims and liabilities relating to sales, use and other taxes of CITY, including, but not limited to, determination of taxes due from taxpayers, the collection thereof, the Deposit Process, Section A (3), above, and any refunding related thereto.

9. Limitation of Liability: To the maximum extent permitted by law, in no event shall AVENU, its employees, contractors, directors, affiliates and/ or agents be liable for any special, incidental or consequential damages, such as, but not limited to, delay, lost data, disruption, and loss of anticipated profits or revenue arising from or related to the services, whether liability is asserted in contract or tort, and whether or not AVENU has been advised of the possibility of any such loss or damage. In addition, AVENU'S total liability hereunder, including reasonable attorney's fees and costs, shall in no event exceed an amount equal to the fee paid by the CITY for the affected service to which the claim pertains. The foregoing sets forth the CITY'S exclusive remedy for claims arising from or out of this Agreement. The provisions of this section allocate the risks between AVENU and the CITY and AVENU'S pricing reflects the allocation of risk and limitation of liability specified herein.

10. Equal Opportunity to Draft: The Parties have participated and had an equal opportunity to participate in the drafting of this Agreement. No ambiguity shall be construed against any Party upon a claim that that party drafted the ambiguous language.

11. Assignment: This Agreement shall be binding upon and inure to the benefit of the Parties, their successors; representatives and assigns. AVENU shall not assign this Agreement, or delegate its duties or obligations under this Agreement, without the prior written consent of CITY, which consent shall not be unreasonably withheld, delayed or conditioned. Notwithstanding the foregoing, AVENU may assign this Agreement, in whole or in part, without the consent of CITY to any corporation or entity into which or with which AVENU has merged or consolidated; any parent, subsidiary, successor or affiliated corporation of AVENU; or any corporation or entity which acquires all or substantially all of the assets of AVENU. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties and their successors or assigns.

12. Force Majeure: AVENU shall not be in default of its obligations hereunder to the extent that its performance is delayed or prevented by causes beyond its control, including but not limited to acts of God, government, weather, fire, power or telecommunications failures, inability to obtain supplies, breakdown of equipment or interruption in vendor services or communications.

13. Subcontractors: AVENU shall have the right to hire assistants as subcontractors or to use employees to provide the Services required by this Agreement. AVENU, in rendering performance under this Agreement shall be deemed an independent contractor and nothing contained herein shall constitute this arrangement to be employment, a joint venture, or a partnership. AVENU shall be solely responsible for and shall hold CITY harmless from any and all claims for any employee related fees and costs including without limitation employee insurance, employment taxes, workman's compensation, withholding taxes or income taxes.

14. Intellectual Property Rights: The entire right, title and interest in and to AVENU'S database and all copyrights, patents, trade secrets, trademarks, trade names, and all other intellectual property rights associated with any and all ideas, concepts, techniques, inventions, processes, or works of authorship including, but not limited to, all materials in written or other tangible form developed or created in the course of this Agreement (collectively, the "Work Product") shall vest exclusively in AVENU. The foregoing notwithstanding, in no event shall any CITY-owned data provided to AVENU be deemed included within the Work Product.

15. Entire Agreement: This Agreement constitutes the entire agreement between the parties hereto and supersedes any prior understandings or written or oral agreements between the

parties respecting the subject matter contained herein. Said Agreement shall not be amended, altered, or changed, except by a written Agreement signed by both parties hereto.

16. Invalidity: If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained thereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

IN WITNESS WHEREOF, the parties hereto as of the date first above written have duly executed this Agreement.

AVENU INSIGHTS & ANALYTICS, LLC
D/B/A AVENU

By: ______________________________

Title:

City of Opelika

By: ______________________________

Title: ______________________________

Proposed pricing contained herein valid for 60 days from date of issuance. Issued 10/25/2020 (crg)

EXHIBIT A

DISTRIBUTION, RATE CONFIRMATION and SCHEDULE OF FEES

October 25, 2020

Lillie Finley
City of Opelika
PO Box 390
Opelika, AL 36803

Dear Ms. Finley:

Funds will be distributed in the following accounts pursuant to this Agreement:

Agency	Routing #	Account #	Distribution %	Tax Type/Rate Code
Opelika	261170876	Xxxxx6545	100%	Business License Discovery/Recovery

If at any time there are any discrepancies between the schedule set out above and your Municipality's records, please notify us in writing immediately.

IT IS YOUR RESPONSIBILITY TO PROVIDE NOTICE TO US OF ANY CHANGES IN TAX RATES OR IN THE DISTRIBUTION OF FUNDS. NOTICE MUST BE IN WRITING AND SENT, VIA CERTIFIED MAIL, TO:

AVENU Insights & Analytics, LLC
600 Beacon Parkway West, Suite 900
Birmingham AL 35209
ATT: Daryl Savage, General Counsel

Thank you for your assistance. If you have any questions, or if I may be of assistance, please let me know.

Sincerely Yours,
Connie Taylor
Client Relations Manager
AVENU
205-423-4144 direct dial
205-423-4097 direct fax

I have reviewed the above distribution and verify that it is correct.

By: ____________________ ____________________

Name: (AVENU)

Title:

Please delete this line, insert necessary information and print on Jurisdiction letterhead.

[date]

RE: Letter of Introduction

Dear Business Owner/ Manager:

The City of Opelika AL has contracted with AVENU (Revenue Discovery Systems) to perform collection services for business license taxes on the City's behalf. AVENU helps the City ensure that all businesses pay their fair share of business license tax.

AVENU, as the City's authorized representative, is bound by the same confidentiality as the City's own employees. Any information provided to AVENU will be used solely for the purpose(s) of this collection contract.

We ask that you extend your full cooperation to AVENU, and we thank you in advance for doing so. If you have any questions, please contact AVENU directly at 855-219-4336, or by email at dresupport@avenuinsights.com.

Your cooperation is greatly appreciated during this process.

Sincerely,

_________________________ Date: ____________________

Lillie Finley
City Clerk
City of Opelika

RESOLUTION NO. 315-20

Approve Agreement with Johnson Controls, Inc. - P&R.

RESOLUTION NO. _____________

RESOLUTION APPROVING PLANNED SERVICE AGREEMENT BETWEEN THE CITY OF OPELIKA, ALABAMA AND JOHNSON CONTROLS, INC.

WHEREAS, Johnson Controls, Inc., ("JCI") is a company offering products and services to optimize energy and operational efficiencies of buildings; and

WHEREAS, the City of Opelika, Alabama (the "City") and JCI heretofore entered into a preventive maintenance agreement for the monitoring of the mechanical equipment located at the Opelika Sportsplex; and

WHEREAS, the City and JCI desire to renew the preventive maintenance agreement for the period from March 1, 2021 through February 28, 2026 as proposed in the Planned Service Agreement (the "Agreement") presented herewith as Exhibit "A"; and

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

WHEREAS, the compensation to be paid to JCI shall come from budgeted funds in the Parks and Recreation Department; and

WHEREAS, the Parks and Recreation Director has certified that sufficient funds exist in the Parks and Recreation Department Budget to pay for said services.

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

1. That the proposed Planned Service Agreement (the "Agreement") to be entered into between the City and JCI, 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 directed to execute and deliver said Agreement in the name and on behalf of the City.

3. That the Purchasing-Revenue Manager is hereby authorized and directed to issue such purchase orders as shall be necessary or appropriate to compensate JCI for contractual services rendered pursuant to and under the Agreement.

4. 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.

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

ADOPTED AND APPROVED this the ______ day of ______________________, 2020.

PRESIDENT OF THE CITY COUNCIL

OF THE CITY OF OPELIKA

ATTEST:

CITY CLERK

anned Service Proposal

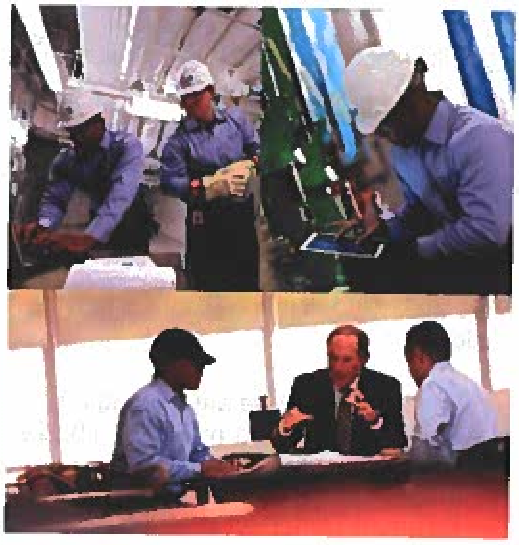
CUSTOMER
CITY OF OPELIKA

LOCAL JOHNSON CONTROLS OFFICE
511 MINERAL TRACE
HOOVER,AL 35244

AGREEMENT START DATE:
03/01/2021

PROPOSAL DATE:
11/9/2020

ESTIMATE NO:
1-197E0REU



Partnering with you to deliver value-driven solutions

A Planned Service Agreement with Johnson Controls provides you with a customized service strategy designed around the needs of your facility. Our approach features a combination of scheduled, predictive and preventative maintenance services that focus on your goals.

As your building technology services partner, Johnson Controls delivers an unmatched service experience delivered by factory-trained, highly skilled technicians who optimize operations of the buildings we work with, creating productive and safe environments for the people within.

By integrating our service expertise with innovative processes and technologies, our value-driven planned service solutions deliver sustainable results, minimize equipment downtime and maximize occupant comfort.

YORK BY JOHNSON CONTROLS METASYS BY JOHNSON CONTROLS Johnson Controls

Executive Summary

PLANNED SERVICE PROPOSAL FOR CITY OF OPELIKA

Dear Sam Bailey,

We value and appreciate your interest in Johnson Controls as a service provider for your building systems and are pleased to provide a value-driven maintenance solution for your facility. The enclosed proposal outlines the Planned Service Agreement we have developed on your facility.

Details are included in the Planned Service Agreement summary (Schedule A), but highlights are as follows:

- In this proposal we are offering a service agreement for 5 Years starting 03/01/2021 and ending 02/28/2026.
- The agreement price for first year is $41650.00; see Schedule A, Supplemental Price and Payment Terms, for pricing in subsequent years.
- The equipment options and number of visits being provided for each piece of equipment are described in Schedule A, Equipment list.

As a manufacturer of both mechanical and controls systems, Johnson Controls has the expertise and resources to provide proper maintenance and repair services for your facility.

Again, thank you for your interest in Johnson Controls and we look forward to becoming your building technology services partner.

Please contact me if you have any questions.

Sincerely,

Benjamin Hurlbert
Service Manager
(866) 825-8868

Benefits of Planned Service

A Planned Service Agreement with Johnson Controls will allow you to optimize your building's facility performance, providing dependability, sustainability and energy efficiency. You'll get a value-driven solution that fits your specific goals, delivered with the attention of a local service company backed by the resources of a global organization.

With this Planned Service Agreement, Johnson Controls can help you achieve the following five objectives:

1. **Identify Energy Savings Opportunities**
   Since HVAC equipment accounts for a major portion of a building's energy usage, keeping your system performing at optimum levels may lead to a significant reduction in energy costs.

2. **Reduce Future Repair Costs**
   Routine maintenance may maximize the life of your equipment and may reduce equipment breakdowns.

3. **Extend Asset Life**
   Through proactive, factory-recommended maintenance, the life of your HVAC assets may be extended, maximizing the return on your investment.

4. **Ensure Productive Environments**
   Whether creating a comfortable place where employees can be productive or controlling a space to meet specialized needs, maintenance can help you achieve an optimal environment for the work that is being accomplished

5. **Promote Environmental Health and Safety**
   When proper indoor conditions and plant requirements are maintained, business outcomes may be improved by minimizing sick leave, reducing accidents, minimizing greenhouse gas emissions and managing refrigerant requirements.

All of the services we perform on your equipment are aligned with "The 5 Values of Planned Maintenance" and our technicians understand how the work they perform can help you accomplish your business objectives.

Personalized Account Management

A Planned Service Agreement also provides you with the support of an entire team that knows your site and can closely work with you on budget planning and asset management. Your local Johnson Controls account management team can help guide planned replacement, energy retrofits and other building improvement projects. You'll have peace of mind that an entire team of skilled professionals will be looking out for what is best for your facility and budget.

A Culture of Safety

Johnson Controls technicians take safety seriously and personally, and integrate it into everything they do. All of our technicians participate in regular and thorough safety training. Because of their personal commitment, we are a leader in the HVAC service industry for workplace safety performance. This means that you do not have to worry about us when we are on your site.

Commitment to Customer Satisfaction

Throughout the term of your Planned Service Agreement, we will periodically survey you and use your feedback to continue to make improvements to our service processes and products. Our goal is to deliver the most consistent and complete service experience possible. To meet this goal, we've developed and implemented standards and procedures to ensure you receive the ultimate service experience – every time.

Energy & Sustainability

A more sustainable world one building at a time – Johnson Controls is a company that started more than 125 years ago with a product that reduced energy use in buildings. We've been saving energy for customers ever since. Today, Johnson Controls is a global leader in creating smart environments where people live, work and play, helping to create a more comfortable, safe and sustainable world.

The Value of Integrity

Johnson Controls has a long, proud history of integrity. We do what we say we will do and stand behind our commitments. Our good reputation builds trust and loyalty. In recognition for our commitment to ethics across our global operations, we are honored to be named one of the World's Most Ethical Companies by Ethisphere Institute, a leading think tank dedicated to business ethics and corporate social responsibility. In addition, *Corporate Responsibility Magazine* recognizes Johnson Controls as one of the top companies in its annual "100 Best Corporate Citizens" list.

Service Plan Methodology

As part of the delivery of this Planned Service Agreement, Johnson Controls will dedicate a local customer service agent responsible for having a clear understanding of the agreement scope, and your facility procedures and protocols.

A high-level overview around our service delivery process is outlined below including scheduling, emergency service, on-site paperwork, communication and performing repairs outside of the agreement scope.

Scheduling

Preventative maintenance service will be scheduled using our automated service management system. In advance of the scheduled service visit, our technician is sent a notice of service to a smartphone. Once the technician acknowledges the request, your customer service agent will call or e-mail your on-site contact to let you know the start date and type of service scheduled.

The technician checks in, wears personal protective equipment, performs the task(s) as assigned, checks out with you and asks for a screen capture signature on the smartphone device. A work order is then e-mailed, faxed or printed for your records.

Emergency Services

Emergency service can be provided 7 days a week, 24 hours a day, 365 days a year. During normal business hours, emergency service will be coordinated by the customer service agent. After hours, weekends and holidays, the emergency service number transfers to the Johnson Controls after-hours call center and on-call technicians are dispatched as needed.

Johnson Controls is committed to dispatching a technician within hours of receiving your call through the service line. A work order is e-mailed, faxed or printed for your records. Depending on the terms of your agreement, you may incur charges for after hour services.

Communication

A detailed communication plan will be provided to you so you know how often we will provide information to you regarding your Planned Service Agreement. The communication plan will also provide you with your main contacts at Johnson Controls.

Approval Process for Non-Covered Items

Johnson Controls will adhere to your procurement process. No work will be performed outside of the agreement scope without prior approval. Johnson Controls will work with you closely to ensure your procurement process is followed before any non-covered item work is started.

Summary of Services and Options

Comprehensive and Operational Inspections

During comprehensive and operational inspections, Johnson Controls will perform routine checks of the equipment for common issues caused by normal wear and tear on the equipment. Additional tests can be run to confirm the equipment's performance.

Routine maintenance, such as lubrication, cleaning and tightening connections, can be performed depending on the type of equipment being serviced. Routine maintenance is one of the keys to the five values of maintenance – it can help identify energy saving opportunities, reduce future repair costs, extend asset life, ensure productive environments, and promote health and safety.

Summary

Thank you for considering Johnson Controls as your building technology services partner. The following agreement document includes all the details surrounding your Planned Service Agreement.

With planned service from Johnson Controls, you'll get a value-driven solution that can help optimize your building controls and equipment performance, providing dependability, sustainability and energy efficiency. You'll get a solution that fits your specific goals, delivered with the attention of a local service company backed by the resources of a global organization.

We'll be your building technology services partner

Planned Service Agreement

Customer Name :	CITY OF OPELIKA
Address:	1001 ANDREWS RD OPELIKA,AL 36801-9691
Proposal Date:	11/09/2020
Estimate #:	1-197E0REU

Scope of Service

Johnson Controls, Inc. ("JCI") and the Customer (collectively the "Parties") agree Preventative Maintenance Services, as defined in Schedule A ("Services"), will be provided by JCI at the Customer's facility. This Planned Service Agreement, the Equipment List, Supplemental Price and Payment Terms, Terms and Conditions, and Schedules attached hereto and incorporated by this reference as if set forth fully herein (collectively the "Agreement"), cover the rights and obligations of both the Customer and JCI.

Extended Service Options for Premium Coverage

If Premium Coverage is selected, on-site repair services to the equipment will be provided as specified in this Agreement for the equipment listed in the attached Equipment List.

Equipment List

Only the equipment listed in the Equipment List will be covered as part of this Agreement. Any changes to the Equipment List must be agreed upon in writing by both Parties.

Term / Automatic Renewal

This Agreement takes effect on 03/01/2021 and will continue until 02/28/2026 ("Original Term"). The Agreement will automatically renew on a year-to-year basis after the Original Term ends unless the Customer or JCI gives the other written notice it does not want to renew. The notice must be delivered at least (45) days prior to the end of the Original Term or of any renewal period. The Original Term and any renewal periods are sometimes collectively referred to in this Agreement as the "Term". Renewal price adjustments are discussed in the Terms and Conditions.

Refrigerant Charges

Refrigerant is not included under this Agreement and will be billed separately to the Customer by JCI.

Price and Payment Terms

The total Contract Price for JCI's Services during the 1st year of the Original Term is $41650.00. This amount will be paid to JCI in Quarterly installments. Pricing for each subsequent year of a multiyear original term is set forth in the Supplemental Price and Payment Terms. All payments will be due and payable within 30 days of the invoice date and such timely payment by Customer shall be a condition precedent to JCI's obligation to perform its Services. A penalty of one and a half percent (1.5%) of the amount due per month shall accrue for payments received after the payment due date. Renewal price adjustments are set forth in the Terms and Conditions.

Invoices will be sent to the following location:

CITY OF OPELIKA
ATTN SAM BAILEY
PO BOX 1026
OPELIKA,AL 36803-1026

☐ In lieu of paper invoices sent to the location above, invoices should be emailed to the following email address: ____________________

This proposal is valid for thirty days from the proposal date.

JOHNSON CONTROLS Inc.		
By: Benjamin Hurlbert	By:	
Signature:	Signature:	
Title: Service Manager Date:	Title:	Date:
Signature:	Customer PO#:	
Title: Date:		

JCI Branch: JOHNSON CONTROLS BIRMINGHAM AL CB - 0N89
Address: 511 MINERAL TRACE
HOOVER,AL 35244
Branch Phone: (866) 825-8868
Branch Email:

Schedule A - Equipment List

CITY OF OPELIKA	1001 ANDREWS RD OPELIKA, AL 36801-9691

Contractor - Misc 1

Quantity: 1
Coverage Level: Basic

Services Provided
1 Contractor - Misc 1

Customer Tag	Manufacturer	Model #	Serial #

Block Hours - Controls

Quantity: 1
Coverage Level: Basic

Services Provided
52 Preventive Maintenance

Customer Tag	Manufacturer	Model #	Serial #
Controls Block Hours			

Equipment Tasking

	Block Hours - Controls
Preventive Maintenance	Use appropriate eye protection in work environment Use appropriate Head protection on worksite Use appropriate hand gloves on worksite Use and follow the JCI safety policy for Fall Protection while performing work Use and follow the JCI Ladder Safety processes while performing work Use and follow the JCI Lock-out Tag-out on all electrical machinery Check with appropriate customer representative for operational deficiencies Perform scheduled block hour tasks Complete any required maintenance checklists, report observations to appropriate customer representative

Supplemental Price & Payment Terms (Applies to Multi-Year Contracts Only)

Year	Total Annual Dollar Amount	Payment Frequency
Year1	$41650.00	Quarterly
Year2	$42483.00	Quarterly
Year3	$43333.00	Quarterly
Year4	$44200.00	Quarterly
Year5	$45084.00	Quarterly

Special Additions and Exceptions

TERMS AND CONDITIONS
DEFINITIONS

CONNECTED EQUIPMENT SERVICES means a data-analytics and monitoring Software platform that uses a cellular or network connection to gather equipment performance data to assist JCI in advising Customer on such equipment's health, performance or potential malfunction.

CONTRACT PRICE means the price that Customer shall pay to JCI for the Services.

COVERED EQUIPMENT means the equipment for which Services are to be provided under this Agreement. Covered Equipment is set forth in Schedule A - Equipment List.

EQUIPMENT FAILURE means the failure, under normal and expected working conditions, of moving parts or electric or electronic components of the Covered Equipment that are necessary for its operation.

PREMISES means those Customer premises where the Covered Equipment is located or Services performed pursuant to this Agreement.

REMOTE MONITORING SERVICES means remote monitoring of Covered Equipment and/or systems including building automation, HVAC equipment, and fire alarm, intrusion, and/or other life safety systems for alarm and event notifications using a UL Certified Central Station.

REMOTE OPERATIONS CENTER (ROC) is the department at JCI that remotely monitors alarm and industrial (HVAC) process signals.

REMOTE OPERATING SERVICES means remote interrogation, modification and/or operation of building automation, HVAC equipment, and/or other Covered Equipment.

REPAIR LABOR is the labor necessary to restore Covered Equipment to working condition following an Equipment Failure, but does not include services relating to total equipment replacement due to obsolescence or unavailability of parts.

REPAIR MATERIALS are the parts and materials necessary to restore Covered Equipment to working condition following an Equipment Failure, but excludes total equipment replacement due to obsolescence or unavailability of parts, unless excluded from the Agreement. At JCI's option, Repair Materials may be new, used, or reconditioned.

SCHEDULED SERVICE MATERIALS are the materials required to perform Scheduled Service Visits on Covered Equipment, unless excluded from the Agreement.

SCHEDULED SERVICE VISITS are the on-site labor visits required to perform JCI recommended inspections and preventive maintenance on Covered Equipment.

SERVICES are the work, materials, labor, service visits, and repairs to be provided by JCI pursuant to this Agreement except that the Services do not include the Connected Equipment Services or the provision of other software products or digital or cloud services, which are provided under separate terms and conditions referenced in Section P.

A. JCI'S SERVICES FOR COVERED EQUIPMENT

1. **BASIC COVERAGE** means Scheduled Service Visits, plus Scheduled Service Materials (unless excluded from this Agreement). No parts, equipment, Repair Labor or Repair Materials are provided for under BASIC COVERAGE.

2. **PREMIUM COVERAGE** means BASIC COVERAGE plus Repair Labor, plus Repair Materials (unless excluded from the Agreement). If Customer has ordered PREMIUM COVERAGE, JCI will inspect the Covered Equipment within forty-five (45) days of the date of this Agreement, or as seasonal or operational conditions permit. JCI will then advise Customer if JCI finds any Covered Equipment not in working order or in need of repair. With Customer's approval, JCI will perform the work necessary to put the Covered Equipment in proper working condition, subject to the terms of this Agreement. Customer will pay for such work at JCI's standard rates for parts and labor in effect at the time that the work is performed. If Customer does not want JCI to perform the work identified as necessary by JCI, any equipment thereby affected will be removed from the list of Covered Equipment, and the Contract Price will be adjusted accordingly. Should Customer not make JCI's recommended repairs or proceed with the modified PREMIUM COVERAGE, JCI reserves the right to invoice Customer for the cost of the initial equipment inspection.

