



Minutes of the City of Calera Council Meeting – March 18, 2019

The Council of the City of Calera met in the Council Chambers of the City Hall at 7901 Highway 31 on Monday, March 18, 2019 at 6:30 p.m., in a regular meeting. Mayor Graham presiding.

Mayor and Council Members Present:

Jon G. Graham, Mayor
David Bradshaw, Council Member
Philip Busby, Council Member
Ernest Montgomery, Council Member
Kay Snowden Turner, Council Member
Alan Watts, Council Member

Absent:

Chris Bunn, Council Member

Guests:

Adrianne Turner, Calvin Morgan, Fred Hoskins, Freddie Gilliland, Taylor Neal, Andrew Wages

Mayor Graham called the meeting to order at 6:30 p.m.

Word of Prayer and Pledge of Allegiance:

Michael Jones opened the meeting with prayer and the Pledge of Allegiance.

Approval of Minutes:

Council Member Watts made a motion to approve and dispense with the reading of the following minutes:

Regular Meeting – March 4, 2019
Work Session – March 4, 2019

Council Member Bradshaw seconded said motion and upon vote, the results were as follows:

AYES: Bradshaw, Busby, Graham, Montgomery, Turner, Watts

NAYS: None

Motion Passed

OLD BUSINESS:

No old business

NEW BUSINESS

PUBLIC HEARING

Capital Budget (See Attached)

Council Member Bradshaw made a motion to approve the capital budget as presented. Council Member Busby seconded said motion which was carried unanimously.

Motion passed

Proclamation – Parental Alienation Prevention Week, April 21 – 27, 2019 Parental Alienation Awareness “Bubbles For Love” Day, April 25, 2019

Council Member Turner made a motion to proclaim April 21 – 27, 2019 as Parental Alienation Prevention Week and April 25, 2019 as “Bubbles For Love” Day. Council Member Bradshaw seconded said motion which was carried unanimously.

Motion passed

Proclamation – Safe Digging Month – April, 2019

Council Member Turner made a motion to proclaim April 2019 as Safe Digging Month. Council Member Bradshaw seconded said motion which was carried unanimously.

Motion passed

Resolution No. 2019-09 Establishing a Temporary Moratorium on New Business within the City Relating to the Sell of Cannabidiol / THC Extracts

Council Member Turner moved that Resolution No. R-2019-09 is adopted. Council Member Watts seconded said motion and upon vote, the results were as follows:

AYES: Bradshaw, Busby, Graham, Montgomery, Turner, Watts

NAYS: None

Motion Passed – Adopted this 18th day of March, 2019

Ordinance No. 2019-03 – Verizon Franchise Agreement

Council Member Bradshaw moved unanimous consent of the Council is given for immediate action upon said Ordinance. Council Member Busby second said motion and upon vote the results was as follows:

AYES: Bradshaw, Graham, Busby, Montgomery, Turner, Watts

NAYS: None

The Mayor declared said motion carried and unanimous consent given.

Council Member Turner moved Ordinance No. 2019-03 be adopted. Council Member Watts seconded said motion and upon vote the results was as follows:

AYES: Bradshaw, Graham, Busby, Montgomery, Turner, Watts

NAYS: None

Motion Passed – Adopted this 18th day of March, 2019

Municipal Board Appointment – Zoning Board of Adjustments:

Council Member Watts made a motion to appoint Shane Schroeder to the Zoning Board of Adjustments. Council Member Bradshaw seconded said motion and upon vote, the results were as follows:

AYES: Bradshaw, Busby, Graham, Montgomery, Turner, Watts

NAYS: None

Motion Passed

GUESTS:

Council Member Busby made a motion to adjourn the meeting at 6:41 p.m.

Approved this 1st day of April, 2019.

