

**MINUTES, LIMESTONE COUNTY COMMISSION, AUGUST 17, 2018**

The Limestone County Commission met in a regular meeting today, at 10:00 a.m. at the Clinton Street Courthouse Annex, 100 South Clinton Street, Athens, Alabama.

Present: Stanley Hill, Steve Turner, Jason Black, and Ben Harrison. Absent: None. Mark Yarbrough, Chairman presided.

Chairman Yarbrough awarded Justin Brown and Moses McGuire with Certificates of Appreciation in recognition of their outstanding commitment and involvement to the county's roadside vegetation control program that has been nationally awarded the 2018 Turney J. Hernandez Award of Excellence.

The meeting began with the Pledge of Allegiance.

**MOTION** was made by Jason Black and seconded by Stanley Hill to approve the minutes of August 6 & 15, 2018.

The Chairman asked if there was any discussion. There was no discussion. The Administrator called the roll. Jason Black, aye; Stanley Hill, aye; Steve Turner, aye; and Ben Harrison, aye. Motion carries unanimously.

**MOTION** was made by Ben Harrison and seconded by Jason Black to approve the following claims

8/03/18	Check # 49660 – 49740	\$512,506.92
8/03/18	Check # 49741	\$ 1,140.00
8/03/18	Check # 49742	\$ 8,200.00
8/07/18	Check # 49743	\$ 18,000.00
8/09/18	Check # 49744	\$ 233.71
8/10/18	Check # 49745 – 49828	<u>\$435,796.34</u>
	TOTAL	<u>\$975,876.97</u>

with detailed claims of the above being on file for review upon request to the County Administrator.

The Chairman asked if there was any discussion. There was no discussion. The Administrator called the roll. Ben Harrison, aye; Jason Black, aye; Stanley Hill, aye; Steve Turner, aye. Motion carries unanimously.

**MOTION** was made by Steve Turner and seconded by Stanley Hill to authorize the Chairman to execute the following Outside Agency Service Agreement with Athens Limestone Hospital to provide a dialysis van driver for FY19; in the amount of \$32,500.00 annually.

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STATE OF ALABAMA

LIMESTONE COUNTY

## OUTSIDE AGENCY SERVICE CONTRACT AGREEMENT

Agreement made and entered into on the **4th** day of **February, 2008**, by and between Limestone County Commission, Alabama, hereinafter called the "County" and the Athens/Limestone Hospital hereinafter called the "Contractor" and the same witness:

1. The term of this agreement shall be for one year, commencing on the 1<sup>st</sup> day of **October, 2018**, and expiring on the **30<sup>th</sup>** day of **September, 2019**. The contract may be renewed in succeeding years for periods of one year per renewal by and through a proposal/request of the Contractor to provide specified services to. the County, and by consent of the County to accept said services with payments made from funds appropriated by the governing body of the County.

2. The County agrees to pay to Contractor the total sum of \$32,500.00 payable in quarterly payments.

3. In consideration of the payment of the above sum, the Contractor will provide the following services during the term of this agreement: Contractor will operate a program whereby a hospital driver will transport desiring county residents who are kidney dialysis patients to a local dialysis center at no charge to the patients. Contractor will coordinate with the City of Athens regarding the operation of the bus involved in the transportation.

4. The intent of this agreement is that the Contractor is an independent Contractor and not an employee of the County and Contractor agrees to indemnify the County against any losses by reason of any claim by any party for injuries or damages arising out of the performance by Contractor under the herein agreement including the cost of any attorney fees expended by the County in defense of any such claims.

5. All costs, fees, licenses, etc., that are required by law of the Contractor to carry out the provisions of the herein agreement shall be at the sole expense of Contractor.

IN WITNESS WHEREOF, we have hereunto set our hands and seals, this 17<sup>th</sup> day of August, 2018.

\_\_\_\_\_  
Mark Yarbrough, Chairman  
Limestone County  
Commission

\_\_\_\_\_  
David Pryor, President  
ATHENS/LIMESTONE HOSPITAL  
700 West Market Street  
Athens, AL 35611

The Chairman asked if there was any discussion. There was no discussion. The Administrator called the roll. Steve Turner, aye; Stanley Hill, aye; Jason Black, aye; and Ben Harrison, aye. Motion carries unanimously.

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**MOTION** was made by Jason Black and seconded by Steve Turner to approve the following agreement for a three-year renewal amendment of the Clarity Election Suite Hosting & Support Agreement for support to maintain www.votelimestone.com website with SOE Software Corporation (d/b/a SCYTL); \$6,000.00 annually.

**AMENDMENT OF CLARITY ELECTION SUITE HOSTING AND SUPPORT AGREEMENT  
BETWEEN  
SOE SOFTWARE CORPORATION and LIMESTONE COUNTY COMMISSION  
PREAMBLE**

This Extension Amendment (the "Amendment") is entered into as of this June 20, 2018 (the Effective Date), by SOE SOFTWARE CORPORATION (d/b/a SCYTL) with principal offices at 5426 Bay Center Drive, suite 525, Tampa, Fl 3 609 ("SOY") and LIMESTONE COUNTY COMMISSION with principal offices at 310 W Washington St. Athens AL 35611 ('Customer').

Collectively, SOE and Customer shall be referred to as the "Parties" and each separately as a "Party" .In consideration of the mutual promises and covenants hereinafter set forth, SOE and the CUSTOMER acknowledge and agree that the Software as a Service for Election Services) entered into as of December 05, 2012 and then again on November 1<sup>st</sup>, 2015, by and between the Parties (the Agreement) is hereby renewed for another year and consequently amended as follows, but that such Agreement shall otherwise continue in full force a d effect.

The Parties agree as follows:

1. To EXTEND the Election Services to the term of the Agreement for three (3) years as of December 01, 2018 until November 30, 2021 (the Extended Term) under a fixed pricing structure to guarantee the Customer will not be subject to price increases for Clarity Connect within this timeframe
2. To pay the fee s as indicated below for any renewal (Fee). The Fee for any successive Extended Term shall be equal to the Fee at the end of the Extended Term or any Renewal Term, as applicable, increased in a five (5) %.
3. The Customer will be invoiced the Fee annually 30 days in advance each year, in accordance with the following schedule:

<b>Service</b>	<b>Fee</b>	<b>Invoicing Date</b>
Clarity Connect Annual Assurance Dec. 1, 2018 to Nov. 30, 2019	\$6000.00	November 1, 2018
Clarity Connect Annual Assurance Dec. 1, 2019 to Nov. 30, 2020	\$6000.00	November 1, 2019
Clarity Connect Annual Assurance Dec. 1, 2020 to Nov. 30, 2021	\$6000.00	November 1, 2020

4. Except as modified above, all other terms and conditions of the Agreement and all amendments and addenda thereto, shall remain in full force and effect. All capitalized words not defined herein shall have the same meaning as set forth in the Agreement.

IN WITNESS WHEREOF, the PARTIES have duly executed this Agreement on the Effective Date intending to be bound thereby.

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The Chairman asked if there was any discussion. There was no discussion. The Administrator called the roll. Jason Black, aye; Steve Turner, aye; Stanley Hill, aye; and Ben Harrison, aye. Motion carries unanimously.

**MOTION** was made by Ben Harrison and seconded by Steve Turner to approve the following two-year renewal contract with Election Systems & Software, LLC for support to maintain AutoMARK Voter Assist Terminals; \$5,684.00 annually

**ELECTION SYSTEMS & SOFTWARE, LLC  
HARDWARE MAINTENANCE AND SOFTWARE LICENSE,  
MAINTENANCE AND SUPPORT SERVICES AGREEMENT**

THIS HARDWARE MAINTENANCE AND SOFTWARE LICENSE, MAINTENANCE AND SUPPORT SERVICES AGREEMENT (“Agreement”) is made effective as of the date set forth below, by and between Election Systems & Software, LLC, a Delaware Limited Liability Company (“ES&S”) and **Limestone County, Alabama** (“Customer”).

**RECITALS:**

- A. ES&S has sold to Customer the proprietary voter tabulation equipment (“Equipment”) and licensed the software (“Software”) described on Attachment 1 and Customer now desires to obtain maintenance services for such Equipment and license, maintenance and support services for such Software.
- B. ES&S has agreed to provide such services, subject to the terms and conditions of this Agreement.
- C. This Agreement supersedes and replaces in their entirety any and all prior agreements between ES&S and Customer respecting maintenance services for such Equipment and license, maintenance and support services for such Software.

NOW, THEREFORE, in consideration of the foregoing recitals (which are specifically incorporated herein by this reference) and the mutual representations, warranties, covenants and agreements set forth below, the parties hereby agree as follows:

**ARTICLE I  
GENERAL**

1. **Term; Termination.** This Agreement for Hardware Maintenance and Software License, Maintenance and Support Services shall be in effect for the coverage period as described in Attachment 1 (the “Initial Term”). Upon expiration of the Initial Term, this Agreement may be renewed for an unlimited number of successive **Two-Year Periods** (each a “Renewal Period”) upon mutual written agreement by the parties. Notwithstanding the foregoing, this Agreement may be terminated by the first to occur of (a) either party’s written election not to renew, which shall be delivered to the other party at least sixty (60) days prior to the end of the Initial Term or any Renewal Period, as applicable, (b) the date which is thirty (30) days after either party notifies the other that it has materially breached this Agreement, if the breaching party fails to cure such breach (except for a breach pursuant to subsection (e), which will require no notice), (c) the date which is thirty (30) days after ES&S notifies Customer that it is

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no longer able to procure replacement parts that may be needed in order to perform the Hardware Maintenance Services contemplated hereunder, (d) the date on which the Equipment or firmware installed thereon is no longer certified by federal and/or state authorities for use in Customer's jurisdiction, or (e) the date which is thirty (30) days after Customer fails to pay any amount due to ES&S under this Agreement. The termination of this Agreement shall not relieve Customer of its liability to pay any amounts due to ES&S hereunder and shall only entitle Customer to a prorated refund of any fees already paid to ES&S in the event that this Agreement is terminated pursuant to subsection 1(c) or 1(d) above.