3. **EXTENDED SERVICE** means Services performed outside JCI's normal business hours and is available only if Customer has PREMIUM COVERAGE. Extended Service is available either 24/5 or 24/7, at Customer's election. The price for Extended Service, if chosen by Customer, is part of the total Contract Price.

4. **JCI CONNECTED EQUIPMENT SERVICES.** Certain equipment sold hereunder includes by default JCI's Connected Equipment Services. **If Customer's equipment includes Connected Equipment Services, such services will be on by default and the remote connection will continue to connect to Customer's Equipment through the full equipment lifecycle, unless Customer specifically requests in writing that JCI disable the remote connection or JCI discontinues or removes such remote connection.** For more information on whether your particular equipment includes Connected Equipment Services, a subscription to such services and the cost, if any, of such subscription, please see your applicable order, quote, proposal, or purchase documentation or talk to your JCI sales representative. If Customer's equipment includes Connected Equipment Services, JCI will provide a cellular modem or other gateway device ("Gateway Device") owned by JCI or Customer will supply a network connection suitable to establish a remote connection with Customer's applicable equipment to permit JCI to use Connected Equipment Services to perform first-year and extended warranty services as well as other services, including troubleshooting, quarterly health reports,

remote diagnostic and monitoring and aftermarket services. For certain subscriptions, Customer will be able to access equipment information from a mobile or smart device using Connected Equipment Service's mobile or web app. Any Gateway Devices provided hereunder shall remain JCI's property, and JCI may upon reasonable notice access and remove such Gateway Device and discontinue services in accordance with the Software Terms. If Customer does not permit JCI to connect via a connection validated by JCI for the equipment and a service representative must therefore be dispatched to the Customer site, then the Customer will pay JCI at JCI's then-current standard applicable contract regular time and/or overtime rate for services performed by the service representative. **Customer acknowledges that, while Connected Equipment Services generally improve equipment performance and services, Connected Equipment Services does not prevent all potential malfunction, insure against all loss or guarantee a certain level of performance and that JCI shall not be responsible for any injury, loss, or damage caused by any act or omission of JCI related to or arising from the monitoring of the equipment under Connected Equipment Services.**

5. REMOTE MONITORING SERVICES OR REMOTE OPERATING SERVICES. If Remote Monitoring Services or Remote Operating Services are provided, Customer agrees to furnish JCI with a list of the names, titles, addresses, email addresses, and phone numbers of all persons authorized to be contacted by, or be able to contact the ROC to perform specific agreed upon actions with the appropriate authority. If JCI's Services include "Remote Monitoring Services with Open and Close," Customer also agrees to furnish JCI with Customer's daily and holiday opening and closing schedules. Customer agrees to maintain and update the call lists with accurate information. Customer further agrees to notify JCI of such changes as soon as possible. JCI/ROC is not responsible to find new contacts/numbers if the contacts on the call lists cannot be reached. A maximum of three contacts are allowed for any time of the day. If none of those contacts can be reached, then neither JCI nor the ROC are responsible for damages. Customer is responsible for any and all costs and expenses arising from Customer's failure to provide timely updates for any of the contact information submitted to the ROC.

6. CUSTOMER SERVICE INFORMATION PORTAL. Customer may be able to utilize JCI's Customer Service Information Portal during the term of the Agreement, pursuant to the then applicable Terms of Use Agreement.

B. OUT OF SCOPE SERVICES

If, during any Service Visit, JCI detects a defect in any of Customer's equipment that is not Covered Equipment under this Agreement (an "Out of Scope Defect"), JCI may (but shall have no obligation to) notify Customer of such Out of Scope Defect. If Customer elects for JCI to repair such Out of Scope Defect, or if JCI otherwise performs any Services or provides any materials, parts, or equipment outside the scope of the Services (collectively, "Out of Scope Services"), Customer shall direct JCI to perform such Out of Scope Services in writing, and Customer shall pay for such Out of Scope Services at JCI's standard fees or hourly rates. If, after receiving notice of an Out of Scope Defect, Customer elects not to engage JCI to repair such Out of Scope Defect, Customer shall defend and indemnify JCI from and against any and all losses, damages, claims, costs and expenses arising directly or indirectly out of such Out of Scope Defect. Any Out of Scope Services performed by JCI at the direction of Customer pursuant to this Section shall be subject to the terms of this Agreement.

C. EXCLUSIONS

JCI's Services and warranty obligations expressly exclude:

(a) the repair or replacement of ductwork, casings, cabinets, structural supports, tower fill/slats/basin, hydronic and pneumatic piping, and vessels, gaskets, and piping not normally replaced or maintained on a scheduled basis, and removal of oil from pneumatic piping;

(b) disposal of hazardous wastes (except as otherwise expressly provided herein);

(c) disinfecting of chiller condenser water systems and other components for biohazards, such as but not limited to, Legionella unless explicitly set forth in the scope of services between the parties. Unless explicitly provide for within the scope of services, this is Out of Scope Services and the Customer's exclusive responsibility to make arrangements for such services with a provider other than JCI. Mentions of chiller tube cleaning, condenser cleaning, cooling tower cleaning or boiler tube cleaning in any scope of services, only involve work to remove normal buildup of debris and scale using tube brush cleaning, pressure washing or acid flushing. Reference to such cleaning does not include chemical cleaning, disinfection or chemical water treatment required to eliminate, control or disinfect against biohazards such as but not limited to Legionella;

(d) refrigerant; supplies, accessories, or any items normally consumed during the use of Covered Equipment, such as ribbons, bulbs and paper;

(e) the furnishing of materials and supplies for painting or refinishing equipment;

(f) the repair or replacement of wire in conduit, buried cable/transmission lines, or the like, if not normally replaced or maintained on a scheduled basis;

(g) replacement of obsolete parts; and

(h) damages of any kind, including but not limited to personal injury, death, property damage, and the costs of repairs or service resulting from:

- abuse, misuse, alterations, adjustments, attachments, combinations, modifications, or repairs to Covered Equipment not performed, provided, or approved in writing by JCI;
- equipment not covered by this Agreement or attachments made to Covered Equipment;
- acts or omissions of the Customer, including but not limited to the failure of the Customer to fulfill the Customer Obligations and Commitments to JCI as described in Section F of this Agreement, operator error, Customer's failure to conduct preventive maintenance, issues resulting from Customer's previous denial of JCI access to the Covered Equipment, and Customer's failure to keep the site clean and free of dust, sand, or other particles or debris, unless such conditions are previously expressly acknowledged by JCI in writing;
- use of the Covered Equipment in a manner or environment, or for any purpose, for which it was not designed by the manufacturer;
- site-related and environmental conditions, including but not limited to power failures and fluctuations in electrical current (or "power surges") and biohazards such as but not limited to Legionella associated with condenser water, cooling tower systems and subcomponent systems;
- the effects of erosion, corrosion, acid cleaning, or damage from unexpected or especially severe freezing weather;

- issues or failures not specifically covered by this Agreement; or
- occurrences beyond JCI's reasonable control and without JCI's fault or negligence.

D. PAYMENT TERMS; PRICE ADJUSTMENTS

Fees and other amounts due hereunder are due upon receipt of the invoice and shall be paid by Customer within thirty (30) days. Such payment is a condition precedent to JCI's obligation to perform Services under the Agreement. Any invoice disputes must be identified in writing by Customer within 21 days of the date of invoice. Payments of any disputed amounts are due and payable upon resolution. All other amounts remain due within 30 days. Failure by Customer to make payments when due will give JCI, without prejudice to any other right or remedy, the right to: (i) to stop performing any Services, withhold deliveries of Equipment and other materials, terminate or suspend any software licenses provided hereunder and/or terminate this Agreement; and (ii) charge Customer interest on the amounts unpaid at a rate equal to the lesser of one and one-half (1.5) percent per month or the maximum rate permitted under applicable law, until payment is made in full. Customer will pay all of JCI's reasonable collection costs (including legal fees and expenses). In the event of Customer's default, the balance of any outstanding amounts will be immediately due and payable.

JCI may increase prices upon notice to the Customer to reflect increases in material and labor costs. In issuing any purchase order related to this Agreement, and notwithstanding any language to the contrary therein, Customer acknowledges and agrees that any and all JCI invoices for an amount greater than $25,000 shall be paid only via wire transfer, check, or money order. If this Agreement is renewed, JCI will provide Customer with notice of any adjustments in the Contract Price applicable to any renewal period no later than forty-five (45) days prior to the commencement of that renewal period. Unless Customer terminates the Agreement at least thirty (30) days prior to the start of such renewal period, the adjusted price shall be the price for the renewal period.

E. WARRANTIES

JCI warrants its Services will be provided in a good and workmanlike manner for 90 days from the date of Services. If JCI receives written notice of a breach of this warranty prior to the end of this warranty period, JCI will re-perform any non-conforming Services at no additional charge within a commercially reasonable time of the notification.

JCI warrants that equipment manufactured or labeled by Johnson Controls, Inc. shall be free from defects in material and workmanship arising from normal usage for a period of 90 days. If JCI installs or furnishes a piece of equipment under this Agreement, and that equipment is covered by a warranty from a manufacturer other than JCI, JCI will transfer the benefits of that manufacturer's warranty, if any, to Customer and such warranty remedies are exclusive for that equipment. All transportation charges incurred in connection with the warranty for equipment and/or materials not covered under this Agreement shall be borne by Customer. Except as provided herein, if JCI receives written notice of a breach of this warranty prior to the end of this warranty period, JCI will repair or replace (at JCI's option) the defective equipment.

These warranties do not extend to any Services or equipment that have been misused, altered, or repaired by Customer or third parties without the supervision of and prior written approval of JCI, or if JCI serial numbers or warranty decals have been removed or altered. All replaced parts or equipment shall become JCI's property. This warranty is not assignable. Warranty service will be provided during normal business hours, excluding holidays. The remedies set forth herein shall be Customer's sole and exclusive remedy with regards to any warranty claim under this Agreement. Any lawsuit based upon the warranty must be brought no later than one (1) year after the expiration of the applicable warranty period. This limitation is in lieu of any other applicable statute of limitations. **CUSTOMER FURTHER ACKNOWLEDGES AND AGREES THAT THESE WARRANTIES ARE JCI'S SOLE WARRANTIES AND TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THOSE OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.** JCI makes no and specifically disclaims all representations or warranties that the services, products, software or third party product or software will be secure from cyber threats, hacking or other similar malicious activity.

F. CUSTOMER OBLIGATIONS AND COMMITMENTS TO JCI

1. Customer warrants it has given JCI all information concerning the condition of the Covered Equipment. The Customer agrees and warrants that, during the Term of this Agreement, Customer will:

(1) operate the Covered Equipment according to the manufacturer's and/or JCI's recommendations;

(2) keep accurate and current work logs and information about the Covered Equipment as recommended by the manufacturer and/or JCI;

(3) provide an adequate environment for Covered Equipment as recommended by the manufacturer and/or JCI, including, but not limited to adequate space, electrical power, water supply, air conditioning, and humidity control;

(4) notify JCI immediately of any Covered Equipment malfunction, breakdown, or other condition affecting the operation of the Covered Equipment;

(5) provide JCI with safe access to its Premises and Covered Equipment at all reasonable and necessary times for the performance of the Services;

(6) allow JCI to start and stop, periodically turn off, or otherwise change or temporarily suspend equipment operations so that JCI can perform the Services required under this Agreement;

(7) as applicable, provide proper condenser, cooling tower and boiler water treatment for the proper functioning of Covered Equipment and protect against any environmental issues and instances of biohazards such as but not limited to Legionella;

(8) carefully and properly set and test the intrusion alarm system each night or at such other time as Customer shall close the Premises;

(9) obtain all necessary licenses and permits required for and pay all taxes associated with the Services;

(10) notify JCI immediately of any claimed inadequacy in, or failure of, the Covered Equipment or other condition affecting the operation of the Covered Equipment;

(11) furnish any necessary 110 volt A/C power and electrical outlets at its expense;

(12) properly maintain, repair, service, and assure the proper operation of any other property, system, equipment, or device of Customer or others to which the Covered Equipment may be attached or connected, in accordance with manufacturer recommendations, insurance carrier requirements, or the requirements of any fire rating bureau, agency, or other authorities having jurisdiction thereof;

(13) not tamper with, alter, adjust, disturb, injure, remove, or otherwise interfere with any Covered Equipment (including any related software) and not permit the same to be done; and

(14) refrain from causing false alarms, and reimburse JCI for any fine, penalty, or fee paid by or assessed against JCI by any governmental or municipal agency as a result thereof.

(15) be solely responsible for the establishment, operation, maintenance, access, security and other aspects of its computer network ("Network") and shall supply JCI secure Network access for providing its services. Products networked, connected to the internet, or otherwise connected to computers or other devices must be appropriately protected by Customer and/or end user against unauthorized access.

(16) take appropriate measures, including performing back-ups, to protect information, including without limit data, software, or files (collectively "Data") prior to receiving the service or products.

2. Customer acknowledges and understands that unless water treatment for biohazards (such as Legionella) is explicitly included in the services JCI is providing, it is Customer's responsibility to provide such treatment. Customer also acknowledges that its failure to meet the above obligations will relieve JCI of any responsibility for any Covered Equipment breakdown, or any necessary repair or replacement of any Covered Equipment. If Customer breaches any of these obligations, JCI shall have the right, upon written notice to Customer, to suspend its Services until Customer cures such breach. In addition, Customer shall be responsible for paying or reimbursing JCI for any costs associated with corrective work required as a result of Customer's breach of these obligations.

G. INSURANCE

Customer is responsible for obtaining all insurance coverage that Customer believes is necessary to protect Customer, Customer's property, and persons in or on the Premises, including coverage for personal injury and property damage. **THE PAYMENTS CUSTOMER MAKES UNDER THIS AGREEMENT ARE NOT RELATED TO THE VALUE OF THE PREMISES, CUSTOMER'S PROPERTY OR POSSESSIONS, OR THE PERSONS OCCUPYING OR AT ANY TIME PRESENT IN OR ON THE PREMISES, BUT RATHER ARE BASED ON THE COST OF THE SYSTEM AND THE SERVICES, AND TAKE INTO CONSIDERATION THE PROTECTION AFFORDED TO JCI UNDER THIS AGREEMENT.** Customer hereby releases JCI from any liability for any event or condition customarily covered by commercial liability insurance. Customer understands that neither the Services nor the Covered Equipment are designed to reduce, but not eliminate, certain risks. JCI does not guaranty that neither the Services nor Covered Equipment will prevent personal injury, unauthorized entrances or fire and smoke damage to the Premises. Customer further agrees that Customer has read and understands the terms and conditions of this Agreement.

H. INDEMNITY

JCI and Customer shall each indemnify the other party and its officers, agents, directors, and employees, from any and all damages, losses, costs and expenses (including reasonable attorneys' fees) arising out of third party claims, demands, or suits for bodily injury (including death) or damage to tangible property to the extent arising out of the negligence or intentional misconduct of the indemnifying party or its employees or agents. Customer expressly agrees that JCI shall be responsible for injury, damage, or loss only to the extent caused directly by JCI's negligence or intentional misconduct. The obligations of JCI and Customer under this section are further subject to sections I and J below.

I. LIMITATION OF LIABILITY

TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL JCI AND ITS AFFILIATES AND THEIR RESPECTIVE PERSONNEL, SUPPLIERS AND VENDORS ("JCI PARTIES") BE LIABLE TO YOU OR ANY THIRD PARTY UNDER ANY CAUSE OF ACTION OR THEORY OF LIABILITY EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, FOR ANY: (1) SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR INDIRECT DAMAGES; (2) LOST PROFITS, REVENUES, DATA, CUSTOMER OPPORTUNITIES, BUSINESS, ANTICIPATED SAVINGS, OR GOODWILL; (3) BUSINESS INTERRUPTION; OR (4) DATA LOSS OR OTHER LOSSES ARISING FROM VIRUSES, RANSOMWARE, CYBER ATTACKS OR FAILURES OR INTERRUPTIONS TO NETWORK SYSTEMS. IN ANY CASE, THE ENTIRE AGGREGATE LIABILITY OF THE JCI PARTIES UNDER THIS AGREEMENT FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE SHALL BE LIMITED TO $250,000. CUSTOMER UNDERSTANDS THAT JCI IS NOT AN INSURER REGARDING THE WORK OR THE SERVICES. JCI SHALL NOT BE RESPONSIBLE FOR ANY DAMAGE OR LOSS THAT MAY RESULT FROM FIRE SAFETY OR SECURITY EQUIPMENT THAT FAILS TO PERFORM PROPERLY OR FAILS TO PREVENT A CASUALTY OR LOSS

J. FORCE MAJEURE

JCI shall not be liable, nor in breach or default of its obligations under this Agreement, for delays, interruption, failure to render services, or any other failure by JCI to perform an obligation under this Agreement, where such delay, interruption or failure is caused, in whole or in part, directly or indirectly, by a Force Majeure Event. A "Force Majeure Event" is a condition or event that is beyond the reasonable control of JCI, whether foreseeable or unforeseeable, including, without limitation, acts of God, severe weather (including but not limited to hurricanes, tornados, severe snowstorms or severe rainstorms), wildfires, floods, earthquakes, seismic disturbances, or other natural disasters, acts or omissions of any governmental authority (including change of any applicable law or regulation), epidemics, pandemics, disease, viruses, quarantines, or other public health risks and/or responses thereto, condemnation, strikes, lock-outs, labor disputes, an increase of 5% or more in tariffs or other excise taxes for materials to be used on the project, fires, explosions or other casualties, thefts, vandalism, civil disturbances, insurrection, mob violence, riots, war or other armed conflict (or the serious threat of same), acts of terrorism, electrical power outages, interruptions or degradations in telecommunications, computer, network, or electronic communications systems, data breach, cyber-attacks, ransomware, unavailability or shortage of parts, materials, supplies, or transportation, or any other cause or casualty beyond the reasonable control of JCI. If JCI's performance of the work is delayed, impacted, or prevented by a Force Majeure Event or its continued effects, JCI shall be excused from performance under the Agreement. Without limiting the generality of the foregoing, if JCI is delayed in achieving one or more of the scheduled milestones set forth in the Agreement due to a Force Majeure Event, JCI will be entitled to extend the relevant completion date by the amount of time that JCI was delayed as a result of the Force Majeure Event, plus such additional time as may be reasonably necessary to overcome the effect of the delay. To the extent that the Force Majeure Event directly or indirectly increases JCI's cost to perform the services, Customer is obligated to reimburse JCI for such increased costs, including, without limitation, costs incurred by JCI for additional labor, inventory storage, expedited shipping fees, trailer and equipment rental fees, subcontractor fees or other costs and expenses incurred by JCI in connection with the Force Majeure Event.

K. RESOLUTION OF DISPUTES

If a dispute arises under this Agreement, the parties shall promptly attempt in good faith to resolve such dispute by negotiation. In the event the dispute is unable to be resolved, either party shall have the right to initiate arbitration by filing with the American Arbitration Association provided no other legal action has been previously filed. Upon filing of the arbitration, the AAA shall have the exclusive jurisdiction over the Dispute. Thus, either party may decide to file an action in a court of competent jurisdiction. If that court filing is the first legal proceeding filed, that court shall have jurisdiction over the Dispute to the exclusion of any arbitration. Arbitration shall be conducted in accordance with the then current arbitration rules of the American Arbitration Association or other arbitration service mutually agreed to by the parties. Arbitration must be completed within sixty (60) days after the Dispute is submitted to arbitration unless the parties mutually agree otherwise. The award rendered by the arbitrator shall be final, and judgment issued by the Arbitrator may be entered in accordance with applicable law in any court having competent jurisdiction. The party prevailing in the arbitration or court proceeding shall be entitled to an award of its reasonable costs, including reasonable attorneys' fees, incurred as a result of the Dispute. CUSTOMER MUST BRING ANY CLAIM AGAINST JCI WITHIN ONE (1) YEAR AFTER THE CLAIM AROSE. IF CUSTOMER DOES NOT, CUSTOMER WILL HAVE IRREVOCABLY WAIVED ITS RIGHT TO SUE JCI AND/OR INSTITUTE OTHER PROCEEDINGS, AND JCI SHALL HAVE NO LIABILITY TO CUSTOMER FOR SUCH CLAIM. TIME IS OF THE ESSENCE RELATIVE TO CUSTOMER PURSUING ANY SUCH CLAIM. THE PROVISIONS OF THIS AGREEMENT WHICH APPLY TO ANY CLAIM SHALL REMAIN IN EFFECT EVEN AFTER THE AGREEMENT IS TERMINATED. JCI AND CUSTOMER EACH WAIVE THEIR RIGHT TO A JURY TRIAL.

L. TERMINATION

1. Remote Monitoring Services and Remote Operating Services may be immediately canceled by either party if JCI's Remote Operations Center, connecting wires, or monitoring systems are destroyed by fire or other catastrophe, or where the Premises are so substantially damaged that it is impractical to continue Services.

2. If either party fails to perform any of its obligations under this Agreement, the other party shall provide written notice thereof to the party alleged to be in default. Should the party alleged to be in default fail to respond in writing or take action to cure the alleged default within ten (10) days of receiving such written notice, the notifying party may terminate this Agreement by providing written notice of such termination.

3. JCI may terminate this Agreement and discontinue any Services if JCI is unable to obtain or continue to support technologies, equipment or component parts that are discontinued, become obsolete or are otherwise not commercially available. JCI will not be liable for any damages or subject to any penalty as a result of any such termination.

4. Upon termination of this Agreement for any reason, Customer shall pay to JCI all undisputed amounts owed through the date of termination within thirty (30) days of such termination. Customer shall also provide JCI with reasonable access to the Premises to remove the Gateway Device and any other JCI property and to un-program any intrusion, fire, or life safety system, as applicable. Customer shall be liable for all fees, costs, and expenses that JCI may incur in connection with the enforcement of this Agreement, including without limitation, reasonable attorney fees, collection agency fees, and court costs.

5. If the Agreement is for a multi-year term, either party may terminate the Agreement after the first full year of Services by giving the other party no less than forty-five (45) days written notice; provided, however, that if Customer has ordered PREMIUM COVERAGE, Customer may terminate the Agreement only upon JCI's written consent.

M. ASBESTOS, MOLD, BIOHAZARDS, AND HAZARDOUS MATERIALS

"Hazardous Materials" means any material or substance that, whether by its nature or use, is now or hereafter defined or regulated as a hazardous waste, hazardous substance, pollutant, or contaminant under any local, state, or federal law, regulation, or ordinance relating to or addressing public and employee health and safety and protection of the environment, or which is toxic, explosive, corrosive, flammable, radioactive, carcinogenic or otherwise hazardous or which is or contains petroleum, gasoline, diesel, fuel, another petroleum hydrocarbon product or polychlorinated biphenyls. "Hazardous Materials" specifically includes mold, lead-based paints, biohazards such as but not limited to Legionella and asbestos-containing materials ("ACM").

Neither Customer nor JCI desires to or is licensed to undertake direct obligations relating to the identification, abatement, cleanup, control, removal or disposal of ACM.

