

CULLMAN CITY COUNCIL
REGULAR MEETING
October 11th, 2010

The Mayor and Council met in the Council Chamber at 6:00 pm to discuss items on the agenda.

Tom Charney, Risk Management Director, came to explain to the Council Members the changes in the Windjammer Communication, LLC agreement. Mr. Jim Bennett, a representative from Windjammer Communications, LLC will be attending the meeting tonight. Tom was leaving to go to the hospital to welcome a new grandchild into the world.

Wesley Moore, Accountant and Attorney Roy Williams were present to answer any questions. Trent Moore, Cullman Times Reporter and Delton Blalock, Cullman Tribune Reporter, were also present.

The Cullman City Council met in regular session on October 11, 2010 at 7:00 o'clock p.m. in the Lucille N. Galin Auditorium. Council President Garlan Gudger called the meeting to order and Council Member Clint Hollingsworth presented the invocation.

A roll call by the City Clerk reflected the following. Present - Mayor Max A. Townson, President Garlan E. Gudger, Jr, Council Member Andy Page, Council Member Johnny Cook, Council Member Jenny Folsom and Council Member Clint Hollingsworth. Also present were City Attorney Roy Williams and City Clerk Ruth W. Rose .

Council Member Cook made a motion to suspend the rules in order to consider the minutes from the meeting on September 27th, 2010 and take immediate action. Council Member Hollingsworth seconded the motion and the motion carried on roll call vote. Council Member Page: Aye, Council Member Cook: Aye. Council President Gudger: Aye. Council Member Folsom: Aye. Council Member Hollingsworth: Aye. Nays: None.

Council Member Cook then moved to approve the minutes as written on October 11th, 2010 and Council Member Page seconded the motion. Motion was approved by a voice vote. Ayes: All Nays: None.

ADDITIONS/DELETIONS TO AGENDA

Council Member Cook made a motion to add item #12 under Roman Numeral X , a request to pay the Army Corps of Engineers a fee of \$160,000 for the Duck River Project. Council Member Folsom seconded the motion and motion was approved by a voice vote. Ayes: All. Nays: None.

A motion was made by Council Member Cook to add item #13 under Roman Numeral X to authorize a contract for payment of \$2,000 to David Schultz for organizing an air show at the Cullman Regional Airport. Council Member Hollingsworth seconded the motion and motion was approved by a voice vote. Ayes: All. Nays: None.

Council Member Folsom made a motion to add item #14 under Roman Numeral X which is a resolution to authorize Alabama Abatement to prepare an asbestos abatement survey on the Greif Brothers Property in the amount of \$800. Council Member Cook seconded the motion and motion was approved by a voice vote. Ayes: All. Nays: None.

A motion was made by Council Member Folsom to add item #15 under Roman Numeral X an Ordinance allowing Windjammer Communications, LLC a Franchise Agreement with the City of Cullman. Council Member Page seconded the motion and motion was approved by a voice vote. Ayes: All. Nays: None.

Council Member Cook made a motion to delete item 11-B under Roman Numeral X, a board appointment to the Cullman Utilities Board. Council Member Folsom seconded the motion and motion was approved by a voice vote. Ayes: All. Nays: None.

REPORTS OF STANDING COMMITTEES

Council Member Andy Page - Police Committee - Chief Culpepper and Council Member Page attended the North Alabama Police Chiefs Meeting last Friday. The meeting was very informative.

Council President Garlan Gudger - Fire Committee - No Report.

Council Member Johnny Cook - Sanitation Committee - No Report.

Council Member Clint Hollingsworth - Street Committee - No Report.

Council Member Jenny Folsom - Finance Committee - No Report

REPORTS OF OFFICERS

Mayor Max A. Townson - No Report.

COMMENTS FROM ANYONE NOT ON THE AGENDA

Mr. Rick Fulmer, Oktoberfest Committee Chairman, thanked all department heads for the hard work and support of the event. A new event, Rocktoberfest was added this year and was very successful with the younger generation. It was held in Depot Park and had several local bands playing for the event.

Tara Burns Meharg, 2nd Grade Teacher at West Elementary was present to thank the Fire Department and Police Department Employees. There was a false alarm at the school recently but the Fire and Police departments responded very quickly. Mrs. Meharg brought cards made by the students to show their appreciation. The children were very thankful that so many people were willing to help them and protect them in a very scary situation.

PETITIONS, APPLICATIONS, COMPLAINTS, APPEALS & COMMUNICATIONS

Katherine Morgan, representing the CHS Tennis Booster Club, made a request to host the Second Annual CHS Turkey Day 5K run on Saturday, November 13, 2010. President Gudger asked Chief Culpepper and Chief Reinhardt if they had reviewed the route. Chief Culpepper said the event went smoothly last year and had no problems. The event will begin at 8:00 am and will be completed by the time the Christmas Parade begins. Council Member Cook made a motion to approve this request. Council Member Hollingsworth seconded the motion and motion was approved by a voice vote. Ayes: All. Nays: None.

Council Member Folsom made a motion to approve a request from Mr. John Apel to close Clark Street between First Avenue and Second Avenue on Friday, October 22, 2010 from 7:00 pm until 9:00 pm and Saturday, October 23, 2010 from 6:00 pm until 11:00 pm for a wedding. President Gudger asked if there would be a band. The event will be held inside the Rotunda. The motion was seconded by Council Member Cook. The motion was approved by a voice vote. Ayes: All. Nays: None.

Council Member Cook made a motion to approve the request made by Mrs. Cindy Byerley, PTL President of St. Paul's Lutheran School, to close 6th Street between 3rd and 4th Avenue and 4th Avenue between 6th and 7th Street on October 30, 2010 from 8:00 am until 8:00 pm for the annual Fall Festival. Council Member Hollingsworth seconded the motion and motion was approved by a voice vote. Ayes: All. Nays: None.

Council Member Folsom made a motion to approve a request from Mr. Jeff Adams, WWTP Supt. to purchase a computer system in the amount of \$1,293. This is a budgeted item. Council Member Page seconded the motion and the approval was made by a voice vote. Ayes: All. Nays: None.

A request from the Economic Development Office for two computers to be purchased on the state bid list was discussed. The \$2,600 was budgeted in the new fiscal year's budget. Council Member Page made a motion to approve the purchase and Council Member Folsom seconded the motion. The motion was approved by a voice vote. Ayes: All. Nays: None.

RESOLUTIONS, ORDINANCES, ORDERS AND OTHER BUSINESS

Council President Gudger explained the next Resolution is an annual agreement with the Cullman Area Chamber of Commerce for services. Council Member Cook made a motion to approve the following resolution:

RESOLUTION 2011-01
AUTHORIZING AN AGREEMENT BETWEEN THE CULLMAN AREA
CHAMBER OF COMMERCE AND THE CITY OF CULLMAN, ALABAMA

WHEREAS, the Cullman Area Chamber of Commerce is able to provide certain service to the City of Cullman, its present and prospective businesses, industries, utilities, Industrial Development Boards and citizens; and

WHEREAS, the Cullman Area Chamber of Commerce is seeking new and expanding businesses, industries and services within the City of Cullman and will create new jobs, employment and economic improvement to its citizens while promoting the welfare of the City; and

WHEREAS, the City Council deems it appropriate to provide funds to the Chamber to assist them in providing these services to its citizens and businesses.

THEREFORE, BE IT RESOLVED by the City Council that the Mayor is hereby authorized to execute the agreement with the Cullman Area Chamber of Commerce now before this Council on behalf of the City of Cullman.

ADOPTED this the 11th day of October, 2010.

/s/ Garlan E. Gudger, Jr.
President of the Cullman City Council

ATTEST

/s/ Ruth W. Rose
City Clerk

Transmitted to the Mayor this the 11th day of October, 2010.

/s/ Ruth W. Rose
City Clerk

APPROVED by the Mayor this the 11th day of October, 2010.

/s/ Max A. Townson
Mayor

Council Member Page seconded the motion and the motion was approved by a voice vote. Ayes: All. Nays: None.

Council Member Folsom made a motion to adopt the following resolution:

RESOLUTION 2011-02
AUTHORIZING THE MAYOR TO SIGN AN AGREEMENT BETWEEN THE CITY OF
CULLMAN AND WINDJAMMER COMMUNICATIONS, LLC

WHEREAS, the Cullman City Council authorizes the Mayor to sign the Franchise Ordinance with Windjammer Communications, LLC; and

WHEREAS, the Cullman Council Members are aware of the terms and conditions in the Franchise Agreement for Cable Television Services for the City of Cullman; and

WHEREAS, the City Council deems it appropriate to provide this service to the citizens of Cullman.

THEREFORE, BE IT RESOLVED by the City Council that the Mayor is hereby authorized to execute the agreement with Windjammer Communications, LLC now before this Council on behalf of the City of Cullman.

ADOPTED this the 11th day of October, 2010.

/s/ Garlan E. Gudger, Jr.
President of the Cullman City Council

ATTEST

/s/ Ruth W. Rose
City Clerk

Transmitted to the Mayor this the 11th day of October, 2010.

/s/ Ruth W. Rose
City Clerk

APPROVED by the Mayor this the 11th day of October, 2010.

/s/ Max A. Townson
Mayor

Council President asked Mr. Jim Bennett, General Manager for Windjammer Communications to come to the podium. Mr. Bennett's address is 126 County Road 677, Cullman, AL 35055. Mr. Bennett thanked the Mayor and Council Members for allowing Windjammer Communications, LLC the opportunity to provide services to the City of Cullman Residents. The name of the

company has changed but the same employees remain and provide the services. This agreement provides quality service to the citizens and a portion of the fees are returned to the city for future projects and growth. President Gudger thanked Mr. Bennett for his attendance.

Council Member Hollingsworth seconded the motion to approve the resolution and the resolution was approved by a voice vote. Ayes: All. Nays: None.

Council Member Page made a motion to approve the following resolution appointing election officials for the City of Cullman Municipal Option Election to be held on November 2nd, 2010:

**RESOLUTION 2011-03
RESOLUTION DESIGNATING ELECTION OFFICIALS
FOR THE MUNICIPAL OPTION ELECTION
TO BE HELD ON NOVEMBER 2, 2010**

WHEREAS, a municipal option election has been called to be held on the 2nd day of November, 2010 for the City of Cullman; and

WHEREAS, Section 11-46-27 of the Code of 1975, as amended, provides that the municipal governing body shall not less than 15 days before the holding of any municipal election, appoint from the qualified electors of the respective voting districts officers to hold the election;

NOW, THEREFORE, BE IT RESOLVED by the City Council of Cullman, Alabama, that the election officers for said election shall be as follows:

CULLMAN CIVIC CENTER

BEAT 1 Box 1

Donnie Moyer	Inspector	734-8304	101 8 th Ave. NE	Cullman, AL	35055
Jo Burrow	Chief Clerk	734-8165	1831 Main Ave. SW	Cullman, AL	35055
Peggy Harris	Clerk	734-2831	1628 Edgewood ST NW	Cullman, AL	35055
Suzanne Tidwell	Clerk	734-7384	1720 Demorie Ave NW	Cullman, AL	35055
Dorothy Waldrop	Clerk	734-5636	1420 Linwood Dr SW	Cullman, AL	35055
Fannie R. Smith	Clerk	734-0926	1111 Second St SW	Cullman, AL	35055
Gail Sylvius	Clerk	734-5494	1405 Angie Drive NW	Cullman, AL	35055
Margaret Hale	Clerk	739-5920	408 6 th Street, SW	Cullman, AL	35055

CULLMAN COUNTY OFFICE BUILDING

BEAT 1 BOX 4

Inez Ruehl	Inspector	734-4312	204 6 th St SE	Cullman, AL	35055
Louise Lowry	Chief Clerk	734-3014	1631 Woodland ST NW	Cullman, AL	35055
Buford Lowry	Clerk	734-3014	1631 Woodland ST NW	Cullman, AL	35055
Evelyn Skipper	Clerk	734-8250	207 Convent Road NE	Cullman, AL	35055
Joy Flynn	Clerk	734-0471	401 5 th Avenue NE	Cullman, AL	35055
Betty Kendrick	Clerk	734-9143	901 Brentwood Dr	Cullman, AL	35055

CULLMAN CITY HALL
BEAT 1 BOX 5

Helen Marie Dahlke	Insp.	734-6510	1418 Legion Dr NW	Cullman, AL	35055
Carl Alverson	Chief Clerk	734-7631	109 8 th Ave. NE	Cullman, AL	35055
Sue Alverson	Clerk	734-7631	109 8 th Ave. NE	Cullman, AL	35055
Terry Howard	Clerk	739-5385	1400 5 th Ave. SE	Cullman, AL	35055
Pete Misegades	Clerk	739-4215	113 Schwann NE	Cullman, AL	35055

CULLMAN COUNTY COURTHOUSE
BEAT 1 BOX 6

Sid Borden	Inspector	734-1965	1704 Derby Dr SE	Cullman, AL	35055
Elaine Lovin	Chief Clerk	734-3897	1606 Lakeview Dr NW	Cullman, AL	35055
Karon Lovin	Clerk	734-3897	1606 Lakeview Dr NW	Cullman, AL	35055
Gloria Hewett	Clerk	734-8815	1430 Longbrook Dr. NE	Cullman, AL	35055
Rebecca H. Kirk	Clerk	595-0173	1214 Interbitzen St SW	Cullman, AL	35055

ABSENTEE BOX

Susie Richardson	Inspector	775-4770	P.O. Box 2321	Cullman, AL	35056
Charlotte D. Jacobs	Chief Clerk	734-7090	1007 9 th Street SW	Cullman, AL	35055
Pat Sapp	Clerk	734-8840	712 9 th Ave SE	Cullman, AL	35055

ADOPTED this the 11th day of October , 2010

/s/ Garlan E. Gudger, Jr.
President of the City Council

Attest:

/s/ Ruth W. Rose
City Clerk

APPROVED this the 11th day of October, 2010

/s/ Max A. Townson
Mayor

Council Member Cook seconded the motion and the resolution was approved by a voice vote.
Ayes: All. Nays: None.