Jon G. Graham, Mayor

ATTEST:

Connie B. Payton, City Clerk

PROPOSED 2019 CAPITAL BUDGET

Department		Proposed 2019 Capital Budget	Dept Head/Superintendent Reason for the Request
GENERAL FUND			
	Budgeted Revenues Over Expense	\$ 253,133.36	
	Capital Fund Balance 9/30/18	\$ 265,000.00	
	Available to Spend	\$ 518,133.36	
Fire	Life Pak 15 (3 units)	\$ (92,500.00)	Our current heart monitors are eight years old and are three generations old. We need to replace all of them but at least two need to be replaced immediately.
Fire	Fire Shift Commander Vehicle	\$ (42,418.48)	Included in 2018 Capital Budget but received in 2019
Fire	Trailer	\$ (5,500.00)	Needed to carry trench rescue gear
Police	Remaining Balance Police Roof	\$ (52,660.00)	Remaining Balance of Roof- budgeted in 2018
Park	Pronovost 5 ton Dump Trailer with electrical hydraulic	\$ (12,000.00)	Main usage is for when we fraize mow. Also to haul materials around the complex
Park	New AC/Heat at Oliver 2 Concession	\$ (8,000.00)	Currently not working
Park	20 Cement Light Pole Wiring Repair	\$ (20,000.00)	Wiring in poles need to be replaced
Rolling Hills	Side Entrance	\$ (11,900.00)	Family Life Center
Rolling Hills	Front Entrance	\$ (27,600.00)	Family Life Center
Rolling Hills	Liner Panel Project	\$ (14,800.00)	Family Life Center
Rolling Hills	Lobby Floor	\$ (7,500.00)	Family Life Center
Rolling Hills	Gym Floor	\$ (98,000.00)	Family Life Center- price ranges from \$65k to \$98k
Rolling Hills	Fence around AC Units	\$ (6,000.00)	Family Life Center
Street	Single Axel Dump Truck	\$ (80,000.00)	Replace 1997 Ford Dump Truck
Library	Carpet	\$ (4,700.00)	Carpet in the meeting room is 12 years old. It has multiple stains and wear.
Engineering	Replace Trimble GPS RTK Unit	\$ (28,000.00)	Replaces out of date GPS Unit
	Total Requests	\$ (511,578.48)	
	Net	\$ 6,554.88	

GARBAGE

FUND:

	Budgeted Revenues over Expense	\$ 87,575.95	
	Automated Garbage Truck	\$ (240,000.00)	Replace 2008 Mack
	Net	\$ (152,424.05)	\$183k available in cash

GAS FUND:

	Budgeted Revenue Over Expense	\$ 359,625.00	
	Mini Excavator	\$ (46,000.00)	to replace our 2006 mini excavator
	Gas Rover Leak Detector	\$ (5,500.00)	Gas Leak detection equipment to replace aging equipment
	Walk behind trencher	\$ (18,600.00)	To replace our 1995 model worn out and unsafe equipment
	Net	\$ 289,525.00	

SEWER FUND	Budgeted Revenues Over Expense		
	From 2018 Fund Balance	\$ 25,536.00	Alum Tank never purchased
	From 2018 Fund Balance	\$ 65,750.00	Portable Pump returned
	Balance Stone Creek Project	\$ 50,000.00	This project will finish under under budget
	Transfer from GF	\$ 157,714.00	
	Available to Spend	\$ 299,000.00	
Collection	Omni Site Replacement	\$ (20,000.00)	
Camp Branch	Fine Screens	\$ (110,000.00)	
Camp Branch	Diffuser Membranes	\$ (46,000.00)	
Camp Branch	SBR tank cleaning	\$ (50,000.00)	
Camp Branch	Polymer Feed System	\$ (22,000.00)	
Buxahatchee	Replace Aqua Disk Filter Media	\$ (41,000.00)	
Buxahatchee	Replace Failed Blower Motor	\$ (10,000.00)	
	Total Expense	\$ (299,000.00)	
	Net	\$ -	

PROCLAMATION

WHEREAS, strong family relationships constitute the foundation of our community; and

WHEREAS, alienating behaviors are frequently seen in high-conflict divorces, separations and asymmetrical custody arrangements but can occur in intact marriages; and

WHEREAS, Parental Alienation is a term used to describe any number of behaviors and attitudes on the part of one parent, both parents or third party designed to interfere, damage or destroy the relationship a child has with their other parent. It's a form of abuse that causes emotional trauma to children; and

WHEREAS, Parental Alienation deprives children of their right to freely love and be loved by both parents, their extended families and robs children of their sense of security; and

WHEREAS, we encourage all Alabamians to visit paawarenessday.com for information on raising awareness to stop Parental Alienation, and we call on community and state leaders to support shared parenting because of its benefits for children; and