JCI will be responsible for removing or disposing of any Hazardous Materials that it uses in providing the Services ("JCI Hazardous Materials") and for the remediation of any areas affected by the release of JCI Hazardous Materials. For other Hazardous Materials that may be present at its facilities ("Non-JCI Hazardous Materials"), Customer shall supply JCI with any information in its possession relating to the presence of Hazardous Materials if their presence may affect JCI's performance of the Services. If either Customer or JCI becomes aware of or suspects the presence of Non-JCI Hazardous Materials that may interfere with JCI's Services, it shall immediately stop the Services in the affected area and notify the other party. As between Customer and JCI, Customer shall be responsible at its sole expense for removing and disposing of Non-JCI Hazardous Materials from its facilities and for the remediation of any areas impacted by the release of the Non-JCI Hazardous Materials and must provide a certificate of abatement before JCI will be obligated to perform or continue its Services, unless JCI had actual knowledge that Non-JCI Hazardous Materials were present and acted in disregard of that knowledge, in which case (i) JCI shall be responsible at its sole expense for the remediation of any areas impacted by its release of such Hazardous Materials, and (ii) Customer shall remain responsible at its sole expense for the removal of Hazardous Materials that have not been released and for releases not resulting from JCI's performance of the Services. Customer shall defend and indemnify JCI against any losses, costs, damages, expenses, and claims arising out of its failure to comply with this Section M.

N. CUSTOMER DATA

Customer data obtained from the Services is owned by and shall belong to Customer. JCI will access and use Customer data to provide Services to Customer. Except as set forth herein, JCI will not disclose to any third party any individual Customer data acquired through performance of the Services without Customer's consent. Customer agrees that JCI and its subsidiaries, affiliates and approved third party contractors and developers may collect and use Customer data for any reason, as long as any external use of the data is on a de-identified basis that does not personally identify Customer or any individual. Customer hereby grants JCI a perpetual, worldwide, irrevocable, royalty free license to use, modify, manipulate, sublicense, and create derivative works from such data. JCI shall retain all rights to any intellectual property, data, materials and products created as a result of its performance of Services.

O. JCI'S INTELLECTUAL PROPERTY

JCI shall retain all right, title and interest in any (a) work provided to Customer, including without limitation, all software source and object code, documentation, technical information or data, specifications and designs and any changes, improvements or modifications thereto ("Deliverables"), and (b) Know-How (defined below) employed by JCI in the creation of the Deliverables or performance of the Services, whether known to JCI prior to, or developed or discovered or acquired in connection with, the performance of its obligations under this agreement. Ownership of all Deliverables and Know-How shall vest solely in JCI and no Deliverables shall be deemed "works made for hire." Without limiting the generality of the foregoing, ownership of all source files used in the course of performing the Services shall remain the exclusive property of JCI. For purposes of this Agreement, "Know-How" means any know-how, processes, techniques, concepts, methodologies, tools, analytical approaches, database models and designs, discoveries, and ideas furnished, produced by, developed, or used by JCI in the creation or provision of the Deliverables or in the performance of the Services, and any changes, improvements, or modifications thereto or derivatives thereof.

P. SOFTWARE AND DIGITAL SERVICES

Use, implementation, and deployment of the software and hosted software products ("Software") offered under these terms shall be subject to, and governed by, JCI's standard terms for such Software and Software related professional services in effect from time to time at https://www.johnsoncontrols.com/techterms (collectively, the "Software Terms"). Applicable Software Terms are incorporated herein by this reference. Other than the right to use the Software as set forth in the Software Terms, JCI and its licensors reserve all right, title, and interest (including all intellectual property rights) in and to the Software and improvements to the Software. The Software that is licensed hereunder is licensed subject to the Software Terms and not sold. If there is a conflict between the other terms herein and the Software Terms, the Software Terms shall take precedence and govern with respect to rights and responsibilities relating to the Software, its implementation and deployment and any improvements thereto.

Q. MISCELLANEOUS PROVISIONS

1. All notices required to be given hereunder shall be in writing and shall be considered properly given if: (a) delivered in person, (b) sent via the United States Postal Service, postage prepaid, registered or certified with return receipt requested, (c) sent by overnight delivery service (e.g., FedEx, UPS), or (d) sent by facsimile, email or other electronic means and confirmed by facsimile, return email or telephone.

2. This Agreement may not be assigned by Customer without JCI's prior written consent. JCI shall have the right to assign this Agreement to any other person, firm, or corporation without Customer's consent. JCI shall also have the right, in its sole discretion, to subcontract any portion of the Services. This Agreement inures to the benefit of and is applicable to any assignees or subcontractors of JCI, and is binding upon Customer with respect to said assignees or subcontractors with the same force and effect as it binds Customer to JCI.

3. This Agreement shall be subject to and governed by the laws of the State where the Services are performed.

4. If any provision of this Agreement is found to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

5. This Agreement is the entire contract between JCI and Customer and supersedes any prior oral understandings, written agreements, proposals, or other communications between the parties.

6. Customer acknowledges and agrees that any purchase order issued by Customer in connection with this Agreement is intended only to establish payment authority for Customer's internal accounting purposes and shall not be considered to be a counteroffer, amendment, modification, or other revision to the terms of this Agreement. No term or condition included or referenced in Customer's purchase order will have any force or effect and these terms and conditions shall control. Customer's acceptance of any Services shall constitute an acceptance of these terms and conditions. Any proposal for additional or different terms, whether in Customer's purchase order or any other document, unless expressly accepted in writing by JCI, is hereby objected to and rejected.

7. If there are any changes to Customer's facilities or operations, or to applicable regulations, laws, codes, taxes, or utility charges, that materially affect JCI's performance of the Services or its pricing thereof, JCI shall have the right to an equitable and appropriate adjustment to the scope, pricing, and other affected terms of this Agreement.

8. No claim or cause of action, whether known or unknown, shall be brought against JCI more than one year after the claim first arose. Except as provided for herein, JCI's claims must also be brought within one year. Claims for unpaid contract amounts are not subject to the one-year limitation.

**ADDENDUM TO PSA TERMS AND CONDITIONS FOR
MONITORING OF INTRUSION, FIRE AND OTHER SAFETY SYSTEMS**

If Remote Monitoring Services explicitly includes remote fire alarm monitoring, security alarm monitoring or video monitoring in the scope of work or customer charges, the Agreement is hereby modified and amended to include the terms and provisions of this Addendum to the PSA for Monitoring of Intrusion, Fire and Safety Systems (the "Addendum"). Capitalized terms that are not defined herein, shall have the meaning given to them in the Agreement. In the event of a conflict between the terms and conditions of this Addendum and those appearing in the Agreement, the terms and conditions of this Addendum shall prevail.

1. **Remote Monitoring of Alarm Signals.** If JCI receives an emergency alarm signal at JCI's ROC, JCI shall endeavor to notify the appropriate police or fire department, or other emergency response agency having jurisdiction and JCI shall endeavor to notify Customer or its designated representative by email unless instructed to do otherwise by Customer in writing and/or based on standard operating procedures for the ROC. JCI, upon receipt of a non-emergency signal from the Premises, shall endeavor to notify Customer's representative pursuant to Customer's written instructions, defaulting to email or text notification. Customer acknowledges that if the signals transmitted from the Premises will be monitored in a monitoring facility not operated by JCI, the personnel in such monitoring facilities are not the agents of JCI, nor does JCI assume any responsibility for the manner in which such signals are monitored or the response to such signal.

2. **Remote Monitoring Services Pricing.** Remote Monitoring Services shall be provided by JCI if the Agreement includes a charge for such Service. If such Service is purchased, JCI will monitor the number of alarms for the Premises and the initial charge is based on the pricing agreed to by the parties, subject to the terms and conditions of this Addendum. If the number of alarms produced at the Premises goes beyond the contracted number of alarms in a month, Customer will be billed an overage fee.

3. **Communications Media.** Customer acknowledges that monitoring of Covered Equipment requires transmission of signals over standard telephone lines and/or the Internet and that these modes of transmission may be interrupted, circumvented, or compromised, in which case no signal can be transmitted from the Premises to the monitoring facility. Customer understands that to allow the monitoring facility to be aware of such a condition, additional or alternative protection can be installed, such as line security devices, at Customer's cost and expense and for transmission via telephone line only. Customer acknowledges it is aware that line security devices are available and, unless expressly identified in Schedule A - Equipment List, has declined to purchase such devices. Customer further acknowledges that such additional protection is not available for Internet transmission under this Agreement.

4. **False/Unnecessary Alarms; Service Calls.** At JCI's option, an additional fee may be charged for any false alarm or unnecessary Service Visit caused or necessitated by Customer. In addition, Customer shall be fully responsible and liable for fines, penalties, assessments, taxes, fees or charges imposed by a governmental body, telephone, communication, or signal transmission company as the result of any false alarm and shall reimburse JCI for any costs incurred by JCI in connection therewith. Customer shall operate the system carefully so as to avoid causing false alarms. False alarms can be caused by severe weather or other forces beyond the control of JCI. If an undue number of false alarms are received by JCI, in addition to any other available remedies available to JCI, JCI may terminate this Agreement and discontinue any Service(s) and seek to recover damages. If an agent is dispatched, by a governmental authority or otherwise, to respond to a false alarm, where the Customer, or any other party has intentionally, accidentally or negligently activated the alarm signal, Customer shall be responsible for and pay any and all fees and/or fines assessed with respect to the false alarms and pay to JCI the additional charges and costs incurred by it from a false alarm. If the Customer's system has a local audible device, Customer authorizes JCI to enter the Premises to turn off the audible device if JCI is requested or ordered to do so by governmental authorities, neighbors or anyone else and Customer will pay JCI its standard service call charge for each such visit. Police agencies require repair of systems which cause false dispatches. Customer shall maintain the equipment necessary for JCI to supply the Services and Customer shall pay all costs for such maintenance. At least monthly, Customer will test the system's protective devices and send test signals to the ROC for all monitoring equipment in accordance with instructions from JCI or the ROC. Customer agrees to test the monitoring systems, including testing any ultrasonic, microwave, infrared, capacitance or other electronic equipment prior to the end of each month and will immediately report to JCI if the equipment fails to respond to the test. Customer shall make any necessary repairs as soon after receipt of notice as is reasonably practical. Customer shall at all times be solely responsible for maintaining any sprinkler system in good working order and provide adequate heat to the Premises.

5. **Remote Monitoring of Video Monitoring Services.** During the Term, JCI's sole and only obligation arising from the inclusion of Video Monitoring Services in any Service offering shall be to monitor the digital signals actually received by JCI at its ROC from means of the Video System and upon receipt of a digital signal indicating that an alarm condition exists, to endeavor, as permitted by law, to notify the police or other municipal authority deemed appropriate in JCI's absolute discretion and to such persons Customer has designated in writing to JCI to receive notification of such alarm condition as set forth herein. . No alarm installation, repair, maintenance or guard responses will be provided under this Video Monitoring Services option. JCI may, without prior notice to Customer, in response to applicable law or insurance requirements, revise, replace, discontinue and/or rescind its response policies and procedures.

   a. **Inception and conclusion of service.** Video Monitoring shall be provided by JCI if this Agreement includes a charge for Video Monitoring Services. If such Video Monitoring Service is purchased, Video Monitoring Services will begin when the Video System is installed and operational, and when the necessary communications connection is completed. No obligation for the provision of this Video Monitoring Service will commence until these requirements are met.

   b. **Customer Equipment.** Customer shall obtain, at its own cost and expense: (a) the equipment necessary to connect to JCI's ROC; and (b) whatever permission, permits or licenses that may be necessary from all persons, governmental authorities, utility, and any other related service providers in connection with the Services. The video system to be used by the Customer is intended to produce and transmit video images (the "Video System Images") of the Premises to the ROC (the "Video System"). JCI makes no promise, warranty or representation that the video system will operate as intended. Customer further agrees that, notwithstanding any role or participation by JCI in Video System and Video System Images, JCI shall have no responsibility or obligation with regard to Customer, the Video System or any other Customer equipment.

   c. **System Location.** The Video System related cameras shall be located and positioned by Customer along with attendant burglary digital alarm signal(s). Customer shall ensure that the Video System related cameras will be positioned and located such that it will only produce or capture Video System Images of areas of the Premises. Customer will provide adequate illumination under all operating conditions for the proper viewing of the cameras. Customer acknowledges and agrees that JCI has exercised no control over, or participated in locating or positioning the Video System related camera including, but not limited to selecting what areas, locations, things or persons that the Video System Images may depict or capture.

d. **Images.** Customer shall be solely responsible for the Video System Images produced or captured by the Video System and Customer shall defend, indemnify and hold harmless JCI and its officers, agents, directors, and employees, from any and all damages, losses, costs and expenses (including reasonable attorneys' fees) arising out of third party claims, demands, or suits in connection with the use, operation, location and position of the Video System, and the Video System Images resulting there from, including, but not limited to, any claims of any person depicted in a Video System image, including but not limited to, any claim by such person that his or her privacy has been invaded or intruded upon or his or her likeness has been misappropriated. Any duty to obtain the consent or permission of any person depicted in a Video System Image to have his or her likeness to be depicted, received, transmitted or otherwise used, and the duty to determine and comply with any and all applicable laws, regulations, standards and other obligations that govern the legal, proper and ethical use of video capturing devices, such as the Video System, including, but not limited to, notification that the Video System is in use at the Premises, shall be the sole responsibility of the Customer. JCI agrees to make Video System Images available to Customer and upon their respective request. JCI makes no promise, warranty or representation as to the length of time that it retains Video Images, or the quality thereof.

e. **Video System Signals.** When a signal from the Video System is received, JCI reserves the right to verify all alarm signals before notifying emergency personnel, and may choose not to notify emergency personnel if it has reason to believe, in its sole discretion, that an emergency condition does not exist. JCI will first attempt to verify the nature of the emergency by using visual verification and/or the two-way voice system (if applicable) of the Video System included in Customer's system. If JCI determines that an emergency condition exists, JCI will endeavor to notify the proper police or emergency contact on a notification call list provided in writing by Customer to JCI, or its designee. When a non-emergency signal is received, JCI will attempt to contact the first available Customer representative on the notification call list but will not notify emergency authorities, this notification will be in the form of email or text and follow ROC processes. If the customer requires phone calls to the call list for any emergency or non-emergency situation, the customer will need to make this request in writing. Customer authorizes and directs JCI, as its agent, to use its full discretion in causing the arrest or detention of any person or persons on or around the premises who are not authorized by Customer. **JCI WILL NOT ARREST OR DETAIN ANY PERSON.**

f. **Recordings.** Customer consents to the tape recording of all telephonic communications between the Premises and JCI. JCI will have no liability arising from recording (or failure to record) or publication of any two-way voice communications, other video recordings or their quality. JCI shall have no liability in connection with Video System or the Video System Images, including, but not limited to, any failure, omission, negligence or other act by JCI, or any of its officers, employees, representatives, agents, contractors, or any other third party in connection with the receipt (or failure of receipt), transmission, reading, interpreting, or response to any Video Image.

6. **Risk of Loss is Customer's.** JCI does not represent or warrant that the Services will prevent any loss by burglary, holdup, fire or otherwise, or that the Services will in all cases provide the protection for which it is installed or intended, or that the Services will be uninterrupted or error-free. Customer assumes all risk of loss or damage to the Premises being monitored and to its contents, whether belonging to Customer or others; and has not relied on any representations and warranties of JCI, express or implied, except as specifically set forth in this Agreement. Further, expressly excluded from this Agreement are the warranties of merchantability or fitness or suitability for a particular purpose.

7. **JCI'S RECEIPT OF ALARM SIGNALS, ELECTRONIC DATA, VOICE DATA OR IMAGES (COLLECTIVELY, "ALARM SIGNALS") FROM THE EQUIPMENT OR SYSTEM INSTALLED IN THE PREMISES IS DEPENDENT UPON PROPER TRANSMISSION OF SUCH ALARM SIGNALS. JCI'S ROC CANNOT RECEIVE ALARM SIGNALS WHEN THE CUSTOMER'S TELCO SERVICE OR OTHER TRANSMISSION MODE IS NOT OPERATING OR HAS BEEN CUT, INTERFERED WITH, OR IS OTHERWISE DAMAGED, OR IF THE ALARM SYSTEM IS UNABLE TO ACQUIRE, TRANSMIT OR MAINTAIN AN ALARM SIGNAL OVER CUSTOMER'S TELCO SERVICE OR TRANSMISSION MODE FOR ANY REASON INCLUDING BUT NOT LIMITED TO NETWORK OUTAGE OR OTHER NETWORK PROBLEMS SUCH AS CONGESTION OR DOWNTIME, ROUTING PROBLEMS, OR INSTABILITY OF SIGNAL QUALITY. CUSTOMER UNDERSTANDS THAT SIGNAL TRANSMISSION FAILURE MAY OCCUR OVER CERTAIN TYPES OF TELCO SERVICES SUCH AS SOME TYPES OF DSL, ADSL, VOIP, DIGITAL PHONE, INTERNET PROTOCOL BASED PHONE OR OTHER INTERNET INTERFACE-TYPE SERVICE OR RADIO SERVICE, INCLUDING CELLULAR, WIRELESS OR PRIVATE RADIO, OR CUSTOMER'S PROPRIETARY TELCOMMUNICATION NETWORK, INTRANET OR IP-PBX, OR OTHER THIRD-PARTY EQUIPMENT OR VOICE/DATA TRANSMISSION NETWORKS OR SYSTEMS OWNED, MAINTAINED OR SERVICED BY CUSTOMER OR THIRD PARTIES, IF: (1) THERE IS A LOSS OF NORMAL ELECTRIC POWER TO THE MONITORED PREMISES OCCURS (THE BATTERY BACK-UP FOR JCI'S ALARM PANEL DOES NOT POWER CUSTOMER'S COMMUNICATION FACILITIES OR TELCO SERVICE); OR (2) ELECTRONIC COMPONENTS SUCH AS MODEMS MALFUNCTION OR FAIL. CUSTOMER UNDERSTANDS THAT JCI WILL ONLY REVIEW THE INITIAL COMPATIBILITY OF THE ALARM SYSTEM WITH CUSTOMER'S TELCO SERVICE AT THE TIME OF INITIAL INSTALLATION OF THE ALARM SYSTEM AND THAT CHANGES IN THE TELCO SERVICE'S DATA FORMAT AFTER JCI'S INITIAL REVIEW OF COMPATIBILITY COULD MAKE THE TELCO SERVICE UNABLE TO TRANSMIT ALARM SIGNALS TO JCI'S ROC. IF JCI DETERMINES IN ITS SOLE DISCRETION THAT CUSTOMER'S TELCO SERVICE IS COMPATIBLE, JCI WILL PERMIT CUSTOMER TO USE ITS TELCO SERVICE AS THE PRIMARY METHOD OF TRANSMITTING ALARM SIGNALS, ALTHOUGH CUSTOMER UNDERSTANDS THAT JCI RECOMMENDS THAT CUSTOMER ALSO USE AN ADDITIONAL BACK-UP METHOD OF COMMUNICATION TO CONNECT CUSTOMER'S ALARM SYSTEM TO JCI'S ROC REGARDLESS OF THE TYPE OF TELCO SERVICE USED. CUSTOMER ALSO UNDERSTANDS THAT IF JCI DETERMINES IN ITS SOLE DISCRETION THAT CUSTOMER'S TELCO SERVICE IS, OR LATER BECOMES, NON-COMPATIBLE, OR IF CUSTOMER CHANGES TO ANOTHER TELCO SERVICE THAT IS NOT COMPATIBLE, THEN JCI WILL REQUIRE THAT CUSTOMER USE AN ALTERNATE METHOD OF COMMUNICATION ACCEPTABLE TO JCI AS THE PRIMARY METHOD TO CONNECT CUSTOMER'S ALARM SYSTEM TO JCI'S ROC. JCI WILL NOT PROVIDE FIRE OR SMOKE ALARM MONITORING FOR CUSTOMER BY MEANS OTHER THAN AN APPROVED TELCO SERVICE AND CUSTOMER UNDERSTANDS THAT IT IS SOLELY RESPONSIBLE FOR ASSURING THAT IT USES APPROVED TELCO SERVICE FOR ANY SUCH MONITORING AND THAT IT COMPLIES WITH NATIONAL FIRE ALARM STANDARDS AND LOCAL FIRE CODES. CUSTOMER ALSO UNDERSTANDS THAT IF CUSTOMER'S ALARM SYSTEM HAS A LINE CUT FEATURE, IT MAY NOT BE ABLE TO DETECT ALARM SIGNALS IF THE TELCO SERVICE IS INTERRUPTED, AND THAT JCI MAY NOT BE ABLE TO DOWNLOAD SYSTEM CHANGES REMOTELY OR PROVIDE CERTAIN AUXILIARY MONITORING SERVICES THROUGH A NON-APPROVED TELCO SERVICE. CUSTOMER ACKNOWLEDGES THAT ANY DECISION TO USE A NON-APPROVED TELCO SERVICE AS THE METHOD FOR TRANSMITTING ALARM SIGNALS IS BASED ON CUSTOMER'S OWN INDEPENDENT BUSINESS JUDGMENT AND THAT ANY SUCH DECISION IS MADE WITHOUT ANY ASSISTANCE, INVOLVEMENT, INPUT, RECOMMENDATION, OR ENDORSEMENT ON THE PART OF JCI. CUSTOMER ASSUMES SOLE AND COMPLETE RESPONSIBILITY FOR ESTABLISHING AND MAINTAINING ACCESS TO AND USE OF**

THE NON-APPROVED TELCO SERVICE FOR CONNECTION TO THE ALARM MONITORING EQUIPMENT. CUSTOMER FURTHER UNDERSTANDS THAT THE ALARM SYSTEM MAY BE UNABLE TO SEIZE THE TELCO SERVICE TO TRANSMIT AN ALARM SIGNAL IF ANOTHER CONNECTION HAS DISABLED, IS INTERFERING WITH, OR BLOCKING THE CONNECTION.

[END OF DOCUMENT]

RESOLUTION NO. 316-20

Approve Agreement with NRC, Inc. for Arborist Services.

RESOLUTION NO. __________

RESOLUTION APPROVING PROPOSAL FROM NATURAL RESOURCE CONSULTING, INC. FOR ARBORIST SERVICES

WHEREAS, the City of Opelika (the "City") is responsible for the management of trees growing within its public rights-of-way and City-owned lands; and

WHEREAS, Natural Resource Consulting, Inc. ("NRC") has extensive experience working in and for municipal governments managing their urban forest; and

WHEREAS, the City desires to engage NRC to provide arborist services for calendar years 2021, 2022 and 2023; and

WHEREAS, a Proposal for Arborist Services has been prepared by NRC and submitted to the City Council for approval; and

WHEREAS, City staff is recommending approval of said Proposal; and

WHEREAS, the Alabama Competitive Bid Law authorizes the City Council to approve agreements for professional services without competitive bidding; and

WHEREAS, the compensation to be paid to Natural Resource Consulting, Inc., shall come from budgeted funds in the Planning Department; and

WHEREAS, the Planning Director has certified that sufficient funds exist in the Planning Department Budget to pay for said services.

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

1. That the Proposal submitted by NRC for arborist services, a copy of which is attached hereto as Exhibit "A", is hereby approved, authorized, ratified and confirmed in the

form substantially submitted to the City Council.

2. That the Mayor is hereby authorized and directed to execute and deliver or cause to be executed or delivered on behalf of the City such contracts, notices, certificates, assurances or other instruments or other communications as are deemed necessary or appropriate in order to carry into effect the intent of the provisions of this Resolution.

3. That the compensation to be paid to NRC, under and pursuant to this Resolution, shall be paid from the Planning Department Budget as invoiced for service provided, and the Controller is hereby authorized and directed make all necessary budget and accounting entries to implement this Resolution.

4. That the Purchasing-Revenue Manager is hereby authorized and directed to issue purchase orders to NRC for the provision of professional services as outlined in the Proposal attached hereto.

5. 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.