Council Member Folsom made a motion to adopt the following resolution:

RESOLUTION 2011-04

RESOLUTION OF THE CULLMAN CITY COUNCIL
CALLING A MUNICIPAL OPTION ELECTION
CONCERNING THE SALE OF ALCOHOLIC BEVERAGES

WHEREAS, petitions were filed with the City of Cullman on Monday September 27, 2010, requesting that a municipal option election be held to determine whether to permit the legal sale of alcoholic beverages within the City of Cullman, and

WHEREAS, the City Clerk has certified to the Council that said petitions contain the names of more than 30% of the number of voters voting in the last preceding municipal general election held in the City of Cullman, and

WHEREAS, under the provisions of Act No. 84-408 of the Alabama Legislature (Section 28-2A-1, Code of Alabama 1975, as amended), the City Council must therefore call a municipal election to determine the sentiment of the people of the City of Cullman concerning the sale and distribution of alcoholic beverages;

THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CULLMAN, ALABAMA, AS FOLLOWS:

Section 2. A municipal option election is called to be held in the City of Cullman on Tuesday, November 2, 2010, the date of the next primary, general, county-wide or municipal election to be held more than thirty days subsequent to the filing of the petitions.

Section 4. That said election shall be held in the manner provided by law for holding other municipal elections, and the returns thereof tabulated and the results certified as provided by law for such municipal elections.

Section 6. That the mayor and city clerk are authorized and directed to give notice of said election and to perform such other duties in connection with the election as may be necessary or required by law.

ADOPTED this the 11th day of October, 2010.

/s/ Garlan E. Gudger, Jr.
President of the City Council

ATTEST

/s/ Ruth W. Rose
City Clerk

Approved this the 11th Day of October, 2010.

/s/ Max A. Townson
Mayor, City

Council Member Page seconded the motion and the resolution was approved by a voice vote.
Ayes: All. Nays: None.

Council Member made a motion to approve the following resolution awarding a bid for tree services:

RESOLUTION NO. 2011-05
Tree Services on North Side of David Drive NW
Bid Award

WHEREAS, bids were opened on October 7th, 2010 at 2:00 pm for Tree Services located on the North Side of David Drive NW in the City of Cullman; and

WHEREAS, the following bids were opened from 6 vendors:

Reeves and Son, LLC	Vinemont	1,525.00
Discount Tree Service	Crane Hill	1,575.00
Marshall's Tree Service	Hanceville	1,590.00
Clemmon's Tree Service	Cullman	1,999.00
Burk's Tree Service	Hanceville	2,000.00
B & H Tree Service	Bremen	2,695.00

WHEREAS, the recommendation from Darrell Johns, Arborist for the City of Cullman is to award the bid to Reeves and Son, LLC, the lowest bidder.

BE IT RESOLVED by the City Council of the City of Cullman, Alabama that the bid for the tree service be awarded to Reeves and Son, LLC of Vinemont, AL at this time.

ADOPTED this the 11th day of October, 2010.

/s/ Garlan E. Gudger, Jr.
President of the City Council

ATTEST:

/s/ Ruth W. Rose
City Clerk

APPROVED by the Mayor this the 11th day of October, 2010.

/s/ Max A. Townson
Mayor

Council Member Hollingsworth seconded the motion and motion was approved by a voice vote.
Ayes: All. Nays: None.

Council Member Cook made a motion to reject the following resolution:

RESOLUTION 2011-06

**RESOLUTION AWARDING BID FOR
CULLMAN REGIONAL AIRPORT
HANGAR FLOOR PAINTING**

WHEREAS, bids were opened on September 23rd, 2010 at 2:00 p.m., for painting the hangar floor at the Cullman Regional Airport ; and

WHEREAS, the following 2 bids were received:

O.F. Richter	Cullman, AL	\$18,897.00
Klopfert Painting Contractors	Cullman, AL	22,500.00

WHEREAS, the recommendation from Mr. Robert Burns, Airport Manager was to negotiate the specifications with the low bidder O.F. Richter and get a better price which is in compliance with the bid requirements.

BE IT RESOLVED by the City Council of the City of Cullman, Alabama that the contract be awarded to O. F. Richter of Cullman, Alabama in the amount of \$10,900.00.

ADOPTED this the 11th day of October, 2010.

President of the City Council

ATTEST:

City Clerk

APPROVED by the Mayor this the 11th day of October, 2010.

Mayor

Council Member Folsom seconded the motion and the bids were **Rejected** by a voice vote.
Ayes: All. Nays: None. The bid will not be awarded.

Council Member Cook made a motion to approve the following resolution:

RESOLUTION NO. 2011-07

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

1. Ruth Walker Rose, City Clerk is hereby designated as absentee election manager for the Municipal Option election to be held November 2nd, 2010; and
2. Wesley Moore is hereby designated assistant absentee manager and shall be compensated for these services.
3. In accordance with Act #2006-570 their compensation for these services are set at fifty dollars (\$50.00) per day for days served and this will be divided equally being \$25.00 each per day.

ADOPTED this the 11th day of October, 2010.

/s/ Garlan E. Gudger, Jr.
President of the City Council

Attested:

/s/ Ruth W. Rose
City Clerk

APPROVED this the 11th day of October, 2010.

/s/ Max A. Townson

Mayor

Council Member Folsom seconded the motion and the motion was approved by a voice vote.
Ayes: All. Nays: None.

Council Member Folsom made a motion to adopt the following resolution which amends a tax abatement for Cash Acme:

RESOLUTION 2011-08

AMENDED RESOLUTION

This Resolution is made this **11th** day of **October**, **2010** (the Effective Date) to replace the existing resolution passed on the **13th** day of **September, 2010** by the **City of Cullman, Alabama** (the Granting Authority), to grant a tax abatement for **Cash Acme** (the Company). This resolution is amended to show that **Cash Acme** has changed their capital investment figure from **\$5,375,000** to **\$8,525,000**.

WHEREAS, the Company has announced plans for a (check one):

new project or **XX** major addition to their existing facility (the Project),

located within the jurisdiction of the Granting Authority; and

WHEREAS, pursuant to the Tax Incentive Reform Act of 1992 (Section 40-9B-1 et seq., **Code of Alabama 1975**) (the Act), the Company has requested from the Granting Authority an Abatement of (check all that apply):

- X** all state and local noneducational ad valorem taxes,
- X** all construction related transaction taxes, except those construction related transaction taxes levied for educational purposes or for capital improvements for education, and/or
- X** all mortgage and recording taxes; and

WHEREAS, the Company has requested that the abatement of state and local noneducational ad valorem taxes (if applicable) be extended for a period of **10** years, in accordance with the Act; and

WHEREAS, the Granting Authority has considered the request of the Company and the completed application (copy attached) filed with the Granting Authority by the Company, in connection with its request; and

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

WHEREAS, the construction of the project will involve capital investment of **\$8,525,000**; and

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

WHEREAS, the Granting Authority represents and warrants to the Company that it has power under that constitution and laws of the State of Alabama (including particularly the provisions of the Act) to carry out provisions of the Tax Abatement Agreement;

NOW THEREFORE, be it resolved by the Granting Authority as follows:

Section 1. Approval is hereby given to the application of the Company and abatement is hereby granted of (check all that apply):

- all state and local noneducational ad valorem taxes,
- all construction related transaction taxes, except those construction related transaction taxes levied for educational purposes or for capital improvements for education, and/or
- all mortgage and recording taxes

as the same may apply to the fullest extent permitted by the Act. The period of abatement for the noneducational ad valorem taxes (if applicable) shall extend for a period of **10** years measured as provided in Section 40-9B-3(h) of the Act.

Section 2. The governing body of the Granting Authority is authorized to enter into an abatement agreement with the Company to provide for the abatement granted in Section 1.

Section 3. A certified copy of this resolution, with the application and abatement agreement, shall be forwarded to the Company to deliver to the appropriate local taxing authorities (if applicable) and to the Alabama Department of Revenue in accordance with the Act.

Section 4. The governing body of the Granting Authority is authorized to take any and all actions necessary or desirable to accomplish the purpose of the foregoing of this resolution.

I hereby certify that the foregoing was duly adopted by the **City of Cullman, Alabama** of Alabama at a meeting held on the **11th** day of **October, 2010** .

/s/ Garlan E. Gudger, Jr.
President of City Council

ATTEST:

/s/ Ruth W. Rose
City Clerk

APPROVED this the 11th day of October, 2010

/s/ Max A. Townson
Mayor

Council Member Page made a second to the motion. President Gudger stated he is very thankful that

Cash Acme has chosen to stay in Cullman and creating more jobs for citizens. The motion was approved by a voice vote. Ayes: All. Nays: None.

Council Member Page made a motion to adopt the following resolution to amend the tax abatement for Cash Acme Distribution:

RESOLUTION 2011-09

AMENDED RESOLUTION

This Resolution is made this **11th** day of **October**, **2010** (the Effective Date) to replace the existing resolution passed on the **13th** day of **September, 2010** by the **City of Cullman, Alabama** (the Granting Authority), to grant a tax abatement for **Cash Acme** (the Company). This resolution is amended to show that **Cash Acme** has changed their capital investment figure from **\$5,250,000** to **\$1,700,000**.

WHEREAS, the Company has announced plans for a (check one):

XX new project or major addition to their existing facility (the Project),
located within the jurisdiction of the Granting Authority; and

WHEREAS, pursuant to the Tax Incentive Reform Act of 1992 (Section 40-9B-1 et seq., **Code of Alabama 1975**) (the Act), the Company has requested from the Granting Authority an Abatement of (check all that apply):

- X** all state and local noneducational ad valorem taxes,
- X** all construction related transaction taxes, except those construction related transaction taxes levied for educational purposes or for capital improvements for education, and/or
- X** all mortgage and recording taxes; and

WHEREAS, the Company has requested that the abatement of state and local noneducational ad valorem taxes (if applicable) be extended for a period of **10** years, in accordance with the Act; and

WHEREAS, the Granting Authority has considered the request of the Company and the completed application (copy attached) filed with the Granting Authority by the Company, in connection with its request; and

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

WHEREAS, the construction of the project will involve capital investment of **\$1,700,000**; and

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

WHEREAS, the Granting Authority represents and warrants to the Company that it has power under that constitution and laws of the State of Alabama (including particularly the provisions of the Act) to carry out provisions

of the Tax Abatement Agreement;

NOW THEREFORE, be it resolved by the Granting Authority as follows:

Section 1. Approval is hereby given to the application of the Company and abatement is hereby granted of (check all that apply):

- all state and local noneducational ad valorem taxes,
- all construction related transaction taxes, except those construction related transaction taxes levied for educational purposes or for capital improvements for education, and/or
- all mortgage and recording taxes

as the same may apply to the fullest extent permitted by the Act. The period of abatement for the noneducational ad valorem taxes (if applicable) shall extend for a period of **10** years measured as provided in Section 40-9B-3(h) of the Act.

Section 2. The governing body of the Granting Authority is authorized to enter into an abatement agreement with the Company to provide for the abatement granted in Section 1.

Section 3. A certified copy of this resolution, with the application and abatement agreement, shall be forwarded to the Company to deliver to the appropriate local taxing authorities (if applicable) and to the Alabama Department of Revenue in accordance with the Act.

Section 4. The governing body of the Granting Authority is authorized to take any and all actions necessary or desirable to accomplish the purpose of the foregoing of this resolution.

I hereby certify that the foregoing was duly adopted by the **City of Cullman, Alabama**
of Alabama at a meeting held on the **11th** day of **October, 2010** .

/s/ Garlan E. Gudger, Jr.

President of City Council

ATTEST:

/s/ Ruth W. Rose
City Clerk

APPROVED by the Mayor this the 11th day of October, 2010.

/s/ Max A. Townson

Mayor

Council Member Folsom seconded the motion and the Resolution was approved by a voice vote.
Ayes: All. Nays: None.

Council Member Folsom made a motion to accept the following resolution and noted Hollingsworth Investments II is not connected or related to Council Member Clint Hollingsworth:

RESOLUTION 2011-10

AMENDED RESOLUTION

This Resolution is made this **11th** day of **October**, **2010** (the Effective Date) to replace the existing resolution passed on the **13th** day of **September, 2010** by the **City of Cullman, Alabama** (the Granting Authority), to grant a tax abatement for **Hollingsworth Investments II** (the Company). This resolution is amended to show that **Hollingsworth Investments II** has changed their capital investment figure from **\$7,825,000** to **\$6,025,000**.

WHEREAS, the Company has announced plans for a (check one):

XX new project or major addition to their existing facility (the Project),
located within the jurisdiction of the Granting Authority; and

WHEREAS, pursuant to the Tax Incentive Reform Act of 1992 (Section 40-9B-1 et seq., **Code of Alabama 1975**) (the Act), the Company has requested from the Granting Authority an Abatement of (check all that apply):

- X** all state and local noneducational ad valorem taxes,
- X** all construction related transaction taxes, except those construction related transaction taxes levied for educational purposes or for capital improvements for education, and/or
- X** all mortgage and recording taxes; and

WHEREAS, the Company has requested that the abatement of state and local noneducational ad valorem taxes (if applicable) be extended for a period of **10** years, in accordance with the Act; and

WHEREAS, the Granting Authority has considered the request of the Company and the completed application (copy attached) filed with the Granting Authority by the Company, in connection with its request; and

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

WHEREAS, the construction of the project will involve capital investment of **\$6,025,000**; and

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

WHEREAS, the Granting Authority represents and warrants to the Company that it has power under that constitution and laws of the State of Alabama (including particularly the provisions of the Act) to carry out provisions of the Tax Abatement Agreement;

NOW THEREFORE, be it resolved by the Granting Authority as follows:

Section 1. Approval is hereby given to the application of the Company and abatement is hereby granted of (check all that apply):

- all state and local noneducational ad valorem taxes,
- all construction related transaction taxes, except those construction related transaction taxes levied for educational purposes or for capital improvements for education, and/or
- all mortgage and recording taxes

as the same may apply to the fullest extent permitted by the Act. The period of abatement for the noneducational ad valorem taxes (if applicable) shall extend for a period of **10** years measured as provided in Section 40-9B-3(h) of the Act.

