

**Vestavia Hills  
City Council Agenda  
February 23, 2015  
5:00 PM**

1. Call to Order
2. Roll Call
3. Invocation – Rebecca Walden, *Vestavia Voice*
4. Pledge Of Allegiance
5. Announcements and Guest Recognition
6. City Manager’s Report
7. Councilors’ Reports
8. Financial Reports –Melvin Turner, III, Treasurer
9. Approval of Minutes – February 9, 2015 (Regular Meeting)

**Old Business**

10. Ordinance Number 2555 - An Ordinance Authorizing The City Manager To Enter Into A Purchase/Sale Agreement For Real Estate Located On Old Columbiana Road

**New Business**

11. Resolution Number 4680 – A Resolution Authorizing The City Manager To Refund A Portion Of A 2014 Business License To Advance Alabama Media, LLC dba “Birmingham News”
12. Resolution Number 4681 – A Resolution Determining That Certain Personal Property Is Not Needed For Public Or Municipal Purposes And Directing The Sale/Disposal Of Said Surplus Property
13. Resolution Number 4683 – A Resolution Accepting A Bid For Managed Exchange Mailbox Services For The City Of Vestavia Hills

**New Business (Requesting Unanimous Consent)**

14. Resolution Number 4684 – A Resolution Authorizing The City Manager To Execute And Deliver An Agreement With Sain Associates For Design Of A Roadway Adjacent To Vestavia Hills Elementary School – Cahaba Heights

**First Reading (No Action Taken At This Meeting)**

15. Ordinance Number 2556 – Rezoning – 4300 Dolly Ridge Road; Rezone From Vestavia Hills R-4 (Residential) To VH B-1.2 (Neighborhood Mixed Use District); Troy W. And Barbara L. Peters, Owners; Bryan Pressnell, Representing
16. Ordinance Number 2557 – Rezoning – 4317 and 4321 Dolly Ridge Road; Rezone from Vestavia Hills R-4 (Residential) to VH B-1.2 (Neighborhood Mixed Use District); JFKE, LLC and B&J LLC, Owners
17. Resolution Number 4682 – A Resolution Authorizing The City Manager To Enter Into An Agreement To Lease/Purchase A Communications System
18. Resolution Number 4685 – A Resolution For The Purchase Of A Speed Awareness Monitor Trailer For The Purpose Of Monitoring Traffic And Maintaining Road Safety
19. Citizens Comments
20. Motion For Adjournment

## CITY OF VESTAVIA HILLS

### CITY COUNCIL

### MINUTES

**FEBRUARY 9, 2015**

The City Council of Vestavia Hills met in regular session on this date at 5:00 PM. The Mayor called the meeting to order and the City Clerk called the roll with the following:

**MEMBERS PRESENT:**

Mayor Alberto C. Zaragoza, Jr.  
Steve Ammons, Mayor Pro-Tem  
George Pierce  
John Henley  
Jim Sharp

**OTHER OFFICIALS PRESENT:**

Jeff Downes, City Manager  
Patrick H. Boone, City Attorney  
Rebecca Leavings, City Clerk  
Melvin Turner, Finance Director  
George Sawaya, Deputy Treasurer  
Danny Rary, Police Chief  
Tim Holcomb, Deputy Police Chief  
Brian Gilham, Police Lieutenant  
Jim St. John, Fire Chief  
Terry Ray, Deputy Fire Chief  
Marvin Green, Deputy Fire Chief  
Greg Gilchrist, Fire Marshal

Invocation was given by Sheila Phillips, Vestavia Hills Superintendent of Education, followed by the Pledge of Allegiance.

#### **ANNOUNCEMENTS, GUEST RECOGNITION, CANDIDATES**

- Mr. Pierce welcomed Chamber Board members Roger Steur and David Surber.
- Mr. Henley welcomed Sheila Phillips, Superintendent of Education, to the meeting.
- The Mayor announced that the Addition Prevention Coalition recognized the City, the school system and some residents with a community award for the awareness of drugs in the City. Mr. Pierce has been heavily involved and Ms. Phillips has done an outstanding job at getting information out. The City lost two more citizens to drug overdoses just last week.

### **CITY MANAGER REPORT**

- Mr. Downes stated that the City is showing growth with the recent construction along Montgomery Highway and it was heartening to go through a process with the Chamber's Board determining how to partner with new and existing businesses within the City. He stated some great ideas came forward in a recent work session with the Mayor and several Chamber members.
- There were several items prioritized at the retreat which included city-wide signage. Consistent signage throughout the City was also recognized by the City's branding initiatives and the task to determine the cost and timetable for this endeavor has been assigned to Brian Davis and information should be forthcoming in a couple of months.
- The City of Hoover gained momentum to update the "whiteway" lighting along Highway 31 and the City is following up with the City of Hoover to determine their funding mechanisms and working on updating the City's lighting.
- The new consultant who be managing the City's athletic fields has identified some problems at the Liberty Park fields that prevent some of the drainage and is finding ways to improve these fields.
- Mr. Downes stated that he has been working with the Finance Department on reporting software that will assist the Council in their decision making in order to gain historical information, blending costs, budgetary costs, etc. He stated that will also be forthcoming soon.

### **COUNCILOR REPORTS**

- The Mayor stated that he met with Mayor Bell and Federal transportation representatives who will help to fund possible projects in the future for cities in the Birmingham area.
- John Henley and the Mayor were participants in the Board of Education's strategic efforts and are working with several other team members toward a February 23 full-day work session.
- The Mayor stated that the Library is also working on strategic planning efforts.

### **FINANCIAL REPORTS**

George Sawaya presented the financial reports for the month ending January, 2015. He read and explained the balances.

### **APPROVAL OF MINUTES**

The minutes of January 26, 2015 (Regular Meeting), were presented for approval.

**MOTION** Motion to dispense with the reading of the minutes of January 26, 2015 (Regular Meeting) and approve them as presented was by Mr. Pierce and second by Mr. Ammons. Roll call vote as follows:

Mr. Pierce – yes	Mr. Henley – yes
Mr. Sharp – yes	Mr. Ammons – yes
Mayor Zaragoza – yes	motion carried.

## **OLD BUSINESS**

### **ORDINANCE NUMBER 2553**

**Ordinance Number 2553 – An Ordinance Amending Section 6-16 Of The Vestavia Hills Code Of Ordinances, Republished 2013 Entitled “Codes Adopted;” To Repeal Ordinance Number 2013 And Adopting The 2015 International Fire Prevention Code For The City Of Vestavia Hills, Alabama**

**MOTION** Motion to approve Ordinance Number 2553 was by Mr. Ammons and second was by Mr. Henley.

Chief Gilchrist explained that this Ordinance adopts the latest 2015 International Fire Code with one exception. He explained the exception and the reason for it and asked the Council for approval.

The Mayor opened the floor for a public hearing. There being no one to address the Council concerning this request, he closed the floor and asked for the question.

Roll call vote as follows:

Mr. Pierce – yes	Mr. Henley – yes
Mr. Sharp – yes	Mr. Ammons – yes
Mayor Zaragoza – yes	motion carried.

### **ORDINANCE NUMBER 2554**

**Ordinance Number 2554 – An Ordinance Accepting The Cahaba Heights Village Plan, Being The 2015 Amendment To The 2008 Cahaba Heights Community Plan**

**MOTION** Motion to approve Ordinance Number 2554 was by Mr. Pierce and second was by Mr. Henley.

Mr. Downes explained that Cheryl Morgan led a team of staff members and professionals through public meetings and charrettes which included many of the

residents of the Cahaba Heights area and drafted a “village” plan for the central area of Cahaba Heights. He stated that the Commission recently adopted this plan which will be used as a fluid guide for the development of this particular area.

The Mayor stated that this Ordinance accepts the plan.

Mr. Henley asked about the background and development of the plan and Mr. Downes gave a full background of the meetings and charrettes which led to the final draft.

Mr. Sharp stated that the Planning and Zoning Commission was very excited to adopt this particular plan.

The Mayor opened the floor for a public hearing. There being no one to address the Council concerning this request, he closed the floor and asked for the question.

Roll call vote as follows:

Mr. Pierce – yes	Mr. Henley – yes
Mr. Sharp – yes	Mr. Ammons – yes
Mayor Zaragoza – yes	motion carried.

## NEW BUSINESS

### RESOLUTION NUMBER 4677

#### **Resolution Number 4677 - A Resolution Accepting A Bid For A Cardiac Monitor/Defibrillator For The City Of Vestavia Hills Fire Department**

**MOTION** Motion to approve Resolution Number 4677 was by Mr. Ammons and second was by Mr. Sharp.

Chief Terry Ray stated that bids were requested for a new cardiac monitor/defibrillator for the Fire Department. When the bids were returned, there were two companies that declined to bid and one bid was actually submitted. Recommendation is to accept that bid. He stated that the company is allowing a trade-in of the old unit for a credit toward this new unit and the next request is to surplus that old unit for this credit.

Discussion ensued concerning the number of bids received, clarifying that this unit is the 4<sup>th</sup> of five units that need to be rotated and the trade-in of the old unit.

There being no further discussion, the Mayor called for the question. Roll call vote as follows:

Mr. Pierce – yes	Mr. Henley – yes
Mr. Sharp – yes	Mr. Ammons – yes

Mayor Zaragoza – yes motion carried.

**RESOLUTION NUMBER 4678**

**Resolution Number 4678 - A Resolution Declaring Personal Property As Surplus And Authorizing The City Manager To Sell And/Or Dispose Of Said Equipment**

**MOTION** Motion to approve Resolution Number 4678 was by Mr. Ammons and second was by Mr. Pierce.

Chief Terry Ray stated that this Resolution surpluses the old unit to allow for the trade-in on the new unit previously approved.

There being no further discussion, the Mayor called for the question. Roll call vote as follows:

Mr. Pierce – yes	Mr. Henley – yes
Mr. Sharp – yes	Mr. Ammons – yes
Mayor Zaragoza – yes	motion carried.

**RESOLUTION NUMBER 4679**

**Resolution Number 4679 – A Resolution Urging The University Of Alabama System Board Of Trustees And The University Of Alabama At Birmingham President To Reconsider The Discontinuation Of The Athletic Programs That Were Recently Cancelled At The University Of Alabama At Birmingham**

**MOTION** Motion to approve Resolution Number 4679 was by Mr. Ammons and second was by Mr. Pierce.

The Mayor gave a brief background on the drafting of this Resolution and then read it aloud.

Mr. Ammons stated that he feels the UAB President and the UA Board of Trustees need to be more transparent in their decisions. He pointed out that UAB is a public institution and their decisions have a direct impact on many of the citizens of Vestavia Hills.

Percy Coleman and Timothy Alexander addressed the Council and thanked them for the support through this Resolution.

There being no further discussion, the Mayor called for the question. Roll call vote as follows:

Mr. Pierce – yes  
Mr. Sharp – yes  
Mayor Zaragoza – yes

Mr. Henley – yes  
Mr. Ammons – yes  
motion carried.

**NEW BUSINESS (REQUESTING UNANIMOUS CONSENT)**

There was no new business requesting unanimous consent.

**FIRST READING (NO ACTION TO BE TAKEN AT THIS MEETING)**

The Mayor stated that the following Resolutions and/or Ordinances will be presented at a public hearing at the Council's next regularly scheduled meeting on February 23, 2015 at 5 PM.

- Ordinance Number 2555 - An Ordinance Authorizing The City Manager To Enter Into A Purchase/Sale Agreement For Real Estate Located On Old Columbiana Road

**CITIZENS COMMENTS**

There were no citizens comments.

**MOTION** Motion to adjourn was by Mr. Pierce and second was by Mr. Ammons. Meeting adjourned at 6:45 PM.

Alberto C. Zaragoza, Jr.  
Mayor

Attested by:

Rebecca Leavings  
City Clerk



**ORDINANCE NUMBER 2555**

**AN ORDINANCE AUTHORIZING AND DIRECTING THE  
PURCHASING AND CLOSING OF THE SALE OF REAL ESTATE**

**THIS ORDINANCE NUMBER 2555** is considered, approved, enacted and adopted on this the 23<sup>rd</sup> day of February, 2015.

**WITNESSETH THESE RECITALS**

**WHEREAS**, municipalities in Alabama have the legal authority to acquire real estate by purchase pursuant to Title 11-40-1, *Code of Alabama, 1975*; and

**WHEREAS**, the City Council (the “City Council”) of the City of Vestavia Hills, Alabama, a municipal corporation (the “City”) finds and determines that the purchase by the City of the hereinafter described real property (the “Property”) will promote the health, safety and general welfare of the City; and

**WHEREAS**, Title 11-47-5, *Code of Alabama, 1975*, reads as follows:

“Contracts entered into by a municipality shall be in writing, signed and executed in the name of the city or town by the officers authorized to make the same and by the party contracting. In cases not otherwise directed by law or ordinance, such contracts shall be entered into and executed by the mayor in the name of the city or town and all obligations for the payment of money by the municipality, except for bonds and interest coupons, shall be attested by the clerk. This section shall not be construed to cover purchases for the ordinary needs of the municipality;” and

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF  
THE CITY OF VESTAVIA HILLS, ALABAMA AS FOLLOWS:**

1. **PROMOTION OF PUBLIC WELFARE:** The City Council (the “City Council”) of the City of Vestavia Hills, Alabama, a municipal corporation (the “City”) finds and determines that the purchase by the City of the hereinafter described real property and improvements located at 2221 Old Columbiana Road (the “Property”) will promote the health, safety and general welfare of the City.

2. **CONTRACT FOR PURCHASE OF REAL ESTATE:** The purchasing and closing of the sale of the Property shall be completed all in accordance with the terms, provisions, conditions and limitations of a written General Sales Contract (the "Contract") ultimately considered for acceptance and approval by the City Council at this regularly scheduled public meeting. The City Manager shall execute and deliver all documents necessary to close the purchase and secure clear title to the Property;

3. **CONTRACT:** A copy of the proposed contract is attached to and incorporated into this Ordinance Number 2555 as though written fully therein.

9. **POSTING OF ORDINANCE NUMBER 2555:** If the City Council approves, enacts and adopts Ordinance Number 2555, as amended, then in such event, said Ordinance shall be posted in three (3) public places within the City as required by Title 11-45-8(b)(1), *Code of Alabama, 1975*.

10. **EFFECTIVE DATE OF ORDINANCE NUMBER 2555:** Ordinance Number 2555 shall become effective five (5) days after posting in accordance with Title 11-45-8(3), *Code of Alabama, 1975*.

11. **CLOSING DATE:** The Real Estate Sales Contract shall be closed after the effective date of Ordinance Number 2555 on a date mutually agreed upon by Seller and Purchaser.

**DONE, ORDERED, APPROVED and ADOPTED,** this the 23<sup>rd</sup> day of February, 2015.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

**CERTIFICATION:**

I, Rebecca Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance # 2555 is a true and correct copy of such Ordinance that was duly adopted by the City Council of the City of Vestavia Hills on the 23<sup>rd</sup> day of February, 2015 as same appears in the official records of said City.

Posted at Vestavia Hills Municipal Center, Vestavia Hills New Merkle House, Vestavia Hills Civic Center and Vestavia Hills Library in the Forest this the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

Rebecca Leavings  
City Clerk

**RESOLUTION NUMBER 4680**

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO REFUND A PORTION OF THE 2012-2014 SALES TAX TO ADVANCE ALABAMA MEDIA, LLC DBA "BIRMINGHAM NEWS"**

**WHEREAS**, in October 2012 *The Birmingham News*, *The Mobile Press Register, Inc.*, and *The Huntsville Times* merged and formed the company Advance Alabama Media, LLC; and

**WHEREAS**, in October 2012 through July 2014, Advance Alabama Media, LLC dba "Birmingham News" submitted sales tax to the City of Vestavia Hills, Alabama based on the carrier distribution center instead of the customer's delivery address as established in the 1978 Alabama Revenue Department agreement "Local Sales Tax by Newspapers Publishers"; and

**WHEREAS**, Advance Alabama Media, LLC dba "Birmingham News" has submitted a request for a refund of said sales tax pursuant to said overpayment; and

**WHEREAS**, RiverTree Systems, Inc. serves as the City's Agent for auditing said sales tax and has researched and verified that said refund is due to be remitted according to the business records; and

**WHEREAS**, the City's Finance Director has declared in a memorandum to the Mayor and the City Manager that said refund is due to be remitted as stated and has submitted documentation of said remittance which is attached and incorporated into this Resolution Number 4680 with sensitive information redacted pursuant to the Taxpayer Bill of Rights.

**NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA, AS FOLLOWS:**

1. The City Manager is hereby authorized to refund \$31,367.95 to Advance Alabama Media, LLC dba "Birmingham News" pursuant to overpayment of the sales tax for October 2012- July 2014; and
2. This Resolution Number 4680 shall become effective immediately upon adoption and approval.

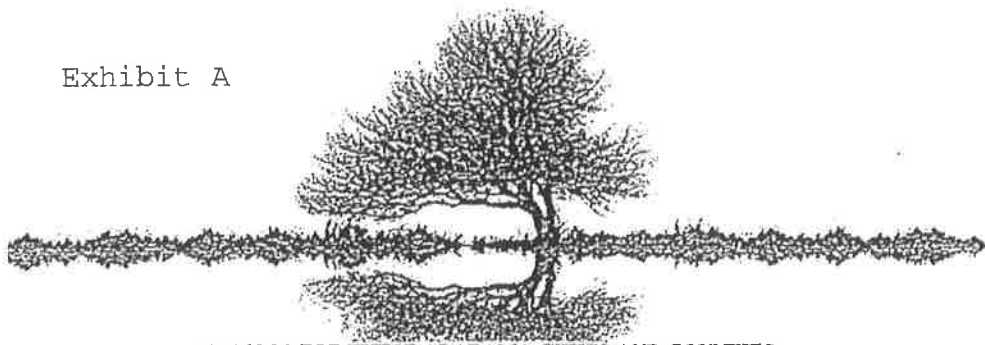
**DONE, ORDERED, ADOPTED and APPROVED** this the 23<sup>th</sup> day of February, 2015.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

RiverTree Systems, Inc.  
P. O. Box 361361  
Birmingham, AL 35236



AUDITORS FOR THESE ALABAMA CITIES AND COUNTIES:  
ALABASTER\* AUBURN\* BIRMINGHAM\* CENTER POINT\* GARDENDALE  
GULF SHORES\* HAPERSVILLE\* HARTSELLE\* HELENA\* HOMEWOOD  
HUEYTOWN \* IRONDALE \* JASPER \* MADISON\* MONTGOMERY  
MONTEVALLO \* MOODY\* NORTHPORT\* ORANGE BEACH \* OZARK\*  
PELHAM \* PRATTVILLE\* TALLADEGA\* TRUSSVILLE\* TUSCUMBIA  
VESTSTVIA HILLS\* BALDWIN COUNTY\* CULLMAN COUNTY\* SHELBY  
COUNTY\* MONTGOMERY COUNTY

988-0331 X301  
988-9687 fax  
Jimthomas308 @bellsouth.net

www: rivertreesystems.com

January 6, 2015

Melvin Turner III  
Finance Director  
City of Vestavia Hills  
Municipal Center  
513 Montgomery Highway  
Vestavia Hills, AL 35216

RE: Advance Alabama Media, LLC  
dba- **Birmingham News**  
1313 N. Market Street- 11<sup>th</sup> Floor  
Wilmington, Delaware 19801

REFUND PETITION

Dear Mr. Turner:

In late 2012 several clients requested Rivertree Systems to review the records of the new partnership of The Birmingham News, The Mobile Press Register, Inc., and The Huntsville Times - Advance Alabama Media LLC for nonpayment of sales tax.

After almost a year of contacting various offices, I was referred to Ms. Diane Sanders, Senior Tax Compliance Manager in Wilmington, Delaware. The returns are filed out of Virginia and the IT Department is in New York.

The new partnership decided to remit sales tax at the carrier's distribution point **instead of the customer's delivery address**. Please review the attached 1978 Local Sales Taxes by Newspaper Publishers agreement that allowed local taxes to be paid on a percentage of circulation in a city or county.

Please review the payment history provided by your office for September 2012 and prior to the payments remitted in October 2012 to August 2014. Based on the circulation in Vestavia Hills the tax due should be around \$1600.00 instead of the \$3000-4500 a

RiverTree Systems, Inc.

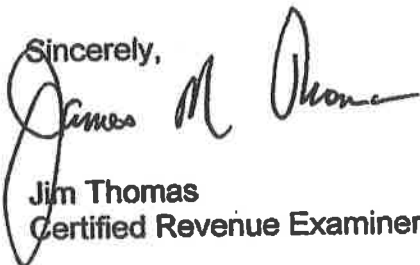
month. The payment prior October 2013 maybe shown as The Birmingham News since they failed to get RDS to change the account name. The City needs to verify with RDS that returns were filed prior to October 2013. The Alliance for Audited Media does not show a "zip code allocation" for Vestavia Hills in 2013.

I had the Taxpayer run the "spread" on circulation 5 times to get a correct City of Vestavia Hills zip code circulation measure. The Taxpayer requested a refund of \$77,325.14 but I reduced the refund to \$31,367.95. Since Vestavia Hills did not instruct the new Partnership to change reporting methods, it is up to the City if they want to pay interest.

The Alabama Taxpayer's Bill of Rights 40-2A-13 (H) requires Rivertree to notify the Taxpayer of any overpayments. I cannot verify the exact jurisdictions the money was due. Advance Alabama Media did not want to provide sales information on non-client cities. The Alabama Department of Revenue and RDS are to start an audit this month and should be able to pinpoint the cities. From the 2013 Media Circulation you can tell that Hoover, Irondale, and Center Point are not included in detail.

Since RDS is scheduled to audit this Taxpayer you may want to have them run the refund against current receipts.

Sincerely,

A handwritten signature in black ink, appearing to read "James M. Thomas". The signature is written in a cursive style with a large initial "J" and "M".

Jim Thomas  
Certified Revenue Examiner

**RESOLUTION NUMBER 4681**

**A RESOLUTION DETERMINING THAT CERTAIN  
PERSONAL PROPERTY IS NOT NEEDED FOR  
PUBLIC OR MUNICIPAL PURPOSES AND  
DIRECTING THE SALE/DISPOSAL OF SAID  
SURPLUS PROPERTY**

**WITNESSETH THESE RECITALS**

**WHEREAS**, the City of Vestavia Hills, Alabama, is the owner of personal property detailed in the attached "Exhibit A"; and

**WHEREAS**, the City has determined that it would be in the best public interest to sell said property.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF  
THE CITY OF VESTAVIA HILLS, ALABAMA, AS FOLLOWS:**

1. The City Manager is hereby authorized to sell and/or dispose of the above-referenced surplus personal property; and
2. This Resolution Number 4681 shall become effective immediately upon adoption and approval.

**DONE, ORDERED, APPROVED and ADOPTED** on this the 23<sup>rd</sup> day of February, 2015.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk



**EXHIBIT A**

2/18/2015

To: Rebecca Leavings  
From: Lt. Brian Gilham  
Re: 2004 Chevy Tahoe

Chief Rary requests the below listed vehicle be declared surplus at the next applicable City Council meeting. Said vehicle is a confiscation/seizure, awarded by the court, from the illegal sale of narcotics and has no viable purpose to our department.

2004 Chevrolet Tahoe  
Vin: 1GNAC13VX4J119711  
Mileage: 272,831

Thank you,  
  
Brian Gilham

**RESOLUTION NUMBER 4683**

**A RESOLUTION ACCEPTING A BID FOR MANAGED EXCHANGE MAILBOX SERVICES FOR THE CITY OF VESTAVIA HILLS**

**WHEREAS**, on January 7, 2015 at 10:00 a.m. the City of Vestavia Hills publicly read aloud bids submitted for Managed Exchange Mailbox Services; and

**WHEREAS**, a detail of said bids is marked as Exhibit A and attached and incorporated in this Resolution Number 4683 as though written fully therein; and

**WHEREAS**, the Director of Information Technology has reviewed the bids and recommended acceptance of the bid submitted by Teklinks, LLC as detailed in Exhibit B; and

**WHEREAS**, the Mayor and City Council feel it is in the best public interest to follow the recommendation of the Director of Information Technology and accept said bid as detailed above.

**NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA, AS FOLLOWS:**

1. The bid submitted by Teklinks, LLC as detailed in Exhibit A attached and recommended by the Director of Information Technology is hereby accepted; and
2. This Resolution Number 4683 shall become effective immediately upon adoption and approval.

**DONE, ORDERED, ADOPTED and APPROVED** this the 23<sup>rd</sup> day of February, 2015.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

EXHIBIT A

# BID SUMMARY

**BID-2014-13**

BID: Managed Exchange Mailbox Services

BID OPENED: January 7, 2015  
10:00 AM

ATTENDEES:

Rebecca Leavings  
Darrin Estes  
Kay Russom

BIDDERS:

- |    |                      |   |
|----|----------------------|---|
| 1. | Netgain Technologies | Annual Payment \$31,140.00<br>One Time Set Up \$23,670.00 |
| 2. | Teklinks, LLC        | Annual Payment \$46,620.00<br>One Time Set Up \$14,200.00 |

## EXHIBIT B

VESTAVIA HILLS INFORMATION SYSTEMS DEPARTMENT  
513 MONTGOMERY HIGHWAY  
VESTAVIA HILLS, ALABAMA 35216  
(205) 978-0215

### MEMORANDUM

TO: Jeff Downes, City Manager  
FROM: Darrin Estes, Network Systems Administrator  
DATE: February 19, 2015  
RE: Managed Exchange Mailboxes

Two bids were received for the 36 month managed exchange mailbox service. NetGain Technologies bid an annual payment of \$31,140.00 with a one-time setup\migration fee of \$23,670.00 but did not meet all of the specifications. TekLinks LLC bid an annual payment of \$46,620.00 with a one-time setup\migration fee of \$14,200.00 and meets all specifications.