WHEREAS, the recently published Diagnostic and Statistical Manual of Mental Disorders (DSM-5) made several references to the dysfunctional family dynamic of alienation to be a form of psychological child abuse; and

WHEREAS, approximately 40,000 Alabama children a year experience court ordered visitation with one parent for only two to six days a month; and

WHEREAS, Parental Alienation Prevention Week is intended to increase the knowledge and understanding of this problem to help Alabamians, institutions, the legal and mental health community and leaders to better identify and combat parental alienation; and

WHEREAS, God so loved us, we also ought to love one another; love does no harm to its neighbor; therefore Children should be able to freely express the meaning of F.A.M.I.L.Y.;

Father **A**nd **M**other, **I** Love **Y**ou; and

WHEREAS, in honor of Parental Alienation Prevention Week, come and show your support by taking 10 minutes out of your day at noon, on April 25, to blow soap "Bubbles For Love". Each bubble we blow represents the love our children have and should be allowed to share with both their parents without fear or guilt;

NOW, THEREFORE, I, Jon G. Graham, Mayor of the City of Calera, Alabama do hereby proclaim April 21 through April 27, 2019, as **PARENTAL ALIENATION PREVENTION WEEK** and April 25, 2019, as **PARENTAL ALIENATION AWARENESS "Bubbles For Love" DAY**.

Witness my hand this 18th day of March, 2019. The City of Calera, Alabama.

By: _____
Jon G. Graham, Mayor

**Proclamation
By the City of Calera**

Whereas, Alabama's underground utility infrastructure is jeopardized by unintentional damage of those who fail to call 811 to have underground lines located prior to digging; and

Whereas, Alabama 811 and its approximate 425 utility members promote the National Call-Before-You-Dig Number 811, in an effort to reduce these damages. Designated by the FCC in 2005, 811 provides potential excavators and homeowners a simple number to reach their local "one call center" to request utility line locations at the intended dig site; and

Whereas, through education of safe digging practices, excavators and homeowners can save time and money keeping Alabama safe and connected by making a simple call to 811 in advance of any digging project, waiting the required amount of time, respecting the marked lines by maintaining visual definition throughout the course of excavation and finally, digging with care around the marks; and

Whereas, all parties agree that safe digging is a shared responsibility. Before you dig, it is important to know what is below and call 811:

Now Therefore, I, Jon G. Graham, Mayor of City of Calera, Alabama, do hereby proclaim the month of April 2019, as

Safe Digging Month

In the City of Calera and encourage all excavators and homeowners to always call 811 before digging.

Council Member Turner made a motion to proclaim April 2019 as Safe Digging Month. Council Member Bradshaw seconded said motion which was carried unanimously.

Motion passed

On this, the 18th day of March, 2019.

Jon G. Graham, Mayor

Mayor Graham introduced the following Resolution:

RESOLUTION NO. R-2019-09

ESTABLISHING A TEMPORARY MORATORIUM ON NEW BUSINESSES WITHIN THE CITY LIMITS OF THE CITY OF CALERA, ALABAMA RELATING TO THE SELL OF CANNABIDIOL / THC EXTRACTS

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

WHEREAS, cannabidiol (CBD) and delta-9 tetrahydrocannabinol (THC) extracts are found in the plant Cannabis sativa also known as industrial hemp and is sometimes used medicinally; and

WHEREAS, in 2014 and 2016 the State of Alabama passed legislation permitting **patients** the use of CBD extracts for therapeutic purposes aka Carly's Law and Leni's Law (patients may possess extract preparations of CBD that also contain up to three percent THC for the treatment of a seizure-related debilitating condition); and

WHEREAS, the Agricultural Improvement Act of 2018 legalized industrial hemp and CBD derived from industrial hemp with a THC concentration of not greater than .3% on a dry weight basis; and

WHEREAS, businesses and storefronts featuring CBD hemp oil are appearing in neighboring cities and areas; and,

WHEREAS, the City's zoning and other ordinances do not address appropriate districts for such businesses, its placement in current businesses, and its access by minors and families; and,

WHEREAS, the City of Calera desires to promote the health, safety, and welfare of the inhabitants of this City and its environs and citizens and visitors, in an orderly and thoughtful way concerning CBD.