Section 2. The governing body of the Granting Authority is authorized to enter into an abatement agreement with the Company to provide for the abatement granted in Section 1.

Section 3. A certified copy of this resolution, with the application and abatement agreement, shall be forwarded to the Company to deliver to the appropriate local taxing authorities (if applicable) and to the Alabama Department of Revenue in accordance with the Act.

Section 4. The governing body of the Granting Authority is authorized to take any and all actions necessary or desirable to accomplish the purpose of the foregoing of this resolution.

I hereby certify that the foregoing was duly adopted by the **City of Cullman, Alabama**
of Alabama at a meeting held on the **11th** day of **October, 2010** .

/s/ Garlan E. Gudger, Jr.
President of City Council

ATTEST:

/s/ Ruth W. Rose
City Clerk

APPROVED by the Mayor on this 11th day of October, 2010

/s/ Max A. Townson
Mayor

Council Member Cook seconded the motion and the Resolution was approved by a voice vote.
Ayes: All. Nays: None.

President Gudger announced the next item on the agenda is a board appointment to the Zoning Board of Adjustments (Appeals Board). Council Member Folsom made a motion to appoint Mr. Don Hewett, who currently is serving as a Supernumerary Member. Council Member Cook seconded the motion and Mr. Hewett was appointed by a voice vote. Ayes: All. Nays: None.

Council Member Page made a motion to approve the resolution authorizing payment to the Army Corps of Engineers for the Duck River Project. The resolution is as follows:

Section 7.18

Resolution 2011-11

Scope of Work

11 August 2010

US Army Corps of Engineers' Compilation and Transfer of Cullman, Alabama, Duck River Water Supply Dam Design documents to the City of Cullman, Alabama

1.01 General

1.011 Synopsis: The Nashville District and the City of Cullman, Alabama will execute a new Chief's Economy Act agreement for the Corps to accept Cullman funds to work on previously compiled Duck River Dam design documents. The Mobile District (SAM) and Nashville District (LRN) will assemble a complete design team, consisting of a core group of the original Duck River Dam design team members and supplemented as needed to support all disciplines. The team will research and compile the basic dam design information, including the latest design documents, supporting and exploratory drilling data, and latest version Phase I Plans and Specifications (P&S). The team will incorporate the final review comments from the latest Independent Technical Review Board (ITRB). The team will also research and provide any current Corps regulation criteria which would alter the design. The Phase I drawings titled "Final Design Submittal", dated November 1999 will be provided as ".dgn" Microstation files. The specifications titled "100% Unreviewed Submittal" Phase I Specifications will be provided in SpecsIntact format and/or MS Word. Other data will be transferred to Cullman in their original format. The transfer will include Corps' collaboration with Cullman and their selected Designer of Record, to describe the design philosophy, present the designs, assumptions and calculations and to provide the 1998 base cost estimate, design data, and latest completed Phase I P&S. An initial meeting will be mutually scheduled with Cullman to take place in Cullman, Alabama and to include a site visit. A second meeting may take place to answer/address any other technical issues for the transfer. The Corps team will remain available, as funding allows, for consultation after the second meeting.

1.012 Assumptions/Guiding Principles:

- a. The team will work jointly with Cullman and their Architect-Engineer (AE) Designer of Record.
- b. The team will research and provide Cullman current Corps standards prior to transfer.

- c. Cullman's AE will complete and assume design responsibility for Phase I P&S. The work will be bid for construction by the City of Cullman.
- d. Corps ITR and Type II IEPR (SAR) requirements of EC 1165-2-209 would not be completed at this time. The Corps will not perform technical reviews of the design produced by the City of Cullman.
- e. If at some future point the design/construction of the project is federally authorized and funds are appropriated for the Corps, all required Corps reviews will be conducted.

1.06 Background

1.061 The City of Cullman (Cullman), Alabama Utilities Board has pursued an alternative water source for the City and surrounding water districts for over 17 years. Using primarily Appalachian Regional Commission (ARC) grant funds, USACE and Cullman have studied and identified an optimal dam site, completed design, environmental studies in compliance with the NEPA process, and a 404 Clean Water Act permit has been obtained. Design documents were essentially completed in 1999 for the first phase of dam construction and construction was slated to begin in 2000. A series of law suits, however, have delayed the start of the dam's construction. A Federal District Court Judge ruled in March 2009 in the Corps' and Cullman's favor and dismissed the most recent case with prejudice.

2.2 In November 2009, Cullman requested the Corps to update the 10-year old design documents at Cullman expense. USACE will use the Corps' Interagency and International Services (IIS) Program to accept Cullman funds to research and compile the 1998 design documents; however, design standard changes will be accomplished by Cullman's AE who will assume the role of Designer of Record.

3.0 Tasks

3.1 The effort will include the following tasks:

- a. LRN and Cullman, Alabama will execute an Interagency and International Services (IIS) Program Model Memorandum of Agreement (MOA) under 10 U.S.C. 3036 (d), the Chief's Economy Act.
- b. LRN will obtain funds for the effort herein from Cullman.
- c. LRN and SAM will assemble a full-service team, employing original team members when appropriate.
- d. The team will research and compile all the past design calculations and data, to include subsurface exploration.
- e. The team will incorporate all comments from the most recent Independent Technical Review Board (ITRB) effort into the latest Phase I construction documents.
- f. The team will research and provide any updated Corps design criteria in effect since the Phase I P&S were last reviewed.
- g. The team will provide the design and all supporting Phase I data to Cullman and their AE.
- h. The team will provide current Corps ITR and Type II IEPR (SAR) review regulations of EC 1165-2-209.
- i. The initial meeting will include a site visit and briefing by the team on design rationale, assumptions, and engineering and geologic data.
- j. The team, Cullman and their AE will meet in Cullman over a three day period; time to be mutually agreed.
- k. The team will be available to answer questions, as funds allow, from Cullman and their AE as they review and prepare the Phase I P&S.

- l. The team may meet a second time in Cullman, if requested, to answer any other technical issues for the transfer.
- m. The team will be accessible, based on available funding, for consultation as the AE completes the Phase I P&S for advertisement of a construction contract.
- n. The transfer of data and Phase I P&S will include a disclaimer or release, as mutually determined by USACE Office of Counsel.

1.04 Schedule by Task

1.041 Tasks and key milestones shall be as follows:

	Task	Milestone Date (task completed by)
1. LRN	LRN and Cullman execute MOA	30 August 2010
2	LRN obtains funds from Cullman	
3	LRN and SAM will assemble a full-service team, employing as many of the original team members as possible	
4	Team researches and compiles past design calculations and data, prepares to present to Cullman and their AE	
5	Team incorporates comments from the most recent ITRB	
6	Team researches and provides updated Corps regulations	
7	Team compiles all data and deliverables.	
8	The team will provide the design data and P&S to Cullman and their AE	13 November 2010
9	The team, Cullman and their AE will meet in Cullman over several days (Agenda TBD)	17 December 2010
10	Team available to answer questions from Cullman and their AE as they review and endorse the Phase I P&S.	
11	The team may meet a second time in Cullman to review the Cullman/Cullman AE- endorsed Phase I P&S.	
12	The team will be available for brief consultation, as funding allows, as Cullman completes the P&S.	
13	The transfer of data and Phase I P&S will include a disclaimers or release, as mutually determined by LRN Office of Counsel.	

5.0 Deliverables: (to include but not limited to)

- | <u>Item</u> | <u>Format</u> |
|---|--------------------------------------|
| 1. Topographic Mapping(Contracted by Cullman) | Microstation |
| 2. Engineering Study Reports | Paper - already furnished to Cullman |
| <ul style="list-style-type: none"> ● MAIN REPORT- FOR CULLMAN/MORGAN WATER DISTRICT DUCK RIVER DAM, PUMP STATION AND PIPELINE ● APPENDIX A – HYDROLOGY AND HYDRAULIC (THIS VOLUME) ● APPENDIX B – BORING LOGS AND LAB TESTING (SEPARATE VOLUME) ● APPENDIX C – GEOTECHNICAL DATA AND CALCULATIONS (SEPARATE VOLUME) | |

- APPENDIX D – STRUCTURAL CALCULATION FOR OGEE SPILLWAY, INTAKE STRUCTURE AND GATES AND INTAKE TOWER/PUMP STATION (SEPARATE VOLUME)
- APPENDIX E – MECHANICAL DESIGN CALCULATIONS (SEPARATE VOLUME)
- APPENDIX F – ELECTRICAL (SEPARATE VOLUME)
- APPENDIX G – PIPELINE DESIGN (SEPARATE VOLUME)
- APPENDIX H- RELOCATIONS IF ROADS AND UTILITIES (SEPARATE VOLUME)
- APPENDIX I – COST ESTIMATE (SEPARATE VOLUME)

- 11. Minutes of Meetings .pdf
- 12. Ph 1 Plans Microstation
- 13. Ph 1 Specifications SpecsIntact and/or MS Word
- 14. Misc Correspondence .pdf
- 15. Misc Design Calculations(Ph 1) .pdf

Section 7. Cost

Proposed Team Member	Discipline	Organization
(* denotes original cast)		
Duane Poiroux*	Soils, Technical Mgr	SAM, OP-N
Juan Payne*	Geology	LRN, EC-CHK
Paul Bluhm*	Soils; Technical Mgr	LRN, Rehired
Tommy Haskins*	Geology	LRN, Rehired
Jody Stanton*	Geology	LRN, EC-CD
Wade Ross	Hydrology & Hydraulics	SAM
Allen Davis*	Structural	SAM
Josh Blevins	Geotechnical Engr	SAM
Stewart Turner	CE Technician	SAM
Ken Hull*	Structural	LRN, Rehired
Gary Stinson*	Cost Engineering	LRN, EC-CD
Dean Trawick	Project Manager	SAM
Linda Adcock	Project Manager	LRN, PM-MD

Total Labor Cost Estimate- \$135,000
 Total Travel Estimate- 9,600

Contingency 15,000
TOTAL \$159,600
(Round to \$160,000)**

****\$50,000 of current project funds in LRN will be used toward the initiation of the effort; \$110,000 will be funded by Cullman after the MOA is signed.**

Section 9. Coordination

(b) The team will work under the general coordination of a Technical Manager with support from Project Managers from Mobile and Nashville Districts.

Section 11. Quality Control

(b) Standard Corps Quality Control procedures will be followed during the research, data gathering and transfer.

Adopted this the 11th day of October 2010.

/s/ Garlan E. Gudger, Jr.

President of City Council

ATTEST

/s/ Ruth W. Rose
City Clerk

APPROVED by the Mayor this the 11th day of October 2010.

/s/ Max A. Townson
Mayor, City of Cullman

Council Member Hollingsworth seconded the motion and the resolution was approved by a voice vote. Ayes: All. Nays: None.

President Gudger asked Mayor Townson to explain the request from the airport for the \$2,000. Mayor Townson said the \$2,000 is one half of the fee charged by David Schultz to organize the air show. The Cullman County Commission will pay the remaining one half. The airport has many improvements to show off to the public and this will be a super fun day

for the public to see the new airport features. The event is scheduled for Saturday, May 21st, 2011 and the plans are for a large crowd of vendors and military aircraft. Council Member Folsom made a motion to approve the following resolution:

RESOLUTION NO. 2011-12
AUTHORIZING MAYOR TO SIGN AGREEMENT
FOR AIRPORT AIRSHOW WITH DAVID SCHULTZ AIRSHOWS, LLC

WHEREAS, the City of Cullman and Cullman County Commission have the opportunity to provide a fantastic airshow for the citizens of Cullman and Cullman County; and

WHEREAS, the City has considered the price of \$4,000 and Cullman County Commission has agreed to pay \$2,000 and City of Cullman shall pay \$2,000; and

WHEREAS, the City Council finds that it is in the best interest of the City to proceed with the Air Show and allow David Shultz Airshows, LLC to coordinate the event.

THEREFORE, BE IT RESOLVED by the Cullman City Council that the Mayor is hereby authorized to execute an agreement for and on behalf of the City of Cullman to provide this entertaining event for the citizens of Cullman.

ADOPTED this the 11th day of October, 2010.

/s/ Garlan E. Gudger, Jr.
President of the City Council

ATTEST

/s/ Ruth W. Rose, City Clerk

Transmitted to the Mayor this the 11th day of October, 2010.

/s/ Ruth W. Rose
City Clerk

APPROVED by the Mayor this the 11th day of October, 2010.

/s/ Max A. Townson, Mayor

Council Member Hollingsworth seconded the motion and the motion was approved by a

voice vote. Ayes: All. Nays: None.

Council Member Cook made a motion to adopt the following Resolution:

RESOLUTION NO. 2011-13

**RESOLUTION AUTHORIZING ALABAMA ABATEMENT
TO PROVIDE SURVEY OF PROPERTY AT 701 SECOND AVENUE NE
FOR ASBESTOS ABATEMENT PROJECT**

WHEREAS, Alabama Abatement have presented a proposal to provide a survey of the property located at 701 Second Avenue NE, and

WHEREAS, the City has considered the scope of work included in the proposal and wants to proceed with the asbestos abatement bidding process; and

WHEREAS, the City Council finds that it is in the best interest of the City to proceed with the work set out in the survey, and

THEREFORE, BE IT RESOLVED by the Cullman City Council that the Mayor is hereby authorized to execute an agreement with Alabama Abatement for and on behalf of the City of Cullman for an estimated cost of \$800.00.

ADOPTED this the 11th day of October, 2010.

/s/ Garlan E. Gudger, Jr.
President of the City Council

ATTEST:

/s/ Ruth W. Rose
City Clerk

Transmitted to the Mayor this the 11th day of October, 2010.

/s/ Ruth W. Rose
City Clerk

APPROVED by the Mayor this the 11th day of October, 2010.