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

ADOPTED AND APPROVED this the ______ day of ______________________, 2020.

____

PRESIDENT OF THE CITY COUNCIL

OF THE CITY OF OPELIKA

ATTEST:

CITY CLERK

AGREEMENT BETWEEN THE CITY OF OPELIKA, ALABAMA AND NATURAL RESOURCE CONSULTING, INC., FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made and entered into this the _____ day of _____________, 2020 (the "Agreement"), by and between **THE CITY OF OPELIKA, ALABAMA,** a municipal corporation (hereinafter called the "City") and **NATURAL RESOURCE CONSULTING, INC.,** an Alabama corporation located at 5265 Upper River Road, Tallassee, Alabama (hereinafter called "Consultant").

RECITALS

WHEREAS, the City intends to contract for certain urban forest services and desires to engage a consultant to provide such services; and

WHEREAS, Consultant has represented that it has the necessary professional expertise, qualifications and capability and all required licenses and/or certifications to provide the services; and

WHEREAS, the City desires to engage the Consultant to provide the services ("Services") as more fully described in Exhibit "A" attached hereto and made a part of this Agreement.

NOW THERFORE, in accordance with the mutual covenants and agreements hereinafter set forth and further good valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

AGREEMENT

Section 1. Scope of Services.

Consultant shall perform the Services as described in Exhibit “A” in accordance with the terms and conditions described in this Agreement. The performance of all Services shall be to the reasonable satisfaction of the City.

Section 2. Term.

The term of this Agreement shall be three (3) years from January 1, 2021 through December 30, 2023, unless terminated earlier pursuant to Section 14 of this Agreement.

Section 3. Compensation.

The compensation to be paid to Consultant for the performance of the Services described in Exhibit “A” shall not exceed $99,000 for each one-year period for a total contract amount not to exceed $297,000. Consultant agrees to complete all Services within this amount. Consultant shall be paid for its Services in monthly installments of $8,250 each.

Section 4. Invoices.

In order to request payment, Consultant shall submit monthly invoices to the City describing the Services performed. The City will generally process and pay invoices within thirty (30) days of receipt.

Section 5. Qualifications/Standard of Care.

All the Services shall be performed by the Consultant or under Consultant’s supervision. Consultant represents that it possesses the professional and technical personnel to perform the Services required by this Agreement and that the personnel have the sufficient skill and experience to perform the Services assigned to them. All Services to be furnished by Consultant under this Agreement shall meet the professional standard and quality that prevail among professionals in the same discipline and of similar knowledge and skill engaged in related work throughout Alabama under the same or similar circumstances.

Section 6. Compliance With Laws.

Consultant shall comply with all federal, state and local laws, ordinances, regulations and orders that may affect in any manner the performance of the Services or those engaged to perform Services under this Agreement. Consultant shall procure all permits and licenses, pay all charges and fees and give all notices required by law in accordance required by law in performance of the Services.

Section 7. Errors/Omission.

Consultant is solely responsible for all costs arising from or caused by Consultant's errors and omissions, including, but not limited to, the costs of corrections caused by said errors and omissions.

Section 8. Independent Contractor Status.

It is understood and agreed that in performing the Services under this Agreement Consultant and any person employed by Consultant to furnish labor and/or materials under this Agreement shall act as and be an independent contractor and not an agent or employee of the City. It is understood between the parties that this Agreement is not intended to nor does it create an employment contract between the City, on the one hand, and Consultant and any of its employees, on the other hand, nor does it create a joint relationship or partnership between the parties hereto. Consultant is solely and exclusively responsible for the satisfaction of Consultant's own local, state and federal income taxes and Social Security withholdings that may be applicable to the amounts payable by the City to the Consultant under this Agreement.

Section 9. Assignment.

The parties agree that the expertise and experience of Consultant are material considerations of this Agreement. Consultant shall not assign or transfer any interest in this

Agreement nor the performance of any of Consultant's obligations hereunder without the prior consent of the City. Consent of one assignment shall not be deemed to be consent of any subsequent assignment. Any assignment made without the approval of the City will be void.

Section 10. Subcontracting.

Consultant shall not subcontract any portion of the work to be performed under this Agreement without the prior written authorization of the City.

Section 11. Indemnity.

To the fullest extent permitted by law, Consultant shall protect, indemnify, defend and hold harmless the City, its elected officials, officers, employees and agents from and against any and all demands, claims or liability of any nature including death or injury to any person, property damage or any other loss including all costs and expenses of whatever nature including attorney's fees, expert's fees, court costs and disbursements resulting from or arising out of or related to the performance by Consultant of Services under this Agreement.

Section 12. Insurance.

Consultant, at its sole cost and expense, shall obtain and maintain in full force and effect during the term of this Agreement, the insurance coverage described in Exhibit "B". Consultant shall obtain a policy endorsement naming the City as an additional named insured under any general liability or automobile policy or policies.

Certificates evidencing such insurance shall be filed with the City concurrently with the execution of this Agreement. The certificates will be subject to the approval of the City and will contain an endorsement stating that the insurance is primary coverage and will not be cancelled or materially reduced in coverage or limits by the insured except after filing with the City thirty (30) days' prior written notice of the cancellation or modification.

Section 13. Compliance With Immigration Laws.

Consultant agrees to fully comply with the Immigration Reform and Control Act of 1986, as amended by the Immigration Act of 1990 and the Beason-Hammond Alabama Taxpayer and Citizen Protection Act, as amended. Consultant agrees to participate in the E-Verify Program and shall verify every employee that is required to be verified according to applicable federal rules and regulations. Consultant agrees that it will not violate federal immigration law and will not knowingly employ, hire for employment or continue to employ an unauthorized alien within the State of Alabama.

Section 14. Termination of Agreement.

The City may terminate this Agreement without cause by giving ninety (90) days' prior written notice thereof to the Consultant. The Consultant may terminate this Agreement without cause by giving ninety (90) days' notice thereof to the City.

This Agreement may be terminated, in whole or in part, in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this Agreement through no fault of the terminating party; provided that no such termination may be effected unless the other party is given (1) not less than ten (10) days' written notice (delivered by Certified Mail, return receipt requested) of the intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination.

Upon termination of this Agreement as provided herein, Consultant will be paid for the services rendered in accordance with the Scope of Services on or before the effective date of termination. No payment or partial payment by the City will operate as a waiver on the part of the City of any of its rights under this Agreement.

Section 15. Records.

Consultant shall maintain all records or documents relating to Services performed under this Agreement for a minimum of three (3) years, or for any longer period required by law. Any documents this Agreement requires Consultant to maintain shall be available for inspection and/or copying by the City at any time during regular business hours upon oral or written request of the City.

Section 16. Governing Law.

The laws of the State of Alabama shall govern this Agreement.

Section 17. Binding Effect.

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

Section 18. Attorney's Fees.

The prevailing party in any action to enforce the provisions of this Agreement may recover its reasonable costs and attorney's fees expended in connection with that action.

Section 19. Counterparts.

This Agreement may be signed in multiple counterparts, which shall, when executed by the parties constitute a single binding agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date below.

THE CITY OF OPELIKA, ALABAMA

By:________________________________
GARY FULLER, ITS MAYOR

____
DATE

ATTEST:

____
RUSSELL A JONES, CITY CLERK

NATURAL RESOURCE CONSULTING, INC.

By:_________________________________
ITS PRESIDENT

____
DATE

Exhibit "A"

Natural Resource Consulting, Inc.

ADDENDUM 'A'

Arborist Services 2021 Payments to be made as services are rendered **$99,000.00**

- **Tree Planting Project Development and Oversight (150 Trees)**
  - Develop plan
  - Notification of Homeowners
  - Modification of list
  - Marking locations
  - Checking for utilities
  - Specification development for trees to be planted
  - Price quote procurement
  - Tree selection at nursery
  - Tree delivery logistic coordination
  - Update Tree Inventory data base
  - Specification development for tree planting
  - Price quote procurement
  - Managing Tree Planting Contractor
  - Watering – First 12 months as needed
  - Monitoring Soil Moisture
  - Monitoring of Insects
  - Monitoring tree survivability and condition
- **Tree Removals and Pruning Planning and Oversight Project**
  - Developing Bid Specifications for Pruning
  - Developing Bid Specifications for Removals
  - Review of Bids
  - Oversight of work
  - Meeting with and addressing citizens' concern
  - Update Tree Inventory Data base
- **Ongoing Services**
  - Day to day Arborist services to include monthly summary report
  - The managing of the five-year plan
  - City Departmental advisory as needed
  - Managing and overseeing all tree related activities
  - Maintaining and enhancing GIS database capabilities
  - Citizen response to tree concerns
  - Urban Forest Outreach – Educational & Public Relations
- **Small Tree Care**
  - Monitoring last year's planting – water, nutrient supplementation, weed suppression when needed

P.O. Box 780603 • Tallassee Alabama 36078-0603 • (334) 252-0644 • Fax: (334) 252- 0654
NRCnAL@aol.com

Exhibit "A"

Natural Resource Consulting, Inc.

- Small tree pruning and maintenance when needed

P.O. Box 780603 • Tallassee Alabama 36078-0603 • (334) 252-0644 • Fax: (334) 252- 0654
NRCnAL@aol.com

Exhibit B

Insurance Coverages:

General Liability

General Aggregate Limit	$2,000,000
Products/Completed Operations Aggregate Limit	$1,000,000
Personal and Advertising Injury Limit	$1,000,000
Each Occurrence Limit	$1,000,000
Damage to Rented Premises	$100,000 (each occurrence)
	$100,000 (total aggregate for all claims)
Foresters Special Liability	$500,000 (each occurrence)
	$500,000 (total aggregate for all claims)

Automobile Liability

Combined Liability	$500,000 each accident
Uninsured Motorist	$25,000 each person / $ 50,000 each accident

RESOLUTION NO. 317-20

Approve Cumberland Plastic Systems, LLC Tax Abatements and Exemptions - ED.

RESOLUTION NO. ___________

RESOLUTION APPROVING CERTAIN TAX ABATEMENTS AND EXEMPTIONS FOR CUMBERLAND PLASTIC SYSTEMS, LLC

WHEREAS, Cumberland Plastic Systems, LLC, d/b/a Cumberland Plastic Solutions (the “Company”) is a world class leader in plastic injection molding utilizing innovative combinations of materials, the integration of manufacturing processes, as well as state-of-the-art technology and equipment; and

WHEREAS, the Company has announced plans for a major addition (the “Project”) to its existing facility located at 4401 Northpark Drive, Opelika, Alabama (the “Facility”); and

WHEREAS, the Project will be located in Lee County inside the city limits of Opelika, Alabama; and

WHEREAS, the Company has announced plans to purchase and install 1500 ton UBE injection molding machine and support equipment (the “Project”) at its existing Facility; and

WHEREAS, the Project, involving the purchase and acquisition of new manufacturing machinery and other new personal property, will involve a capital investment of approximately two million, six hundred eighty-eight thousand, two hundred seventy-eight dollars ($2,688,278.00) and is expected to result in the creation of approximately ten (10) new jobs; and

WHEREAS, the Project is estimated to be placed in service by September 1, 2021; and

WHEREAS, the Project will be operated by the Company as an “industrial or research enterprise” as defined under Alabama Code §40-9B-3(a)(10); and

WHEREAS, the Company’s NAICS Code 326100 meets the qualifications of an industrial or research enterprise in accordance with §40-9B-3(a)(10)(a)(1), *Code of Alabama*, as amended; and

WHEREAS, pursuant to the Tax Incentive Reform Act of 1992 (Section 40-9B-1, et seq, *Code of Alabama*, 1975) (the “Act”), the Company has requested from the City (the “Granting Authority”) the abatement of (a) all state and local non-education ad valorem taxes (property taxes) for a period of ten (10) years in accordance with the Act; and (b) all construction related transaction taxes (sales and use taxes), except those construction related transaction taxes levied for educational purposes or for capital improvements for education; and

WHEREAS, the Company has requested that the abatement of state and local non-educational property taxes be extended for a period of ten (10) years in accordance with the Act; and

WHEREAS, pursuant to the authority granted to the City under Article IV of Chapter 51 of Title 11, *Code of Alabama*, the Company has requested from the City a complete exemption of non-educational City ad valorem taxes for the project for a period of fifteen (15) years; and

WHEREAS, the City has considered the requests of the Company and completed form CO:CAA Application to Granting Authority for Abatement of Taxes (copy attached) filed by the Company with the City in connection with its request; and

WHEREAS, the City has found the information contained in the Company's application to be sufficient to permit the City to make a reasonable cost/benefit analysis of the proposed Project and to determine the economic benefits to the community; and

WHEREAS, according to the application, the Project will involve an investment of approximately two million two hundred thirteen thousand dollars ($2,291,174.00) which includes the acquisition of manufacturing machinery and other personal property to be purchased and installed at the Facility and related costs; and

WHEREAS, the City Council has been furnished a copy of a Tax Abatement Agreement (the "Abatement Agreement") by and between the City and the Company, and the City Council has determined that the general terms of such Abatement Agreement are acceptable to the City in principle; and

WHEREAS, the Company is duly qualified to do business in the State of Alabama and has power to enter into and to perform and observe the agreements and covenants on its part contained in the Abatement Agreement; and

WHEREAS, the City represents and warrants to the Company that the City has the power under the Constitution and the laws of the State of Alabama (including particularly the provisions of the Act) to carry out the provisions of the Abatement Agreement; and

WHEREAS, the City wishes to secure the numerous and significant benefits to the City, its business community and residents that will likely result from the Project.

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

1. Approval is hereby given to the application of the Company and abatement is hereby authorized of (1) all state and local non-educational property taxes for a period of ten (10)

years; and (2) all construction-related transaction (sales and use) taxes, except those construction-related transaction taxes levied for educational purposes or for capital improvements for education. The period of abatement for the non-educational taxes shall extend for a period of ten (10) years measured as provided in Section 40-9B-3(a)(12) of the Act.

2. In addition, pursuant to Title 11, Article 4 of Chapter 51, *Code of Alabama*, the City agrees to grant to the Company a complete exemption for non-educational City ad valorem taxes for a period of fifteen (15) years.

3. The abatements and exemptions granted herein do not include any ad valorem taxes earmarked for city and county schools and school district purposes. The tax abatements and exemptions for ad valorem taxes under paragraphs 1 and 2 shall not exceed the maximum abatement allowed by state law.

4. The Mayor and the City Clerk are hereby authorized and directed to execute the Tax Abatement Agreement with the Company and such other ancillary documents and agreements as may be necessary to provide the abatements and exemptions granted in paragraphs 1 and 2 above.

5. A certified copy of this resolution, with the application and Abatement Agreement, shall be forwarded to the Company to deliver to the appropriate taxing authorities and to the Alabama Department of Revenue in accordance with the Act.

6. 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 caused 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.

7. This resolution shall take effect upon passage and adoption by the City Council.

ADOPTED AND APPROVED this the _______ day of __________________, 2020.

____

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

ATTEST:

____

CITY CLERK

RESOLUTION NO. 318-20

Weed Abatement Assessment - 3900 Marvyn Pkwy.

RESOLUTION NO. ___________

RESOLUTION FIXING AMOUNT OF ASSESSMENT

FOR WEED LIEN AGAINST PROPERTY LOCATED AT

3900 Marvyn Parkway, Parcel No. 029.000

==

WHEREAS, the weed nuisance growing upon or in front of the property located at 3900 Marvyn Pkwy, parcel no. 029.000 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 3900 Marvyn Pkwy, a copy of said itemized statement being attached hereto as Exhibit “A”; and

WHEREAS, the 1st day of December, 2020 at 7:00 p.m. in the Municipal Court 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 $1,068.34 is hereby assessed against the parcel of land mentioned in said itemized statement, to wit: 3900 Marvyn Pkwy., Parcel no. 029.000 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 43-10-09-30-4-000-029.000 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 ____ day of ______________________________, 2020.

____

C. E. "Eddie" Smith Jr.

President of the City Council

City of Opelika, Alabama

Attest:

____

Russell A Jones

City Clerk

WEED ABATEMENT INVOICE

Date: November 16, 2020

To: Cove Creek Development LLC
2055 County Road 237
Roanoke, Al 36274

Property Address:
3900 Marvyn Parkway
Opelika Al. 36804
Parcel # 10-09-30-4-000-029.000

On October 21, 2020 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: 1,055.00

Certified mail: 13.34

Misc. ____________

Total 1,068.34

RESOLUTION NO. 319-20

Approve Designation of Automobile Allowances.

RESOLUTION NO. __________

RESOLUTION DESIGNATING SENIOR MANAGEMENT EMPLOYEES TO RECEIVE AUTOMOBILE ALLOWANCES

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

1. That the following senior management employees shall receive an annual automobile allowance in the amount of $5,400.00:

   1. City Administrator
   2. Community Relations Officer

The automobile allowance shall be paid in installments at the same time as classified employees of the City are paid.

2. Under Internal Revenue Service (IRS) regulations, payment of an automobile allowance must be included in the employee’s income as wages subject to withholding for federal and state income taxes and applicable FICA taxes. The amount is reportable on the employee’s Form W-2 in the year paid.

3. The automobile allowance is paid to the employee in lieu of the provision of a City vehicle and is intended to compensate the employee for routine business travel within Lee County and the surrounding areas.

4. The employee shall be responsible for maintaining liability and comprehensive

insurance on the vehicle with limits approved by the Mayor.

5. Designated classified senior management employees who receive an automobile allowance will not receive additional reimbursement for business travel outside the City limits unless the destination is more than 150 miles from the City limits. Classified employees receiving this allowance are expected to use their personal vehicles for all City business (not City-owned vehicles) within the 150 mile radius and will not be reimbursed per mile as other employees for travel. Contractual employees will be reimbursed for travel mileage in accordance with the provisions of their respective contracts.

6. That Resolution No. 079-19, adopted on April 2, 2019, is hereby repealed.

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

ADOPTED AND APPROVED this the _____ day of ___________________ 2020.

____

PRESIDENT OF THE CITY COUNCIL
OF THE CITY OF OPELIKA

ATTEST:

____

CITY CLERK

RESOLUTION NO. 320-20

Approve Agreement for N. Uniroyal Bridge Gas Line Relocation.

RESOLUTION NO. _____________

RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A UTILITY RELOCATION AGREEMENT WITH SOUTHEAST ALABAMA GAS DISTRICT PROVIDING FOR THE RELOCATION OF ITS GAS MAIN IN CONNECTION WITH THE NORTH UNIROYAL BRIDGE REPLACEMENT PROJECT

WHEREAS, the City of Opelika, Alabama (the "City") desires to replace the bridge on North Uniroyal Road over Halawaka Creek (the "Project"); and

WHEREAS, to replace the bridge, the existing gas main owned by Southeast Alabama Gas District (the "Company") must be relocated; and

WHEREAS, the Company must complete the relocation of its facilities before a significant amount of work may be accomplished by the contractor for the Project; and

WHEREAS, the Company has agreed to relocate the gas main associated with the Project at an estimated cost of $227,500 to be paid by the City; and

WHEREAS, the City desires to enter into a Utility Relocation Agreement with the Company at an estimated cost to the City of $227,500; and

WHEREAS, pursuant to the Utility Relocation Agreement, the Company will design and relocate the gas main facilities; and

WHEREAS, in connection with the relocation, the Company has requested that the City obtain easement(s) to relocate the gas main onto property west of the existing road right-of-way; and

WHEREAS, the costs associated with the relocation of the gas main are not budgeted and will come from the Unassigned Fund Balance; and

WHEREAS, the City Council finds and determines that it is in the best interest of the City and its citizens to enter into a Utility Relocation Agreement with the Company for the reasons stated above.

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

1. That the City is hereby authorized to enter into a Utility Relocation Agreement with the Company providing the terms and conditions under which the Company's gas main facilities will be relocated at a cost estimated to be $227,500. Any cost above this amount will required additional Council approval. The Council hereby authorizes the Mayor to execute the Utility Relocation Agreement and to perform all of the acts necessary to accomplish the intent of this Resolution.

2. That the Mayor and the Director of Engineering are hereby authorized and directed to take all necessary steps to acquire an easement for the Company to relocate the Company's utilities onto property located west of the existing road right-of-way.

3. That the compensation to be paid to the Company for the relocation of its gas main facilities shall come from the Unassigned Fund Balance and the Controller is hereby authorized and directed to make all necessary and appropriate budget adjustments to implement this Resolution.

4. That the Purchasing-Revenue Manager is hereby authorized and directed to issue appropriate purchase orders to the Company for the provision of services under the Utility

Relocation Agreement.

5. 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.

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

ADOPTED AND APPROVED this the ______ day of ______________________, 2020.

____

PRESIDENT OF THE CITY COUNCIL
OF THE CITY OF OPELIKA

ATTEST:

____

CITY CLERK

ORDINANCE NO. 030-20-ORD

Amend Zoning Ordinance & Map; Rezone 89.5 Acres, 900 Block N. Uniroyal Road - 2nd Reading.

ORDINANCE NO. ________

AN ORDINANCE TO AMEND THE ZONING

ORDINANCE AND ZONING MAP OF THE CITY OF OPELIKA

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

Section 1. That Ordinance 124-91 entitled "Zoning Ordinance City of Opelika, Alabama", adopted on September 17, 1991, and the Zoning Map of the City of Opelika provided for and referred to therein, as previously amended and/or modified, be and the same is hereby amended by rezoning or redistricting the parcel of land hereinafter in this section described, so as to change such parcel from one class of district to another class of district as follows, to-wit:

From a R-1 District (Rural District) to a R-2 District (Low Density Residential District), the parcel of land hereinafter described:

All of the following described property lying to the south of the section line dividing Sections 3 and 10, 19N, Range 27E in Lee County, Alabama, to wit:

From the Northeast corner of the Northwest Quarter of Section 10, Township 19 North, Range 27 East, in Lee County, Alabama, thence run Westerly along the North Section line of said Section 10 for 435 feet; thence run South 570 feet; thence run West 395 feet to said point of beginning; thence continue Westerly for 1,750 feet, more or less, to the Easterly margin of North Uniroyal Road; thence run Northerly along the Easterly margin of said road for 2,430 feet, more or less, to the intersection of Ridge Road with North Uniroyal Road; thence leaving said margin of said road run South 37 degrees 32 minutes East for 610.3 feet; thence run South 54 degrees 10 minutes East for 135.6 feet; thence run South 87 degrees 29 minutes East for 674.6 feet to the Southerly margin of Ridge Road; thence continuing along said margin of said road run South 59 degrees 21 minutes East for 565.2 feet; thence along a curve to the left, the radius of said curve being 867.05 feet for 205.2 feet; thence leaving said margin of said road run South 29 degrees 25 minutes West for 107.6 feet; thence run South 44 degrees 00 minutes East for 260.0 feet; thence run South 50 degrees 00 minutes East for 600.4 feet; thence run South 1 degree 10 minutes East for 542.2 feet; thence run South 18 degrees 15 minutes East for 2,233.5 feet; thence run West for 1,599.3 feet; thence run North 1,869.9 feet to said point of beginning.

The above-described property, lying in Section 10, Township 19N, Range 27E in Lee County, Alabama, contains approximately 89.5 acres and is located in the 900 Block of North Uniroyal Road, Opelika, Alabama.

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

Section 3. This Ordinance shall be published in a newspaper of general circulation in the City of Opelika, Lee County, Alabama.

ADOPTED AND APPROVED this the _____day of ____________________, 2020.

____

PRESIDENT OF THE CITY COUNCIL OF THE

CITY OF OPELIKA, ALABAMA

ATTEST:

____

CITY CLERK

TRANSMITTED TO MAYOR on this the _____day of _______________, 2020.