TekLinks bid of \$60,820.00 is less than what was budgeted for this in account 49-5840 -000-100.

I recommend that the bid from TekLinks LLC of \$60,820.00 be accepted.

### INVITATION TO BID

## CITY OF VESTAVIA HILLS 513 MONTGOMERY HIGHWAY VESTAVIA HILLS AL 35216

BIDS TO BE OPENED AT THE CITY OF  
VESTAVIA HILLS ON JANUARY 7, 2015  
AT 10:00 AM. BIDS TO BE TURNED IN NO  
LATER THAN 10:00 AM ON THIS DATE.

DATE: November 14, 2014  
BID: Managed Exchange Mailbox  
Services

Ladies and Gentlemen:

Sealed bids will be received by the City of Vestavia Hills, Alabama, in the Office of the City Clerk at the Municipal Center until the above time and date, and opened as soon thereafter as practical. Please return in a sealed envelope marked with the bid name as listed above. Bids must be returned by 2:00 PM by the date listed above. Bids received in the Office of the City Clerk either by hand delivery or mail after the specified date and hour will not be considered.

\*\*\*\*\*

NAME OF COMPANY: TEKLINKS LLC

PRICE FOR 3-YEAR SERVICE: working  
ANNUAL PAYMENT: \$ 46,620.00 + ONE TIME MIGRATION AND SET UP FEE OF \$ 13,000 AND

DELIVERY DATE: \_\_\_\_\_  
BIDS GOOD THROUGH\*\*: \_\_\_\_\_  
*A ONE TIME SET UP FEE OF \$1,200 FOR TEK ENCRYPTION MAIL BOX SET UP. (DOC'S ATTACHED)*

*\*See Specifications Enclosed.  
\*\*All bids must be good for a minimum of 90 days.*

I hereby affirm that I have not been in any agreement or collusion among bidders or prospective bidders in restraint of freedom of competition, by agreement to bid at a fixed price or to refrain from bidding or otherwise.

**This form must be notarized.**

FIRM TEKLINKS, LLC

Sworn and Subscribed before me  
this the 23<sup>rd</sup> day of December,  
2014.

BY Wesley Templeton

ADDRESS 201 Summit Pk


Homewood, AL 35209

PHONE 205-314-6600

  
Notary Public

My Commission Expires 9-16-17. DATE 12-23-2014

ALL BIDDERS MUST USE OUR BID FORMS. COMPLETE IN INK OR TYPE. THE CITY RESERVES THE RIGHT TO REJECT OR WAIVE ANY AND ALL BIDS OR PORTIONS THEREOF. QUESTIONS SHOULD BE ADDRESSED TO THE OFFICE OF THE CITY CLERK, PHONE (205) 978-0131.

  
Rebecca Leavings, Purchasing Agent

## MANAGED EXCHANGE MAILBOX SERVICE REQUIREMENTS

The City of Vestavia Hills invites bid packages for a 3-year (36 month) managed Exchange Mailbox Service. Said service shall be purchased in 12-month increments. Bid for 3-year agreement shall include all fees including, but not limited to setup, migration, training, installation, delivery, etc.

### 1. Bid Requirements

Bids not conforming with the following requirements may be rejected.

- (a) Bids must be made on the blank bid form provided.
- (b) Bids must be complete and specific.
- (c) Bids will be free of alterations and erasures.
- (d) Bids will be properly signed by the bidder or by a legally authorized officer or agent of the bidder and notarized.
- (e) The bid will be enclosed in a sealed envelope marked "SEALED BID --- MANAGED MAILBOX SERVICE."
- (f) The sealed envelope must be addressed to:  
  
City of Vestavia Hills  
Office of the City Clerk  
513 Montgomery Highway  
Vestavia Hills AL 35216
- (h) The winning bid must provide a performance bond equivalent to the 3-year bid price upon execution of agreement.
- (i) Bid must include all delivery fees, installation costs, setup and migration fees, etc.
- (j) Vendor should include 3 local references.
- (k) If you have any questions regarding the bid requirements or specifications, please contact Darrin Estes, IT Director 205-978-0215 or email at [destes@vhal.org](mailto:destes@vhal.org)

## MANAGED EXCHANGE MAILBOX SERVICE SPECIFICATIONS

1. Vendor-managed and hosted offsite solution for exchange server 300 mailboxes. Service must be hosted in your data center, not to be subcontracted to a 3<sup>rd</sup> party.
2. Vendor shall provide written assurance and confirmation to the City of Vestavia Hills prior to providing services of the following:
  - a. That the City's IT Director will be immediately notified as soon as a breach or possible access to data by an unauthorized source is detected; and/or
  - b. In the event of system failure, regardless of the source, vendor will work diligently with the City of Vestavia Hills to resolve the issue; and/or
  - c. City of Vestavia Hills retains ownership of all data at all times and data will be transferred to the City of Vestavia Hills upon request, or if vendor ceases to operate.
3. Data Center must be at least Tier III.
4. Setup of existing mail boxes for all users including aliases.
5. Migration of currently existing email files for all users.
6. Unlimited storage.
7. Archiving for minimum 7 (seven) years of all outbound and inbound mail. Vendor shall notify the City of Vestavia Hills prior to deletion of archived email.
8. All data is and remains the property of the City of Vestavia Hills.
9. Data shall be searched and delivered to the City of Vestavia Hills upon request by the IT Director or his designee in cases of subpoenas, lawsuits, or as a need develops.
10. Spam and virus filtering including a per user black/white list for all users and aliases.
11. Backup with restoration capability.
12. Easy recovery of deleted or lost mail.
13. Email collaboration for personal and shared calendars, contacts, tasks, global address lists, distribution lists, scheduling assistant, public folders.
14. Mobile access.
15. Outlook Web Access (OWA) including license MS Outlook client
16. Update Outlook client and setup mailboxes for existing users and mobile devices.
17. Capability to search archived messages by (from, recipient, date range, message text, etc...).
18. Confidentiality of data must be ensured and data must be secured logically, environmentally and physically.
19. Policy-driven Email Encryption per mailbox that automatically and dynamically applies email encryption and insures that compliance and content security polices are consistently and accurately applied for attachments up to 20MB.
20. Service Level Agreement that includes uptime of at least 99% with issue response time not to exceed 4-hours.
21. Technical Support Service with 24x7x365 toll-free or local telephone support.

**RAPID RESPONSE PROGRAM APPLICATION**

Contract Surety Bonds under \$350,000

Single and/or Aggregate Program



**PENN NATIONAL  
INSURANCE**

Date: 12-29-14

Surety

Writing bonds faster with  
EON & Rapid Response

**AGENCY INFORMATION**

Agency Code: \_\_\_\_\_ Agency Name: \_\_\_\_\_  
Contact Name: \_\_\_\_\_ Email: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

**BUSINESS/COMPANY INFORMATION**

Company Name: Teklinks, Inc. Date Business Started: 2001  
Address: 201 Summit Parkway Fed Tax ID #: 63-1297749  
City/State/Zip: Birmingham AL 35209

Type Work Performed: information tech. resell, consulting, install  
Do Owner(s) have interests in other Construction Business?....  Y  N  
Have you ever failed to complete a project?.....  Y  N  
Are you in litigation for any current or previous work?.....  Y  N  
Business Net Worth: \$41,227,526  
Current Bank Line Amount? \$ 0 outstanding  
Currently Available? \$ 7,000,000  
Value of Owned Equip: \$ 10,938,014 net of deprec.

» Attach an explanation of all 'YES' answers above.

Do you currently have any unfinished bonded contracts?  Y  N If 'Yes', how much? \$ \_\_\_\_\_

**OWNERSHIP/INDEMNITOR INFORMATION**

Ownership %: 70 % Title: Private equity  
Name: Pamlico Capital II LP  
Address: 150 N College Suite 2400  
City/State/Zip: Charlotte, NC 28202  
SS#: N/A Married?  Y  N  
Owners Current Total Income: \$ \_\_\_\_\_

Prior to this company, provide the  
Total Years of Construction Mgt Experience: NA years

Previous Position (Title): \_\_\_\_\_  
Spouse Name: \_\_\_\_\_  
Spouse SS#: N/A  
Spouse Current Total Income: \$ \_\_\_\_\_  
Combined Personal Net Worth: \$ \_\_\_\_\_

Ownership %: 30 % Title: \_\_\_\_\_  
Name: Pamlico Investment Fund & key Teklinks  
Address: 201 Summit Pkwy mgmt employees  
City/State/Zip: Birmingham AL 35209  
SS#: NA Married?  Y  N  
Owners Current Total Income: \$ \_\_\_\_\_

Prior to this company, provide the  
Total Years of Construction Mgt Experience: NA years

Previous Position (Title): \_\_\_\_\_  
Spouse Name: \_\_\_\_\_  
Spouse SS#: N/A  
Spouse Current Total Income: \$ \_\_\_\_\_  
Combined Personal Net Worth: \$ \_\_\_\_\_

♦ Applicant(s) acknowledge that this is an application for Surety Credit and each of the undersigned give their permission for the Surety to order and use Personal Credit Reports in the determination of the amount of credit extended, if any. The applicant(s), under penalty of law further certify that all information provided in this application is true and accurate.

Name & Date \_\_\_\_\_ Spouse Name & Date \_\_\_\_\_ Name & Date \_\_\_\_\_ Spouse Name & Date \_\_\_\_\_



## GENERAL INDEMNITY AGREEMENT

**THIS AGREEMENT** is made by the undersigned Principal(s) (signing as the "Company") and Indemnitor(s), all of which are individually and collectively referred to as "Undersigned," for the continuing benefit of Surety in connection with any Bond executed on behalf of any Indemnitor or any Principal.

**DEFINITIONS.** The following terms shall have the following definitions in this Agreement:

**Bond:** Any surety bond, undertaking, or other express or implied obligation of guaranty or suretyship executed or committed to by Surety on, before or after this date, and any riders, endorsements, extensions, continuations, renewals, substitutions, increases or decreases in penal sum, reinstatements or replacements thereto.

**Principal:** The person(s) and entity(ies), for whom any Bond is issued or committed to by Surety, or any one or combination thereof, or their successors in interest, whether along or in joint venture with others named herein or not named herein, and any person or entity which may act as surety or co-surety on any bond, or any other person or entity who executes any Bond at its request.

**Surety:** Any and all of Pennsylvania National Mutual Casualty Insurance Company and Penn National Security Insurance Company (herein collectively referred below as "Penn National Insurance"), their respective reinsurers and any other person or entity which may act as surety or co-surety on any Bond, or any other person or entity who execute any Bond at its request.

**INDEMNITY:** The Undersigned:

- A. Agrees to defend, indemnify, and save harmless Surety from and against any and all demands, liabilities, costs, penalties, obligations, interest, damages and expenses of whatever nature of kind, including but not limited to attorneys' fees (including those of both outside and in-house attorneys) and costs and fees incurred in investigation of claims or potential claims, adjustment of claims, procuring or attempting to procure the discharge of Bond, or attempting to recover losses or expenses from the Undersigned or third parties, whether Surety shall have paid out any such sums; and
- B. Agrees to pay Surety all premiums on Bonds issued by Surety on behalf of any Principal, in accordance with Surety's rates in effect when each payment is due. Premiums on contract bonds are based on the contract price, without reference to the penal sum of the Bond, and shall be adjusted due to changes in the total contract price. On any Bond where Surety charges an annual premium, such annual premium shall be due upon execution of the Bond and upon the renewal or anniversary date of such Bond until satisfactory evidence of termination of Surety's liability as a matter of law under the Bond is furnished to Surety's satisfaction; and
- C. Agrees that in furtherance of such indemnity:
  - i) In any claim or suite arising out of or related to either or both any Bond and this Agreement, an itemized statement of Surety's loss and expense, sworn to by a representative of Surety, or other evidence or disbursement by Surety, shall be prima facie evidence of the fact and extent of Undersigned's liability under this Agreement.
  - ii) Surety shall have the right to defense and indemnity regardless of whether Surety has made any payment under any Bond.
  - iii) In any suit between any Undersigned or Principal and Surety under this agreement or arising out of any Bond, Surety may recover its expenses and attorneys' fees incurred in such suit either or both defending or prosecuting such suit.

**CONFESSION OF JUDGMENT:** The Undersigned also agree that:

**EFFECTIVE UPON OCCURRENCE OF ANY BREACH OR DEFAULT BY THE PRINCIPAL AND/OR ANY ONE OR MORE INDEMNITORS OF ANY OF THE PROVISIONS OF THIS AGREEMENT, AND WITHOUT LIMITING THE ENFORCEABILITY OF ANY OTHER PROVISION OF THIS AGREEMENT, THE PRINCIPAL AND INDEMNITORS HEREBY JOINTLY AND SEVERALLY IRREVOCABLY AUTHORIZE AND EMPOWER ANY ATTORNEY OF RECORD, OR PROTHONOTARY, OR CLERK OF ANY JURISDICTION WITHIN THE UNITED STATES OR ANY OF ITS TERRITORIES OR POSSESSIONS TO APPEAR FOR ANY ONE OR MORE OF THEM AT ANY TIME OR TIMES WITH RESPECT TO ANY MONIES DUE UNDER THIS AGREEMENT, AND TO CONFESS OR ENTER JUDGMENT BY WARRANT OF ATTORNEY AGAINST ANY OR ALL OF THEM FOR ALL SUCH SUMS PAYABLE UNDER THIS AGREEMENT AS EVIDENCED BY AN AFFIDAVIT SIGNED BY AN AUTHORIZED REPRESENTATIVE OF SURETY SETTING FORTH SUCH AMOUNT DUE, PLUS REASONABLE ATTORNEYS' FEES, COST OF SUIT, INTEREST, WITH RELEASE OF PROCEDURAL ERRORS AND WITHOUT RIGHT OF APPEAL. IF A COPY OF THIS AGREEMENT, VERIFIED BY AFFIDAVIT, SHALL BE FILED, IT SHALL NOT BE NECESSARY TO FILE THE ORIGINAL AS A WARRANT OF ATTORNEY. THE UNDERSIGNED JOINTLY AND SEVERALLY WAIVE THE RIGHT OF ANY STAY OF EXECUTION AND THE BENEFIT OF ANY AND ALL EXEMPTIONS TO WHICH THEY MAY NOW OR MAY HEREAFTER BE ENTITLED UNDER LAW. NO SINGLE EXERCISE OF THE FOREGOING WARRANT AND POWER TO BRING AN ACTION OR CONFESS JUDGMENT SHALL BE DEEMED TO EXHAUST THE POWER BUT THE POWER SHALL CONTINUE UNDIMINISHED AND MAY BE EXERCISED FROM TIME TO TIME AS OFTEN AS SURETY SHALL ELECT, WHETHER BEFORE OR AFTER DEMAND IS MADE, UNTIL ALL SUMS PAYABLE TO SURETY UNDER THIS AGREEMENT HAVE BEEN PAID IN FULL.**

**EACH OF THE INDEMNITORS REPRESENTS AND WARRANTS THAT HE OR SHE HAD READ THE FOREGOING CONFESSION OF JUDGMENT AND UNDERSTANDS THAT HE OR SHE IS GIVING UP THE RIGHT TO A HEARING BEFORE JUDGMENT IS CONFESSED, LEVY AND EXECUTION MADE, AND THAT EACH GIVES UP THE RIGHT TO SUCH HEARING FREELY AND VOLUNTARILY IN THIS BUSINESS TRANSACTION.**

**GENERAL PROVISIONS.** The undersigned further agrees as follows:

- A. If a claim or demand for performance of any obligation under any Bond is made against Surety, Undersigned, upon Surety's demand, shall immediately deposit with Surety United States legal currency, as collateral security, in an amount equal to the reserves posted by Surety with respect to such claim or demand, plus an amount equivalent to Surety's estimate of its anticipated expenses and attorneys' fees to be incurred in connection therewith. Undersigned acknowledges and agrees that Surety shall be entitled to specific performance of this paragraph.
- B. Undersigned's obligations under this Agreement are joint and several. Repeated actions under this Agreement or as otherwise permitted may be maintained by Surety without any former action operating as a bar to any subsequent action. Surety's release of any one Undersigned shall not release any other Undersigned shall relieve the Undersigned of any obligation owned under this Agreement. Undersigned shall not be released from liability under this Agreement because of the status, condition, or situation of any party to this Agreement or any Principal.

- C. If the execution of this Agreement by any Undersigned is defective or invalid for any reason, such defect or invalidity shall not affect the validity hereof as to any other Undersigned. Should any provision of this Agreement be held invalid, the remaining provisions shall retain their full force and effect.
- D. Undersigned waives any defense that this instrument was executed subsequent to the date of any Bond and acknowledges that such Bond was executed pursuant to Undersigned's request and in reliance on Undersigned's promise to execute this Agreement. Undersigned understands and agrees that this Agreement is a continuing agreement to indemnify over an indefinite period.
- E. Undersigned has the right to review all Bonds executed by Surety for errors and omissions prior to delivery of the Bond to the Oblige, and hereby waives any claim against Surety arising out of any such error or omission.
- F. Surety shall have the right in its sole discretion to decide whether any claims arising out of or related to any Bond shall be paid, compromised, defended, prosecuted or appealed regardless of whether or not suit is actually filed or commenced against Surety upon such claim. Absent Surety's intentional wrongdoing, Undersigned agrees to be conclusively bound by Surety's determination.
- G. Surety may decline to execute any Bond for any reason and shall not be liable to Undersigned, or any person or entity, as a result of such declination.
- H. This Agreement may be terminated by the Indemnitors or by any one or more of them, if written notice, signed by the terminating Indemnitor(s), clearly expressing their intent to terminate this agreement, is sent by registered or certified mail to the Surety at its home office at Two North Second Street, P.O. Box 2361, Harrisburg, Pennsylvania, 17105-2361, with said termination to become effective (the "Termination Date") thirty (30) days from the date the written notice of termination is received by Surety, however, no notice of termination shall operate to modify, bar, discharge, relieve, limit, affect or impair the obligation of the Principal or the Indemnitors under this Agreement with respect to any Bond that is or was issued prior to the Termination Date or in connection with Bonds which are issued after such Termination Date when such Bonds are issued upon the award of a Contract to the Principal from or related to a bid or proposal bond or similar undertaking that was issued prior to the Termination Date. Further, such notice of termination shall operate only with respect to those Indemnitors upon whose behalf such notice of termination shall have been given, the obligation of any other Indemnitors to remain in full force and effect.

**FOR OHIO RESIDENTS AND DOMICILIARIES**

**WARNING - BY SIGNING THIS PAPER YOU GIVE UP YOUR RIGHT TO NOTICE AND COURT TRIAL. IF YOU DO NOT PAY ON TIME, A COURT JUDGMENT CAN BE TAKEN AGAINST YOU WITHOUT YOUR PRIOR KNOWLEDGE AND THE POWERS OF A COURT CAN BE USED TO COLLECT FROM YOU REGARDLESS OF ANY CLAIMS YOU MAY HAVE AGAINST THE CREDITOR, WHETHER FOR RETURNED GOODS, FAULTY GOODS, FAILURE ON HIS PART TO COMPLY WITH THE AGREEMENT OR ANY OTHER CAUSE.**

**FOR VIRGINIA RESIDENTS AND DOMICILIARIES**

**IMPORTANT NOTICE: THIS INSTRUMENT CONTAINS A CONFESSION OR JUDGMENT PROVISION WHICH CONSTITUTES A WAIVER OF IMPORTANT RIGHTS YOU MAY HAVE AS A DEBTOR AND ALLOWS THE CREDITOR TO OBTAIN A JUDGMENT AGAINST YOU WITHOUT ANY FURTHER NOTICE.**

**Electronic Copy Provision**

The undersigned agree that an electronic reproduction/photocopy/other image of the original document shall be just as binding on the parties to this agreement as the original document.

It is agreed that all Corporate indemnitors are agreeing to indemnify cross corporately for any other corporation that has executed this document, even though a corporate resolution has not been executed.

IN WITNESS WHEREOF, the parties have executed this Agreement set our hands with the intent to be legally bound this \_\_\_\_\_

**COMPANY INDEMNITY**

TEKLINKS LLC  
 (SEAL)  
 By: X [Signature]  
 Name / Title: Wesley A. Templeton  
 Fed ID #: 63-1247749

**COMPANY ACKNOWLEDGEMENT**

STATE OF Alabama } SS:  
 COUNTY/CITY OF Jefferson  
 On 12-23-14, comes before me, Wesley Templeton  
 known to me to be the person who executed the foregoing instrument and  
 acknowledges to me that he/she is the ACCOUNT MANAGER of  
TEKLINKS, the company  
 described in and which executed the foregoing instrument; that he/she knows  
 the seal of the said company; that the seal affixed to the said instrument is such  
 company seal; that it was so affixed by the order of the Board of Directors of  
 said company and that he/she signed his/her name thereto by like order.

X [Signature]  
 Notary Public  
 My Commission Expires. 12-16-17  
 (Notary Seal)

**COMPANY INDEMNITY**

\_\_\_\_\_  
 (SEAL)  
 By: X  
 Name / Title \_\_\_\_\_  
 Fed ID #: \_\_\_\_\_

**COMPANY ACKNOWLEDGEMENT**

STATE OF \_\_\_\_\_ } SS  
 COUNTY/CITY OF \_\_\_\_\_  
 On \_\_\_\_\_, comes before me, \_\_\_\_\_  
 known to me to be the person who executed the foregoing instrument and  
 acknowledges to me that he/she is the \_\_\_\_\_ of  
 \_\_\_\_\_, the company  
 described in and which executed the foregoing instrument; that he/she knows  
 the seal of the said company; that the seal affixed to the said instrument is such  
 company seal; that it was so affixed by the order of the Board of Directors of  
 said company and that he/she signed his/her name thereto by like order.

X  
 Notary Public  
 My Commission Expires.  
 (Notary Seal)

**INDIVIDUAL INDEMNITY**

Signature By: X  
Print Name: \_\_\_\_\_ / Individually  
Soc. Sec #: \_\_\_\_\_  
Address: \_\_\_\_\_

**INDIVIDUAL ACKNOWLEDGEMENT**

STATE OF \_\_\_\_\_ } SS:  
COUNTY/CITY OF \_\_\_\_\_

On \_\_\_\_\_, comes before me,  
\_\_\_\_\_ known to me to be the  
person who is described in and who executed the foregoing instrument and  
acknowledged to me that he/she/they executed the same

X  
Notary Public  
My Commission Expires:  
(Notary Seal)

**INDIVIDUAL INDEMNITY**

Signature By: X  
Print Name: \_\_\_\_\_ / Individually  
Soc. Sec #: \_\_\_\_\_  
Address: \_\_\_\_\_

**INDIVIDUAL ACKNOWLEDGEMENT**

STATE OF \_\_\_\_\_ } SS:  
COUNTY/CITY OF \_\_\_\_\_

On \_\_\_\_\_, comes before me,  
\_\_\_\_\_ known to me to be the  
person who is described in and who executed the foregoing instrument and  
acknowledged to me that he/she/they executed the same.

X  
Notary Public  
My Commission Expires:  
(Notary Seal)

**INDIVIDUAL INDEMNITY**

Signature By: X  
Print Name: \_\_\_\_\_ / Individually  
Soc. Sec #: \_\_\_\_\_  
Address: \_\_\_\_\_

**INDIVIDUAL ACKNOWLEDGEMENT**

STATE OF \_\_\_\_\_ } SS:  
COUNTY/CITY OF \_\_\_\_\_

On \_\_\_\_\_, comes before me,  
\_\_\_\_\_ known to me to be the  
person who is described in and who executed the foregoing instrument and  
acknowledged to me that he/she/they executed the same

X  
Notary Public  
My Commission Expires:  
(Notary Seal)

**INDIVIDUAL INDEMNITY**

Signature By: X  
Print Name: \_\_\_\_\_ / Individually  
Soc. Sec #: \_\_\_\_\_  
Address: \_\_\_\_\_

**INDIVIDUAL ACKNOWLEDGEMENT**

STATE OF \_\_\_\_\_ } SS:  
COUNTY/CITY OF \_\_\_\_\_

On \_\_\_\_\_, comes before me,  
\_\_\_\_\_ known to me to be the  
person who is described in and who executed the foregoing instrument and  
acknowledged to me that he/she/they executed the same.

X  
Notary Public  
My Commission Expires:  
(Notary Seal)

**INDIVIDUAL INDEMNITY**

Signature By: X  
Print Name: \_\_\_\_\_ / Individually  
Soc. Sec #: \_\_\_\_\_  
Address: \_\_\_\_\_

**INDIVIDUAL ACKNOWLEDGEMENT**

STATE OF \_\_\_\_\_ } SS:  
COUNTY/CITY OF \_\_\_\_\_

On \_\_\_\_\_, comes before me,  
\_\_\_\_\_ known to me to be the  
person who is described in and who executed the foregoing instrument and  
acknowledged to me that he/she/they executed the same

X  
Notary Public  
My Commission Expires:  
(Notary Seal)

**INDIVIDUAL INDEMNITY**

Signature By: X  
Print Name: \_\_\_\_\_ / Individually  
Soc. Sec #: \_\_\_\_\_  
Address: \_\_\_\_\_

**INDIVIDUAL ACKNOWLEDGEMENT**

STATE OF \_\_\_\_\_ } SS:  
COUNTY/CITY OF \_\_\_\_\_

On \_\_\_\_\_, comes before me,  
\_\_\_\_\_ known to me to be the  
person who is described in and who executed the foregoing instrument and  
acknowledged to me that he/she/they executed the same.