/s/ Max A. Townson

Mayor

Council Member Folsom seconded the motion and the resolution was approved by a voice vote. Ayes: All. Nays: None.

President Gudger stated the next item on the agenda is an Ordinance being read for the first time. A motion to suspend the rules and take immediate action was made by Council Member Cook. Council Member Page seconded the motion and the Clerk polled the Council Members. Council Member Page: Aye. Council Member Cook: Aye. Council President Gudger: Aye. Council Member Folsom: Aye. Council Member Hollingsworth: Aye. Nays: None.

Council Member Hollingsworth made a motion to adopt the following Ordinance:

Ordinance 2011-01

Section 6.

916073v7

25

ORDINANCE 2011-01

CABLE TELEVISION FRANCHISE ORDINANCE

FOR THE

CITY OF CULLMAN, ALABAMA

AND

WINDJAMMER COMMUNICATIONS LLC

October 11, 2010

TABLE OF CONTENTS

- a. SHORT TITLE AND DEFINITIONS
 - 1
 - 1. Short Title 1
 - 2. Definitions 1
- b. GRANT OF AUTHORITY AND GENERAL PROVISIONS
 - 5
 - 1. Grant of Franchise 5
 - 2. Grant of Nonexclusive Authority 5
 - 3. Lease or Assignment Prohibited 6
 - 4. Franchise Term 6
 - 5. Previous Franchises. 6
 - 6. Compliance with Applicable Laws, Resolutions and Ordinances 6
 - 7. Rules of Grantee 7
 - 8. Territorial Area Involved 7
 - 9. Written Notice 7
 - 10. Ownership of Grantee 7
- c. CONSTRUCTION STANDARDS
 - 8
 - 1. Registration, Permits Construction Codes and Cooperation 8
 - 2. Ongoing Construction 8
 - 3. Use of existing poles or conduits 9
 - 4. Minimum Interference 9
 - 5. Disturbance or damage 9

6.....	Temporary Relocation	10
7.....	Emergency	10
8.....	Tree Trimming	10
9.....	Protection of facilities	10
10.....	Installation records	10
11.....	Locating facilities	10
12.....	City's rights	11
13.....	Relocation delays	11
14.....	Interference with City Facilities	11
15.....	Interference with Utility Facilities	11
16.....	Collocation	12
17.....	Safety Requirements	12

d. DESIGN PROVISIONS
12

1.	System Upgrade: Minimum Channel Capacity	12
2.....	Interruption of Service	13
3.....	Emergency Alert Capability	13
4.....	Technical Standards	13
5.....	FCC Reports	13
6.....	Interconnection	13
7.....	Lockout Device	13

e. SERVICE PROVISIONS
14

1.	Non-Standard Installations	14
2.....	Sales Procedures	14

	3.	Consumer Protection and Service Standards	14
	4.	Subscriber Contracts	17
	5.	Refund Policy	17
	6.	Late Fees	17
f.	ACCESS CHANNEL(S) PROVISIONS		
	17		
	1.	Grantee Support for PEG Access	17
	2.	Compliance with Federal Law	17
g.	OPERATION AND ADMINISTRATION PROVISIONS		
	18		
	1.	Administration of Franchise	18
	2.	Franchise Fee	18
	3.	Discounted Rates	19
	4.	Not Franchise Fees	19
	5.	Access to Records	20
	6.	Reports and Maps to be Filed with City	20
h.	GENERAL FINANCIAL AND INSURANCE PROVISIONS		
	20		
	1.	Liability Insurance	20
	2.	Indemnification	21
	3.	Grantee's Insurance	22
i.	SALE, ABANDONMENT, TRANSFER AND REVOCATION OF FRANCHISE		
	23		
	1.	City's Right to Revoke	23
	2.	Procedures for Revocation	23
	3.	Abandonment of Service	24
	4.	Removal After Abandonment, Termination or Forfeiture	24

	5.	Sale or Transfer of Franchise	24
j.	PROTECTION OF INDIVIDUAL RIGHTS		
	25		
	1.	Discriminatory Practices Prohibited	25
		2. Subscriber Privacy	25
k.	UNAUTHORIZED CONNECTIONS AND MODIFICATIONS		
	26		
	1.	Unauthorized Connections or Modifications Prohibited	26
		2. Removal or Destruction Prohibited	26
		3. Penalty	26
l.	MISCELLANEOUS PROVISIONS		
	27		
	1.	Franchise Renewal	27
		2. Work Performed by Others	27
		3. Amendment of Franchise Ordinance	27
		4. Compliance with Federal, State and Local Laws	27
		5. Nonenforcement by City	28
		6. Rights Cumulative	28
		7. Grantee Acknowledgment of Validity of Franchise	28
		8. Force Majeure	28
m.	PUBLICATION EFFECTIVE DATE; ACCEPTANCE AND EXHIBITS		
	28		
	1.	Publication, Effective Date	28
		2. Acceptance	28
EXHIBIT A - OWNERSHIP			1
EXHIBIT B			1
GRANTEE COMMITMENT TO			1

PEG ACCESS FACILITIES AND EQUIPMENT	1
EXHIBIT C - SERVICE TO PUBLIC BUILDINGS	1
EXHIBIT D - DESCRIPTION OF SYSTEM	1
EXHIBIT E - FRANCHISE FEE PAYMENT WORKSHEET	1

ORDINANCE NO. 2011-01

AN ORDINANCE GRANTING A FRANCHISE TO WINDJAMMER COMMUNICATIONS LLC, TO CONSTRUCT, OPERATE, AND MAINTAIN A CABLE SYSTEM IN THE CITY OF CULLMAN, ALABAMA SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; PROVIDING FOR REGULATION AND USE OF THE SYSTEM AND THE PUBLIC RIGHTS-OF-WAY AND PRESCRIBING PENALTIES FOR THE VIOLATION OF THE PROVISIONS HEREIN;

The City Council of the City of Cullman Alabama ordains:

STATEMENT OF INTENT AND PURPOSE

City intends, by the adoption of this Franchise, to bring about the further development of a Cable System, and the continued operation of it. Such development can contribute significantly to the communication needs and desires of the residents and citizens of City and the public generally. Further, City may achieve better utilization and improvement of public services and enhanced economic development with the development and operation of a Cable System.

Adoption of this Franchise is, in the judgment of the City Council, in the best interests of City and its residents.

FINDINGS

In the review of the request for renewal by Grantee and negotiations related thereto, and as a result of a public hearing, the City Council makes the following findings:

- a. Grantee's technical ability, financial condition, legal qualifications, and character were considered and approved in a full public proceeding after due notice and a reasonable opportunity to be heard;
- b. Grantee's plans for constructing, upgrading, and operating the Cable System were considered and found adequate and feasible in a full public proceeding after due notice and a reasonable opportunity to be heard;
- c. The Franchise granted to Grantee by City complies with the existing applicable state statutes, federal laws and regulations; and
- d. The Franchise granted to Grantee is nonexclusive.

**SECTION 1.
SHORT TITLE AND DEFINITIONS**

1.01 Short Title. This Franchise Ordinance shall be known and cited as the Cable Television Franchise Ordinance.

1.02 Definitions. For the purposes of this Franchise, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words in the singular number include the plural number, and words in the plural number include the singular number. The word “shall” is always mandatory and not merely directory. The word “may” is directory and discretionary and not mandatory. Words not defined shall be given their common and ordinary meaning.

1. “Applicable Laws” means any law, statute, charter, ordinance, rule, regulation, code, license, certificate, franchise, permit, writ, ruling, award, executive order, directive, requirement, injunction (whether temporary, preliminary or permanent), judgment, decree or other order issued, executed, entered or deemed applicable by any governmental authority.

2. “Basic Cable Service” means any Service tier which includes the lawful retransmission of local television broadcast signals and any public, educational, and governmental access programming required by the Franchise to be carried on the basic tier. Basic Cable Service as defined herein shall not be inconsistent with 47 U.S.C. § 543(b)(7).

3. “Cable Service” or “Service” means (A) the one-way transmission to Subscribers of (i) Video Programming or (ii) Other Programming Service, and (B) Subscriber interaction, if any, which is required for the selection or use of such Video Programming or Other Programming Service. Cable Service as defined herein shall not be inconsistent with the definition set forth in 47 U.S.C. § 522(6).

4. “Cable System” or “System” means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes Video Programming and which is provided to multiple Subscribers within a community, but such term does not include:

- i.a facility that serves only to retransmit the television signals of one (1) or more television broadcast stations;
- ii.a facility that serves Subscribers without using any public Right-of-Way;
- iii.a facility of common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. § 201 et seq., except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of Video Programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services;

- iv. an open video system that complies with 47 U.S.C. § 573; or
- v. any facilities of any electric utility used solely for operating its electric utility systems.

Cable System as defined herein shall not be inconsistent with the definition set forth in 47 U.S.C. § 522(7).

- 2. "Channel" or "Cable Channel" means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television Channel as defined by the FCC. Cable Channel as defined herein shall not be inconsistent with the definition set forth in 47 U.S.C. § 522(4).
- 3. "City" means City of Cullman, a municipal corporation, in the State of Alabama, acting by and through its City Council, or its lawfully appointed designee.
- 4. "City Council" means the governing body of the City of Cullman, Alabama.
- 5. "Converter" means an electronic device which converts signals to a frequency acceptable to a television receiver of a Subscriber.
- 6. "Drop" means the cable that connects the ground block on the Subscriber's residence to the nearest feeder cable of the System.
- 7. "FCC" means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.
- 8. "Franchise" or "Cable Franchise" means this franchise ordinance and the regulatory and contractual relationship established hereby.
- 9. "Franchise Fee" includes any tax, fee, or assessment of any kind imposed by the City or other governmental entity on Grantee or Subscriber, or both, solely because of their status as such. It does not include any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their services but not including a tax, fee, or assessment which is unduly discriminatory against cable operators or cable Subscribers); capital costs which are required by the Franchise to be incurred by Grantee for public, educational, or governmental access facilities; requirements or charges incidental to the awarding or enforcing of the Franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or any fee imposed under Title 17 of the United

States Code. Franchise Fee defined herein shall not be inconsistent with the definition set forth in 47 U.S.C. § 542(g).

10. "Grantee" is Windjammer Communications LLC, its lawful successors, transferees or assignees.
11. "Gross Revenue" means any and all revenue derived by Grantee from the operation of its Cable System to provide Cable Service within the City including, but not limited to, 1) all Cable Service fees, 2) Franchise Fees, 3) late fees and returned check fees, 4) Installation and reconnection fees, 5) upgrade and downgrade fees, 6) local, state and national advertising revenue, 7) home shopping commissions, 8) equipment rental fees, and 9) written or electronic Channel guide revenue. The term "Gross Revenue" shall not include launch fees, bad debts or any taxes or fees on Services furnished by Grantee imposed upon Subscribers by any municipality, state or other governmental unit, including the FCC regulatory fee, credits, refunds and any amounts collected from Subscribers for deposits, PEG fees or PEG support. City and Grantee acknowledge and agree that Grantee will maintain its books and records in accordance with generally accepted accounting principles (GAAP).
12. "Installation" means any connection of the System from feeder cable to the point of connection including Standard Installations and custom Installations with the Subscriber Converter or other terminal equipment.
13. "Lockout Device" means an optional mechanical or electrical accessory to a Subscriber's terminal which inhibits the viewing of a certain program, certain Channel, or certain Channels provided by way of the Cable System.
14. "Normal Business Hours" means those hours during which most similar businesses in City are open to serve customers. Normal Business Hours as defined herein shall not be inconsistent with the definition set forth in 47 C.F.R. § 76.309.
15. "Normal Operating Conditions" means those Service conditions which are within the control of Grantee. Those conditions which are not within the control of Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System. Normal Operating Conditions as defined herein

shall not be inconsistent with the definition set forth in 47 C.F.R. § 76.309.

16. “Other Programming Service” means information that a cable operator makes available to all Subscribers generally. Other Programming Services as defined herein shall not be inconsistent with the definition set forth in 47 U.S.C. § 522 (14).

17. “PEG” means public, educational and governmental.

18. “Person” is any Person, firm, partnership, association, corporation, company, limited liability entity or other legal entity.

19. “Right-of-Way” or “Rights-of-Way” means the area on, below, or above any real property in City in which the City has an interest including, but not limited to any street, road, highway, alley, sidewalk, parkway, utility easements or any other place, area, or real property owned by or under the control of City which are dedicated for compatible use.

20. “Right-of-Way Ordinance” means any ordinance or other applicable code requirements regarding regulation, management and use of Rights-of-Way in City, including registration and permitting requirements.

21. “Service Area” or “Franchise Area” means the entire geographic area within the City as it is now constituted or may in the future be constituted.

22. “Service Interruption” means the loss of picture or sound on one (1) or more Cable Channels. Service Interruption as defined herein shall not be inconsistent with the definition set forth in 47 C.F.R. § 76.309.

23. “Standard Installation” means any residential or commercial Installation which can be completed using a Drop of one hundred twenty-five (125) feet or less.

24. “Subscriber” means any Person who receives broadcast programming distributed by a Cable System and does not further distribute it. Subscriber as defined herein shall not be inconsistent with the definition set forth in 47 C.F.R. § 76.5(ee).

25. “Video Programming” means programming provided by, or generally considered comparable to programming provided by, a television broadcast station. Video Programming as defined herein shall not be inconsistent with the definition set forth in 47 U.S.C. § 522(20).

SECTION 2.
GRANT OF AUTHORITY AND GENERAL PROVISIONS

•Grant of Franchise. This Franchise is granted pursuant to the terms and conditions contained herein. Failure of Grantee to provide a System as described herein, or meet the obligations and comply with all provisions herein, shall be deemed a violation of this Franchise.