2. **Fees.** In consideration for ES&S' agreement to provide Hardware Maintenance Services and Software License, Maintenance and Support Services under this Agreement, Customer shall pay to ES&S the Hardware Maintenance and Software License, Maintenance and Support Fees set forth on Attachment 1 for the Initial Term and any Renewal Periods. The Hardware Maintenance and Software License, Maintenance and Support Fees for the Initial Term are due as set forth on Attachment 1. ES&S may increase the Hardware Maintenance and Software License, Maintenance and Support Fees for a Renewal Period by not more than 5% of the amount of the most recent Fees paid by Customer. All fees for any Renewal Period shall be due and payable no later than thirty (30) days prior to the beginning of such Renewal Period. The Software License, Maintenance and Support Fee shall be comprised of (i) a fee for the Software License, Maintenance and Support provided for the ES&S Firmware, and (ii) a fee for the Software License, Maintenance and Support provided for all other ES&S Software, and shall be in addition to any fees or charges separately referred to in any Section of this Agreement. If Customer elects to receive Software License, Maintenance and Support for an Add-On or New Product during the Initial Term or any Renewal Period thereof, ES&S will charge an incremental Software License, Maintenance and Support Fee for such services.

### ARTICLE II HARDWARE

1. **Maintenance Services.** The Hardware Maintenance Services to be provided to Customer under this Agreement for the ES&S equipment set forth on Attachment 1 (the "Products") shall be subject to the following terms and conditions:

a. **Routine Maintenance Services.** An ES&S Representative shall provide such services as may be necessary to keep the Products working in accordance with their Documentation, normal wear and tear excepted ("Normal Working Condition"). The services provided by ES&S pursuant to this Subsection 1(a) are referred to herein as "Routine Maintenance Services. Routine Maintenance Services shall be provided once each **Twenty-Four (24) Months** during the Initial Term or any Renewal Period thereof. Generally, Routine Maintenance Services shall include cleaning, lubrication, diagnostic check, and calibration services. The Routine Maintenance Services shall not include the repair or replacement of any ES&S Equipment components that are consumed in the normal course of operating the Equipment, including, but not limited to, printer ribbons, printer cartridges, paper rolls, batteries, removable media storage devices, PCMCIA cards or marking devices. Customer may request that Routine Maintenance Services be performed more than once during the Initial Term or any Renewal Period. Any such request shall be made at least sixty (60) days before the Routine Maintenance Services are desired. The per-unit fee for such additional Routine Maintenance Services is set forth on Attachment 1 and shall be due within thirty (30) days after invoice date. ES&S will schedule the Routine Maintenance Services with Customer. The Routine Maintenance Services will be provided at Customer's Designated Location. Customer's "Designated Location" shall mean

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Customer's owned or leased facility at which Customer desires ES&S to perform the Hardware Maintenance Services.

b. **Repair Services.**

i. **Defects Under Normal Use and Service.** If a defect or malfunction occurs in

any Product while it is under normal use and service, Customer shall promptly notify ES&S, and ES&S shall use reasonable efforts to restore the item to Normal Working Condition as soon as practicable. The services provided by ES&S pursuant to this Subsection 1(b)(i) are referred to herein as "Repair Services". ES&S will perform Repair Services in conjunction with a Routine Maintenance Service event at the Customer's Designated Location.

ii. **Defects Due to Customer Actions or Omissions.** If a defect or malfunction

occurs in any Product as a result of (1) repairs, changes, modifications or alterations not authorized or approved by ES&S, (2) accident, theft, vandalism, neglect, abuse or use that is not in accordance with instructions or specifications furnished by ES&S or (3) causes beyond the reasonable control of ES&S or Customer, including acts of God, fire, flooding, riots, acts of war, terrorism or insurrection, labor disputes, transportation delays, governmental regulations, and utility or communication interruptions, rodent infestation, or if Customer does not notify ES&S within 72 hours after it knows of the defect or malfunction, Customer shall pay ES&S for the Repair Services at ES&S' then-current rates, as well as for the cost of all parts used in connection with such Repair Services.

iii. **Timing.** The date(s) on which any Repair Services shall be provided shall be mutually agreed upon by ES&S and Customer. If Customer requires ES&S to provide "emergency" Repair Services (which shall be defined as Repair Services that are provided by ES&S within 48 hours after Customer notifies ES&S of the need therefore), and such emergency Repair Services are not needed as a result of an action, error or omission by ES&S, Customer shall pay a surcharge, as set forth on Attachment 1.

iv. **Loaner Unit.** At Customer's request and if such product is available, ES&S shall use reasonable efforts to promptly make available to Customer a product that is the same as, or substantially similar to, the Product for which Repair Services are being performed (a "Loaner Unit"). If the Repair Services are being performed pursuant to Subsection 1(b)(ii) above, Customer shall pay ES&S for the use of the Loaner Unit at ES&S' then-current rates including the cost of shipping.

c. **Exclusions.** ES&S has no obligation under this Agreement to (i) assume the obligations under any existing or expired warranty for a Third Party Item; (ii) repair or replace Product components that are consumed in the normal course of operating the Product, including, but not limited to, printer ribbons, printer cartridges, paper rolls, batteries, removable media storage devices, PCMCIA cards or marking devices, or (iii) repair any Product from which the serial number has been removed or altered. In addition, ES&S may, at any time in its discretion, determine that any Product is no longer fit for Hardware Maintenance Services because it is in such poor condition that it cannot practically be restored to Normal Working Condition, or cannot be restored to Normal Working Condition at an expense that is less than the then-current

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value of the Product. If such a determination is made, ES&S shall no longer be required to provide Hardware Maintenance Services for such Product. ES&S shall also refund to Customer an amount equal to (1) that portion of the most recent fee paid for Hardware Maintenance Services that is attributable to such Product, multiplied by (2) a fraction, the numerator of which is the remaining number of days in the respective period within the Initial Term or Renewal Period for which such fee was paid and the denominator of which is the total number of days in the respective period within such Initial Term or Renewal Period.

d. **Sole Provider; Access.** Customer shall not permit any individual other than an ES&S Representative to provide maintenance or repairs with respect to the Products for so long as the Initial Term or any Renewal Period is in effect. Customer shall provide ES&S Representatives with all information necessary to enable them to provide Hardware Maintenance Services. Customer shall likewise provide full access to the Products and adequate working space for all Hardware Maintenance Services performed at its Designated Location, including sufficient heat, lights, ventilation, electric current and outlets.

e. **Environment Conditions.** Products should be stored in a clean, dry and secure environment. During the storage and operation of the Products, the temperature and moisture ranges should be maintained in accordance with the Product's Documentation.

f. **Reinstatement of Hardware Maintenance Services; Inspection.** If the Initial Term or any Renewal Period thereof expires without being renewed, Customer may thereafter resume receiving Hardware Maintenance Services upon (a) notification to ES&S and (b) the granting to ES&S of access to the Products. ES&S requires Customer to allow it to inspect such Products before it provides any Hardware Maintenance Services. The purpose of such inspection shall be to determine whether or not the Products are in Normal Working Condition. The cost of such inspection will be at ES&S' then current rates and shall be due from Customer within thirty (30) days of its receipt of ES&S' invoice therefore. If any of the Products is not in Normal Working Condition, ES&S, at the option of Customer, (i) shall provide such repairs and replacements as it deems reasonable and necessary to restore such item to Normal Working Condition, at Customer's expense with respect to the cost of any labor (charged at ES&S' then current rates) and parts used in such repairs or replacements, or (ii) shall not provide any Hardware Maintenance Services with respect to such Product(s).

### ARTICLE III ANNUAL LICENSE OF SOFTWARE

1. **Grant of License.** Subject to the terms and conditions of this Agreement, ES&S hereby grants to Customer a nonexclusive, nontransferable license for its bona fide full time, part time or temporary employees to use the Software and all related operating instructions, user manuals and training materials supplied by ES&S (collectively the "Documentation") in **Limestone County, Alabama** ("Jurisdiction"). The license allows Customer to use and copy the Software (in object code only) and the Documentation, solely for the purposes of defining an election and tabulating and reporting election results in the Jurisdiction. The license does not permit Customer to take any of the following actions:

a. Reverse engineer, decompile, disassemble, re-engineer or otherwise create, attempt to create, or permit, allow or assist others to create, the source code or the structural framework for part or all of the Software;

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b. Cause or permit any use, display, loan, publication, transfer of possession, sublicensing or other dissemination of the Software or Documentation, in whole or in part, to or by any third party including, but not limited to, any transfer of possession to, or use of the ES&S Software or Documentation by any third party to perform any services for Customer (including, but not limited to, any coding, programming or layout services) without ES&S' prior written consent; or

c. Cause or permit any change to be made to the Software without ES&S' prior written consent.

d. Allow a third party to cause or permit any copying, reproduction or printing of any output generated by the Software (except finished ballots by ballot printers selected by Customer) in which ES&S owns or claims any proprietary intellectual property rights (e.g., copyright, trademark, patent pending or patent), including, but not limited to, any ballot shells or ballot code stock.

**2. License Fees.** In consideration for ES&S' grant of the license for the ES&S Software described in Section 1, Customer shall pay ES&S the ES&S Software License Fees set forth on Attachment 1. Any license or royalty fees payable to any Third Parties for the use of any third party items are the sole responsibility of Customer.

**3. Term of License.** The licenses granted in Section 1 shall commence upon the delivery of the ES&S Software described in Section 1 and shall continue for a one-year period (the "Initial License Term"). Upon expiration of the Initial License Term, the licenses shall automatically renew for an unlimited number of successive one-year periods (each a "License Renewal Term") upon the payment by Customer of the annual software license and software maintenance and support fee as set forth on Attachment 1. ES&S may terminate either license if Customer fails to pay the consideration due for, or breaches Sections 1, 2, or 4 with respect to, such license. Upon the termination of either of the licenses granted in Section 1 for ES&S Software or upon Customer's discontinuance of the use of any ES&S Software, Customer shall immediately return such ES&S Software and the related Documentation (including any and all copies thereof) to ES&S, or (if requested by ES&S) destroy such ES&S Software and Documentation and certify in writing to ES&S that such destruction has occurred.

**4. Proprietary Rights.** Customer acknowledges and agrees that ES&S owns all right, title and interest in and to the Software and Documentation, subject to the license granted herein. ES&S likewise owns all patents, trademarks, copyrights, trade names and other proprietary or intellectual property in, or used in connection with, the Software and Documentation. The Software and Documentation also contain confidential and proprietary trade secrets of ES&S which are protected by law and are of substantial value to ES&S. Customer shall keep the Software and Documentation free and clear of all claims, liens and encumbrances and shall maintain all copyright, trademark, patent or other intellectual or proprietary rights notices which are set forth on the Software, the Documentation, and all permitted copies thereof.