X  
Notary Public  
My Commission Expires:  
(Notary Seal)

**MUTUAL NON-DISCLOSURE AGREEMENT**

**This Agreement** is made and entered on the last date executed below into between TekLinks, Inc., a Delaware Corporation, having an office and place of business in 201 Summit Parkway, Birmingham, AL 35209; and **COMPANY NAME** (each a "party" and both together referred to herein as the "parties").

**RECITALS**

**This Agreement** provides for the disclosure by one party hereto to the other party of information that is deemed Proprietary and Confidential by the Disclosing Party. The Proprietary and Confidential Information shall be disclosed either through written or oral communications as TekLinks, Inc. and COMPANY NAME for purposes of information exchange and conducting of business. It is understood and agreed that the Proprietary and Confidential Information provided will be reviewed and used solely for the aforesaid purposes by both parties. The Receiving Party is prohibited from using the Proprietary and Confidential Information of the Disclosing Party for any purpose other than those identified above without first obtaining the express written permission of the Disclosing Party.

**AGREEMENTS**

**Accordingly**, for the consideration of the protection of the Disclosing Party's Information, the parties hereto agree as follows:

1. "Proprietary and Confidential Information" is defined as information in any form of any nature including, but not limited to that which concerns or relates to the Disclosing Party's (i) business practices/plans, pricing, financial results, personnel, markets, services, customers, prospective customers and suppliers, investors; (ii) information concerning inventions, processes, methods, products, patents, patent applications, intellectual property and other proprietary rights; (iii) information concerning specifications, drawings, models, samples, tools, software/computer programs, formulae, designs, data, graphs, charts, prototypes, technical information/roadmaps, presentations and related materials; (iv) information concerning manufacturing processes, forecasts, yields, contract manufacturers, etc., which has been reduced to written form and relates to the purpose of this Agreement. It shall be identified as "Proprietary" or "Confidential" with an appropriate legend, marking, stamp, or other obvious written identification by the Disclosing Party. Proprietary and Confidential Information shall also include oral and visual (including graphic or machine readable) disclosures provided that such oral or visual disclosure is identified as Proprietary or Confidential at the time of disclosure and is reduced to writing in summary form, marked as "Proprietary" or "Confidential", and delivered to the Receiving Party within thirty (30) days of the oral or visual disclosure.
2. Upon receiving Proprietary and Confidential Information, the Receiving Party shall keep in confidence and not disclose to any person or entity, not bound by this Agreement, any of the Disclosing Party's Proprietary and Confidential Information, except as otherwise provided by the terms and conditions of this Agreement. The Receiving Party shall (a) exercise the same degree of care to guard against disclosure or use of such information, except as provided herein, as Receiving Party employs with respect to its own Proprietary and Confidential Information of like importance, but in no event, less than reasonable care; (b) not remove or export from the United States or export any such Proprietary and Confidential Information or any direct product thereof except in compliance with and with all licenses and approvals required under applicable export laws and regulations, including without limitation, those of the U.S. Department of Commerce; and (c) not copy or reverse engineer any such Proprietary Information. The Receiving Party will make the Disclosing Party's Proprietary and Confidential Information available only to those of its employees and agents having a "need to know" in order to carry out the purposes of this Agreement. The Receiving Party may make Disclosing Party's Proprietary and Confidential

Information available to Receiving Party's consultants who have previously been approved by the Disclosing Party and which consultants agree in writing to be bound by the restrictions set forth in this Agreement. Further, the Receiving Party shall not use such Proprietary and Confidential Information except for the purpose identified above without the prior written approval of the Disclosing Party. *In order to monitor the receipt of Proprietary Information, the primary recipient of the Disclosing Party's Proprietary Information will be as follows or such other person as the Receiving Party will designate from time to time.*

TekLinks, Inc.

<COMPANY NAME>

Name: Laurie Halvorson  
Title: HR Director  
Address: 201 Summit Pkwy  
Bham AL 35209  
Phone: 205-314-6620  
FAX: 205-271-2471  
Email: lhalvorson@teklinks.com

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_  
FAX: \_\_\_\_\_  
Email: \_\_\_\_\_

3. The Receiving Party shall not be liable for the disclosure or use of Proprietary and Confidential Information if the same is:
  - a. in or enters the public domain, other than by breach of this Agreement;
  - b. known to the Receiving Party at the time of first receipt, or thereafter becomes known to the Receiving Party without similar restrictions from a source other than the Disclosing Party, as evidenced by written records;
  - c. developed by the Receiving Party independent of any disclosure hereunder as evidenced by written records;
  - d. first disclosed by the Receiving Party more than ten (10) years after the date upon which the particular Proprietary Information was received from the Disclosing Party.
4. The Receiving Party hereby agrees to advise each of its employees or consultants participating in the activity which is the purpose of this Agreement that they are obligated to protect the Disclosing Party's Proprietary and Confidential Information in a manner consistent with this Agreement.
5. The obligations and responsibilities of the parties hereto shall survive and continue in full force and effect beyond the expiration or termination of this Agreement for the term specified in 3.d. hereof.
6. All written Proprietary and Confidential Information shall be returned to Disclosing Party or destroyed by Receiving Party, when requested by Disclosing Party at any time, or when Receiving Party's need for such information for the purpose of this Agreement has ended, whichever is earlier. In the event of destruction, Receiving Party shall certify in writing to Disclosing Party, within thirty (30) days, that such destruction has been accomplished. Receiving Party shall make no further use of such Proprietary Information.
7. The disclosure of Proprietary and Confidential Information hereunder shall not be construed as granting either a license under any patent, patent application, trademark, copyright, mask work protection right or any other intellectual property right or right of ownership in said Proprietary Information. Nor shall such disclosure constitute any representation, warranty, assurance, guarantee, or inducement by the Disclosing Party with respect

to infringement of patents or other rights of third parties. *No warranty or representation as to the accuracy completeness, or technical or scientific quality of any Proprietary Information is provided herein. WITHOUT RESTRICTING THE GENERALITY OF THE FOREGOING, NEITHER PARTY MAKES ANY REPRESENTATION OR WARRANTY AS TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF ANY PROPRIETARY INFORMATION DISCLOSED HEREUNDER.*

8. Should the Receiving Party be faced with legal action or a requirement under Government regulations to disclose Proprietary and Confidential Information received hereunder, the Receiving Party shall promptly notify the Disclosing Party thereof, and, upon the request of the latter, shall cooperate in contesting such disclosure. Except in connection with failure to discharge responsibilities set forth in the preceding sentence, neither party shall be liable in damages for any disclosures pursuant to judicial action or Government regulations.
9. This Agreement shall apply to Proprietary and Confidential Information received during the term of this Agreement which shall be three (3) years beginning with its effective date. This Agreement, however, may be terminated earlier by either party upon thirty (30) days written notice. Such termination or any other termination of this Agreement for any reason by either party shall not relieve the parties of any obligation on information disclosed hereunder prior to termination.
10. The effective date of this Agreement shall be the date of the last signature affixed to this Agreement.
11. This Agreement is not intended to be, nor shall it be construed as, a teaming arrangement, joint venture, partnership, or any other business arrangement.
12. Each party shall bear its own costs and expenses incurred in connection with this Agreement. Nothing in this Agreement shall be construed as an obligation by either party to make any purchase of products or services or to enter into a contract, subcontract, or other business relationship with the other.
13. This Agreement contains the entire understanding between the parties with respect to the safeguarding of said Proprietary and Confidential Information and supersedes all prior communications and understandings with respect thereto. No waiver, alteration, modification, or amendment shall be binding or effective for any purpose whatsoever unless and until reduced to writing and executed by authorized representatives of the parties.
14. This Agreement shall be construed in accordance with the laws of the State of Alabama.
15. The Receiving Party acknowledges and agrees that due to the unique nature of the Disclosing Party's Proprietary and Confidential Information, there can be no adequate remedy at law for any breach of its obligations hereunder, that any such breach may allow the Receiving Party or third parties to unfairly compete with the Disclosing Party resulting in irreparable harm to the Disclosing Party, and therefore, that upon any such breach or any threat thereof, the Disclosing Party shall be entitled to appropriate injunctive relief in addition to whatever remedies it might have at law and to be indemnified by the Receiving Party from any loss or harm, including, without limitation, attorney's fees, in connection with any breach or enforcement of the Receiving Party's obligations hereunder or the unauthorized use, or release of any such Proprietary Information. Neither party shall be liable for indirect, incidental, consequential or punitive damages of any nature resulting from or arising in connection with this Agreement. The Receiving Party will notify the Disclosing Party in writing immediately upon the occurrence of any such unauthorized release or other breach of which it is aware.

16. In the event that any of the provisions of this Agreement shall be held by a court or tribunal of competent jurisdiction to be illegal, invalid or unenforceable, such provisions shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect.

17. This Agreement may be executed in any number of counterparts, all of which together shall constitute a single instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement on the respective dates entered below.

**TekLinks, Inc.**  
**A Delaware Corporation**

**<COMPANY NAME>**

Dated: 12-23-14

\_\_\_\_\_  
Dated: \_\_\_\_\_

By: *Laurie Halvorson*  
*Authorized Signature*

By: \_\_\_\_\_  
*Authorized Signature*

Name: Laurie Halvorson

Name: \_\_\_\_\_

Title: HR Director  
*(Group or Division, if applicable)*

Title: \_\_\_\_\_  
*(Group or Division, if applicable)*

# TEKLINKS

Physical Address:  
201 Summit  
Parkway  
Birmingham, AL  
35209

[www.teklinks.com](http://www.teklinks.com)

Remittance Address:  
TekLinks, Inc.  
PO Box 830674  
MSC #703  
Birmingham, AL 35283

Date: 08/01/14

Quote #: AAAQ72630

Sales Rep: wtempleton

Quote To:

City of Vestavia Hills  
Eddy Nelson  
513 Montgomery Highway

Vestavia Hills AL 35216  
Phone: (205) 978-0106

Qty	Description	Unit Price	Ext. Price
300	TekEx Plus - per mailbox Exchange Managed Mailbox - Monthly -Unlimited Storage -TekFilter Advanced - Spam & Virus Filtering -Archiving for 5 years or upon termination of service. (Up to 10 GB per mailbox) Meets most compliance objectives -Backups with restoration capabilities -Email Collaboration - Personal and Shared - Calendars, Contacts, Tasks, Global Address List, Distribution Lists, Scheduling Assistant, Public Folders, Mobile Access* *Supported devices: iPhone, Windows Mobile, Blackberry via POP Outlook Web Access (OWA) -Includes Licensed MS Outlook client (free download)	\$8.95	\$2,685.00
300	TekFilter TekEncryption - per mailbox Policy-driven email encryption Automatically and dynamically applies email encryption Compliance and content security policies are consistently and accurately applied Attachments up to 20MB	\$4.00	\$1,200.00
	Total monthly recurring		\$3,885.00
300	TekFilter TekEncryption Setup - per mailbox	\$4.00	\$1,200.00
	Total setup fees		\$1,200.00



This Quote (i) hereby incorporates by reference the terms and conditions of the Master Service Agreement ("MSA") with TekLinks, (ii) hereby incorporates by reference the pertinent Service Agreement(s) as referenced at <http://www.teklinks.com/content.asp?id=621438>, (iii) applies only to the Services or products covered by this Quote and not to Services or products covered by any other quote, statement of work or order under the MSA, and (iv) does not amend or supplement the terms of the MSA. This Quote, the MSA, Service Agreement and any other written documents attached hereto or incorporated herein are the "Agreement." Capitalized terms not defined herein shall have the respective meanings ascribed to such terms in the MSA.

The prices outlined in this Quote are valid for no more than sixty (60) days from the date the Quote was issued (the "Quotation Life"). At the end of Quotation Life, a new Quote must be issued in order to proceed with purchase of Services.

The Term of this Agreement shall begin on the Service Activation Date (as defined in the Service Agreement) and, unless sooner terminated as provided herein, shall continue until the later of three (3) years after the Effective Date (the "Initial Term") and the expiration of any Renewal Term (as hereinafter defined). After the expiration of the Initial Term or any Renewal Term, and provided that neither party has given the other written notice of its desire not to renew at least sixty (60) days prior to the expiration of the Initial Term or such Renewal Term, this Agreement shall automatically renew for additional one (1) year periods (each, a "Renewal Term" and together with the Initial Term, the "Term").

Either party (the "Terminating Party") may terminate this Agreement effective upon the delivery of written notice to the Defaulting Party on the occurrence of an Event of Default as set forth in the MSA. Customer may terminate this Agreement for convenience upon sixty (60) days' prior written notice to TekLinks ("Termination for Convenience").

Upon termination of this Agreement for any reason, Customer shall be obligated to pay all amounts due and owing to TekLinks for Services performed in accordance with this Agreement up to the effective date of termination, and if fees or costs are calculated on a monthly, quarterly or other periodic basis, then Customer shall be liable for the pro rata portion thereof up to the effective date of termination. If TekLinks effects a termination for Customer's Event of Default, or if Customer effects a Termination for Convenience, then Customer shall pay to TekLinks on demand an amount equal to the sum of all fees for Services through the remainder of the Term that would have been paid had the Agreement not been terminated (such sum being the "Termination Fees"). Requests for Termination for Convenience by Customer should be submitted via email to [hosting@teklinks.com](mailto:hosting@teklinks.com). Upon termination, Customer will no longer have access to, or be able to use the Services except as TekLinks may allow to facilitate Customer's move to another service. Upon termination of this Agreement, Customer, at its expense, is responsible for uninstalling and returning to TekLinks any Service Software previously installed on Customer's system for use with the Service and for returning to TekLinks any TekLinks Equipment located at Customer's location. If requested by TekLinks, Customer shall provide TekLinks with access to Customer's location to repossess all TekLinks Equipment. Payments owed by Customer to TekLinks for TekLinks Equipment shall continue under the applicable Quote until such time as all TekLinks Equipment has been returned to or repossessed by TekLinks.

In connection with the termination or expiration of the Agreement, TekLinks shall (i) reasonably cooperate with Customer to minimize any adverse effect on Customer, its Affiliates or their respective customers arising out of termination of the Service, (ii) assist Customer, at Customer's cost and expense, with deinstallation and removal of any of Customer's Equipment located at a TekLinks location, and (iii) perform those other obligations set forth in this Agreement to be performed by TekLinks upon the termination or expiration of this Agreement; provided, however, if there is a termination for Customer's Event of Default, or a Termination for Convenience by Customer, TekLinks' obligations under this paragraph shall be conditioned on the prior payment by Customer of all Services Fees and Termination Fees due and payable to TekLinks under this Agreement.

TekLinks shall deliver to Customer a monthly invoice for Services Fees. Each invoice will include the Service Fees owed for the following calendar month, including fees related to any adjustments to the Service. A separate invoice will be issued monthly for (1) any known Expenses for which Customer is responsible under the terms of the Services Agreement, and (2) any other applicable charges or fees due and payable for the immediately preceding month and other preceding months.

IN WITNESS WHEREOF, the parties have caused this Quote to be executed by their duly authorized officers on the date set forth below.

Customer Signature \_\_\_\_\_

TEKLINKS, INC.

Print Name \_\_\_\_\_

Signature 

Title of Representative \_\_\_\_\_

Title of Representative ACCOUNT MANAGER

Date \_\_\_\_\_

Date 12/23/2014

# TEKLINKS

## Addendum to TekEx Service Level Agreement

The following terms and conditions are incorporated into and form a part of the referenced Agreement(s) to which they are attached (the "Agreement"). Provisions in the Agreement that are consistent with the Addendum will continue in full force and effect. In the event there is a conflict between the terms and conditions of the Agreement and this Addendum, this Addendum will control. For all purposes, "City of Vestavia Hills", "Customer", "Client" mean the authorized representatives of City of Vestavia Hills acting for City of Vestavia Hills.

*The following paragraphs are amended:*

### 3.0 Service Features

#### 3.1 Common Features

##### 3.1.3 Data Backup, Recovery, & Archiving

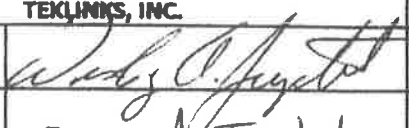
TekEx Service provides backups of mailboxes with restoration capabilities via the TekArchive Service. The TekArchive Service provides archival capacity of up to 10 gigabytes ("GB") per year per mailbox of all incoming, outgoing, and internal e-mails to a separate server. The TekArchive Service includes the following features and benefits:

- Archived messages are available online for up to 7 years or upon termination of Service.
- Full-text search and retrieval on all parts of a message including attachments
- Deleted e-mail messages are restored
- Disaster recovery for electronic communications

The TekArchive service does not cover archiving and recovery of calendar events or contacts.

*The remaining paragraphs remain intact and in full force and effect.*

The parties, acting through their authorized officers hereby execute this Service Level Agreement Addendum.

For TEKLINKS, INC.		For City of Vestavia Hills	
Signature:		Signature:	
Printed Name:	WESLEY A. TEMPLETON	Printed Name:	
Title:	ACCOUNT MANAGER	Title:	
Signature Date:	12-23-2014	Signature Date:	

**Physical Address:**  
 201 Summit Parkway  
 Homewood, AL 35209  
 Phone: 205.314.8800  
 Fax: 205.940.9067

**TEKLINKS**  
**QUOTATION**  
[www.teklinks.com](http://www.teklinks.com)

**Remittance Address:**  
 TekLinks, Inc.  
 PO Box 830674  
 MSC #703  
 Birmingham, AL 35283

Date: 08/07/14

Quote #: AAAQ72806

Sales Rep: wtempleton

**Quote To:**

City of Vestavia Hills  
 Jeff Downes  
 513 Montgomery Highway

Vestavia Hills AL 35216  
 Phone: (205) 978-0195

**Ship To:**

City of Vestavia Hills  
 Jeff Downes  
 513 Montgomery Highway

Vestavia Hills AL 35216

Qty	Part #	Description	Unit Price	Ext. Price
		Exchange Migration Project Flat Fee Aug 2014		
1	TekLinks	Exchange Migration and Archive Set Up Fee A detailed Scope of Work (SOW) will be presented upon acceptance of this project. Migration of existing Exchange data and repositioning email address to TekLinks hosted platform -TekExchange	\$13,000.00	\$13,000.00
			<b>Total</b>	<b>\$13,000.00</b>

Prices subject to change - Pricing does not include applicable sales taxes and handling and delivery charges. We specifically disclaim any and all warranties, express or implied, including but not limited to any implied warranties or with regard to any licensed products.

Pricing may reflect discounts or promotions through our Manufacturer Partners which are subject to change or have availability limitations. Please confirm pricing with your TekLinks CAM before ordering.

Customer Signature \_\_\_\_\_ Date \_\_\_\_\_

**Addendum to the Master Service Agreement  
for The City of Vestavia Hills, Alabama**

Tuesday, February 3<sup>rd</sup>, 2015

This language is to replace the following sections in the TekLinks Master Service Agreement.

**VI. CUSTOMER RESPONSIBILITIES**

**B. Software Rights**

Customer has title to, or a license or other rights to use, access and modify, and has or will obtain for TekLinks a right or license to use, access or modify, any Customer Software or Third Party Software that Customer has requested TekLinks to use, access or modify as part of the Services. Customer, at its sole cost and expenses, shall be responsible for obtaining all such licenses or rights from Third Party Software providers, and TekLinks' obligation to provide the Services hereunder shall be conditioned on Customer's provision of evidence satisfactory to TekLinks that all such licenses and rights have been obtained.

**XVII. GENERAL**

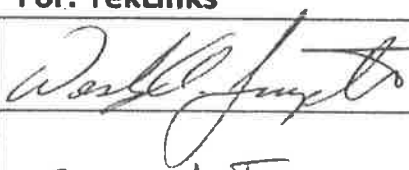
**G. Governing Law**

This Agreement is to be governed by and construed in accordance with the laws of the State of Alabama. Jurisdiction and venue for any action arising under or relating to this Agreement is exclusively in the state or federal courts located in Jefferson County, Alabama. The parties waive any other choice of venue.

**X. BILLING AND PAYMENT TERMS**

**D. Taxes**

Customer is a municipal corporation and, pursuant to Ala. Code §40-23-4(a)(1975), Customer is not required to pay sales, use, excise or services taxes ("Taxes") on the provision of the Services or products by TekLinks under this Agreement.

For: TekLinks		For: City of Vestavia Hills	
Signature:		Signature:	
Printed Name:	WESLEY A. TEMPLETON	Printed Name:	
Title:	ACCOUNT MANAGER	Title:	
Signature Date:	2/3/2015	Signature Date:	

**RESOLUTION NUMBER 4684**

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AND DELIVER AN AGREEMENT WITH SAIN ASSOCIATES FOR DESIGN OF A ROADWAY ADJACENT TO VESTAVIA HILLS ELEMENTARY SCHOOL - CAHABA HEIGHTS**

**WHEREAS**, the City Council adopted and approved Resolution Number 4624 authorizing the City Manager to execute and deliver an agreement with Sain Associates entitled “Proposal for Engineering and Surveying Services, Cahaba Heights Elementary Roadway Project, SA#14-0127” (“the Project”); and

**WHEREAS**, the City Manager has determined that additional services will be needed to expand the Project; and

**WHEREAS**, Sain Associates has submitted an agreement to provide professional services to expand the Project in an amount not to exceed \$20,600; and

**WHEREAS**, the Mayor and City Council feel it is in the best public interest to accept the recommendations of the City Manager as described above.

**BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA, AS FOLLOWS:**

1. The City Manager is hereby authorized to execute and deliver an agreement with Sain Associates for additional services for the project entitled “Proposal for Engineering and Surveying Services, Cahaba Heights Elementary Roadway Project, SA#14-0127” (“the Project”); and
2. The City Manager is authorized to expend an amount not to exceed \$20,600 for the additional services; and
3. A copy of said agreement marked Exhibit A is attached to and incorporated into this Resolution Number 4684; and
4. This Resolution Number 4684 is effective immediately upon adoption and approval.

**DONE, ORDERED, ADOPTED and APPROVED** this the 23<sup>rd</sup> day of February, 2015.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk



## WORK AUTHORIZATION No. 1

**TO:** Mr. Jeff Downes  
City Manager  
City of Vestavia Hills, Alabama  
513 Montgomery Highway  
Vestavia Hills, Alabama 35216

**PROJECT No.:** 14-0127  
**City P.O. No.:** 14-24066

**FROM:** Darren Hamrick, P.E.  
Team Leader/Civil Engineering Division

**DATE:** February 19, 2015  
(Original Proposal: 08/01/14)

**SUBJECT:** Cahaba Heights Elementary Roadway Project  
Proposal for Additional Engineering Design  
and Surveying Services  
Cahaba Heights  
Existing PO No.: 14-24066

---

### I. SCOPE

Sain Associates will perform the following additional activities, as requested for this project:

- We will extend the length of roadway design all the way to Oak View Lane, which will increase the new roadway length to a total length of approximately 775 feet from the previous 400 feet.
- The new roadway will have 11' wide lanes, rather than 12' wide lanes, as previously shown. On-street parking will be provided along the northern side of the road. (See the attached conceptual site plan.)
- We will expand the topographic survey area and establish boundaries along the length of this roadway to be designed. See the attached Exhibit A, which details the expanded survey scope and fee.
- We will coordinate with the developer's architect (Williams Blackstock Architects) regarding their site development plans and buildings. We understand from WBA that they intend to use the residential/apartment building to retain fill material, which could support fill material for the roadway. Therefore the timing of their construction would need to be considered in with the roadway construction.
- We will coordinate with Alabama Power Company for the existing overhead power to be relocated underground, along the northern side of the new road, for the full length of the project. The City will assist in these negotiations, as needed, regarding costs for relocation. Precise locations of ornamental light poles will be coordinated with APCO and the adjoining developers (lighting design by them).
- We will set the construction schedule to allow the portion of the work adjacent to the dermatology project (immediately north of the school entrance) to be substantially completed by early August. This may involve phasing the construction so that this portion of the project is delivered on time for the dermatology project to open.
- No landscaping or irrigation design is included in this scope of services.
- No environmental studies, geotechnical studies, or retaining wall design is included in this scope of services.

Celebrating 40 Years of Excellence in Engineering and Surveying

Two Perimeter Park South, Suite 500 East - Birmingham, Alabama 35243

p (205) 940-6420 - f (205) 940-6433

www.sain.com

**II. BUDGET**

<u>Scope</u>	<u>Original Fee</u>	<u>Expanded Fee</u>
Surveying	\$ 5,285	\$11,185
Construction Documents	\$17,300	\$29,500
Bidding	\$ 3,500	\$ 3,500
Construction Observations	\$ 7,000	\$ 9,500

**III. STATUS**

We will schedule surveying activities immediately upon receiving your signed authorization, and we will target having the bid package ready in time to bid the project and to have a contractor ready to proceed with work when school lets out for summer.

**IV. REVISIONS**

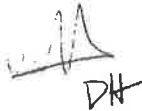
Any requested additional services such as ALTA Survey, plats for recording roadway boundary, construction stakeout, legal descriptions, retaining wall design, traffic counts, lighting design (photometrics), environmental or geotechnical investigations will be negotiated with you prior to proceeding. We would discuss details with you prior to commencement of any additional services to verify your approval.