•Grant of Nonexclusive Authority.

oThe Grantee shall have the right and privilege, subject to the permitting and other lawful requirements of City ordinance, rule or procedure, to construct, erect, and maintain, in, upon, along, across, above, over and under the Rights-of-Way in City a Cable System and shall have the right and privilege to provide Cable Service. The System constructed and maintained by Grantee or its agents shall not interfere with other uses of the Rights-of-Way. Grantee shall make use of existing poles and other above and below ground facilities available to Grantee to the extent it is technically and economically feasible to do so.

b.Notwithstanding the above grant to use Rights-of-Way, no Right-of-Way shall be used by Grantee if City determines, in its sole discretion, that such use is inconsistent with the terms, conditions, or provisions by which such Right-of-Way was created or dedicated, or with the present use of the Right-of-Way.

c.This Franchise shall be nonexclusive, and City reserves the right to grant use of said Rights-of-Way to any Person at any time during the period of this Franchise for the provision of Cable Service.

d.The Grantee acknowledges and agrees that the City reserves the right to grant one (1) or more additional franchises or other similar lawful authorization to provide Cable Services within the City; provided, however, that no such franchise or similar lawful authorization shall contain material terms or conditions which, when considered as a whole, are substantially more favorable or less burdensome to the competitive provider than the material terms and conditions herein. The parties agree that this provision shall not require a word for word identical franchise or authorization for a competitive entity so long as the overall regulatory and financial burdens on each entity are generally equivalent.

e.Notwithstanding any provision to the contrary, should any non-wireless facilities based entity provide Cable Service within the Franchise Area during the term of this Franchise without a Franchise granted by the City and the City has the legal authority under State and Federal law to impose a Franchise on such entity, then Grantee shall have all rights which may be available to assert, at Grantee's option, that this Franchise is rendered "commercially impracticable," and invoke the modification procedures set forth in Section 625 of the Cable Act.

3. Lease or Assignment Prohibited. No Person may lease Grantee's System for the purpose of providing Cable Service until and unless such Person shall have first obtained and shall currently hold a valid franchise or other lawful authorization containing substantially similar burdens and obligations to this Franchise. Any assignment of rights under this Franchise shall be subject to and in accordance with the requirements of Section 9.5 of this Franchise. This provision shall not prevent Grantee from complying with any commercial leased access requirements or any other provisions of Applicable Law.

4. Franchise Term. This Franchise shall be in effect for a period of ten (10) years from the date of execution by City, unless sooner renewed, revoked or terminated as herein provided.

5. Previous Franchises. Upon acceptance by Grantee as required by Section 13.2 herein, this Franchise shall supersede and replace any previous ordinance or other authorization granting a franchise to Grantee.

6. Compliance with Applicable Laws, Resolutions and Ordinances.

a. The terms of this Franchise shall define the contractual rights and obligations of Grantee with respect to the provision of Cable Service and operation of the System in City. However, Grantee shall at all times during the term of this Franchise be subject to all lawful exercise of the police power, statutory rights, local ordinance-making authority of the City. This Franchise may also be modified or amended with the written consent of City and Grantee as provided in Section 12.3 herein.

b. Grantee shall comply with the terms of any City ordinance or regulation of general applicability which addresses usage of the Rights-of-Way within City, which may have the effect of superseding, modifying or amending the terms herein, except that Grantee shall not, through application of such City ordinance or regulation of Rights-of-Way, be subject to additional burdens with respect to usage of Rights-of-Way which exceed burdens on similarly situated Rights-of-Way users.

c. In the event of any conflict between this Franchise and any City ordinance or regulation which addresses usage of the Rights-of-Way, the conflicting terms of this Franchise shall be superseded by such City ordinance or regulation, except that Grantee shall not, through application of such City ordinance or regulation of Rights-of-Way, be subject to additional burdens with respect to usage of Rights-of-Way which exceed burdens on similarly situated Rights-of-Way users.

7. Rules of Grantee. Grantee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable said Grantee to exercise its rights and perform its obligations under this Franchise and to assure uninterrupted Service to each and all of its Subscribers; provided that such rules, regulations, terms and conditions shall not be in conflict with Applicable Laws.

8.Territorial Area Involved. This Franchise is granted for the corporate boundaries of City, as they exist from time to time. Access to Cable Service shall not be denied to any group of potential cable Subscribers because of the income of the potential cable Subscribers or the area in which such group resides.

9.Written Notice. All notices, reports, or demands required to be given in writing under this Franchise shall be sent via registered or certified mail or shall be deemed to be given when delivered personally to any officer of Grantee or City Clerk or forty-eight (48) hours after it is deposited in the United States mail in a sealed envelope, postage prepaid thereon, addressed to the party to whom notice is being given, as follows:

If to City:Mayor
204 Second Avenue
Cullman, Alabama 35056

If to Grantee:Windjammer Communications LLC
8500 W 110th St, Ste 600
Overland Park, KS 66210

Such addresses may be changed by either party upon notice to the other party given as provided in this section.

10.Ownership of Grantee. Grantee represents and warrants to City that the names of the shareholders, partners, members or other equity owners of the Grantee and any of the shareholders, partners, members and/or other equity owners of Grantee are as set forth in Exhibit A hereto.

SECTION 3. CONSTRUCTION STANDARDS

1.Registration, Permits, Construction Codes, and Cooperation.

a.Grantee shall comply with the construction requirements of local, state and federal laws.

b.Grantee agrees to obtain a permit as required by City prior to removing, abandoning, relocating or reconstructing, if necessary, any portion of its facilities. Notwithstanding the foregoing, City understands and acknowledges there may be instances when Grantee is required to make repairs, in compliance with federal or state laws, that are of an emergency nature. Grantee will notify City prior to such repairs, if practicable, and will obtain the necessary permits in a reasonable time after notification to City.

c.Reimbursement paid through the permitting process is separate and in addition to any other fees included in the Franchise. Grantee, at the time of or prior to submitting construction plans, shall provide City with a description of the type of

Service to be provided by the Grantee in sufficient detail for City to determine compliance with the Franchise and Applicable Laws.

d.City may issue reasonable policy guidelines to all grantees to establish procedures for determining how to control issuance of engineering permits to multiple grantees for the use of the same Rights-of-Way for their facilities. Grantee shall cooperate with City in establishing such policy and comply with the procedures established by the Mayor or his or her designee to coordinate the issuance of multiple engineering permits in the same Right-of-Way segments.

e.Failure to obtain permits or comply with permit requirements shall subject Grantee to all enforcement remedies available to City under Applicable Laws or this Franchise.

f.Grantee shall meet with developers and be present at pre-construction meetings to ensure that the newly constructed Cable System facilities are installed in new developments within City in a timely manner.

g.Grantee shall hold an annual meeting with City to coordinate construction plans of both parties for the upcoming year.

2.Ongoing Construction. Grantee shall not open or disturb the surface of any Rights-of-Way or public place for any purpose without first having obtained a permit to do so in the manner provided by law. All excavation shall be coordinated with other utility excavation or construction so as to minimize disruption to the public. Any excavation shall be backfilled without delay and lawns, berms, gardens, shrubs, and flower beds returned and restored in as good a condition as before work involving such disturbance was done. Any excessive or loose dirt, gravel, mud or sand shall be removed from the property and deposited at an approval disposal site.

3.Use of existing poles or conduits.

a.Grantee shall utilize existing and/or replacement poles, conduits and other facilities whenever commercially reasonable and shall not construct or install any new, different or additional poles, conduits or other facilities on public property until it has obtained the appropriate permit(s) as required by City. No location or any pole or wire-holding structure of Grantee shall be a vested interest, and such poles or structures shall be removed or modified by Grantee at its own expense whenever City determines that the public convenience would be enhanced thereby.

b.The facilities of Grantee shall be installed underground in those areas of City where existing telephone and electric services are both underground at the time of construction by Grantee. In areas where either telephone or electric utility facilities are installed aerially at the time of System construction, Grantee may install its facilities aerially; however, at such time as the existing aerial facilities are placed underground, Grantee shall likewise place its facilities underground at

its sole cost. If City requires utilities to bury lines which are currently overhead, and the City financially participates in said undergrounding, then the City will consider providing the same cost sharing to the Grantee.

4. Minimum Interference.

a. Grantee shall use its best efforts to give reasonable prior notice to any adjacent private property owners who will be negatively affected or impacted by Grantee's work in the Rights-of-Way.

b. All transmission and distribution structures, lines and equipment erected by Grantee shall be located so as to cause minimum interference with the unencumbered use of Rights-of-Way and other public places and minimum interference with the rights and reasonable convenience of property owners who adjoin any of the Rights-of-Way and public places.

c. Grantee shall provide advance notice to any private property owner and shall obtain authorization prior to commencing work on private property.

5. Disturbance or damage. Any and all Rights-of-Way, or public or private property, which are disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance, expansion, extension or reconstruction of the System shall be promptly and fully restored by Grantee, at its expense, to a condition as good as that prevailing prior to Grantee's work, as determined by City. If Grantee shall fail to promptly perform the restoration required herein, after written request of City and reasonable opportunity to satisfy that request, City shall have the right to put the Rights-of-Way back into condition as good as that prevailing prior to Grantee's work. In the event City determines that Grantee is responsible for such disturbance or damage, Grantee shall be obligated to fully reimburse City for such restoration within thirty (30) days after its receipt of City's invoice thereof.

6. Temporary Relocation.

a. At any time during the period of the Franchise, Grantee shall, at its own expense, protect, support, temporarily disconnect, relocate or remove any of its property when, in the opinion of City, (i) the same is required by reason of traffic conditions, public safety, Rights-of-Way vacation, freeway or Rights-of-Way construction, alteration to or establishment of any Rights-of-Way or any facility within the Rights-of-Way, sidewalk, or other public place, including but not limited to, installation of sewers, drains, waterlines, power lines, traffic signal lines or transportation facilities; or (ii) a City project or activity makes disconnection, removal, or relocation necessary or less expensive for City.

b. Grantee shall, on request of any Person holding a permit to move a building, temporarily raise or lower its wires to permit the movement of such buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by the Person requesting the same, and Grantee shall have the authority to

require such payment in advance. Grantee shall be given not less than five (5) days advance notice to arrange such temporary wire alterations.

7.Emergency. Whenever, in case of fire or other emergency, it becomes necessary in the judgment of the Mayor, police chief, fire chief, or their delegates, to remove or damage any of Grantee's facilities, no charge shall be made by Grantee against City for restoration, repair or damages.

8.Tree Trimming. Grantee shall comply with all applicable provisions of the Code of Ordinances of the City regarding the trimming of any tress on public property or in the Rights-of-Way.

9.Protection of facilities. Nothing contained in this section shall relieve any Person from liability arising out of the failure to exercise reasonable care to avoid damaging Grantee's facilities while performing any work connected with grading, regrading or changing the line of any Rights-of-Way or public place or the construction or reconstruction of any sewer or water system.

10.Installation records. Each Grantee shall keep accurate Installation records of the location of all facilities in the Rights-of-Way and public ways and furnish them to City upon request. Grantee shall cooperate with City to furnish such information in an electronic mapping format, if possible compatible with the then-current City electronic mapping format. Upon completion of new or relocation construction of underground facilities in the Rights-of-Way and public ways, Grantee shall provide City with Installation records in an electronic format, if possible compatible with the then-current City electronic mapping format showing the location of the underground and above ground facilities.

11.Locating facilities.

a.If, during the design process for public improvements, City discovers a potential conflict with proposed construction, Grantee shall either: (a) locate and, if necessary, expose its facilities in conflict or (b) use a location service under contract with City to locate or expose its facilities. Grantee is obligated to furnish the location information in a timely manner, but in no case longer than thirty (30) days.

b.City reserves the prior and superior right to lay, construct, erect, install, use, operate, repair, replace, remove, relocate, regrade, widen, realign, or maintain any Rights-of-Way and public ways, aerial, surface, or subsurface improvement, including but not limited to water mains, traffic control conduits, cable and devices, sanitary or storm sewers, subways, tunnels, bridges, viaducts, or any other public construction within the Rights-of-Way of City limits.

12.City's rights.

a. When City uses its prior superior right to the Rights-of-Way and public ways, Grantee shall move its property that is located in the Rights-of-Way and public ways, at its own cost, to such a location as City directs.

b. Nothing in this Franchise shall be construed to prevent City from constructing, maintaining, repairing or relocating sewers; grading, paving, maintaining, repairing, relocating and/or altering any Right-of-Way; constructing, laying down, repairing, maintaining or relocating any water mains; or constructing, maintaining, relocating, or repairing any sidewalk or other public work.

13. Relocation delays.

a. Subject to Grantee's compliance with Section 3.12 above, if Grantee's relocation effort so delays construction of a public project causing City to be liable for delay damages, Grantee shall reimburse City for those damages attributable to the delay created by Grantee. In the event Grantee should dispute the amount of damages attributable to Grantee, the matter shall be referred to the City engineer for a decision. In the event that Grantee disagrees with the City engineer's decision, the matter shall be submitted to the Mayor for determination, whose decision shall be final and binding upon Grantee as a matter of City review, but nothing herein waives any right of appeal to the courts.

b. In the event City becomes aware of a potential delay involving Grantee's facilities, City shall promptly notify Grantee of this potential delay.

14. Interference with City Facilities. The Installation, use and maintenance of the Grantee's facilities within the Rights-of-Way and public ways authorized herein shall be in such a manner as not to interfere with City's placement, construction, use and maintenance of its Rights-of-Way and public ways, Rights-of-Way lighting, water pipes, drains, sewers, traffic signal systems or other City systems that have been, or may be, installed, maintained, used or authorized by City.

15. Interference with Utility Facilities. Grantee agrees not to install, maintain or use any of its facilities in such a manner as to damage or interfere with any existing facilities of another utility located within the Rights-of-Way and public ways of City and agrees to relocate its facilities, if necessary, to accommodate another facility relocation. Nothing in this section is meant to limit any rights Grantee may have under Applicable Laws to be compensated for the cost of relocating its facilities from the utility that is requesting the relocation.