### ARTICLE IV SOFTWARE LICENSE, MAINTENANCE AND SUPPORT SERVICES

**1. Services Provided.** ES&S shall provide maintenance and support services ("Software License, Maintenance and Support") for the ES&S Software and ES&S Firmware (collectively, "ES&S Software"), to enable it to perform in accordance with its Documentation in all material respects, and to cure any defect in material or workmanship. The specific Software Maintenance and Support services

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provided by ES&S and each party's obligations with respect to such services are set forth on Attachment 1.

2. **Updates.** During the Initial License Term or any License Renewal Term, ES&S may provide new releases, upgrades or maintenance patches to the ES&S Software, together with appropriate Documentation ("Updates"), on a schedule defined by ES&S. Customer is responsible for obtaining any upgrades or purchases of Third Party Items required to operate the Updates as well as the cost of any replacements, retrofits or modifications to the ES&S Equipment which may be necessary in order to operate the Updates. All Updates shall be deemed to be ES&S Software for purposes of this Agreement upon delivery. Customer may install the Updates in accordance with ES&S' recommended instructions or may request that ES&S install the Updates. ES&S may charge Customer at its then-current rates to (i) install the Updates, (ii) train Customer on Updates, if such training is requested by Customer; or (iii) provide maintenance and support on the ES&S Software that is required as a result of Customer's failure to timely or properly install an Update. Customer shall be responsible for any claim, damage, loss, judgment, penalty, cost, amount paid in settlement or fee which is caused by Customer's failure to install and use the most recent Update provided to it by ES&S. If Customer proposes changes in the ES&S Software to ES&S, such proposals will become ES&S' property. ES&S may, in its sole discretion, elect to make or not to make such changes without reference or compensation to Customer or any third party. ES&S represents to Customer that the Updates will comply with all applicable state law requirements at the time of delivery. Customer shall be responsible to ensure that it has installed and is using only certified versions of ES&S Software in accordance with applicable law. In the event that any Updates are required due to changes in state law, Customer shall be responsible for:

- (i) the total cost of any third-party items that are required in order to operate the Updates;
- (ii) the total cost of any replacements, retrofits or modifications to the ES&S Equipment contracted for herein that may be developed and offered by ES&S in order for such ES&S Equipment to remain compliant with applicable laws and regulations; and
- (iii) Customer's pro-rata share of the costs of designing, developing and/or certification by applicable federal and state authorities of such state mandated Updates.

Customer's pro-rata share of the costs included under subsection (iii) above shall be determined at the time by dividing the number of registered voters in Customer's jurisdiction by the total number of registered voters in all counties in Customer's state to which ES&S has sold and/or licensed the Equipment and/or Licensed Software purchased and licensed by Customer under this Agreement. Customer shall pay ES&S the entire costs incurred for design, development and certification of any Update which is required due to a change in local law or is otherwise requested or required by Customer.

3. **Conditions.** ES&S shall not provide Software License, Maintenance and Support for any item of ES&S Software if such item requires such services as a result of (a) repairs, changes, modifications or alterations not authorized or approved by ES&S, (b) accident, theft, vandalism, neglect, abuse or use that is not in accordance with instructions or specifications furnished by ES&S, (c) causes beyond the reasonable control of ES&S or Customer, including acts of God, fire, flooding, riots, acts of war, terrorism or insurrection, labor disputes, transportation delays, governmental regulations and utility or communication interruptions, (d) Customer's failure to timely and properly install and use the most recent update provided to it by ES&S, or (e) Customer's failure to notify ES&S within three (3) business days after Customer knows of the need for such services. Any such Software License, Maintenance and Support shall be provided at the fees to be agreed upon by the parties if and when the need for such

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Software License, Maintenance and Support arises. Replacement versions of Software requested by Customer as a result of items set forth in this Section 3 or as a result of Customer's actions or inactions shall be billable to Customer at ES&S' then current rates.

4. **Proprietary Rights.** ES&S shall own the entire right, title and interest in and to all corrections, programs, information and work product conceived, created or developed, alone or with Customer or others, as a result of or related to the performance of this Agreement, including all proprietary rights therein or based thereon. Subject to the payment of all Software Maintenance Fees, ES&S hereby grants to Customer a non-exclusive license to use that portion of such corrections, programs, information and work product that ES&S actually delivers to Customer pursuant to this Agreement. All licensed items shall be deemed to be ES&S Software for purposes of this Agreement. Except and to the extent expressly provided herein, ES&S does not grant to Customer any right, license, or other proprietary right, express or implied, in or to any corrections, programs, information, or work product covered by this Agreement.

5. **Reinstatement of Software License, Maintenance and Support.** If the Initial Term or any Renewal Period thereof expires without being renewed, Customer may thereafter receive a Software License and resume receiving Software Maintenance and Support upon (a) notification to ES&S, (b) payment of all fees, which would have been due to ES&S had the Initial Term or any Renewal Period not expired, and (c) the granting to ES&S of access to the ES&S Software, so that ES&S may analyze it and perform such maintenance as may be necessary before resuming the Software License, Maintenance and Support services..

### ARTICLE V MISCELLANEOUS

1. **Taxes; Interest.** Customer will provide ES&S with proof of its tax-exempt status. If Customer does not provide such proof, it shall pay, or shall reimburse ES&S for, all sales and use, excise or other similar taxes imposed on the transactions contemplated by this Agreement, but shall in no event be liable for taxes imposed on or measured by ES&S' income. If Customer disputes the applicability of any tax to be paid pursuant to this Section 1, it shall pay the tax and may thereafter seek a refund. Any disputed or undisputed payment which is past due to ES&S will bear interest at the rate of one and one-half percent per month (or such lesser amount as may be permitted by applicable law) for each month or portion thereof during which it remains unpaid.

2. **Limitation of Liability.** Neither party shall be liable for any indirect, incidental, punitive, exemplary, special or consequential damages of any kind whatsoever arising out of or relating to this Agreement. Neither party shall be liable for the other party's negligent or willful misconduct. ES&S' total liability to Customer arising out of or relating to this Agreement shall not exceed the aggregate amount to be paid to ES&S hereunder. By entering into this Agreement, Customer agrees to accept responsibility for (a) the selection of, use of and results obtained from any equipment, software or services not provided by ES&S and used with the Equipment or Software; or (b) user errors, voter errors or problems encountered by any individual in voting that are not otherwise a result of the failure of ES&S to perform. ES&S shall not be liable under this Agreement for any claim, damage, loss, judgment, penalty, cost, amount paid in settlement or fee that is caused by (y) Customer's failure to timely or properly install and use the most recent Update provided to it by ES&S or (z) Customer's election not to receive, or to terminate, the Hardware Maintenance Services or the Software License and Maintenance and Support.

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3. **Excusable Nonperformance.** Except for obligations to make payments hereunder, if either party is delayed or prevented from performing its obligations under this Agreement as a result of any cause beyond its reasonable control, including acts of God, fire, riots, acts of war, terrorism or insurrection, labor disputes, transportation delays, governmental regulations and utility or communication interruptions, the delay shall be excused during the continuance of, and to the extent of, such cause, and the period of performance shall be extended to the extent necessary to allow performance after the cause of delay has been removed. ES&S agrees to work with Customer, at Customer's request, to develop mutually agreeable alternatives in order to minimize the negative impact of any such delay.

4. **Notice.** Any notice or other communication required or permitted hereunder shall be in writing, and will be deemed given when (a) delivered personally, (b) sent by confirmed email, (c) sent by confirmed fax, (d) sent by commercial overnight courier (with written verification of receipt) or (e) sent by registered or certified mail, return receipt requested, postage prepaid, when the return receipt is received. All communications shall be sent to the attention of the persons listed on the signature page to this Agreement and at the addresses, email address or fax numbers set forth on such signature page unless other names, addresses or fax numbers are provided by either or both parties in accordance herewith.

5. **Assignment.** Except in the case of a reorganization of the assets or operation of ES&S with one or more affiliates of ES&S or the sale, transfer or assignment of all or substantially all of the assets of ES&S to a successor who has asserted its intent to continue the business of ES&S, neither party may assign or transfer this Agreement or assign, subcontract or delegate any of its rights, duties or obligations hereunder without the prior written consent of the other party hereto, such consent not to be unreasonably withheld or conditioned, nor unduly delayed.

6. **Entire Agreement.** This Agreement, including all exhibits hereto, shall be binding upon and inure to the benefit of the parties and their respective representatives, successors and assigns. This Agreement, including Attachment 1 (which is specifically incorporated herein by this reference), contains the entire agreement of the parties with respect to the subject matter hereof and supersedes and replaces any and all other prior or contemporaneous discussions, negotiations, agreements or understandings between the parties, whether written or oral, regarding the subject matter hereof. Any provision of any purchase order, form or other agreement which conflicts with or is in addition to the provisions of this Agreement shall be of no force or effect. In the event of any conflict between a provision contained in an Attachment to this Agreement and these General Terms, the provision contained in the Attachment shall control. No waiver, amendment or modification of any provision of this Agreement shall be effective unless in writing and signed by the party against whom such waiver, amendment or modification is sought to be enforced. No consent by either party to, or waiver of, a breach by either party shall constitute a consent to or waiver of any other different or subsequent breach by either party. This Agreement shall be governed by and construed in accordance with the laws of the State in which the Customer resides, without regard to its conflicts of laws principles. The parties agree that venue for any dispute or cause of action arising out of or related to this Agreement shall be in the state and federal courts of the United States located in the State in which the Customer resides. ES&S is providing Equipment, Software and services to Customer as an independent contractor, and shall not be deemed to be a "state actor" for purposes of 42 U.S.C. § 1983. ES&S may engage subcontractors to provide certain of the Equipment, Software or services, but shall remain fully responsible for such performance. The provisions of Article II, Section 1(f) and Article III, and Article IV, Sections 1-6 shall survive the termination of this Agreement, to the extent applicable.

7. **Counterparts; Execution By Facsimile.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but which together shall constitute one and

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the same instrument. The parties may execute this Agreement and exchange counterparts of the signature pages by means of facsimile transmission, and the receipt of such executed counterparts by facsimile transmission shall be binding on the parties. Following such exchange, the parties shall promptly exchange original versions of such signature pages.

IN WITNESS WHEREOF, this Agreement has been executed effective as of the date it is signed by last of the parties hereto.