*This agreement is subject to the Terms and Conditions of our existing agreement. All subsequent services required by you outside the scope of services specified will be performed on a time and materials basis according to the schedule of rates enclosed.*

**APPROVED:**



Darren Hamrick, PE, LEED AP  
Project Development Manager/Team Leader  
Alabama License No. 23374

  
DH

Lawren Pratt, PE, LEED AP  
Division Manager/Team Leader  
Alabama License No. 23133

**ACCEPTED:**

**THE CITY OF VESTAVIA HILLS**

By: \_\_\_\_\_  
Authorized Representative

\_\_\_\_\_  
Printed Name, Title

\_\_\_\_\_  
Date

Enclosure: Exhibit A – Detailed Survey Scope

Cc: Joe Meads, PE – Sain Associates  
Rodney Cunningham, PLS – Sain Associates





## Exhibit A Detailed Survey Scope

**DATE:** February 18, 2015

**SUBJECT:** Cahaba Heights Elementary Roadway Project  
Topographic Survey and Roadway Right-of-Way Establishment  
Sain Project Number 14-0127

### EXPANDED SURVEY SCOPE OF SERVICES

#### Topographic Survey

Sain Associates will perform a Topographic Survey of an area located near Vestavia Elementary School (Cahaba Heights). Contours will be shown at 1-foot intervals and based from USGS datum. Spot elevations will be shown in flat areas. A benchmark will be set on site. We will show visible utilities and utilities as marked by utility companies or as shown on maps. We will order a utility locate request to have utilities in public right-of-way marked. Alabama One Call does NOT mark any utilities that are within the limits of private property. It is the responsibility of the City to have any subsurface utilities within the limits of City property marked prior to our arrival, in order for them to be included in the survey. Visible drainage structures will be shown indicating top and invert elevations as well as type and size of pipes. Visible improvements will be shown including buildings, walls, fences, sidewalks, curbs, parking areas, paved areas, and landscaped areas. *See enclosed site map for Topographic Survey Limits.*

#### Right-of Way Re-establishment

Sain Associates will re-establish a portion of existing right-of-way of Oakview Lane for graphical reference on the Topographic Survey. The southern 250 feet of existing right-of-way of Oakview Lane will be re-established. Missing or calculated right-of-way points will **NOT** be set during the survey.

#### Property Lines Re-establishment

Sain Associates will re-establish property lines for Tax Parcels **28 00 22 2 009 003.000** and **28 00 22 2 010 013.00** are recorded in the office of the Judge of Probate of Jefferson County.

Iron pins will be set at missing or calculated property corners. Visible encroachments onto and beyond the limits of the surveyed parcel will be noted and shown on the survey. The legal description, as recorded in the office of the Judge of Probate of Jefferson County, will be shown on the survey. Sain Associates will **NOT** perform an independent title search of the surveyed parcel of land. ALTA/ACSM requirements and procedures will NOT be utilized during the Boundary Survey but can be performed upon request. If ALTA/ACSM requirements are requested, additional fees will apply and will be billed hourly in accordance to the enclosed Terms and Conditions. Boundary Survey locations will extend twenty-five (10) feet beyond the property lines. *See attached site map for survey limits*

Celebrating 40 Years of Excellence in Engineering and Surveying

Two Perimeter Park South, Suite 500 East - Birmingham, Alabama 35243

p (205) 940-6420 - f (205) 940-6433

www.sain.com

Mr. Jeff Downes  
February 19, 2015  
Page 2

**FEES**

Lump Sum .....\$5,900.00

**REVISIONS**

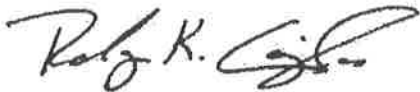
Revisions to the survey and additional work not stated in the scope of work above, will be billed hourly in accordance with the rate schedule shown on the enclosed Terms and Conditions.

**EXCEPTIONS**

- ALTA/ACSM Survey is excluded.
- Platting or Recording Roadway Boundary (It is proposed as an Easement)
- Construction Stakeout
- As Built Survey

Should you have any questions or comments, please do not hesitate to call.

Sincerely,



Rodney Cunningham, P.L.S.  
Survey Division Manager  
Alabama Lic. No. 26013

**ORDINANCE NUMBER 2556**

**AN ORDINANCE TO FURTHER AMEND THE ZONING ORDINANCE AND THE ZONING MAP OF THE CITY OF VESTAVIA HILLS, ALABAMA, ADOPTED SEPTEMBER 16, 1985, AND AS LAST AMENDED SO AS TO CHANGE THE CLASS OF DISTRICT ZONING OF PROPERTY FROM VESTAVIA HILLS R-4 TO VESTAVIA HILLS B-1.2**

**BE IT ORDAINED** by the City Council of the City of Vestavia Hills, Alabama, as follows: That the Zoning Ordinance and Zoning Map of the City of Vestavia Hills, Alabama, adopted September 16, 1985, and as last amended so as to change the class of district zoning of the following described property from Vestavia Hills R-4 (residential) Vestavia Hills B 1.2 (neighborhood mixed use district):

4300 Dolly Ridge Road  
Troy W. and Barbara L. Peters, owner(s)

More particularly described as follows:

Lot 6, Block 1, New Merkle Heights as recorded in Map Book 19, Page 92, Judge of Probate Jefferson County, Alabama, less and except the west 501 feet.

**BE IT FURTHER ORDAINED** that said rezoning be subject to the following conditions: (1) That the City reach a development agreement between the vested parties and that said agreement and conditions be recordable; (2) The use is limited to professional office; and (3) a two-story height limitation is imposed.

**APPROVED and ADOPTED** this the 9<sup>th</sup> day of March 2015.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

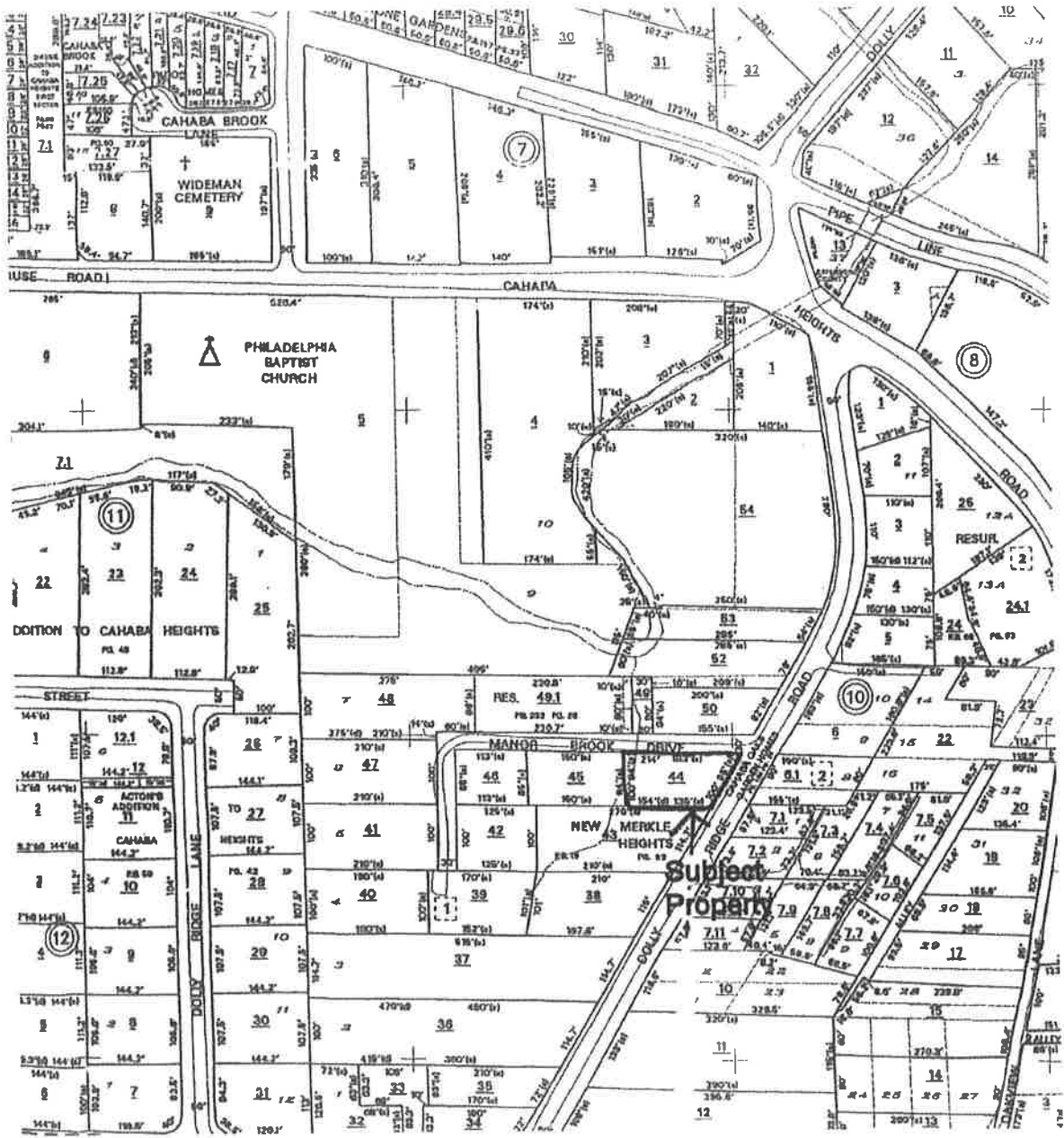
Rebecca Leavings  
City Clerk

**CERTIFICATION:**

I, Rebecca Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance # 2556 is a true and correct copy of such Ordinance that was duly adopted by the City Council of the City of Vestavia Hills on the 9<sup>th</sup> day of March 2015 as same appears in the official records of said City.

Posted at Vestavia Hills Municipal Center, Vestavia Hills Library in the Forest, New Merkle House and Vestavia Hills Recreational Center this the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

Rebecca Leavings  
City Clerk



**ORDINANCE NUMBER 2557**

**AN ORDINANCE TO FURTHER AMEND THE ZONING ORDINANCE AND THE ZONING MAP OF THE CITY OF VESTAVIA HILLS, ALABAMA, ADOPTED SEPTEMBER 16, 1985, AND AS LAST AMENDED SO AS TO CHANGE THE CLASS OF DISTRICT ZONING OF PROPERTY FROM VESTAVIA HILLS R-4 AND R-6 TO VESTAVIA HILLS B-1.2**

**BE IT ORDAINED** by the City Council of the City of Vestavia Hills, Alabama, as follows: That the Zoning Ordinance and Zoning Map of the City of Vestavia Hills, Alabama, adopted September 16, 1985, and as last amended so as to change the class of district zoning of the following described property from Vestavia Hills R-4 (residential) Vestavia Hills B 1.2 (neighborhood mixed use district):

4317 AND 4321 Dolly Ridge Road  
JFKE, LLC and B&J, LLC, owner(s)

More particularly described as follows:

Parcel 1. Part of the Southeast quarter of the Northwest quarter of Section 22, Township 18 South, Range 2 West, more particularly described as follows;

Commence at the Southeast corner of said ¼-¼ section and run thence Westwardly along the south line thereof for a distance of 535.1 feet to the Southwest corner of Lot 24, in Block B-2, According to the Survey of New Merkle Heights, as recorded in Map Book 16, Page 20, in the Office of the Judge of Probate Jefferson County, Alabama; run thence Northwardly along the west line of said Lot 24 for a distance of 95.50 feet to the Point of Beginning of the tract herein described; from the Point of Beginning thus obtained, continue Northwardly along the west line of said Lot 24 for a distance of 115.0 feet to the Southeast corner of Lot 23, in Block B-2, in said Survey; run thence Westwardly along the South line of said Lot 23, and along the South line of Lot 1, in Block B-2 in said survey, for a distance of 326.55 feet to the Easterly line of Dolly Ridge Road (Formerly Caldwell Mill Road) as now located and constructed with 50 foot right-of-way as granted to Jefferson County, Alabama, by deed recorded in Volume 2555, Page 259; run thence Southwestwardly along the Easterly line of said road for a distance of 133.18 feet; run thence Eastwardly and parallel to the South line of said ¼-¼ section for a distance of 397.62 feet to the Point of Beginning. Property located in Jefferson County, Alabama.

Parcel 2. Part of the Southeast quarter of the Northwest quarter of Section 22, Township 18 South, Range 2 West, more particularly described as follows:

Lots 1, 2, 22 and 23, Block 2, according to the survey of New Merkle Heights as recorded in Map Book 19, Page 92, in the Office of the Judge of Probate of Jefferson County, Alabama, except that part of Lots 1 and 2 previously conveyed to Jefferson County, Alabama, for right of way purposes as recorded in Volume 2555, Page 251, in said Probate Office, and also except that part of Lot 22 described as follows: Commence at the Northeast corner of Lot 22; thence run Westerly along the Northerly line of said Lot 22 a distance of 150 feet; thence left and proceed in a generally Southwesterly direction parallel to the West line of said Lot 22 a distance of 10 feet; thence left and proceed in a generally Southeasterly direction to a point on the East line of said Lot 22 which is 18.3 feet North of the Southeast corner of said Lot 22; thence left and in a generally Northeasterly direction along the East line of Lot 22 to point of beginning.

**BE IT FURTHER ORDAINED** that said rezoning be subject to the following conditions: (1) That the City reach a development agreement between the vested parties and that said agreement and conditions be recordable; (2) That the parcels be re-platted; and (3) any changes to the Bilano Dermatology Project be brought back to the Commission; and/or (4) that a rear access agreement is recorded between the applicant and neighboring parcels (should Option B be desired).

**APPROVED and ADOPTED** this the 9<sup>th</sup> day of March 2015.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

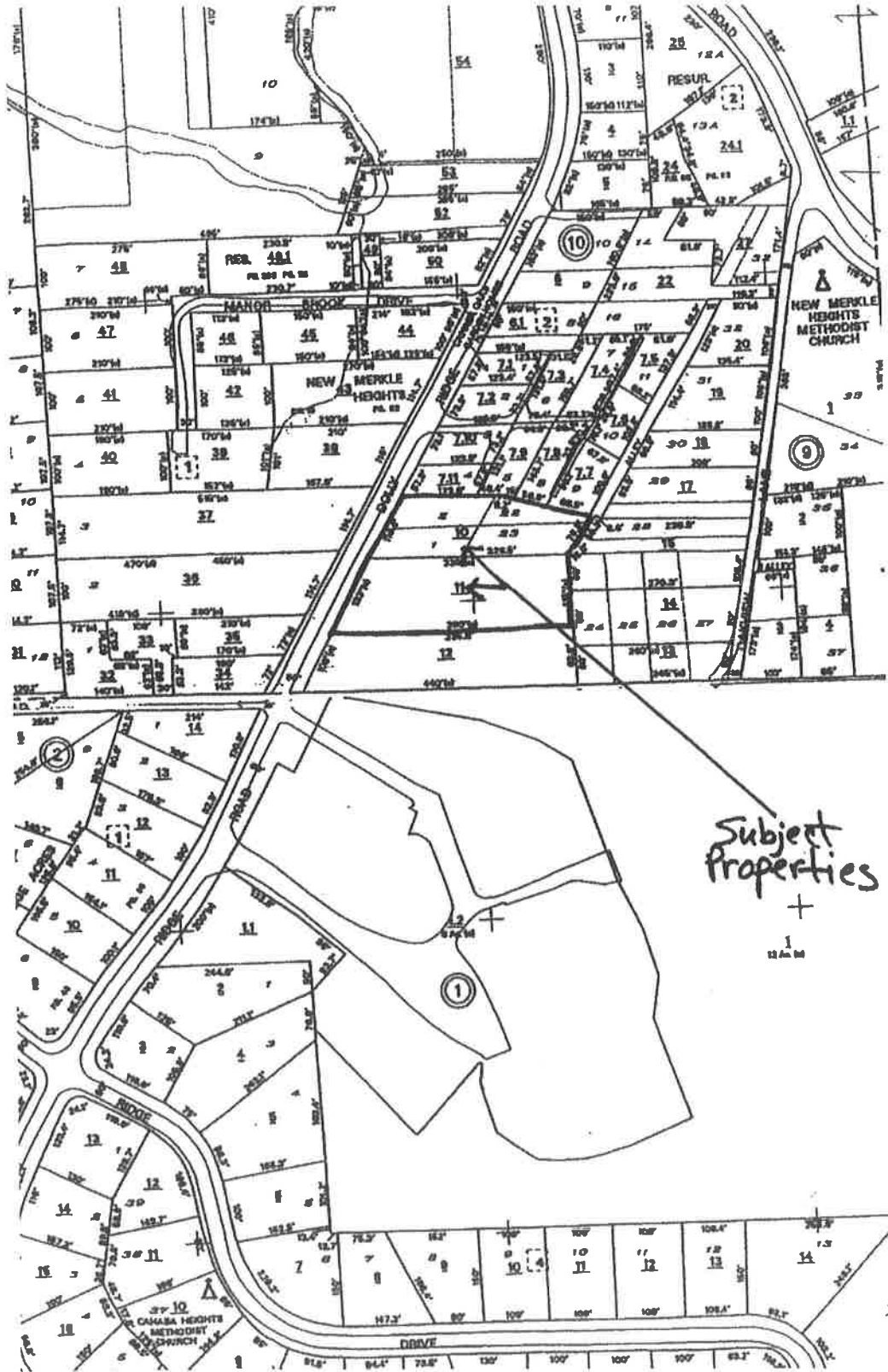
**CERTIFICATION:**

I, Rebecca Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance # 2557 is a true and correct copy of such Ordinance that was duly adopted by the City Council of the City of Vestavia Hills on the 9<sup>th</sup> day of March 2015 as same appears in the official records of said City.

Posted at Vestavia Hills Municipal Center, Vestavia Hills Library in the Forest, New Merkle House and Vestavia Hills Recreational Center this the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

Rebecca Leavings  
City Clerk





**RESOLUTION NUMBER 4682**

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT TO LEASE/PURCHASE A COMMUNICATIONS SYSTEM**

**WHEREAS**, the Fire Department has identified a need to lease/purchase a communications system in the total amount of \$448,305.00 to be payable in increments on a yearly basis for the next 5 years as requested from the Fire Chief to the City Manager; and

**WHEREAS**, a copy of said agreement and supporting documents are marked as “Exhibit A,” and attached to and incorporated into this Resolution Number 4682 as though written fully therein; and

**WHEREAS**, the Fire Department has requested that the expense be charged to the E-911 Special Funds account; and

**WHEREAS**, the City Manager has reviewed the request and has recommended acceptance of said lease/purchase; and

**WHEREAS**, the Mayor and the City Council feel it is in the best public interest to accept the request as presented and recommended by the City Manager.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA, AS FOLLOWS:**

1. The City Manager is hereby authorized to enter into an agreement to lease/purchase a communications system in the amount of \$448,305.00 to be expensed to the E-911 Special Funds account; and
2. This Resolution Number 4682 shall become effective immediately upon adoption and approval.

**ADOPTED and APPROVED** this the 9<sup>th</sup> day of March, 2015.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

PATRICK H. BOONE  
ATTORNEY AND COUNSELOR AT LAW  
NEW SOUTH FEDERAL SAVINGS BUILDING, SUITE 705  
215 RICHARD ARRINGTON, JR. BOULEVARD NORTH  
BIRMINGHAM, ALABAMA 35203-3720

TELEPHONE (205) 324-2018  
FACSIMILE (205) 324-2295

February 17, 2015

By Hand Delivery

Fire Chief Jim St. John  
Vestavia Hills Fire Department  
Vestavia Hills Municipal Center  
513 Montgomery Highway  
Vestavia Hills, Alabama 35216

In Re: Communications System Agreement Between Motorola Solutions, Inc.  
("Motorola") and City of Vestavia Hills, Alabama ("Customer")

Dear Chief St. John:

On January 21, 2015, you sent to me via electronic mail a copy of proposed Equipment Lease-Purchase Agreement by and between Motorola Solutions, Inc. ("Lessor") and the City of Vestavia Hills, Alabama ("Lessee") with a request that I review the document and provide you with my written legal opinion. I furnished you with my written legal opinion, dated January 28, 2015, via hand delivery on that date.

I was out of the state from February 3, 2015 until February 9, 2015. When I returned to my office on February 10, 2015, I learned that you had provided me with a copy of Communications System Agreement by and between Motorola Solutions, Inc. ("Motorola") and the City of Vestavia Hills, Alabama ("Customer"). You have requested that I furnish you with my written legal opinion regarding the Communications System Agreement. The purpose of this letter is to comply with your request.

After reading the Communications System Agreement, I find the same to meet the requirements of Alabama law and do not have any suggested additions, deletions, changes and/or corrections.

February 17, 2015  
Page 2

When you and I discussed the Equipment Lease Purchase Agreement and the Communications System Agreement this morning on the telephone, you informed me that attorney, Bill Stancik, wishes to discuss the Equipment Lease Purchase Agreement with me and that attorney, Judy Jean-Pierre, wants to talk to me about the Communications System Agreement. I will be happy to participate in conference calls with both of them and you at mutually agreeable times.

Please call me if you have any questions regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Patrick H. Boone". The signature is fluid and cursive, with a long horizontal stroke at the end.

Patrick H. Boone  
Vestavia Hills City Attorney

PHB:gp

cc: City Manager Jeffrey D. Downes

PATRICK H. BOONE  
ATTORNEY AND COUNSELOR AT LAW  
NEW SOUTH FEDERAL SAVINGS BUILDING, SUITE 705  
215 RICHARD ARRINGTON, JR. BOULEVARD NORTH  
BIRMINGHAM, ALABAMA 35203-3720

TELEPHONE (205) 324-2018  
FACSIMILE (205) 324-2295

January 28, 2015

By Hand Delivery

Fire Chief Jim St. John  
Vestavia Hills Fire Department  
Vestavia Hills Municipal Center  
513 Montgomery Highway  
Vestavia Hills, Alabama 35216

In Re: Equipment Lease Purchase Agreement Between Motorola Solutions, Inc. ("Lessor")  
and City of Vestavia Hills ("Lessee")

Dear Chief St. John:

On January 21, 2015, you sent to me via electronic mail a copy of proposed Equipment Lease-Purchase Agreement by and between Motorola Solutions, Inc. ("Lessor") and the City of Vestavia Hills, Alabama ("Lessee") with a request that I review the document and provide you with my written legal opinion. This letter legal opinion complies with your request.

**I. OPINION OF COUNSEL**

The Equipment Lease-Purchase Agreement ("agreement") requires me as City Attorney to sign the Opinion of Counsel contained in the Lease on page 6, which reads in pertinent part as follows:

"iii. The Lease constitutes a legal, valid and binding obligation of the Lessee enforceable in accordance with its terms;"

**II. INDEMNITY**

Section 14 of the agreement requires the City, as Lessee, to indemnify the Lessor and reads as follows:

"14. **INDEMNIFICATION.** Lessee shall, to the extent permitted by law, indemnify Lessor against, and hold Lessor harmless from, any and all claims, actions, proceedings, expenses, damages or liabilities, including attorneys' fees and court costs, arising in connection with the Equipment, including, but not limited to, its selection, purchase, delivery, licensing, possession, use, operation, rejection, or return and the recovery of claims under insurance policies thereon."

It is my legal opinion that municipalities in Alabama cannot spend public funds to indemnify and hold harmless third parties. I base my legal opinion upon the following legal authorities:

A. **MUNICIPALITIES CANNOT SPEND PUBLIC FUNDS TO INDEMNIFY THIRD PARTIES:**

(1) **Constitution of Alabama of 1901:** Section 94, as amended by Amendments 112 and 558, of the Constitution of Alabama provides as follows:

“The Legislature shall not have power to authorize any county, city, town or other subdivision of this state to lend its credit or to grant public money or thing of value in aid of or to any individual, association or corporation whatsoever.”

In my opinion, it would be a violation of Article IV, Section 94(a) of the *Constitution of Alabama* for the City to indemnify a third party for actions, costs, expenses, damages and liabilities.

(2) **Limits of Liability of Municipalities:** Section 11-93-2, *Code of Alabama, 1975*, establishes the maximum amount of damages recoverable against governmental entities. The recovery of damages under any judgment against a city shall be limited to \$100,000.00 for bodily injury or death for one person in any single occurrence and to \$300,000.00 in the aggregate where more than two persons have claims or judgments on account of bodily injury or death arising out of any single occurrence. This statute also provides in pertinent part that recovery of damages under any judgment against a city shall be limited to \$100,000.00 for damage or loss of property arising out of any single occurrence.

It is my opinion that if the City agreed to indemnify a third party, then in such event said indemnity agreement could waive the statutory maximum limits of liability set forth in Title 11-93-2, *Code of Alabama, 1975*.

(3) **Public Officers Are Entitled to Discretionary Function Immunity:** Public officials and employees who act within the scope of their authority in performing functions involving discretion are entitled to discretionary function immunity. *Woods v. Wilson*, 539 So.2d 224 and *Hillard v. Huntsville*, 585 So.2d 889.

It is my opinion that if the City agreed to indemnify a third party, then in such event such indemnity agreement could waive the discretionary function immunity for its public employees.

(4) **Joint Liability:** Title 11-47-191(b), *Code of Alabama, 1975*, provides as follows:

“(b) When a judgment shall be obtained against a municipality and the other party liable as provided in subsection (a) of this section, execution shall issue against the other defendant or defendants in the ordinary form and shall not be demandable of the city or town unless the other defendants are insolvent and the same cannot be made out of their property, and the city or town shall pay only so much of the said judgment as cannot be collected from the other defendants.”

If the City indemnified a third party, then in such event it would violate the above statute.

