

**MINUTES OF THE REGULAR MEETING  
OF THE MAYOR AND BOARD OF ALDERMEN  
The City of Starkville, Mississippi**

**September 6, 2011**

Be it remembered that the Mayor and Board of Aldermen met in a regular meeting on September 6, 2011 at 5:30 p.m. in the Courtroom of City Hall, located at 101 E. Lampkin Street, Starkville, MS. The following City Officials and members of the Board of Aldermen were present: Mayor Parker Wiseman, Aldermen Ben Carver, Sandra Sistrunk, Eric Parker, Richard Corey, Jeremiah Dumas, Roy A. Perkins, and Henry Vaughn, Sr. Attending with the Board were City Attorney Chris Latimer and City Clerk Markeeta Outlaw.

**Mayor Parker Wiseman** opened the meeting with the Pledge of Allegiance followed by a moment of silence.

**REQUESTED REVISIONS OF THE OFFICIAL AGENDA**

**Mayor Parker Wiseman** after receiving no objections;

**Removed agenda item VII-A** and corresponding action item X-A regarding a Public Appearance by Jennifer Gregory of the Main Street Association requesting Board Approval and City In-Kind Services valued at \$2,323.00 for the Downtown events, Pumpkinpaloosa and the Block Party.

**Removed agenda item VII-C** and corresponding action item X-B regarding a Public Appearance by Rhett Hobart of the Student Association requesting Board Approval and City In-Kind Services valued at \$8,794.94 for the Special Event, Bulldog Bash.

**Made Correction to agenda item X-D** clarifying the length of term to be 3 years, thereby correcting all references of a 1-year term.

**Made Correction to agenda item X-F** by adding the 2 mil Ad Valorem Tax Levy for the Downtown District.

**Made Correction to agenda item X-H** by changing the Tax Levy for the Starkville School District from 62.24 mils to 62.77 mils.

**Alderman Jeremiah Dumas** requested the following changes to the September 6, 2011 Official Agenda

**Add to Consent: Item X-I** regarding the Franchise Agreement with KDL/Windstream for the use of the City's Rights-of-Way.

**Add to Consent: Item XI-I-1** regarding employing Ashley Hannah, Derek T. Nelson, and Matthew T. Davis to fill vacant positions of Police Officer.

**Add to Consent: Item XI-I-2** regarding employing Frank Rogers, III, and Rodrigues Hinton to fill vacant positions of Laborer in the Sanitation and Environmental Services Department.

**Add to Consent: Item XI-I-3** regarding employing William Brooks and Jonathan Upchurch to fill vacant positions of Apprentice Lineman in the Electric Department.

**Alderman Roy A'. Perkins** requested the following changes to the September 6, 2011 Official Agenda

**Add to Consent: Item XI-I-4** regarding transferring Gary Scott Rivers to the vacant position of Warehouse Manager in the Electric Department.

1.

**A MOTION TO APPROVE THE OFFICIAL AGENDA OF THE  
SEPTEMBER 6, 2010 MEETING OF THE MAYOR  
AND BOARD OF ALDERMEN AS REVISED**

Upon the motion of Alderman Richard Corey, duly seconded by Alderman Henry Vaughn, Sr., to approve and adopt the September 6, 2011, Official Agenda of the Mayor and Board of Aldermen, with changes as enumerated, the Board unanimously voted to approve the motion.

There being no objections to the Consent Items listed, the Mayor declared the list of items for consent, adopted.

**OFFICIAL AGENDA**

**THE MAYOR AND BOARD OF ALDERMEN**

**OF THE**

**CITY OF STARKVILLE, MISSISSIPPI**

REGULAR MEETING OF TUESDAY, SEPTEMBER 6, 2011  
5:30 P.M., COURT ROOM, CITY HALL  
101 EAST LAMPKIN STREET

**PROPOSED CONSENT AGENDA ITEMS ARE NOTED ### AND PROVIDED AS APPENDIX A  
ATTACHED**

*\*\*\*\*\*ITEMS SHOWN IN ITALICS WITH AN ASTERISK HAVE BEEN ADDED, ~~DELETED~~ OR  
MODIFIED FROM THE ORIGINAL AGENDA.*

- I. **CALL THE MEETING TO ORDER**
- II. **PLEDGE OF ALLEGIANCE AND A MOMENT OF SILENCE**

**III. APPROVAL OF THE OFFICIAL AGENDA**

- A. CONSIDERATION OF THE APPROVAL OF THE CONSENT AGENDA.

**IV. APPROVAL OF BOARD OF ALDERMEN MINUTES**

- A. CONSIDERATION OF THE APPROVAL OF THE MINUTES FROM THE RECESS MEETING OF THE BOARD OF ALDERMEN HELD ON JULY 19, 2011.
- B. CONSIDERATION OF THE APPROVAL OF THE MINUTES FROM THE REGULAR MEETING OF THE BOARD OF ALDERMEN HELD ON AUGUST 2, 2011.

**V. ANNOUNCEMENTS AND COMMENTS**

- A. MAYOR'S COMMENTS:

TOWN MEETING ON THE MUNICIPAL COMPLEX TO BE HELD ON TUESDAY, SEPTEMBER 13, FROM 5 – 7 PM AT THE CITY HALL COURTROOM WITH TOURS OF THE POLICE DEPARTMENT AVAILABLE

RECOGNITION OF HONORS:

**SERGEANT SHAWN WORD** WAS THE ONLY LAW ENFORCEMENT OFFICER (THE REST WERE ALCOHOL & BEVERAGE CONTROL OFFICERS) AMONG 5 HONOREES IN THE NATION RECOGNIZED AT THE NATIONAL CONFERENCE FOR THE OFFICE OF JUVENILE JUSTICE DELINQUENCY PROGRAM HELD IN ORLANDO, FLORIDA.

**SERGEANT CHADD GARNETT** WAS SELECTED ON JULY 14, 2011, AMONG 300 PARTICIPANTS AS THE TOP MISSISSIPPI LIAISON OFFICER (MILO) FOR THE STATE OF MISSISSIPPI

WELCOME TO NEW EMPLOYEES:

**CASSANDRA YOUNG**, COURT  
**WILLIAM BELL**, SANITATION & ENVIRONMENTAL SERVICES  
**BENJAMIN BURKETT**, STARKVILLE ELECTRIC DEPARTMENT

- B. BOARD OF ALDERMEN COMMENTS:

**ARTHUR THOMPSON**- FROM THE WATER DIVISION OF THE PUBLIC SERVICES DEPARTMENT IS RECEIVING RECOGNITION AS THE EMPLOYEE OF THE MONTH FOR SEPTEMBER, 2011 BY ALDERMAN SISTRUNK

**VI. CITIZEN COMMENTS**

**VII. PUBLIC APPEARANCES**

- A. PUBLIC APPEARANCE REQUEST BY JENNIFER GREGORY FROM THE MAIN STREET ASSOCIATION REQUESTING BOARD APPROVAL FOR THE DOWNTOWN EVENTS OF PUMPKINPALOOZA AND THE BLOCK PARTY AND FOR IN-KIND SERVICES TO BE PROVIDED BY THE CITY VALUED AT \$ 2,323.00

- B. PUBLIC APPEARANCE REQUEST BY DR. ROY RUBY ON BEHALF OF THE BOYS AND GIRLS CLUB FOR PARTICIPATION IN THE FUNDING FOR FISCAL YEAR 2012.
- C. PUBLIC APPEARANCE BY RHETT HOBART FOR THE STUDENT ASSOCIATION REQUESTING APPROVAL OF THE SPECIAL EVENT, BULLDOG BASH, AND IN-KIND SERVICES FROM THE CITY OF STARKVILLE IN THE AMOUNT OF \$8,794.94.
- D. PUBLIC APPEARANCE BY JOHN HARGRAVES OF PE ENVIRONMENTAL PROVIDING PUBLIC INFORMATION ON THE GRANT REQUEST TO ENVIRONMENTAL PROTECTION AGENCY (EPA) FOR BROWNFIELDS REVITALIZATION FUNDS.

**VIII. PUBLIC HEARING**

THERE ARE NO PUBLIC HEARINGS SCHEDULED

**IX. MAYOR'S BUSINESS**

### A. CONSIDERATION OF ADOPTING A RESOLUTION SUPPORTING THE APPLICATION BY THE CITY OF STARKVILLE, MISSISSIPPI, TO THE ENVIRONMENTAL PROTECTION AGENCY (EPA) FOR BROWNFIELDS REVITALIZATION GRANT FUNDS TO BE USED FOR THE REVITALIZATION OF PROJECTS WITHIN OKTIBBEHA COUNTY.

### B. CONSIDERATION OF CERTIFYING THAT THE REQUIREMENTS FOR THE HOME INVESTMENT PARTNERSHIP PROGRAM HAVE BEEN MET.

### C. CONSIDERATION OF APPROVING THE MINUTES OF THE CITY OF STARKVILLE 2011 HOME INITIAL PUBLIC HEARING HELD ON AUGUST 29, 2011.

**X. BOARD BUSINESS**

- A. CONSIDERATION OF THE APPROVAL OF THE SPECIAL EVENT REQUESTS FOR PUMPKINPALOOZA SCHEDULED FOR OCTOBER 14, 2011, AND THE DOWNTOWN BLOCK PARTY SCHEDULED FOR SEPTEMBER 23, 2011, AND AUTHORIZATION FOR THE IN-KIND SERVICES VALUED AT \$2,323.00 TO BE PROVIDED BY THE CITY.
- B. CONSIDERATION OF THE APPROVAL OF THE SPECIAL EVENT REQUEST FROM THE MSU STUDENT ASSOCIATION FOR BULLDOG BASH AND AUTHORIZATION OF IN-KIND SERVICES VALUED AT \$8,794.94 TO BE PROVIDED BY THE CITY.

### C. CONSIDERATION OF APPROVING THE HEALTH CARE CONTRACT WITH BLUE CROSS/BLUE SHIELD FOR THE FISCAL YEAR 2012 FOR THE CITY OF STARKVILLE.

### D. REQUEST AUTHORIZATION FOR THE MAYOR TO EXECUTE THE CONTRACT FOR PROFESSIONAL SERVICES FROM SOUTHERN ADMINISTRATORS AND BENEFIT CONSULTANTS FOR ADMINISTRATION

OF THE CITY OF STARKVILLE'S FLEXIBLE BENEFIT CAFETERIA PLAN AS DEFINED IN SECTION 125 OF THE INTERNAL REVENUE CODE.

E. REPORT FROM THE CITY CLERK'S OFFICE ON THE CURRENT STATUS OF THE REVENUES AND EXPENDITURES AND YEAR END PROJECTIONS FOR THE ENDING FISCAL YEAR 2011.

### F. CONSIDERATION OF THE APPROVAL OF THE CITY OF STARKVILLE MILLAGE RATE OF 20 MILS FOR THE FISCAL YEAR 2012.

### G. CONSIDERATION OF ADVERTISING TO FILL ONE VACANCY ON THE OKTIBBEHA COUNTY LIBRARY AND TWO VACANCIES ON THE OKTIBBEHA COUNTY HERITAGE MUSEUM FOR THE CURRENT TERMS ENDING 9-30-11.

### H. CONSIDERATION OF THE APPROVAL OF THE STARKVILLE SCHOOL DISTRICT BUDGET AND TAX LEVY AT 62.24 MILS FOR FISCAL YEAR 2012.

I. CONSIDERATION OF THE APPROVAL OF A FRANCHISE AGREEMENT WITH KDL/WINDSTREAM FOR THE USE OF THE CITY RIGHTS OF WAY.

#### **XI. DEPARTMENT BUSINESS**

A. AIRPORT

~~\*\*\*\* #1. REQUEST APPROVAL TO ENTER INTO AN AGREEMENT WITH CLEARWATER CONSULTANTS FOR PROFESSIONAL SERVICES FOR MULTIPLE AND VARIOUS PROJECTS FOR GEORGE M. BRYAN FIELD.~~

~~\*\*\*\* #2. REQUEST APPROVAL TO ISSUE WORK AUTHORIZATION NUMBER 11-01 FOR PROFESSIONAL SERVICES REGARDING THE FAA 2011 AIP, WITH RESPECT TO GEORGE M. BRYAN FIELD.~~

~~\*\*\*\* #3. REQUEST APPROVAL TO ISSUE WORK AUTHORIZATION NUMBER 11-02 FOR PROFESSIONAL SERVICES REGARDING THE FAA 2011 AIP, WITH RESPECT TO GEORGE M. BRYAN FIELD.~~

### 4. REQUEST APPROVAL OF THE CONTRACT EXTENSION WITH BUDGET CAR RENTAL FOR AN ADDITIONAL YEAR TO EXTEND TO SEPTEMBER 3, 2012.

B. BUILDING, CODES AND PLANNING DEPARTMENT

*THERE ARE NO ITEMS FOR THIS AGENDA*

C. OFFICE OF THE CITY CLERK

1. REQUEST APPROVAL OF THE CITY OF STARKVILLE FIRE DEPARTMENT CLAIMS DOCKET AS OF SEPTEMBER 1, 2011.

### 2. REQUEST APPROVAL OF THE CITY OF STARKVILLE CLAIMS DOCKET FOR ALL DEPARTMENTS EXCEPT THE FIRE DEPARTMENT AS OF SEPTEMBER 1, 2011.

D. COURTS

*THERE ARE NO ITEMS FOR THIS AGENDA*

E. ELECTRIC DEPARTMENT

### 1. REQUEST AUTHORIZATION TO ADVERTISE FOR SEALED BIDS FOR APPROXIMATELY 34,000 FEET OF ALUMACORE OPTICAL GROUND WIRE WITH 48 SINGLE-MODE FIBERS.

### 2. REQUEST AUTHORIZATION OF THE PASS-THROUGH WHOLESALE RATE ADJUSTMENT IMPLEMENTED BY THE TVA BOARD ON AUGUST 18, 2011, TO BECOME EFFECTIVE ON OCTOBER 1, 2011.

F. ENGINEERING AND STREETS

### 1. REQUEST AUTHORIZATION TO ADVERTISE FOR BIDS FOR SC-1 ASPHALT SOURCE OF SUPPLY FOR THE THIRD QUARTER OF CALENDAR YEAR 2011.

2. REQUEST APPROVAL OF THE LOW QUOTE FOR THE MAPLE STREET DRAINAGE IMPROVEMENT PROJECT- PHASE 1 AND AUTHORIZATION TO ENTER AN AGREEMENT WITH SAID CONTRACTOR.

G. FIRE DEPARTMENT

### 1. REQUEST PERMISSION TO PURCHASE A 2011 CROWN VICTORIA FROM STATE CONTRACT FOR USE IN FIRE DEPARTMENT AT A COST OF \$26,125.

### 2. REQUEST PERMISSION TO PURCHASE A 2011, 3/4 TON PICK-UP FROM STATE CONTRACT FOR USE IN FIRE DEPARTMENT AT A COST OF \$24,779.12

H. INFORMATION TECHNOLOGY

### 1. REQUEST AUTHORIZATION TO PROCEED WITH AN RFP FOR THE ESTABLISHMENT OF A WEB PORTAL FOR INTERNET CUSTOMER SERVICE.

I. PERSONNEL

1. REQUEST APPROVAL TO HIRE ASHLEY HANNAH, DEREK T. NELSON, AND MATTHEW T. DAVIS TO FILL VACANT POSITIONS OF POLICE OFFICER.

2. REQUEST APPROVAL TO HIRE FRANK ROGERS, III, AND RODRIGUES HINTON TO FILL VACANT POSITIONS OF LABORER IN SANITATION & ENVIRONMENTAL SERVICES.

3. REQUEST APPROVAL TO HIRE WILLIAM BROOKS AND JONATHAN UPCHURCH TO FILL VACANT POSITIONS OF APPRENTICE LINEMAN.

4. REQUEST APPROVAL TO TRANSFER GARY SCOTT RIVERS TO THE VACANT POSITION OF WAREHOUSE MANAGER IN THE ELECTRIC DEPARTMENT.
5. REQUEST APPROVAL OF THE JOB DESCRIPTION AND APPROVAL TO ADVERTISE TO FILL THE POSITION OF STAFF ACCOUNTANT IN THE ELECTRIC DEPARTMENT.

J. POLICE DEPARTMENT

### 1. REQUEST AUTHORIZATION TO ENTER INTO AN AGREEMENT WITH THE OFFICE OF HIGHWAY SAFETY (OCCUPANT PROTECTION) FOR A 100% REIMBURSABLE GRANT IN THE AMOUNT OF \$15,000.

### 2. REQUEST AUTHORIZATION TO ENTER INTO AN AGREEMENT WITH THE OFFICE OF HIGHWAY SAFETY (DUI NETWORK COORDINATOR/DUI ENFORCEMENT) FOR A 100% REIMBURSABLE GRANT IN THE AMOUNT OF \$138,000.

K. PUBLIC SERVICES

### 1. REQUEST APPROVAL TO PURCHASE PIPE AND FITTINGS TO PROVIDE HYDRAULIC FIRE PROTECTION TO GEECHIE ROAD IN NORTHEAST STARKVILLE FROM CENTRAL PIPE, THE SUBMITTER OF THE LOWEST QUOTE, IN THE AMOUNT OF \$27,288.30.

L. SANITATION DEPARTMENT

*THERE ARE NO ITEMS FOR THIS AGENDA*

**XII. CLOSED DETERMINATION SESSION**

**XIII. OPEN SESSION**

**XIV. EXECUTIVE SESSION**

- A. PENDING LITIGATION
- B. PROPERTY ACQUISITION
- C. PERSONNEL

**XV. OPEN SESSION**

**XVI. RECESS UNTIL SEPTEMBER 20, 2011 @ 5:30 AT 101 LAMPKIN STREET IN THE CITY HALL COURTROOM.**

***The City of Starkville is accessible to persons with disabilities. Please call the ADA Coordinator, Mr. Ben Griffith, at (662) 323-2525, ext. 119 at least forty-eight (48) hours in advance for any services requested.***

**APPENDIX A**

**PROPOSED CONSENT AGENDA**

**IX. MAYOR'S BUSINESS**

- A. CONSIDERATION OF ADOPTING A RESOLUTION SUPPORTING THE APPLICATION BY THE CITY OF STARKVILLE, MISSISSIPPI, TO THE ENVIRONMENTAL PROTECTION AGENCY (EPA) FOR BROWNFIELDS REVITALIZATION GRANT FUNDS TO BE USED FOR THE REVITALIZATION OF PROJECTS WITHIN OKTIBBEHA COUNTY.
- B. CONSIDERATION OF CERTIFYING THAT THE REQUIREMENTS FOR THE HOME INVESTMENT PARTNERSHIP PROGRAM HAVE BEEN MET.
- C. CONSIDERATION OF APPROVING THE MINUTES OF THE CITY OF STARKVILLE 2011 HOME INITIAL PUBLIC HEARING HELD ON AUGUST 29, 2011.