**PRICING SUMMARY AND PAYMENT TERMS**

<b><u>Sale Summary:</u></b>		
<b>Description</b>	<b>Refer To</b>	<b>Amount</b>
ES&S Hardware Maintenance Fees	Attachment 1	\$11,368.00
ES&S Firmware License, Maintenance and Support Fees	Attachment 1	Included in Hardware Maintenance Fees
<b>Total Maintenance Fees for the Initial Term:</b>		<b>\$11,368.00</b>
<b><u>Terms &amp; Conditions:</u></b>		
<b>Note 1:</b> Any applicable state and local taxes are not included, and are the responsibility of Customer.		
<b>Note 2: <u>Invoicing and Payment Terms are as Follows:</u></b>		
\$5,684.00 due on or before September 1, 2018 for the Coverage Period of October 1, 2018 through September 30, 2019.		
\$5,684.00 due on or before September 1, 2019 for the Coverage Period of October 1, 2019 through September 30, 2020.		
<b>Note 3:</b> In the event the Customer subsequently acquires any ES&S Equipment and or ES&S Software, the post warranty maintenance and support periods will be adjusted to synchronize the dates in order to conform with the current term.		

**Attachment 1**

**ES&S HARDWARE MAINTENANCE DESCRIPTION AND FEES**

**Initial Term: October 1, 2018 through September 30, 2020**

<b>Qty</b>	<b>Description</b>	<b>Coverage Period</b>	<b>Annual Maintenance Fee Per Unit</b>	<b>Maintenance Fee In Total</b>
28	AutoMARK Voter Assist Terminal	10/1/2018 through 9/30/2019	\$203.00	\$5,684.00
28	AutoMARK Voter Assist Terminal	10/1/2019 through 9/30/2020	\$203.00	\$5,684.00
<b>Total Hardware Maintenance Fees for the Initial Term</b>				<b>\$11,368.00</b>

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**Note 1: The Per-Unit Fees if Customer requests more than one Routine Maintenance visit in a 24-month period for “Silver” Coverage Items shall be 75% of the then current maintenance fee per unit.**

**Note 2: Surcharge for Emergency Repair Services shall be the daily maintenance service rate in effect at the time such service is requested.**

**Note 3: Customer’s Designated Location: Limestone County, Alabama**

**Note 4: The Per Unit Surcharge for performance of Routine Maintenance visit at more than one Customer Designated Location shall be \$25.00 per unit for all units located at second or more locations.**

### **Hardware Maintenance Services Provided by ES&S Under the Agreement**

1. Telephone Support.
2. Issue Resolution.
3. ES&S posts Technical Bulletins available through Customer’s ES&S Web-based portal.
4. Routine Maintenance Services.
  - Onsite scheduled maintenance inspection per Article 2, Section 1a. The inspection includes:
    - Service performed by an ES&S trained and certified technician.
    - Performance of factory approved diagnostics on the unit, identifying and making adjustments where necessary as indicated by the testing.
    - Replacement of worn or defective with new or remanufactured federally and state certified parts.
    - Conducting a final test to verify that the unit is working according to manufacturer’s specifications.
    - Use of a checklist tailored for each piece of equipment.
5. Repair Services.
  - Customer receives coverage for interim repair calls.
    - Interim calls may be scheduled during the regular Routine Maintenance Services event or scheduled in conjunction with other service work being performed in close proximity of Customer’s location if they are not election critical.

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- o A Product may be sent to ES&S’ Depot location for repairs at a time to be mutually agreed upon by ES&S and Customer.

6. Priority Services.

- Customer has access to the ES&S Help Desk for assistance.
- The customer receives priority on service calls.
- The customer receives priority on response time.
- The customer receives priority on certified ES&S parts inventory.

**Note:** Except for those Hardware Maintenance Services specifically set forth herein, ES&S is under no obligation and shall not provide other Hardware Maintenance Services to the Customer unless previously agreed upon in writing by the parties.

**ES&S SOFTWARE LICENSE, MAINTENANCE AND SUPPORT DESCRIPTION AND FEES  
FIRMWARE**

**Initial License and Maintenance Term: October 1, 2018 through September 30, 2020**

Listed below are the Hardware Products and Fees for which Firmware License, Maintenance and Support will be provided:

<b>Qty</b>	<b>Description</b>	<b>Coverage Period</b>	<b>Annual Firmware License, Maintenance and Support Fee Per Unit</b>	<b>Firmware License, Maintenance and Support Fee In Total</b>
28	AutoMARK Voter Assist Terminal	10/1/2018 through 9/30/2019	Included in Hardware Maintenance Fees	Included in Hardware Maintenance Fees
28	AutoMARK Voter Assist Terminal	10/1/2019 through 9/30/2020	Included in Hardware Maintenance Fees	Included in Hardware Maintenance Fees
<b>Total Firmware License, Maintenance and Support Fees for the Initial Term</b>				<b>Included in Hardware Maintenance Fees</b>

**Software License, Maintenance and Support Services Provided by ES&S under the Agreement**

1. Telephone Support.
2. Issue Resolution.
3. Technical Bulletins will be available through Customer’s ES&S Web-based portal.

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**Note:** Except for those Software License, Maintenance and Support services specifically set forth herein, ES&S is under no obligation and shall not provide other Software License, Maintenance and Support services to the Customer unless previously agreed upon by the parties.

Software License, Maintenance and Support and Hardware Maintenance and Support Services – Customer Responsibilities

1. Customer shall have completed a full software training session for each product selected.
  - Customer shall have completed training at a proficiency level to successfully use the hardware (firmware) and software products.
  - Customer shall have the ability to install firmware and application software and make changes to date and time settings.
  - Customer shall have the ability to change consumable items. Any other changes made by the customer must be pre-approved in writing by ES&S.
2. Customer shall have reviewed a complete set of User Manuals.
3. Customer shall be responsible for the installation and integration of any third-party hardware or software application or system purchased by the Customer, unless otherwise agreed upon, in writing, by the parties.
4. Customer shall be responsible for data extraction from Customer voter registration system.
5. Customer shall be responsible for implementation of any security protocols physical, network or otherwise which are necessary for the proper operation of the ES&S Equipment and ES&S Software.
6. Customer shall be responsible for the acceptance of the Equipment and Software, unless otherwise agreed upon, in writing, by the parties.
7. Customer shall be responsible for the design, layout, set up, administration, maintenance or connectivity of the Customer's network.
8. Customer shall be responsible for the resolution of any errors associated with the Customer's network or other hardware and software not purchased or recommended by ES&S and not otherwise identified in the User Guides as part of ES&S' Equipment and Software.
9. Customer shall be responsible for all costs associated with diagnosing ballot printing problems resulting from the use of non-ES&S Ballot Partner Printers ballots.
10. Customer shall be responsible for the payment of additional or replacement Software CDs or DVDs requested by Customer. The price for such additional or replacement Software CDs or DVDs shall be at ES&S' then current rates.

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The Chairman asked if there was any discussion. There was no discussion. The Administrator called the roll. Ben Harrison, aye; Steve Turner, aye; Stanley Hill, aye; and Jason Black, aye. Motion carries unanimously.

**MOTION** was made by Steve Turner and seconded by Stanley Hill to authorize the Chairman to execute an agreement between the Alabama Department of Transportation and Limestone County, for additional lanes on East Limestone Road from McLemore Circle to East Limestone School, Project # ACAA61945-ATRP(013).

Federal ATRP Funds	\$792,205.42
County Funds	<u>\$206,436.52</u>
Total (Incl. E & I, Utilities and Betterment)	\$998,641.94

The Chairman asked if there was any discussion. There was no discussion. The Administrator called the roll. Steve Turner, aye; Stanley Hill, aye; Jason Black, aye; and Ben Harrison, aye. Motion carries unanimously.

**MOTION** was made by Jason Black and seconded by Steve Turner to authorize the Chairman to execute the following agreement to continue consulting services with Roadside Inc. to provide vegetation control for roadside rights-of-way; \$8,000.00 annual fee.



### AGREEMENT FOR CONSULTING SERVICES

This agreement entered this 17<sup>th</sup> day of August 2018 between Limestone County, Alabama, a body corporate and politic, hereinafter referred to as the "County" and Roadside Inc., hereinafter referred to as the "Consultant".

Whereas, the County wishes to retain the Consultant to provide vegetation control consulting services for roadside rights of way, and the Consultant wishes to provide the same in accordance with the terms and conditions of this agreement;

Now, therefore, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

The Agreement consists of this written agreement. The Consultant shall perform the following consulting services in accordance with this agreement.

#### SCOPE OF SERVICES

The scope of services is to provide consulting services to the County as outlined below:

- Provide application timings and chemical mixes to achieve desired outcome
- Provide quality assurance by evaluating each application

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- Answer questions and discuss treatments via phone
- Provide a minimum of four (4) on site visits

### **PROJECT PERIOD**

The Scope of Services shall be provided for a period of approximately 12 months, beginning the date the contract is executed and ending 365 days after execution.

### **FEE FOR ADDITIONAL CONSULTING SERVICES**

The fee for the Consultant's services provided in the Scope of Services is an annual fee of eight thousand dollars (\$8,000), divided in twelve (12) monthly payments of \$666.66. Additional services and fees are as follows when authorized by the County in writing:

Training a new driver: \$1,000 per day

Soil samples: \$500 per incident

Plant samples: \$1,200 per incident

Correction of mechanical issues as relates to spray components (in person): \$1,000 per day

Call out fee for spray complaint or issue: \$1,500 per incident

### **BILLINGS AND PAYMENTS**

Payments are due and payable in full thirty (30) days from date of the invoice.

If the above terms are acceptable, please sign below for authorization for the proposed consulting services.

### **TERMINATION OF SERVICE**

The County shall have the right at any time to terminate this Agreement by giving the Consultant ten (10) working day's written notice of its intent to terminate this Agreement, or any portion thereof. The County shall be obligated to pay the Consultant for all costs and services rendered by the Consultant up to the termination date.

Furthermore, the Consultant reserves the right to terminate this Agreement at any time. The Consultant shall give the County a ten (10) days written notice of its intent to terminate this Agreement or any portion thereof.

### **INDEMNITY**

Consultant and County shall indemnify and hold harmless the other, their agents and employees from and against legal liability for all claims, losses, damages, and expenses to the extent such claims, losses, damages, or expenses are caused by their negligent acts, errors, or omissions.

### **ADDITIONAL PROVISIONS**

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

The Chairman asked if there was any discussion. There was no discussion. The Administrator called the roll. Jason Black, aye; Steve Turner, aye; Stanley Hill, aye; and Ben Harrison, aye. Motion carries unanimously.