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

1. Moratorium is hereby in effect on any new businesses whose primary sales are intended for CBD, and on the issuance of any business licenses in the City where the sale of CBD exceeds 10% of the gross revenue of the business.
2. During the moratorium no sign applications shall be approved for placement on any business that promotes THC or CBD.
3. Existing businesses within the City are urged to not promote or sell CBD during this moratorium.
4. The City's administration is hereby tasked to research and study the impact of these type businesses, their appropriate locations within zoning districts in the city, and shall make recommendations to the Council and various boards of the City consistent with federal and state law.

5. This moratorium shall take effect immediately upon the passage of this Resolution and shall continue **in effect until March 10, 2020.**
6. It is the intent of the City of Calera, Alabama that this moratorium is to supplement, and not repeal or replace, any ordinances, codes, or rules of the City of Calera.

Council Member Turner moved that Resolution No. R-2019-09 be adopted. Council Member Watts seconded said motion and upon vote, the results were as follows:

AYES: Montgomery, Watts, Bradshaw, Graham, Busby, Turner

NAYS: None

Mayor Graham declared Resolution No. R-2019-09 adopted.

Adopted this 18th day of March, 2019.

Jon G. Graham, Mayor

ATTEST:

Connie B. Payton, City Clerk

Mayor Graham introduced the following Ordinance:

ORDINANCE NO. 2019-03

FRANCHISE AGREEMENT

**AN AGREEMENT GRANTING A NON-EXCLUSIVE RIGHT-OF-WAY USE AGREEMENT TO
MCIMETRO ACCESS TRANSMISSION SERVICES CORPORATION D/B/A
VERIZON ACCESS TRANSMISSION SERVICES,
FOR THE PURPOSE OF CONSTRUCTING
AND MAINTAINING A FIBER-BASED COMMUNICATIONS SYSTEM
WITHIN CERTAIN PUBLIC RIGHTS-OF-WAY WITHIN THE
CITY OF CALERA, ALABAMA**

WHEREAS, MCImetro Access Transmission Services Corp. d/b/a Verizon Access Transmission Services, a Delaware corporation, whose address is One Verizon Way, Basking Ridge, NJ 07920 (hereinafter referred to as the “the Company”) desires to construct a fiber-based communications system within certain public rights-of-way within the City of Calera, Alabama; and

WHEREAS, the Company agrees and recognizes that it is required to obtain consent in the form of a right-of-way use agreement from the City of Calera in order to construct the proposed fiber-based communications system within the corporate limits of the City of Calera; and

WHEREAS, the City Council wishes to accommodate the Company’s request and grant a right-of-way use agreement for the construction of the proposed fiber-based communications system in accordance with the terms and conditions contained herein.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CALERA, ALABAMA, AS FOLLOWS:

The City Council of the City of Calera does hereby grant to MCImetro Access Transmission Services Corp. d/b/a Verizon Access Transmission Services a non-exclusive right-of-way use agreement granting the limited authority to construct a fiber-based communications system in the City of Calera in and along certain rights-of-way outlined in the Franchise Agreement below, subject to the terms and conditions set forth in said agreement:

FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT effective as of March 18, 2019, by and between the **CITY of CALERA, ALABAMA**, a municipal corporation, (hereinafter referred to as the “City”) and **MCImetro Access Transmission Services Corp. d/b/a Verizon Access Transmission Services**, a Delaware corporation, whose address is **One Verizon Way, Basking Ridge, NJ 07920** (hereinafter referred to as the “Franchisee”).

WHEREAS the City has and reserves the right to exercise control over the highways, streets, alleys, rights of way, easements and public places and to require City’s consent prior to using such highways, streets, alleys and public places; and

WHEREAS State law, confers to the City certain rights and requirements for franchises and permission to use the public ways of City; and

WHEREAS the Franchisee has requested from City a franchise to use the streets and public ways of the City to conduct business as a communications services provider; and

WHEREAS the City and the Franchisee have negotiated this Franchise Agreement which is mutually agreeable to both parties.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and intending to be legally bound thereby, the City and Franchisee enter into this Franchise Agreement and agree as follows:

SECTION 1. GRANT OF NON-EXCLUSIVE FRANCHISE. A non-exclusive franchise is hereby granted to Franchisee, subject to the City’s receipt of monetary compensation, to construct, maintain and operate in, over, under, across and through the public rights-of-way of the City of Calera, Alabama, a fiber-based communications system within the City of Calera and any future additions thereto, the duration of such franchise to be a period of five (5) years, to commence on the 18th day of March 2019. The grant of this non-exclusive franchise is for the use by the Franchisee for the purpose of providing telecommunication and communications services, including dark fiber, within the City of Calera as a "competitive access provider" which directly connects customers within the franchise area with other businesses, local area networks, a local exchange carrier and interexchange carriers and for such other services, including local exchange and enhanced services, as may be authorized by the Alabama Public Service

Commission or federal law, other than cable services as defined below. Franchisee shall not provide services directly regulated by the Alabama Public Service Commission (PSC) unless authorized by the PSC. Franchisee is permitted to operate a telecommunications system as defined by the Telecommunications Act of 1996. Franchisee shall not operate a cable system as defined in the Cable Communications Policy Act of 1984 (47 USCA §521 et seq., as amended) without first having obtained a separate cable franchise with the City.

The Company shall have the option to renew this Agreement for three (3) successive terms of five (5) years each by giving written notice to the City sixty (60) days before the expiration of the current term on the same terms and conditions set forth herein, provided that Franchisee shall have performed according to the terms hereof, and, further provided that statutory authority shall exist for the City of Calera to renew this franchise. New terms and conditions may be required by either party for renewal if the telecommunications and broadband technology and rights-of-way laws change after the date of this franchise ordinance and cause substantial effects on service types, availability, character of service, system technology or the regulatory environment. New terms and conditions may also be required by either party for renewal to clarify the intent of this franchise or to update the terms and conditions to reflect terms and conditions applicable to other franchises for similar services that are established after the date of this agreement.

When used herein, the term "facilities" shall mean all or any part of a network of fiber optic cables and all related property, including but not limited to, conduit, carrier pipe, fiber optic cables, poles, handholes, manholes, repeaters, power sources, and other attachments and appurtenances necessary for the fiber-based communications system and located within the City's rights of way. For the purposes of this Agreement, the term "facilities" excludes "microcell" facilities, "minor facilities," "small cell facilities," and "macro cell" facilities, including towers and new base stations and other similar facilities used solely for the provision of "personal wireless services".

SECTION 2. GENERAL TERMS. Franchisee, for the duration of this franchise and for the purposes hereinabove expressed, shall have the privilege to construct, operate and maintain facilities and to make any and all necessary excavations therefore, in, over, under, across and through all or any of the portions of the streets, alleys, avenues or public ways of the City of Calera as may be specifically approved in writing by the City Engineering Department, to utilize defined existing City owned conduit within the public rights-of-way as may be specifically approved in writing by the City Engineering Department and to utilize, with permission of the affected utility companies, their facilities within public

rights-of-way for the purpose of providing a fiber-based communications system within the City of Calera, to be exercised in such manner only, however, as to offer the least interference with the public use of said streets, alleys, avenues and public ways; and Franchisee shall be subject to and shall comply with all laws and ordinances of the City of Calera, now and as updated in the future, and shall be further subject to and shall comply with all rules, regulations and other restrictions of the City of Calera set forth herein.. The granting of this franchise shall not prohibit the City from granting other non-exclusive franchises or otherwise allowing or making other uses of the City's rights-of-way. The granting of this franchise shall in no way interfere with or hinder the use by the City of the rights-of-way for any purpose.

SECTION 3. SCOPE OF FRANCHISE. The franchise hereby granted shall extend to and include all portions of streets, alleys, avenues and other public ways that conform to the General Terms set forth in Section 2, above, as may be necessary to carry out the purpose of this franchise.

SECTION 4. INDEMNIFICATION. Franchisee hereby agrees to indemnify, defend and hold harmless the City, its Mayor and Council, appointed boards and commissions, officials, officers, employees and insurance carriers, individually and collectively from all losses, claims, suits, judgments, demands, expenses, subrogation, attorney's fees, costs or actions of any kind and nature resulting from personal injury to any person, including employees of Franchisee or of any contractor or subcontractor employed by Franchisee, (including bodily injury and death) or damages to any property, arising out of the acts or omissions of Franchisee, its contractors, subcontractors, officers, agents and employees while exercising any of the rights or privileges granted by this franchise. The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of indemnity in this paragraph. The terms and provisions of this section are intended to be for the benefit of the City and Franchisee and are not intended to be for the benefit of any third party. Notwithstanding the foregoing, Franchisee shall not be obligated to indemnify the City for Claims resulting solely from gross negligent or willful acts of the City or its representatives.