(5) **Municipalities in Alabama May Spend Public Funds Only for Public Purposes:** Municipalities in Alabama may spend public funds only for public purposes. The Supreme Court of Alabama has interpreted the language of Sections 93 and 94 of the *Constitution of Alabama* to allow appropriations of public funds when the appropriation is used for public purposes. *Alabama Constitution* amend. 93; *Alabama Constitution* amend. 94; *Slawson v. Alabama Forestry Comm'n*, 631 So.2d 953 (Ala.1994). *Opinion of the Justices No. 269*, 384 So.2d 1051 (1980); *Stone v. State*, 251 Ala. 240 (1948).

**B. MUNICIPALITIES MAY BE LIABLE FOR THE NEGLIGENT ACTS OF ITS EMPLOYEES ACTING IN THE LINE AND SCOPE OF THEIR EMPLOYMENT:**

(1) Title 11-47-190, *Code of Alabama, 1975*, reads as follows:

“No city or town shall be liable for damages for injury done to or wrong suffered by any person or corporation, unless such injury or wrong was done or suffered through the neglect, carelessness or unskillfulness of some agent, officer or employee of the municipality engaged in work therefor and while acting in the line of his or her duty, or unless the said injury or wrong was done or suffered through the neglect or carelessness or failure to remedy some defect in the streets, alleys, public ways or buildings after the same had been called to the attention of the council or other governing body or after the same had existed for such an unreasonable length of time as to raise a presumption of knowledge of such defect on the part of the council or other governing body and whenever the city or town shall be made liable for damages by reason of the unauthorized or wrongful acts or negligence, carelessness or unskillfulness of any person or corporation, then such person or corporation shall be liable to an action on the same account by the party so injured. However, no recovery may be had under any judgment or combination of judgments, whether direct or by way of indemnity under Section 11-47-24, or otherwise, arising out of a single occurrence, against a municipality, and/or any officer

or officers, or employee or employees, or agents thereof, in excess of a total of \$100,000 per injured person up to a maximum of \$300,000 per single occurrence, the limits set out in the provisions of Section 11-93-2 notwithstanding.”

(2) **Joint Liability:** Title 11-47-191(b), *Code of Alabama, 1975*, provides as follows:

“(b) When a judgment shall be obtained against a municipality and the other party liable as provided in subsection (a) of this section, execution shall issue against the other defendant or defendants in the ordinary form and shall not be demandable of the city or town unless the other defendants are insolvent and the same cannot be made out of their property, and the city or town shall pay only so much of the said judgment as cannot be collected from the other defendants.”

(3) **Defense of Municipal Employees Sued for Damages:** Title 11-47-24(a), *Code of Alabama, 1975*, provides as follows:

“(a) Whenever any employee of a municipal corporation of the State of Alabama shall be sued for damages arising out of the performance of his official duties, and while operating a motor vehicle or equipment engaged in the course of his employment, such government agency shall be authorized and required to provide defense counsel for such employees in such suit and to indemnify him from any judgment rendered against him in such suit. In no event shall a municipal corporation of the state be required to provide defense and indemnity for employees who may be sued for damages arising out of actions which were either intentional or willful or wanton.”

(4) **Liability Insurance:** Title 11-47-24(b), *Code of Alabama, 1975*, provides as follows:

“(b) All municipal corporations of the State of Alabama are hereby authorized to contract at governmental expense for policies of liability insurance to protect employees in the course of their employment.”

(5) **The City has Liability Insurance Coverage for Employees:** At the present time, the City has general comprehensive liability insurance issued by States Self-Insurers Risk Retention Group written by Berkly Risk Administrators Company, LLC.



(6) **Prejudice the Rights of the City General Comprehensive Insurance Carrier and Jeopardize Coverage:** Based upon Title 11-47-191(b), *Code of Alabama, 1975*, it is my legal opinion that if the City agreed to the indemnity language, that it would prejudice the rights of the City general comprehensive liability insurance carrier and jeopardize coverage under the policy.

Section 23 of the agreement on page 5 reads in pertinent part as follows:

“Any provision of this Lease found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of the Lease.”

In my legal opinion, the City of Vestavia Hills cannot agree to the language of Section 14 regarding indemnification.

### **III. MY RECOMMENDATIONS**

A. I recommend that Section 14 of the agreement be deleted in its entirety. It is my legal opinion that with that modification, the agreement will meet the requirements of Alabama law.

B. I further recommend that our insurance carrier properly insure the equipment or in the alternative that the City be self-insured with the written consent of Lessor as provided for in Section 13 of the agreement.

### **IV. WARRANTIES BY CITY**

The Equipment Lease-Purchase Agreement requires the City to make certain warranties to the Lessor. Some of those warranties are discussed below.

A. **SECTION 6(i). THE CITY IS A POLITICAL SUBDIVISION OR AGENCY OR DEPARTMENT OF A STATE.** The City of Vestavia Hills, Alabama is a municipal corporation incorporated under the *Constitution* and laws of the State of Alabama. The City was incorporated as a municipality on November 8, 1950 pursuant to the authority of Chapter 2, Article 1, Title 37 of the 1940 *Code of Alabama* by virtue of Order of Incorporation rendered on November 8, 1950 by Jefferson County Probate Judge Tom Garner in Jefferson County Probate Court case number 25507. The Order of Incorporation is filed for recorded in the office of the Judge of Probate of Jefferson County, Alabama in Probate Minute Book 49 on page 183.

Municipal corporations are political subdivisions of the state, created as convenient agencies for exercising such government powers of state as may be entrusted to them. *City of Birmingham v. Norton*, 255 Ala. 262.

**B. SECTION 2(d). THE INTEREST PORTION OF THE LEASE PAYMENTS SHALL BE EXCLUDED FROM GROSS INCOME FOR FEDERAL INCOME TAX PURPOSES:** Section 103 of the *Internal Revenue Code* (26 USC §103(a) and (c)), read as follows:

**“§103. Interest on State and Local Bonds**

(a) Exclusion.—Except as provided in subsection (b), gross income does not include interest on any State or local bond.

(c) Definitions.—For purposes of this section and part IV—

(1) State or local bond.—The term “State or local bond” means an obligation of a State or political subdivision thereof.”

**C. SECTION 6(iii). THE CITY HAS COMPLIED WITH ALL BIDDING REQUIREMENTS:** The Alabama Competitive Bid Law applicable to municipalities is set forth at Title 41-16-50 (a), *Code of Alabama, 1975*, provides in pertinent parts as follows:

“(a) With the exception of contracts for public works whose competitive bidding requirements are governed exclusively by Title 39, all expenditure of funds of whatever nature for labor, services, work, or for the purchase of materials, equipment, supplies, or other personal property involving fifteen thousand dollars (\$15,000) or more, and the lease of materials, equipment, supplies, or other personal property where the lessee is, or becomes legally and contractually, bound under the terms of the lease, to pay a total amount of fifteen thousand dollars (\$15,000) or more, by or on behalf of any...governing bodies of the municipalities of the state ...shall be made under contractual agreement entered into by free and open competitive bidding, on sealed bids, to the lowest responsible bidder.”

The City invited competitive bids as required by the above statute.

**D. SECTION 6(iii). THE ENTERING INTO AND PERFORMANCE OF THIS LEASE ARE AUTHORIZED UNDER THE LAWS AND CONSTITUTION OF YOUR STATE.** Municipalities in Alabama, by virtue of Title 11-40-1, *Code of Alabama, 1975*, may contract and be contracted with. The Supreme Court of Alabama has held that the City Council is authorized to enter into contracts for the City (*City of Prichard v. Moulton*, 277 Ala. 231 (1964)). The City Council must approve the contract (*Town of Boligee v. Greene County Water and Sewer Authority*, 77 So.3rd 1166 (2011)) by ordinance or resolution (*Van Antwerp, et al v. Board of Commissioners of the City of Mobile, et al*, 115 So. 239 (1928)). The contract must be in writing (Title 11-47-5, *Code of Alabama, 1975*) and signed by the Mayor (Title 11-43-83, *Code of Alabama, 1975*) and the City Manager (Title 11-43-21(7) and Title 11-43-A-48, *Code of Alabama, 1975*).

E. SECTION 6(iv). THIS LEASE IS A LEGAL, VALID AND BINDING OBLIGATION ENFORCEABLE WITH ITS TERMS. Municipalities in Alabama, by virtue of Title 11-40-1, *Code of Alabama, 1975*, may sue and be sued.

F. SECTION 18 AND EXHIBIT. MUNICIPALITIES IN ALABAMA MAY ENTER INTO A LEASE-PURCHASE AGREEMENT FOR A TERM OF FIVE (5) YEARS: Title 41-16-57(f), *Code of Alabama, 1975*, provides as follows:

“(f) Contracts for the purchase of personal property or contractual services shall be let for periods not greater than three years. Contracts for the leasing of motor vehicles by local governing bodies shall be let for periods not greater than five years. Lease-purchase contracts for capital improvements and repairs to real property shall be let for periods not greater than 10 years and all other lease-purchase contracts shall be let for periods not greater than 10 years.”

G. ATTACHMENT BANK QUALIFIED TAX EXEMPT OBLIGATION: The City warrants and represents that, “Lessee, City of Vestavia Hills, certifies that it has designated this lease No. 23668 as a qualified tax-exempt obligation in accordance with Section 265(B)(3) of the Code and if the Lessee has designated this lease as a qualified tax-exempt obligation, it has not designated more than \$10,000,000 of its obligations as qualified tax-exempt obligations in accordance with such section for the current calendar year and that it reasonably anticipates that the total amount of tax-exempt obligations to be issued by Lessee during the current calendar year will not exceed \$10,000,000.”

I am prepared to sign the “Opinion of Counsel” in the agreement provided the indemnity language (Section 14) is deleted in its entirety. In the meantime, please call me if you have any questions regarding this matter.

Sincerely,



Patrick H. Boone  
Vestavia Hills City Attorney

PHB:gp  
cc: City Manager Jeffrey D. Downes

# EXHIBIT A

## Communications System Agreement Lease Purchase

Motorola Solutions, Inc. ("Motorola") and the City of Vestavia Hills, AL ("Customer") enter into this "Agreement," pursuant to which Customer will purchase and Motorola will sell the System, as described below. Motorola and Customer may be referred to individually as a "Party" and collectively as the "Parties." For good and valuable consideration, the Parties agree as follows:

### Section 1 EXHIBITS

The exhibits listed below are incorporated into and made a part of this Agreement. In interpreting this Agreement and resolving any ambiguities, the main body of this Agreement takes precedence over the exhibits and any inconsistency between Exhibits A through D will be resolved in their listed order.

Exhibit A	Software License Agreement
Exhibit B	Motorola's Proposal dated _____, 2014
Exhibit C	Service Terms and Conditions, if applicable
Exhibit D	System Acceptance Certificate

### Section 2 DEFINITIONS

Capitalized terms used in this Agreement have the following meanings:

- 2.1. "Acceptance Tests" means those tests described in the Acceptance Test Plan.
- 2.2. "Beneficial Use" means when Customer first uses the System or a Subsystem for operational purposes (excluding training or testing).
- 2.3. "Confidential Information" means any information that is disclosed in written, graphic, verbal, or machine-recognizable form, and is marked, designated, or identified at the time of disclosure as being confidential or its equivalent; or if the information is in verbal form, it is identified as confidential at the time of disclosure and is confirmed in writing within thirty (30) days of the disclosure. Confidential Information does not include any information that: is or becomes publicly known through no wrongful act of the receiving Party; is already known to the receiving Party without restriction when it is disclosed; is or becomes, rightfully and without breach of this Agreement, in the receiving Party's possession without any obligation restricting disclosure; is independently developed by the receiving Party without breach of this Agreement; is explicitly approved for release by written authorization of the disclosing Party; or is released pursuant to law.
- 2.4. "Contract Price" means the price for the System, excluding applicable sales or similar taxes and freight charges.
- 2.5. "Effective Date" means that date upon which the last Party executes this Agreement.
- 2.6. "Equipment" means the equipment that Customer purchases from Motorola under this Agreement. Equipment that is part of the System is described in the Equipment List.
- 2.7. "Force Majeure" means an event, circumstance, or act of a third party that is beyond a Party's reasonable control (e.g., an act of God, an act of the public enemy, an act of a government entity, strikes or other labor disturbances, hurricanes, earthquakes, fires, floods, epidemics, embargoes, war, and riots).
- 2.8. "Infringement Claim" means a third party claim alleging that the Equipment manufactured by Motorola or the Motorola Software infringes upon the third party's United States patent or copyright.
- 2.9. "Motorola Software" means Software that Motorola or its affiliated company owns.

- 2.10. "Non-Motorola Software" means Software that another party owns.
- 2.11. "Open Source Software" (also called "freeware" or "shareware") means software that has its underlying source code freely available to evaluate, copy, and modify.
- 2.12. "Proprietary Rights" means the patents, patent applications, inventions, copyrights, trade secrets, trademarks, trade names, mask works, know-how, and other intellectual property rights in and to the Equipment and Software, including those created or produced by Motorola under this Agreement and any corrections, bug fixes, enhancements, updates or modifications to or derivative works from the Software whether made by Motorola or another party.
- 2.13. "Software" means the Motorola Software and Non-Motorola Software, in object code format that is furnished with the System or Equipment.
- 2.14. "Specifications" means the functionality and performance requirements that are described in Exhibit B.
- 2.15. "Subsystem" means a major part of the System that performs specific functions or operations. Subsystems are described in Exhibit B.
- 2.16. "System" means the Equipment, Software, and incidental hardware and materials that are combined together into an integrated system; the System is described in Exhibit B.
- 2.17. "System Acceptance" means the Acceptance Tests have been successfully completed.
- 2.18. "Warranty Period" means one (1) year from the date of System Acceptance or Beneficial Use, whichever occurs first.

### **Section 3 SCOPE OF AGREEMENT AND TERM**

- 3.1. **SCOPE OF WORK.** Motorola will provide, install and test the System, and perform its other contractual responsibilities, all in accordance with this Agreement. Customer will perform its contractual responsibilities in accordance with this Agreement.
- 3.2. **CHANGE ORDERS.** Either Party may request changes within the general scope of this Agreement. If a requested change causes an increase or decrease in the cost or time required to perform this Agreement, the Parties will agree to an equitable adjustment of the Contract Price, Performance Schedule, or both, and will reflect the adjustment in a change order. Neither Party is obligated to perform requested changes unless both Parties execute a written change order.
- 3.3. **TERM.** Unless terminated in accordance with other provisions of this Agreement or extended by mutual agreement of the Parties, the term of this Agreement begins on the Effective Date and continues until the date of Final Project Acceptance or expiration of the Warranty Period, whichever occurs last.
- 3.4. **ADDITIONAL EQUIPMENT OR SOFTWARE.** For three (3) years after the Effective Date, Customer may order additional Equipment or Software if it is then available. Each order must refer to this Agreement and must specify the pricing and delivery terms. Notwithstanding any additional or contrary terms in the order, the applicable provisions of this Agreement (except for pricing, delivery, passage of title and risk of loss to Equipment, warranty commencement, and payment terms) will govern the purchase and sale of the additional Equipment or Software. Title and risk of loss to additional Equipment will pass at shipment, warranty will commence upon delivery, and payment is due within thirty (30) days after the invoice date. Motorola will send Customer an invoice as the additional Equipment is shipped or Software is licensed. Alternatively, Customer may register with and place orders through Motorola Online ("MOL"), and this Agreement will be the "Underlying Agreement" for those MOL transactions rather than

the MOL On-Line Terms and Conditions of Sale. MOL registration and other information may be found at <http://www.motorola.com/businessandgovernment/> and the MOL telephone number is (800) 814-0601.

3.5. **MAINTENANCE SERVICE.** During the Warranty Period, Motorola will provide maintenance services for the Equipment and support for the Motorola Software pursuant to this Agreement. Those services and support are included in the Contract Price. If Customer wishes to purchase additional maintenance and support services for the Equipment during the Warranty Period, or any maintenance and support services for the Equipment after the Warranty Period, the description of and pricing for the services will be set forth in a separate document. If Customer wishes to purchase extended support for the Motorola Software after the Warranty Period, it may do so by ordering software subscription services. Unless otherwise agreed by the parties in writing, the terms and conditions applicable to the maintenance, support or software subscription services will be Motorola's standard Service Terms and Conditions, together with the appropriate statements of work.

3.6. **MOTOROLA SOFTWARE.** Any Motorola Software, including subsequent releases, is licensed to Customer solely in accordance with the Software License Agreement. Customer hereby accepts and agrees to abide by all of the terms and restrictions of the Software License Agreement.

3.7. **NON-MOTOROLA SOFTWARE.** Any Non-Motorola Software is licensed to Customer in accordance with the standard license, terms, and restrictions of the copyright owner on the Effective Date unless the copyright owner has granted to Motorola the right to sublicense the Non-Motorola Software pursuant to the Software License Agreement, in which case it applies and the copyright owner will have all of Licensor's rights and protections under the Software License Agreement. Motorola makes no representations or warranties of any kind regarding Non-Motorola Software. Non-Motorola Software may include Open Source Software. All Open Source Software is licensed to Customer in accordance with, and Customer agrees to abide by, the provisions of the standard license of the copyright owner and not the Software License Agreement. Upon request by Customer, Motorola will use commercially reasonable efforts to determine whether any Open Source Software will be provided under this Agreement; and if so, identify the Open Source Software and provide to Customer a copy of the applicable standard license (or specify where that license may be found); and provide to Customer a copy of the Open Source Software source code if it is publicly available without charge (although a distribution fee or a charge for related services may be applicable).

3.8. **SUBSTITUTIONS.** At no additional cost to Customer, Motorola may substitute any Equipment, Software, or services to be provided by Motorola, if the substitute meets or exceeds the Specifications and is of equivalent or better quality to the Customer. Any substitution will be reflected in a change order.

3.9. **OPTIONAL EQUIPMENT OR SOFTWARE.** This paragraph applies only if a "Priced Options" exhibit is shown in Section 1, or if the parties amend this Agreement to add a Priced Options exhibit. During the term of the option as stated in the Priced Options exhibit (or if no term is stated, then for one (1) year after the Effective Date), Customer has the right and option to purchase the equipment, software, and related services that are described in the Priced Options exhibit. Customer may exercise this option by giving written notice to Seller which must designate what equipment, software, and related services Customer is selecting (including quantities, if applicable). To the extent they apply, the terms and conditions of this Agreement will govern the transaction; however, the parties acknowledge that certain provisions must be agreed upon, and they agree to negotiate those in good faith promptly after Customer delivers the option exercise notice. Examples of provisions that may need to be negotiated are: specific lists of deliverables, statements of work, acceptance test plans, delivery and implementation schedules, payment terms, maintenance and support provisions, additions to or modifications of the Software License Agreement, hosting terms, and modifications to the acceptance and warranty provisions.

#### Section 4 PERFORMANCE SCHEDULE

The Parties will perform their respective responsibilities in accordance with this Agreement. By executing this Agreement, Customer authorizes Motorola to proceed with contract performance.

#### Section 5 CONTRACT PRICE, PAYMENT AND INVOICING

5.1. CONTRACT PRICE. The Contract Price in U.S. dollars is \$\_\_\_\_\_. The Contract Price will be paid via the disbursement of the financing proceeds pursuant to the Equipment Lease-Purchase Agreement executed between the parties. For Customer's reference, the Federal Tax Identification Number for Motorola Solutions, Inc. is 36-1115800. Motorola will pre-pay and add all freight charges to the invoices.

5.2. TITLE, AND RISK OF LOSS; INVOICING AND SHIPPING. Motorola will pre-pay and add all freight charges to the invoices. Unless otherwise stated in Equipment Lease-Purchase Agreement, title and risk of loss to the Equipment will pass to Customer upon shipment. Title to Software will not pass to Customer at any time. Motorola will pack and ship all Equipment in accordance with good commercial practices.

5.3. INVOICING AND SHIPPING ADDRESSES. Invoices will be sent to the Customer at the following address: \_\_\_\_\_.  
The Equipment will be shipped to the Customer at the following address (insert if this information is known): \_\_\_\_\_. If different, the address for the ultimate destination where the Equipment will be delivered to Customer is \_\_\_\_\_.  
Customer may change this information by giving written notice to Motorola.

#### Section 6 SITES AND SITE CONDITIONS

6.1. ACCESS TO SITES. In addition to its responsibilities described elsewhere in this Agreement, Customer will provide a designated project manager; all necessary construction and building permits, zoning variances, licenses, and any other approvals that are necessary to develop or use the sites; and access to the work sites as reasonably requested by Motorola so that it may perform its duties in accordance with the Performance Schedule and Statement of Work. If the Statement of Work so indicates, Motorola may assist Customer in the local building permit process.

6.2. SITE CONDITIONS. Customer will ensure that all work sites it provides will be safe, secure, and in compliance with all applicable industry and OSHA standards. To the extent applicable and unless the Statement of Work states to the contrary, Customer will ensure that these work sites have adequate: physical space; air conditioning and other environmental conditions; electrical power outlets, distribution and equipment; and telephone or other communication lines (including modem access and adequate interfacing networking capabilities), all for the installation, use and maintenance of the System. Before installing the Equipment or Software at a work site, Motorola will inspect the work site and advise Customer of any apparent deficiencies or non-conformities with the requirements of this Section. This Agreement is predicated upon normal soil conditions as defined by the version of E.I.A. standard RS-222 in effect on the Effective Date.

6.3. SITE ISSUES. If a Party determines that the sites identified in the Technical and Implementation Documents are no longer available or desired, or if subsurface, structural, adverse environmental or latent conditions at any site differ from those indicated in the Technical and Implementation Documents, the Parties will promptly investigate the conditions and will select replacement sites or adjust the installation plans and specifications as necessary. If change in sites or adjustment to the installation plans and specifications causes a change in the cost or time to perform, the Parties will equitably amend the Contract Price, Performance Schedule, or both, by a change order.

## **Section 7 TRAINING**

Any training to be provided by Motorola to Customer will be described in the Statement of Work. Customer will notify Motorola immediately if a date change for a scheduled training program is required. If Motorola incurs additional costs because Customer reschedules a training program less than thirty (30) days before its scheduled start date, Motorola may recover these additional costs.

## **Section 8 SYSTEM ACCEPTANCE**

8.1. **COMMENCEMENT OF ACCEPTANCE TESTING.** Motorola will provide to Customer at least ten (10) days notice before the Acceptance Tests commence. System testing will occur only in accordance with the Acceptance Test Plan.

8.2. **SYSTEM ACCEPTANCE.** System Acceptance will occur upon successful completion of the Acceptance Tests. Upon System Acceptance, the Parties will memorialize this event by promptly executing a System Acceptance Certificate. If the Acceptance Test Plan includes separate tests for individual Subsystems or phases of the System, acceptance of the individual Subsystem or phase will occur upon the successful completion of the Acceptance Tests for the Subsystem or phase, and the Parties will promptly execute an acceptance certificate for the Subsystem or phase. If Customer believes the System has failed the completed Acceptance Tests, Customer will provide to Motorola a written notice that includes the specific details of the failure. Minor omissions or variances in the System that do not materially impair the operation of the System as a whole will not postpone System Acceptance or Subsystem acceptance, but will be corrected according to a mutually agreed schedule.

8.3. **BENEFICIAL USE.** Customer acknowledges that Motorola's ability to perform its implementation and testing responsibilities may be impeded if Customer begins using the System before System Acceptance. Therefore, Customer will not commence Beneficial Use before System Acceptance without Motorola's prior written authorization, which will not be unreasonably withheld. Motorola is not responsible for System performance deficiencies that occur during unauthorized Beneficial Use. Upon commencement of Beneficial Use, Customer assumes responsibility for the use and operation of the System.

8.4 **FINAL PROJECT ACCEPTANCE.** Final Project Acceptance will occur after System Acceptance when all deliverables and other work have been completed. When Final Project Acceptance occurs, the parties will promptly memorialize this final event by so indicating on the System Acceptance Certificate.

## **Section 9 REPRESENTATIONS AND WARRANTIES**

9.1. **SYSTEM FUNCTIONALITY.** Motorola represents that the System will perform in accordance with the Specifications in all material respects. Upon System Acceptance or Beneficial Use, whichever occurs first, this System functionality representation is fulfilled. Motorola is not responsible for System performance deficiencies that are caused by ancillary equipment not furnished by Motorola which is attached to or used in connection with the System or for reasons or parties beyond Motorola's control, such as natural causes; the construction of a building that adversely affects the microwave path reliability or radio frequency (RF) coverage; the addition of frequencies at System sites that cause RF interference or intermodulation; or Customer changes to load usage or configuration outside the Specifications.

9.2. **EQUIPMENT WARRANTY.** During the Warranty Period, Motorola warrants that the Equipment under normal use and service will be free from material defects in materials and workmanship.

9.3. **MOTOROLA SOFTWARE WARRANTY.** Unless otherwise stated in the Software License Agreement, during the Warranty Period, Motorola warrants the Motorola Software in accordance with the terms of the Software License Agreement and the provisions of this Section 9 that are applicable to the Motorola Software.



9.4. EXCLUSIONS TO EQUIPMENT AND MOTOROLA SOFTWARE WARRANTIES. These warranties do not apply to: (i) defects or damage resulting from: use of the Equipment or Motorola Software in other than its normal, customary, and authorized manner; accident, liquids, neglect, or acts of God; testing, maintenance, disassembly, repair, installation, alteration, modification, or adjustment not provided or authorized in writing by Motorola; Customer's failure to comply with all applicable industry and OSHA standards; (ii) breakage of or damage to antennas unless caused directly by defects in material or workmanship; (iii) Equipment that has had the serial number removed or made illegible; (iv) batteries (because they carry their own separate limited warranty) or consumables; (v) freight costs to ship Equipment to the repair depot; (vi) scratches or other cosmetic damage to Equipment surfaces that does not affect the operation of the Equipment; and (vii) normal or customary wear and tear.