**MOTION** was made by Steve Turner and seconded by Jason Black to approve the following TARCOG Contracts:

- Area Agency on Aging Contract (19-Aging-Limestone-4), effective October 1, 2018 until September 30, 2019; in the amount of \$129,530.00.
- SenioRx Program Contract (19-Rx-Lim-3), effective October 1, 2018 until September 30, 2019; in the amount of \$20,848.00.
- FY 2019 Alabama Cares Program Contract, effective October 1, 2018, unskilled respite, reimbursed \$15 per hour.

The Chairman asked if there was any discussion. There was no discussion. The Administrator called the roll. Steve Turner, aye; Jason Black, aye; Stanley Hill, aye; and Ben Harrison, aye. Motion carries unanimously.

**MOTION** was made by Jason Black and seconded by Steve Turner to authorize the Chairman to execute the following Business Associate Agreement between TARCOG and Limestone County Commission to maintain privacy practices with respect to Protected Health Information (PHI) as required by the HIPAA Act of 1996.

**BUSINESS ASSOCIATE AGREEMENT  
BETWEEN  
TOP OF ALABAMA REGIONAL COUNCIL OF GOVERNMENTS  
AND  
LIMESTONE COUNTY COMMISSION**

This Agreement is entered into by and between Top of Alabama Regional Council of Governments, hereinafter "Medical Provider," and the Limestone County Commission, hereinafter "Business Associate." This agreement is effective this the first day of August, 2018 and terminates upon the termination of the relationship of the parties in accordance with provision 4 of this agreement.

The Business Associate performs certain services on behalf of or for the Medical Provider pursuant to the underlying Agreement that requires the exchange of information including protected health information protected by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as amended by the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5) (the "HITECH Act"), any associated regulations and the federal regulations published at 45 CFR

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parts 160 and 164 (sometimes collectively referred to as "HIPAA"). The Medical Provider is a "*Covered* Entity" as that term is defined in HIPAA, and the parties to the underlying Agreement are entering into this Agreement to establish the responsibilities of both parties regarding HIPAA-covered information and to bring the underlying Agreement into compliance with HIPAA.

Whereas it is desirable, in order to further the continued efficient operations of the Medical Provider to disclose to its Business Associate certain information which may contain confidential individually identifiable health information (hereafter, Protected Health Information or PHI); and

Whereas, it is the desire of both parties that the confidentiality of the PHI disclosed hereunder be maintained and treated in accordance with all applicable laws relating to confidentiality, including the Privacy and Security Rules, the HITECH Act and its associated regulations, and the parties do agree to at all times treat the PHI and interpret this Agreement consistent with that desire.

NOW THEREFORE: the parties agree that in consideration of the mutual promises herein, in the Agreement, and of the exchange of PHI hereunder that:

**1. Definitions.** Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

**a. Privacy Officer** shall mean the Medical Provider's HIPAA Privacy Officer.

**b. Agent** shall mean those person(s) who are agent(s) of the Business Associate, in accordance with the Federal common law, as referenced in 45 CFR § 160.402(c).

**c. Breach** shall mean the acquisition, access, use or disclosure of protected health information which compromises the security of privacy of such information, except as excluded in the definition of Breach in 45 CFR § 164.402.

**d. Business Associate** shall have the meaning given to such term in 45 CFR § 160.103.

**e. HITECH Act** shall mean the Health Information Technology for Economic and Clinical Health Act. Public Law No. 111-05. 111th Congress (2009).

**f. Privacy Rule** means the Standards for Privacy of Individually Identifiable Health Information found at 45 CFR Parts 160 and 164.

**g. Protected Health Information or PHI** shall have the meaning given to such term in 45 CFR § 160.103 limited to the information created or received by Business Associate from or on behalf of Medical Provider.

**h. Security Incident** means any known successful or unsuccessful attempt by an authorized or unauthorized individual to inappropriately use, disclose, modify, access, or destroy any information or interference with system operations in an information system.

**i. Security Rule** means the Security Standards for the Protection of Electronic Protected Health Information found at 45 CFR Parts 160 and 164.

**j. Subcontractor** means a person to whom a Business Associate delegates a function, activity, or service, other than in the capacity of a member of the workforce of such Business Associate.

**2. Permitted Uses and Disclosures.**

**a. PHI Described.** This means PHI created, received, maintained or transmitted on behalf of the Medical Provider by the Business Associate. This PHI is governed by this Agreement and is limited to the minimum necessary, to complete the tasks or to provide the services associated with the terms of the original Agreement, and is generally described in Appendix A.

**b. Purposes.** Except as otherwise limited in this Agreement, Business Associate may use or disclose the PHI on behalf of, or to provide services to, Medical Provider for the purposes necessary to complete the tasks, or

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provide the services, associated with, and required by the terms of the original Agreement, or as required by law, if such use or disclosure of the PHI would not violate the Privacy or Security Rules or applicable state law if done by Medical Provider or Business Associate, or violate the minimum necessary and related Privacy and Security policies and procedures of the Medical Provider. The Business Associate is directly liable under HIPAA for impermissible uses and disclosures of the PHI it handles on behalf of Medical Provider.

**C. Further Uses and Disclosures.** Except as otherwise limited in this Agreement, the Business Associate may disclose PHI to third parties for the purpose of its own proper management and administration, or as required by law, provided that (i) the disclosure is required by law; or (ii) the Business Associate has obtained from the third party reasonable assurances that the PHI will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the third party by the Business Associate; and, (iii) an agreement to notify the Business Associate and Medical Provider of any instances of which it (the third party) is aware in which the confidentiality of the information has been breached. To the extent practical, the information should be in a limited data set or the minimum necessary information pursuant to 45 CFR § 164.502, or take other measures as necessary to satisfy the Medical Provider's obligations under 45 CFR § 164.502.

### 3. Obligations of Business Associate.

**a. Stated Purposes Only.** The PHI may not be used by the Business Associate for any purpose other than as stated in this Agreement or as required or permitted by law.

**b. Limited Disclosure.** The PHI is confidential and will not be disclosed by the Business Associate other than as stated in this Agreement or as required or permitted by law. Business Associate is prohibited from directly or indirectly receiving any remuneration in exchange for an individual's PHI unless Medical Provider gives written approval and the individual provides a valid authorization. Business Associate will refrain from marketing activities that would violate HIPAA, including specifically Section 13406 of the HITECH Act. Business Associate will report to Medical Provider any use or disclosure of the PHI, including any Security Incident not provided for by this Agreement of which it becomes aware.

Provided, however, that the Business Associate shall not be required to report an immaterial incident consisting solely of trivial incidents that occur on a daily basis, such as scans, "pings", or an unsuccessful attempt to improperly access PHI that is stored in an information system under its control.

Business Associate shall report to Medical Provider use or disclosure of PHI provided the use or disclosure of the PHI was in the possession of the Business Associate or a subcontractor or agent of Business Associate.

**C. Safeguards.** The Business Associate will use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of the PHI, except as provided for in this Agreement. This shall include, but not be limited to:

- i. Limitation of the groups of its workforce and agents, to whom the PHI is disclosed to those reasonably required to accomplish the purposes stated in this Agreement, and the use and disclosure of the minimum PHI necessary or a Limited Data Set;
- ii. Appropriate notification and training of its workforce and agents in order to protect the PHI from unauthorized use and disclosure;
- iii. Maintenance of a comprehensive, reasonable and appropriate written PHI privacy and security program that includes administrative, technical and physical safeguards appropriate to the size, nature, scope and

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complexity of the Business Associate's operations, in compliance with the Security Rule;

iv. In accordance with 45 CFR §§ 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information.

**d. Compliance With Law.** The Business Associate will not use or disclose the PHI in a manner in violation of existing law and specifically not in violation of laws relating to confidentiality of PHI, including but not limited to, the Privacy and Security Rules.

**e. Mitigation.** Business Associate agrees to mitigate, to the extent practicable, any harmful *effect* that is known to Business Associate of a use or disclosure of the PHI by Business Associate in violation of the requirements of this Agreement, and report its mitigation activity back to the Medical Provider.

**f. Support of Individual Rights.**

**i. Access to PHI.** Business Associate shall make the PHI maintained by Business Associate or its agents or subcontractors in Designated Record Sets available to Medical Provider for inspection and copying, and in electronic format, if requested, within five (5) days of a request by Medical Provider to enable Medical Provider to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR § 164.524 and consistent with Section 13405 of the HITECH Act

**ii. Amendment of PHI.** Within five (5) days of receipt of a request from Medical Provider for an amendment of the PHI or a record about an individual contained in a Designated Record Set, Business Associate or its agents or subcontractors shall make such PHI available to Medical Provider for amendment and incorporate any such amendment to enable Medical Provider to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR § 164.526.

**iii. Accounting Rights.** Within thirty (30) days of notice of a request for an accounting of disclosures of the PHI, Business Associate and its agents or subcontractors shall make available to Medical Provider the documentation required to provide an accounting of disclosures to enable Medical Provider to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR §164.528 and consistent with Section 13405 of the HITECH Act Business Associate agrees to document disclosures of the PHI and information related to such disclosures as would be required for Medical Provider to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528. This should include a process that allows for an accounting to be collected and maintained by Business Associate and its agents or subcontractors for at least six (6) years from the date of disclosure, or longer if required by state law. At a minimum, such documentation shall include:

- the date of disclosure;
- the name of the entity or person who received the PHI, and if known, the address of the entity or person;
- a brief description of the PHI disclosed; and
- a brief statement of purposes of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure.

**iv. Request for Restriction.** Under the direction of the Medical Provider, abide by any individual's request to restrict the disclosure of PHI,

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consistent with the requirements of Section 13405 of the HITECH Act and 45 CFR § 164.522, when the Medical Provider determines to do so (except as required by law) and if the disclosure is to a health plan for payment or health care operations and it pertains to a health care item or service for which the health care provider was paid in full "out-of-pocket."

**V. Immediate Discontinuance of Use or Disclosure.** The Business Associate will immediately discontinue use or disclosure of Medical Provider PHI pertaining to any individual when so requested by Medical Provider. This includes, but is not limited to, cases in which an individual has withdrawn or modified an authorization to use or disclose PHI.

**g. Retention of PHI.** Notwithstanding section 4.a. of this Agreement, Business Associate and its subcontractors or agents shall retain all PHI pursuant to state and federal law and shall continue to maintain the PHI required under Section 3.f. of this Agreement for a period of six (6) years after termination of the Agreement, or longer if required under state law.

**h. Agent's, Subcontractor's Compliance.** The Business Associate shall notify the Medical Provider of all subcontracts and agreements relating to the Agreement, where the subcontractor or agent receives PHI as described in section 2.a. of this Agreement.