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4. REQUEST APPROVAL OF THE CONTRACT EXTENSION WITH BUDGET CAR RENTAL FOR AN ADDITIONAL YEAR TO EXTEND TO SEPTEMBER 3, 2012.

B. BUILDING DEPARTMENT – NO ITEMS

C. OFFICE OF THE CITY CLERK

2. REQUEST APPROVAL OF THE CITY OF STARKVILLE CLAIMS DOCKET FOR ALL DEPARTMENTS EXCEPT THE FIRE DEPARTMENT AS OF SEPTEMBER 1, 2011.

D. COURTS – NO ITEMS

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L. SANITATION DEPARTMENT - NO ITEMS

**CONSENT ITEMS (2-25)**

2.

**APPROVAL TO ADOPT A RESOLUTION SUPPORTING THE APPLICATION BY THE CITY OF STARKVILLE, MISSISSIPPI TO THE ENVIRONMENTAL PROTECTION AGENCY (EPA) FOR BROWNFIELDS REVITALIZATION GRANT FUNDS**

Upon the motion of Alderman Richard Corey, duly seconded by Alderman Henry Vaughn, Sr., and unanimously approved by the Board, to approve the September 6, 2011 Official Agenda, with no objections to the Consent Items, in which approval to "adopt a Resolution supporting the application by the City of Starkville, Mississippi to the Environmental Protection Agency (EPA) for Brownfields Revitalization Grant Funds to be used for the revitalization of projects within Oktibbeha County" is enumerated, this consent item is thereby unanimously approved.



**THE CITY OF  
STARKVILLE**

CITY HALL, LAMPKIN STREET  
STARKVILLE, MISSISSIPPI 39759

**RESOLUTION**

**RESOLUTION SUPPORTING THE APPLICATION BY THE CITY OF STARKVILLE,  
MISSISSIPPI, TO THE ENVIRONMENTAL PROTECTION AGENCY FOR BROWNFIELDS  
REVITALIZATION GRANT FUNDS TO BE USED FOR THE REVITALIZATION OF  
PROJECTS WITHIN OKTIBBEHA COUNTY**

WHEREAS, the City of Starkville has been pursuing the revitalization of properties within the City limits; and

WHEREAS, during the course of pursuing revitalization of the property the Environment Protection Agency was authorized by Congress to administer funding of the Brownfield Revitalization and Environmental Restoration Act of 2001; and

WHEREAS, the City of Starkville meets the criteria to be an applicant for a grant which would be used to revitalize properties;

NOW, THEREFORE, BE IT RESOLVED that the City of Starkville, Mississippi hereby strongly supports an application being submitted to the Environmental Protection Agency (EPA) for funding under the Brownfields Revitalization and Environmental Restoration Act of 2001 and hereby authorizes the Mayor and Clerk to sign any applications which may be necessary to make the grant application effective.

ADOPTED on this, the 6<sup>th</sup> day of September, 2011, by the City of Starkville, Mississippi.

UPON MOTION of Alderman \_\_\_\_\_ duly seconded by Alderman \_\_\_\_\_

the aforesaid Resolution was put to a roll call vote with the Aldermen voting as follows:

|                 |        |
|-----------------|--------|
| Ben Carver      | Voted: |
| Sandra Sistrunk | Voted: |
| Eric Parker     | Voted: |

|                |        |
|----------------|--------|
| Richard Corey  | Voted: |
| Jeremiah Dumas | Voted: |
| Roy A. Perkins | Voted: |
| Henry Vaughn   | Voted: |

\_\_\_\_\_  
PARKER Y. WISEMAN, MAYOR

\_\_\_\_\_  
MARKEETA OUTLAW,  
CITY CLERK

SIGNED AND SEALED THIS \_\_\_\_ DAY OF SEPTEMBER, 2011.

3.

**APPROVAL AUTHORIZING EXECUTION OF THE CITIZEN  
PARTICIPATION REQUIREMENTS FOR THE  
HOME INVESTMENT PARTNERSHIP PROGRAM**

Upon the motion of Alderman Richard Corey, duly seconded by Alderman Henry Vaughn, Sr., and unanimously approved by the Board, to approve the September 6, 2011 Official Agenda, with no objections to the Consent Items, in which approval to "execute the Citizen Participation Requirements certifying that all requirements for the Home Investment Partnership Program have been met" is enumerated, this consent item is thereby unanimously approved.

### CITIZEN PARTICIPATION REQUIREMENTS AND CERTIFICATION

The City of Starkville hereby certifies that the following requirements have been met concerning the Home Investment Partnerships Program (HOME) under FY 2011 funds:

(1) An initial public hearing was conducted in the proposed project area to inform the local citizens of the City's intent to apply for funds and to obtain local citizens' input. The public hearing was conducted at the City Hall in Starkville, Mississippi on August 29, 2011 at 6:00 PM. This location was accessible to the handicapped. The City provided for the needs of non-English speaking residents in the community upon request.

(2) Published a notice of the initial public hearing not more than twenty (20) days prior to and at least fourteen (14) days before the date of the hearing in the non-legal section of a local newspaper of general circulation.

(3) The City during the initial public hearing, furnished information to citizens concerning amounts of funds available statewide for proposed community development and housing activities; the types of eligible activities that may be undertaken; amount of funds expected to benefit low-and moderate-income persons.

(4) Informed citizens that written comments will be accepted regarding the proposed use of funds and areas to be targeted for assistance and must provide a reasonable time period and location for submittal of written comments. Technical assistance was provided to representatives of persons of low-and moderate-income as appropriate in developing program input;

(5) Ensured that local files contain documentary evidence that the initial public hearing was held, including a copy of the actual notice and proof of publication notice. Copies of these will be submitted to the State with the application. The City will retain the attendance roster and minutes of the meeting in the application file for public review. All written citizens' comments will be maintained in the local files and available for review by the State.

(6) In determining the proposed project location and needs to be addressed by the proposed HOME projects, the City will consider both citizen input that was received during the initial public hearing and the written comments received within the designated time frame after the public hearing.

Signed: \_\_\_\_\_  
Mayor

Date of Publication : 8-12-11  
Date Public Hearing: 8-29-11

4.

### APPROVAL OF THE MINUTES OF THE CITY OF STARKVILLE 2011 HOME INITIAL PUBLIC HEARING HELD ON AUGUST 29, 2011

Upon the motion of Alderman Richard Corey, duly seconded by Alderman Henry Vaughn, Sr., and unanimously approved by the Board, to approve the September 6, 2011 Official Agenda, with no objections to the Consent Items, in which approval of "the Minutes of the City of Starkville FY 2011 Home Initial Public Hearing which was held on August 29, 2011" is enumerated, this consent item is thereby unanimously approved.

**MINUTES**  
**CITY OF STARKVILLE**  
**FY 2011 HOME INITIAL PUBLIC HEARING**  
**August 29, 2011**

The FY2011 HOME Initial Public Hearing was conducted at the City Hall in Starkville, Mississippi on August 29, 2011 at 6:00 PM. The purpose of the meeting was to announce the intent of the City to apply for a FY2011 HOME Homeowner Rehabilitation/Reconstruction Grant and to gain input into the development of the application.

Ms. Patsy Patterson of the Golden Triangle Planning and Development District conducted the public hearing. Ms. Patterson, Housing Specialist, reported that the State of Mississippi expects to receive approximately \$13 million for the FY2011 HOME Investment Partnership Program, which has been allocated for the following purposes:

- Homeowner Rehabilitation/Reconstruction -
- Homebuyer Assistance-Non Competitive through Mississippi Home Corp
- CHDO Set-Aside -
- Disabled Housing Initiative (Ms. Home Corp)

Ms. Patterson stated that the purpose of the HOME program is to:

1. Expand the supply of decent, safe, sanitary, and affordable housing.
2. Strengthen the abilities of states and units of general local government to design and implement strategies for achieving an adequate supply of affordable housing.
3. Provide participating jurisdictions, on a coordinated basis, with the various forms of federal housing assistance.

Ms. Patterson advised those present that the deadline for HOME program applications in Jackson is September 30, 2011, at 4:00 PM. The HOME program rating factors were each explained and afterward the floor was opened for discussions and questions. Applications were handed out to potential homeowners with a date of September 9 to return to the City.

There being no further discussions or questions, Ms. Patterson agreed to remain afterward to answer any questions or assist in with applications. There were no negative comments received during the hearing, nor in writing.

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Clerk

5.

**APPROVAL AUTHORIZING THE CITY OF STARKVILLE TO ENTER INTO A CONTRACT WITH BLUE CROSS BLUE SHIELD OF MISSISSIPPI AND TRU SERVICES TO PROVIDE HEALTH CARE INSURANCE FOR FISCAL YEAR 2011-12 AT A RATE OF \$352.66 FOR SINGLE COVERAGE AND \$888.27 FOR FAMILY COVERAGE**

Upon the motion of Alderman Richard Corey, duly seconded by Alderman Henry Vaughn, Sr., and unanimously approved by the Board, to approve the September 6, 2011 Official Agenda, with no objections to the Consent Items, in which approval to "execute the contract between the City of Starkville, Mississippi and Blue Cross Blue Shield of Mississippi to provide Health Care Administration Services and TRU Services to provide Health Care Reinsurance for Fiscal Year 2011-12 at a rate of \$352.66 employee only coverage and \$888.27 employee and family coverage" is enumerated, this consent item is thereby unanimously approved.

6.

**APPROVAL AUTHORIZING THE EXECUTION OF THE 3-YEAR CONTRACT BETWEEN THE CITY OF STARKVILLE, MISSISSIPPI AND THE SOUTHERN ADMINISTRATORS AND BENEFIT CONSULTANTS FOR ADMINISTRATION OF THE CITY OF STARKVILLE'S FLEXIBLE BENEFIT CAFETERIA PLAN AS DEFINED IN SECTION 125 OF THE INTERNAL REVENUE CODE**

Upon the motion of Alderman Richard Corey, duly seconded by Alderman Henry Vaughn, Sr., and unanimously approved by the Board, to approve the September 6, 2011 Official Agenda, with no objections to the Consent Items, in which approval to "execute a 3-year contract between the City of Starkville, Mississippi and the Southern Administrators and Benefit Consultants for administration of the City of Starkville's Flexible Benefit Cafeteria Plan as defined in Section 125 of the Internal Revenue Code" is enumerated, this consent item is thereby unanimously approved.

**CITY OF STARKVILLE  
CONTRACT FOR PROFESSIONAL SERVICES**

1. **Parties.** This contract (hereinafter referred to as "Contract" and "Agreement" is made and entered into by and between the City of Starkville as "Employer," and "Plan Sponsor" (hereinafter referred to as "Plan Administrator"), and Southern Administrators and Benefit Consultants, Inc., ("SABC") as Service Provider (hereinafter referred to as "SABC").
2. **Purpose.** City of Starkville hereby engages the services of SABC for City of Starkville Flexible Benefit Cafeteria Plan ("the Plan") as defined in Section 125 of the Internal Revenue Code, and SABC hereby agrees to render those certain services described in Paragraph 3, "Scope of Services," below.
3. **Scope of Services.** SABC shall perform and render the following services:

Perform non-fiduciary and fiduciary duties of a service provider to the extent permitted by law, with Plan Administrator retaining ultimate responsibility of the Plan and supervisory authority over SABC. The duties hereunder of SABC shall be, to do all things necessary to implement the Plan, and ensure compliance with all applicable laws, including but not limited to the following duties:

- A. Inform City of Starkville of employees who are eligible to participate in the Plan and the requirements for participation (subject to the restrictions on participation in the Plan).
- B. Provide all documents and services necessary to implement the Plan, including but not limited to the following:
  - 1. A Flexible Benefit Cafeteria Plan document that meets the requirements of all state and federal laws, including but not limited to Section 125 of the Internal Revenue Code and subsequent regulations;
  - 2. An Election and Salary Reduction Agreement (paper or electronic) to be executed by eligible employees in the Plan;
  - 3. A Summary Plan Description to be copied and distributed to Plan participants by Plan Administrator;
  - 4. A Business Associate Agreement (Appendix A) intended to comply with the business associate agreement provisions set forth in 45 C.F.R. ' 164.502(e) & 164.504(e), and any other applicable provisions of 45 C.F.R. parts 160 and 164, subparts A and E, (the "Privacy Rules"), issued pursuant to the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA") and HIPAA Security Standards as set forth in 45 C.F.R. Part 160 and Part 164, Subparts A and C.
- C. SABC will conduct an enrollment prior to each Plan Year.
- D. Advise Plan Administrator of all reporting requirements and prepare for execution, by the Plan Administrator, all reports required to be filed with governmental agencies, including but not limited to, form 5500 and reports required by Section 6039D(a) of the Internal Revenue Code, and subsequent regulations.
- E. Establish and to Maintain, with the cooperation of Plan Administrator, a responsible record-keeping system for the Plan that meets the requirements of Section 6039D(b) of the Internal Revenue Code, and/or Section 25-17-1 to 25-17-11 of the Mississippi Code.
- F. Provide necessary payroll adjustments information to the Plan Administrator, pursuant to the compensation and reduction agreements executed by the participants in the Plan or necessary to meet the discrimination requirements or other limitations under the Plan or the Internal Revenue Code.
- G. Based on the information provided by the Plan Administrator, SABC will perform all required discrimination testing based on the non-discriminatory standards imposed by the law.
- H. Establish and maintain, as authorized by the Plan Administrator, a checking account for the deposits and disbursements for the funds under the Plan, when Spending Accounts are adopted.

- I. Advise Plan Administrator on maintaining compliance with all applicable laws and relevant changes in the law.
- J. Provide City of Starkville with educational information to be distributed to eligible employees.
- K. Perform 5500 form filing as and if required by IRS.
- L. Perform fiduciary duties of a service provider, for adopted Spending Accounts to the extent of collecting and verifying all supporting documentation.

4. **Period of Performance.** The Period of Performance of services under this Contract shall begin on October 1, 2011 **and** shall end on September 30, 2014, for a three (3) year term. The Period of Performance will automatically be extended as required to complete the coverage periods adopted by the Plan.

This Period of Performance will continue for a three (3) year term, if not terminated under the terms of this Contract, if not superseded by a revised contract.

5. **Consideration and Method of Payment.** During the term of this Contract, City of Starkville will pay SABC at the rate of \$1.25 per participant\*, per month, a minimum billing of \$100.00 per month. \*A participant is defined as an employee who signed to participate in Premium Only Plan. Payment is due by the 10<sup>th</sup> of each month. SABC will pay all of its own expenses and City of Starkville will not be liable for any of such expenses (except where agreed), including but not limited to expenses for overhead, copying, printing and hiring additional part-time or full-time employees.

6. **Relationship of Parties.** It is expressly understood and agreed that City of Starkville enters into this contract with SABC based on the purchase of professional services and not based on an employer-employee relationship. For all purposes under this Contract:

- A. SABC represents that it has, or will secure at its own expense, applicable personnel who shall be qualified to perform the duties required to be performed under this Contract. Such personnel shall not be deemed in any way, directly or indirectly, expressly, or by implication, to be employees of City of Starkville.
- B. Any person employed by SABC to perform the services hereunder shall be the employee of SABC, who shall have the sole right to hire and discharge its employee.
- C. It is further understood that the consideration expressed herein constitutes full and complete compensation for all services and performances hereunder, and that any sum due and payable to SABC shall be paid as a gross sum with no withholdings or deductions being made by City of Starkville for any purpose from said Contract sum.
- D. SABC shall pay, when due, all salaries and wages of its employees, and it accepts exclusive responsibility for the payment of Federal Income Tax, State Income Tax, Social Security, Unemployment Compensation and any other withholdings that may be required.

7. **Termination for Cause.** Either party may terminate the Contract for cause by giving thirty (30) days written notice to the other party. Cause shall be defined as follows:

- A. The breach by either party or its representations or duties under the Contract.
  - B. A determination by any governmental authority or court that the participants in the Plan are taxable on the benefits received pursuant to the Plan or that City of Starkville must make FICA payments on account of such benefits, including, but not limited to, a pre-determination by the Internal Revenue Service that the Plan does not meet the requirements of Section 125 of the Internal Revenue Code.
  - C. The insolvency of either party or the filing of a bankruptcy petition by or on behalf of either party.
  - D. The failure of SABC to qualify as necessary in an advisory capacity to the Plan under state or federal regulatory authority,
  - E. The discontinuance of business operations by either party.
8. **Termination of Convenience.** Either City of Starkville or SABC may terminate this Contract at any time by giving written notice to the other party of such termination and specifying the effective date thereof, at least ninety (90) days before the effective date of such termination.

9. **Ownership of Documents and Work Product.** All documents, notes, programs, books, data bases (and all applications thereof), files, reports, studies, unfinished documents and/or other materials collected or prepared by SABC specifically at the request and solely for the use of City of Starkville, which information is not of the sort that would be compiled in the ordinary course and scope of SABC=s regular business activities, shall be owned by City of Starkville upon completion or termination of this Contract. City of Starkville reserves the right to any and all information and/or materials collected on its behalf.

SABC assures that any and all information regarding employees of City of Starkville will be kept strictly confidential and will become the property of City of Starkville. SABC further assures that City of Starkville shall have full access to all information collected, based on the business associate agreement provisions set forth in 45 C.F.R. ' 164.502(e) or 164.504(e), and any other applicable provisions of 45 C.F.R. parts 160 and 164, subparts A and E (the "Privacy Rules"), issued pursuant to the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA").