____

CITY CLERK

ACTION BY MAYOR

APPROVED this the _____day of _________________, 2020.

____

MAYOR

ATTEST:

____

CITY CLERK

ORDINANCE NO. 031-20-ORD

Lease Agreement with Level-Up Towers, LLC - 2nd Reading.

ORDINANCE NO.__________

AN ORDINANCE APPROVING THE LEASING OF A TRACT OF REAL PROPERTY OWNED BY THE CITY OF OPELIKA TO LEVEL-UP TOWERS, LLC, FOR THE PURPOSE OF ERECTING, INSTALLING, OPERATING AND MAINTAINING A COMMUNICATIONS TOWER AND RELATED EQUIPMENT AND GRANTING TO LEVEL-UP TOWERS, LLC, A NON-EXCLUSIVE ACCESS AND UTILITY EASEMENT TO PROVIDE ACCESS TO THE TOWER COMPOUND

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

Section 1. It is hereby established and declared that the following described real property of the City of Opelika, Alabama (the "City") is not currently needed for public or municipal purposes, to-wit:

All that tract or parcel of land, lying and being in the Northeast Quarter of the Southeast Quarter of Section 12, Township 19 North, Range 26 East, in the City of Opelika, Lee County, Alabama, and being more particularly described as follows:

Commence at an open top iron being the Southeast corner of a parcel identified as PID# 43-09-01-12-4-001-013.000 located at the intersection of the North right of way line of Elliott Avenue and the West right of way line of Westwood Street, and having Alabama State Plane Coordinates (East) of N: 782250.41 / E: 792345.98; thence N 68° 20' 42"W a distance of 263.57' to a 5/8" capped rebar (Bailey Land Group CA 899LS) and the Point of Beginning of the following described lease area; thence S 42° 16' 24"W a distance of 40.00' to a 5/8" capped rebar (Bailey Land Group CA 899LS); thence N 47° 43' 36"W a distance of 62.50' to a 5/8" capped rebar (Bailey Land Group CA 899LS); thence N 42° 16' 24"E a distance of 40.00' to a 5/8" capped rebar (Bailey Land Group CA 899LS); thence S 47° 43' 36"E a distance of 62.50' back to the Point of Beginning.

Said tract contains 2,500 square feet (0.06 acres), more or less.

Section 2. That the City, having received an offer from Level-Up Towers, LLC, a Georgia limited liability company, to lease the real property described in Section 1 above, it is hereby declared to be in the best interest of the public and the City, to lease said real property (the "Premises") to Level-Up Towers, LLC, for the following terms and conditions, to-wit:

The Lease of the premises commences on the date Level-Up Towers, LLC gives written notification to the City of its exercise of the option to lease, which Commencement Date shall occur no later than two (2) years after the date of the Option and Lease, but said option to lease may be renewed for an additional two (2) years.

The lease provides for the lease by the City to Level-Up Towers of the premises described in Section 1 above for an initial term of ten (10) years commencing on the Commencement Date, with five (5) renewal options of an additional five (5) years each, for a maximum term (including renewal terms) of thirty-five (35) years.

Beginning as of the Commencement Date, rent is payable by Level-Up Towers to the City in equal monthly installments of $1,500. Rent is subject to an annual increase of two percent (2%), such increase to take effect on each anniversary date of the Commencement Date and continuing throughout the remainder of the term of the Lease (including the renewal terms). In addition, commencing with the installation of the second subtenant on the tower and each subtenant thereafter, the City shall be entitled to receive an amount equal to ten percent (10%) of the second and subsequent subtenant's monthly rental fee actually received and collected by Level-Up Towers, LLC.

Level-Up Towers, LLC may use the premises for the purposes of erecting, installing, operating and maintaining communications towers, antennae, related equipment and communication equipment shelters or cabinets.

The City grants to Level-Up Towers a 30-foot wide non-exclusive access and utility easement from Elliott Avenue to the leased premises as more particularly described in the Option and Lease Agreement.

Section 3. That the proposed Option and Lease Agreement to be entered into between the City and Level-Up Towers, LLC, a copy of which is on file in the office of the City Clerk, be and the same is hereby approved, authorized, ratified and confirmed in substantially the form submitted to the City Council.

Section 4. Pursuant to the authority granted by §11-47-21 of the *Code of Alabama*, 1975, the Mayor is hereby authorized and directed to execute and deliver said Option and Lease Agreement in the name and on behalf of the City.

Section 5. 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 Ordinance and the Option and Lease Agreement.

Section 6. That this ordinance shall become effective immediately upon its adoption and publication as required by law.

Section 7. That the City Clerk of the City of Opelika is hereby authorized and directed to cause this ordinance to be published one (1) time in a newspaper published in and of general circulation in the City of Opelika, Alabama.

ADOPTED AND APPROVED this the _____day of ____________________, 2020.

____

PRESIDENT OF THE CITY COUNCIL OF THE

CITY OF OPELIKA, ALABAMA

ATTEST:

____

CITY CLERK

TRANSMITTED TO MAYOR this the _____day of _____________________, 2020.

____

CITY CLERK

ACTION BY MAYOR

APPROVED this the _____day of _______________________, 2020.

____

MAYOR

ATTEST:

____

CITY CLERK

Level-Up Site Name: Opelika, Floral Park

OPTION AND LEASE AGREEMENT

THIS OPTION AND LEASE AGREEMENT ("**Agreement**"), dated as of the latter of the signature dates below (the "**Effective Date**"), is entered into by **The CITY OF OPELIKA**, a municipal corporation, having a mailing address of 204 S 7th Street, Opelika, AL 36803 ("**Landlord**") and Level-Up Towers, LLC, a Georgia limited liability company, having a mailing address of 3740 Davinci Ct. Suite 100, Peachtree Corners, GA 30092 ("**Tenant**").

BACKGROUND

Landlord owns or controls that certain plot, parcel or tract of land, as described on **Exhibit 1,** together with all rights and privileges arising in connection therewith, located at **600 Floral St**, in the City of Opelika, State of **Alabama** (collectively, the "**Property**"). Tenant desires to use a portion of the Property in connection with the installation, operation, maintenance and management of telecommunications equipment at the Property and, the Landlord desires to grant to Tenant the right to use a portion of the Property in accordance with this Agreement.

The parties agree as follows:

1. <u>OPTION TO LEASE.</u>

(a) Landlord grants to Tenant an option (the "**Option**") to lease a certain portion of the Property containing approximately 2,500 square feet including the air space above such ground space, as described on attached **Exhibit 1** (the "**Premises**")**,** for the placement of Tenant's Communication Facility.

(b) During the Option Term, and during the term of this Agreement, Tenant and its agents, engineers, surveyors and other representatives shall have the right to enter upon the Property to inspect, examine, conduct soil borings, drainage testing, material sampling, radio frequency testing and other geological or engineering tests or studies of the Property (collectively, the "**Tests**"), to apply for and obtain licenses, permits, approvals, or other relief required of or deemed necessary or appropriate at Tenant's sole discretion for its use of the Premises and include, without limitation, applications for zoning variances, zoning ordinance, amendments, special use permits, and construction permits (collectively, the "**Government Approvals**"), initiate the ordering and/or scheduling of necessary utilities, and otherwise to do those things on or off the Property that, in the reasonable opinion of Tenant, are necessary in Tenant's sole discretion to determine the physical condition of the Property, the environmental history of the Property, the validity of Landlord's title to the Property and the feasibility or suitability of the Property for Tenant's Permitted Use, all at Tenant's expense. Tenant will not be liable to Landlord or any third party on account of any pre-existing defect or condition on or with respect to the Property, whether or not such defect or condition is disclosed by Tenant's inspection. Tenant will restore the Property to its condition as it existed at the commencement of the Option Term, except for reasonable wear and tear and loss by casualty or other causes beyond Tenant's control excepted.

(c) In consideration of Landlord granting Tenant the Option, Tenant agrees to pay Landlord the sum of one thousand and No/100 Dollars ($1000.00) within thirty (30) business days of the Effective Date. The Option will be for an initial term of two (2) years commencing on the Effective Date (the "**Initial Option Term**") and may be renewed by Tenant for an additional two (2) years (the "**Renewal Option Terms**") upon written notification to Landlord and the payment of an additional one thousand and No/100 Dollars ($1000.00) no later than five (5) days prior to the expiration date of the Initial Option Term. The Initial Option Term and any Renewal Option Term are collectively referred to as the "**Option Term**."

(d) The Option may be sold, assigned or transferred at any time by Tenant to an Affiliate (as that term is hereinafter defined) of Tenant or to any third party agreeing to be subject to the terms hereof. Otherwise, the Option may not be sold, assigned or transferred without the written consent of Landlord, such consent not to be unreasonably withheld, conditioned or delayed. From and after the date the Option has been sold, assigned or transferred by Tenant to an Affiliate or a third party agreeing to be subject to the terms hereof, Tenant shall immediately be released from any and all liability under this Agreement, including the payment of any rental or other sums due, without any further action. Tenant will give landlord notice within fifteen (15) days of the option being sold, assigned or transferred

(e) During the Option Term, Tenant may exercise the Option by notifying Landlord in writing. If Tenant exercises the Option, then Landlord leases the Premises to Tenant subject to the terms and conditions of this Agreement. If Tenant does not exercise the Option during the Initial Option Term or any extension thereof, this Agreement will terminate, and the parties will have no further liability to each other.

(f) If during the Option Term, or during the term of this Agreement, the Option is exercised, and Landlord subdivides, sells, or changes the status of the zoning of the Premises, Property or any of Landlord's contiguous, adjoining or surrounding property (the **"Surrounding Property"**) or in the event of foreclosure, Landlord shall immediately notify Tenant in writing. Landlord agrees that during the Option Term, or during the Term of this Agreement if the Option is exercised, Landlord shall not initiate or consent to any change in the zoning of the Premises, Property or Surrounding Property or impose or consent to any other use or restriction that would prevent or limit Tenant from using the Premises for the Permitted Use. Any and all terms and conditions of this Agreement that by their sense and context are intended to be applicable during the Option Term shall be so applicable.

2. **<u>PERMITTED USE.</u>** Tenant shall be entitled to sublease and/or sublicense all or any part of the Premises or any communications tower(s) thereon at any time to a subtenant, sublessee or sublicensee (collectively, the "Subtenants") without Landlord's consent and without additional payment to Landlord. Tenant and Subtenants, may use the Premises for the transmission and reception of communications signals and the installation, construction, maintenance, operation, repair, replacement and upgrade of communications fixtures and related equipment, cables, accessories and improvements, which may include a suitable support structure, associated antennas, dishes, generators, equipment shelters or cabinets and fencing and any other items necessary to the successful and secure use of the Premises (collectively, the "**Communication Facility**"), as well as the right to test, survey and review title on the Property. Tenant and Subtenants, further have the right but not the obligation to add, modify and/or replace equipment in order to be in compliance with any current or future federal, state or local mandated application, including, but not limited to, emergency 911 communication services, at no additional cost to Tenant or Landlord (collectively, the "**Permitted Use**"). Landlord and Tenant agree that any portion of the Communication Facility that may be conceptually described on **Exhibit 1** will not be deemed to limit Tenant's Permitted Use. If **Exhibit 1** includes drawings of the initial installation of the Communication Facility, Landlord's execution of this Agreement will be confirmation of Landlord's approval of **Exhibit 1**. For a period of ninety (90) days following the start of construction, Landlord grants Tenant, its subtenants, licensees and sublicensees, the right to use such portions of Landlord's contiguous, adjoining or Surrounding Property, as described on **Exhibit 1**, as may reasonably be required during construction and installation of the Communication Facility. Tenant and Subtenants, have the right to install and operate transmission cables from the equipment shelter or cabinet to the antennas, electric lines from the main feed to the equipment shelter or cabinet and communication lines from the Property's main entry point to the equipment shelter or cabinet, and to make other improvements, alterations, upgrades or additions appropriate for Tenant's Permitted Use including the right to construct a fence around the Premises and undertake any other appropriate means to secure the Premises at Tenant's expense. Tenant and Subtenants have the right to modify, supplement, replace, upgrade, expand the equipment, increase the number of antennas or relocate the Communication Facility within the Premises at any time during the term of this Agreement. Tenant will be allowed to make such alterations to the Property in order to ensure that Tenant's Communication

Facility complies with all applicable federal, state or local laws, rules or regulations. In the event Tenant desires to modify or upgrade the Communication Facility, in a manner that requires an additional portion of the Property (the "**Additional Premises**") for such modification or upgrade, Landlord agrees to lease to Tenant the Additional Premises, upon the same terms and conditions set forth herein, except that the Rent shall increase, in conjunction with the lease of the Additional Premises by the amount equivalent to the then-current per square foot rental rate charged by Landlord to Tenant times the square footage of the Additional Premises. Landlord agrees to take such actions and enter into and deliver to Tenant such documents as Tenant reasonably requests in order to effect and memorialize the lease of the Additional Premises to Tenant.

3. TERM.

(a) The initial lease term will be ten (10) years (the "**Initial Term**"), commencing on the effective date of written notification by Tenant to Landlord of Tenant's exercise of the Option (the "**Term Commencement Date**"). The Initial Term will terminate on the Tenth (10^{th}) anniversary of the Term Commencement Date.

(b) This Agreement will automatically renew for five (5) additional five (5) year term(s) (each five (5) year term shall be defined as an "**Extension Term**"), upon the same terms and conditions unless Tenant notifies Landlord in writing of Tenant's intent to terminate this Agreement at least sixty (60) days prior to the expiration of the Initial Term or then current Extension Term.

(c) Unless (i) Landlord or Tenant notifies the other in writing of its intent to terminate this Agreement at least six (6) months prior to the expiration of the final Extension Term, or (ii) the Agreement is terminated as otherwise permitted by this Agreement prior to the end of the final Extension Term, then upon the final Extension Term, this Agreement shall continue in force upon the same covenants, terms and conditions for a further term of one (1) year, and for annual terms thereafter (each an "**Annual Term**") until terminated by either party by giving to the other written notice of its intent to terminate at least six (6) months prior to the end of any such Annual Term. Monthly rental during such Annual Terms shall be equal to the Rent paid for the last month of the final Extension Term. If Tenant remains in possession of the Premises after the termination of this Agreement then Tenant will be deemed to be occupying the Premises on a month-to-month basis (the "**Holdover Term**"), subject to the terms and conditions of this Agreement.

(d) The Initial Term, any Extension Terms, any Annual Terms and any Holdover Term are collectively referred to as the Term (the "**Term**").

4. RENT.

(a) Commencing on the first day of the month following the date that Tenant commences construction (the "**Rent Commencement Date**"), Tenant will pay Landlord on or before the fifth (5^{th}) day of each calendar month in advance, ONE THOUSAND FIVE HUNDRED and No/100 Dollars ($1,500.00) (the "**Rent**"), at the address set forth above. In any partial month occurring after the Rent Commencement Date, Rent will be prorated. The initial Rent payment will be forwarded by Tenant to Landlord within forty-five (45) days after the Rent Commencement Date.

(b) If applicable, all charges payable under this Agreement such as utilities and taxes shall be billed by Landlord within one (1) year from the end of the calendar year in which the charges were incurred; any charges beyond such period shall not be billed by Landlord, and shall not be payable by Tenant. The foregoing shall not apply to monthly Rent which is due and payable without a requirement that it be billed by Landlord. The provisions of this subsection shall survive the termination or expiration of this Agreement.

(c) Rent shall increase annually by two percent (2%) on the anniversary of the Commencement Date (the "Rent Escalator").

(d) Commencing with the installation of the second Subtenant on the tower and each Subtenant thereafter, Landlord shall be entitled to receive an amount equal to Ten percent (10%) of the second and subsequent Subtenant's monthly rental fee actually received and collected by Tenant ("Revenue Share").

Tenant's Revenue Share payment to Landlord shall be due the following month after receipt of rental payments from applicable Subtenants. At all times, Tenant shall be entitled to have one Subtenant located on the Premises/tower for no Revenue Share or other consideration owed to Landlord. Monies collected by Tenant from Subtenants for utility installation and fees, structural upgrades to the tower, and other reimbursable costs and expenses and actual pass through costs shall be excluded for purposes of calculating the Revenue Share. Tenant shall provide Landlord with documentation, evidencing new rents to be collected by Tenant, within 60 days of commencement of each Subtenant agreement starting with the second Subtenant agreement. Tenant's obligation to pay the Revenue Share to Landlord shall become effective on the date any such subtenant begins to pay rent to Tenant (although payment of such Revenue Share is due as set forth above) and shall terminate at such time as said subtenant's sublease expires or is terminated, and shall be prorated for partial months. Tenant shall provide Landlord a copy of any such sublease.

5. APPROVALS.

(a) Landlord agrees that Tenant's ability to use the Premises is contingent upon the suitability of the Premises and Property for Tenant's Permitted Use and Tenant's ability to obtain and maintain Government Approvals. Landlord authorizes Tenant to prepare, execute and file all required applications to obtain Government Approvals for Tenant's Permitted Use under this Agreement and agrees to reasonably assist Tenant with such applications and with obtaining and maintaining the Government Approvals.

(b) Tenant has the right to obtain a title report or commitment for a leasehold title policy from a title insurance company of its choice and to have the Property surveyed by a surveyor of its choice.

(c) Tenant may also perform and obtain, at Tenant's sole cost and expense, soil borings, percolation tests, engineering procedures, environmental investigation or other tests or reports on, over, and under the Property, necessary to determine if Tenant's use of the Premises will be compatible with Tenant's engineering specifications, system, design, operations or Government Approvals.

(d) The Tenant acknowledges that the building of a new tower or collocating an antenna on an existing structure requires compliance with the City of Opelika's "Wireless Telecommunications Facilities Siting Ordinance", which is codified at Sections 5.5-301 through 5.5-337 of the *City Code*. No person is permitted to site, build, construct or modify a wireless telecommunications facility without first having obtained a special use permit from the City Council.

6. TERMINATION. This Agreement may be terminated, without penalty or further liability, as follows:

(a) by either party on thirty (30) days prior written notice, if the other party remains in default under Section 15 of this Agreement after the applicable cure periods;

(b) by Tenant upon written notice to Landlord, if Tenant is unable to obtain, or maintain, any required Governmental Approvals necessary for the construction or operation of the Communication Facility as now or hereafter intended by Tenant; or if Tenant determines, in its sole discretion that the cost of or delay in obtaining or maintaining the same is commercially unreasonable;

(c) by Tenant, upon written notice to Landlord, if Tenant determines, in its sole discretion that the condition of the Premises is unsatisfactory for its intended uses because of title or survey defects or unsatisfactory soil boring or environmental studies;

(d) by Tenant upon written notice to Landlord for any reason or no reason, at any time prior to the Rent Commencement Date; or

(e) by Tenant upon sixty (60) days' prior written notice to Landlord for any reason or no reason, so long as Tenant pays Landlord a termination fee equal to three (3) months' Rent, at the then-current rate, provided, however, that no such termination fee will be payable on account of the termination of this Agreement by Tenant under any termination provision contained in any other Section of this

Agreement, including the following: 5 Approvals, 6(a) Termination, 6(b) Termination, 6(c) Termination, 6(d) Termination, 11(d) Environmental, 18 Condemnation or 19 Casualty.

7. <u>INSURANCE</u>.

During the Term, Tenant will carry, at its own cost and expense, the following insurance: (i) workers' compensation insurance as required by law; and (ii) commercial general liability (CGL) insurance with respect to its activities on the Property, such insurance to afford protection of up to One Million Dollars ($1,000,000) per occurrence and Two Million Dollars ($2,000,000) general aggregate, based on Insurance Services Office (ISO) Form CG 00 01 or a substitute form providing substantially equivalent coverage. Tenant's CGL insurance shall contain a provision including Landlord as an additional insured. Such additional insured coverage:

(i) shall be limited to bodily injury, property damage or personal and advertising injury caused, in whole or in part, by Tenant, its employees, agents or independent contractors;

(ii) shall not extend to claims for punitive or exemplary damages arising out of the acts or omissions of Landlord, its employees, agents or independent contractors or where such coverage is prohibited by law or to claims arising out of the gross negligence of Landlord, its employees, agents or independent contractors; and

(iii) shall not exceed Tenant's indemnification obligation under this Agreement, if any.

8. <u>INTERFERENCE</u>.

(a) Prior to, or concurrent with the execution of this Agreement, Landlord has provided or will provide Tenant with a list of radio frequency user(s) and frequencies used on the Property as of the Effective Date. Tenant warrants that its use of the Premises will not interfere with those existing radio frequency user(s) on the Property, as long as those existing radio frequency user(s) operate and continue to operate within their respective frequencies and in accordance with all applicable laws and regulations.

(b) Landlord will not grant, after the date of this Agreement, a lease, license or any other right to any third party, if the exercise of such grant may in any way adversely affect or interfere with the Communication Facility, the operations of Tenant or its Subtenants or the rights of Tenant under this Agreement. Landlord will notify Tenant in writing prior to granting any third party the right to install and operate communications equipment on the Property.

(c) Landlord shall not permit its employees, tenants, licensees, invitees, agents or independent contractors to interfere in any way with the Communication Facility, the operations of Tenant or its Subtenants or the rights of Tenant under this Agreement. Landlord shall cause such interference to cease within twenty-four (24) hours after receipt of notice of interference from Tenant. In the event any such interference does not cease within the aforementioned cure period; Landlord shall cease all operations which are suspected of causing interference (except for intermittent testing to determine the cause of such interference) until the interference has been corrected.

(d) For the purposes of this Agreement, "interference" may include, but is not limited to, any use on the Property or Surrounding Property that causes electronic or physical obstruction with, or degradation of, the communications signals from the Communication Facility.

(e) Tenant, its employees, Subtenants, agents, vendors and contractors, shall not interfere with the operations of the Landlord.

(f) The Tenant agrees to require its subtenants to operate their equipment so as to not create unreasonable radio frequency interference with the properly licensed and operatingtransmissions of the Landlord. In the event such interference occurs, Tenant agrees to notify any subtenant within 48 hours to correct such interference or to cease its use of its equipment located on the Facility.

9. <u>INDEMNIFICATION.</u>

(a) Tenant agrees to indemnify, defend and hold Landlord harmless from and against any and all injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses (including reasonable attorneys' fees and court costs) resulting from or arising out of the negligence or willful misconduct of Tenant, except to the extent such claims or damages are caused by the negligence or willful misconduct of Landlord, its employees, agents or independent contractors.

(b) Landlord agrees to indemnify, defend and hold Tenant harmless from and against any and all injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses (including reasonable attorneys' fees and court costs) resulting from or arising out of the negligence or willful misconduct of Landlord, its employees or agents, except to the extent such claims or damages are caused by the negligence or willful misconduct of Tenant, its employees, agents or independent contractors.

(c) The indemnified party: (i) shall promptly provide the indemnifying party with written notice of any claim, demand, lawsuit, or the like for which it seeks indemnification pursuant to this Section and provide the indemnifying party with copies of any demands, notices, summonses, or legal papers received in connection with such claim, demand, lawsuit, or the like; (ii) shall not settle any such claim, demand, lawsuit, or the like without the prior written consent of the indemnifying party; and (iii) shall fully cooperate with the indemnifying party in the defense of the claim, demand, lawsuit, or the like. A delay in notice shall not relieve the indemnifying party of its indemnity obligation, except (1) to the extent the indemnifying party can show it was prejudiced by the delay; and (2) the indemnifying party shall not be liable for any settlement or litigation expenses incurred before the time when notice is given.