Such notification shall occur within 30 (thirty) calendar days of the execution of the subcontract and shall be delivered to the Medical Provider Privacy Officer and Medical Provider Office Manager. The Business Associate will ensure that any of its subcontractors, to whom it provides any of the PHI it receives hereunder, or to whom it provides any PHI which the Business Associate creates or receives on behalf of Medical Provider, agree to the restrictions and conditions which apply to the Business Associate hereunder. The Medical Provider may request copies of downstream subcontracts and agreements to determine whether all restrictions, terms and conditions have been flowed down. Failure to ensure that downstream contracts, subcontracts and agreements contain the required restrictions, terms and conditions may result in termination of the Agreement.

**i. Federal and Medical Provider Access.** The Business Associate shall make its internal practices, books, and records relating to the use and disclosure of PHI, as well as the PHI, received from, or created or received by the Business Associate on behalf of the Medical Provider available to the U.S. Secretary of Health and Human Services consistent with 45 CFR § 164.504. The Business Associate shall also make these records available to Medical Provider, or Medical Provider's contractor, for periodic audit of Business Associate's compliance with the Privacy and Security Rules. Upon Medical Provider's request, the Business Associate shall provide proof of compliance with HIPAA and HITECH data privacy/protection guidelines, certification of a secure network and other assurance relative to compliance with the Privacy and Security Rules. This section shall also apply to Business Associate's subcontractors, if any.

**j. Security.** The Business Associate shall take all steps necessary to ensure the continuous security of all PHI and data systems containing PHI. In addition, compliance with 74 FR 19006 Guidance Specifying the Technologies and Methodologies That Render PHI Unusable, Unreadable, or Indecipherable to Unauthorized Individuals for Purposes of the Breach Notification Requirements under Section 13402 of Title XIII is required, to the extent practicable. If Business Associate chooses not to adopt such methodologies as defined in 74 FR 19006 to secure the PHI governed by this Agreement, it must submit such written rationale, including its Security Risk Analysis, to the Medical Provider Security Officer for review prior to the execution of the Agreement.

**k. Notification of Breach.** During the term of this Agreement the Business Associate shall notify the Medical Provider's Office Manager within five (5) days, understanding that the Medical Provider's Privacy Officer would already

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have notice, by e-mail or web form upon the discovery of any Breach of unsecured PHI of any suspected Security Incident, intrusion or unauthorized use or disclosure of PHI in violation of this Agreement, or potential loss of confidential data affecting this Agreement. Notification shall be provided to the Medical Provider Office Manager from Business Associate as the Medical Provider's Privacy Officer. Provided, however, that the Business Associate shall not be required to report an immaterial incident consisting solely of trivial incidents that occur on a daily basis, such as scans, "pings", or an unsuccessful attempt to improperly access PHI that is stored in an information system under its control.

The Business Associate shall investigate such Security Incident, Breach, or unauthorized use or disclosure of PHI or confidential data. Within five (5) days of the discovery, the Business Associate shall notify the Medical Provider Privacy Officer and Medical Provider Officer Manger, unless otherwise directed by the Medical Provider in writing: (a) Date of discovery; (b) What data elements were involved and the extent of the data involved in the Breach; (c) A description of the unauthorized persons known or reasonably believed to have improperly used or disclosed PHI or confidential data; (d) A description of where the PHI or confidential data is believed to have been improperly transmitted, sent, or utilized; (e) A description of the probable causes of the improper use or disclosure; and (f) Whether any federal or state laws requiring individual notifications of Breaches are triggered.

Medical Provider will coordinate with Business Associate to determine additional specific actions that will be required of the Business Associate for mitigation of the Breach, which may include notification to the individual or other authorities.

The Business Associate shall be responsible for any and all costs associated with the notification and mitigation of a breach that has occurred because of the negligence of the Business Associate. This may include, but not be limited to, costs associated with notifying affected individuals.

If the Business Associate enters into a subcontract relating to the Agreement where the subcontractor or agent receives PHI as described in section 2.a. of this Agreement, all such subcontracts or downstream agreements shall contain the same incident notification requirements as contained herein, with reporting directly to the Medical Provider Privacy Officer. Failure to include such requirement in any subcontract or agreement may result in the Medical Provider's termination of the Agreement.

**1. Assistance in Litigation or Administrative Proceedings.** The Business Associate shall make itself and any subcontractors, workforce or agents assisting Business Associate in the performance of its obligations under this Agreement, available to the Medical Provider at no cost to the Medical Provider to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against the Medical Provider, its officers or employees based upon claimed violations of HIPAA, the HIPAA regulations or other laws relating to security and privacy, which involves inaction or actions by the Business Associate, except where Business Associate or its subcontractor, workforce or agent is named as an adverse party.

#### **4. Agreement Administration.**

**a. Term.** This Agreement shall terminate upon termination of the underlying Agreement or on the date the Medical Provider terminates for cause as authorized in paragraph (c) of this Section, whichever is sooner.

**b. Duties at Termination.** Upon any termination of the underlying Agreement, the Business Associate shall return or destroy, at the Medical Provider's option, all PHI received from, or created or received by the Business Associate on behalf of the Medical Provider that the Business Associate still maintains in any form and retain no copies of such PHI or, if such return or destruction is not feasible, the Business Associate shall extend the protections of this Agreement to the PHI and limit further uses and

## MINUTES, LIMESTONE COUNTY COMMISSION, AUGUST 17, 2018

disclosures to the purposes that make the return or destruction of the PHI infeasible. This shall also apply to all agents and subcontractors of Business Associate. The duty of the Business Associate and its agents and subcontractors to assist the Medical Provider with any HIPAA required accounting of disclosures survives the termination of the underlying Agreement.

**C. Termination for Cause.** Business Associate authorizes termination of this Agreement by Medical Provider, if Medical Provider determines Business Associate has violated a material term of the Agreement. Medical Provider may, at its sole discretion, allow Business Associate a reasonable period of time to cure the material breach before termination.

**d. Judicial or Administrative Proceedings.** The Medical Provider may terminate this Agreement if the Business Associate is found guilty of a criminal violation of HIPAA. The Medical Provider may terminate this Agreement if the finding or stipulation that the Business Associate has violated any standard or requirement of HIPAA/HITECH, or other security or privacy laws is made in any administrative or civil proceeding in which the Business Associate is a party or has been joined. Business Associate shall be subject to prosecution by the Department of Justice for violations of HIPAA/HITECH.

**e. Survival.** The respective rights and obligations of Business Associate under this Agreement shall survive the termination of the underlying Agreement.

### 5. General Provisions/Ownership of PHI.

**a. Retention of Ownership.** Ownership of the PHI resides with the Medical Provider and is to be returned on demand or destroyed at the Medical Provider's option, at any time, and subject to the restrictions found within section 4. b. above.

**b. Secondary PHI.** Any data or PHI generated from the PHI disclosed hereunder which would permit identification of an individual must be held confidential and is also the property of Medical Provider.

**c. Electronic Transmission.** Except as permitted by law or this Agreement, the PHI or any data generated from the PHI which would permit identification of an individual must not be transmitted to another party by electronic or other means for additional uses or disclosures not authorized by this Agreement or to another contractor, or allied Medical Provider, or affiliate without prior written approval of Medical Provider.

**d. No Sales.** Reports or data containing the PHI may not be sold without Medical Provider's or the affected individual's written consent.

**e. No Third-Party Beneficiaries.** Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than Medical Provider, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

**f. Interpretation.** The provisions of this Agreement shall prevail over any provisions in the Agreement that may conflict or appear inconsistent with any provisions in this Agreement. The interpretation of this Agreement shall be made under the laws of the state of Alabama.

**g. Amendment.** The parties agree that to the extent necessary to comply with applicable law they will agree to further amend this Agreement.

**h. Additional Terms and Conditions.** Additional discretionary terms may be included in the release order or change order process.

**MINUTES, LIMESTONE COUNTY COMMISSION, AUGUST 17, 2018**

**Medical Provider**

Top of Alabama Regional Council  
of Governments

**Business Associate**

Limestone County Commission

\_\_\_\_\_  
Nancy Robertson  
Executive Director

\_\_\_\_\_  
Mark Yarbrough  
Commission Chairman

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

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

**APPENDIX A**

Patient information from **Top of Alabama Regional Council of Governments** may be shared with **Limestone County Commission** in accordance with the Business Associate Agreement. Examples of protected health information that may be shared include, but are not limited to: (list below)

- Name
- Address
- Social Security Number
- Family History
- Telephone and fax numbers
- Account numbers
- Medical Record Numbers
- Email Address
- Dates (birthday, admission, discharge)
- Certificate/license numbers
- Personal Assets
- Device identifiers
- Photographs
- Any unique identifying number, code or characteristic

The Chairman asked if there was any discussion. There was no discussion. The Administrator called the roll. Jason Black, aye; Steve Turner, aye; Stanley Hill, aye; and Ben Harrison, aye. Motion carries unanimously.

**MOTION** was made by Jason Black and seconded by Ben Harrison to authorize the Chairman to execute the following Non-Reimbursable Agreement with WOW! Cable for relocation of utility facilities on Old Highway 20 public right-of-way, over a slough of Limestone Creek. Project # ERPR-9010(955).

**NON-REIMBURSABLE AGREEMENT**

**FOR RELOCATION OF UTILITY FACILITIES ON PUBLIC RIGHT-OF-WAY**

PROJECT NUMBER	ERPR-9010(955)
COUNTY NUMBER	LCP 42-166-16
COUNTY	Limestone

## MINUTES, LIMESTONE COUNTY COMMISSION, AUGUST 17, 2018

THIS AGREEMENT is entered into by and between the County of LIMESTONE acting by and through its COUNTY COMMISSION, hereinafter referred to as the COUNTY, and KNOLOGY OF HUNTSVILLE D.B.A. WOW! hereinafter referred to as the UTILITY.