SABC is prohibited from use of the above described information and/or materials without the express written approval of City of Starkville.

10. **Funding.** Intentionally left blank.
11. **Confidentiality.** City of Starkville agrees to keep confidential and not to use or to disclose to others during the term of this Contract , except as expressly permitted in writing by Southern Administrators and Benefit Consultants, Inc., terms and provisions of this Contract. It is understood, however, that City of Starkville attorneys, accountants or other agents may review such forms in order to determine whether Southern Administrators and Benefit Consultants, Inc., is meeting its duties under this Contract.
- a. **Mandatory Electronic Payment of Vendors-Contract Provision:** It is expressly provided that the City of Starkville's payments to vendors, unless specifically exempt, under this Contract shall be paid electronically and shall be provided the supporting remittance detail by electronic means using Paymode™, the State's e-payment vehicle for Electronic Funds Transfer (EFT), in conformity with the Mississippi Department of Finance and Administration rules regarding Mandatory Electronic Payment of Vendors.

All vendors, with the exception of those specifically exempt under the Rule, shall register for Paymode™. Registration can be completed at the Bank of America™ enrollment website at <http://www.bankofamerica.com/paymode/ms> or by calling 1-866-252-7366. Vendor may request assistance in enrolling or receive more information by contacting [mash@dfa.state.ms.us](mailto:mash@dfa.state.ms.us) or by calling MASH at (601) 359-1343. Vendors expressly exempt from this rule include, but are not limited to: State Employees as defined by §25-9-107; Contract Workers, not including Independent Contractors; Vendors specifically approved for “one of” payments; Vendors who apply for exemption and are approved by DFA.

12. **Record Retention and Access to Records.** SABC shall maintain, and shall make available to City of Starkville, any state or federal agency authorized to audit City of Starkville, or any duly authorized representatives, financial records, supporting documents, statistical records and all other records pertinent to the services performed under this Contract. These records shall be maintained for such period as required to correspond with applicable statutes of limitation imposed by State and Federal law; however, if any litigation or other legal action, by or on behalf of the State or Federal Government has begun that is not completed, or if audit findings litigation or other legal action has not been resolved at the end of the period, the records shall be retained until resolution. Unless requested by City of Starkville, records will be destroyed after the period required by State and Federal law, unless terminated by paragraphs 7 & 8. Should this Contract terminate, pursuant to paragraphs 7 or 8, all records must be recovered at SABC=s place of business (during business hours) within ninety (90) days of the effective date of termination or upon request, SABC will forward any records the City of Starkville deems necessary. Except as stated above, SABC is released from all record keeping liability after ninety (90) days from the date of termination of this Contract.
13. **Modification or Amendment.** Modifications, changes, or amendments to this Contract may be made upon mutual agreement of the parties, in writing and signed by the parties hereto.
14. **Assignment.** SABC may not assign or otherwise transfer its obligations or duties under this Contract without the prior written consent of City of Starkville. Any attempt to assign or transfer the obligations and duties hereunder without such consent shall be void.
15. **Waiver.** Failure of either party hereto to insist upon strict compliance with any of the terms, covenants and conditions hereof shall not be deemed a waiver or relinquishment of any similar right or power thereunder at any subsequent time or of any other provision hereof, nor shall it be construed to be a modification of the terms of this Contract.
16. **Indemnification.** SABC shall indemnify and save City of Starkville harmless from any and all liabilities, fines, penalties, excise taxes, expenses, costs, damages, attorneys= fees and losses of any kind or nature (hereafter “Damages”) arising out of any at or omission by SABC, its agents or employees. SABC shall be liable under this paragraph only for damages due in whole or in part to its own acts or omissions or the acts or omissions of its officers, agents or employees. SABC shall not be liable under this paragraph for any Damages due exclusively by the acts or omissions of the City of Starkville, its agents or employees. SABC shall assume the defense and settlement of any lawsuits, administrative actions or other legal proceedings brought to collect such Damages and shall pay all judgments entered in such legal proceedings and expenses of such proceedings. The paragraph and the obligations herein shall continue in full force and effect notwithstanding the termination of this Contract, whether by expirations of time, operation of law, action by either party or otherwise.
17. **Insurance.** SABC represents that it meets the requirements of Section 25-17-1 thru 9 of the Mississippi Code.

18. **Governing Law and Legal Remedies.** This Contract shall be governed by and construed in accordance with the laws of the State of Mississippi. If either party to this Contract brings or participates in an action in court or before an administrative body to enforce or interpret any part or all of this Contract against the other party, each party agrees to pay its expenses incurred in enforcing this Contract and the judgment, including but not limited to, all attorney's fees at a trial and on appeal.
19. **Severability.** If any term or provision of this Contract is prohibited by the laws of the State of Mississippi or declared invalid or void by a court of competent jurisdiction, the remainder of this Contract shall not be affected thereby and each term and provision of this Contract shall be valid and enforceable to the fullest extent permitted by law.
20. **Disputes.** This Contract shall be governed by and construed in accordance with the laws of the State of Mississippi. Any action, suit or proceeding brought by, or on behalf of either party under this Contract, in whole or in part, shall be brought in the federal or state courts of Mississippi as governed by Mississippi law on venue and jurisdiction.
21. **Compliance with Laws.** SABC shall comply with all applicable laws, regulations, policies and procedures and Grant requirements (if applicable) of the United States of America of any agency thereof, the State of Mississippi of any agency thereof and any local governments or political subdivisions that may affect the performance or services under this Contract. Specifically, but not limited to, SABC shall not discriminate against any employee nor shall any party be subject to discrimination in the performance of this Contract because of race, religion, color, sex, age, national origin or disability.

**a. Compliance with Mississippi Employment Protection Act (MEPA):** SABC represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act (Senate Bill 2988 from the 2008 Regular Legislative Session) and will register and participate in the status verification system for all newly hired employees. The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. SABC further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Mississippi. SABC understands and agrees that any breach of these warranties may subject SABC to the following: (a) termination of this Agreement and ineligibility for any state or public contract in Mississippi for up to three (3) years, with notice of such cancellation/termination being made public, or (b) the loss of any license, permit, certification or other document granted to SABC by an Division, department or governmental entity for the right to do business in Mississippi for up to one (1) year, or (c) both. In the event of such termination/cancellation, Contractor/Seller would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit.

22. **Entire Agreement.** This Contract constitutes the entire agreement of the parties with respect to the subject matter contained herein and supersedes and replaces any and all prior negotiations, understandings and agreements, written or oral, between the parties relating thereto.
23. **Special Terms and Conditions.** It is agreed and understood by each party to this Contract that the City of Starkville agrees to cooperate with SABC to the extent permitted by law,

including but not limited to providing SABC necessary payroll information to the extent needed by SABC to perform its duties.

24. **Notice.** Any notice required or permitted to be given under this Contract shall be in writing and sent by United States Certified Mail, Return Receipt Requested, to the party to whom the notice should be given at the address set forth below:

**COMPANY:** CITY OF STARKVILLE  
Markeeta Outlaw, City Clerk  
City Hall  
101 Lampkin St.  
Starkville, MS 39759

**SERVICE PROVIDER:** SOUTHERN ADMINISTRATORS  
AND BENEFIT CONSULTANTS, INC.  
Nelson Morrison, President  
P.O. Box 2449  
Madison, MS 39130-2449

Each party agrees to notify the other promptly in the event of an address change.

**APPENDIX A  
AMENDMENT**

**HEALTH INSURANCE PORTABILITY  
AND  
ACCOUNTABILITY ACT OF 1996  
PRIVACY RULES  
BUSINESS ASSOCIATE AGREEMENT**

**THIS BUSINESS ASSOCIATE AGREEMENT** (the "Agreement"), effective October 1, 2011, by and between City of Starkville (hereinafter "Plan Administrator") Unreimbursed Medical Spending Account Plan, maintained under and as part of the City of Starkville Flexible Benefit Cafeteria Plan ("the Plan") and Southern Administrators and Benefit Consultants, Inc. (hereinafter "SABC"), as Service Provider for the Plan Administrator, is incorporated into and made a part of the Agreement for Professional Services, ("Contract") between SABC and City of Starkville. This Agreement is intended to comply with the business associate agreement provisions set forth in 45 C.F.R. '164.502(e) and '164.504(e), and any other applicable provisions of 45 C.F.R. Parts 160, and Part 164, subparts A and E (the "Privacy Rules"), issued pursuant to the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), compliance date of April 14, 2003, (April 14, 2004, for small health plans) and HIPAA Security Standards for the Protection of Electronic Protected Health Information ("EPHI") as set forth in 45 C.F.R. Part 160 and Part 164, Subparts A and C, compliance date of April 20, 2005, (April 20, 2006 for small health plans) as amended by the U.S. Department of Health and Human Services.

SABC recognizes that in the performance of services for the Plan under the Agreement it will have access to, create, and/or receives general or electronic information from the Plan or on its behalf Protected Health Information ("PHI"), as defined at 45 C.F.R. ' 160.103. For purposes herein, PHI shall have the meaning given to such term in 45 C.F.R. ' 164.501, limited to the information created or received from the Plan or on its behalf by SABC. Whenever used in this Plan, other capitalized terms shall have the respective meaning set forth below, unless a different meaning shall be clearly required by the context. In addition,

other capitalized terms used in this Agreement, but not defined herein, shall have the same meaning as those terms defined in the HIPAA Security Standards or Privacy Rules.

## **SECTION 1. SABC RESPONSIBILITIES**

- 1.1 SABC agrees, as a Business Associate, to not use or disclose PHI other than as permitted or required by the Agreement or as required by law. SABC shall use or disclose PHI only as follows:
  - a. Except as otherwise limited in this Agreement, SABC may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Plan as specified in the Agreement, provided that such use or disclosure would not violate the Privacy Rules if done by Plan or the minimum necessary policies and procedures of the Plan
  - b. Except as otherwise limited in this Agreement, SABC may use PHI for the proper management and administration of SABC or to carry out the legal responsibilities of SABC.
  - c. Except as otherwise limited in this Agreement, SABC may disclose PHI for the proper management and administration of SABC.
  - d. Except as otherwise limited in this Agreement, SABC may use PHI to provide Data Aggregation services to Plan as permitted by 42 C.F.R. ' 164.504(e)(2)(i)(B).
  - e. SABC may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 42 C.F.R. ' 164.502(j)(1).
  - f. SABC may use and disclose PHI that has been de-identified within the meaning of 45 C.F.R. ' 164.514.
- 1.2 SABC agrees to implement appropriate administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of general and electronic PHI that it creates, receives, maintains or transmits on behalf City of Starkville to prevent the use or disclosure of PHI other than as provided for by this Agreement in accordance with 45 C.F.R. ' 164 (HIPAA Security Rule & Security Standards) April 21, 2005, or as amended by the American Recovery and Reinvestment Act ("The Act"), for breach or unsecured PHI, effective September 23, 2009. SABC uses technologies and a methodology that renders PHI unusable, unreadable, and indecipherable or de-identified to unauthorized individuals are in place.
- 1.3 SABC agrees to use reasonable efforts to maintain the security of PHI and to prevent unauthorized uses or disclosures of such PHI, as well as, alert City of Starkville of any security incident of which it becomes aware.
- 1.4 SABC agrees to report to the Plan any use or disclosure of PHI not provided for by this Agreement or in the Agreement. SABC, as a business associate, shall send the required notification to each individual whose unsecured PHI has been, or is reasonably believed to have been, accessed, acquired, used, or disclosed as a result of the breach, without unreasonable delay, based on the requirements of HIPAA.
- 1.5 SABC agrees to only request, use or discloses the minimum amount of PHI necessary to accomplish the purpose of the request, use or disclosure.
- 1.6 SABC agrees to ensure that any agent, including a subcontractor, to whom it provides PHI that was created, received, maintained or transmitted on behalf of the City of Starkville agrees to the same restrictions and conditions that apply through this Agreement to SABC with respect to such information.

- 1.7 SABC agrees to provide access, at the request of the Plan, and in the time and manner designated by Plan, to PHI in a Designated Record Set (as defined in 45 C.F.R. ' 164.501), to the Plan, or as directed by the Plan, to an Individual in order to meet the requirements under 45 C.F.R. ' 164.524. SABC shall have the right to charge the Individual a reasonable cost-based fee, as permitted by 45 C.F.R. ' 164.524.
- 1.8 SABC agrees to make any amendment(s) to PHI in a Designated Record Set that the Plan directs or agrees to pursuant to 45 C.F.R. ' 164.526 at the request of the Plan or an Individual, and in the time and manner designated by the Plan.
- 1.9 SABC agrees to make its internal practices, books and records relating to the use and disclosure of PHI received from, or created or received by SABC on behalf of the Plan available to the Plan, or at the request of the Plan to the Secretary (as defined in 45 C.F.R. ' 160.103), in the time and manner designated by the Plan, or the Secretary, for purposes of the Secretary determining the Plan=s compliance with the Privacy Rules.
- 1.10 SABC agrees to document such disclosures of PHI and information related to such disclosures as would be required for the Plan to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. ' 164.528.
- 1.11 SABC shall maintain the privacy of the employees PHI, and electronic protected health information, (E PHI), by using technologies and methodologies that render the E PHI or PHI, unusable, unreadable, indecipherable or de-identified to unauthorized individuals. The Plan shall render all PHI unusable, unreadable, indecipherable or de-identified to unauthorized individuals by using shredding or destroying PHI, and encryption required.
- 1.12 SABC shall, following the discovery of a breach of unsecured PHI as a business associate, SABC will notify the Plan Administrator of the breach so that, the Plan Administrator will, in turn, notify all the affected individuals. To the extent possible, as a business associate, SABC shall identify each individual whose unsecured PHI has been, or is reasonably believed to have been, breached. Such notice shall be given without unreasonable delay and no later than sixty (60) days following discovery of a breach and/or based on the number of affected individuals, SABC will adhere to requirements of posting notice by web sites and/or media, and/or HHS. With the exception of a delay if a law enforcement official determines that such notification would impede a criminal investigation or cause damage to national security.
- 1.13 SABC agrees to provide to Plan or an Individual, in the time and manner designated by Plan, information collected in accordance with 1.10 to permit the Plan to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. ' 164.528.
- 1.14 Except as provided for herein, or as required by law, upon termination of the Agreement, SABC agrees to return to the Plan or destroy PHI and retain no copies in any form, if feasible. In the event that SABC determines that returning or destroying the PHI is infeasible, SABC shall notify the Plan of the conditions that make return or destruction infeasible and agrees to extend the protections, limitations and restrictions of this Agreement to such PHI and to limit any further uses and/or disclosures of such PHI retained to the purposes that make the return or destruction of the PHI infeasible, for as long as SABC maintains such PHI. Both parties agree that this Section 1.14 shall survive the expiration or termination of the Agreement and remain in full force and effect thereafter for so long as SABC or any of SABC= employees, subcontractors, or agents remains in possession of any PHI.
- 1.15 SABC authorizes termination of this agreement by City of Starkville if the City of Starkville determines that SABC has violated a material term of this Appendix.

## **SECTION 2. PLAN AND PLAN ADMINISTRATOR RESPONSIBILITIES**

- 2.1 Plan Administrator acting as the Plan Sponsor agrees to comply with the requirements set forth in 45 C.F.R. ' 164.504(f), including but not limited to amending the Plan, if necessary to restrict uses and disclosures of PHI. The Plan Administrator agrees to forward a copy of such amendments to SABC at least ten (10) business days before the effective date of such amendments. SABC agrees to provide Plan Administrator with any amendments necessary to comply with this Section with regard to Plan documents provided by SABC to Plan Administrator for adoption. The Plan Administrator further agrees to provide the names of employees or agents who have access to PHI in accordance 45 C.F.R. ' 164.504(f), and to notify SABC of any changes in writing.
- 2.2 Plan Administrator agrees that it will not request SABC to use or disclose PHI in any manner that would not be permissible under the Privacy Rules if done by the Plan, except that SABC may use or disclose PHI as provided in Section 1.1.
- 2.3 Plan Administrator agrees to provide Plan participants and beneficiaries with adequate notice of the uses and disclosures of PHI that may be made by the Plan, and of the individual=s rights and the Plan=s responsibilities with respect to PHI as required in 45 C.F.R. ' 164.520. The Plan further agrees to forward a copy of such notice to SABC, as well as any changes to such notices.
- 2.4 Plan Administrator agrees to provide SABC with any changes to, or revocation of, permission by a Participant or Beneficiary to use or disclose PHI, if such changes affect SABC=s permitted or required uses or disclosures.
- 2.5 Plan Administrator agrees it will not agree to any special privacy restrictions requested by an Individual without SABC=s written approval, including those provided for 45 C.F.R. ' 164.522.

## **SECTION 3. MISCELLANEOUS**

- 3.1 Both parties agree that nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than SABC, the Plan, the Plan Administrator, and their respective successors, or assigns, any rights, remedies, obligations, or liabilities whatsoever.
- 3.2 This Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA and the Privacy Rules, and any ambiguity in this Agreement shall be resolved in favor of a meaning that complies and is consistent with HIPAA and the Privacy Rules. Both parties agree that the provisions of this Section shall prevail over any provisions in the Agreement that may conflict or appear inconsistent with any provisions of this Section.
- 3.3 Both parties acknowledge that future changes to the requirements of HIPAA, the Privacy Rules, and other applicable laws relating to the security or confidentiality of PHI may require amendment of this Agreement. Upon the written request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this Agreement. If either party disagrees with any such amendment, it shall so notify the other party in writing within thirty (30) days of notice. If the parties are unable to agree on an amendment within thirty (30) days thereafter, then any of the parties may terminate the Agreement on thirty days written notice to the other party or in accordance with Section 7 of the Agreement.
- 3.4 Notwithstanding Section 3.3 above and without limiting the rights of the parties under the Agreement, upon written notice of the existence of an alleged material breach of the terms of this

Agreement, the Plan Administrator shall afford SABC an opportunity to cure said breach upon mutually agreeable terms. Failure to cure shall be immediate grounds for termination of the Agreement.