10. WARRANTIES.

(a) Tenant and Landlord each acknowledge and represent that it is duly organized, validly existing and in good standing and has the right, power and authority to enter into this Agreement and bind itself hereto through the party set forth as signatory for the party below.

(b) Landlord represents, warrants and agrees that: (i) Landlord solely owns the Property as a legal lot in fee simple, or controls the Property by lease or license; (ii) the Property is not and will not be encumbered by any liens, restrictions, mortgages, covenants, conditions, easements, leases, or any other agreements of record or not of record, which would adversely affect Tenant's Permitted Use and enjoyment of the Premises under this Agreement; (iii) as long as Tenant is not in default then Landlord grants to Tenant sole, actual, quiet and peaceful use, enjoyment and possession of the Premises without hindrance or ejection by any persons lawfully claiming under Landlord; (iv) Landlord's execution and performance of this Agreement will not violate any laws, ordinances, covenants or the provisions of any mortgage, lease or other agreement binding on Landlord; and (v) if the Property is or becomes encumbered by a deed to secure a debt, mortgage or other security interest, Landlord will provide promptly to Tenant a mutually agreeable subordination, non-disturbance and attornment agreement executed by Landlord and the holder of such security interest.

(c) The Tenant being familiar with the physical condition of the Property agrees to lease the Property in an “As-Is”, “Where-Is” condition with all faults and conditions thereon. Tenant acknowledges that except as expressly set forth in this lease, neither Landlord not agent of Landlord has made any representation or warranty, express or implied, as to the physical condition of the Property. The Tenant waives any implied warranty that the property is suitable for the permitted use.

11. ENVIRONMENTAL.

(a) Landlord represents and warrants that, except as may be identified on Exhibit 2 attached to this Agreement, (i) the Property, as of the date of this Agreement, is free of hazardous substances, including asbestos-containing materials and lead paint, and (ii) the Property has never been subject to any contamination or hazardous conditions resulting in any environmental investigation, inquiry or remediation. Landlord and Tenant agree that each will be responsible for compliance with any and all applicable governmental laws, rules, statutes, regulations, codes, ordinances, or principles of common law regulating or imposing standards of liability or standards of conduct with regard to protection of the environment or worker health and safety, as may now or at any time hereafter be in effect, to the extent such apply to that party's activity conducted in or on the Property

(b) Landlord and Tenant agree to hold harmless and indemnify the other from, and to assume all duties, responsibilities and liabilities at the sole cost and expense of the indemnifying party for, payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation or proceeding ("**Claims**"), to the extent arising from that party's breach of its obligations or representations under Section 11(a). Landlord agrees to hold harmless and indemnify Tenant from, and to assume all duties, responsibilities and liabilities at the sole cost and expense of Landlord for, payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any Claims, to the extent arising from subsurface or other contamination of the Property with hazardous substances prior to the Effective Date of this Agreement or from such contamination caused by the acts or omissions of Landlord during the Term. Tenant agrees to hold harmless and indemnify Landlord from, and to assume all duties, responsibilities and liabilities at the sole cost and expense of Tenant for, payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any Claims, to the extent arising from hazardous substances brought onto the Property by Tenant.

(c) The indemnifications of this Section 11 specifically include reasonable costs, expenses and fees incurred in connection with any investigation of Property conditions or any clean-up, remediation, removal or restoration work required by any governmental authority. The provisions of this Section 11 will survive the expiration or termination of this Agreement.

(d) In the event Tenant becomes aware of any hazardous substances on the Property, or any environmental, health or safety condition or matter relating to the Property, that, in Tenant's sole determination, renders the condition of the Premises or Property unsuitable for Tenant's use, or if Tenant believes that the leasing or continued leasing of the Premises would expose Tenant to undue risks of liability to a government agency or other third party, Tenant will have the right, in addition to any other rights it may have at law or in equity, to terminate this Agreement upon written notice to Landlord.

12. <u>ACCESS.</u> At all times throughout the Term of this Agreement, and at no additional charge to Tenant, Tenant, its Subtenants, employees, agents, and subcontractors, will have twenty-four (24) hour per day, seven (7) day per week pedestrian and vehicular access ("**Access**") to and over the Property, from an open and improved public right of way to the Premises, for the installation, maintenance and operation of the Communication Facility and any utilities, including fiber, serving the Premises. As may be described more fully in **Exhibit 1**, Landlord grants to Tenant an easement for such Access and Landlord agrees to provide to Tenant such codes, keys and other instruments necessary for such Access at no additional cost to Tenant. Upon Tenant's request, Landlord will execute a separate recordable easement evidencing this right. As necessary, Landlord agrees to execute a letter granting Tenant Access to the Property; upon Tenant's request, Landlord shall execute additional letters during the Term. Landlord acknowledges that in the event Tenant cannot obtain Access to the Premises, Tenant shall incur significant damage. If Landlord fails to provide the Access granted by this Section 12, such failure shall be a default under this Agreement. In connection with such default, in addition to any other rights or remedies available to Tenant under this Agreement or at law or equity, Landlord shall pay Tenant, as liquidated damages and not as a penalty, $500.00 per day in consideration of Tenant's damages until Landlord cures such default. Landlord and Tenant agree that Tenant's damages in the event of a denial of Access are difficult, if not impossible, to ascertain, and the liquidated damages set forth above are a reasonable approximation of such damages. Tenant's Access shall not impede the Landlord's operations.

13. <u>REMOVAL/RESTORATION.</u> All portions of the Communication Facility brought onto the Property by Tenant will be and remain Tenant's personal property and, at Tenant's option, may be removed by Tenant at any time during or after the Term. Upon the expiration or earlier termination of this Agreement, Tenant will remove the Communications Facility (except footings) and restore the Premises to its condition on the Effective Date, reasonable wear and tear and casualty damage excepted. Landlord covenants and agrees that no part of the Communication Facility constructed, erected or placed on the Premises by Tenant will become, or be considered as being affixed to or a part of, the Property, it being the specific intention of Landlord that all improvements of every kind and nature constructed, erected or placed by Tenant on the Premises will be and remain the property of Tenant and may be removed by Tenant at any time during or after the Term. Any portions of the Communication Facility that Tenant does not remove within one hundred twenty (120) days after the later of the end of the Term and cessation of Tenant's operations at the Premises shall be deemed abandoned and owned by Landlord. Notwithstanding the foregoing, Tenant will not be responsible for the replacement of any trees, shrubs or other vegetation.

14. MAINTENANCE/UTILITIES.

(a) Tenant will keep and maintain the Premises in good condition, reasonable wear and tear and damage from the elements excepted. Landlord will maintain and repair the Property and access thereto and all areas of the Premises where Tenant does not have exclusive control, in good and tenantable condition, subject to reasonable wear and tear and damage from the elements

(b) If applicable, Tenant will be responsible for paying on a monthly or quarterly basis all utilities charges for electricity, telephone service or any other utility used or consumed by Tenant on the Premises. In the event Tenant cannot secure its own metered electrical supply, Tenant will have the right, at its own cost and expense, to submeter from Landlord. When submetering is required under this Agreement, Landlord will read the meter and provide Tenant with an invoice and usage data on a monthly basis. Landlord agrees that it will not include a markup on the utility charges. Landlord further agrees to provide the usage data and invoice on forms provided by Tenant and to send such forms to such address and/or agent designated by Tenant. Tenant will remit payment within thirty(30) days of receipt of the usage data and required forms. As noted in Section 4(c) above, any utility fee recovery by Landlord is limited to a twelve (12) month period. If Tenant submeters electricity from Landlord, Landlord agrees to give Tenant at least twenty-four (24) hours advance notice of any planned interruptions of said electricity. Landlord acknowledges that Tenant provides a communication service which requires electrical power to operate and must operate twenty-four (24) hours per day, seven (7) days per week. If the interruption is for an extended period of time, in Tenant's reasonable determination, Landlord agrees to allow Tenant the right to bring in a temporary source of power for the duration of the interruption. Landlord will not be responsible for interference with, interruption of or failure, beyond the reasonable control of Landlord, of such services to be furnished or supplied by Landlord.

(c) Landlord hereby grants to any company providing utility or similar services, including electric power, fiber and telecommunications, to Tenant an easement over the Property, from an open and improved public right of way to the Premises, and upon the Premises, for the purpose of constructing, operating and maintaining such lines, wires, circuits, and conduits, associated equipment cabinets and such appurtenances thereto, as such companies may from time to time require in order to provide such services to the Premises. Upon Tenant's or the service company's request, Landlord will execute a separate recordable easement evidencing this grant, at no cost to Tenant or the service company.

15. DEFAULT AND RIGHT TO CURE.

(a) The following will be deemed a default by Tenant and a breach of this Agreement: (i) non-payment of Rent if such Rent remains unpaid for more than thirty (30) days after written notice from Landlord of such failure to pay; or (ii) Tenant's failure to perform any other term or condition under this Agreement within forty-five (45) days after written notice from Landlord specifying the failure. No such failure, however, will be deemed to exist if Tenant has commenced to cure such default within such period and provided that such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Tenant. If Tenant remains in default beyond any applicable cure period, Landlord will have the right to exercise any and all rights and remedies available to it under law and equity. In the event Landlord elects to terminate this Agreement due to a default by Tenant, it shall continue to honor all leasehold and or license commitments made by Tenant through the expiration of the Term of any such commitment, it being intended hereby that each such commitment shall survive the early termination of this Agreement.

(b) The following will be deemed a default by Landlord and a breach of this Agreement: (i) Landlord's failure to provide Access to the Premises as required by Section 12 of this Agreement within twenty-four (24) hours after written notice of such failure; (ii) Landlord's failure to cure an interference problem as required by Section 8 of this Agreement within twenty-four (24) hours after written notice of such failure; or (iii) Landlord's failure to perform any term, condition or breach of any warranty or covenant under this Agreement within forty-five (45) days after written notice from Tenant specifying the failure. No such failure, however, will be deemed to exist if Landlord has commenced to cure the default within such period and provided such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Landlord. If Landlord remains in default beyond any applicable cure period, Tenant will have: (i) the right to cure Landlord's default and to deduct the costs of such cure from any monies due to Landlord from Tenant, and (ii) any and all other rights available to it under law and equity.

16. ASSIGNMENT/SUBLEASE. Tenant will have the right to assign this Agreement or sublease the Premises and its rights herein, in whole or in part, without Landlord's consent. If there is an assignment of the Agreement that results in another party becoming responsible for the terms of this Agreement, Tenant will provide prompt notification of the assignment which shall include the identity of the new party, their address, the date on which the assignment shall take effect and documentation demonstrating that the new party is aware of and has agreed to the terms of this Agreement. Upon notification to Landlord of such assignment, Tenant will be relieved of all future performance, liabilities and obligations under this Agreement to the extent of such assignment.

17. NOTICES. All notices, requests and demands hereunder will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Formal notices will be addressed to the parties as follows

If to Tenant (Formal): Level-Up Towers, LLC
c/o Foresite Group
Attn: Dustin Baily
Re: Opelika, Floral Park
3740 Davinci Ct. Suite 100
Peachtree Corners, GA 30092

Tenant (Informal) : David Grigonis
Email: dgrigonis@fg-inc.net
Phone: (410) 365-5238

If to Landlord (Formal): City of Opelika
ATTN: Mayor
204 S 7th Street,
Opelika, AL 36803

Landlord Informal Contact:
Email: jmotley@opelika-al.gov
Phone No. 334-705-5150

Either party hereto may change the place for the giving of notice to it by thirty (30) days' prior written notice to the other as provided herein.

18. <u>CONDEMNATION.</u> In the event Landlord receives notification of any condemnation proceedings affecting the Property, Landlord will provide notice of the proceeding to Tenant within forty-eight (48) hours. If a condemning authority takes all of the Property, or a portion sufficient, in Tenant's sole determination, to render the Premises unsuitable for Tenant, this Agreement will terminate as of the date the title vests in the condemning authority. The parties will each be entitled to pursue their own separate awards in the condemnation proceeds, which for Tenant will include, where applicable, the value of its Communication Facility, moving expenses, prepaid Rent, and business dislocation expenses. Tenant will be entitled to reimbursement for any prepaid Rent on a prorata basis.

19. <u>CASUALTY.</u> Landlord will provide notice to Tenant of any casualty or other harm affecting the Property within forty-eight (48) hours of the casualty or other harm. If any part of the Communication Facility or Property is damaged by casualty or other harm as to render the Premises unsuitable, in Tenant's sole determination, then Tenant may terminate this Agreement by providing written notice to Landlord, which termination will be effective as of the date of such casualty or other harm. Upon such termination, Tenant will be entitled to collect all insurance proceeds payable to Tenant on account thereof and to be reimbursed for any prepaid Rent on a prorata basis. Landlord agrees to permit Tenant to place temporary transmission and reception facilities on the Property, but only until such time as Tenant is able to activate a replacement transmission facility at another location; notwithstanding the termination of this Agreement, such temporary facilities will be governed by all of the terms and conditions of this Agreement, including Rent. If Landlord or Tenant undertakes to rebuild or restore the Premises and/or the Communication Facility, as applicable, Landlord agrees to permit Tenant to place temporary transmission and reception facilities on the Property at no additional Rent until the reconstruction of the Premises and/or the Communication Facility is completed. If Landlord determines not to rebuild or restore the Property, Landlord will notify Tenant of such determination within thirty (30) days after the casualty or other harm. If Landlord does not so notify Tenant and Tenant decides not to terminate under this Section, then Landlord will promptly rebuild or restore any portion of the Property interfering with or required for Tenant's Permitted Use of the Premises to substantially the same condition as existed before the casualty or other harm. Landlord agrees that the Rent shall be abated until the Property and/or the Premises are rebuilt or restored, unless Tenant places temporary transmission and reception facilities on the Property.

20. <u>WAIVER OF LANDLORD'S LIENS.</u> Landlord waives any and all lien rights it may have, statutory or otherwise, concerning the Communication Facility or any portion thereof. The Communication Facility shall be deemed personal property of the Tenant for purposes of this Agreement, regardless of whether any portion is deemed real or personal property under applicable law; Landlord consents to Tenant's right to remove all or any portion of the Communication Facility from time to time in Tenant's sole discretion and without Landlord's consent.

21. <u>TAXES.</u>

(a) If applicable, Landlord shall be responsible for timely payment of all taxes and assessments levied upon the lands, improvements and other property of Landlord including any such taxes that may be calculated by the taxing authority using any method, including the income method. Tenant shall be responsible for any taxes and assessments attributable to and levied upon Tenant's leasehold improvements on the Premises if and as set forth in this Section 21. Nothing herein shall require Tenant to pay any inheritance, franchise, income, payroll, excise, privilege, rent, capital stock, stamp, documentary, estate or profit tax, or any tax of similar nature, that is or may be imposed upon Landlord.

(b) In the event Landlord receives a notice of assessment with respect to which taxes or assessments are imposed on Tenant's leasehold improvements on the Premises, Landlord shall provide Tenant with copies of each such notice immediately upon receipt, but in no event later than thirty (30) days after the date of such notice of assessment. If Landlord does not provide such notice or notices to Tenant within such time period, Landlord shall be responsible for payment of the tax or assessment set forth in the notice, and Landlord shall not have the right to reimbursement of such amount from Tenant. If Landlord provides a notice of assessment to Tenant within such time period and requests reimbursement from Tenant as set forth below, then Tenant shall reimburse Landlord for the tax or assessments identified on the notice of assessment on Tenant's leasehold improvements, which has been paid by Landlord. If Landlord seeks reimbursement from Tenant, Landlord shall, no later than thirty (30) days after Landlord's payment of the taxes or assessments for the assessed tax year, provide Tenant with written notice including evidence that Landlord has timely paid same, and Landlord shall provide to Tenant any other documentation reasonably requested by Tenant to allow Tenant to evaluate the payment and to reimburse Landlord.

(c) For any tax amount for which Tenant is responsible under this Agreement, Tenant shall have the right to contest, in good faith, the validity or the amount thereof using such administrative, appellate or other proceedings as may be appropriate in the jurisdiction, and may defer payment of such obligations, pay same under protest, or take such other steps as Tenant may deem appropriate. This right shall include the ability to institute any legal, regulatory or informal action in the name of Landlord, Tenant, or both, with respect to the valuation of the Premises. Landlord shall cooperate with respect to the commencement and prosecution of any such proceedings and will execute any documents required therefor. The expense of any such proceedings shall be borne by Tenant and any refunds or rebates secured as a result of Tenant's action shall belong to Tenant, to the extent the amounts were originally paid by Tenant. In the event Tenant notifies Landlord by the due date for assessment of Tenant's intent to contest the assessment, Landlord shall not pay the assessment pending conclusion of the contest, unless required by applicable law.

(d) Landlord shall not split or cause the tax parcel on which the Premises are located to be split, bifurcated, separated or divided without the prior written consent of Tenant.

(e) Tenant shall have the right but not the obligation to pay any taxes due by Landlord hereunder if Landlord fails to timely do so, in addition to any other rights or remedies of Tenant. In the event that Tenant exercises its rights under this Section 21(e) due to such Landlord default, Tenant shall have the right to deduct such tax amounts paid from any monies due to Landlord from Tenant as provided in Section 15(b), provided that Tenant may exercise such right without having provided to Landlord notice and the opportunity to cure per Section 15(b).

(f) Any tax-related notices shall be sent to Tenant in the manner set forth in Section 17. Promptly after the Effective Date of this Agreement, Landlord shall provide the Tenant's address to the taxing authority for the authority's use in the event the authority needs to communicate with Tenant. In the event that Tenant's tax address changes by notice to Landlord, Landlord shall be required to provide Tenant's new tax address to the taxing authority or authorities.

(g) Notwithstanding anything to the contrary contained in this Section 21, Tenant shall have no obligation to reimburse any tax or assessment for which the Landlord is reimbursed or rebated by a third party.

22. SALE OF PROPERTY.

(a) Landlord shall not be prohibited from the selling, leasing or use of any of the Property or the Surrounding Property except as provided below.

(b) If Landlord, at any time during the Term of this Agreement, decides to rezone or subdivide all or any part of the Premises, or all or any part of the Property or Surrounding Property, or to sell or otherwise transfer all or other parts of Premises, or any part of the Property or Surrounding Property, to a purchaser other than Tenant, Landlord shall promptly notify Tenant in writing, and such rezoning, sale, subdivision or transfer shall be subject to this Agreement and Tenant's rights hereunder. In the event of a change in ownership, transfer or sale of the Property, within ten (10) days of such transfer, Landlord or its successor shall send the documents listed below in this subsection (b) to Tenant. Until Tenant receives all such documents, Tenant shall not be responsible for any failure to make payments under this Agreement and reserves the right to hold payments due under this Agreement.

i. Old deed to Property
ii. New deed to Property
iii. Bill of Sale or Transfer
iv. Copy of current Tax Bill
v. New IRS Form W-9
vi. Completed and Signed TND Payment Direction Form
vii. Full contact information for new Landlord including phone number(s)

(c) Landlord agrees not to sell, lease or use any areas of the Property or Surrounding Property for the installation, operation or maintenance of other wireless communications facilities if such installation, operation or maintenance would interfere with Tenant's Permitted Use or communications equipment as determined by radio propagation tests performed by Tenant in its sole discretion. Landlord or Landlord's prospective purchaser shall reimburse Tenant for any costs and expenses of such testing. If the radio frequency propagation tests demonstrate levels of interference unacceptable to Tenant, Landlord shall be prohibited from selling, leasing or using any areas of the Property or the Surrounding Property for purposes of any installation, operation or maintenance of any other wireless communications facility or equipment.

(d) The provisions of this Section shall in no way limit or impair the obligations of Landlord under this Agreement, including interference and access obligations.

23. RENTAL STREAM OFFER. If at any time after the date of this Agreement, Landlord receives a bona fide written offer from a third party seeking an assignment or transfer of the Rent payments associated with this Agreement ("**Rental Stream Offer**"), Landlord shall immediately furnish Tenant with a copy of the Rental Stream Offer. Tenant shall have the right within thirty (30) days after it receives such copy to match the Rental Stream Offer and agree in writing to match the terms of the Rental Stream Offer. Such writing shall be in the form of a contract substantially similar to the Rental Stream Offer. If Tenant chooses not to exercise this right or fails to provide written notice to Landlord within the thirty (30) day period, Landlord may assign the right to receive Rent payments pursuant to the Rental Stream Offer, subject to the terms of this Agreement. If Landlord attempts to assign or transfer Rent payments without complying with this Section, the assignment or transfer shall be void. Tenant shall not be responsible for any failure to make payments under this Agreement and reserves the right to hold payments due under this Agreement until Landlord complies with this Section.

24. MISCELLANEOUS.

(a) **Amendment/Waiver.** This Agreement cannot be amended, modified or revised unless documented in writing and signed by Landlord and Tenant. No provision may be waived except in writing signed by both parties. The failure by a party to enforce any provision of this Agreement or to require performance by the other party will not be construed to be a waiver, or in any way affect the right of either party to enforce such provision thereafter.

(b) **Memorandum/Short Form Lease.** Contemporaneously with the execution of this Agreement, the parties will execute a recordable Memorandum or Short Form of Lease substantially in the form attached as **Exhibit 3**. Either party may record this Memorandum or Short Form of Lease at any time during the Term, in its absolute discretion. Thereafter during the Term of this Agreement, either party will, at any time upon fifteen (15) business days' prior written notice from the other, execute, acknowledge and deliver to the other a recordable Memorandum or Short Form of Lease.

(c) **Limitation of Liability**. Except for the indemnity obligations set forth in this Agreement, and otherwise notwithstanding anything to the contrary in this Agreement, Tenant and Landlord each waives any claims that each may have against the other with respect to consequential, incidental or special damages, however caused, based on any theory of liability.

(d) **Compliance with Law**. Tenant agrees to comply with all federal, state and local laws, orders, rules and regulations ("**Laws**") applicable to Tenant's use of the Communication Facility on the Property. Landlord agrees to comply with all Laws relating to Landlord's ownership and use of the Property and any improvements on the Property. If for any reason the Tenant's use of the Property fails to comply with any federal, state or local law and the Tenant fails to bring its use in compliance within ninety (90) days' written notice of such non-compliance from the Landlord, this Lease shall be terminable by the Landlord.

(e) **Bind and Benefit.** The terms and conditions contained in this Agreement will run with the Property and bind and inure to the benefit of the parties, their respective heirs, executors, administrators, successors and assigns.

(f) **Entire Agreement.** This Agreement and the exhibits attached hereto, all being a part hereof, constitute the entire agreement of the parties hereto and will supersede all prior offers, negotiations and agreements with respect to the subject matter of this Agreement. Exhibits are numbered to correspond to the Section wherein they are first referenced. Except as otherwise stated in this Agreement, each party shall bear its own fees and expenses (including the fees and expenses of its agents, brokers, representatives, attorneys, and accountants) incurred in connection with the negotiation, drafting, execution and performance of this Agreement and the transactions it contemplates.

(g) **Governing Law.** This Agreement will be governed by the laws of the state in which the Premises are located, without regard to conflicts of law.