16. Collocation. To maximize public and employee safety, to minimize visual clutter of aerial plant, and to minimize the amount of trenching and excavation in and along City Rights-of-Way and sidewalks for underground plant, Grantee shall make every commercially reasonable effort to collocate compatible facilities within the Rights-of-Way subject to the engineering requirements of the owners of utility poles and other facilities.

17.Safety Requirements.

- a.Grantee shall at all times employ ordinary and reasonable care and shall install and maintain in use nothing less than commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage or injuries.
- b.Grantee shall install and maintain its System and other equipment in accordance with City's codes and the requirements of the National Electric Safety Code and all other applicable FCC, state and local regulations, and in such manner that they will not interfere with City communications technology related to health, safety and welfare of the residents.
- c.Cable System structures, and lines, equipment and connections in, over, under and upon the Rights-of-Way of City, wherever situated or located, shall at all times be kept and maintained in good condition, order, and repair so that the same shall not menace or endanger the life or property of City or any Person.

SECTION 4. DESIGN PROVISIONS

1.System Upgrade/Construction: Minimum Channel Capacity.

- a.Grantee shall operate and maintain for the term of this Franchise a System providing a minimum of 625 MHz capacity. Design specifications found in Exhibit D attached hereto are hereby incorporated as part of this Franchise.
- b.The System will utilize a hybrid fiber-coaxial architecture. In addition, the System will be designed with the capability to transmit return signals upstream in the 5-40 MHz spectrum. Grantee shall evaluate and replace any existing headend equipment with cable industry standard headend equipment, which is technically necessary to meet FCC technical standards.
- c.Grantee shall operate and maintain a System capable of providing non-video services such as high-speed data transmission, Internet access, and Other Programming Services.
- d.All final programming decisions remain the discretion of Grantee in accordance with this Franchise, provided that Grantee notifies City and Subscribers in writing thirty (30) days prior to any Channel additions, deletions, or realignments, and further subject to Grantee's signal carriage obligations hereunder and pursuant to 47 U.S.C. § 531-536, and further subject to City's rights pursuant to 47 U.S.C. § 545. Location and relocation of the PEG Channels shall be governed by Section 6 and Exhibit B.

2.Interruption of Service. Grantee shall interrupt Service only for good cause and for the shortest time possible. Such interruption shall occur during periods of minimum use of the System. If

Service is interrupted for a total period of more than twenty-four (24) continuous hours in any thirty (30) day period, Subscribers shall be credited pro rata for such interruption.

3. Emergency Alert Capability. Grantee shall immediately provide the System capability to allow the City to transmit from the Emergency Operation Center, 911 Communications Parkway, or other said location at City's discretion, an emergency alert signal to all participating Subscribers, in the form of an audio message on all Channels within the City simultaneously in the event of disaster or public emergency. The City shall be solely responsible for the content of any message which the City generates on the emergency alert system. Grantee shall only be responsible for the proper functioning of the emergency alert system. In addition, Grantee shall at all times comply with the Emergency Alert System standards pursuant to Title 47, Section 11, Subparts A-E of the Code of Federal Regulations, as may be amended or modified from time to time.

4. Technical Standards. The technical standards used in the operation of the System shall comply, at minimum, with the technical standards promulgated by the FCC relating to Cable Systems pursuant to Title 47, Section 76, Subpart K of the Code of Federal Regulations, as may be amended or modified from time to time, which regulations are expressly incorporated herein by reference. In addition, Grantee is subject to the technical standards outlined in Exhibit D attached hereto.

5. FCC Reports. The results of any tests required to be filed by Grantee with the FCC shall upon request of City also be filed with City or its designee within ten (10) days of the date of request.

6. Interconnection. At the request of the City, Grantee shall make commercially-reasonable efforts to interconnect with adjacent Cable Systems to facilitate the two-way distribution of PEG Access Channels. All decisions regarding whether to interconnect and the terms and conditions of any such interconnect shall be a matter of agreement between the cable operators involved.

7. Lockout Device. Upon the request of a Subscriber, Grantee shall make available by sale or lease a Lockout Device allowing Channels on the System to be blocked.

SECTION 5. SERVICE PROVISIONS

1. Non-Standard Installations. Grantee shall install and provide Cable Service to any Person requesting other than a Standard Installation provided that said Cable Service can meet FCC technical specifications and all payment and policy obligations are met. In such case, Grantee may charge for the incremental increase in material and labor costs incurred beyond the Standard Installation.

2. Sales Procedures. Grantee shall not exercise deceptive sales procedures when marketing any of its Services within City. In its initial communication or contact with a non-Subscriber or current Subscriber seeking alternative options, Grantee shall inform the non-Subscriber of all

levels of Service available, including the lowest priced Basic Cable Service tier and free Service tiers. Grantee shall have the right to market door-to-door during reasonable hours consistent with local ordinances and regulation.

3.Consumer Protection and Service Standards. Grantee shall maintain a convenient local customer service and bill payment location in the City for receiving Subscriber payments, handling billing questions, equipment replacement and customer service information. The Grantee shall comply with the standards and requirements for customer service set forth below and shall comply with all applicable regulations relating to customer service obligations, including any amendments to 47 C.F.R. § 76.309 during the term of this Franchise.

a.Cable System office hours and telephone availability.

i.Grantee will maintain a local, toll-free or collect call telephone access line which will be available to its Subscribers twenty-four (24) hours a day, seven (7) days a week.

(1)Trained Grantee representatives will be available to respond to customer telephone inquiries during Normal Business Hours.

(2)After Normal Business Hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after Normal Business Hours must be responded to by a trained Grantee representative on the next business day.

ii.Under Normal Operating Conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety percent (90%) of the time under Normal Operating Conditions, measured on a quarterly basis.

iii.Grantee shall not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.

iv.Under Normal Operating Conditions, the customer will receive a busy signal less than three percent (3%) of the time.

v.Customer service center and bill payment locations will be open at least during Normal Business Hours and will be conveniently located.

b.Installations, Outages and Service Calls. Under Normal Operating Conditions, each of the following standards will be met no less than ninety-five percent (95%) of the time measured on a quarterly basis.

i. Standard Installations will be performed within seven (7) business days after an order has been placed. "Standard" Installations are those that are located up to one hundred twenty-five (125) feet from the existing distribution system.

ii. Excluding conditions beyond the control of Grantee, Grantee will begin working on "Service Interruptions" promptly and in no event later than twenty-four (24) hours after the interruption becomes known. Grantee must begin actions to correct other Service problems the next business day after notification of the Service problem.

iii. The "appointment window" alternatives for Installations, Service calls, and other Installation activities will be either a specific time or, at maximum, a four (4) hour time block during Normal Business Hours. (Grantee may schedule Service calls and other Installation activities outside of Normal Business Hours for the express convenience of the customer.)

iv. Grantee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

v. If Grantee's representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

c. Communications between Grantee and Subscribers.

i. Notifications to Subscribers:

(1) Grantee will provide written information on each of the following areas at the time of Installation of Service, at least annually to all Subscribers, and at any time upon request:

(a) Products and Services offered;

(b) Prices and options for programming Services and conditions of subscription to programming and other Services;

(c) Installation and Service maintenance policies;

(d) Instructions on how to use the Cable Service;

(e) Channel positions of programming carried on the System; and

(f) Billing and complaint procedures, including the address and telephone number of the City's cable office.

(2)Subscribers will be notified of any changes in rates, programming Services or Channel positions as soon as possible in writing. Notice must be given to Subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the Grantee. In addition, the Grantee shall notify Subscribers thirty (30) days in advance of any significant changes in the other information required by Section 5.4(c)(i)(1).

(3)In addition to the requirement of subparagraph (2) of this section regarding advance notification to Subscribers of any changes in rates, programming services or Channel positions, Grantee shall give thirty (30) days written notice to both Subscribers and the City before implementing any rate or Service change. Such notice shall state the precise amount of any rate change and briefly explain in readily understandable fashion the cause of the rate change (e.g., inflation, change in external costs or the addition/deletion of Channels). When the change involves the addition or deletion of Channels, each Channel added or deleted must be separately identified. For purposes of the carriage of digital broadcast signals, the Grantee need only identify for Subscribers, the television signal added and not whether that signal may be multiplexed during certain day parts.

(4)To the extent Grantee is required to provide notice of Service and rate changes to Subscribers, the Grantee may provide such notice using any reasonable written means at its sole discretion.

(5)Notwithstanding any other provision of this section, Grantee shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, Franchise Fee, or any other fee, tax, assessment, or charge of any kind imposed by any federal agency, state, or City on the transaction between the Grantee and the Subscriber.

ii.Billing:

(1)Consistent with 47 C.F.R. § 76.1619, bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, Basic Cable Service and premium Service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.

(2)In case of a billing dispute, the Grantee must respond to a written complaint from a Subscriber within thirty (30) days.

iii. Refunds: Refund checks will be issued promptly, but no later than either:

(1) The Subscriber's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or

(2) The return of the equipment supplied by Grantee if Service is terminated.

iv. Credits: Credits for Service will be issued no later than the Subscriber's next billing cycle following the determination that a credit is warranted.

4. Subscriber Contracts. Grantee shall file, upon request, with City any standard form residential Subscriber contract utilized by Grantee. If no such written contract exists, Grantee shall file, upon request, with the City a document completely and concisely stating the length and terms of the Subscriber contract offered to customers. The length and terms of any Subscriber contract(s) shall be available for public inspection during Normal Business Hours. A list of Grantee's current Subscriber rates and charges for Cable Service shall be maintained on file with City and shall be available for public inspection.

Section 6. Refund Policy. If a Subscriber's Cable Service is interrupted or discontinued without cause, for twenty-four (24) or more consecutive hours, the Grantee shall, upon request by Subscriber, credit such Subscriber pro rata for such interruption. For this purpose, every month will be assumed to have thirty (30) days.

6. Late Fees. Grantee shall comply with all applicable state and federal laws with respect to any assessment, charge, cost, fee or sum, however characterized, that the Grantee imposes upon a Subscriber for late payment of a bill. The City reserves the right to enforce Grantee's compliance with all Applicable Laws to the maximum extent legally permissible.

SECTION 6. ACCESS CHANNEL(S) PROVISIONS

1. Grantee Support for PEG Access. Grantee shall provide the following support for PEG access usage within the Service Area:

- a. Provision of the Channels designated in Exhibit B of this Agreement for local PEG programming and access use at no charge in accordance with the requirements of Exhibit B.
- b. Support of PEG programming to the extent specified in Exhibit B of this Agreement.
- c. Provision of free public building Installation and Cable Service and a fiber connection to City's network as more clearly specified in Exhibit B.

2. Compliance with Federal Law. Grantee and City agree that the PEG access support fee referenced in Exhibit B will not be deemed to be “Franchise Fees” within the meaning of Section 622 of the Cable Act (47 U.S.C. §542), and such obligations shall not be deemed to be (i) “payments in kind” or any involuntary payments chargeable against the Franchise Fees to be paid to the City by Grantee pursuant to Section 7 hereof or (ii) part of the Franchise Fees to be paid to City by Grantee pursuant to Section 7 hereof.

SECTION 7. OPERATION AND ADMINISTRATION PROVISIONS

1.Administration of Franchise. The Mayor or other designee shall have continuing regulatory jurisdiction and supervision over the System and the Grantee’s operation under the Franchise; provided, however, that the City Council shall retain the sole authority to take enforcement action pursuant to this Franchise.

2.Franchise Fee.

a.During the term of the Franchise, Grantee shall pay quarterly to City a Franchise Fee in an amount equal to five percent (5%) of its quarterly Gross Revenues, or such other amounts as are subsequently permitted by federal statute.

b.Any payments due under this provision shall be payable quarterly. The payment shall be made within forty-five (45) days of the end of each of Grantee’s fiscal quarters together with a report showing the basis for the computation in form and substance substantially the same as Exhibit E attached hereto. In the event that a Franchise Fee payment or other sum due is not received by the City on or before the date due, or is underpaid, Grantee shall pay in addition to the payment, or sum due, interest from the due date at an annual rate equal to prime plus two percent (2%).

c.All amounts paid shall be subject to audit and recomputation by City for a period of six (6) years from the date of payment and acceptance of any payment shall not be construed as an accord that the amount paid is in fact the correct amount. Any additional and valid amount due the City as a result of the audit shall be paid by Grantee within thirty (30) days after Grantee receives a written notice from the City. In the event that payment of any Franchise Fees described in Section 7.2.a of this Agreement with respect to Cable Service that has been recomputed pursuant to this Section is not made on or before the expiration of thirty (30) days following written notice by the City, Grantee shall be charged and shall pay, in addition to the amount due, interest on the amount due equal to the prevailing prime rate plus two hundred (200) basis points of interest compounded daily from the due date for payment of the recomputed amount until paid in full.

The prevailing prime rate shall be the prime rate of the Regions Bank of
Birmingham, Alabama.

3.Discounted Rates. If Grantee’s Subscribers are offered what is, in effect, a discount for “bundled” services (i.e. Subscribers obtain Cable Services and some other, non-cable goods or

service) then for the purpose of calculating Gross Revenues, the discount shall be applied proportionately to cable and non-cable goods and services, in accordance with the following example:

Assume a Subscriber's charge for a given month for Cable Service alone would be \$40, for local telephone service alone would be \$30, and for high-speed service alone would be \$30, for a total of \$100. In fact, the three (3) services are offered in effect at a combined rate where the Subscriber receives what amounts to a twenty percent (20%) discount from the rates that would apply to a service if purchased individually (i.e. \$80 per month for all three (3) services). The discount (here, \$20) for Gross Revenue computation purposes would be applied pro rata so that Gross Revenues for Cable Service are deemed to be \$32 (\$40 less 20% of \$40). The result would be the same if the Subscriber received a \$20 discount for telephone service on the condition that he or she also subscribes to Cable Service at standard rates.

In no event shall Grantee be permitted to evade or reduce applicable franchise fee payments required to be made to City due to discounted bundled services.