3.5 SABC agrees to indemnify and hold harmless the Plan and Plan Administrator from any and all liabilities, fines, penalties, expenses, costs, attorney's fees and other damages arising out of the failure of SABC, its employees, agents or subcontractors to comply with the provisions of this Agreement, HIPAA, or the Security and Privacy Rules. These provisions shall survive this termination of the Agreement regardless of the cause of reason of such termination.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement and Appendix to be executed by their duly authorized appointed representatives or officers, effective as of the date first listed in section 4, above, of this Agreement/Contract.

**CITY OF STARKVILLE  
FLEXIBLE BENEFITS  
CAFETERIA PLAN**

**SOUTHERN ADMINISTRATORS  
AND BENEFIT CONSULTANTS, INC.**

By: Markeeta Outlaw  
Markeeta Outlaw  
"Plan Administrator"

By: Nelson Morrison  
Nelson Morrison, CFCI

Title: City Clerk

Title: President

Date: 09/21/2011

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

7.

**APPROVAL OF THE RESOLUTION ADOPTING THE CITY OF  
STARKVILLE, MISSISSIPPI GENERAL MILLAGE RATE OF 20 MILS  
AND DOWNTOWN SPECIAL DISTRICT MILLAGE RATE OF 2 MILS  
FOR THE FISCAL YEAR 2011-12**

Upon the motion of Alderman Richard Corey, duly seconded by Alderman Henry Vaughn, Sr., and unanimously approved by the Board, to approve the September 6, 2011 Official Agenda, with no objections to the Consent Items, in which approval of "A Resolution adopting the City of Starkville, Mississippi General Millage Rate of 20 mils and levying the Downtown Special District millage rate of 2 mils for Fiscal Year 2011-12" is enumerated, this consent item is thereby unanimously approved.

**RESOLUTION ADOPTING THE AD VALOREM TAX LEVY  
FOR THE CITY OF STARKVILLE FY 2011-12 AND  
THE DOWNTOWN DISTRICT FOR FY 2011-12**

Be it adjudged, resolved, and ordered by the Mayor and Board of Aldermen of the City of Starkville, Mississippi, that the following ad valorem tax rates are levied and imposed for the City of Starkville, Mississippi, upon taxable property, including motor vehicles, in said City, as the same is now assessed and listed, or may be hereafter assessed and listed, upon the Assessment Rolls of the City of Starkville, Mississippi as of January 1, 2011.

Be it also adjudged, resolved and ordered by the Mayor and Board of Aldermen of the City of Starkville, Mississippi, that the following ad valorem tax rates are levied and imposed for the City of Starkville, Mississippi Downtown District, upon taxable property, in said Downtown District, as the same is now assessed and listed, or may be hereafter assessed and listed, upon the Assessment Roll of the City of Starkville, Mississippi Downtown Business District as of January 1, 2011.

Said rates for the City of Starkville, Mississippi and the City of Starkville Downtown District are to be expressed in mills and a decimal fraction of a mill, and levied and imposed upon each dollar of assessed valuation appearing upon the Assessment Roll for the City of Starkville, Mississippi, and as designated for the City of Starkville, Mississippi Downtown District, for the following funds and purposes; and, when the same is collected the money shall be credited to the respective funds as provided by law:

There is hereby levied upon each dollar of assessed valuation, including motor vehicles, appearing on the Assessment Roll of the City of Starkville, Mississippi, except as to such value as may be exempt by law, as follows, pursuant to the authority granted in Section 21-33-45 of the Mississippi Code of 1972 as amended:

|  |         |
|--|---------|
| General Revenue Purposes and<br>General Improvements | 20 mils |
| TOTAL LEVY FOR THE GENERAL FUND                      | 20 Mils |

There is hereby levied upon each dollar of assessed valuation, in the designated Downtown Business District two (2) Mils, for the purpose of providing parking facilities and making improvements to develop and promote the growth of said Downtown Business District pursuant to the authority of Senate Bill 1601, 1969 Extraordinary Session of the Mississippi Legislature.

|                                  |        |
|----------------------------------|--------|
| Downtown District                | 2 mils |
| TOTAL LEVY FOR DOWNTOWN DISTRICT | 2 Mils |

**8.**

**APPROVAL TO ADVERTISE TO FILL THE UPCOMING VACANCIES  
ON THE OKTIBBEHA COUNTY HERITAGE MUSEUM BOARD AND  
THE OKTIBBEHA COUNTY LIBRARY BOARD**

Upon the motion of Alderman Richard Corey, duly seconded by Alderman Henry Vaughn, Sr., and unanimously approved by the Board, to approve the September 6, 2011 Official Agenda, with no objections to the Consent Items, in which approval to "advertise to fill the upcoming vacancies on the Oktibbeha County Heritage Museum Board and the Oktibbeha County Library Board" is enumerated, this consent item is thereby unanimously approved.

9.

**APPROVAL OF THE RESOLUTION TO ADOPT THE  
STARKVILLE SCHOOL DISTRICT BUDGET  
AND 62.77 MIL TAX LEVY FOR FISCAL YEAR 2011-2012**

Upon the motion of Alderman Richard Corey, duly seconded by Alderman Henry Vaughn, Sr., and unanimously approved by the Board, to approve the September 6, 2011 Official Agenda, with no objections to the Consent Items, in which approval of "the Resolution adopting the Starkville School District Fiscal Year 2011-12 Budget and Tax Levy of 62.77 mils" is enumerated, this consent item is thereby unanimously approved.

**A RESOLUTION APPROVING THE AD VALOREM TAX LEVY  
FOR THE STARKVILLE SCHOOL DISTRICT FOR  
FISCAL YEAR 2012 EXTENDING FROM OCTOBER 1, 2011  
THROUGH SEPTEMBER 30, 2012**

Be it adjudged, resolved and ordered by the Mayor and Board of Aldermen of the City of Starkville, Mississippi that the following Ad Valorem Tax rates are levied and imposed for the Starkville School District upon taxable property, including motor vehicles, in said School District as the same is now assessed and listed, or may be hereafter assessed and listed, upon the Assessment Roll of the Starkville School District as of January 1, 2011, said rate being expressed in mills or a decimal fraction of a mil and levied and imposed upon each dollar of assessed valuation appearing upon the Assessment Roll of the Starkville School District, for the following funds or purposes; and, when the same is collected the money shall be credited to the respective funds as provide by law.

- I. There is hereby levied upon each dollar of assessed valuation, including motor vehicles, appearing on the Assessment Roll of the Starkville School District, except as to such value as may be exempt by law, as follows, pursuant to the authority of Section 27-39-307 and 37-57-3 et seq. of the Mississippi Code of 1972 as amended:

|                                  |            |
|----------------------------------|------------|
| • DISTRICT MAINTENANCE           | 48.44 MILS |
| • LIMITED SCHOOL NOTES           | .13 MILS   |
| • SCHOOL BOND & INTEREST 2007-08 | 8.40 MILS  |
| • MILLSAPS VOCATIONAL CENTER     | 2.50 MILS  |
| • SCHOOL BOND & INTEREST 1995-96 | 3.30 MILS  |

**TOTAL LEVY FOR STARKVILLE SCHOOL DISTRICT      62.77 MILS**

Starkville School District  
 Combined Budget - Original  
 For the Year Ending June 30, 2012  
 Date Approved: 10/13/2011

|   | Governmental Fund Types |                      |                       |                     | Proprietary Fund Types |             |                  | Total                |
|---|-------------------------|----------------------|-----------------------|---------------------|------------------------|-------------|------------------|----------------------|
|   | General                 | Special Revenue      | Capital Projects      | Debt Service        | Permanent Trust        | Enterprise  | Internal Service |                      |
| <b>Revenues:</b>  |                         |                      |                       |                     |                        |             |                  |                      |
| Local Sources   | 11,911,229.00           | 1,916,806.28         | 0.00                  | 2,951,451.00        | 5,500.00               | 0.00        | 0.00             | 16,784,986.28        |
| Intermediate Sources                                    | 42,000.00               | 62,000.00            | 0.00                  | 0.00                | 0.00                   | 0.00        | 0.00             | 104,000.00           |
| State Sources   | 16,665,988.00           | 1,524,164.63         | 0.00                  | 195,000.00          | 0.00                   | 0.00        | 0.00             | 18,385,152.63        |
| Federal Sources   | 207,500.00              | 7,045,142.52         | 0.00                  | 0.00                | 0.00                   | 0.00        | 0.00             | 7,252,642.52         |
| Sixteenth section Sources                               | 0.00                    | 16,807.00            | 0.00                  | 0.00                | 0.00                   | 0.00        | 0.00             | 16,807.00            |
| <b>Total Revenues</b>                                   | <b>28,826,717.00</b>    | <b>10,564,920.43</b> | <b>0.00</b>           | <b>3,146,451.00</b> | <b>5,500.00</b>        | <b>0.00</b> | <b>0.00</b>      | <b>42,543,588.43</b> |
| <b>Expenditures:</b>                                    |                         |                      |                       |                     |                        |             |                  |                      |
| Instruction   | 16,679,809.26           | 3,947,401.57         | 0.00                  | 0.00                | 0.00                   | 0.00        | 0.00             | 20,627,210.83        |
| Support services  | 10,529,711.34           | 2,983,839.48         | 0.00                  | 0.00                | 0.00                   | 0.00        | 0.00             | 13,513,550.82        |
| Noninstructional services                               | 5,000.00                | 3,547,987.07         | 0.00                  | 0.00                | 0.00                   | 0.00        | 0.00             | 3,552,987.07         |
| Sixteenth section                                       | 0.00                    | 22,211.00            | 0.00                  | 0.00                | 0.00                   | 0.00        | 0.00             | 22,211.00            |
| Facilities acquisition and construction                 | 0.00                    | 0.00                 | 2,010,000.00          | 0.00                | 0.00                   | 0.00        | 0.00             | 2,010,000.00         |
| <b>Debt Service</b>                                     |                         |                      |                       |                     |                        |             |                  |                      |
| Principal   | 110,000.00              | 0.00                 | 0.00                  | 2,002,545.00        | 0.00                   | 0.00        | 0.00             | 2,112,545.00         |
| Interest  | 12,500.00               | 0.00                 | 0.00                  | 1,113,992.00        | 0.00                   | 0.00        | 0.00             | 1,126,492.00         |
| Other   | 100.00                  | 0.00                 | 0.00                  | 14,000.00           | 0.00                   | 0.00        | 0.00             | 14,100.00            |
| <b>Total Expenditures</b>                               | <b>27,337,120.60</b>    | <b>10,501,439.12</b> | <b>2,010,000.00</b>   | <b>3,130,537.00</b> | <b>0.00</b>            | <b>0.00</b> | <b>0.00</b>      | <b>42,979,096.72</b> |
| <b>Excess(deficiency) of revenues over expenditures</b> | <b>1,489,596.40</b>     | <b>63,481.31</b>     | <b>(2,010,000.00)</b> | <b>15,914.00</b>    | <b>5,500.00</b>        | <b>0.00</b> | <b>0.00</b>      | <b>(435,508.29)</b>  |

Starkville School District  
 Combined Budget - Original  
 For the Year Ending June 30, 2012  
 Date Approved: 10/13/2011

|   | Governmental Fund Types |                   |                     |                  | Proprietary Fund Types |             |                  | Total               |
|---|-------------------------|-------------------|---------------------|------------------|------------------------|-------------|------------------|---------------------|
|   | General                 | Special Revenue   | Capital Projects    | Debt Service     | Permanent Trust        | Enterprise  | Internal Service |                     |
| <b>Other Financing Sources (Uses)</b>               |                         |                   |                     |                  |                        |             |                  |                     |
| Proceeds of General Obligation Bonds                | 0.00                    | 0.00              | 2,010,000.00        | 0.00             | 0.00                   | 0.00        | 0.00             | 2,010,000.00        |
| Proceeds of Refunding Bonds                         | 0.00                    | 0.00              | 0.00                | 0.00             | 0.00                   | 0.00        | 0.00             | 0.00                |
| Proceeds of Loans                                   | 0.00                    | 0.00              | 0.00                | 0.00             | 0.00                   | 0.00        | 0.00             | 0.00                |
| Inception of Capital Leases                         | 0.00                    | 0.00              | 0.00                | 0.00             | 0.00                   | 0.00        | 0.00             | 0.00                |
| Insurance Loss Recoveries                           | 0.00                    | 0.00              | 0.00                | 0.00             | 0.00                   | 0.00        | 0.00             | 0.00                |
| Sale of Transportation Equipment                    | 0.00                    | 0.00              | 0.00                | 0.00             | 0.00                   | 0.00        | 0.00             | 0.00                |
| Sale of Other Property                              | 0.00                    | 0.00              | 0.00                | 0.00             | 0.00                   | 0.00        | 0.00             | 0.00                |
| Indirect Costs                                      | 50,000.00               | 0.00              | 0.00                | 0.00             | 0.00                   | 0.00        | 0.00             | 50,000.00           |
| Other Transfers in                                  | 413,433.93              | 815,067.67        | 0.00                | 0.00             | 0.00                   | 0.00        | 0.00             | 1,228,501.60        |
| Payments to Escrow Agent                            | 0.00                    | 0.00              | 0.00                | 0.00             | 0.00                   | 0.00        | 0.00             | 0.00                |
| Miscellaneous Other Financing Sources               | 0.00                    | 94,000.00         | 0.00                | 0.00             | 0.00                   | 0.00        | 0.00             | 94,000.00           |
| Indirect Transfers Out                              | 0.00                    | 3,020.00          | 0.00                | 0.00             | 0.00                   | 0.00        | 0.00             | 3,020.00            |
| Other Transfers Out                                 | 1,098,158.00            | 214,036.00        | 0.00                | 0.00             | 0.00                   | 0.00        | 0.00             | 1,312,194.00        |
| Payment to Refunded Bond Escrow Agent               | 0.00                    | 0.00              | 0.00                | 0.00             | 0.00                   | 0.00        | 0.00             | 0.00                |
| Payment to Qualified Zone Academy Debt Escrow Agent | 0.00                    | 0.00              | 0.00                | 0.00             | 0.00                   | 0.00        | 0.00             | 0.00                |
| Miscellaneous Other Financing Use                   | 0.00                    | 7,700.00          | 0.00                | 0.00             | 0.00                   | 0.00        | 0.00             | 7,700.00            |
| <b>Total Other Financing Sources(Uses)</b>          | <b>(634,724.07)</b>     | <b>884,311.67</b> | <b>2,010,000.00</b> | <b>0.00</b>      | <b>0.00</b>            | <b>0.00</b> | <b>0.00</b>      | <b>2,059,587.60</b> |
| <b>Net Change in Fund Balances</b>                  | <b>854,872.33</b>       | <b>747,792.98</b> | <b>0.00</b>         | <b>15,914.00</b> | <b>5,500.00</b>        | <b>0.00</b> | <b>0.00</b>      | <b>1,624,079.31</b> |

Starkville School District  
 Combined Budget - Original  
 For the Year Ending June 30, 2012  
 Date Approved: 10/13/2011

|  | Governmental Fund Types |                 |                  | Debt Service | Permanent Trust | Proprietary Fund Types |                  | Total          |
|--|-------------------------|-----------------|------------------|--------------|-----------------|------------------------|------------------|----------------|
|  | General                 | Special Revenue | Capital Projects |              |                 | Enterprise             | Internal Service |                |
| <b>Fund Balances / Retained Earnings</b>     |                         |                 |                  |              |                 |                        |                  |                |
| July 1, 2011                                 | 1,310,480.06            | 1,595,219.61    | 8,548,784.89     | 1,353,950.50 | 78,241.39       | 0.00                   | 0.00             | 12,886,676.45  |
| Prior period adjustments                     |                         |                 |                  |              |                 |                        |                  |                |
| Reclassify fund equity                       | 0.00                    | 0.00            | 0.00             | 0.00         | 0.00            | 0.00                   | 0.00             | 0.00           |
| Unrecorded fund equity                       | 904,775.71              | 1,309,245.45    | (8,193,449.59)   | 138,408.48   | 0.00            | 0.00                   | 0.00             | (5,841,019.97) |
| Reclassify fund types                        | 0.00                    | 0.00            | 0.00             | 0.00         | 0.00            | 0.00                   | 0.00             | 0.00           |
| July 1, 2011 as restated                     | 2,215,255.77            | 2,904,465.06    | 355,335.30       | 1,492,358.98 | 78,241.39       | 0.00                   | 0.00             | 7,045,656.48   |
| Increase (decrease) in reserve for inventory | 0.00                    | 0.00            | 0.00             | 0.00         | 0.00            | 0.00                   | 0.00             | 0.00           |
| June 30, 2012                                | 3,070,128.10            | 3,652,258.04    | 355,335.30       | 1,508,272.96 | 83,741.39       | 0.00                   | 0.00             | 8,669,735.79   |

The above Original budget has been approved by the School board as noted in our board minutes dated 06/21/2011

Board President \_\_\_\_\_ Date: \_\_\_\_\_  
 Dr. Keith Coble

Board Secretary \_\_\_\_\_ Date: \_\_\_\_\_  
 Lee Brand, Jr.

**10.**

**APPROVAL OF THE FRANCHISE AGREEMENT BETWEEN THE  
 CITY OF STARKVILLE, MISSISSIPPI AND KDL/WINDSTREAM  
 FOR THE USE OF CITY RIGHT-OF-WAY**

Upon the motion of Alderman Richard Corey, duly seconded by Alderman Henry Vaughn, Sr., and unanimously approved by the Board, to approve the September 6, 2011 Official Agenda, with no objections to the Consent Items, in which approval to "execute the Franchise Agreement between the City of Starkville, Mississippi and KDL/Windstream for the use of City Right-of-Way" is enumerated, this consent item is thereby unanimously approved.