(h) **Interpretation.** Unless otherwise specified, the following rules of construction and interpretation apply: (i) captions are for convenience and reference only and in no way define or limit the construction of the terms and conditions hereof; (ii) use of the term "including" will be interpreted to mean "including but not limited to"; (iii) whenever a party's consent is required under this Agreement, except as otherwise stated in the Agreement or as same may be duplicative, such consent will not be unreasonably withheld, conditioned or delayed; (iv) exhibits are an integral part of this Agreement and are incorporated by reference into this Agreement; (v) use of the terms "termination" or "expiration" are interchangeable; (vi) reference to a default will take into consideration any applicable notice, grace and cure periods; (vii) to the extent there is any issue with respect to any alleged, perceived or actual ambiguity in this Agreement, the ambiguity shall not be resolved on the basis of who drafted the Agreement; (viii) the singular use of words includes the plural where appropriate and (ix) if any provision of this Agreement is held invalid, illegal or unenforceable, the remaining provisions of this Agreement shall remain in full force if the overall purpose of the Agreement is not rendered impossible and the original purpose, intent or consideration is not materially impaired.

(i) **Affiliates.** All references to "Tenant" shall be deemed to include any Affiliate of Tenant using the Premises for any Permitted Use or otherwise exercising the rights of Tenant pursuant to this Agreement. "Affiliate" means with respect to a party to this Agreement, any person or entity that (directly or indirectly) controls, is controlled by, or under common control with, that party. "Control" of a person or entity means the power (directly or indirectly) to direct the management or policies of that person or entity, whether through the ownership of voting securities, by contract, by agency or otherwise.

(j) **Survival**. Any provisions of this Agreement relating to indemnification shall survive the termination or expiration hereof. In addition, any terms and conditions contained in this Agreement that by their sense and context are intended to survive the termination or expiration of this Agreement shall so survive.

(k) **W-9.** As a condition precedent to payment Landlord agrees to provide Tenant with a completed IRS Form W-9, or its equivalent, upon execution of this Agreement and at such other times as may be reasonably requested by Tenant, including any change in Landlord's name or address.

(l) **Execution/No Option.** The submission of this Agreement to any party for examination or consideration does not constitute an offer, reservation of or option for the Premises based on the terms set forth herein. This Agreement will become effective as a binding Agreement only upon the handwritten legal execution, acknowledgment and delivery hereof by Landlord and Tenant. This Agreement may be executed in two (2) or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties. All parties need not sign the same counterpart.

(m) **Attorneys' Fees.** In the event that any dispute between the parties related to this Agreement should result in litigation, the prevailing party in such litigation shall be entitled to recover from the other party all reasonable fees and expenses of enforcing any right of the prevailing party, including without limitation, reasonable attorneys' fees and expenses. Prevailing party means the party determined by the court to have most nearly prevailed even if such party did not prevail in all matters. This provision will not be construed to entitle any party other than Landlord, Tenant and their respective Affiliates to recover their fees and expenses.

(n) **WAIVER OF JURY TRIAL**. EACH PARTY, TO THE EXTENT PERMITTED BY LAW, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING UNDER ANY THEORY OF LIABILITY ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT OR THE TRANSACTIONS IT CONTEMPLATES.

(o) **Force Majeure**. The time for performance by Landlord or Tenant for any term, provision or covenant of this Lease is to be deemed extended by time loss due to delays resulting from acts of God, strikes, civil commotion, terrorist act, epidemic, pandemic, quarantine, riots, war, natural catastrophes, floods, material or labor restrictions by governmental authority, and any other cause within the control of Landlord or Tenant as the case may be.

[SIGNATURES APPEAR ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be effective as of the last date written below.

"**LANDLORD**"

City of Opelika

By: ______________________________
Print Name: Gary Fuller
Its: Mayor
Date: ____________________________

"**TENANT**"

Level-Up Towers, LLC,
a Georgia limited liability company

By: ______________________________
Print Name: Erik Johnson
Its: President
Date: ____________________________

[ACKNOWLEDGMENTS APPEAR ON THE NEXT PAGE]

LANDLORD ACKNOWLEDGMENT

Acknowledgment of Individual acting in his Own Right.

State of Alabama

City of Opelika

On this _____ day of __________ 20__, before me personally appeared _____________________________, to me known to be the person (or persons) described in and who executed the foregoing instrument, and acknowledged that he (or they) executed the same as his (or their) free act and deed.

____

Notary Public

Print Name: __________________________

My commission expires:________________

TENANT ACKNOWLEDGMENT

State of Georgia

County of Gwinnett

On this ______ day of __________ 20__, before me appeared_____________________________ to me personally known, who, being by me duly sworn (or affirmed), did say that he is the President of Level-Up Towers, LLC, a Georgia limited liability company, and that said instrument was signed on behalf of said limited liability company, by consent of its members, and acknowledged said instrument to be the free act and deed of said limited liability company.

____

Notary Public

Print Name: __________________________

My commission expires:________________

EXHIBIT 1

DESCRIPTION OF PREMISES

Page ___ of ___

to the Option and Lease Agreement dated ________________, 20___, by and between **The CITY OF OPELIKA**, as Landlord, and Level-Up Towers, LLC, a Georgia limited liability company, as Tenant.

The Property is legally described as follows:

LEASE AREA --- AS SURVEYED

A lease area of land situated in the Northeast ¼ of the Southeast ¼ of Section 12, Township 19 North, Range 26 East, Lee County, Alabama, and being more particularly described as follows:

Commence at an open top iron being the Southeast corner of a parcel identified as PID# 43-09-01-12-4-001-013.000 located at the intersection of the North right of way line of Elliott Avenue and the West right of way line of Westwood Street, and having Alabama State Plane Coordinates (East) of N: 782250.41 / E: 792345.98; thence N 68° 20' 42"W a distance of 263.57' to a 5/8" capped rebar (Bailey Land Group CA 899LS) and the Point of Beginning of the following described lease area; thence S 42° 16' 24"W a distance of 40.00' to a 5/8" capped rebar (Bailey Land Group CA 899LS); thence N 47° 43' 36"W a distance of 62.50' to a 5/8" capped rebar (Bailey Land Group CA 899LS); thence N 42° 16' 24"E a distance of 40.00' to a 5/8" capped rebar (Bailey Land Group CA 899LS); thence S 47° 43' 36"E a distance of 62.50' back to the Point of Beginning. Said lease area containing 2,500 SQ FT (0.06 acres), more or less.

30' ACCESS/POWER/FIBER EASEMENT --- AS SURVEYED

An easement of land situated in the Northeast ¼ of the Southeast ¼ of Section 12, Township 19 North, Range 26 East, Lee County, Alabama, and being more particularly described as follows:

Commence at an open top iron being the Southeast corner of a parcel identified as PID# 43-09-01-12-4-001-013.000 located at the intersection of the North right of way line of Elliott Avenue and the West right of way line of Westwood Street, and having Alabama State Plane Coordinates (East) of N: 782250.41 / E: 792345.98; thence N 68° 20' 42"W a distance of 263.57' to a 5/8" capped rebar (Bailey Land Group CA 899LS); thence S 42° 16' 24"W a distance of 10.00' to the Point of Beginning of the following described 30' access/power/fiber easement; thence S 47° 43' 36"E a distance of 30.00' to a point; thence S 42° 16' 24"W a distance of 39.23' to a point; thence S 0° 11' 02"W a distance of 39.83' to a point along the North right of way line of Elliott Avenue; thence along said right of way N 89° 48' 58"W a distance of 30.00' to a point; thence leaving said right of way line N 0° 11' 02"E a distance of 38.94' to a point; thence N 47° 43' 36"W a distance of 39.59' to a point; thence N 42° 16' 24"E a distance of 30.00' to a point; thence S 47° 43' 36"E a distance of 31.25' to a 5/8" capped rebar (Bailey Land Group CA 899LS); thence N 42° 16' 24"E a distance of 30.00' back to the Point of Beginning. Said easement containing 3,694 SQ FT (0.08 acres), more or less.

EXHIBIT 1

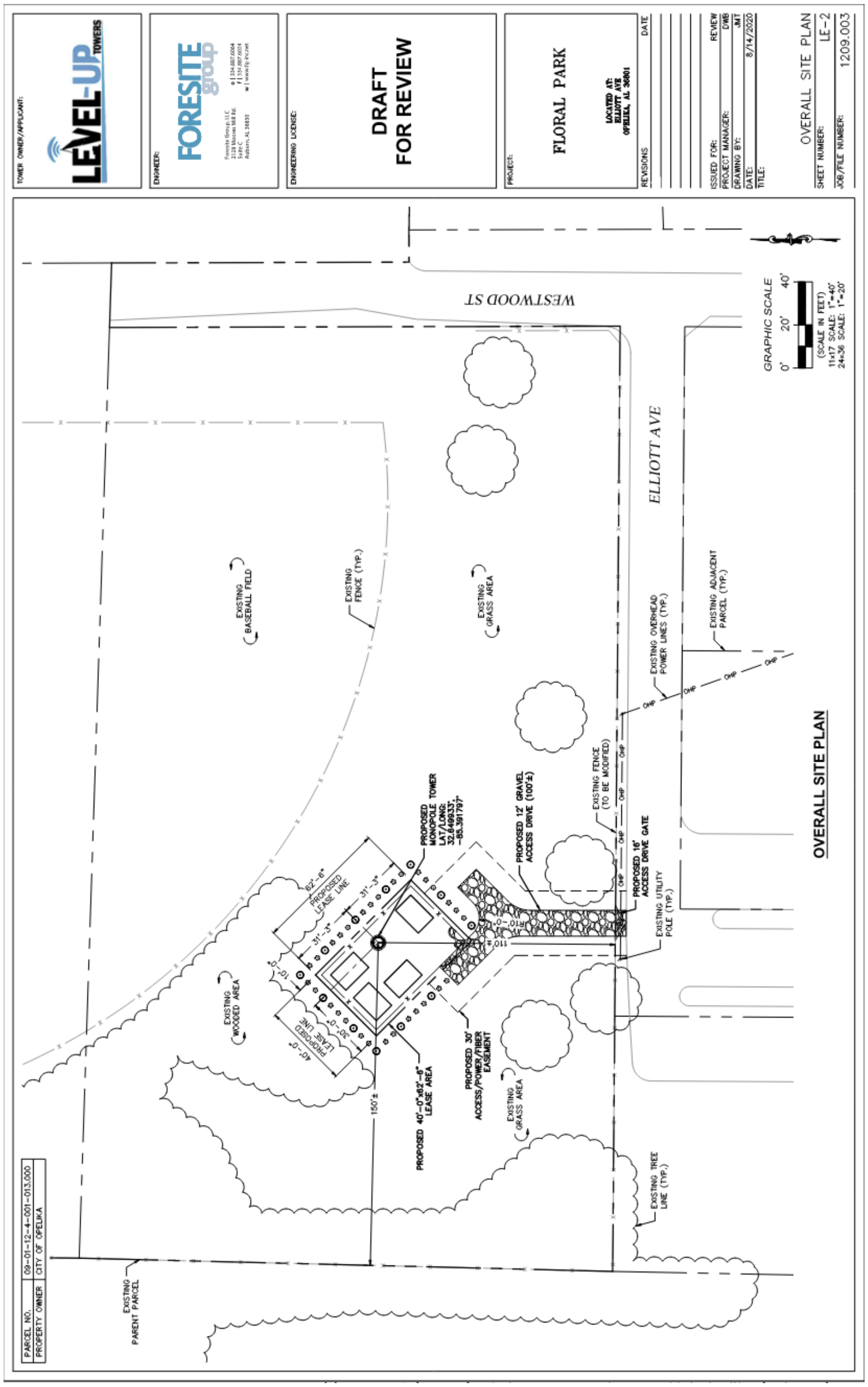
DESCRIPTION OF PREMISES

Page ___ of ___

The Premises are described and/or depicted as follows:

Parcel ID#: 0901124001013000
Coordinates: Latitude: 32.649933 / Longitude: -85391797
Ground Elevation: ~788 feet AMSL

(see site plan on next page)



Notes:

1. THIS EXHIBIT MAY BE REPLACED BY A LAND SURVEY AND/OR CONSTRUCTION DRAWINGS OF THE PREMISES ONCE RECEIVED BY TENANT.
2. ANY SETBACK OF THE PREMISES FROM THE PROPERTY'S BOUNDARIES SHALL BE THE DISTANCE REQUIRED BY THE APPLICABLE GOVERNMENTAL AUTHORITIES.
3. WIDTH OF ACCESS ROAD SHALL BE THE WIDTH REQUIRED BY THE APPLICABLE GOVERNMENTAL AUTHORITIES, INCLUDING POLICE AND FIRE DEPARTMENTS.

EXHIBIT 2

ENVIRONMENTAL DISCLOSURE

Landlord represents and warrants that the Property, as of the date of this Agreement, is free of hazardous substances except as follows:

1. NONE.

EXHIBIT 3

MEMORANDUM OF LEASE

[FOLLOWS ON NEXT PAGE]

MEMORANDUM OF LEASE

Prepared by:
David Grigonis
Level-Up Towers/Foresite Group
3740 Davinci Ct. Suite 100, Peachtree Corners, GA 30092

Return to:
David Grigonis
Level-Up Towers/Foresite Group
3740 Davinci Ct. Suite 100, Peachtree Corners, GA 30092

Re: Opelika, Floral Park
State: Alabama
County: City of Opelika

MEMORANDUM
OF
LEASE

This Memorandum of Lease is entered into on this ____ day of ______________, 20___, by and between **The CITY OF OPELIKA**, having a mailing address of 204 S 7th Street, Opelika, AL 36803 ("**Landlord**") and Level-Up Towers, LLC, a Georgia limited liability company, having a mailing address of 3740 Davinci Ct. Suite 100, Peachtree Corners, GA 30092 ("**Tenant**").

1. Landlord and Tenant entered into a certain Option and Lease Agreement ("**Agreement**") on the _____ day of ________________, 20___, for the purpose of installing, operating and maintaining a communications facility and other improvements. All of the foregoing is set forth in the Agreement.

2. The initial lease term will be Ten (10) years commencing on the effective date of written notification by Tenant to Landlord of Tenant's exercise of its option, with five (5) additional successive five (5) year options to renew.

3. The portion of the land being leased to Tenant and associated easements are described in **Exhibit 1** annexed hereto.

4. This Memorandum of Lease is not intended to amend or modify and shall not be deemed or construed as amending or modifying, any of the terms, conditions or provisions of the Agreement, all of which are hereby ratified and affirmed. In the event of a conflict between the provisions of this Memorandum of Lease and the provisions of the Agreement, the provisions of the Agreement shall control. The Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, successors, and assigns, subject to the provisions of the Agreement.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Lease as of the day and year first above written.

"**LANDLORD**"

City of Opelika

By: ______________________________
Print Name: Gary Fuller
Its: Mayor
Date: ____________________________

"**TENANT**"

Level-Up Towers, LLC,
a Georgia limited liability company

By: ______________________________
Print Name: Erik Johnson
Its: President
Date: ____________________________

[ACKNOWLEDGMENTS APPEAR ON THE NEXT PAGE]

LANDLORD ACKNOWLEDGMENT

Acknowledgment of Individual acting in his Own Right.

State of Alabama

City of Opelika

On this _____ day of __________ 20__, before me personally appeared ____________________________, to me known to be the person (or persons) described in and who executed the foregoing instrument, and acknowledged that he (or they) executed the same as his (or their) free act and deed.

____

Notary Public

Print Name: _________________________

My commission expires:________________

TENANT ACKNOWLEDGMENT

State of Georgia

County of Gwinnett

On this ______ day of __________ 20__, before me appeared Erik Johnson, to me personally known, who, being by me duly sworn (or affirmed), did say that he is the President of Level-Up Towers, LLC, a Delaware limited liability company, and that said instrument was signed on behalf of said limited liability company, by consent of its members, and acknowledged said instrument to be the free act and deed of said limited liability company.

____

Notary Public

Print Name: _________________________

My commission expires:________________

EXHIBIT 1

DESCRIPTION OF PREMISES

Page _____ of ______

to the Memorandum of Lease dated ________________, 20___, by and between **City of Opelika,** as Landlord, and Level-Up Towers, LLC, a Georgia limited liability company, as Tenant.

The Property is legally described as follows:

LEASE AREA --- AS SURVEYED

A lease area of land situated in the Northeast ¼ of the Southeast ¼ of Section 12, Township 19 North, Range 26 East, Lee County, Alabama, and being more particularly described as follows:

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30' ACCESS/POWER/FIBER EASEMENT --- AS SURVEYED

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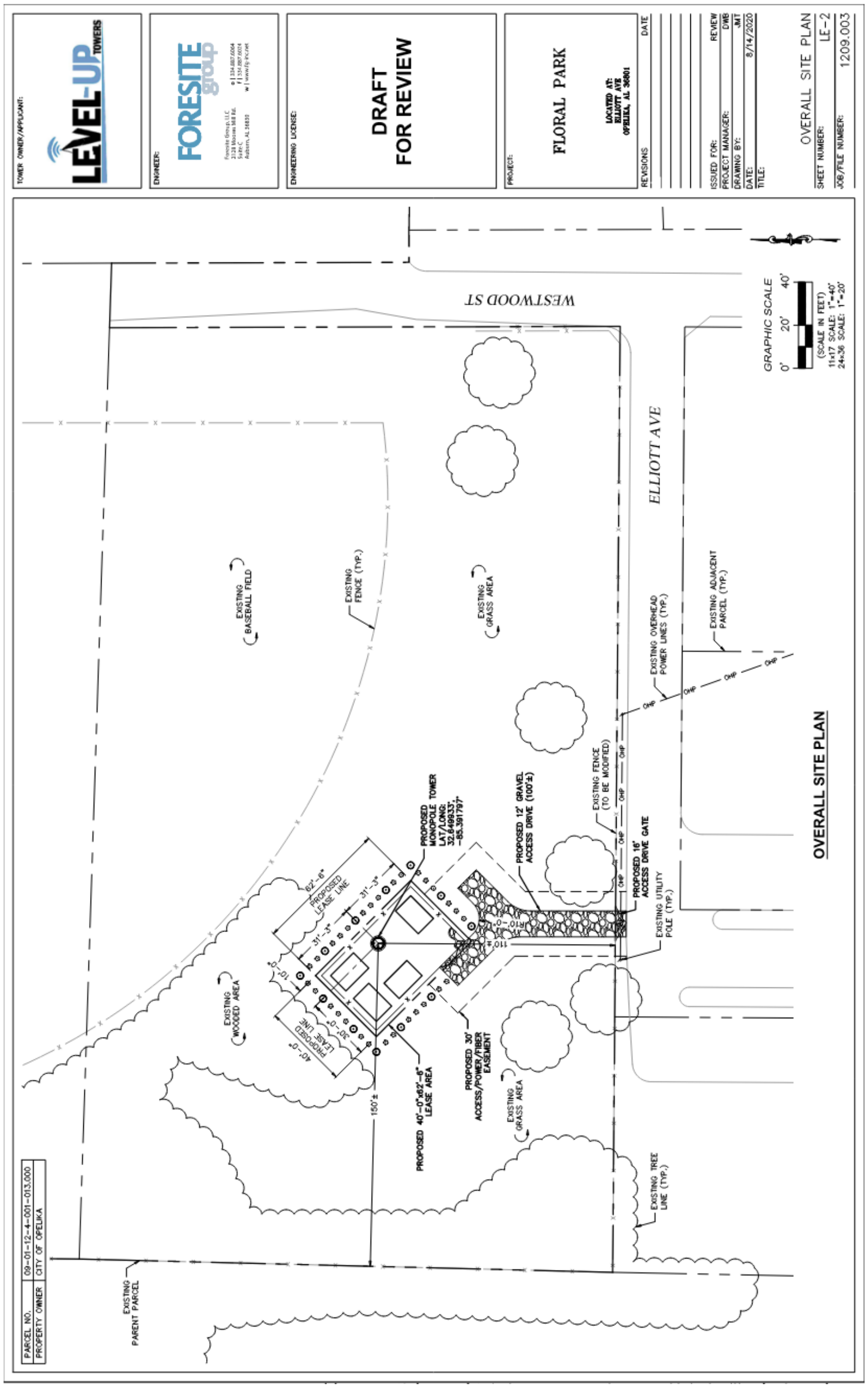
The Premises are described and/or depicted as follows:



Notes:

1. THIS EXHIBIT MAY BE REPLACED BY A LAND SURVEY AND/OR CONSTRUCTION DRAWINGS OF THE PREMISES ONCE RECEIVED BY TENANT.
2. ANY SETBACK OF THE PREMISES FROM THE PROPERTY'S BOUNDARIES SHALL BE THE DISTANCE REQUIRED BY THE APPLICABLE GOVERNMENTAL AUTHORITIES.
3. WIDTH OF ACCESS ROAD SHALL BE THE WIDTH REQUIRED BY THE APPLICABLE GOVERNMENTAL AUTHORITIES, INCLUDING POLICE AND FIRE DEPARTMENTS.

4820-4301-2813v1
2953210-000001 10/04/2020

ORDINANCE NO. 032-20-ORD

Conveyance of Real Property to SMB Land, LLC - 2nd Reading.

ORDINANCE NO.__________

ORDINANCE AUTHORIZING THE CONVEYANCE OF REAL PROPERTY TO SMB LAND, LLC

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

Section 1. It is hereby established and declared that the following described real property of the City of Opelika, Alabama, is no longer needed for public or municipal purposes, to-wit:

PARCEL A

Commencing at the southwest corner of Section 4, T-19-N, R-27-E in Opelika, Lee County, Alabama; thence N87°16'38"E, 1402.86 feet; thence N89%%D22'46"E, 500.03 feet; thence N89°22'36"E, 387.76 feet to a 1" open-top iron pin; thence N19°05'12"W, 457.42 feet to a 1/2" rebar and the True Point of Beginning of the Parcel of Land herein described; thence N19°52'48"W, 43.93 feet to a 1" open-top iron pin; thence N47°11'28"W, 461.61 feet to a 1" open-top iron pin; thence N7°38'45"W, 131.23 feet to a 1/2" rebar with cap marked LS26956; thence N8°26'13"W, 74.94 feet to a 1/2" rebar with cap marked LS26956; thence N8°18'23"W, 75.15 feet to a 1/2" rebar with cap marked LS26956; thence N8°12'10"W, 74.85 feet to a 1/2" rebar; thence N8°21'38"W, 147.44 feet to a 1/2" rebar with an unreadable cap; thence N81°44'34"E, 73.55 feet to a 1-1/2" x 2-1/2" angle iron; thence N81°32'08"E, 73.09 feet to a 1-1/2" x 2-1/2" angle iron; thence N81°31'48"E, 51.52 feet to a 1-1/2" x 2-1/2" angle iron; thence N69°38'21"E, 71.03 feet to a 1/2" rebar with cap marked LS11232; thence N69°35'40"E, 115.00 feet to a 1/2" rebar with cap marked LS11232;; thence N69°35'40"E, 89.96 feet to a 1/2" rebar;; thence N89°03'19"E, 75.72 feet to a set 1/2" rebar with cap marked LS18677 and the westerly R/W line of Douglas Street; thence, along said R/W line, southwesterly along a curve concave northwesterly and having a radius of 270.00 feet, an arc length of 23.17 feet, and a chord bearing and distance of S7°45'11"W, 23.16 feet to a 5" square concrete monument; thence S10°13'14"W, 198.80 feet to a 5" square concrete monument; thence southeasterly along a curve concave northeasterly and having a radius of 330.00 feet, an arc length of 380.10 feet, and a chord bearing and distance of S22°48'01"E, 359.43 feet to a 5" square concrete monument; thence S55°47'35"E, 460.72 feet to a 5" square concrete monument; thence southeasterly along a curve concave southwesterly and having a radius of 270.00 feet, an arc length of 198.84 feet, and a chord bearing and distance of S34°46'37"E, 194.38 feet to a set 1/2" rebar with cap marked LS18677; thence, leaving said R/W line, S89°05'29"W, 698.38 feet to the True Point of Beginning.