4. Not Franchise Fees.

a. Grantee acknowledges and agrees that the Franchisee Fees payable by Grantee to City pursuant to this section shall take precedence over all other payments, contributions, services, equipment, facilities, support, resources or other activities to be provided or performed by Grantee pursuant to this Franchise and that the Franchise Fees provided for in this section of this Franchise shall not be deemed to be in the nature of a tax, and shall be in addition to any and all taxes of general applicability and other fees and charges which Grantee shall be required to pay to City and/or to any other governmental authority, all of which shall be separate and distinct obligations of Grantee.

b. Grantee shall not apply or seek to apply or make any claim that all or any part of the Franchisee Fees or other payments or contributions to be made by Grantee to City pursuant to this Franchise shall be deducted from or credited or offset against any taxes, fees or assessments or general applicability levied or imposed by City or any other governmental authority, including any such tax, fee or assessment imposed on both utilities and cable operators or their services.

c. Grantee shall not apply or seek to apply all or any part of any taxes, fees or assessments or general applicability levied or imposed by the City or any other governmental authority (including any such tax, fee or assessment imposed on both utilities and cable operators or their services) as a deduction or other credit from or against any of the Franchise Fees or other payments or contributions to be paid or made pursuant by Grantee to City to this Franchise which shall be deemed to be separate and distinct obligations of Grantee.

5.Access to Records. The City shall have the right to inspect, upon reasonable notice and during Normal Business Hours, or require Grantee to provide within a reasonable time copies of any records maintained by Grantee which relate to System operations including specifically Grantee's accounting and financial records. City acknowledges that some of the records which may be provided by Grantee may be classified as confidential and therefore may subject Grantee to competitive disadvantage if made public. City shall therefore maintain the confidentiality of any and all records provided to it by Grantee which are not required to be made public pursuant to Applicable Laws. Grantee shall produce such books and records for City's inspection at Grantee's local office within the Service Area or at such other mutually agreed upon location within the City. To the extent it is necessary for City to send representatives to a location outside of the City to inspect Grantee's books and records, Grantee shall be responsible for all travel costs incurred by City representatives. Grantee shall not be required to maintain books and records for compliance purposes under this Franchise for a period longer than six (6) years.

6.Reports and Maps to be Filed with City.

a.Grantee shall file with the City, at the time of payment of the Franchise Fee, a report of all Gross Revenues in form and substance as Exhibit E attached hereto.

b.If required by City, Grantee shall provide City a written or computer-stored record of all service calls and interruptions or degradation of Service experienced for the preceding two (2) years, provided that such complaints result in or require a service call, subject to the Subscriber's right of privacy.

c.City and Grantee shall mutually agree, at the times and in the form prescribed, such other reasonable reports with respect to Grantee's operations pursuant to this Franchise.

d.If required by City, Grantee shall furnish to and file with Mayor the maps, plats, and permanent records of the location and character of all facilities constructed, including underground facilities, and Grantee shall file with City updates of such maps, plats and permanent records annually if changes have been made in the System.

SECTION 8.

GENERAL FINANCIAL AND INSURANCE PROVISIONS

1.Liability Insurance.

a.Upon the effective date, Grantee shall, at its sole expense take out and maintain during the term of this Franchise commercial general liability insurance with a company licensed to do business in the State of Alabama with a rating by A.M. Best & Co. of not less than "B" that shall protect the Grantee, City and its officials, officers, directors, employees and agents from claims which may arise from operations under this Franchise, whether such operations be by the Grantee, its officials,

officers, directors, employees and agents or any subcontractors of Grantee. This liability insurance shall include, but shall not be limited to, protection against claims arising from bodily and personal injury and damage to property, resulting from Grantee's vehicles, products and operations. Grantee shall maintain, throughout the term of the Franchise, liability insurance insuring Grantee and the City in the minimum amounts of:

i. Three Million and No/100 Dollars (\$3,000,000.00) for bodily injury or death to any one (1) Person;

ii. Three Million and No/100 Dollars (\$3,000,000.00) for bodily injury or death resulting from any one accident;

iii. Five Million and No/100 Dollars (\$5,000,000.00) in the form of an umbrella policy.

b. The following endorsements shall be attached to the liability policy:

i. The policy shall provide coverage on an "occurrence" basis.

ii. The policy shall cover personal injury as well as bodily injury.

iii. The policy shall cover blanket contractual liability subject to the standard universal exclusions of contractual liability included in the carrier's standard endorsement as to bodily injuries, personal injuries and property damage.

iv. Broad form property damage liability shall be afforded.

v. City shall be named as an additional insured on the policy.

vi. An endorsement shall be provided which states that the coverage is primary insurance and that no other insurance maintained by the City will be called upon to contribute to a loss under this coverage.

vii. Standard form of cross-liability shall be afforded.

viii. An endorsement stating that the policy shall not be canceled without thirty (30) days notice of such cancellation given to City.

c. Grantee shall submit to City documentation of the required insurance, including

a copy of the policy showing that the City is an additional insured, as well as all properly executed endorsements.

3. Indemnification

- a. Grantee shall indemnify, defend and hold City, its officers, boards, commissions, agents and employees (collectively the "Indemnified Parties") harmless from and against any and all lawsuits, claims, causes or action, actions, liabilities, demands, damages, judgments, settlements, disability, losses, expenses (including attorney's fees and disbursements of counsel) and costs of any nature that any of the Indemnified Parties may at any time suffer, sustain or incur arising out of, based upon or in any way connected with the Grantee's operations, the exercise of the Franchise, the breach of Grantee of its obligations under this Franchise and/or the activities of Grantee, its subcontractors, employees and agents hereunder. Grantee shall be solely responsible for and shall indemnify, defend and hold the Indemnified Parties harmless from and against any and all matters relative to payment of Grantee's employees, including compliance with Social Security and withholdings. Grantee shall not be required to provide indemnification to City for programming cablecast over the PEG access Channels administered by City. Grantee shall not be required to indemnify City for negligence or misconduct on the part of City or its officials, boards, commissions, agents, or employees.
- b. The indemnification obligations of Grantee set forth in this Franchise are not limited in any way by the amount or type of damages or compensation payable by or for Grantee under Workers' Compensation, disability or other employee benefit acts, acceptance of insurance certificates required under this Franchise or the terms, applicability or limitations of any insurance held by Grantee.
- c. City does not, and shall not, waive any rights against Grantee which it may have by reason of the indemnification provided for in this Franchise, because of the acceptance by City, or the deposit with City by Grantee, of any of the insurance policies described in this Franchise.
- d. The indemnification of City by Grantee provided for in this Franchise shall apply to all damages and claims for damages of any kind suffered by reason of any of the Grantee's operations referred to in this Franchise, regardless of whether or not such insurance policies shall have been determined to be applicable to any such damages or claims for damages.

4. Grantee's Insurance.

Grantee shall not commence any Cable System reconstruction work or permit any subcontractor to commence work until all insurance required under this Franchise has been obtained. Said insurance shall be maintained in full force and effect until the expiration of this Franchise.

a. In order for City to assert its rights to be indemnified, defended, and held harmless, City must, with respect to each claim:

i. Promptly notify Grantee in writing of any claim or legal proceeding which gives rise to such right;

ii. Afford Grantee the opportunity to participate in and fully control any compromise, settlement or other resolution or disposition of any claim or proceeding; and

iii. Fully cooperate with reasonable requests of Grantee, at Grantee's expense, in its participation in, and control, compromise, settlement or resolution or other disposition of such claim or proceeding subject to subparagraph (ii) above.

SECTION 9.

SALE, ABANDONMENT, TRANSFER AND REVOCATION OF FRANCHISE

1. City's Right to Revoke.

a. In addition to all other rights which City has pursuant to law or equity, City reserves the right to commence proceedings to revoke, terminate or cancel this Franchise, and all rights and privileges pertaining thereto, if it is determined by City that after notice and an opportunity to cure as reordered herein;

i. Grantee has violated material provisions(s) of this Franchise and has not cured; or

ii. Grantee has attempted to evade any of the provisions of the Franchise; or

iii. Grantee has practiced fraud or deceit upon City.

b. City may revoke this Franchise without the hearing otherwise required herein if Grantee is adjudged a bankrupt. However, if Grantee is operating under Chapter 11 reorganization and remains in compliance with Franchise provisions, Grantee may be granted a hearing to explain its business plan.

2. Procedures for Revocation.

a. City shall provide Grantee with written notice of a Franchise violation consistent with Section 8 of this Franchise and shall allow Grantee thirty (30) days subsequent to receipt of the notice in which to correct the violation or to provide adequate assurance of performance in compliance with the Franchise.

b. Should City determine to proceed with a revocation proceeding, Grantee shall be provided the right to a public hearing affording due process before the City Council prior to the effective date of revocation. City shall provide Grantee

with written notice of its decision together with written findings of fact supplementing said decision.

c. Only after the public hearing and upon written notice of the determination by City to revoke the Franchise may Grantee appeal said decision with an appropriate state or federal court or agency.

d. During the appeal period, the Franchise shall remain in full force and effect unless the term thereof sooner expires or unless continuation of the Franchise would endanger the health, safety and welfare of any Person or the public.

3. Abandonment of Service. Grantee may not abandon the System or any portion thereof without having first given three (3) months written notice to City. Grantee may not abandon the System or any portion thereof without compensating City for damages resulting from the abandonment, including all costs incident to removal of the System.

4. Removal After Abandonment, Termination or Forfeiture.

a. In the event of termination or forfeiture of the Franchise or abandonment of the System, City shall have the right to require Grantee to remove all or any portion of the System from all Rights-of-Way and public property within City.

b. If Grantee has failed to commence removal of System, or such part thereof as was designated by City, within thirty (30) days after written notice of City's demand for removal is given, or if Grantee has failed to complete such removal within twelve (12) months after written notice of City's demand for removal is given, City shall have the right to declare all right, title, and interest to the System to be in City with all rights of ownership including, but not limited to, the right to operate the System or transfer the System to another for operation by it.

5. Sale or Transfer of Franchise.

a. Grantee may not assign or transfer this Franchise or any interest therein, without the prior consent of the City, which consent shall not be unreasonably withheld or delayed.

b. A change in the actual working control of Grantee shall be considered a transfer and shall not take place without the prior written consent of the City. Such consent shall not be unreasonably withheld or delayed.

c. Notwithstanding anything to the contrary, no consent shall be required, however, for (1) a transfer of the Franchise or any interest therein to an Affiliate or (2) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title or interest of Grantee in this Franchise or the system in order to secure indebtedness.

- d. Any request for consent to a transfer of this Franchise or change in control of Grantee shall be handled by the City in accordance with applicable federal and state law.
 - a. The Grantee shall file, in addition to all documents, forms and information required to be filed by Applicable Laws, the following:
 - i. All contracts, agreements or other documents that constitute the proposed transaction and all exhibits, attachments, or other documents referred to therein which are necessary in order to understand the terms thereof; and
 - ii. A list detailing all documents filed with any state or federal agency related to the transaction including, but not limited to the FCC, the FTC, the FEC, the SEC or applicable state departments and agencies. Upon request, Grantee shall provide City with a complete copy of any such document; and
 - iii. Any other documents or information related to the transaction as may be specifically requested by the City.
 - b. City shall have such time as is permitted by Applicable Laws in which to review a transfer request. City may request copies of any redacted information so long as City agrees to maintain the confidentiality of such information to the extent permitted under applicable law. If the City conducts its review of the proposed transfer by utilizing a third party consultant, such consultant shall also be required to agree to maintain confidentiality.
 - c. In no event shall a sale, transfer, corporate change, or assignment of ownership or control pursuant to subparagraph (a) or (b) of this section be approved without the transferee becoming a signatory to this Franchise and assuming all rights and obligations thereunder, and assuming all other rights and obligations of the transferor to the City including, but not limited to, any adequate guarantees or other security instruments required by the City.
 - d. No Franchise may be transferred if City determines Grantee is in noncompliance of the Franchise unless an acceptable compliance program has been approved by City. The approval of any transfer of ownership pursuant to this section shall not be deemed to waive any rights of City to subsequently enforce noncompliance issues relating to this Franchise even if such issues predated the approval, whether known or unknown to City.

**SECTION 10.
PROTECTION OF INDIVIDUAL RIGHTS**

1. Discriminatory Practices Prohibited. Grantee shall not deny Service, deny access, or otherwise discriminate against Subscribers or general citizens on the basis of race, color, religion, national

origin, sex, age, status as to public assistance, affectional preference, or disability. Grantee shall comply at all times with all other Applicable Laws, and all executive and administrative orders relating to nondiscrimination.

2.Subscriber Privacy.

a.No signals may be transmitted from a Subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the Subscriber. Such written permission shall be for a limited period of time not to exceed one (1) year which may be renewed at the option of the Subscriber. No penalty shall be invoked for a Subscriber's failure to provide or renew such authorization. The authorization shall be revocable at any time by the Subscriber without penalty of any kind whatsoever. Such permission shall be required for each type or classification of activity planned for the purpose of monitoring individual viewing patterns or practices.

b.No lists of the names and addresses of Subscribers or any lists that identify the viewing habits of Subscribers shall be sold or otherwise made available to any party other than to Grantee or its agents for Grantee's service business use or to City for the purpose of Franchise administration, and also to the Subscriber subject of that information, unless Grantee has received specific written authorization from the Subscriber to make such data available. Such written permission shall be for a limited period of time not to exceed one (1) year which may be renewed at the option of the Subscriber. No penalty shall be invoked for a Subscriber's failure to provide or renew such authorization. The authorization shall be revocable at any time by the Subscriber without penalty of any kind whatsoever.

c.Written permission from the Subscriber shall not be required for the conducting of system wide or individually addressed electronic sweeps for the purpose of verifying System integrity or monitoring for the purpose of billing. Confidentiality of such information shall be subject to the provision set forth in subparagraph (b) of this section.

d.Subscribers and non-Subscribers may request to be put on a list to prevent solicitations from Grantee.

e.Grantee shall not include any mandatory arbitration provisions of any kind in any Subscriber contracts.

SECTION 11.