9.5. WARRANTY CLAIMS. To assert a warranty claim, Customer must notify Motorola in writing of the claim before the expiration of the Warranty Period. Upon receipt of this notice, Motorola will investigate the warranty claim. If this investigation confirms a valid warranty claim, Motorola will (at its option and at no additional charge to Customer) repair the defective Equipment or Motorola Software, replace it with the same or equivalent product, or refund the price of the defective Equipment or Motorola Software. That action will be the full extent of Motorola's liability for the warranty claim. If this investigation indicates the warranty claim is not valid, then Motorola may invoice Customer for responding to the claim on a time and materials basis using Motorola's then current labor rates. Repaired or replaced product is warranted for the balance of the original applicable warranty period. All replaced products or parts will become the property of Motorola.

9.6. ORIGINAL END USER IS COVERED. These express limited warranties are extended by Motorola to the original user purchasing the System for commercial, industrial, or governmental use only, and are not assignable or transferable.

9.7. DISCLAIMER OF OTHER WARRANTIES. THESE WARRANTIES ARE THE COMPLETE WARRANTIES FOR THE EQUIPMENT AND MOTOROLA SOFTWARE PROVIDED UNDER THIS AGREEMENT AND ARE GIVEN IN LIEU OF ALL OTHER WARRANTIES. TO THE EXTENT ALLOWED BY LAW, MOTOROLA DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

## **Section 10 DELAYS**

10.1. FORCE MAJEURE. Neither Party will be liable for its non-performance or delayed performance if caused by a Force Majeure. A Party that becomes aware of a Force Majeure that will significantly delay performance will notify the other Party promptly (but in no event later than fifteen days) after it discovers the Force Majeure. If a Force Majeure occurs, the Parties will execute a change order to extend the Performance Schedule for a time period that is reasonable under the circumstances.

10.2. PERFORMANCE SCHEDULE DELAYS CAUSED BY CUSTOMER. If Customer (including its other contractors) delays the Performance Schedule, the Parties will execute a change order to extend the Performance Schedule and, if requested, compensate Motorola for all reasonable charges incurred because of the delay. Delay charges may include costs incurred by Motorola or its subcontractors for additional freight, warehousing and handling of Equipment; extension of the warranties; travel; suspending and re-mobilizing the work; additional engineering, project management, and standby time calculated at then current rates; and preparing and implementing an alternative implementation plan.

## **Section 11     DISPUTES**

11.1. **SETTLEMENT PREFERRED.** The Parties, by their project managers, will attempt to settle any dispute arising from this Agreement (except for a claim relating to intellectual property or breach of confidentiality) through consultation and a spirit of mutual cooperation. The dispute will be escalated to appropriate higher-level managers of the Parties, if necessary.

11.2. **LITIGATION.** A Party may submit to a court of competent jurisdiction in the State of Alabama any claim relating to intellectual property or a breach of confidentiality provisions. Each Party consents to jurisdiction over it by that court. Either Party may resort to the judicial proceedings described in this section if good faith efforts to resolve the dispute under these procedures have been unsuccessful; or interim relief from the court is necessary to prevent serious and irreparable injury to the Party.

## **Section 12     DEFAULT AND TERMINATION**

12.1 **DEFAULT BY A PARTY.** If either Party fails to perform a material obligation under this Agreement, the other Party may consider the non-performing Party to be in default (unless a Force Majeure causes the failure) and may assert a default claim by giving the non-performing Party a written and detailed notice of default. Except for a default by Customer for failing to pay any amount when due under this Agreement which must be cured immediately, the defaulting Party will have thirty (30) days after receipt of the notice of default to either cure the default or, if the default is not curable within thirty (30) days, provide a written cure plan. The defaulting Party will begin implementing the cure plan immediately after receipt of notice by the other Party that it approves the plan. If Customer is the defaulting Party, Motorola may stop work on the project until it approves the Customer's cure plan.

12.2. **FAILURE TO CURE.** If a defaulting Party fails to cure the default as provided above in Section 12.1, unless otherwise agreed in writing, the non-defaulting Party may terminate any unfulfilled portion of this Agreement. In the event of termination for default, the defaulting Party will promptly return to the non-defaulting Party any of its Confidential Information. If Customer is the non-defaulting Party, terminates this Agreement as permitted by this Section, and completes the System through a third Party, Customer may as its exclusive remedy recover from Motorola reasonable costs incurred to complete the System to a capability not exceeding that specified in this Agreement less the unpaid portion of the Contract Price. Customer will mitigate damages and provide Motorola with detailed invoices substantiating the charges.

## **Section 13     INDEMNIFICATION**

13.1. **GENERAL INDEMNITY BY MOTOROLA.** Motorola will indemnify and hold Customer harmless from any and all liability, expense, judgment, suit, cause of action, or demand for personal injury, death, or direct damage to tangible property which may accrue against Customer to the extent it is caused by the negligence of Motorola, its subcontractors, or their employees or agents, while performing their duties under this Agreement, if Customer gives Motorola prompt, written notice of any the claim or suit. Customer will cooperate with Motorola in its defense or settlement of the claim or suit. This section sets forth the full extent of Motorola's general indemnification of Customer from liabilities that are in any way related to Motorola's performance under this Agreement.

### **13.2.    PATENT AND COPYRIGHT INFRINGEMENT.**

13.2.1. Motorola will defend at its expense any suit brought against Customer to the extent it is based on an Infringement Claim, and Motorola will indemnify Customer for those costs and damages finally awarded against Customer for an Infringement Claim. Motorola's duties to defend and indemnify are conditioned upon: Customer promptly notifying Motorola in writing of the Infringement Claim; Motorola having sole control of the defense of the suit and all negotiations for its settlement or compromise; and Customer providing to Motorola cooperation and, if requested by Motorola, reasonable assistance in the defense of the Infringement Claim.

13.2.2. If an Infringement Claim occurs, or in Motorola's opinion is likely to occur, Motorola may at its option and expense procure for Customer the right to continue using the Equipment or Motorola Software, replace or modify it so that it becomes non-infringing while providing functionally equivalent performance, or grant Customer a credit for the Equipment or Motorola Software as depreciated and accept its return. The depreciation amount will be calculated based upon generally accepted accounting standards for such Equipment and Motorola Software.

13.2. Motorola will have no duty to defend or indemnify for any Infringement Claim that is based upon: (a) the combination of the Motorola Product with any software, apparatus or device not furnished by Motorola; (b) the use of ancillary equipment or software not furnished by Motorola and that is attached to or used in connection with the Motorola Product; (c) Motorola Product designed or manufactured in accordance with Customer's designs, specifications, guidelines or instructions, if the alleged infringement would not have occurred without such designs, specifications, guidelines or instructions; (d) a modification of the Motorola Product by a party other than Motorola; (e) use of the Motorola Product in a manner for which the Motorola Product was not designed or that is inconsistent with the terms of this Agreement; or (f) the failure by Customer to install an enhancement release to the Motorola Software that is intended to correct the claimed infringement. In no event will Motorola's liability resulting from its indemnity obligation to Customer extend in any way to royalties payable on a per use basis or the Customer's revenues, or any royalty basis other than a reasonable royalty based upon revenue derived by Motorola from Customer from sales or license of the infringing Motorola Product.

13.4. This Section 13 provides Customer's sole and exclusive remedies and Motorola's entire liability in the event of an Infringement Claim. Customer has no right to recover and Motorola has no obligation to provide any other or further remedies, whether under another provision of this Agreement or any other legal theory or principle, in connection with an Infringement Claim. In addition, the rights and remedies provided in this Section 13 are subject to and limited by the restrictions set forth in Section 14.

#### **Section 14      LIMITATION OF LIABILITY**

Except for personal injury or death, Motorola's total liability, whether for breach of contract, warranty, negligence, strict liability in tort, indemnification, or otherwise, will be limited to the direct damages recoverable under law, but not to exceed the price of the Equipment, Software, or services with respect to which losses or damages are claimed. **ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, THEY AGREE THAT MOTOROLA WILL NOT BE LIABLE FOR ANY COMMERCIAL LOSS; INCONVENIENCE; LOSS OF USE, TIME, DATA, GOOD WILL, REVENUES, PROFITS OR SAVINGS; OR OTHER SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES IN ANY WAY RELATED TO OR ARISING FROM THIS AGREEMENT, THE SALE OR USE OF THE EQUIPMENT OR SOFTWARE, OR THE PERFORMANCE OF SERVICES BY MOTOROLA PURSUANT TO THIS AGREEMENT.** This limitation of liability provision survives the expiration or termination of the Agreement and applies notwithstanding any contrary provision. An action for contract breach or otherwise relating to the transactions contemplated by this Agreement may be brought within one year.

#### **Section 15      CONFIDENTIALITY AND PROPRIETARY RIGHTS**

15.1.1. Confidentiality Obligation. Each party is a disclosing party ("Discloser") and a receiving party ("Recipient") under this Agreement. During the term of this Agreement, for a period of three (3) years from the date of expiration or termination of this Agreement, and to the extent allowed by law, recipient will (i) not disclose Confidential Information to any third party; (ii) restrict disclosure of Confidential Information to only those employees (including, but not limited to, employees, officers, officials, agents, volunteers or consultants who must be directly involved with the Confidential Information for the purpose and who are bound by confidentiality terms substantially similar to those in this Agreement; (iii) not reverse engineer, de-compile or disassemble any Confidential Information; (iv) use the same degree of care as for its own information of like importance, but at least use reasonable care, in safeguarding against disclosure of Confidential Information; (v) promptly notify discloser upon discovery of any

unauthorized use or disclosure of the Confidential Information and take reasonable steps to regain possession of the Confidential Information and prevent further unauthorized actions or other breach of this Agreement; and (vi) only use the Confidential Information as needed to fulfill this Agreement.

15.1.2. Required Disclosure. If a recipient is required to disclose Confidential Information pursuant to applicable law, statute, or regulation, or court order, the recipient will give to the discloser prompt written notice of the request and a reasonable opportunity to object to such disclosure and seek a protective order or appropriate remedy. If, in the absence of a protective order, the recipient determines, upon the advice of counsel, that it is required to disclose such information, it may disclose only Confidential Information specifically required and only to the extent required to do so.

15.1.3. Confidential Exceptions. Recipient is not obligated to maintain as confidential, Confidential Information that recipient can demonstrate by documentation (i) is now available or becomes available to the public without breach of this Agreement; (ii) is explicitly approved for release by written authorization of discloser; (iii) is lawfully obtained from a third party or parties without a duty of confidentiality; (iv) is known to the recipient prior to such disclosure; or (v) is independently developed by recipient without the use of any discloser's Confidential Information or any breach of this Agreement.

15.1.4. Ownership and Retention. All Confidential Information remains the property of the discloser and will not be copied or reproduced without the express written permission of the discloser, except for copies that are absolutely necessary in order to fulfill this Agreement. Within ten (10) days of receipt of discloser's written request, recipient will return all Confidential Information to discloser along with all copies and portions thereof, or certify in writing that all such Confidential Information has been destroyed. However, recipient may retain one (1) archival copy of the Confidential Information that it may use only in case of a dispute concerning this Agreement. No license, express or implied, in the Confidential Information is granted other than to use the Confidential Information in the manner and to the extent authorized by this Agreement. The discloser warrants that it is authorized to disclose any Confidential Information it discloses pursuant to this Agreement.

15.2. PRESERVATION OF MOTOROLA'S PROPRIETARY RIGHTS. Motorola, the third party manufacturer of any Equipment, and the copyright owner of any Non-Motorola Software own and retain all of their respective Proprietary Rights in the Equipment and Software, and nothing in this Agreement is intended to restrict their Proprietary Rights. All intellectual property developed, originated, or prepared by Motorola in connection with providing to Customer the Equipment, Software, or related services remain vested exclusively in Motorola, and this Agreement does not grant to Customer any shared development rights of intellectual property. Except as explicitly provided in the Software License Agreement, Motorola does not grant to Customer, either directly or by implication, estoppel, or otherwise, any right, title or interest in Motorola's Proprietary Rights. Customer will not modify, disassemble, peel components, decompile, otherwise reverse engineer or attempt to reverse engineer, derive source code or create derivative works from, adapt, translate, merge with other software, reproduce, distribute, sublicense, sell or export the Software, or permit or encourage any third party to do so. The preceding sentence does not apply to Open Source Software which is governed by the standard license of the copyright owner.

## **Section 16 GENERAL**

16.1. TAXES. The Contract Price does not include any excise, sales, lease, use, property, or other taxes, assessments or duties, all of which will be paid by Customer except as exempt by law. If Motorola is required to pay any of these taxes, Motorola will send an invoice to Customer and Customer will pay to Motorola the amount of the taxes (including any interest and penalties) within forty-five (45) days after the date of the invoice. Customer will be solely responsible for reporting the Equipment for personal property tax purposes, and Motorola will be solely responsible for reporting taxes on its income or net worth.

16.2. ASSIGNABILITY AND SUBCONTRACTING. Neither Party may assign this Agreement without the prior written consent of the other Party, except that Motorola may assign this Agreement to any of its

affiliates or its right to receive payment without the prior consent of Customer. Motorola may subcontract any of the work, but subcontracting will not relieve Motorola of its duties under this Agreement.

16.3 WAIVER. Failure or delay by either Party to exercise a right or power under this Agreement will not be a waiver of the right or power. For a waiver of a right or power to be effective, it must be in a writing signed by the waiving Party. An effective waiver of a right or power will not be construed as either a future or continuing waiver of that same right or power, or the waiver of any other right or power.

16.4 SEVERABILITY. If a court of competent jurisdiction renders any part of this Agreement invalid or unenforceable, that part will be severed and the remainder of this Agreement will continue in full force and effect.

16.5 INDEPENDENT CONTRACTORS. Each Party will perform its duties under this Agreement as an independent contractor. The Parties and their personnel will not be considered to be employees or agents of the other Party. Nothing in this Agreement will be interpreted as granting either Party the right or authority to make commitments of any kind for the other. This Agreement will not constitute, create, or be interpreted as a joint venture, partnership or formal business organization of any kind.

16.6 HEADINGS AND SECTION REFERENCES. The section headings in this Agreement are inserted only for convenience and are not to be construed as part of this Agreement or as a limitation of the scope of the particular section to which the heading refers. This Agreement will be fairly interpreted in accordance with its terms and conditions and not for or against either Party.

16.7 GOVERNING LAW. This Agreement and the rights and duties of the Parties will be governed by and interpreted in accordance with the laws of the State of Alabama.

16.8 ENTIRE AGREEMENT. This Agreement, including all Exhibits, constitutes the entire agreement of the Parties regarding the subject matter of the Agreement and supersedes all previous agreements, proposals, and understandings, whether written or oral, relating to this subject matter. This Agreement may be amended or modified only by a written instrument signed by authorized representatives of both Parties. The preprinted terms and conditions found on any Customer purchase order, acknowledgment or other form will not be considered an amendment or modification of this Agreement, even if a representative of each Party signs that document.

16.9 NOTICES. Notices required under this Agreement to be given by one Party to the other must be in writing and either personally delivered or sent to the address shown below by certified mail, return receipt requested and postage prepaid (or by a recognized courier service, such as Federal Express, UPS, or DHL), or by facsimile with correct answerback received, and will be effective upon receipt:

Motorola Solutions, Inc.  
Attn: Judy Jean-Pierre,  
Legal, Government Affairs & Communications  
1303 E. Algonquin Road, IL01-8<sup>th</sup> Floor  
Schaumburg, IL 60196  
[Judy.Jean-Pierre@motorolasolutions.com](mailto:Judy.Jean-Pierre@motorolasolutions.com)

Customer  
Attn:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

16.10 COMPLIANCE WITH APPLICABLE LAWS. Each Party will comply with all applicable federal, state, and local laws, regulations and rules concerning the performance of this Agreement or use of the System. Customer will obtain and comply with all Federal Communications Commission ("FCC") licenses and authorizations required for the installation, operation and use of the System before the scheduled installation of the Equipment. Although Motorola might assist Customer in the preparation of its FCC license applications, neither Motorola nor any of its employees is an agent or representative of Customer in FCC or other matters.

16.11. **AUTHORITY TO EXECUTE AGREEMENT.** Each Party represents that it has obtained all necessary approvals, consents and authorizations to enter into this Agreement and to perform its duties under this Agreement; the person executing this Agreement on its behalf has the authority to do so; upon execution and delivery of this Agreement by the Parties, it is a valid and binding contract, enforceable in accordance with its terms; and the execution, delivery, and performance of this Agreement does not violate any bylaw, charter, regulation, law or any other governing authority of the Party.

16.12. **SURVIVAL OF TERMS.** The following provisions will survive the expiration or termination of this Agreement for any reason: Section 3.6 (Motorola Software); Section 3.7 (Non-Motorola Software); if any payment obligations exist, Sections 5.1 and 5.2 (Contract Price and Invoicing and Payment); Subsection 9.7 (Disclaimer of Implied Warranties); Section 11 (Disputes); Section 14 (Limitation of Liability); and Section 15 (Confidentiality and Proprietary Rights); and all of the General provisions in Section 16.

The Parties hereby enter into this Agreement as of the Effective Date. This Agreement may be executed by each of the Parties hereto in separate counterparts, and shall have the same legal force and effect as if the Parties had executed it as a single document. The parties may sign in writing, or by electronic signature, including by email. An electronic signature, or a facsimile copy or computer image, such as a PDF or tiff image, of a signature, shall be treated as and shall have the same effect as an original signature. In addition, an electronic signature, a true and correct facsimile copy or computer image of this Agreement shall be treated as and shall have the same effect as an original signed copy of this document.

**Motorola Solutions, Inc.**

**Customer**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

## Exhibit A

### SOFTWARE LICENSE AGREEMENT

This Exhibit A Software License Agreement ("Agreement") is between Motorola Solutions, Inc., ("Motorola") and the City of Vestavia Hills ("Licensee"). For good and valuable consideration, the parties agree as follows:

#### Section 1 DEFINITIONS

1.1 "Designated Products" means products provided by Motorola to Licensee with which or for which the Software and Documentation is licensed for use.

1.2 "Documentation" means product and software documentation that specifies technical and performance features and capabilities, and the user, operation and training manuals for the Software (including all physical or electronic media upon which such information is provided).

1.3 "Open Source Software" means software with either freely obtainable source code, license for modification, or permission for free distribution.

1.4 "Open Source Software License" means the terms or conditions under which the Open Source Software is licensed.

1.5 "Primary Agreement" means the agreement to which this exhibit is attached.

1.6 "Security Vulnerability" means a flaw or weakness in system security procedures, design, implementation, or internal controls that could be exercised (accidentally triggered or intentionally exploited) and result in a security breach such that data is compromised, manipulated or stolen or the system damaged.

1.7 "Software" (i) means proprietary software in object code format, and adaptations, translations, de-compilations, disassemblies, emulations, or derivative works of such software; (ii) means any modifications, enhancements, new versions and new releases of the software provided by Motorola; and (iii) may contain one or more items of software owned by a third party supplier. The term "Software" does not include any third party software provided under separate license or third party software not licensable under the terms of this Agreement.

#### Section 2 SCOPE

Motorola and Licensee enter into this Agreement in connection with Motorola's delivery of certain proprietary Software or products containing embedded or pre-loaded proprietary Software, or both. This Agreement contains the terms and conditions of the license Motorola is providing to Licensee, and Licensee's use of the Software and Documentation.

#### Section 3 GRANT OF LICENSE

3.1. Subject to the provisions of this Agreement and the payment of applicable license fees, Motorola grants to Licensee a personal, limited, non-transferable (except as permitted in Section 7) and non-exclusive license under Motorola's copyrights and Confidential Information (as defined in the Primary Agreement) embodied in the Software to use the Software, in object code form, and the Documentation solely in connection with Licensee's use of the Designated Products. This Agreement does not grant any rights to source code.

3.2. If the Software licensed under this Agreement contains or is derived from Open Source Software, the terms and conditions governing the use of such Open Source Software are in the Open Source

Software Licenses of the copyright owner and not this Agreement. If there is a conflict between the terms and conditions of this Agreement and the terms and conditions of the Open Source Software Licenses governing Licensee's use of the Open Source Software, the terms and conditions of the license grant of the applicable Open Source Software Licenses will take precedence over the license grants in this Agreement. If requested by Licensee, Motorola will use commercially reasonable efforts to: (i) determine whether any Open Source Software is provided under this Agreement; (ii) identify the Open Source Software and provide Licensee a copy of the applicable Open Source Software License (or specify where that license may be found); and, (iii) provide Licensee a copy of the Open Source Software source code, without charge, if it is publicly available (although distribution fees may be applicable).

#### **Section 4      LIMITATIONS ON USE**

4.1. Licensee may use the Software only for Licensee's internal business purposes and only in accordance with the Documentation. Any other use of the Software is strictly prohibited. Without limiting the general nature of these restrictions, Licensee will not make the Software available for use by third parties on a "time sharing," "application service provider," or "service bureau" basis or for any other similar commercial rental or sharing arrangement.

4.2. Licensee will not, and will not allow or enable any third party to: (i) reverse engineer, disassemble, peel components, decompile, reprogram or otherwise reduce the Software or any portion to a human perceptible form or otherwise attempt to recreate the source code; (ii) modify, adapt, create derivative works of, or merge the Software; (iii) copy, reproduce, distribute, lend, or lease the Software or Documentation to any third party, grant any sublicense or other rights in the Software or Documentation to any third party, or take any action that would cause the Software or Documentation to be placed in the public domain; (iv) remove, or in any way alter or obscure, any copyright notice or other notice of Motorola's proprietary rights; (v) provide, copy, transmit, disclose, divulge or make the Software or Documentation available to, or permit the use of the Software by any third party or on any machine except as expressly authorized by this Agreement; or (vi) use, or permit the use of, the Software in a manner that would result in the production of a copy of the Software solely by activating a machine containing the Software. Licensee may make one copy of Software to be used solely for archival, back-up, or disaster recovery purposes; *provided* that Licensee may not operate that copy of the Software at the same time as the original Software is being operated. Licensee may make as many copies of the Documentation as it may reasonably require for the internal use of the Software.

4.3. Unless otherwise authorized by Motorola in writing, Licensee will not, and will not enable or allow any third party to: (i) install a licensed copy of the Software on more than one unit of a Designated Product; or (ii) copy onto or transfer Software installed in one unit of a Designated Product onto one other device. Licensee may temporarily transfer Software installed on a Designated Product to another device if the Designated Product is inoperable or malfunctioning, if Licensee provides written notice to Motorola of the temporary transfer and identifies the device on which the Software is transferred. Temporary transfer of the Software to another device must be discontinued when the original Designated Product is returned to operation and the Software must be removed from the other device. Licensee must provide prompt written notice to Motorola at the time temporary transfer is discontinued.

4.4. When using Motorola's Radio Service Software ("RSS"), Licensee must purchase a separate license for each location at which Licensee uses RSS. Licensee's use of RSS at a licensed location does not entitle Licensee to use or access RSS remotely. Licensee may make one copy of RSS for each licensed location. Licensee shall provide Motorola with a list of all locations at which Licensee uses or intends to use RSS upon Motorola's request.

4.5. Licensee will maintain, during the term of this Agreement and for a period of two years thereafter, accurate records relating to this license grant to verify compliance with this Agreement. Motorola or an independent third party ("Auditor") may inspect Licensee's premises, books and records, upon reasonable prior notice to Licensee, during Licensee's normal business hours and subject to Licensee's facility and security regulations. Motorola is responsible for the payment of all expenses and costs of the Auditor.



Any information obtained by Motorola and the Auditor will be kept in strict confidence by Motorola and the Auditor and used solely for the purpose of verifying Licensee's compliance with the terms of this Agreement.

## **Section 5 OWNERSHIP AND TITLE**

Motorola, its licensors, and its suppliers retain all of their proprietary rights in any form in and to the Software and Documentation, including, but not limited to, all rights in patents, patent applications, inventions, copyrights, trademarks, trade secrets, trade names, and other proprietary rights in or relating to the Software and Documentation (including any corrections, bug fixes, enhancements, updates, modifications, adaptations, translations, de-compilations, disassemblies, emulations to or derivative works from the Software or Documentation, whether made by Motorola or another party, or any improvements that result from Motorola's processes or, provision of information services). No rights are granted to Licensee under this Agreement by implication, estoppel or otherwise, except for those rights which are expressly granted to Licensee in this Agreement. All intellectual property developed, originated, or prepared by Motorola in connection with providing the Software, Designated Products, Documentation or related services, remains vested exclusively in Motorola, and Licensee will not have any shared development or other intellectual property rights.

## **Section 6 LIMITED WARRANTY; DISCLAIMER OF WARRANTY**

6.1. The commencement date and the term of the Software warranty will be a period of ninety (90) days from Motorola's shipment of the Software (the "Warranty Period"). If Licensee is not in breach of any of its obligations under this Agreement, Motorola warrants that the unmodified Software, when used properly and in accordance with the Documentation and this Agreement, will be free from a reproducible defect that eliminates the functionality or successful operation of a feature critical to the primary functionality or successful operation of the Software. Whether a defect occurs will be determined by Motorola solely with reference to the Documentation. Motorola does not warrant that Licensee's use of the Software or the Designated Products will be uninterrupted, error-free, completely free of Security Vulnerabilities, or that the Software or the Designated Products will meet Licensee's particular requirements. Motorola makes no representations or warranties with respect to any third party software included in the Software.