### WITNESSETH:

WHEREAS, the COUNTY proposes a project of certain highway improvements in LIMESTONE County, Alabama, said project being designated as Project No. ERPR-9010(955) and consisting approximately of the following: Bridge replacement on Old Highway 20 over a slough of Limestone Creek; and

WHEREAS, the UTILITY is the owner of certain facilities located on public right-of-way at places where they will interfere with the construction of said project unless said facilities are relocated; and

WHEREAS, the COUNTY has determined that the relocation of the facilities referred to is necessitated by the construction of said project and has ordered the UTILITY to relocate same; and

WHEREAS, under the laws of Alabama, the UTILITY is required to relocate said facilities at its own expense;

NOW, THEREFORE, the parties hereto agree as follows:

1. The UTILITY will relocate its facilities presently located within the right-of-way limits of the above referenced project in accordance with the UTILITY'S plans as approved by the COUNTY, so as to occasion the least possible interference with the progress of the project. The UTILITY'S plans are transmitted herewith and made a part hereof by reference. The UTILITY will furnish the COUNTY a copy of its "as built" plans at the completion of the relocation.
2. The UTILITY will conform to the provisions of the latest edition of the State of Alabama Department of Transportation Utility Manual, as the provisions thereof are applicable hereto, for both installation and maintenance of such facilities. Such Utility Manual is of record within the Alabama Department of Transportation at the execution of this Agreement and is hereby made a part hereof by reference.
3. The UTILITY will conform to the provisions of the Federal Highway Administration Manual on Uniform Traffic Control Devices (MUTCD), latest edition, as the provisions thereof are applicable hereto, for both installation and maintenance of such facilities. Such manual is of record within the Alabama Department of Transportation at the execution of this Agreement and is hereby made a part hereof by reference.
4. Code of Federal Regulations 23 CFR 645 is hereby made a part hereof by reference and will be conformed to by the UTILITY as the provisions thereof are applicable hereto.

## MINUTES, LIMESTONE COUNTY COMMISSION, AUGUST 17, 2018

5. The UTILITY will observe and comply with the provisions of all Federal, State and Municipal laws and regulations as the provisions thereof are applicable hereto in the performance of work hereunder, including the Clean Water Act of 1987, the Alabama Nonpoint Source Management Program of 1989, and the regulations of the Environmental Protection Agency (EPA) and the Alabama Department of Environmental Management (ADEM). The UTILITY will procure and pay for all licenses and permits that are necessary for its performance of the work.
6. Reimbursement for future relocation of the UTILITYS facilities will be in accordance with State law in effect at the time such relocation is made.
7. The UTILITY will be obligated for the payment of damages occasioned to private property, public utilities or the general public, caused by the legal liability (in accordance with Alabama and/or Federal law) of the UTILITY, its agents, servants, employees or facilities.
8. The UTILITY will have a copy of this Agreement on the project site at all times while work is being performed under this Agreement.
9. The COUNTY will furnish the STATE, in writing, six (6) weeks prior to the State's project letting date, a "Utility Certification" letter with a time frame for beginning and ending the required relocation work.
10. Nothing contained in this Agreement, or in its execution, shall be construed to alter or affect the title of the COUNTY to the public right-of-way nor to increase, decrease or in any way the rights of the UTILITY provided by law with respect to the construction, operation or maintenance of its facilities on the public right-of-way.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers, officials or persons thereunto duly authorized on this 8<sup>th</sup> day of August, 2018.

The Chairman asked if there was any discussion. There was no discussion. The Administrator called the roll. Jason Black, aye; Ben Harrison, aye; Stanley Hill, aye; and Steve Turner, aye. Motion carries unanimously.

**MOTION** was made by Jason Black and seconded by Steve Turner to authorize the Chairman to execute the following Reimbursable Agreement with Limestone County Water & Sewer Department for relocation of utility facilities on Old Highway 20 public right-of-way, over a slough of Limestone Creek. Project # ERPR-9010(955)

### **REIMBURSABLE AGREEMENT FOR RELOCATION OF UTILITY FACILITIES ON PRIVATE OR PUBLIC RIGHT-OF-WAY**

**MINUTES, LIMESTONE COUNTY COMMISSION, AUGUST 17, 2018**

\_\_\_\_ Private Right-of-Way  
  X   Public Right-of-Way

PROJECT NUMBER ERPR-9010(955)  
COUNTY NUMBER LCP 42-166-16  
COUNTY Limestone

**THIS AGREEMENT** is entered into by and between the County of Limestone acting by and through its County Commission, hereinafter referred to as the **COUNTY**, and LIMESTONE COUNTY WATER AND SEWER AUTHORITY, hereinafter referred to as the **UTILITY**.

**WITNESSETH:**

**WHEREAS**, the **COUNTY** proposes a project of certain highway improvements in LIMESTONE County, Alabama, said project being designated as Project No. ERPR-9010(955) and consisting approximately of the following: Bridge replacement on Old Highway 20 (CR-12) over a slough of Limestone Creek; and

**WHEREAS**, the **UTILITY** is the owner of certain facilities located on private or public right-of-way, as applicable, at places where they will interfere with the construction of said project unless said facilities are relocated; and

**WHEREAS**, the **COUNTY** has determined that the relocation of the facilities hereinafter referred to is necessitated by the construction of said project and has requested or ordered, as applicable, the **UTILITY** to relocate same; and

**WHEREAS**, the Alabama Department Of Transportation will use Federal funds allocated to the County, if available, that are provided to it by the Federal Highway Administration pursuant to 23 CFR 645 to reimburse the County's expenses incurred in adjusting the utilities facilities;

**NOW, THEREFORE**, the parties hereto agree as follows:

1. The **UTILITY** will relocate its facilities presently located within the right-of-way limits of the above referenced project in accordance with the **UTILITY'S** plans and specifications as approved by the **COUNTY**, so as to occasion the least possible interference with the progress of the project. The **UTILITY'S** plans, specifications and estimate of relocation cost are transmitted herewith and made a part hereof by reference.

2. The **UTILITY** will conform to the provisions of the latest edition of the State of Alabama Department of Transportation Utility Manual, as the provisions thereof are applicable hereto, for both installation and maintenance of such facilities. Such Utility Manual is of record within the Alabama Department of Transportation at the execution of this Agreement and is hereby made a part hereof by reference.

3. The **UTILITY** will conform to the provisions of the Federal Highway Administration Manual on Uniform Traffic Control Devices (MUTCD), latest edition, as the provisions thereof are applicable hereto, for both installation and maintenance of such facilities. Such manual is of record within the Alabama Department of Transportation at the execution of this Agreement and is hereby made a part hereof by reference.

## MINUTES, LIMESTONE COUNTY COMMISSION, AUGUST 17, 2018

4. Code of Federal Regulations 23 CFR 645 is hereby made a part hereof by reference and will be conformed to by the **UTILITY** as the provisions thereof are applicable hereto.

5. The **UTILITY** will observe and comply with the provisions of all Federal, State and Municipal laws and regulations as the provisions thereof are applicable hereto in the performance of work hereunder, including the Clean Water Act of 1987, the Alabama Nonpoint Source Management Program of 1989, and the regulations of the Environmental Protection Agency (EPA) and the Alabama Department of Environmental Management (ADEM). The **UTILITY** will procure and pay for all licenses and permits that are necessary for its performance of the work.

6. The **UTILITY** will perform the work of relocation:
- (a) \_\_\_\_\_ by **UTILITY'S** own forces
  - (b) \_\_\_\_\_ by contract let by the **UTILITY**
  - (c)   X   by an existing written continuing contract where the work is regularly performed for the **UTILITY**
  - (d) \_\_\_\_\_ by combination of the preceding (as shown in detail on the estimate).

7. The detailed relocation cost estimate will be itemized and attached to this agreement. With respect to facilities located on the **UTILITY'S** private right-of-way, the **COUNTY** will reimburse the **UTILITY** for the actual cost of relocation, as may be adjusted below. With respect to facilities located on public right-of-way, the **COUNTY** will reimburse the **UTILITY** for all or part of the actual cost of relocation as required by the laws of Alabama, as may be adjusted below.

- a. The **STATE'S** share of the engineering charges shall be limited to the "in-kind" work only.
- b. The total actual cost of relocation, including Engineering, whether the facilities are on private or public right-of-way, shall be adjusted for betterment, if any, as defined and provided for in 23 CFR 645 above noted. Excluding betterment costs, the total estimated cost of relocation, including Engineering, is \$351,919.99. The total estimated cost including betterment is \$351,919.99.
- c. If an adjustment for betterment is applicable, the **COUNTY** will reimburse the **UTILITY** for 100 percent of the actual cost of relocation and the remaining 0 percent thereof shall be for the account of the **UTILITY** for betterment. If there are changes during construction and/or the actual construction cost percentage becomes substantially different from the construction estimate, the **COUNTY** reserves the right to recalculate the percentages at any time.

8. The **UTILITY** will keep accurate and true records of all expenditures made by it in the process of such relocation. Records will be kept in accordance with 23 CFR 645 above noted, or in accordance with Part 30 and 31, Federal Acquisition Regulations, or in accordance with accounting practices acceptable to the **STATE**.

9. The **UTILITY** will, during the progress of the work and for three years from the date final payment is made, make its records available during normal working hours for examination and audit by representatives of the **STATE** and of the Federal Highway Administration to verify amounts and items

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covered in the reimbursement for relocation of facilities covered herein. Said records will be available for examination at

**Limestone County Water and Sewer Authority**  
**17218 Highway 72 West**  
**Athens, AL 35612**

10. The **UTILITY** will, within six (6) months following completion of the relocation, furnish the **COUNTY** such papers, records, supporting documents and invoices as may be required by the State showing the cost of said relocation. The **UTILITY** will furnish the **COUNTY** a copy of its "as built" plans for the **STATE'S** records.

11. Upon receipt of such documents and accounts as may be required by the preceding paragraph and upon completion and acceptance of such verification as the **COUNTY** may deem necessary, the **COUNTY** will reimburse the **UTILITY** for the actual cost of such relocation as verified by the **COUNTY**. In the event the actual verified cost, as accepted, exceeds the estimated cost, the **COUNTY** may require a Supplemental Agreement to be executed between the parties prior to reimbursement of any amount in excess of the estimated cost.

12. Paragraphs numbered 13 through 17 set forth below are applicable to this Agreement only if some or all of the **UTILITY** facilities to be relocated hereunder are located on private right-of-way of the **UTILITY**; otherwise, such paragraphs are considered inapplicable to this Agreement and null and void.

13. Where the **UTILITY** has a compensable property interest in its existing location (herein referred to as private right-of-way) by reason of holding the fee, an easement or other property interest, evidence of such compensable property interest will be submitted to the **COUNTY** by the **UTILITY** for review and approval.

14. If the **UTILITY** is required to move all of its facilities from a portion of its private right-of-way, upon completion of the relocation provided for herein, the **UTILITY** will convey to the **COUNTY** by Quitclaim Deed the portion of its private right-of-way located within the right-of-way limits of the above referenced project.