**NONEXCLUSIVE TELECOMMUNICATIONS FRANCHISE AGREEMENT**

**BY AND BETWEEN THE CITY OF STARKVILLE, MISSISSIPPI  
 AND  
 WINDSTREAM KDL, INC.**

**DATED AS OF SEPTEMBER \_\_\_\_\_, 2011**

**NONEXCLUSIVE TELECOMMUNICATIONS FRANCHISE AGREEMENT**

**THIS AGREEMENT** is dated this \_\_\_\_\_ day of September, 2011, and is by and between the City of Starkville, Mississippi, a municipal corporation, with its principal mailing address being 101 East Lampkin Street, Starkville, Mississippi 39759 (hereinafter referred to as “the City”) and Windstream KDL, Inc., with its principal place of business at 5020 Smythe Drive, Evansville, IN 47715 (hereinafter referred to as “Grantee”).

## **SECTION 1.**

### **RECITALS**

Grantee is engaged in the business of designing, selling, constructing, managing, installing, maintaining and operating a digital, fiber optic based alternative access telecommunications system.

On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and pursuant to Board order, the Board of Alderman for the City of Starkville, Mississippi, authorized the Mayor to execute and the City Clerk to attest an agreement between the City of Starkville and the Grantee awarding a nonexclusive, revocable telecommunications Franchise to Grantee conditioned upon the successful negotiation by Grantee and the City of all terms and conditions of such Franchise.

The Starkville Board of Aldermen, after due and careful consideration, has concluded that granting a non-exclusive telecommunications Franchise to Grantee pursuant to and in accordance with this Agreement would be in the best interest of the City and its residents.

NOW, THEREFORE, in consideration of the recitals and the mutual covenants and agreements set forth herein, the parties hereto agree as follows:

## **SECTION 2.**

### **DEFINITIONS**

For the purpose of this Agreement the following terms, phrases, words, abbreviations and their derivations shall have the meaning given herein unless more specifically defined within other sections of this Agreement. When not inconsistent with the context, words used in the present tense include the future tense; words in the single number include the plural number.

- (a) “Acceptance Fee” shall mean \$10,000.
- (b) “Anniversary Date” shall mean the later of the date on which this Agreement is accepted by the City of Starkville or the date on which City receives the Acceptance Fee from Grantee.
- (c) “Annual Fee” shall mean \$20,000.
- (d) “Annual Gross Revenue Based Fee” means an amount equal to five percent (5%) of Grantee’s Gross Revenues received by Grantee during the year for the operation of Grantee’s Network within the City.
- (e) “City” shall mean the City of Starkville, a municipal corporation, organized and existing under the laws of the State of Mississippi.
- (f) “Compensation Year” means each calendar year during the term of this Franchise Agreement in which General Compensation is paid by Grantee to the City.
- (g) “Day or Days” shall mean a calendar day or days.
- (h) “Director of Public Services” shall mean the Director of the City’s Department of Public Services or his designee.

- (i) "Franchise" shall mean the non-exclusive, revocable privilege granted to Grantee to use certain Public Ways of the City of Starkville for the purposes of constructing, installing, using, maintaining, testing, managing, inspecting, operating, repairing and removing telecommunications systems and services.
- (j) "General Compensation" means the amount Grantee is required to pay City under Section 11.
- (k) "Grantee" shall mean Windstream KDL, Inc., its successors and assigns.
- (l) "Gross Revenue" shall have the meaning as set forth in Section 11(d) below.
- (m) "Network shall mean the Grantee's system of cables, wires, lines, towers, wave guides, optic fiber, microwave, laser beams, and any associated converters, equipment or facilities designed and constructed for the purpose of producing, receiving, amplifying or distributing by data, audio, video or other forms of electronic signals to or from subscribers or locations within the City.
- (n) "Public Ways" means the surface of, as well as the space above and below any public street, road, highway, freeway, lane, path, public way, or place, alley, court, sidewalk, boulevard, parkway, drive or other easement, or any extension thereof, now or hereafter held by the City for any public purpose and shall include such other easements or rights-of-way or extensions thereof as shall be now held or hereafter held by the City.

### **SECTION 3.**

#### **GRANT OF AGREEMENT**

There is hereby granted, subject to the terms of this Agreement, to Grantee, for an initial term of ten (10) years from the passage of this Agreement, the non-exclusive right and privilege to have, acquire, construct, expand, reconstruct, maintain, use and operate a Network in, along, across, on, over, through, above and under all Public Ways of the City. Grantee shall not provide cable services or operate a cable system as defined in the Cable Communications Policy Act of 1992 (47 U.S.C.A. §521, et seq., as amended) or as recognized by the Federal Communications Commission (the "FCC") without first obtaining a separate cable franchise from the City of Starkville and shall not allow the use of the Network by a cable system that has not been granted a franchise by the City. This Agreement is granted to Grantee solely for the purpose of directly serving its customers (including hotels, motels, hospitals and buildings with shared tenant services) and communications carriers.

### **SECTION 4.**

#### **CONSTRUCTION, MAINTENANCE, EXPANSION, RECONSTRUCTION AND EXCAVATION**

(a) The construction, expansion, reconstruction, excavation, use, maintenance and operation of Grantee's Network, facilities and property shall be subject to all lawful regulations of the City and performed in accordance with the City's regulations for utility location and coordination. In addition to any other City regulations or requirements, forty-five (45) days prior to the commencement of construction, Grantee shall provide the City Planner and Director of Public Services (or such other officials as the City may designate from time to time) with a copy of the construction work plans and drawings. Grantee shall not proceed with construction until plans and drawings have been approved in writing by the proper City officials.

(b) Upon request of the City, Grantee shall remove and abate any portion of the Network that is dangerous to life or property, and in case Grantee, after notice, fails or refuses to act, the City may remove or abate the same, at the sole cost and expense of Grantee, all without compensation or liability for damages to Grantee. Grantee shall promptly restore the public streets, alleys and rights-of-way to their condition prior to Grantee's construction, maintenance or excavation, to the reasonable satisfaction of the City Engineer. Grantee shall excavate only for the construction, installation, expansion, repair, removal and maintenance of all or a portion of its Network. Grantee shall obtain an excavation permit prior to any excavation work and shall comply with all city ordinances and requirements for construction work to be performed.

(c) Except in an emergency, Grantee shall not excavate any pavement in any Public Ways without first securing permission of the Building, Codes and Planning Department head or the City Engineer, but such permission may be given if the proposed excavation is in accordance with the terms of this Agreement. The head of the Building, Codes and Planning Department shall be notified as soon as practicable regarding work performed under emergency conditions; and Grantee shall comply with the reasonable requirements for restoration of any disturbed public property.

(d) Within thirty (30) days of completion of each segment of Grantee's Network, Grantee shall supply the City with a complete set of "as built" drawings for that segment. Further, after each replacement, relocation, reconstruction or removal, Grantee shall promptly notify the City of the exact changes made and shall provide a new set of "as built" drawings of each modification to the Head of the Building, Codes and Planning Department. Grantee will obtain City's approval before any system changes are made.

(e) Grantee shall complete construction and full activation of one hundred percent (100%) of its initial Network within twelve (12) months of execution of this Agreement. Further, Grantee shall be capable of providing service to its customers no later than twelve (12) months after execution of this Agreement.

(f) Grantee specifically understands and agrees that in no event shall construction of its Network involve aerial placement of its cable, unless Grantee receives authorization for aerial cables from the Building, Codes and Planning Department Head, or his designee and the Starkville Electric Department Head or his designee. Grantee further agrees that in the event the City makes a future determination that cables shall be underground, Grantee shall relocate all aerial cables to an underground location approved by the City.

## **SECTION 5.**

### **TERM OF AGREEMENT**

This Agreement shall be in full force and effect for a period of ten (10) years. Upon expiration, the parties shall either negotiate an extension hereof or Grantee shall remove any facilities it has placed in the City ROW pursuant to this Agreement.

## **SECTION 6.**

### **CONSTRUCTION WORK REGULATION BY CITY AND UNDERGROUND CONDUIT USE BY CITY**

(a) All work done in connection with the construction, expansion, reconstruction, maintenance or repair of the Network shall be subject to and governed by all laws, rules, regulations and policies of the City, and Grantee shall place certain facilities underground according to reasonable requirements that may be adopted from time to time by the City.

(b) All excavations and other construction in the Public Ways shall be carried on to interfere as little as practicable with the use of public and private property and in accordance with any direction given by the City under the police and regulatory powers of the City.

(c) Grantee may be required by the City to attach portions of the Network to poles or to share outer conduit or trench space maintained by any other person or entity, or to permit the wires or equipment of any other person or entity franchised by the City to be attached to the facilities owned and maintained by the Grantee, upon reasonable, nondiscriminatory terms acceptable to Grantee. City will make such requirements known to Grantee prior to the commencement of construction of Grantee's Network. Grantee may require any such person or entity to furnish evidence of adequate insurance covering Grantee and adequate bonds covering the performance of the person or entity attaching to Grantee's facilities as a condition precedent to granting permission to any such person or entity to attach wires or equipment to Grantee's facilities; provided Grantee's requirements for such insurance shall be reasonable.

(d) Any facilities of other persons or entities that are attached to or within Grantee's Network shall be placed, replaced, maintained and removed in a safe manner so that the attachment does not interfere unnecessarily with the erection, replacement, operation, repair or maintenance of the Network of other persons or entities using the same Network. Grantee shall not be required to attach its Network to the facilities of any other person or entity franchised by the City or to permit the facilities of any other person or entity to be attached to Grantee's facilities, if it can be satisfactorily shown that thereby that Grantee will be subjected to increased risks or interruption to its service or to increased liability for accidents, or if the facilities of such other person or entity are not of the character, design and construction required by, or are not being maintained in accordance with current practice.

## SECTION 7.

### **BONDS; LETTERS OF CREDIT; ESCROW FUND**

(a) Provision for Bond. Grantee shall obtain and maintain, at its sole cost and expense, and file with the City Clerk, a corporate surety bond with a surety company authorized to do business in the State of Mississippi and found acceptable by the City Attorney, in the amount of TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000) both to guarantee the timely construction and full activation of Grantee's Network and to secure Grantee's performance of its obligations and faithful adherence to all requirements of this Agreement. After the first five (5) years of the initial term, bond requirement shall be reduced to SEVENTY FIVE THOUSAND DOLLARS (\$75,000). Grantee shall provide this corporate surety bond at the time of its execution of this Agreement by the City of Starkville.

The bond shall provide, but not be limited to, the following condition: there shall be recoverable by the City, jointly and severally from the principal and surety, any and all damage, loss or costs suffered by the City resulting from the failure of the Grantee to satisfactorily construct, complete and fully activate one hundred percent (100%) of the Network miles within 12 months after passage of this Agreement.

(b) Provision for Letter of Credit and Escrow Fund. In the event that Grantee does not provide a bond as required above, as an alternative, Grantee shall provide a letter of credit in the amount of TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000) to secure the performance by Grantee of its obligations hereunder.

The Letter of Credit shall be for a minimum of one (1) year with standard "evergreen" provisions so that such Letter of Credit is available throughout the term of the Franchise Agreement. The Letter of Credit shall be drawn upon in the manner provided below.

Such Letter of Credit shall be in form and content which is reasonably acceptable to the City, and shall be issued by a United States bank or financial institution having a credit rating for its long-term debt of at least "B," or the equivalent thereof, from a nationally recognized credit rating agency. Such Letter of Credit shall be delivered to the City at the time of the execution of this Agreement.

Upon the occurrence of any Event of Default by the Grantee hereunder, the City may draw on the Letter of Credit in an amount equal to the City's damages with respect to any Event of Default, or the City may draw full value of the Letter of Credit if such Letter of Credit is within ninety (90) days of its termination date. If only a portion of the Letter of Credit is drawn, the Grantee within thirty (30) days from the draw, must take all steps necessary to replenish the Letter of Credit up to the Security Amount. Draws on the Letter of Credit not needed to cover damages suffered by the City as the result of an Event of Default of the Grantee shall be deposited in the Escrow Fund established herein and used in accordance with such provisions.

Upon termination of the letter of Credit as provided above, an Escrow Fund shall be established and shall be held pursuant to the terms of a written agreement by and between the City, the Grantee and the Escrow Agent which shall be an in-state banking institution with at least a B rating or the equivalent thereof selected by the City.

In the event the Letter of Credit is drawn upon within ninety (90) days of its termination date, draws upon and disbursement from the Escrow Fund shall be made upon the occurrence of any Event of Default hereunder, in an amount equal to the City's damages with respect to any Event of Default. Upon the occurrence of any draw from the Escrow Fund, the Grantee, within thirty (30) days from such draw, must replenish the Escrow Fund up to the amount of Two Hundred Fifty Thousand Dollars (\$250,000). However, notwithstanding the above, upon the expiration of the term of this Agreement, the amount on deposit in the Escrow Fund (as of the date of such expiration) shall (assuming that Company has not defaulted, nor is it in default under the terms of this Agreement on or prior to such expiration date) be paid by the Escrow Agent to Grantee.

Pending application of the amounts which are on deposit in the Escrow Fund as set forth above, such amounts shall be invested by the Escrow Agent (at the direction of the Grantee) in any investment permitted by the terms of the Escrow Agreement with the approval of the City. Any income derived from the investment of amounts which are on deposit in the Escrow Fund from time to time which is not needed to maintain such Escrow Fund at a level equal to the Security Amount shall be transferred on the first business day of each month to the Grantee. Provided there is no Event of Default in existence on the fifth Anniversary Date of the execution of this Agreement, the letter of credit, or alternatively, the amount on deposit in the Escrow Fund, may be reduced to SEVENTY FIVE THOUSAND DOLLARS (\$75,000).

(c) Any extension to the prescribed time limit of one hundred percent (100%) of Network miles within 12 months shall be authorized by the Board of Aldermen.

(d) The rights reserved to the City with respect to the bond and letter of credit are in addition to all other rights of the City, whether reserved by this Agreement or authorized by law and no action, proceeding or exercise of a right with respect to such bond shall affect any other rights the City may have.

(e) The bond shall contain the following endorsement: It is hereby understood and agreed that this bond may not be canceled by the surety and any intention not to renew may not be exercised by the surety until sixty (60) days after receipt by the City, by registered mail, of written notice of such intent.

## **SECTION 8.**

### **INSURANCE**

(a) Grantee shall obtain and maintain in full force and effect throughout the term of this Agreement, and any extension or renewal thereof, insurance with an insurance company licensed to do business in the State of Mississippi, and acceptable to the City. The insurance shall be issued in the standard form approved by the State Insurance Commission. Grantee shall provide City with proof of such insurance so required at the time of executing this Agreement. The City reserves the right to review these insurance requirements during the effective period of the Agreement and any extension or renewal thereof, and to adjust insurance coverage and their limits when deemed necessary and prudent, based upon changes in statutory law, court decisions or the claims history of the industry or the Grantee.

(b) Subject to Grantee's right to maintain reasonable deductibles, Grantee shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension or renewal thereof, at Grantee's sole expense, insurance policy coverage in the following type and minimum amounts:

| TYPE  | AMOUNT   |
|---|--|
| 1. Worker's Compensation and Employer's Liability   | Statutory \$100,000/500,000/100,000  |
| 2. Commercial General (public) Liability to include coverage for the following where exposure exists:<br><br>(i) Premises operations<br>(ii) Independent contractors<br>(iii) Products/completed<br>(iv) Personal injury<br>(v) Contractual liability<br>(vi) Explosion, collapse and underground property damage | Combined single limit for bodily injury and property damage \$3,000,000 per occurrence or its equivalent |
| 3. Comprehensive Automobile insurance coverage for loading and unloading hazards, for:<br><br>(i) Owned/leased automobiles<br>(ii) Non-owned automobiles<br>(iii) Hired automobiles   | Combined single limit for bodily injury and property damage \$1,000,000 per occurrence or its equivalent |

(c) The City shall be entitled, upon request and without expense, to review copies of the policies and all endorsements hereto. The City may make any reasonable requests for deletion, revision or modification of particular policy terms, conditions, limitations or exclusions, except where policy provisions are established by law or regulation binding upon either City or Grantee or upon the underwriter for any of such policies. City acknowledges and agrees that the insurance policies and all endorsements thereto are strictly confidential, and shall not be provided to or discussed with any third party.

(d) Grantee agrees that with respect to the above required insurance, all insurance contracts will contain the following required provision:

(i) Name the City of Starkville and its officers, employees, board members and elected officials as additional insureds (as the interests of such insured may appear) as to all applicable coverage;

(e) Grantee shall provide the City of Starkville forty-five (45) days notice prior to the cancellation, nonrenewal, or any material change to the insurance policy required above. Said notice shall be provided to both the City Clerk and the Office of Risk Management.

(f) Provide that all provisions of the agreement concerning liability, duty and standard of care, including the Indemnity, Section 16, of this Agreement, shall be underwritten by contractual coverage sufficient to include such obligations within applicable policies.

(g) The insurance policies obtained by Grantee in compliance with this Section shall be subject to approval by the City, and such proof of insurance, shall be filed and maintained with the City Clerk during the term of this Agreement, or any extension or renewal thereof, and may be changed from time to time to reflect changing liability limits, as required by the City. Grantee shall immediately advise the City Attorney of any actual or potential litigation that may develop that would affect this insurance.

(f) Insurers shall have no right of recovery against the City, it being the intention that the insurance policies shall protect Grantee and the City and shall be primary coverage for all losses covered by the policies.

(g) Companies issuing the insurance policies shall have no recourse against the City of Starkville for payment of any premiums or assessments which are negotiated at the sole risk of the Grantee.

## SECTION 9.

### **WORK BY OTHERS, CONSTRUCTION BY ABUTTING OWNERS, ALTERATION TO CONFORM WITH PUBLIC IMPROVEMENT**

(a) The City reserves the right to lay and permit to be laid, sewer, gas, water and other pipe lines or cables and conduits, and to do and permit to be done, any underground and overhead work that may be deemed necessary or proper by the City in, across, along, over or under any Public Way occupied by Grantee, and to change any curb or sidewalk or the grade of any street. In permitting such work to be done, the City shall not be liable to Grantee for any damages provided, however, nothing herein shall relieve any other person or entity from liability for damage to Grantee's Network. All work performed will be in accordance with the City's policies, ordinances, regulations and procedures.