UNAUTHORIZED CONNECTIONS AND MODIFICATIONS

1.Unauthorized Connections or Modifications Prohibited. It shall be unlawful for any firm, Person, group, company, corporation, or governmental body or agency, without the express consent of the Grantee, to make or possess, or assist anybody in making or possessing, any unauthorized connection, extension, or division, whether physically, acoustically, inductively, electronically or

otherwise, with or to any segment of the System or receive Services of the System without Grantee's authorization.

2. Removal or Destruction Prohibited. It shall be unlawful for any firm, Person, group, company, or corporation to willfully interfere, tamper, remove, obstruct, or damage, or assist thereof, any part or segment of the System for any purpose whatsoever.

3. Penalty. Any firm Person, group, company, or corporation found guilty of violating this section may be fined not less than Twenty and No/100 Dollars (\$20.00) and the costs of the action nor more than Five Hundred and No/100 Dollars (\$500.00) and the costs of the action for each and every subsequent offense. Each continuing day of the violation shall be considered a separate occurrence.

SECTION 12. MISCELLANEOUS PROVISIONS

1. Franchise Renewal. Any renewal of this Franchise shall be performed in accordance with Applicable Laws.

2. Work Performed by Others. All applicable obligations of this Franchise shall apply to any subcontractor or others performing any work or services pursuant to the provisions of this Franchise, however, in no event shall any such subcontractor or other performing work obtain any rights to maintain and operate a System or provide Cable Service. Grantee shall provide notice to City of the name(s) and address(es) of any entity, other than Grantee, which performs substantial services pursuant to this Franchise.

3. Amendment of Franchise Ordinance. Grantee and City may agree, from time to time, to amend this Franchise. Such written amendments may be made subsequent to a review session pursuant to Section 7 or at any other time if City and Grantee agree that such an amendment will be in the public interest or if such an amendment is required due to changes in federal, state or local laws; provided, however, nothing herein shall restrict City's exercise of its police powers.

4. Compliance with Federal, State and Local Laws.

a. If any federal or state law or regulation shall require or permit City or Grantee to perform any service or act or shall prohibit City or Grantee from performing any service or act which may be in conflict with the terms of this Franchise, then as soon as possible following knowledge thereof, either party shall notify the other of the point in conflict believed to exist between such law or regulation. Grantee and City shall conform to state and federal laws and regulations and rules regarding cable communications as they become effective.

b. If any term, condition or provision of this Franchise or the application thereof to any Person or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition or provision to Persons or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Franchise and all

the terms, provisions and conditions hereof shall, in all other respects, continue to be effective and complied with provided the loss of the invalid or unenforceable clause does not substantially alter the agreement between the parties. In the event such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision which had been held invalid or modified is no longer in conflict with the law, rules and regulations then in effect, said provision shall thereupon return to full force and effect and shall thereafter be binding on Grantee and City.

5.Nonenforcement by City. Grantee shall not be relieved of its obligations to comply with any of the provisions of this Franchise by reason of any failure or delay of City to enforce prompt compliance. City may only waive its rights hereunder by expressly so stating in writing. Any such written waiver by City of a breach or violation of any provision of this Franchise shall not operate as or be construed to be a waiver of any subsequent breach or violation.

6.Rights Cumulative. All rights and remedies given to City by this Franchise or retained by City herein shall be in addition to and cumulative with any and all other rights and remedies, existing or implied, now or hereafter available to City, at law or in equity, and such rights and remedies shall not be exclusive, but each and every right and remedy specifically given by this Franchise or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed expedient by City and the exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy.

7.Grantee Acknowledgment of Validity of Franchise. Grantee acknowledges that it has had an opportunity to review the terms and conditions of this Franchise and that under current law Grantee believes that said terms and conditions are not unreasonable or arbitrary, and that Grantee believes City has the power to make the terms and conditions contained in this Franchise.

8.Force Majeure. Neither party shall be liable for any failure of performance hereunder due to causes beyond its reasonable control including but not limited to; acts of God, fire, explosion, vandalism, storm or other similar catastrophes; national emergencies; insurrection; riots or wars.

SECTION 13. PUBLICATION EFFECTIVE DATE; ACCEPTANCE AND EXHIBITS

1.Publication, Effective Date. This Franchise shall be published in accordance with applicable local and state law. The effective date of this Franchise shall be the date of acceptance by Grantee in accordance with the provisions of Section 13.2.

2.Acceptance.

a.Grantee shall accept this Franchise within thirty (30) days of its enactment by the City Council, unless the time for acceptance is extended by City. Such acceptance by the Grantee shall be deemed the grant of this Franchise for all purposes; provided,

however, this Franchise shall not be effective until all City ordinance adoption procedures are complied with and all applicable timelines have run for the adoption of a City ordinance. In the event acceptance does not take place, or should all ordinance adoption procedures and timelines not be completed, this Franchise and any and all rights granted hereunder to Grantee shall be null and void.

b. Upon acceptance of this Franchise, Grantee and City shall be bound by all the terms and conditions contained herein.

c. Grantee shall accept this Franchise in the following manner:

i. This Franchise will be properly executed and acknowledged by Grantee and delivered to City.

ii. With its acceptance, Grantee shall also deliver any insurance certificates as required herein that have not previously been delivered.

Passed and adopted by the City Council this _____ day of _____, 2010.

ATTEST: CITY OF CULLMAN, ALABAMA

By: By:

Its: Its:

ACCEPTED: This Franchise is accepted, and we agree to be bound by its terms and conditions.

WINDJAMMER COMMUNICATIONS LLC

Date: , 2010 By:

Its:

SWORN TO BEFORE ME this
__ day of _____, 2010.

NOTARY PUBLIC

A-31

**EXHIBIT A
OWNERSHIP**

EXHIBIT B
GRANTEE COMMITMENT TO
PEG ACCESS FACILITIES AND EQUIPMENT

1. PUBLIC, EDUCATIONAL AND GOVERNMENT (PEG) ACCESS CHANNELS Grantee shall make two (2) video Channels available exclusively for PEG use (“PEG Channels”). Initially the two (2) Channels shall be provided by Grantee for shared PEG access as designated in City’s sole discretion. At least one (1) of the two (2) shared PEG Channels will be located at Channel 55 throughout the term of the Franchise. Grantee shall be responsible for all costs associated with the retransmission of said Channel from the current point of origination to Grantee’s current headend. The PEG Channels shall be dedicated for PEG use for the term of the Franchise, provided that Grantee may upon written request to City, utilize any PEG Channels for commercial or non-commercial programming when they are not scheduled for PEG use. City and Grantee shall establish rules and procedures for such scheduling in accordance with Section 611 of the Cable Act (47 U.S.C. § 531).
2. PEG OPERATIONS. City may, in its sole discretion, negotiate agreements with neighboring jurisdictions served by the same Cable System, educational institutions or others to share the expenses of supporting the PEG Channels.
3. TITLE TO PEG EQUIPMENT. City shall retain title to any PEG equipment currently in use for PEG purposes which was purchased by Grantee during the preceding Franchise term.
4. PROMOTION OF PEG ACCESS. To the extent permitted by Grantee’s billing process, Grantee shall allow the City to place bill stuffers in Grantee’s Subscriber statements at a cost to the City not to exceed Grantee’s cost, no less frequently than once per year upon the written request of the City and at such times that the placement of such materials would not materially and adversely effect Grantee’s cost for the production and mailing of such statements. The City agrees to pay Grantee in advance for the actual cost of such bill stuffers. Grantee shall also make available PEG access information provided by City in Subscriber packets at the time of Installation and at the counter in the System’s business office serving the Service Area. Grantee shall also distribute, at no charge to City, through advertising insertion equipment, twenty-five (25) weekly promotional and awareness commercial spots, on a “run of schedule” basis, produced at the City’s cost and submitted by the City in a format compatible with such advertising insertion equipment once Grantee has acquired and activated such capability. Grantee shall also include a listing of the known programming to be cablecast on PEG access Channels in or on any electronic program guide of Services for the Cable System.
5. PEG ACCESS SUPPORT. Grantee shall remit to the City a PEG/I-Net fee in an amount not to exceed one percent of Grantee’s Gross Revenues as defined by Section 1.2 (n) of this Franchise to fund capital expenditures related solely to public, educational and governmental access and institutional network support (hereinafter “Access Fee”). The City shall provide Grantee written notice forty-five (45) days in advance of the date on which it seeks to start collecting the fee setting

forth the percentage it seeks to collect. All fees paid to the City under this section shall be paid in accordance with 47 U.S.C. Sections 531 (a) (4) (B) and may be used by the City as allowed by federal law; further, the PEG fee shall not be offset, deducted or chargeable as a credit against franchise fee payments required by section 7.2 (a) of this Franchise. Payments made for PEG shall be collected and paid in the same manner as outlined in Section 7.2 (b) of this Franchise.

5. The Access Fee may be used in City's sole discretion for PEG capital expenditures. Any and all payments by Grantee to City in support of PEG access programming including the Access Fee shall not be deemed "Franchise Fees" within the meaning of Section 622 of the Cable Act (47 U.S.C. Section 542).

6. DROPS TO DESIGNATED BUILDINGS.

a. Grantee shall, collectively with all other video providers, provide free of charge throughout the term of this Franchise, Installation of one (1) network Drop, one (1) cable outlet, and one (1) Converter, if necessary, and the highest level of Cable Service offered by Grantee, excluding pay-per-view, pay-per-channel (premium) programming, high-speed data services or newly created non-video Cable Services, without charge to the institutions identified on Exhibit C attached hereto and made a part hereof, and such other public institutions subsequently designated by City as determined in City's sole discretion. This requirement shall not include any digital tier of Services Grantee may offer unless and until such time as Grantee's digital programming reduces the amount of spectrum available for analog programming to less than approximately sixty (60) Channels of analog programming. Grantee shall be responsible for the costs of extension to subsequently designated institutions for the first one hundred twenty-five (125) feet as measured from Grantee's nearest active plant. The institution shall pay the net additional Drop or extension costs beyond the one hundred twenty-five (125) feet. No more than one (1) provider shall provide the service required by this section to any given location. The City will confer with all Providers and determine the assignments in a reasonable and proportionate manner.

b. Additional Subscriber network Drops and/or outlets in any of the locations identified on Exhibit C will be installed by Grantee at the lowest actual cost of Grantee's time and material. Alternatively, said institutions may add outlets at their own expense, as long as such Installation meets Grantee's standards and approval which shall not be unreasonably withheld. Grantee shall have three (3) months from the date of City designation of additional accredited schools or public institutions or relocations to complete construction of the Drop and the outlet unless weather or other conditions beyond the control of Grantee requires more time.

EXHIBIT C
SERVICE TO PUBLIC BUILDINGS

Cullman Primary School
West Elementary School
East Elementary School
Cullman Middle School
Cullman High School
Any City Schools added in the future
Cullman Public Library

Cullman City Hall
Cullman Police Department and any added substations
Cullman Fire Department – Stations 1 & 2 and any other added complex

Heritage Park
Cullman Civic Center
City of Cullman Public Works Complex – 6 drops
City of Cullman Public Works Annex – (Water, Street, Sanitation Departments)
Cullman City Gym
Cullman Museum
City of Cullman Waster Water Treatment Plant
City of Cullman Water Treatment Plant
Cullman Economic Development Office
Cullman Power Board
Cullman County Airport
Sanitation Office on Convent Road

Cullman City Garage

EXHIBIT D
DESCRIPTION OF SYSTEM

1. The Cable System shall be designed, constructed, routinely inspected, and maintained to guaranty the Cable System meets or exceeds the requirements of the most current additions of the National Electrical Code (NFPA 70) and the National Electrical Safety Code (ANSI C2). In all matters requiring interpretation of either of these codes, the City's interpretation shall control over all other sources and interpretations.
2. General Requirements. Grantee shall use equipment used in high-quality, reliable, modern Cable Systems of similar design.
3. General Description. The Cable System shall provide Subscribers with a technically advanced and reliable Cable System. The System shall operate with 625 MHz of bandwidth, capable of delivering a minimum of seventy-five (75) Channels of programming. The design will provide the benefits of proven seventy-five (75) Channel electronics while positioning the System for expansion of bandwidth and Channel capacity as technology and future services develop.
4. Technical Specifications. The System shall meet or exceed FCC requirements. In no event shall the System fall below the following standards:
 - a. The System shall be capable of meeting the following distortion parameters:

1. Carrier to RMS Noise	48 dB
2. Carrier to Second Order	53 dB
3. Carrier to Cross Modulation	51 dB
4. Carrier to Composite Triple Beat	53 dB
 - b. The frequency response of a single Channel as measured across any 6 MHz analog Channel shall not exceed +/- 2 dB.
 - c. The frequency response of the entire passband shall not exceed $N/10 + 2$ dB for the entire System where N is the number of amplifiers in cascade.
 - d. The System shall be designed such that at a minimum all technical specifications of this Franchise Agreement are met.
 - e. The System shall be designed such that no noticeable degradation in signal quality will appear at the Subscriber terminal.

EXHIBIT E
FRANCHISE FEE PAYMENT WORKSHEET

	Month/Year	Month/Year	Month/Year	Total
Basic Cable Service				
Installation Charge				
Bulk Revenue				
Expanded Basic Service				
Pay Service				
Pay-per-view				
Guide Revenue				
Franchise Fee Revenue				
Advertising Revenue				
Home Shopping Revenue				
Digital Services				
Inside Wiring				
Other Revenue				
Equipment Rental				
Processing Fees				
Bad Debt				
REVENUE				
Fee Calculated				

Fee Factor: 5%

ADOPTED This the 11th day of October, 2010.

/s/ Garlan E. Gudger, Jr.

President of City Council

ATTEST

/s/ Ruth W. Rose

City Clerk

APPROVED this 11th Day of October, 2010.

/s/ Max A. Townson

Mayor

City of Cullman

Council Member Cook made a motion to adjourn at 7:27 p.m. and Council Member Page seconded the motion. The meeting was adjourned by a voice vote. Ayes: All. Nays: None.