15. In the event the **UTILITY** is not required to relocate any of its facilities which are located on its private right-of-way, the following provisions shall apply:

- a. To the extent the **UTILITY** has the right to so agree the **COUNTY** will have the right to construct, operate and maintain a highway over and along the portion of the **UTILITY'S** private right-of-way located within the right-of-way limits of the above referenced project.
- b. The subordination of the **UTILITY'S** private right-of-way to the right of the **COUNTY** to construct, operate, and maintain said highway will be effective and operative only to such air, surface and sub-surface rights as may reasonably be required and are necessary for the construction, operation, and maintenance of said highway, and to enable the **COUNTY** to control access to the highway where such control is established; otherwise this subordination agreement will in no wise affect and impair the rights of the **UTILITY**, its successors and assigns,

## MINUTES, LIMESTONE COUNTY COMMISSION, AUGUST 17, 2018

in or to its private right-of-way, including but not limited to the right to install additional facilities over, under and across the highway; provided, however, that any installation of additional facilities will be subject to the **STATE'S** responsibility and right to make prior determination that any such additional facilities are located so as not to impair the highway or any planned highway improvement and so as not to interfere with the free and safe flow of traffic thereon.

- c. It is mutually understood that the terms of this Agreement do not subordinate, affect or impair the rights of the **UTILITY** for reimbursement of the cost of such future relocation as may be required and necessitated by highway construction at some future date, as fully as if no subordination existed; however, such relocation will be in accordance with an additional agreement to be entered into at that time between the **UTILITY** and the **COUNTY**.

16. If the **UTILITY** is required to relocate any of its facilities which are located on its private right-of-way to a new location on the same private right-of-way, the following provisions shall apply:

- a. To the extent the **UTILITY** has the right to so agree, upon completion of the relocation provided for herein, the **COUNTY** will have the right to construct, operate and maintain a highway over and along the portion of the **UTILITY'S** private right-of-way located within the right-of-way limits of the above referenced project.
- b. The subordination of the **UTILITY'S** private right-of-way to the right of the **COUNTY** to construct, operate and maintain said highway will be effective and operative only to such air, surface and sub-surface rights as may reasonably be required and are necessary for the construction, operation and maintenance of said highway, and to enable the **COUNTY** to control access to the highway where such control is established; otherwise this subordination agreement will in no wise affect and impair the rights of the **UTILITY**, its successors and assigns, in or to its private right-of-way, including but not limited to the right to install additional facilities over, under and across the highway; provided, however, that any installation of additional facilities will be subject to the **COUNTY'S** responsibility and right to make prior determination that any such additional facilities are located so as not to impair the highway or any planned highway improvement and so as not to interfere with the free and safe flow of traffic thereon.
- c. It is mutually understood that the terms of this Agreement do not subordinate, affect or impair the rights of the **UTILITY** for reimbursement of the cost of such future relocation as may be required and necessitated by highway construction at some future date, as fully as if no subordination existed; however, such relocation will be in accordance with an additional agreement to be entered into at that time between the **UTILITY** and the **COUNTY**.

## MINUTES, LIMESTONE COUNTY COMMISSION, AUGUST 17, 2018

17. If the **UTILITY** is required to relocate any of its facilities which are located on its private right-of-way to a new location on public right-of-way or if any such facilities are to be retained in place within the public right-of-way due to this project, the following provisions will apply

- a. The cost of relocation will include reimbursement for acquisition of right-of-way by the **UTILITY** to place necessary guy wires and anchors on private lands adjacent to the highway right-of-way and the rights to cut, trim and remove, initially and from time to time as necessary, trees on private lands adjacent to the highway right-of-way which might then or thereafter endanger the facilities of the **UTILITY**.
- b. Reimbursement for future relocation of the **UTILITY'S** facilities will be in accordance with State laws in effect at the time such relocation is made; provided, however, the **UTILITY** will be reimbursed for the cost of any future relocation of the facilities, including the cost of acquisition of equivalent private right-of-way if such future relocation is outside the highway right-of-way and such relocation is required by the **COUNTY**, and provided that the prior relocation from private right-of-way to public right-of-way was without compensation to the **UTILITY** for its compensable property interest in its private right-of-way.

18. The **UTILITY** will be obligated for the payment of damages occasioned to private property, public utilities or the general public, caused by the legal liability (in accordance with Alabama and/or Federal law) of the **UTILITY**, its agents, servants, employees or facilities.

19. The **UTILITY** will have a copy of this Agreement on the project site at all times while work is being performed under this Agreement.

20. Nothing contained in this Agreement, or in its execution, shall be construed to alter or affect the title of the **COUNTY** to the public right-of-way nor to increase, decrease or modify in any way the rights of the **UTILITY** provided by law with respect to the construction, operation or maintenance of its facilities on the public right-of-way.

21. Paragraph 22 set forth below is applicable to this Agreement only if Federal appropriated funds are available or will be available in the project by which the relocation required by this Agreement is necessitated.

22. In the event any Federal Funds are utilized for this work, the following certification is made:

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

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- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instruction.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

23. In accordance with Title 23, U.S.C. Sec 313, Buy America, steel and iron materials, and products used on this utility relocation, shall comply with the Buy America requirements of 23 CFR 635.410. Minor items of foreign steel may be used if their cost is less than \$2,500, or one-tenth of one percent of the agreement amount, whichever is greater. Eligibility for reimbursement is subject to audit for compliance with the Buy America Requirement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers, officials or persons thereunto duly authorized, and this agreement is deemed to be dated and to be effective on the date hereinafter stated as the date of its approval by the County Transportation Engineer.

The County requests that (     100% County Funds;   X   Federal participation) be used for utility work in this agreement.

**Old Highway 20 Bridge Replacement - Water Relocation**

<b>Item</b>	<b>Amount</b>	<b>Price per</b>	<b>Price</b>
12" Ductile Iron Pipe	1460 ft	\$29.51	\$43,084.60
12" HDPE Pipe	300 ft	\$30.00	\$9,000.00
12" MJ 45 Elbow	4	\$130.31	\$521.24
12 MJ Long Sleeve	2	\$120.28	\$240.56
12" Gate Valve	2	\$1,175.00	\$2,350.00
Valve Box with Cong. Ring	2	\$54.70	\$109.40
10ga Tracer Wire	2000 ft	\$0.15	\$300.00
12" Field Lock Gasket	15	\$124.99	\$1,874.85
12" DI Mega-lug Pack	26	\$87.60	\$2,277.60
		<b>Total</b>	<b>\$59,758.25</b>
Contingency – 15%			\$8,963.74
Labor Total			\$283,198.00
Labor + Materials Total			\$351,919.99

**MINUTES, LIMESTONE COUNTY COMMISSION, AUGUST 17, 2018**

The Chairman asked if there was any discussion. There was no discussion. The Administrator called the roll. Jason Black, aye; Steve Turner, aye; Stanley Hill, aye; and Ben Harrison, aye. Motion carries unanimously.

**MOTION** was made by Steve Turner and seconded by Jason Black to re-appoint Doug Ezzell and Frank Travis to the E911 Board of Commissioners, with terms ending August 19, 2022.

The Chairman asked if there was any discussion. There was no discussion. The Administrator called the roll. Steve Turner, aye; Jason Black, aye; Stanley Hill, aye; and Ben Harrison, aye. Motion carries unanimously.

**MOTION** was made by Jason Black and seconded by Steve Turner to award the following bid proposal to the lowest responsible bidder meeting specifications as follows:

<b>Proposal No.</b>	<b>Item</b>	<b>Awarded to</b>	<b>Amount</b>
2655	Printing Privilege License Forms (License Commission)	Printers & Stationers Inc.	\$284.00

The Chairman asked if there was any discussion. There was no discussion. The Administrator called the roll. Jason Black, aye; Steve Turner, aye; Stanley Hill, aye; and Ben Harrison, aye. Motion carries unanimously.

**MOTION** was made by Ben Harrison and seconded by Stanley Hill to promote Marc Massey to County Engineer, effective September 1, 2018.

The Chairman asked if there was any discussion. Commissioner Harrison: it is a very good move. Commissioner Black: great addition to the county three years ago and will be even better because you've done an outstanding job. Commissioner Turner: extended his thanks for the outstanding job he has done the last three years. Commissioner Hill: thanked Marc for a very good job in his district. Chairman Yarbrough: you've done an outstanding job and will do a good job for Limestone County. The Administrator called the roll. Ben Harrison, aye; Stanley Hill, aye; Steve Turner, aye; and Jason Black, aye. Motion carries unanimously.

**MOTION** was made by Stanley Hill and seconded by Jason Black to approve Family Medical Leave for Samuel David Beckham, beginning August 22, 2018 and ending in four to six weeks.

The Chairman asked if there was any discussion. There was no discussion. The Administrator called the roll. Stanley Hill, aye; Jason Black, aye; Steve Turner, aye; and Ben Harrison, aye. Motion carries unanimously.

**MINUTES, LIMESTONE COUNTY COMMISSION, AUGUST 17, 2018**

**MOTION** was made by Steve Turner and seconded by Jason Black to approve the following subdivisions:

<b>Name</b>	<b>S/D Type</b>	<b>Approval Type</b>	<b>Lots</b>	<b>District</b>	<b>Location</b>
Lonnie Dale Subdivision	Minor	Preliminary & Final	17	2	Intersection of Saint John Rd & Newby Chapel Rd
KAAAT Subdivision replat Tract 1	Minor	Preliminary & Final	2	2	Along Mooresville Rd north of Hwy 72 south of Kingston Dr.

The Chairman asked if there was any discussion. There was no discussion. The Administrator called the roll. Steve Turner, aye Jason Black, aye; Stanley Hill, aye; and Ben Harrison, aye. Motion carries unanimously.

Commissioner Hill reported his district has been clearing trees to install bridge on Redus Hollow Road and performing routine maintenance. He announced for the Harvest Road project and will be beginning in three to four weeks.

Commissioners Turner reported that his district has been trimming trees and bushwhacking.

Commissioner Black recognized Emily Lewter, School Resource Officer, for a great job handling the vandalism investigation at Clements High School. He stated, "It really helps to have officers in schools."

Commissioner Harrison reported his district has finished Maple Circle and will be starting work soon on Baker and Simpson Roads. He had a meeting with citizens regarding the Sugar Creek iron bridges and will not take any action until reaching an amiable solution is reached.

All Commissioners commended Justin Brown and Moses McGuire for their outstanding efforts with the county's roadside vegetation control program.

Recessed at 10:22 a.m. until 10:00 a.m. on Wednesday, August 29, 2018, at the Washington Street Courthouse Annex, 310 West Washington Street, Athens, Alabama.