(b) In the event that the City authorizes abutting landowners to occupy space under the surface of any Public Way, such grant to an abutting landowner shall be subject to the rights herein granted to Grantee. In the event that the City shall close or abandon any Public Way which contains any portion of Grantee's Network, any conveyance of land contained in such closed or abandoned Public Way shall be subject to the rights herein granted.

(c) Whenever by reason of the changes in the grade of any street or in the location or the manner of constructing any water pipes, gas pipes, sewers or any other underground or overhead structure for any public purpose whatever, it shall be deemed necessary by the City to alter, change, adapt or conform the underground or overhead portion of Grantee's Network thereto, such alterations or changes shall be promptly made by Grantee when ordered in writing by the City, without claim for reimbursement or damages against the City. The City shall have the right to require Grantee, at no expense to the City, to adapt or conform its Network, or to alter, relocate or change its Network to enable the City to use, or to use with greater convenience, any Public Way.

(d) In the event that Grantee has not relocated those of its affected facilities which are located in a Public Way within a reasonable length of time (as determined by the City's Director of Public Works; Building, Codes and Planning Department Head and City Engineer) prior to the City's commencement date for Public Way construction, the City shall have the right to relocate or cause to be relocated the affected portion of Grantee's Network, and the Grantee shall reimburse the City for all costs of relocation.

(e) During the term of this Agreement, Grantee shall be liable for the acts or omissions of any entity used by Grantee (including an affiliate) when such entity is involved directly or indirectly in the construction, installation, maintenance or operations of Grantee's Network as if the acts or omissions of such entity were the acts or omissions of Grantee.

## SECTION 10.

### **COMPLIANCE WITH CITY ORDINANCE AND STATE LAWS**

Grantee recognizes, accepts and agrees that the terms, conditions and provisions of this Agreement are subject to the applicable provisions of the City of Starkville's Code of Ordinances, and any applicable state or federal laws/regulations, as amended.

## SECTION 11.

### COMPENSATION TO THE CITY

- (a) Initial Fee – [INTENTIONALLY DELETED]
- (b) Acceptance Fee – Within fifteen (15) days after execution of this Agreement, Grantee shall pay to the City a one-time Acceptance fee of \$10,000.
- (c) General Compensation – For the reason that the Public Ways to be used by Grantee in the operation of its Network within the boundaries of the City are valuable public properties, acquired and maintained by the City at a great expense to its taxpayers, and that the grant to Grantee of the use of said Public Ways is a valuable property right without which Grantee would be required to invest substantial capital in costs and acquisitions, the Grantee agrees to pay to the City as General Compensation during each year of this Agreement, a sum equal to the greater of the Annual Fee (as defined in Section 2 above) and the Annual Gross Revenue Based Fee, as defined in Section 2 above.
- (d) Calculation and Payment on a Quarterly Basis – Grantee shall pay to the City for each quarter any amount equal to the greater of:
- (i) one fourth ( $\frac{1}{4}$ ) of the Annual Fee, calculated on the basis of a twelve month Compensation Year, or
  - (ii) the Annual Gross Revenue Based Fee for such quarter.

The greater of (i) or (ii) above shall be referred to as the “Quarterly Payment.” Grantee shall forward by check or money order an amount equal to the Quarterly Payment by the fifteenth (15th) day of the calendar month immediately following the close of the calendar quarter for which the payment is calculated. Any necessary prorations shall be made.

(e) Recalculation at end of Compensation Year – At the end of each Compensation Year, Grantee shall recalculate the total General Compensation actually due. If additional amounts are due the City by Grantee, said amounts shall be paid by the fifteenth (15th) day of the second month of the Compensation Year following the Compensation Year during which such amounts were originally due. If amounts are found to be due the Grantee by the City, said amounts shall be credited by the fifteenth (15th) day of the second month of the Compensation Year during which such amounts were originally due. Any necessary proration shall be made. The compensation set forth in this Section 12 shall be exclusive of and in addition to all special assessments and taxes of whatever nature, including, but not limited to, ad valorem taxes. In the event any Quarterly Payment is made after noon on the date due, Grantee shall pay a late payment penalty of the greater of: (i) one hundred dollars (\$100) or (ii) simple interest at ten percent (10%) annual percentage rate of the total amount past due. As used in this Section 11, Gross Revenues shall mean all revenues (exclusive of taxes collected pursuant to federal, state and local laws and interconnect charges for access to carriers other than Grantee) collected by Grantee from operation of Grantee’s Network installed pursuant to this Agreement, and any related services provided by the Grantee within the corporate limits of the City including, but not limited to:

- (i) all telecommunications service revenue charges on a flat rate basis,
- (ii) all telecommunication services charged on a usage sensitive or mileage basis,
- (iii) all revenues from installation service charges,
- (iv) all revenues from connection or disconnection fees,
- (v) all revenues from penalties or charges to customers for checks returned from banks, net of bank costs paid,
- (vi) all revenues from equipment sold or rented to customer upon customer premises,
- (vii) all revenues from local service,
- (viii) all revenues from authorized rental of conduit space,

- (ix) all revenues from authorized rentals of any portion of Grantee's Network, including plant, facilities or capacity leased to others,
- (x) all other revenues collected by Grantee from business pursued within the City, and recoveries of bad debts previously written off and revenues from the sale or assignment of bad debts.

Unrecovered bad debts charged off after diligent, unsuccessful efforts to collect are excluded from Gross Revenues.

(f) Payment of money under this Section shall not in any way limit or inhibit any of the privileges or rights of the City of Starkville, whether under this Agreement or otherwise.

(g) The acceptance by the City of any payments shall not be construed as an accord by the City that the amount of such payment of the Annual Gross Revenue Based Fee is the correct amount due from Grantee pursuant to this Agreement, nor shall such acceptance of any payment be construed to be a release or waiver of any claim the City may have for further or additional sums due and payable pursuant to this Agreement.

(h) Grantee shall file annually with the City Clerk no later than ninety (90) days after the end of Grantee's fiscal year, a statement of Gross Revenues (for that year). This statement shall present a detailed breakdown of Gross Revenues. Grantee will provide any data and information necessary for City to validate revenues and reconcile fees. Should City find a discrepancy of +/- 5%, Grantee will reimburse City for its expenses related to the audit and pay any back fees that are owed.

(i) Any transactions which have the effect of circumventing payment of required Agreement fees and/or evasion of payment of Agreement fees by non-collection or non-reporting of Gross Revenues, bartering or any other means which evade the actual collection of revenues for business pursued by Grantee are prohibited.

## **SECTION 12.**

### **WAIVER**

The terms and conditions of this Agreement shall not be waived unless the parties mutually agree to a waiver in writing.

## **SECTION 13.**

### **ACCOUNTS AND OTHER RECORDS AND REPORTS AND INVESTIGATIONS**

(a) Grantee shall keep the City fully informed as to all matters in connection with or affecting the construction, reconstruction, removal, maintenance, operation and repair of Grantee's Network, Grantee's accounting methods and procedures in connection therewith, and the recording and reporting by Grantee of all revenues and uncollectibles.

(b) Grantee shall keep complete and accurate books of account and records of its business and operations pursuant to this Agreement in accordance with generally accepted accounting principles, subject to approval by the City. If required by the FCC, /grantee shall use the system of accounts and forms of books, accounts, records and memoranda prescribed by the FCC in 47 CFR Part 32 or its successor and as may be further described herein. The City may require the keeping of additional records or accounts which are reasonably necessary for purposes of identifying, accounting for and reporting Gross Revenues and uncollectibles for purposes of Section 11. Grantee shall keep its books of account and records in such a way that breakdowns of revenues are available by type of service within the City. In order to determine the Gross Revenues received by the Grantee for those categories identified in Section 11, Grantee agrees that on the same date that payment is made, as provided in Section 11, it will file with the City Clerk a sworn

copy of a report in sufficient detail to itemize revenues from each of the categories identified in Section 11. City may, if it sees fit, have the books and records of Grantee examined by a representative of the City to ascertain the correctness of the reports agreed to be filed herein.

(c) Grantee shall report to the City such other information relating to Grantee as the City may consider useful and shall comply with the City's determination of forms for reports, the time for reports, the frequency with which any reports are to be made, and whether reports are to be made under oath.

(d) Grantee shall provide the City with access at reasonable times and for reasonable purposes, to examine, audit, review and/or obtain copies of the papers, books, accounts, documents, maps, plans and other records of Grantee pertaining to this Agreement. Grantee shall fully cooperate in making available its records and otherwise assisting in these activities.

(e) The City may, at any time, make inquiries pertaining to Grantee's operation of its Network within the City of Starkville. Grantee shall respond to such inquiries pertaining to Grantee's operating of its Network within the City of Starkville on a timely basis.

(f) Grantee shall provide the City with notices of all petitions, applications, communications and reports submitted by Grantee to the FCC, Securities and Exchange Commission and the Mississippi Public Service Commission, or their successor agencies, relating to any matters targeting the use of the City Public Ways and/or the telecommunications operations authorized pursuant to this Agreement. Upon written request from City, Grantee shall provide the City with copies of all such documentation.

#### **SECTION 14.**

#### **RULES AND REGULATIONS**

In order to ascertain any and all facts, the City shall have full power and authority from Grantee, at Grantee's expense, to: (i) inspect, or cause to be inspected, the books and records of Grantee; (ii) inventory and appraise, or cause to be inventoried and appraised, the property of Grantee within the City of Starkville; and (iii) compel the attendance of witnesses and the production of books and records.

#### **SECTION 15.**

#### **ASSIGNMENT OR LEASE OF AGREEMENT**

Neither the Franchise, nor any rights or obligations of Grantee provided under the Franchise or this Agreement, or any guarantee of the performance of Grantee's obligations pursuant to the terms of the Franchise, nor the Grantee's right, title or interest in any part of the Network, shall be assigned, sold or transferred in any manner, in whole or in part, to any person without the prior written consent of the City. The Grantee shall have the right to mortgage or pledge a portion or all of the Network in order to secure financing in the ordinary course of business. Notwithstanding the foregoing, no such mortgage or pledge shall relieve Grantee from any of the terms and conditions of the Franchise. Should the Grantee sell, assign, transfer, convey or otherwise dispose of any of its rights or its interests under this Agreement, or attempt to do so, in violation of this requirement to obtain prior consent, the City may revoke this Agreement for default, in which event all rights and interest of the Grantee shall cease and no purported sale, assignment, transfer or conveyance shall be effective.

#### **SECTION 16.**

#### **INDEMNITY**

Grantee shall indemnify, defend and save whole and harmless, the City and all of its officers, agencies and employees against and from any and all claims, suits, judgments, actions, losses, costs and expenses, including attorney's fees and costs or expenses incidental to the investigation and defense of

successful claims and lawsuits brought, on behalf of or on account of any injuries or damages received or sustained by any person, firm or corporation or to any property, which may be occasioned by or arising out of or from, the conduct of Grantee in connection with this Agreement, the construction, reconstruction, expansion, removal, maintenance, operation, use or repair of Grantee's Network, the conduct of Grantee's business in the City pursuant to this Agreement, any occurrence in connection with the Agreement, any and all successful lawsuits arising from any breach or default on the part of Grantee in the performance of any term, condition, provision, covenant or agreement to be performed by Grantee pursuant to this Agreement, any act or omission of Grantee, or any of its agents, contractors, subcontractors, servants, employees or licensees, or in relationship between Grantee and its end use customers and retailers whether caused by or attributable solely to Grantee and others, or the City, and shall pay all judgments, with costs, counsel fees and expenses, which may be obtained against the City related to any such claims, all to the extent of the negligence of Grantee in undertaking such acts. City agrees to give Grantee prompt and reasonable notice of any claims or lawsuits and Grantee shall have the right to investigate, compromise and defend same to the extent of its own interest. The above indemnification shall not apply to any judgment of liability resulting from the sole gross negligence or willful misconduct of the City. The terms and provisions contained in this Section are intended to be for the benefit of the City and Grantee and are not intended to be for the benefit of any third party.

#### **SECTION 17.**

#### **OFFICE LOCATION**

Location of the Grantee's local serving office shall be provided and the Grantee shall obtain a privilege license for doing business within the City of Starkville, Mississippi. The City shall have the right to inspect at any time during normal working hours, upon providing seven (7) days notice, books, records, contracts, accounts, documents and papers for its operations within the City. Grantee shall make all such books, records, contracts, accounts, documents and papers available to the City at a location within the City of Starkville upon reasonable prior written notice. All maps, plats, records and inventories and books of the Grantee, insofar as they show values and location of existing property shall be preserved for use, if necessary, in connection with any future valuation of the property of the Grantee.

#### **SECTION 18.**

#### **NOTICES**

All notices shall be submitted from one party to another by certified mail, return receipt requested, as follows:

|                 |  |
|-----------------|--|
| To Grantor:     | Office of the Mayor<br>City of Starkville, Mississippi<br>101 East Lampkin Street<br>Starkville, Mississippi 39759 |
| With copies to: | City Clerk,<br>City of Starkville,<br>101 East Lampkin Street<br>Starkville, MS 39759                              |
| To Grantee:     | Windstream KDL, Inc.<br>Attn: Director – OSP Engineering<br>5020 Smythe Drive<br>Evansville, IN 47715              |
| With a copy to: | Windstream KDL, Inc.<br>Attn: Legal  |

8825 Bond Street  
Overland Park, KS 66214

## **SECTION 19.**

### **DEFAULT**

(a) Event of Default – If, through any cause, Grantee shall fail to fulfill in a timely and proper manner, its obligations under this Agreement, or if Grantee shall violate any of the covenants, agreements or stipulations of this Agreement or any governing laws, ordinances or regulations, Grantee shall be deemed in default of this Agreement. In the case of any event of default, Grantee shall have up to thirty (30) days after written Notice of Default from the Building, Codes and Planning Department Head or the City Engineer to cure such event of default.

(b) Remedies – Remedies available to the City in the event of a default by Grantee shall include:

- (i) Forfeiture and termination of this Agreement, and all its rights and privileges of Grantee hereunder.
- (ii) Specific performance and the payment of any damages resulting to the City as a result of the particular event of default.
- (iii) Any and all remedies available to the City at law or in equity.

(c) Force Majeure – The time within which Grantee shall be required to perform any act under this Agreement shall be extended by a period of time equal to the number of days due to a force majeure. The term “force majeure” shall mean delays due to acts of God, war, civil disturbances, fire, unavoidable casualty, construction delays due to weather or other similar causes beyond the control of Grantee. Notwithstanding anything contained anywhere else in this Agreement, Grantee shall not be excused from performance of any of its obligations under this Agreement by malfeasance of its directors, officers or employees or by mere economic hardship.

## **SECTION 20.**

### **COMPLIANCE WITH LAWS**

Grantee shall comply with all applicable laws, regulations, policies, and procedures of the United States, the State of Mississippi, and the City of Starkville that may apply to this Agreement. Specifically, but not limited to, Grantee shall not discriminate against any employee, contractor or subcontractor, nor shall any party be subject to discrimination in the performance of this Agreement because of race, creed, color, sex, age, national origin or disability. Grantee further agrees to make reasonable efforts to ensure minority and women business participation in the construction and operation of its Network pursuant to the goals of the City of Starkville.

## **SECTION 21.**

### **POLICE POWERS**

In accepting this Agreement, Grantee acknowledges that its rights hereunder are subject to the police power of the City of Starkville to adopt and enforce general ordinances necessary to the safety and welfare of the public; and Grantee shall comply with all applicable general laws and ordinances enacted by the City pursuant to such powers. Any conflict between the provisions of this Agreement and any other present or future lawful exercise of the City’s police powers shall be resolved in favor of the latter. In case of an emergency or disaster, Grantee shall, upon request of the City, make available its facilities to the City, without cost.

**SECTION 22.**

**GOVERNING LAW**

This Agreement shall be construed in accordance with the laws of the State of Mississippi, and any applicable federal laws, rules and regulations. Grantee expressly agrees that under no circumstances shall the City of Starkville be obligated to pay an attorney’s fee or the cost of legal action to Grantee.

**SECTION 23.**

**SEVERABILITY**

If any section, subsection, sentence, clause, phrase, term, provision, condition, covenant or portion of this Agreement is for any reason held invalid or unenforceable by any court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby but shall be deemed as a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof, and each remaining section, subsection, sentence, cause, phrase, term, provision, condition, covenant and portion of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

**SECTION 24.**

**ENTIRE AGREEMENT**

This contract constitutes the entire agreement of the parties with respect to the subject matter contained herein and supersedes and replaces any and all prior negotiations, understandings and agreements, written or oral, between the parties relating hereto.

**SECTION 25.**

**EFFECTIVE DATE**

This Agreement shall take effect after approval and execution by the City of Starkville and Grantee, and the City’s receipt of the Acceptance Fee. The initial Compensation Year as defined in Section 2(e) shall commence on effective date as described above.

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

CITY OF STARKVILLE, MISSISSIPPI

BY: \_\_\_\_\_  
PARKER WISEMAN, MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK  
MARKEETA OUTLAW

WINDSTREAM KDL, INC.

BY: \_\_\_\_\_  
Its: \_\_\_\_\_

11.

**APPROVAL AUTHORIZING EXTENDING THE BUDGET  
RENTAL CAR CONTRACT THROUGH SEPTEMBER 30, 2012**

Upon the motion of Alderman Richard Corey, duly seconded by Alderman Henry Vaughn, Sr., and unanimously approved by the Board, to approve the September 6, 2011 Official Agenda, with no objections to the Consent Items, in which approval to "authorize extending the Budget Rental Car Contract through September 30, 2012" is enumerated, this consent item is thereby unanimously approved.

**CONTRACT FOR PROVISION OF RENTAL CAR SERVICES AT  
AIRPORT**

**THIS CONTRACT** is made and entered into this 6<sup>th</sup> day of September, 2011, by and between the City of Starkville, Mississippi, hereinafter referred to as "City", and Autoway Car Sales, Inc. T/A Budget rent A Car Licensee, hereinafter referred to as "Budget."