Containing 12.252 Acres, more or less.

PARCEL B

Commencing at the southwest corner of Section 4, T-19-N, R-27-E in Opelika, Lee County, Alabama; thence N87°16'38"E, 1402.86 feet; thence N89%%D22'46"E, 500.03 feet; thence N89°22'36"E, 387.76 feet to a 1" open-top iron pin; thence N19°05'12"W, 457.42 feet to a 1/2" rebar; thence N89°05'29"E, 698.38 feet to a set 1/2" rebar with cap marked LS18677 on the westerly R/W line of Douglas Street; thence, leaving said R/W line, N89°05'29"E, 60.75 feet to a set 1/2" rebar with cap marked LS18677 on the easterly R/W line of Douglas Street and the True Point of Beginning of the Parcel of Land herein described; thence, along said R/W line, northwesterly along a curve concave southwesterly and having a radius of 330.00 feet, an arc length of 256.42 feet, and a chord bearing and distance of N33°31'39"W, 250.02 feet to a damaged 5" square concrete monument; thence N55°47'20"W, 460.48 feet to a 5" square concrete monument; thence northwesterly along a curve concave northeasterly and having a radius of 270.00 feet, an arc length of 311.25 feet, and a chord bearing and distance of N22°45'54"W, 294.30 feet to a 5" square concrete monument; thence N10°12'01"E, 198.81 feet to a damaged 5" square concrete monument; thence northeasterly along a curve concave northwesterly and having a radius of 330.00 feet, an arc length of 63.97 feet, and a chord bearing and distance of N4°49'04"E, 63.87 feet to a damaged 5" square concrete monument; thence N1°12'58"W, 58.22 feet to a set 1/2" rebar with cap marked LS18677; thence northwesterly along a curve concave southwesterly and having a radius of 430.00 feet, an arc length of 34.39 feet, and a chord bearing and distance of N3°12'42"W, 34.38 feet to a 1/2" rebar, bent; thence, leaving said R/W line, N84°29'20"E, 145.32 feet to a 1/2" rebar, bent; thence N75°19'29"E, 119.26 feet to a point in the center of a branch; thence, leaving said branch, N89°01'04"E, 90.53 feet to a 1/2" rebar with an unreadable cap; thence N88°57'24"E, 79.96 feet to a 1/2" rebar with an unreadable cap; thence N89°02'26"E, 79.97 feet to a 1/2" rebar with an unreadable cap; thence N89°03'21"E, 79.85 feet to a 1/2" rebar; thence S0°56'33"E, 730.96 feet to a 1/2" rebar; thence N61°23'24"E, 200.00 feet to a set 1/2" rebar with cap marked LS18677; thence S0°56'33"E, 502.46 feet to a set 1/2" rebar with cap marked LS18677; thence S89°05'29"W, 191.11 feet to the True Point of Beginning.

Containing 13.304 Acres, more or less.

Section 2. That the City of Opelika, Alabama, having received an offer from SMB LAND, LLC, an Alabama limited liability company, to purchase the real estate described in Section 1 above, it is hereby declared that it is in the best interest of the public and the City to sell said premises to SMB LAND, LLC, for and in consideration of the sum of $250,000.

Section 3. That the Mayor and the City Clerk be and they are hereby authorized and directed to execute and attest, respectively, for and on behalf of the City of Opelika, Alabama, a warranty deed, whereby the City of Opelika does convey the premises described in Section 1 above to SMB LAND, LLC, for and in consideration of the sum of $250,000.

Section 4. That a Real Estate Sales Agreement to be entered into between the City and SMB LAND, LLC, a copy of which is on file in the office of the City Clerk be and the same is hereby approved, authorized, ratified and confirmed in the form submitted to the City Council with such changes thereto (by addition, deletion or substitution) as the Mayor shall approve, which approval shall be conclusively evidenced by execution and delivery of said Agreement. The Mayor is hereby authorized and directed to execute said Agreement in the name and on behalf of the City and the City Clerk is authorized to attest the same.

Section 5. That the Mayor, City Clerk and other appropriate officers and employees of the City are hereby authorized to take such further actions and execute and deliver such other agreements, contracts, documents, certificates and instruments as may be necessary or desirable to carry out and complete the transaction contemplated by this Ordinance.

Section 6. That this ordinance shall become effective immediately upon its adoption and publication as required by law.

Section 7. The City Clerk of the City of Opelika is hereby authorized and directed to cause this ordinance to be published one (1) time in a newspaper published in and of general circulation in the City of Opelika, Alabama.

ADOPTED AND APPROVED this the _____day of ____________________, 2020.

____

PRESIDENT OF THE CITY COUNCIL OF THE

CITY OF OPELIKA, ALABAMA

ATTEST:

____

CITY CLERK

TRANSMITTED TO MAYOR this the _____day of ______________________, 2020.

____

CITY CLERK

ACTION BY MAYOR

APPROVED this the _____day of ________________________, 2020.

____

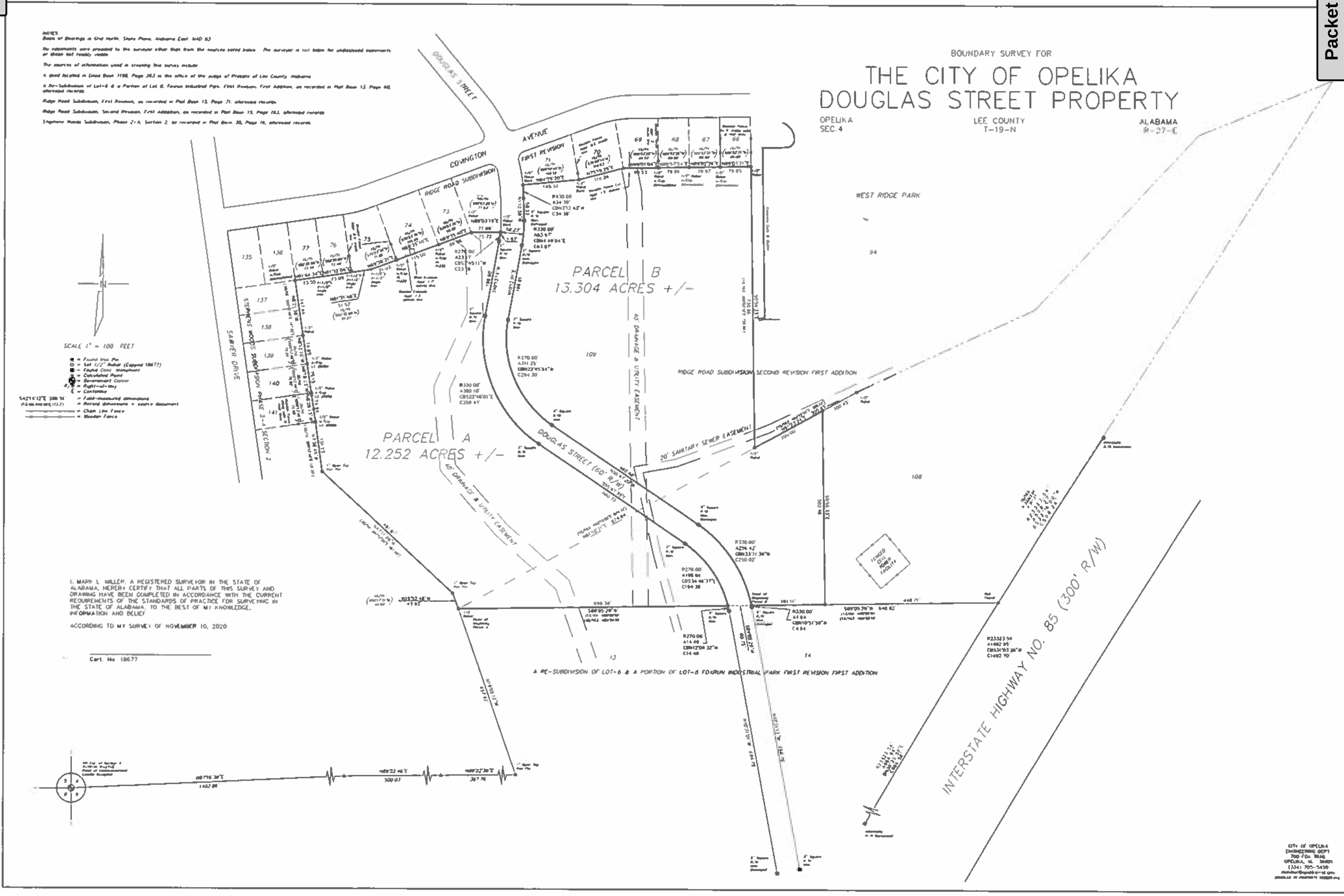
MAYOR

ATTEST:

____

CITY CLERK

EXHIBIT "A"



BOUNDARY SURVEY FOR
THE CITY OF OPELIKA
DOUGLAS STREET PROPERTY
OPELIKA
SEC. 4
LEE COUNTY
T-19-N
ALABAMA
PARCEL A
12.252 ACRES +/-
PARCEL B
13.304 ACRES +/-
DOUGLAS STREET (60' R/W)
COVINGTON AVENUE
DOUGLAS STREET
SAWYER DRIVE
WEST RIDGE PARK
INTERSTATE HIGHWAY NO. 85 (300' R/W)
20' SANITARY SEWER EASEMENT
40' DRAINAGE & UTILITY EASEMENT
RIDGE ROAD SUBDIVISION SECOND REVISION FIRST ADDITION
A RE-SUBDIVISION OF LOT-6 & A PORTION OF LOT-8 FOXRUN INDUSTRIAL PARK FIRST REVISION FIRST ADDITION
STEPHENS WOODS SUBDIVISION PHASE 2-A SECTION 2
RIDGE ROAD SUBDIVISION FIRST REVISION
SCALE 1" = 100 FEET
I, MARK L. MILLER, A REGISTERED SURVEYOR IN THE STATE OF ALABAMA, HEREBY CERTIFY THAT ALL PARTS OF THIS SURVEY AND DRAWING HAVE BEEN COMPLETED IN ACCORDANCE WITH THE CURRENT REQUIREMENTS OF THE STANDARDS OF PRACTICE FOR SURVEYING IN THE STATE OF ALABAMA. TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF
ACCORDING TO MY SURVEY OF NOVEMBER 10, 2020
Cert. No. 18677

REAL ESTATE SALES AGREEMENT

BETWEEN

THE CITY OF OPELIKA, ALABAMA ("SELLER")

AND

SMB LAND, LLC ("PURCHASER")

STATE OF ALABAMA)
: **REAL ESTATE SALES AGREEMENT**
COUNTY OF LEE)

THIS AGREEMENT made and entered into this the ____ day of ____________, 2020 by and between **THE CITY OF OPELIKA, ALABAMA**, a municipal corporation, having address at 204 South 7th Street, Opelika, Alabama (hereinafter referred to as "**SELLER**") and **SMB LAND, LLC,** an Alabama limited liability company, having address at 404 S 8th Street, Opelika, Alabama (hereinafter referred to as "**PURCHASER**").

WITNESSETH:

In consideration of the mutual covenants contained herein, **SELLER** and **PURCHASER** agree as follows:

1. **PURCHASE OF PROPERTY.** **SELLER** hereby agrees to sell and convey unto **PURCHASER**, and **PURCHASER** hereby agrees to purchase from **SELLER**, subject to the conditions hereinafter set forth, the following described parcels of real property on the easterly and westerly right-of-way lines of Douglas Street in the City of Opelika, Alabama (hereinafter called "PROPERTY"), described as follows:

PARCEL A

Commencing at the southwest corner of Section 4, T-19-N, R-27-E in Opelika, Lee County, Alabama; thence N87°16'38"E, 1402.86 feet; thence N89%%D22'46"E, 500.03 feet; thence N89°22'36"E, 387.76 feet to a 1" open-top iron pin; thence N19°05'12"W, 457.42 feet to a 1/2" rebar and the True Point of Beginning of the Parcel of Land herein described; thence N19°52'48"W, 43.93 feet to a 1" open-top iron pin; thence N47°11'28"W, 461.61 feet to a 1" open-top iron pin; thence N7°38'45"W, 131.23 feet to a 1/2" rebar with cap marked LS26956; thence N8°26'13"W, 74.94 feet to a 1/2" rebar with cap marked LS26956; thence N8°18'23"W, 75.15 feet to a 1/2" rebar with cap marked LS26956; thence N8°12'10"W, 74.85 feet to a 1/2" rebar; thence N8°21'38"W, 147.44 feet to a 1/2" rebar with an unreadable cap; thence N81°44'34"E, 73.55 feet to a 1-1/2" x 2-1/2" angle iron; thence N81°32'08"E, 73.09 feet to a 1-1/2" x 2-1/2" angle iron; thence

N81°31'48"E, 51.52 feet to a 1-1/2" x 2-1/2" angle iron; thence N69°38'21"E, 71.03 feet to a 1/2" rebar with cap marked LS11232; thence N69°35'40"E, 115.00 feet to a 1/2" rebar with cap marked LS11232;; thence N69°35'40"E, 89.96 feet to a 1/2" rebar;; thence N89°03'19"E, 75.72 feet to a set 1/2" rebar with cap marked LS18677 and the westerly R/W line of Douglas Street; thence, along said R/W line, southwesterly along a curve concave northwesterly and having a radius of 270.00 feet, an arc length of 23.17 feet, and a chord bearing and distance of S7°45'11"W, 23.16 feet to a 5" square concrete monument; thence S10°13'14"W, 198.80 feet to a 5" square concrete monument; thence southeasterly along a curve concave northeasterly and having a radius of 330.00 feet, an arc length of 380.10 feet, and a chord bearing and distance of S22°48'01"E, 359.43 feet to a 5" square concrete monument; thence S55°47'35"E, 460.72 feet to a 5" square concrete monument; thence southeasterly along a curve concave southwesterly and having a radius of 270.00 feet, an arc length of 198.84 feet, and a chord bearing and distance of S34°46'37"E, 194.38 feet to a set 1/2" rebar with cap marked LS18677; thence, leaving said R/W line, S89°05'29"W, 698.38 feet to the True Point of Beginning.

Containing 12.252 Acres, more or less.

PARCEL B

Commencing at the southwest corner of Section 4, T-19-N, R-27-E in Opelika, Lee County, Alabama; thence N87°16'38"E, 1402.86 feet; thence N89%%D22'46"E, 500.03 feet; thence N89°22'36"E, 387.76 feet to a 1" open-top iron pin; thence N19°05'12"W, 457.42 feet to a 1/2" rebar; thence N89°05'29"E, 698.38 feet to a set 1/2" rebar with cap marked LS18677 on the westerly R/W line of Douglas Street; thence, leaving said R/W line, N89°05'29"E, 60.75 feet to a set 1/2" rebar with cap marked LS18677 on the easterly R/W line of Douglas Street and the True Point of Beginning of the Parcel of Land herein described; thence, along said R/W line, northwesterly along a curve concave southwesterly and having a radius of 330.00 feet, an arc length of 256.42 feet, and a chord bearing and distance of N33°31'39"W, 250.02 feet to a damaged 5" square concrete monument; thence N55°47'20"W, 460.48 feet to a 5" square concrete monument; thence northwesterly along a curve concave northeasterly and having a radius of 270.00 feet, an arc length of 311.25 feet, and a chord bearing and distance of N22°45'54"W, 294.30 feet to a 5" square concrete monument; thence N10°12'01"E, 198.81 feet to a damaged 5" square concrete monument; thence northeasterly along a curve concave northwesterly and having a radius of 330.00 feet, an arc length of 63.97 feet, and a chord bearing and distance of N4°49'04"E, 63.87 feet to a damaged 5" square concrete monument; thence N1°12'58"W, 58.22 feet to a set 1/2" rebar with cap marked LS18677; thence northwesterly along a curve concave southwesterly and having a radius of 430.00 feet, an arc length of 34.39 feet, and a chord bearing and distance of N3°12'42"W, 34.38 feet to a 1/2" rebar, bent; thence, leaving said R/W line, N84°29'20"E, 145.32 feet to a 1/2" rebar, bent; thence N75°19'29"E, 119.26 feet to a point in the center of a branch; thence, leaving said branch, N89°01'04"E, 90.53 feet to a 1/2" rebar with an unreadable cap; thence

N88°57'24"E, 79.96 feet to a 1/2" rebar with an unreadable cap; thence N89°02'26"E, 79.97 feet to a 1/2" rebar with an unreadable cap; thence N89°03'21"E, 79.85 feet to a 1/2" rebar; thence S0°56'33"E, 730.96 feet to a 1/2" rebar; thence N61°23'24"E, 200.00 feet to a set 1/2" rebar with cap marked LS18677; thence S0°56'33"E, 502.46 feet to a set 1/2" rebar with cap marked LS18677; thence S89°05'29"W, 191.11 feet to the True Point of Beginning.

Containing 13.304 Acres, more or less.

Said parcels of land are further described according to a survey dated November 10, 2019, prepared by Mark Miller, a copy of which is attached hereto as Exhibit "A".

2. **PURCHASE PRICE.** The purchase price for the PROPERTY shall be $250,000.00, payable in full at the time of closing.

3. **CLOSING:** Subject to the terms and provisions of this Contract, the "Closing" will be held at 204 South 7th Street, Opelika, Alabama, or at such other place as is mutually agreeable to the **SELLER** and the **PURCHASER** on a date to be designated by the **PURCHASER** within thirty (30) days after the end of the Inspection Period as described in Section 5 below. At Closing and upon the payment of the entire purchase price as recited in this Contract, the **SELLER** shall execute and deliver to **PURCHASER** a good and sufficient warranty deed conveying to the **PURCHASER** good and marketable title to the PROPERTY, subject to the following easements, restrictions, reservations, covenants, conditions, encumbrances and exceptions:

a. The drainage and utility easements as shown on the survey attached hereto as Exhibit "A"
b. The sanitary sewer easements as shown on the survey attached hereto as Exhibit "A".
c. All rights-of-way for public streets and roads as shown on the survey attached hereto as Exhibit "A".
d. Any encroachments, overlaps, or obstructions which might be shown by an accurate, present survey or would be visible upon actual inspection of

the property.

e. All rights-of-way for public roads and utilities physically in existence across or over said property or easements therefor which may be of record.

f. Subdivision regulations and zoning ordinances of the City of Opelika.

In the event title to the PROPERTY is found to be defective and is not good and merchantable, then upon notification thereof by Purchaser to Seller, Seller shall have a reasonable time to correct the defects; but if such defects are not corrected within a reasonable period of time, then all rights and obligations arising hereunder shall terminate.

At closing, Purchaser shall deliver to Seller a check in the amount of the purchase price. The cost of preparing, executing and acknowledging any deeds or other instruments required to convey good and merchantable title to Purchaser in the manner described in this Contract shall be paid by the Seller. All other costs and expenses of closing shall borne by the Purchaser.

4. **POSSESSION:** Seller shall deliver to Purchaser possession of the property at closing.

5. **INSPECTION PERIOD.** Buyer shall have a period of One Hundred Twenty(120) days (the "Inspection Period") to satisfy itself as to any or all matters or conditions pertaining to the Property and the intended use and development thereof. During the Inspection Period, Buyer shall have the right to inspect the Property, to conduct land use, engineering and environmental studies and reviews with respect to the physical condition of the property and the and to otherwise conduct a feasibility review and analysis with respect to the Property and the intended use and development thereof. Notwithstanding anything contained herein to the contrary, in the event that Buyer determines, in its sole and absolute discretion, that the Property is not satisfactory for any reason,

Buyer shall have the right to terminate this Agreement at any time, without explanation for its reason of termination, on or before the expiration of the One Hundred Twenty (120) day inspection period by delivering to Seller of its' notice in writing and, in such event, the Earnest Money shall be refunded to Buyer, as provided herein, and all rights and obligations hereunder shall cease and terminate. In the event this Agreement is NOT terminated by Buyer within the described Inspection Period, it shall be deemed accepted and the parties hereto shall proceed to close this sale as set forth herein.

6. **GOVERNMENTAL APPROVALS**. Buyer is hereby authorized to seek and obtain any and all permits, licenses, permits and authorizations, rezoning approvals, conditional use approval and any and all other approvals or consents as Buyer may deem necessary in connection with its proposed acquisition, development and use of the Property and Seller agrees to cooperate with Buyer in such endeavor. If any such applications, approvals or permits are required to be sought in Seller's name, Seller shall upon Buyer's request seek same without cost to Seller. The contract is made subject to Buyer applying for rezoning to PUD (Planned Unit Development District) and will have until March 15, 2021 to apply and obtained said zoning. If the PUD zoning is denied the Buyer shall have the right to terminate this Agreement, by delivering to Seller of its' notice in writing and, in such event, the Earnest Money shall be refunded to Buyer, as provided herein, and all rights and obligations hereunder shall cease and terminate.

7. **SALE OF PROPERTY "AS-IS".** Purchaser has heretofore inspected the Property and is acquainted with the condition of the Property. Purchaser agrees to take the Property "AS-IS", in its present condition. Until closing, Seller agrees to maintain the Property in its present condition, reasonable war and tear excepted. The provisions of this Section shall survive closing and shall survive the expiration or earlier termination of this Agreement.

8. **DISCLAIMER.** Purchaser acknowledges and agrees that Seller does not make, and specifically negates and disclaims any representations, warranties (other than the warranty of title as set out in the deed), promises, covenants or guarantees of any kind or character whatsoever, whether expressed or implied, oral or written, past, present or future, of, as to, concerning or with respect to the nature, quality or condition of the Property, including, without limitation, the soil, geography capacity for development, access or environmental conditions that may exist or have previously existed on the Property. Purchaser acknowledges and agrees that to the maximum extent permitted by law, the sale of the Property as provided for herein is made on an "AS-IS" condition and basis with all faults. All provisions of this Section shall survive closing or the expiration or earlier termination of this Agreement without closing as applicable.

9. **TITLE OPINION; TITLE POLICY.** Seller has no obligation to provide Purchaser with a title opinion, title commitment or an owner's policy of insurance covering the property. Purchaser may elect to purchase same at its own expense from an attorney or title company of its own choosing, which shall in no event delay the Closing.

10. **DEFAULT.** In the event of a default by Seller or Purchaser, the non-defaulting party may state its or his intention to comply with the contract and seek specific performance of this contract or bring suit for damages.

11. **LEGAL FEES:** Each party agrees to pay its own legal fees for closing this transaction.

12. **SURVIVAL OF TERMS:** The Seller's and the Purchaser's covenants and representations shall survive the closing and shall not be merged in the deed delivered by Seller.

13. **BINDING EFFECT:** This Contract shall be binding upon and shall inure to the

benefit of the parties hereto, and their respective heirs, legal representatives, successors and assigns.

14. **ENTIRE AGREESMENT:** This Contract embodies the entire agreement between the parties hereto and there are no oral or parole agreements existing between the Seller and the Purchaser relating to the subject matter which is not expressly set forth herein and covered hereby.

15. **TIME OF ESSENCE:** Time is of the essence of this Contract.

16. **GENDER.** Words of any gender used in this Contract shall be held and construed to include any other gender and words in the singular shall include the plural and vice versa, unless the context requires otherwise.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have hereunto set their hands and seals on the day and date first above written.

THE CITY OF OPELIKA, ALABAMA
A MUNICIPAL CORPORATION
SELLER

By:_______________________________________
GARY FULLER,
ITS MAYOR

ATTEST:

____
CITY CLERK

SMB LAND, LLC,
AN ALABAMA LIMITED LIABILITY COMPANY
PURCHASER

By:_______________________________________
MITCHELL R. MARTIN
MANAGING MEMBER