6.2 Motorola's sole obligation to Licensee and Licensee's exclusive remedy under this warranty is to use reasonable efforts to remedy any material Software defect covered by this warranty. These efforts will involve either replacing the media or attempting to correct significant, demonstrable program or documentation errors or Security Vulnerabilities. If Motorola cannot correct the defect within a reasonable time, then at Motorola's option, Motorola will replace the defective Software with functionally-equivalent Software, license to Licensee substitute Software which will accomplish the same objective, or terminate the license and refund the Licensee's paid license fee.

6.3. Warranty claims are described in the Primary Agreement.

6.4. The express warranties set forth in this Section 6 are in lieu of, and Motorola disclaims, any and all other warranties (express or implied, oral or written) with respect to the Software or Documentation, including, without limitation, any and all implied warranties of condition, title, non-infringement, merchantability, or fitness for a particular purpose or use by Licensee (whether or not Motorola knows, has reason to know, has been advised, or is otherwise aware of any such purpose or use), whether arising by law, by reason of custom or usage of trade, or by course of dealing. In addition, Motorola disclaims any warranty to any person other than Licensee with respect to the Software or Documentation.

## **Section 7 TRANSFERS**

Licensee will not transfer the Software or Documentation to any third party without Motorola's prior written consent. Motorola's consent may be withheld at its discretion and may be conditioned upon transferee

paying all applicable license fees and agreeing to be bound by this Agreement. If the Designated Products are Motorola's radio products and Licensee transfers ownership of the Motorola radio products to a third party, Licensee may assign its right to use the Software (other than RSS and Motorola's FLASHport® software) which is embedded in or furnished for use with the radio products and the related Documentation; *provided* that Licensee transfers all copies of the Software and Documentation to the transferee, and Licensee and the transferee sign a transfer form to be provided by Motorola upon request, obligating the transferee to be bound by this Agreement.

## **Section 8      TERM AND TERMINATION**

8.1      Licensee's right to use the Software and Documentation will begin when the Primary Agreement is signed by both parties and will continue for the life of the Designated Products with which or for which the Software and Documentation have been provided by Motorola, unless Licensee breaches this Agreement, in which case this Agreement and Licensee's right to use the Software and Documentation may be terminated immediately upon notice by Motorola.

8.2      Within thirty (30) days after termination of this Agreement, Licensee must certify in writing to Motorola that all copies of the Software have been removed or deleted from the Designated Products and that all copies of the Software and Documentation have been returned to Motorola or destroyed by Licensee and are no longer in use by Licensee.

8.3      Licensee acknowledges that Motorola made a considerable investment of resources in the development, marketing, and distribution of the Software and Documentation and that Licensee's breach of this Agreement will result in irreparable harm to Motorola for which monetary damages would be inadequate. If Licensee breaches this Agreement, Motorola may terminate this Agreement and be entitled to all available remedies at law or in equity (including immediate injunctive relief and repossession of all non-embedded Software and associated Documentation unless Licensee is a Federal agency of the United States Government).

## **Section 9      UNITED STATES GOVERNMENT LICENSING PROVISIONS**

This Section applies if Licensee is the United States Government or a United States Government agency. Licensee's use, duplication or disclosure of the Software and Documentation under Motorola's copyrights or trade secret rights is subject to the restrictions set forth in subparagraphs (c)(1) and (2) of the Commercial Computer Software-Restricted Rights clause at FAR 52.227-19 (JUNE 1987), if applicable, unless they are being provided to the Department of Defense. If the Software and Documentation are being provided to the Department of Defense, Licensee's use, duplication, or disclosure of the Software and Documentation is subject to the restricted rights set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 (OCT 1988), if applicable. The Software and Documentation may or may not include a Restricted Rights notice, or other notice referring to this Agreement. The provisions of this Agreement will continue to apply, but only to the extent that they are consistent with the rights provided to the Licensee under the provisions of the FAR or DFARS mentioned above, as applicable to the particular procuring agency and procurement transaction.

## **Section 10     CONFIDENTIALITY**

Licensee acknowledges that the Software and Documentation contain Motorola's valuable proprietary and Confidential Information and are Motorola's trade secrets, and that the provisions in the Primary Agreement concerning Confidential Information apply.

## **Section 11     LIMITATION OF LIABILITY**

The Limitation of Liability provision is described in the Primary Agreement.

## **Section 12 NOTICES**

Notices are described in the Primary Agreement.

## **Section 13 GENERAL**

13.1. **COPYRIGHT NOTICES.** The existence of a copyright notice on the Software will not be construed as an admission or presumption of publication of the Software or public disclosure of any trade secrets associated with the Software.

13.2. **COMPLIANCE WITH LAWS.** Licensee acknowledges that the Software is subject to the laws and regulations of the United States and Licensee will comply with all applicable laws and regulations, including export laws and regulations of the United States. Licensee will not, without the prior authorization of Motorola and the appropriate governmental authority of the United States, in any form export or re-export, sell or resell, ship or reship, or divert, through direct or indirect means, any item or technical data or direct or indirect products sold or otherwise furnished to any person within any territory for which the United States Government or any of its agencies at the time of the action, requires an export license or other governmental approval. Violation of this provision is a material breach of this Agreement.

13.3. **ASSIGNMENTS AND SUBCONTRACTING.** Motorola may assign its rights or subcontract its obligations under this Agreement, or encumber or sell its rights in any Software, without prior notice to or consent of Licensee.

13.4. **GOVERNING LAW.** This Agreement is governed by the laws of the United States to the extent that they apply and otherwise by the internal substantive laws of the State of Alabama. The terms of the U.N. Convention on Contracts for the International Sale of Goods do not apply. In the event that the Uniform Computer Information Transaction Act, any version of this Act, or a substantially similar law (collectively "UCITA") becomes applicable to a party's performance under this Agreement, UCITA does not govern any aspect of this Agreement or any license granted under this Agreement, or any of the parties' rights or obligations under this Agreement. The governing law will be that in effect prior to the applicability of UCITA.

13.5. **THIRD PARTY BENEFICIARIES.** This Agreement is entered into solely for the benefit of Motorola and Licensee. No third party has the right to make any claim or assert any right under this Agreement, and no third party is deemed a beneficiary of this Agreement. Notwithstanding the foregoing, any licensor or supplier of third party software included in the Software will be a direct and intended third party beneficiary of this Agreement.

13.6. **SURVIVAL.** Sections 4, 5, 6.3, 7, 8, 9, 10, 11 and 13 survive the termination of this Agreement.

13.7. **ORDER OF PRECEDENCE.** In the event of inconsistencies between this Exhibit and the Primary Agreement, the parties agree that this Exhibit prevails, only with respect to the specific subject matter of this Exhibit, and not the Primary Agreement or any other exhibit as it applies to any other subject matter.

13.8. **SECURITY.** Motorola uses reasonable means in the design and writing of its own Software and the acquisition of third party Software to limit Security Vulnerabilities. While no software can be guaranteed to be free from Security Vulnerabilities, if a Security Vulnerability is discovered, Motorola will take the steps set forth in Section 6 of this Agreement.

**Exhibit B**

**Motorola's Proposal dated \_\_\_\_\_, 2014**

## Exhibit D

### Service Terms and Conditions

Motorola Solutions, Inc. ("Motorola") and the customer named in this Agreement ("Customer") hereby agree as follows:

#### Section 1 APPLICABILITY

These Service Terms and Conditions apply to service contracts whereby Motorola will provide to Customer either (1) maintenance, support, or other services under a Motorola Service Agreement, or (2) installation services under a Motorola Installation Agreement.

#### Section 2 DEFINITIONS AND INTERPRETATION

2.1. "Agreement" means these Service Terms and Conditions; the cover page for the Service Agreement or the Installation Agreement, as applicable; and any other attachments, all of which are incorporated herein by this reference. In interpreting this Agreement and resolving any ambiguities, these Service Terms and Conditions take precedence over any cover page, and the cover page takes precedence over any attachments, unless the cover page or attachment states otherwise.

2.2. "Equipment" means the equipment that is specified in the attachments or is subsequently added to this Agreement.

2.3. "Services" means those installation, maintenance, support, training, and other services described in this Agreement.

#### Section 3 ACCEPTANCE

Customer accepts these Service Terms and Conditions and agrees to pay the prices set forth in the Agreement. This Agreement becomes binding only when accepted in writing by Motorola. The term of this Agreement begins on the "Start Date" indicated in this Agreement.

#### Section 4 SCOPE OF SERVICES

4.1. Motorola will provide the Services described in this Agreement or in a more detailed statement of work or other document attached to this Agreement. At Customer's request, Motorola may also provide additional services at Motorola's then-applicable rates for the services.

4.2. If Motorola is providing Services for Equipment, Motorola parts or parts of equal quality will be used; the Equipment will be serviced at levels set forth in the manufacturer's product manuals; and routine service procedures that are prescribed by Motorola will be followed.

4.3. If Customer purchases from Motorola additional equipment that becomes part of the same system as the initial Equipment, the additional equipment may be added to this Agreement and will be billed at the applicable rates after the warranty for that additional equipment expires.

4.4. All Equipment must be in good working order on the Start Date or when additional equipment is added to the Agreement. Upon reasonable request by Motorola, Customer will provide a complete serial and model number list of the Equipment. Customer must promptly notify Motorola in writing when any Equipment is lost, damaged, stolen or taken out of service. Customer's obligation to pay Service fees for this Equipment will terminate at the end of the month in which Motorola receives the written notice.

4.5. Customer must specifically identify any Equipment that is labeled intrinsically safe for use in hazardous environments.

4.6. If Equipment cannot, in Motorola's reasonable opinion and in conjunction with the Customer's Project Manager, be properly or economically serviced for any reason, Motorola may modify the scope of Services related to that Equipment; remove that Equipment from the Agreement; or increase the price to Service that Equipment.

4.7. Customer must promptly notify Motorola of any Equipment failure. Motorola will respond to Customer's notification in a manner consistent with the level of Service purchased as indicated in this Agreement.

#### **Section 5 EXCLUDED SERVICES**

5.1. Service excludes the repair or replacement of Equipment that has become defective or damaged from use in other than the normal, customary, intended, and authorized manner; use not in compliance with applicable industry standards; excessive wear and tear; or accident, liquids, power surges, neglect, acts of God or other force majeure events.

5.2. Unless specifically included in this Agreement, Service excludes items that are consumed in the normal operation of the Equipment, such as batteries or magnetic tapes.; upgrading or reprogramming Equipment; accessories, belt clips, battery chargers, custom or special products, modified units, or software; and repair or maintenance of any transmission line, antenna, microwave equipment, tower or tower lighting, duplexer, combiner, or multicoupler. Motorola has no obligations for any transmission medium, such as telephone lines, computer networks, the internet or the worldwide web, or for Equipment malfunction caused by the transmission medium.

#### **Section 6 TIME AND PLACE OF SERVICE**

Service will be provided at the location specified in this Agreement. When Motorola performs service at Customer's location, Customer will provide Motorola, at no charge, a non-hazardous work environment with adequate shelter, heat, light, and power and with full and free access to the Equipment. Waivers of liability from Motorola or its subcontractors will not be imposed as a site access requirement. Customer will provide all information pertaining to the hardware and software elements of any system with which the Equipment is interfacing so that Motorola may perform its Services. Unless otherwise stated in this Agreement, the hours of Service will be 8:30 a.m. to 4:30 p.m., local time, excluding weekends and holidays. Unless otherwise stated in this Agreement, the price for the Services exclude any charges or expenses associated with helicopter or other unusual access requirements; if these charges or expenses are reasonably incurred by Motorola in rendering the Services, Customer agrees to reimburse Motorola for those charges and expenses.

#### **Section 7 CUSTOMER Contact**

Customer will provide Motorola with designated points of contact (list of names and phone numbers) that will be available twenty-four (24) hours per day, seven (7) days per week, and an escalation procedure to enable Customer's personnel to maintain contact, as needed, with Motorola.

#### **Section 8 PAYMENT**

Unless alternative payment terms are stated in this Agreement, Motorola will invoice Customer in advance for each payment period. All other charges will be billed monthly, and Customer must pay each invoice in U.S. dollars within twenty (20) days of the invoice date. Customer will reimburse Motorola for all property taxes, sales and use taxes, excise taxes, and other taxes or assessments that are levied as a result of Services rendered under this Agreement (except income, profit, and franchise taxes of Motorola) by any governmental entity.

#### **Section 9 WARRANTY**

Motorola warrants that its Services under this Agreement will be free of defects in materials and workmanship for a period of ninety (90) days from the date the performance of the Services are completed. In the event of a breach of this warranty, Customer's sole remedy is to require Motorola to re-perform the non-conforming Service or to refund, on a pro-rata basis, the fees paid for the non-conforming Service. MOTOROLA DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

#### **Section 10 DEFAULT/TERMINATION**

10.1. If either party defaults in the performance of this Agreement, the other party will give to the non-performing party a written and detailed notice of the default. The non-performing party will have thirty

(30) days thereafter to provide a written plan to cure the default that is acceptable to the other party and begin implementing the cure plan immediately after plan approval. If the non-performing party fails to provide or implement the cure plan, then the injured party, in addition to any other rights available to it under law, may immediately terminate this Agreement effective upon giving a written notice of termination to the defaulting party.

10.2. Any termination of this Agreement will not relieve either party of obligations previously incurred pursuant to this Agreement, including payments which may be due and owing at the time of termination. All sums owed by Customer to Motorola will become due and payable immediately upon termination of this Agreement. Upon the effective date of termination, Motorola will have no further obligation to provide Services.

#### **Section 11      LIMITATION OF LIABILITY**

Except for personal injury or death, Motorola's total liability, whether for breach of contract, warranty, negligence, strict liability in tort, or otherwise, will be limited to the direct damages recoverable under law, but not to exceed the price of twelve (12) months of Service provided under this Agreement. ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, THEY AGREE THAT MOTOROLA WILL NOT BE LIABLE FOR ANY COMMERCIAL LOSS; INCONVENIENCE; LOSS OF USE, TIME, DATA, GOOD WILL, REVENUES, PROFITS OR SAVINGS; OR OTHER SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES IN ANY WAY RELATED TO OR ARISING FROM THIS AGREEMENT OR THE PERFORMANCE OF SERVICES BY MOTOROLA PURSUANT TO THIS AGREEMENT. No action for contract breach or otherwise relating to the transactions contemplated by this Agreement may be brought more than one (1) year after the accrual of the cause of action, except for money due upon an open account. This limitation of liability will survive the expiration or termination of this Agreement and applies notwithstanding any contrary provision.

#### **Section 12      EXCLUSIVE TERMS AND CONDITIONS**

12.1. This Agreement supersedes all prior and concurrent agreements and understandings between the parties, whether written or oral, related to the Services, and there are no agreements or representations concerning the subject matter of this Agreement except for those expressed herein. The Agreement may not be amended or modified except by a written agreement signed by authorized representatives of both parties.

12.2. Customer agrees to reference this Agreement on any purchase order issued in furtherance of this Agreement, however, an omission of the reference to this Agreement will not affect its applicability. In no event will either party be bound by any terms contained in a Customer purchase order, acknowledgement, or other writings unless: the purchase order, acknowledgement, or other writing specifically refers to this Agreement; clearly indicate the intention of both parties to override and modify this Agreement; and the purchase order, acknowledgement, or other writing is signed by authorized representatives of both parties.

#### **Section 13      PROPRIETARY INFORMATION; CONFIDENTIALITY; INTELLECTUAL PROPERTY RIGHTS**

13.1. Any information or data in the form of specifications, drawings, reprints, technical information or otherwise furnished to Customer under this Agreement will remain Motorola's property, will be deemed proprietary, will be kept confidential, and will be promptly returned at Motorola's request. Customer may not disclose, without Motorola's written permission or as required by law, any confidential information or data to any person, or use confidential information or data for any purpose other than performing its obligations under this Agreement. The obligations set forth in this Section survive the expiration or termination of this Agreement.

13.2. Unless otherwise agreed in writing, no commercial, financial or technical information disclosed in any manner or at any time by Customer to Motorola will be deemed secret or confidential. Motorola will have no obligation to provide Customer with access to its confidential and proprietary information, including cost and pricing data.

13.3. This Agreement does not grant directly or by implication, estoppel, or otherwise, any ownership right or license under any Motorola patent, copyright, trade secret, or other intellectual property, including any intellectual property created as a result of or related to the Equipment sold or Services performed under this Agreement.

#### **Section 14 FCC LICENSES AND OTHER AUTHORIZATIONS**

Customer is solely responsible for obtaining licenses or other authorizations required by the Federal Communications Commission or any other federal, state, or local government agency and for complying with all rules and regulations required by governmental agencies. Neither Motorola nor any of its employees is an agent or representative of Customer in any governmental matters.

#### **Section 15 COVENANT NOT TO EMPLOY**

During the term of this Agreement and continuing for a period of two (2) years thereafter, Customer will not hire, engage on contract, solicit the employment of, or recommend employment to any third party of any employee of Motorola or its subcontractors without the prior written authorization of Motorola. This provision applies only to those employees of Motorola or its subcontractors who are responsible for rendering services under this Agreement. If this provision is found to be overly broad under applicable law, it will be modified as necessary to conform to applicable law.

#### **Section 16 MATERIALS, TOOLS AND EQUIPMENT**

All tools, equipment, dies, gauges, models, drawings or other materials paid for or furnished by Motorola for the purpose of this Agreement will be and remain the sole property of Motorola. Customer will safeguard all such property while it is in Customer's custody or control, be liable for any loss or damage to this property, and return it to Motorola upon request. This property will be held by Customer for Motorola's use without charge and may be removed from Customer's premises by Motorola at any time without restriction.

#### **Section 17 GENERAL TERMS**

17.1. If any court renders any portion of this Agreement unenforceable, the remaining terms will continue in full force and effect.

17.2. This Agreement and the rights and duties of the parties will be governed and interpreted in accordance with the laws of the State in which the Services are performed.

17.3. Failure to exercise any right will not operate as a waiver of that right, power, or privilege.

17.4. Neither party is liable for delays or lack of performance resulting from any causes that are beyond that party's reasonable control, such as strikes, material shortages, or acts of God.

17.5. Motorola may assign its rights and obligations, and may subcontract any portion of its performance, under this Agreement.

17.6. THE MAXIMUM LIFE OF THIS AGREEMENT IS SEVEN (7) YEARS. Prior to the seventh anniversary of the start date, should Motorola wish to continue, it must submit a new proposal, to include a Communications System Agreement, to be negotiated with the Customer. Any new Agreement must be in place on the day following the seventh anniversary. Sixty (60) calendar days prior to the annual anniversary date, Motorola shall provide the Customer with an extension request which clearly states any changes to the original agreement. The Customer, should it desire to continue the Agreement, will submit a letter of concurrence to the Customer's Procurement Branch for approval. Should either party wish to discontinue the Agreement, it must notify the other party in writing not less than thirty (30) calendar days prior to the annual anniversary date.

17.7. If Motorola provides Services after the termination or expiration of this Agreement, the terms and conditions in effect at the time of the termination or expiration will apply to those Services and Customer agrees to pay for those services on a time and materials basis at Motorola's then effective hourly rates.



**Exhibit D**  
**System Acceptance Certificate**

**Customer Name:** \_\_\_\_\_

**Project Name:** \_\_\_\_\_

This System Acceptance Certificate memorializes the occurrence of System Acceptance. Motorola and Customer acknowledge that:

1. The Acceptance Tests set forth in the Acceptance Test Plan have been successfully completed.
2. The System is accepted.

**Customer Representative:**

**Motorola Representative:**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**FINAL PROJECT ACCEPTANCE:**

Motorola has provided and Customer has received all deliverables, and Motorola has performed all other work required for Final Project Acceptance.

Customer Representative:

Motorola Representative:

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

# LESSEE FACT SHEET

Please help Motorola Solutions, Inc. provide excellent billing service by providing the following information:

1. Complete **Billing Address** CITY OF VESTAVIA HILLS

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Attention: 

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Phone: 

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2. Lessee County Location: 

---

3. Federal Tax I.D. Number 

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4. Purchase Order Number to be referenced on invoice (if necessary) or other "descriptions" that may assist in determining the applicable cost center or department: 

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5. Equipment description that you would like to appear on your invoicing: 

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**Appropriate Contact for Documentation / System Acceptance Follow-up:**

6. Appropriate Contact & Mailing Address 

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Phone: 

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Fax: 

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7. Payment remit to address: **Motorola Credit Corp.  
P.O. Box 71132  
Chicago IL 60694-1132**

Thank you  
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## EQUIPMENT LEASE-PURCHASE AGREEMENT

Lease Number: 23668

**LESSEE:**

**CITY OF VESTAVIA HILLS**  
513 Montgomery Highway  
Vestavia Hills AL 35216

**LESSOR:**

Motorola Solutions, Inc.  
1303 E. Algonquin Rd.  
Schaumburg, IL 60196

Lessor agrees to lease to Lessee and Lessee agrees to lease from Lessor, the equipment and/or software described in any Schedule A attached hereto ("Equipment") in accordance with the following terms and conditions of this Equipment Lease-Purchase Agreement ("Lease").

**1. TERM.** This Lease will become effective upon the execution hereof by Lessor. The Term of this Lease will commence on date specified in Schedule A attached hereto and unless terminated according to terms hereof or the purchase option, provided in Section 18, is exercised this Lease will continue until the Expiration Date set forth in Schedule B attached hereto ("Lease Term").

**2. RENT.** Lessee agrees to pay to Lessor or its assignee the Lease Payments (herein so called), including the interest portion, in the amounts specified in Schedule B. The Lease Payments will be payable without notice or demand at the office of the Lessor (or such other place as Lessor or its assignee may from time to time designate in writing), and will commence on the first Lease Payment Date as set forth in Schedule B and thereafter on each of the Lease Payment Dates set forth in Schedule B. Any payments received later than ten (10) days from the due date will bear interest at the highest lawful rate from the due date. Except as specifically provided in Section 5 hereof, the Lease Payments will be absolute and unconditional in all events and will not be subject to any set-off, defense, counterclaim, or recoupment for any reason whatsoever. Lessee reasonably believes that funds can be obtained sufficient to make all Lease Payments during the Lease Term and hereby covenants that it will do all things lawfully within its power to obtain, maintain and properly request and pursue funds from which the Lease Payments may be made, including making provisions for such payments to the extent necessary in each budget submitted for the purpose of obtaining funding, using its bona fide best efforts to have such portion of the budget approved and exhausting all available administrative reviews and appeals in the event such portion of the budget is not approved. It is Lessee's intent to make Lease Payments for the full Lease Term if funds are legally available therefor and in that regard Lessee represents that the Equipment will be used for one or more authorized governmental or proprietary functions essential to its proper, efficient and economic operation.

**3. DELIVERY AND ACCEPTANCE.** Lessor will cause the Equipment to be delivered to Lessee at the location specified in Schedule A ("Equipment Location"). Lessee will accept the Equipment as soon as it has been delivered and is operational. Lessee will evidence its acceptance of the Equipment by executing and delivering to Lessor a Delivery and Acceptance Certificate in the form provided by Lessor.

Even if Lessee has not executed and delivered to Lessor a Delivery and Acceptance Certificate, if Lessor believes the Equipment has been delivered and is operational, Lessor may require Lessee to notify Lessor in writing (within five (5) days of Lessee's receipt of Lessor's request) whether or not Lessee deems the Equipment (i) to have been delivered and (ii) to be operational, and hence be accepted by Lessee. If Lessee fails to so respond in such five (5) day period, Lessee will be deemed to have accepted the Equipment and be deemed to have acknowledged that the Equipment was delivered and is operational as if Lessee had in fact executed and delivered to Lessor a Delivery and Acceptance Certificate.

**4. REPRESENTATIONS AND WARRANTIES.** Lessor acknowledges that the Equipment leased hereunder is being manufactured and installed by Motorola Solutions, Inc. pursuant to contract (the "Contract") covering the Equipment. Lessee acknowledges that on or prior to the date of acceptance of the Equipment, Lessor intends to sell and assign Lessor's right, title and interest in and to this Agreement and the Equipment to an assignee ("Assignee"). LESSEE FURTHER ACKNOWLEDGES THAT EXCEPT AS EXPRESSLY SET FORTH IN THE CONTRACT, LESSOR MAKES NO EXPRESS OR IMPLIED WARRANTIES OF ANY NATURE OR KIND WHATSOEVER, AND AS BETWEEN LESSEE AND THE ASSIGNEE, THE PROPERTY SHALL BE ACCEPTED

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BY LESSEE "AS IS" AND "WITH ALL FAULTS". LESSEE AGREES TO SETTLE ALL CLAIMS DIRECTLY WITH LESSOR AND WILL NOT ASSERT OR SEEK TO ENFORCE ANY SUCH CLAIMS AGAINST THE ASSIGNEE. NEITHER LESSOR NOR THE ASSIGNEE SHALL BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER AS A RESULT OF THE LEASE OF THE EQUIPMENT, INCLUDING WITHOUT LIMITATION, LOSS OF PROFITS, PROPERTY DAMAGE OR LOST PRODUCTION WHETHER SUFFERED BY LESSEE OR ANY THIRD PARTY.

Lessor is not responsible for, and shall not be liable to Lessee for damages relating to loss of value of the Equipment for any cause or situation (including, without limitation, governmental actions or regulations or actions of other third parties).