**WITNESSETH:**

**WHEREAS**, The Starkville Airport Commission desires to contract for the provision of rental car services at the Starkville Airport; and

**WHEREAS**, Budget can provide airport users with access to rental cars; and

**WHEREAS**, Oktibbeha County, Mississippi, the other signatory in an interlocal agreement for the operation of the airport at Bryan Field agrees that rental car services should be provided at the airport under the terms and conditions set out herein.

**NOW THEREFORE**, for and in consideration of the premises and the mutual promises and covenants contained herein, and other good and valuable consideration, the parties agree as follows:

**1. Rental of counter space.** In exchange for the rental fee set out below, Budget agrees to rent inside counter space in the fixed base operations building at the airport located at Bryan Field, Starkville, Mississippi for the purpose of renting vehicles, under the terms and conditions set out below.

**2. Services to be provided.** Budget will offer rental car services to users of the airport and will staff the rental car counter during normal business hours with a representative that will be courteous and professional to all patrons of the airport. "Normal business hours" shall mean 9:00 a.m. until 5:00 p.m. Monday through Friday, and 8:00 a.m. until 12:00 o'clock noon on Saturday.

**3. Equipment.** Budget will provide at its sole expense all equipment and services needed for its operation, including, but not limited to, telephone service, internet service, computer equipment, and vehicles for hire. City, by and through the Airport Commission, will provide access to a water and electrical outlet for the servicing of vehicles, and five (5) dedicated parking spaces adjacent to the terminal building designated for rental vehicles. Budget will provide at its

sole expenses all signage identifying the parking spaces to be used for rental vehicles. All of Budget's property located in the leased space shall be at the risk of the Budget only and City shall not be liable for any damages or loss of any property in or about the building, how ever caused.

**4. Commencement, Duration, and Renewal.** Budget will commence operations at the airport within two (2) weeks after this contract is executed by all three signatories of the interlocal agreement. The term of this lease shall be twelve (12) months. Budget's obligation to pay rent shall commence on the commencement date. Budget shall have the right and option to extend the term of this lease for two (2) additional periods of twelve (12) months each. The period of extension, if exercised, shall be on the same terms and conditions contained in this lease agreement, with the exception that the monthly rental payment shall be negotiated by the parties at the time of the renewal.

**5. Rental Fee.** Budget will pay a rental fee to the Starkville Airport Commission in the amount of Five Hundred Dollars (\$500.00) per month, payable without set-off or demand in advance on the first day of each calendar month. If the commencement date or the expiration date is other than the first day of a calendar month the Budget shall pay on the commencement date or expiration date a portion of the rent pro rated on a daily basis as rent for such month.

**6. Use.** The leased space shall be used only for the provision of rental car services to the public. The said premises shall be used only for lawful purposes, and Budget holds City harmless for the violation of any laws. Budget is not permitted to sublet or grant use or possession of the leased space to any other person or party.

**7. Indemnification.** Budget shall indemnify City and hold City harmless from and against any and all claims arising from Budget's use of the leased space, from the conduct of Budget's business, or from any activity, work, or thing done, permitted or suffered by Budget in, on or about the leased premises or elsewhere. Budget shall further indemnify City and save City harmless from and against any and all claims arising from any breach or default in performance of any obligation on Budget's part to be performed under the terms of this lease, or arising from any negligence of Budget's principals, agents, contractors, employees, business invitees and guests, and from and against all costs, attorneys fees, expenses and liabilities incurred in defense of any such claim or action or proceeding brought thereon.

**8. Waiver Of Liability.** Budget hereby agrees that City shall not be liable for injury to Budget's business or any loss of income therefrom or for damages to any property of Budget's employees, invitees, customers, or any other person in or about the leased premises. All of Budget's property shall be kept or stored at Budget's risk only and Budget shall hold City harmless from any claims arising out of damage to the same, including subrogation claims by the Budget's insurance carrier.

**9. Default.** The occurrence of any one or more of the following events shall constitute a material default and breach of this lease, authorizing termination of this contract:

- (a) Budget's vacating or abandonment of the premises.

(b) The failure by Budget to make any payment of rent.

(c) The failure by Budget to observe or perform any of the covenants, conditions or provisions of this lease to be observed or performed by Lessee.

(d) (i) The making by Budget of any general assignment or general arrangement for the benefit of creditors; (ii) the filing by or against Budget of a petition to have Budget adjudged a bankrupt or a petition for reorganization or rearrangement under any law relating to bankruptcy; (iii) the appointment of a trustee or receiver to take possession of substantially of the Budget's assets located at the leased premises or of the Budget's interest in this contract; or, (iv) the attachment, execution, or other judicial seizure of substantially all of Budget's assets located at the leased premises or Budget's interest in this lease.

**10. Termination.** Either party to this contract may terminate the same without cause upon giving the other party sixty (60) days' notice in writing of its intention to terminate this contract.

**11. Airport Improvements.** Budget acknowledges that during the term of this agreement the airport maybe doing multiple improvement projects, through grant funds, which may cause minor disruption of traffic patterns on the airport.

**12. Entire Agreement.** This agreement constitutes the entire agreement of the parties with reference to the subject matter hereof and supersedes all prior negotiations, understandings, representations, and agreements, if any. The parties acknowledge that that are entering into this agreement as a result of their own independent investigations and not as a result of any representations of the other party not contained herein.

**13. Binding On Personal Representatives.** All the terms of this agreement shall be binding upon and inure to the benefit of, and be enforced by, the respective legal representatives of the parties hereto.

**14. Attorney's fees:** If it becomes necessary for a non-defaulting party to employ an attorney to insure the performance of the terms and conditions of this agreement or to recover damages, then the defaulting party agrees to pay, as part of any judgment, reasonable attorney's fees and court costs.

**15. Choice of Law.** This agreement shall be construed and enforced according to the laws of the State of Mississippi.

**16. Modification.** This agreement sets forth the entire understanding of the parties hereto, and it may not be changed except by a written document signed by the parties hereto.

**IN WITNESS WHEREOF,** the parties hereto by their duly authorized representatives executed this Contract.

**CITY OF STARKVILLE, MISSISSIPPI**

BY: \_\_\_\_\_  
Parker Y. Wiseman, Mayor

**AUTOWAY CAR SALES, INC. T/A BUDGET RENT A CAR LICENSEE**

BY: \_\_\_\_\_

**OKTIBBEHA COUNTY, MISSISSIPPI**

BY: \_\_\_\_\_  
President, Board of Supervisors

12.

**APPROVAL OF CLAIMS DOCKET #09-06-11-A  
FOR THE CITY OF STARKVILLE  
EXCLUDING FIRE DEPARTMENT CLAIMS  
THROUGH SEPTEMBER 2, 2011 IN THE AMOUNT OF \$5,313,367.95  
IN ACCORDANCE WITH SECTION 17-3-1  
OF THE MISSISSIPPI CODE OF 1972, ANNOTATED**

Upon the motion of Alderman Richard Corey, duly seconded by Alderman Henry Vaughn, Sr., and unanimously adopted by the Board to approve the September 7, 2010 Official Agenda, and to accept items for Consent, whereby the "Claims Docket #09-06-11-A which contains claims from all departments through September 2, 2011, except the Fire department, with said claims totaling \$5,313,367.95" is enumerated, this consent item is thereby unanimously approved.

**CLAIMS DOCKET  
# 09-06-11-A  
SEPTEMBER 2, 2011**

General Fund

001

\$356,425.18

|                        |     |                       |
|------------------------|-----|-----------------------|
| Restricted Police Fund | 002 | 0                     |
| Restricted Fire Fund   | 003 | 0                     |
| Airport Fund           | 015 | 5,471.58              |
| Sanitation             | 022 | 48,117.06             |
| Landfill               | 023 | 956.38                |
| Computer Assessments   | 107 | 0                     |
| City Bond and Interest | 202 | 0                     |
| 2009 Road Maint. Bond  | 304 | 33,781.16             |
| P & R Bond Series 2007 | 325 | 0                     |
| Park & Rec Tourism 2%  | 375 | 1,226.14              |
| Water/Sewer            | 400 | 111,792.79            |
| Vehicle Maintenance    | 500 | 28,610.26             |
| Hotel/Motel            | 610 | 10,027.86             |
| 2% (VCC, EDA, MSU)     | 630 | 54,842.46             |
| Electric               |     | 4,662,725.08          |
| <b>TOTAL CLAIMS</b>    |     | <b>\$5,313,367.95</b> |

13.

**APPROVAL TO AUTHORIZE ADVERTISING FOR SEALED BIDS FOR  
34,000 FEET OF ALUMACORE OPTICAL GROUND WIRE  
WITH 48 SINGLE-MODE FIBERS**

Upon the motion of Alderman Richard Corey, duly seconded by Alderman Henry Vaughn, Sr., and unanimously approved by the Board, to approve the September 6, 2011 Official Agenda, with no objections to the Consent Items, in which approval to "authorize advertising for sealed bids for 34,000 feet of Alumacore Optical Ground Wire with 48 Single-Mode Fibers" is enumerated, this consent item is thereby unanimously approved.

14.

**APPROVAL OF THE INCREASED ELECTRIC RATE ADJUSTMENT  
IMPLEMENTED BY TENNESSEE VALLEY AUTHORITY ON  
AUGUST 18, 2011 TO BECOME EFFECTIVE OCTOBER 01, 2011**

Upon the motion of Alderman Richard Corey, duly seconded by Alderman Henry Vaughn, Sr., and unanimously approved by the Board, to approve the September 6, 2011 Official Agenda, with no objections to the Consent Items, in which approval to "accept the increased electric rate adjustment implemented by Tennessee Valley Authority on August 18, 2011 to become effective October 1, 2011" is enumerated, this consent item is thereby unanimously approved.

15.

**APPROVAL TO AUTHORIZE ADVERTISING FOR SEALED BIDS  
OF SOUCE OF SUPPLY ITEM SC-1 ASPHALT FOR THE 3RD QUARTER**

Upon the motion of Alderman Richard Corey, duly seconded by Alderman Henry Vaughn, Sr., and unanimously approved by the Board, to approve the September 6, 2011 Official Agenda, with no objections to the Consent Items, in which approval to "authorize

advertising for sealed bids of Source of Supply item SC-1 Asphalt for the 3rd quarter" is enumerated, this consent item is thereby unanimously approved.

16.

**APPROVAL OF THE STATE CONTRACT PURCHASE OF A 2011  
CROWN VICTORIA FOR THE FIRE DEPARTMENT AT A COST OF  
\$26,125.00 WITH STATE CONTRACT NUMBER 070-06-60500-5**

Upon the motion of Alderman Richard Corey, duly seconded by Alderman Henry Vaughn, Sr., and unanimously approved by the Board, to approve the September 6, 2011 Official Agenda, with no objections to the Consent Items, in which approval to "purchase a 2011 Crown Victoria from State Contract for the Fire Department at a cost of \$26,125.00 with a state contract number of 070-06-60500-5" is enumerated, this consent item is thereby unanimously approved.

17.

**APPROVAL OF THE STATE CONTRACT PURCHASE OF A 2011  
3/4 TON PICK-UP TRUCK FOR THE FIRE DEPARTMENT AT A COST OF  
\$24,779.12 WITH STATE CONTRACT NUMBER 070-91-21367-0**

Upon the motion of Alderman Richard Corey, duly seconded by Alderman Henry Vaughn, Sr., and unanimously approved by the Board, to approve the September 6, 2011 Official Agenda, with no objections to the Consent Items, in which approval to "purchase a 2011 3/4 ton Pick-up truck from State Contract for the Fire Department at a cost of \$24,779.12 with a state contract number of 070-91-21367-0" is enumerated, this consent item is thereby unanimously approved.

18.

**APPROVAL TO AUTHORIZE ADVERTISING FOR PROPOSALS  
FOR ESTABLISHING A WEB PORTAL FOR  
INTERNET CUSTOMER SERVICE**

Upon the motion of Alderman Richard Corey, duly seconded by Alderman Henry Vaughn, Sr., and unanimously approved by the Board, to approve the September 6, 2011 Official Agenda, with no objections to the Consent Items, in which approval to "authorize advertising for proposals to establish a web portal for internet customer service" is enumerated, this consent item is thereby unanimously approved.

19.

**APPROVAL TO EMPLOY ASHLEY HANNAH, AND MATTHEW  
T. DAVIS AS POLICE OFFICER AT AN ANNUAL SALARY OF \$30,814.82  
GRADE 8 STEP 6A (\$13.82 HOURLY WITH 2229.5 HOURS ANNUALLY) AND  
DEREK T. NELSON AS A CERTIFIED POLICE OFFICER AT AN  
ANNUAL SALARY OF \$32,586.20 GRADE 9 STEP 5 (\$14.61 HOURLY WITH  
2229.5 HOURS ANNUALLY) EACH WITH THE STANDARD 1-YEAR  
PROBATIONARY PERIOD**

Upon the motion of Alderman Richard Corey, duly seconded by Alderman Henry Vaughn, Sr., and unanimously approved by the Board, to approve the September 6, 2011 Official Agenda, with no objections to the Consent Items, in which approval to "employ Ashley Hannah, and Matthew T. Davis as Police Officers with an annual salary of \$30,814.82 (Grade 8 Step 6A, \$13,82/hour, 2229.5hrs/annually) and Derek T. Nelson as a Certified Police Officer at an annual salary of \$32,586.20 (Grade 9 Step 5, \$14.61/hour, 2229.5hrs/annually) with each subject to the standard 1-year probationary period" is enumerated, this consent item is thereby unanimously approved.

**20.**

**APPROVAL TO EMPLOY FRANK ROGERS III AS A REGULAR FULL-TIME EMPLOYEE AND RODRIGUES HINTON AS A TEMPORARY FULL-TIME EMPLOYEE WITH FULL BENEFITS, AS LABORERS IN THE SANITATION AND ENVIRONMENTAL SERVICES DEPARTMENT**

Upon the motion of Alderman Richard Corey, duly seconded by Alderman Henry Vaughn, Sr., and unanimously approved by the Board, to approve the September 6, 2011 Official Agenda, with no objections to the Consent Items, in which approval to "employ Frank Rogers III (regular full-time employee) and Rodrigues Hinton (temporary full-time employee with full benefits) as laborers in the Sanitation and Environmental Services Department with annual salaries of \$18,325.21 (Grade 4 Step 4, \$8.81/hour, 2080 hrs/annually) with the standard 1-year probationary period" is enumerated, this consent item is thereby unanimously approved.

**21.**

**APPROVAL TO EMPLOY WILLIAM BROOKS AS APPRENTICE LINEMAN IN THE ELECTRIC DEPARTMENT AT AN ANNUAL SALARY OF \$32,464.22 GRADE 10 STEP 4 (\$15.61 HOURLY 2080 HOURS ANNUALLY) WITH A 1-YEAR PROBATIONARY PERIOD, AND TO PROMOTE JONATHAN UPCHURCH TO APPRENTICE LINEMAN AT AN ANNUAL SALARY OF \$29,709.36 GRADE 10 STEP 1 (\$14.28 HOURLY 2080 HOURS ANNUALLY) WITH A 6-MONTH PROBATIONARY PERIOD**

Upon the motion of Alderman Richard Corey, duly seconded by Alderman Henry Vaughn, Sr., and unanimously approved by the Board, to approve the September 6, 2011 Official Agenda, with no objections to the Consent Items, in which approval to "employ William Brooks as an Apprentice Lineman in the Electric Department with an annual salary of \$32,464.22 (Grade 10 Step 4, \$15.61/hour, 2080 hrs/annually) with the standard 1-year probationary period; and to promote Jonathan Upchurch to Apprentice Lineman with an annual salary of \$29,709.36 (Grade 10 Step 1, \$14.28/hour, 2080 hrs/annually) with the standard 6-month probationary period" is enumerated, this consent item is thereby unanimously approved.

**22.**

**APPROVAL TO TRANSFER GARY SCOTT RIVERS FROM SERVICEMAN TO THE VACANT POSITION OF WAREHOUSE MANAGER IN THE**

**ELECTRIC DEPARTMENT WITH NO CHANGE IN SALARY**

Upon the motion of Alderman Richard Corey, duly seconded by Alderman Henry Vaughn, Sr., and unanimously approved by the Board, to approve the September 6, 2011 Official Agenda, with no objections to the Consent Items, in which approval to "transfer Gary Scott Rivers from Serviceman, Grade 10, to the vacant position of Warehouse Manager in the Electric Department, Grade 12, with no change in salary" is enumerated, this consent item is thereby unanimously approved.

**23.**

**APPROVAL TO AUTHORIZE THE CITY OF STARKVILLE, MISSISSIPPI  
TO ENTER INTO AN AGREEMENT WITH THE OFFICE OF  
HIGHWAY SAFETY (OCCUPANT PROTECTION) FOR A 100%  
REIMBURSABLE GRANT IN THE AMOUNT OF \$15,000.00**

Upon the motion of Alderman Richard Corey, duly seconded by Alderman Henry Vaughn, Sr., and unanimously approved by the Board, to approve the September 6, 2011 Official Agenda, with no objections to the Consent Items, in which approval of "A 100% Reimbursable Grant Agreement in the amount of \$15,000.00 between the City of Starkville and the Mississippi Office of Highway Safety for a Occupant Protection Program" is enumerated, this consent item is thereby unanimously approved.

**24.**

**APPROVAL OF THE 100% REIMBURSABLE GRANT AGREEMENT  
IN THE AMOUNT OF \$138,000.00 BETWEEN THE CITY OF STARKVILLE  
AND THE MISSISSIPPI OFFICE OF HIGHWAY SAFETY  
FOR A DUI NETWORK COORDINATOR/DUI ENFORCEMENT PROGRAM**

Upon the motion of Alderman Richard Corey, duly seconded by Alderman Henry Vaughn, Sr., and unanimously approved by the Board, to approve the September 6, 2011 Official Agenda, with no objections to the Consent Items, in which approval of "A 100% Reimbursable Grant Agreement in the amount of \$138,000.00 between the City of Starkville and the Mississippi Office of Highway Safety for a DUI Network Coordinator/DUI Enforcement Program" is enumerated, this consent item is thereby unanimously approved.

**25.**

**APPROVAL TO PURCHASE PIPE AND FITTINGS FROM LOW BIDDER  
CENTRAL PIPE IN THE AMOUNT OF \$27,228.30 TO PROVIDE  
HYDRAULIC FIRE PROTECTION TO GEECHIE ROAD  
IN NORTHEAST STARKVILLE**

Upon the motion of Alderman Richard Corey, duly seconded by Alderman Henry Vaughn, Sr., and unanimously approved by the Board, to approve the September 6, 2011 Official Agenda, with no objections to the Consent Items, in which approval to "Purchase Pipe and Fittings from low bidder Central Pipe in the amount of \$27,228.30 to provide

hydraulic fire protection to Geechie Road in Northeast Starkville " is enumerated, this consent item is thereby unanimously approved.

| NAME                     | QUOTE       | APPARENT BEST QUOTE |
|--------------------------|-------------|---------------------|
| Central Pipe and Supply  | \$27,228.30 | Apparent Best Quote |
| Southern Pipe and Supply | \$27,992.74 |                     |

#### END CONSENT ITEMS

26.

#### A MOTION TO APPROVE THE MINUTES OF THE JULY 19, 2011 REGULAR MEETING OF THE MAYOR AND BOARD OF ALDERMEN

Upon the motion of Alderman Jeremiah Dumas, duly seconded by Alderman Richard Corey, to approve the minutes of the July 19, 2011 Recess Meeting of the Mayor and Board of Aldermen as presented, the Board voted unanimously in favor of the motion.

27.

#### A MOTION TO APPROVE THE MINUTES OF THE AUGUST 2, 2011 REGULAR MEETING OF THE MAYOR AND BOARD OF ALDERMEN

Upon the motion of Alderman Jeremiah Dumas, duly seconded by Alderman Henry Vaughn, Sr., to approve the minutes of the August 2, 2011 Regular Meeting of the Mayor and Board of Aldermen as presented, the Board voted unanimously in favor of the motion.

#### MAYOR AND BOARD COMMENTS

**Mayor Parker Wiseman** informed the public that the City of Starkville is one of 151 cities throughout the USA, and one of 4 cities in the state of Mississippi to be recognized and bestowed with the distinguish title of "Playful Cities USA." The Mayor recognized Parks and Recreation Director Matthew Rye and Heather Carson for their work toward this honor.

**Mayor Parker Wiseman** informed and encouraged the public to attend the "Open House" and tour the Police Station on Tuesday, September 13, 2011 between the hours of 5 and 7 p.m. He noted that City Staff, Election Commissioners, Municipal Complex Citizen Committee as well as Elected Officials will be available to answer questions.

**Mayor Parker Wiseman** shared the accomplishments of:

**Sgt. Shawn Word** - recognized as the only Law Enforcement Officer in Mississippi and the Nation to be honored at the Juvenile Justice Delinquency

Conference in Florida for spearheading one of the most productive units on “Prevention of Underage Drinking.”

**Sgt. Chad Garnett**- selected the top Liaison Officer in Mississippi.

**Mayor Parker Wiseman** introduced the City of Starkville new employees:

**Cassandra S. Young** - Deputy Court Clerk - Municipal Court Office

**William Bell** - Driver - Sanitation and Environmental Service Department

**Benjamin Burkett** - Meter Technician - Electric Department

**Alderman Sandra Sistrunk** presented the Employee of the Month for September 2011 to:

**Arthur Thompson** of the Water Department.

**Alderman Ben Carver** commented on the need of a Police Station and encouraged the public to attend the Open House, however, he himself remained neutral on his position of the Municipal Complex.

#### CITIZEN COMMENTS

**Mr. Alvin Turner** of ward 7 told the Board that “citizens and tax payers of Carver Drive would like to live in wards 1 - 5 so as to get the feel of a better living.” He also said the he hopes a fight doesn't break out at the schools before we find out what the school board is doing.

#### PUBLIC APPEARANCES

**Dr. Roy Ruby** addressed the Board regarding their continued support of the Boys and Girls Club located on Lynn Lane in Starkville.

**Alderman Sistrunk** before explaining the current budget restraints that caused the need to re-evaluate the distribution of outside donations, expressed appreciation of the Boys and Girls Club and every thing they do for our community.

**Mr. John Hargraves** informed the Board of a Site Assessment Grant being administered by the Environmental Protection Agency (EPA) designed for the revitalization of brown fields. Four Hundred Thousand Grant dollars are available, \$200K for site assessment and \$200K for hazardous substances.

**Mayor Parker Wiseman** opened the floor to the public for questions and comments from the audience regarding the grant.

**City Clerk Markeeta Outlaw** gave a Financial Report that outlined a projection of approximately \$300 Thousand dollars in excess funds, largely due to revenues projecting to come in \$100 Thousand dollars more than budgeted and expenses trending \$200 Thousand dollars under budgeted amounts.

**Alderman Ben Carver** recused himself from all discussions of the next item. (Fire Dept Claims)

28.

**A MOTION TO APPROVE CLAIMS  
FOR THE FIRE DEPARTMENT  
FOR THE PERIOD ENDING SEPTEMBER 2, 2011**

There came for consideration the matter of approving claims docket for the fire department. After discussion, and

upon the motion of Alderman Richard Corey, duly seconded by Alderman Jeremiah Dumas, the Board voted as follows:

|                            |                       |
|----------------------------|-----------------------|
| Alderman Ben Carver        | voted: <u>Recusal</u> |
| Alderman Sandra Sistrunk   | voted: <u>Yea</u>     |
| Alderman Eric Parker       | voted: <u>Yea</u>     |
| Alderman Richard Corey     | voted: <u>Yea</u>     |
| Alderman Jeremiah Dumas    | voted: <u>Yea</u>     |
| Alderman Roy A'. Perkins   | voted: <u>Yea</u>     |
| Alderman Henry Vaughn, Sr. | voted: <u>Yea</u>     |

Having received a majority affirmative vote of those members present and voting, the Mayor declared the motion carried.

FIRE DEPARTMENT CLAIMS  
PERIOD ENDING SEPTEMBER 2, 2011  
DOCKET #09-02-11-A

|                       |              |                    |
|-----------------------|--------------|--------------------|
| FIRE DEPARTMENT       | 001-161      | \$23,874.05        |
| FIRE PREVENTION       | 001-162      | \$ 157.87          |
| FIRE TRAINING         | 001-163      | \$ 340.00          |
| FIRE COMMUNICATIONS   | 001-164      | \$ 2,113.09        |
| FIRE STATIONS & BLDGS | 001-167      | \$ 4,344.61        |
|                       | <b>TOTAL</b> | <b>\$30,829.62</b> |

**Alderman Ben Carver** rejoined the meeting.

**City Engineer Edward Kemp** gave an update on the progress of the Maple Drive Drainage Improvement Project.

**Alderman Roy A'. Perkins** agreed that the project be moved along expeditiously and also to keep a watchful eye on the Carver Drive ditch.

29.

**A MOTION TO APPROVE THE LOW QUOTE**

**SUBMITTED BY TERRY STIDHAM IN THE AMOUNT OF \$43,192.32  
AND AUTHORIZATION TO ENTER INTO AN AGREEMENT WITH  
MR. STIDHAM FOR THE MAPLE STREET  
DRAINAGE IMPROVEMENT PROJECT PHASE 1**

There came for consideration the matter of the Maple Street Drainage Improvement Project Phase 1. After discussion, and

upon the motion of Alderman Roy A'. Perkins, duly seconded by Alderman Jeremiah Dumas to approve the lowest quote submitted by Terry Stidham Construction to perform specific work on the Maple Street Drainage Improvement Project Phase 1, and authorization to enter into an agreement with the named contractor, the Board's vote was unanimous in favor of the motion.

Maple Street Drainage Improvement Project  
Bid Tabulation - Phase 1

| NAME                          | QUOTE       | APPARENT BEST QUOTE |
|-------------------------------|-------------|---------------------|
| Terry Stidham Construction    | \$43,192.32 | Apparent Best Quote |
| 4-D Construction, Inc.        | \$59,800.00 |                     |
| Gregory Construction Services | \$69,036.33 |                     |

**CAO D. Lynn Spruill** was directed to provide information to the Board (at a future meeting before the end of the year) as to the necessity of two accountants for the Electric Department explaining the differences of duties, and outlining those duties for each accountant.

**30.**

**A MOTION TO APPROVE THE JOB DESCRIPTION OF  
STAFF ACCOUNTANT IN THE ELECTRIC DEPARTMENT  
AND AUTHORIZATION TO ADVERTISE TO FILL SAID POSITION**

There came for consideration the matter of a Staff Accountant in the Electric Department. After discussion, and

upon the motion of Alderman Sandra Sistrunk, duly seconded by Alderman Richard Corey to approve the job description of Staff Accountant in the Electric Department and authorization to advertise to fill said position, the Board voted as follows:

|                            |                   |
|----------------------------|-------------------|
| Alderman Ben Carver        | voted: <u>Yea</u> |
| Alderman Sandra Sistrunk   | voted: <u>Yea</u> |
| Alderman Eric Parker       | voted: <u>Yea</u> |
| Alderman Richard Corey     | voted: <u>Yea</u> |
| Alderman Jeremiah Dumas    | voted: <u>Yea</u> |
| Alderman Roy A'. Perkins   | voted: <u>Nay</u> |
| Alderman Henry Vaughn, Sr. | voted: <u>Yea</u> |

Having received a majority affirmative vote of those members present and voting, the Mayor declared the motion carried.

31.

**A MOTION TO ENTER INTO A CLOSED  
DETERMINATION SESSION TO DETERMINE IF  
EXECUTIVE SESSION IS PROPER**

Upon the motion of Alderman Richard Corey, duly seconded by Alderman Ben Carver, authorizing the entrance into a Closed Determination Session to determine the need for Executive Session, the Board voted unanimously in favor of the motion.

32.

**A MOTION DETERMINING THAT DISCUSSIONS REGARDING  
PENDING LITIGATIONS ON MCCO AND BLUEFIELD WATER  
ASSOCIATION; PROPERTY ACQUISITION OF A SEWER PUMPING  
STATION; AND PERSONNEL GRIEVANCES ARE PROPER CAUSES  
FOR EXECUTIVE SESSION, AND AUTHORIZATION TO ENTER  
INTO AN EXECUTIVE SESSION FOR THOSE DISCUSSIONS**

Upon the motion of Alderman Richard Corey, duly seconded by Alderman Ben Carver, determining that discussions regarding Pending Litigations of MCCO and Bluefield Water Acquisition; Property Acquisition of a Sewer Pumping Station; and Personnel Grievances are proper causes for Executive Session, and authorization to enter into an Executive Session for those discussions, the Board voted unanimously in favor of the motion.

**Mayor Parker Wiseman** moved the meeting into a brief Open Session to announced to the public the Board's determination that discussions regarding Pending Litigations regarding MCCO and Bluefield Water Association; Property Acquisition of a Sewer Pumping Station; and Personnel Matters within the Fire Department were proper cause for Executive Session, and the Board's decision to move into an Executive Session for those discussions.

33.

**A MOTION TO AUTHORIZE OBTAINING AN APPRAISAL AND  
SURVEY OF THE PROPERTY ASSOCIATED WITH THE  
POTENTIAL SEWER PUMPING STATION**

There came for consideration the matter of a survey and appraisal of property associated with the potential Sewer Pumping Station. After discussion, and

upon the motion of Alderman Jeremiah Dumas, duly seconded by Alderman Richard Corey authorizing city staff to obtain a survey and appraisal of the property associated with the Sewer Pumping Station for the purpose of offering a fair value for its acquisition, the Board unanimously voted in favor of the motion.

34.

**A MOTION TO TAKE NO ACTION ON THE GRIEVANCE SUBMITTED  
BY LIEUTENANT REVIS LEE KELLUM AND  
TO PROVIDE WRITTEN NOTIFICATION OF THE BOARDS  
INTENTION TO DIRECT THE CAO AND PERSONNEL OFFICER TO  
CONDUCT A COMPREHENSIVE REVIEW OF  
THE CITY'S COMPENSATION SCALE AND REPORT  
THE FINDINGS BACK TO THE BOARD WITH A PROPOSAL**

There came for consideration the matter of a grievance filed by Lt. Revis Lee Kellum of the Fire Department. After discussion, and

upon the motion of Alderman Jeremiah Dumas, duly seconded by Alderman Henry Vaughn, Sr., to take no action on the grievance submitted by Lt. Revis Lee Kellum and to provide written notification of the Boards intention to direct the CAO and Personnel Officer to conduct a comprehensive review of the City's compensation scale, and report findings to the Board along with a proposal or recommendation, the Board voted as follows:

|                            |                   |
|----------------------------|-------------------|
| Alderman Ben Carver        | voted: <u>Yea</u> |
| Alderman Sandra Sistrunk   | voted: <u>Nay</u> |
| Alderman Eric Parker       | voted: <u>Nay</u> |
| Alderman Richard Corey     | voted: <u>Nay</u> |
| Alderman Jeremiah Dumas    | voted: <u>Yea</u> |
| Alderman Roy A'. Perkins   | voted: <u>Nay</u> |
| Alderman Henry Vaughn, Sr. | voted: <u>Nay</u> |

Having failed to receive a majority affirmative vote of those members present and voting, the Mayor declared the motion failed.

35.

**A MOTION TO TAKE NO ACTION ON THE GRIEVANCE AND TO  
SEND WRITTEN NOTIFICATION OF THE BOARD'S DECISION**

Upon the motion of Alderman Richard Corey, duly seconded by Alderman Sandra Sistrunk to take no action on the grievance submitted by Lt. Revis Lee Kellum, and to send Lt. Kellum written notification of the Board's Decision, after discussion

Alderman Richard Corey agreed to amend the motion to reflect the Board's decision to Deny the Grievance submitted by Lt. Revis Lee Kellum and to instruct the City Clerk to send Lt. Kellum written notification of the Board's decision to Deny the Grievance, the Board voted as follows on the amended motion:

|                          |                   |
|--------------------------|-------------------|
| Alderman Ben Carver      | voted: <u>Nay</u> |
| Alderman Sandra Sistrunk | voted: <u>Yea</u> |
| Alderman Eric Parker     | voted: <u>Yea</u> |
| Alderman Richard Corey   | voted: <u>Yea</u> |

|                            |                   |
|----------------------------|-------------------|
| Alderman Jeremiah Dumas    | voted: <u>Nay</u> |
| Alderman Roy A'. Perkins   | voted: <u>Yea</u> |
| Alderman Henry Vaughn, Sr. | voted: <u>Yea</u> |

Having received a majority affirmative vote of those members present and voting, the Mayor declared the amended motion passed.

There being no objections to the original motion as amended, the Mayor declared the original motion as amended passed.

**Alderman Eric Parker** exited the meeting.

**36.**

**A MOTION TO DENY THE GRIEVANCE OF  
LIEUTENANT JOHN GRANT MCCARTER**

There came for consideration the matter of a grievance filed by Lieutenant John Grant McCarter. After discussion, and

Upon the motion of Alderman Jeremiah Dumas, duly seconded by Alderman Richard Corey, to Deny the Grievance of Lt. John Grant McCarter, and to direct the City Clerk to send written notification of the Board's decision, the Board voted as follows:

|                            |                      |
|----------------------------|----------------------|
| Alderman Ben Carver        | voted: <u>Nay</u>    |
| Alderman Sandra Sistrunk   | voted: <u>Yea</u>    |
| Alderman Eric Parker       | voted: <u>absent</u> |
| Alderman Richard Corey     | voted: <u>Yea</u>    |
| Alderman Jeremiah Dumas    | voted: <u>Yea</u>    |
| Alderman Roy A'. Perkins   | voted: <u>Yea</u>    |
| Alderman Henry Vaughn, Sr. | voted: <u>Nay</u>    |

Having received a majority affirmative vote of those members present and voting, the Mayor declared the motion carried.

**37.**

**A MOTION TO RETURN TO OPEN SESSION**

Upon the motion of Alderman Jeremiah Dumas, duly seconded by Alderman Richard Corey, the Board voted as follows to return to Open Session:

|                          |                      |
|--------------------------|----------------------|
| Alderman Ben Carver      | voted: <u>Yea</u>    |
| Alderman Sandra Sistrunk | voted: <u>Yea</u>    |
| Alderman Eric Parker     | voted: <u>absent</u> |
| Alderman Richard Corey   | voted: <u>Yea</u>    |

|                            |                   |
|----------------------------|-------------------|
| Alderman Jeremiah Dumas    | voted: <u>Yea</u> |
| Alderman Roy A'. Perkins   | voted: <u>Yea</u> |
| Alderman Henry Vaughn, Sr. | voted: <u>Yea</u> |

Having received a majority affirmative vote of those members present and voting, the Mayor declared the motion carried.

**Alderman Henry Vaughn** exited the meeting.

**38.**

**A MOTION TO RECESS UNTIL  
5:30 P.M. ON SEPTEMBER 20, 2011**

Upon the motion of Alderman Jeremiah Dumas, duly seconded by Alderman Richard Corey, approving the motion to recess until Tuesday, September 20, 2011, at 5:30 p.m. Meeting will be in the Boardroom of City Hall, located at 101 E. Lampkin Street, Starkville, MS, the Board voted as follows:

|                            |                      |
|----------------------------|----------------------|
| Alderman Ben Carver        | voted: <u>Yea</u>    |
| Alderman Sandra Sistrunk   | voted: <u>Yea</u>    |
| Alderman Eric Parker       | voted: <u>absent</u> |
| Alderman Richard Corey     | voted: <u>Yea</u>    |
| Alderman Jeremiah Dumas    | voted: <u>Yea</u>    |
| Alderman Roy A'. Perkins   | voted: <u>Yea</u>    |
| Alderman Henry Vaughn, Sr. | voted: <u>absent</u> |

Having received a majority affirmative vote of those members present and voting, the Mayor declared the motion carried.

SIGNED AND SEALED THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_ 2010.

\_\_\_\_\_  
MARKEETA OUTLAW, CITY CLERK

\_\_\_\_\_  
PARKER WISEMAN, MAYOR