**5. NON-APPROPRIATION OF FUNDS.** Notwithstanding anything contained in this Lease to the contrary, in the event the funds appropriated by Lessee's governing body or otherwise available by any means whatsoever in any fiscal period of Lessee for Lease Payments or other amounts due under this Lease are insufficient therefor, this Lease shall terminate on the last day of the fiscal period for which appropriations were received without penalty or expense to Lessee of any kind whatsoever, except as to the portions of Lease Payments or other amounts herein agreed upon for which funds shall have been appropriated and budgeted or are otherwise available. The Lessee will immediately notify the Lessor or its Assignee of such occurrence. In the event of such termination, Lessee agrees to peaceably surrender possession of the Equipment to Lessor or its Assignee on the date of such termination, packed for shipment in accordance with manufacturer specifications and freight prepaid and insured to any location in the continental United States designated by Lessor. Lessor will have all legal and equitable rights and remedies to take possession of the Equipment.

**6. LESSEE CERTIFICATION.** Lessee represents, covenants and warrants that: (i) Lessee is a state or a duly constituted political subdivision or agency of the state of the Equipment Location; (ii) the interest portion of the Lease Payments shall be excludable from Lessor's gross income pursuant to Section 103 of the Internal Revenue Code of 1986, as it may be amended from time to time (the "Code"); (iii) the execution, delivery and performance by the Lessee of this Lease have been duly authorized by all necessary action on the part of the Lessee; (iv) this Lease constitutes a legal, valid and binding obligation of the Lessee enforceable in accordance with its terms; (v) Lessee will comply with the information reporting requirements of Section 149(e) of the Code, and such compliance shall include but not be limited to the execution of information statements requested by Lessor; (vi) Lessee will not do or cause to be done any act which will cause, or by omission of any act allow, the Lease to be an arbitrage bond within the meaning of Section 148(a) of the Code; (vii) Lessee will not do or cause to be done any act which will cause, or by omission of any act allow, this Lease to be a private activity bond within the meaning of Section 141(a) of the Code; (viii) Lessee will not do or cause to be done any act which will cause, or by omission of any act allow, the interest portion of the Lease Payments to be or become includible in gross income for Federal income taxation purposes under the Code; and (ix) Lessee will be the only entity to own, use and operate the Equipment during the Lease Term.

Lessee represents, covenants and warrants that (i) it will do or cause to be done all things necessary to preserve and keep the Lease in full force and effect, (ii) it has complied with all public bidding and Bond Commission requirements (as defined in the Code) where necessary and by due notification presented this Lease for approval and adoption as a valid obligation on its part, and (iii) it has sufficient appropriations or other funds available to pay all amounts due hereunder for the current fiscal period.

If Lessee breaches the covenant contained in this Section, the interest component of Lease Payments may become includible in gross income of the owner or owners thereof for federal income tax purposes. In such event, notwithstanding anything to the contrary contained in Section 11 of this Agreement, Lessee agrees to pay promptly after any such determination of taxability and on each Lease Payment date thereafter to Lessor an additional amount determined by Lessor to compensate such owner or owners for the loss of such excludibility (including, without limitation, compensation relating to interest expense, penalties or additions to tax), which determination shall be conclusive (absent manifest error). Notwithstanding anything herein to the contrary, any additional amount payable by Lessee pursuant to this Section 6 shall be payable solely from Legally Available Funds.

It is Lessor's and Lessee's intention that this Agreement does not constitute a "true" lease for federal income tax purposes and, therefore, it is Lessor's and Lessee's intention that Lessee be considered the owner of the Equipment for federal income tax purposes.

**7. TITLE TO EQUIPMENT; SECURITY INTEREST.** Upon shipment of the Equipment to Lessee hereunder, title to the Equipment will vest in Lessee subject to any applicable license; provided, however, that (i) in the event of termination of this Lease by Lessee pursuant to Section 5 hereof; (ii) upon the occurrence of an Event of Default hereunder, and as long as such Event of Default is continuing; or (iii) in the event that the purchase option has not been exercised prior to the Expiration Date, title will immediately vest in Lessor or its Assignee, and Lessee shall immediately discontinue use of the Equipment, remove the Equipment from Lessee's computers and other electronic devices and deliver the Equipment to Lessor or its Assignee. In order to secure all of its obligations hereunder, Lessee hereby (i) grants to Lessor a first and prior security interest in any and all right, title and interest of Lessee in the Equipment and in all additions, attachments, accessions, and substitutions thereto, and on any proceeds therefrom; (ii) agrees that this Lease may be filed as a financing statement evidencing such security interest; and (iii) agrees to execute and deliver all financing statements, certificates of title and other instruments necessary or appropriate to evidence such security interest.

**8. USE; REPAIRS.** Lessee will use the Equipment in a careful manner for the use contemplated by the manufacturer of the Equipment and shall comply with all laws, ordinances, insurance policies, the Contract, any licensing or other agreement, and regulations relating to, and will pay all costs, claims, damages, fees and charges arising out of the possession, use or maintenance of the Equipment. Lessee, at its expense will keep the Equipment in good repair and furnish and/or install all parts, mechanisms, updates, upgrades and devices required therefor.

**9. ALTERATIONS.** Lessee will not make any alterations, additions or improvements to the Equipment without Lessor's prior written consent unless such alterations, additions or improvements may be readily removed without damage to the Equipment.

**10. LOCATION; INSPECTION.** The Equipment will not be removed from, [or if the Equipment consists of rolling stock, its permanent base will not be changed from] the Equipment Location without Lessor's prior written consent which will not be unreasonably withheld. Lessor will be entitled to enter upon the Equipment Location or elsewhere during reasonable business hours to inspect the Equipment or observe its use and operation.

**11. LIENS AND TAXES.** Lessee shall keep the Equipment free and clear of all levies, liens and encumbrances except those created under this Lease. Lessee shall pay, when due, all charges and taxes (local, state and federal) which may now or hereafter be imposed upon the ownership, licensing, leasing, rental, sale, purchase, possession or use of the Equipment, excluding however, all taxes on or measured by Lessor's income. If Lessee fails to pay said charges and taxes when due, Lessor shall have the right, but shall not be obligated, to pay said charges and taxes. If Lessor pays any charges or taxes, Lessee shall reimburse Lessor therefor within ten days of written demand.

**12. RISK OF LOSS: DAMAGE; DESTRUCTION.** Lessee assumes all risk of loss or damage to the Equipment from any cause whatsoever, and no such loss of or damage to the Equipment nor defect therein nor unfitness or obsolescence thereof shall relieve Lessee of the obligation to make Lease Payments or to perform any other obligation under this Lease. In the event of damage to any item of Equipment, Lessee will immediately place the same in good repair with the proceeds of any insurance recovery applied to the cost of such repair. If Lessor determines that any item of Equipment is lost, stolen, destroyed or damaged beyond repair, Lessee at the option of Lessor will: either (a) replace the same with like equipment in good repair; or (b) on the next Lease Payment date, pay Lessor the sum of : (i) all amounts then owed by Lessee to Lessor under this Lease, including the Lease payment due on such date; and (ii) an amount equal to all remaining Lease Payments to be paid during the Lease Term as set forth in Schedule B.

In the event that Lessee is obligated to make such payment with respect to less than all of the Equipment, Lessor will provide Lessee with the pro rata amount of the Lease Payment and the Balance Payment (as set forth in Schedule B) to be made by Lessee with respect to that part of the Equipment which has suffered the Event of Loss.

**13. INSURANCE.** Lessee will, at its expense, maintain at all times during the Lease Term, fire and extended coverage, public liability and property damage insurance with respect to the Equipment in such amounts, covering such risks, and with such insurers as shall be satisfactory to Lessor, or, with Lessor's prior written consent, Lessee may self-insure against any or all such risks. All insurance covering loss of or damage to the Equipment

shall be carried in an amount no less than the amount of the then applicable Balance Payment with respect to such Equipment. The initial amount of insurance required is set forth in Schedule B. Each insurance policy will name Lessee as an insured and Lessor or its Assigns as an additional insured, and will contain a clause requiring the insurer to give Lessor at least thirty (30) days prior written notice of any alteration in the terms of such policy or the cancellation thereof. The proceeds of any such policies will be payable to Lessee and Lessor or its Assigns as their interests may appear. Upon acceptance of the Equipment and upon each insurance renewal date, Lessee will deliver to Lessor a certificate evidencing such insurance. In the event that Lessee has been permitted to self-insure, Lessee will furnish Lessor with a letter or certificate to such effect. In the event of any loss, damage, injury or accident involving the Equipment, Lessee will promptly provide Lessor with written notice thereof and make available to Lessor all information and documentation relating thereto.

**14. INDEMNIFICATION.** Intentionally omitted.

**15. ASSIGNMENT.** Without Lessor's prior written consent, Lessee will not either (i) assign, transfer, pledge, hypothecate, grant any security interest in or otherwise dispose of this Lease or the Equipment or any interest in this Lease or the Equipment or; (ii) sublet or lend the Equipment or permit it to be used by anyone other than Lessee or Lessee's employees. Lessor may assign its rights, title and interest in and to this Lease, the Equipment and any documents executed with respect to this Lease and/or grant or assign a security interest in this Lease and the Equipment, in whole or in part. Any such assignees shall have all of the rights of Lessor under this Lease. Subject to the foregoing, this Lease inures to the benefit of and is binding upon the heirs, executors, administrators, successors and assigns of the parties hereto.

Lessee covenants and agrees not to assert against the Assignee any claims or defenses by way of abatement, setoff, counterclaim, recoupment or the like which Lessee may have against Lessor. No assignment or reassignment of any Lessor's right, title or interest in this Lease or the Equipment shall be effective unless and until Lessee shall have received a notice of assignment, disclosing the name and address of each such assignee; provided, however, that if such assignment is made to a bank or trust company as paying or escrow agent for holders of certificates of participation in the Lease, it shall thereafter be sufficient that a copy of the agency agreement shall have been deposited with Lessee until Lessee shall have been advised that such agency agreement is no longer in effect. During the Lease Term Lessee shall keep a complete and accurate record of all such assignments in form necessary to comply with Section 149(a) of the Code, and the regulations, proposed or existing, from time to time promulgated thereunder. No further action will be required by Lessor or by Lessee to evidence the assignment, but Lessee will acknowledge such assignments in writing if so requested.

After notice of such assignment, Lessee shall name the Assignee as additional insured and loss payee in any insurance policies obtained or in force. Any Assignee of Lessor may reassign this Lease and its interest in the Equipment and the Lease Payments to any other person who, thereupon, shall be deemed to be Lessor's Assignee hereunder.

**16. EVENT OF DEFAULT.** The term "Event of Default", as used herein, means the occurrence of any one or more of the following events: (i) Lessee fails to make any Lease Payment (or any other payment) as it becomes due in accordance with the terms of the Lease, and any such failure continues for ten (10) days after the due date thereof; (ii) Lessee fails to perform or observe any other covenant, condition, or agreement to be performed or observed by it hereunder or the Contract and such failure is not cured within twenty (20) days after written notice thereof by Lessor; (iii) the discovery by Lessor that any statement, representation, or warranty made by Lessee in this Lease or in writing ever delivered by Lessee pursuant hereto or in connection herewith is false, misleading or erroneous in any material respect; (iv) proceedings under any bankruptcy, insolvency, reorganization or similar legislation shall be instituted against or by Lessee, or a receiver or similar officer shall be appointed for Lessee or any of its property, and such proceedings or appointments shall not be vacated, or fully stayed, within twenty (20) days after the institution or occurrence thereof; or (v) an attachment, levy or execution is threatened or levied upon or against the Equipment.

**17. REMEDIES.** Upon the occurrence of an Event of Default, and as long as such Event of Default is continuing, Lessor may, at its option, exercise any one or more of the following remedies: (i) by written notice to Lessee, declare all amounts then due under the Lease, and all remaining Lease Payments due during the Fiscal Year in effect when the default occurs to be immediately due and payable, whereupon the same shall become immediately due and payable; (ii) by written notice to Lessee, request Lessee to (and Lessee agrees that it will), at Lessee's expense, promptly discontinue use of the Equipment, remove the Equipment from all of Lessee's computers and electronic devices, return the Equipment to Lessor in the manner set forth in Section 5 hereof, or

Lessor, at its option, may enter upon the premises where the Equipment is located and take immediate possession of and remove the same; (iii) sell or lease the Equipment or sublease it for the account of Lessee, holding Lessee liable for all Lease Payments and other amounts due prior to the effective date of such selling, leasing or subleasing and for the difference between the purchase price, rental and other amounts paid by the purchaser, Lessee or sublessee pursuant to such sale, lease or sublease and the amounts payable by Lessee hereunder; and (iv) exercise any other right, remedy or privilege which may be available to it under applicable laws of the state of the Equipment Location or any other applicable law or proceed by appropriate court action to enforce the terms of the Lease or to recover damages for the breach of this Lease or to rescind this Lease as to any or all of the Equipment. In addition, Lessee will remain liable for all covenants and indemnities under this Lease and for all legal fees and other costs and expenses, including court costs, incurred by Lessor with respect to the enforcement of any of the remedies listed above or any other remedy available to Lessor.

**18. PURCHASE OPTION.** Upon thirty (30) days prior written notice from Lessee to Lessor, and provided that no Event of Default has occurred and is continuing, or no event, which with notice or lapse of time, or both could become an Event of Default, then exists, Lessee will have the right to purchase the Equipment on the Lease Payment dates set forth in Schedule B by paying to Lessor, on such date, the Lease Payment then due together with the Balance Payment amount set forth opposite such date. Upon satisfaction by Lessee of such purchase conditions, Lessor will transfer any and all of its right, title and interest in the Equipment to Lessee as is, without warranty, express or implied, except that the Equipment is free and clear of any liens created by Lessor.

**19. NOTICES.** All notices to be given under this Lease shall be made in writing and mailed by certified mail, return receipt requested, to the other party at its address set forth herein or at such address as the party may provide in writing from time to time. Any such notice shall be deemed to have been received five days subsequent to such mailing.

**20. SECTION HEADINGS.** All section headings contained herein are for the convenience of reference only and are not intended to define or limit the scope of any provision of this Lease.

**21. GOVERNING LAW.** This Lease shall be construed in accordance with, and governed by the laws of, the state of the Equipment Location.

**22. DELIVERY OF RELATED DOCUMENTS.** Lessee will execute or provide, as requested by Lessor, such other documents and information as are reasonably necessary with respect to the transaction contemplated by this Lease.

**23. ENTIRE AGREEMENT; WAIVER.** This Lease, together with Schedule A Equipment Lease-Purchase Agreement, Schedule B, Evidence of Insurance, Statement of Essential Use/Source of Funds Certificate of Incumbency, Lessee Resolution, Bank Qualified Statement, Information Return for Tax-Exempt Governmental Obligations and the Delivery and Acceptance Certificate and other attachments hereto, and other documents or instruments executed by Lessee and Lessor in connection herewith, constitutes the entire agreement between the parties with respect to the Lease of the Equipment, and this Lease shall not be modified, amended, altered, or changed except with the written consent of Lessee and Lessor. Any provision of the Lease found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of the Lease.

The waiver by Lessor of any breach by Lessee of any term, covenant or condition hereof shall not operate as a waiver of any subsequent breach thereof.

**24. EXECUTION IN COUNTERPARTS.** This Lease may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.



IN WITNESS WHEREOF, the parties have executed this Agreement as of the \_\_\_\_\_ day of January, 2015.

**LESSEE:**

**LESSOR:**

**CITY OF VESTAVIA HILLS**

**MOTOROLA SOLUTIONS, INC.**

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**CERTIFICATE OF INCUMBENCY**

I, \_\_\_\_\_ do hereby certify that I am the duly elected or  
(Printed Name of Secretary/Clerk )  
appointed and acting Secretary or Clerk of City of Vestavia Hills , an entity duly organized and existing under the laws of the **State of Alabama** that I have custody of the records of such entity, and that, as of the date hereof, the individual(s) executing this agreement is/are the duly elected or appointed officer(s) of such entity holding the office(s) below his/her/their respective name(s). I further certify that (i) the signature(s) set forth above his/her/their respective name(s) and title(s) is/are his/her/their true and authentic signature(s) and (ii) such officer(s) have the authority on behalf of such entity to enter into that certain Equipment Lease Purchase Agreement number **23668**, between City of Vestavia Hills and Motorola Solutions, Inc..

**IN WITNESS WHEREOF**, I have executed this certificate and affixed the seal of **CITY OF VESTAVIA HILLS** , hereto this \_\_\_\_\_ day of January, 2015.

By: \_\_\_\_\_

SEAL

(Signature of Secretary/Clerk)

**OPINION OF COUNSEL**

With respect to that certain Equipment Lease-Purchase Agreement # 23668 by and between Motorola Solutions, Inc. (Lessor) and the Lessee, I am of the opinion that: (i) the Lessee is, within the meaning of Section 103 of the Internal Revenue Code of 1986, a state or a fully constituted political subdivision or agency of the State of the Equipment Location described in Schedule A hereto; (ii) the execution, delivery and performance by the Lessee of the Lease have been duly authorized by all necessary action on the part of the Lessee, (iii) the Lease constitutes a legal, valid and binding obligation of the Lessee enforceable in accordance with its terms; and (iv) Lessee has sufficient monies available to make all payments required to be paid under the Lease during the current fiscal year of the Lease, and such monies have been properly budgeted and appropriated for this purpose in accordance with State law. This opinion may be relied upon by the Lessor and any assignee of the Lessor's rights under the Lease.

\_\_\_\_\_  
Attorney for **CITY OF VESTAVIA HILLS**

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**SCHEDULE A  
EQUIPMENT LEASE-PURCHASE AGREEMENT**

**Schedule A                    23668  
Lease Number:**

This Equipment Schedule is hereby attached to and made a part of that certain Equipment Lease-Purchase Agreement Number **23668** ("Lease"), between Motorola Solutions, Inc. ("Lessor") and City of Vestavia Hills ("Lessee").

Lessor hereby leases to Lessee under and pursuant to the Lease, and Lessee hereby accepts and leases from Lessor under and pursuant to the Lease, subject to and upon the terms and conditions set forth in the Lease and upon the terms set forth below, the following items of Equipment

QUANTITY	DESCRIPTION (Manufacturer, Model, and Serial Nos.)
	Refer to attached Equipment List.
<b>Equipment Location:</b>	

**Initial Term: 60 Months**

**Commencement Date: 2/1/2015**

**First Payment Due Date: 2/1/2016**

**5 Annual Payments of \$98,029.24** as outlined in the attached Schedule B, plus Sales/Use Tax of \$0.00, payable on the Lease Payment Dates set forth in Schedule B.

QTY	NOMENCLATURE	DESCRIPTION
1	SQM01SUM0239	MASTER SITE CONFIG UPGRADE
1	CA01403AA	SMARTX 3600 SYSTEM LICENSE
1	CA01404AA	SMARTX 3600 SITE LICENSE
1	SQM01SUM7054	GTR 8000 EXPANDABLE SITE SUBSYST
1	CA00855AA	ADD: 700/800 MHZ
1	X306AC	ADD: QTY (6) GTR 8000 BASE RADIOS
6	CA02209AA	ADD:3600 INTELLIREPEATER SOFTWARE
2	CA01536AA	GPB 8000 REFERENCE DISTRIBUTION M
1	CA01537AA	ADD: REFERENCE DISTRIBUTION SOFT
1	CA00877AA	ADD: CABINET RMC FOR EXPANSION R
1	CA00880AA	ADD: EXPANSION 6 PORT CAVITY COM
1	X882AH	ADD: 7.5 FT OPEN RACK, 48RU
1	CA02684AA	ADD: AC ONLY POWER DISTRIBUTION
6	3082933N20	LINECORD PLUG & RECP 3.7 MTRS
1	DSTSJ100BT	SPD, RJ-48 8 PIN, 10/100 BASE T TSJ PF
1	DSTSJADP	RACK MOUNT GROUND BAR, 19 IN FOR
1	SQM01SUM0205	GGM 8000 GATEWAY
1	CA01616AA	ADD: AC POWER
2	DS4881220000	4 T1 PORTS,UTP ETH PORT,UTP FOR 10
1	DSPREM891830	UNIVERSAL ENCLOSURE TENSr 800
2	DSPREM880370	CPU CARD, XCON CROSS-CONNECT, U
1	DSPREM892360	8T1 E1 IF CARD 128K WITH MODEM
2	DSPREM8901	AC POWER SUPPLY 110/220VAC
2	DSPREM822560	10 PORT LD-SRU CARD
2	DSPREM811960	8 PORT 4W E M TO EXT RANGE CRD
2	DSPREM801470	WAN CARD, DUAL T1/E1 WAN CARD WI
2	0182643X12	DS1 INTERFACE PANEL
1	DSPREM1239	Y ADAPTER 1:1 WAN REDUNDANCY
1	T7599	SMARTX SITE CONVERTER
1	CA01401AA	ADD: SMARTX SITE CONVERTER SOFT
1	CA00140AA	ADD: AC LINE CORD, NORTH AMERICAN
1	CVN1230	SMARTX SOFTWARE
1	BLN1297	VPM POWER SUPPLY MOUNTING KIT

City of Vestavia Hills (Schedule B)

Compound Period: Annual

Nominal Annual Rate: 3.050%

CASH FLOW DATA

Event	Date	Amount	Number	Period	End Date
1 Loan	2/1/2015	\$ 448,305.00	1		
2 Payment	2/1/2016	\$ 98,029.24	5	Annual	2/1/2020

AMORTIZATION SCHEDULE - Normal Amortization, 360 Day Year

	Date	Payment	Interest	Principal	Balance
Loan	2/1/2015				\$448,305.00
1	2/1/2016	\$ 98,029.24	\$ 13,673.30	\$ 84,355.94	\$363,949.06
2	2/1/2017	\$ 98,029.24	\$ 11,100.45	\$ 86,928.79	\$277,020.27
3	2/1/2018	\$ 98,029.24	\$ 8,449.12	\$ 89,580.12	\$187,440.15
4	2/1/2019	\$ 98,029.24	\$ 5,716.92	\$ 92,312.32	\$ 95,127.83
5	2/1/2020	\$ 98,029.24	\$ 2,901.41	\$ 95,127.83	\$ -
Grand Totals		\$490,146.20	\$ 41,841.20	\$448,305.00	

INITIAL INSURANCE REQUIREMENT: \$448,305.00

Except as specifically provided in Section five of the Lease hereof, Lessee agrees to pay to Lessor or its assignee the Lease Payments, including the interest portion, in the amounts and dates specified in the above payment schedule.

**EVIDENCE OF INSURANCE**

Fire, extended coverage, public liability and property damage insurance for all of the Equipment listed on Schedule A number 23668 to that Equipment Lease Purchase Agreement number 23668 will be maintained by the CITY OF VESTAVIA HILLS as stated in the Equipment Lease Purchase Agreement.

This insurance shall name MOTOROLA SOLUTIONS, INC. or its assignee as additional insured and loss payec for the term of the Schedule A number 23668. This insurance is provided by:

\_\_\_\_\_  
Name of insurance provider

\_\_\_\_\_  
Address of insurance provider

\_\_\_\_\_  
City, State and Zip Code

\_\_\_\_\_  
Phone number of insurance provider

In accordance with the Equipment Lease Purchase Agreement Number 23668 , CITY OF VESTAVIA HILLS , hereby certifies that following coverage are or will be in full force and effect:

Type	Amount	Effective Date	Expiration Date	Policy Number
Fire and Extended Coverage	_____	_____	_____	_____
Property Damage	_____	_____	_____	_____
Public Liability	_____	_____	_____	_____

**RESOLUTION NUMBER 4685**

**A RESOLUTION AUTHORIZING THE PURCHASE  
OF A SPEED AWARENESS MONITOR TRAILER  
FOR THE PURPOSE OF MONITORING TRAFFIC  
AND MAINTAINING ROAD SAFETY**

**WHEREAS**, the Vestavia Hills Police Department has analyzed the condition and limited capabilities of the current traffic trailer; and

**WHEREAS**, the Vestavia Hills Police Department has determined that there is a need for a Speed Awareness Monitor Trailer for the purpose of monitoring traffic and maintaining road safety by identifying problem areas and providing accurate statistical data in addition to serving as a deterrent to speeders with the speed indicator signal; and

**WHEREAS**, the Police Department has requested that the expense for the Speed Awareness Monitor Trailer of approximately \$7,500.00 be charged to the General Fund account; and

**WHEREAS**, the City Manager has reviewed the request and has recommended the acceptance of said purchase; and

**WHEREAS**, the Mayor and City Council have concurred with the City Manager and feel it is in the best public interest to accept the request as presented and recommended by the City Manager.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Vestavia Hills, Alabama, as follows:

1. The City Manager is hereby authorized to purchase a Speed Awareness Monitor Trailer for the purpose of monitoring traffic and maintaining road safety in the amount not to exceed \$7,500.00 to be expensed to the General Funds account; and
2. This Resolution shall become effective immediately upon its approval and adoption.

**APPROVED and ADOPTED** this the 9<sup>th</sup> day of March, 2015.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

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**Subject:**

Traffic Data Analysis

In consideration of the current condition and limited capabilities of our traffic trailer, VHPD requests the allocation of funding for a new Data Capturing Traffic Trailer, through Stalker Applied Concepts, that would enable us to appropriately address traffic complaints throughout the city. The statistical data captured by the Stalker SAM Trailer will assist in identifying problem areas, provide accurate statistical data, in addition to serving as a deterrent to speeders with the speed indicator signal.

Stalker Applied Concepts has proven to be a reliable vendor for speed indicator equipment, in that we currently purchase all of our in car and hand-held radar equipment through them. The specific model trailer being requested has been researched and recommended by our neighbors at Hoover PD.



Lt. Brian Gilham  
Community Oriented Policing Section  
Vestavia Hills Police Department  
513 Montgomery Hwy.  
Vestavia Hills, AL 35216  
205-978-0194