SECTION 5. CITY TAKING PART IN LITIGATION. The Franchisee shall immediately notify the City of any litigation which would affect the franchise. The City shall have the right to take part, by intervention or otherwise at its option and at its sole cost, in any suit, action, or proceeding instituted by or against Franchisee in which any judgment, decree, or order can be rendered affecting the rights, powers or duties of Franchisee to do or not to do anything which, by its

franchise, it is obligated or may be required to do or not to do or affecting, such as by foreclosure or lien, Franchisee's title to any facility. Franchisee shall not object to the City's exercise of such right.

SECTION 6. BOND, CERTIFICATE OF DEPOSIT OR LETTER OF CREDIT. Franchisee shall obtain and maintain, or cause to be obtained and maintained, during the entire period of initial and any subsequent construction and for two years thereafter, at its cost and expense, and file with the City Clerk a corporate surety bond, certificate(s) of deposit assigned to the City or irrevocable, unconditional letter of credit in the amount of One Hundred Thousand Dollars (\$100,000), both to guarantee the timely construction and full activation of Franchisee's system and to secure the faithful performance of Franchisee of all its obligations provided under the franchise. Failure to timely obtain, file, assign and/or maintain said bond, certificate(s) of deposit or letter of credit at all times at the required amount shall constitute a substantial violation of this Agreement. If Franchisee elects to deposit and assign for the benefit of the City a certificate(s) of deposit, any interest earned on the principal sum required shall inure to the benefit of the Franchisee and any tax liability on said interest will inure to the Franchisee.

The performance bond shall provide and certificate(s) of deposit and letter of credit shall be subject to the following conditions:

(1) There shall be recoverable by the City, jointly and severally from the principal and surety, or from the certificate(s) of deposit or letter of credit, any and all fines and penalties due to the City and any and all damages, losses, costs, and expenses suffered, incurred by or resulting from failure of Franchisee to: faithfully comply with the provisions of the franchise; comply with all applicable orders, permits and directives of any City agency or body having jurisdiction over its acts or defaults; pay any claims, liens or taxes due to the City which arises from or by reason of the construction, operation, maintenance or repair of the communications system.

(2) The total amount of the bond, certificate(s) of deposit or letter of credit shall be forfeited in favor of the City in the event:

(a) Franchisee abandons its system at any time during the term of the franchise or extension thereof or ceases operation of the system for a period in excess of six (6) months; and/or

- (b) Franchisee assigns the franchise without the express written consent of the City, if such consent is required by the terms of this franchise, which consent shall not be unreasonably withheld.

The performance bond, certificate(s) of deposit or letter of credit required herein shall be in a form satisfactory to the City Attorney. The surety bond, certificate(s) of deposit or letter of credit shall at all times be maintained at the amount and levels as required in this section and shall be a continuing obligation for the duration of the franchise and any renewal thereof and thereafter until the Franchisee has liquidated all of its obligations with the City that may have arisen by reason of the construction, operation or maintenance of the system or breach or termination of the franchise. If the bond, certificate(s) of deposit or letter of credit is drawn-down for any reason, the bond, certificate(s) of deposit or letter of credit shall be renewed to the amounts required by the city.

The City shall notify the Franchisee in writing and allow Franchisee thirty (30) days to cure, unless such time to cure is extended by the City Attorney, before calling the surety bond or drawing upon the certificate of deposit or letter of credit.

SECTION 7. INSURANCE REQUIREMENTS. On the effective date of this Agreement, Franchisee shall file with the City a certificate of insurance and thereafter continually maintain in full force and effect at all times for the full term of the franchise and any renewal thereof, at the expense of Franchisee, a commercial general liability insurance policy, including coverage for explosion, collapse and underground, written by a company authorized to do business in the State of Alabama with a rating of at least B+, protecting the City against liability for claims of bodily injury and property damage occasioned by the installation, removal, maintenance or operation of the communications system by Franchisee in the following amounts:

- (1) One Million Dollars (\$1,000,000) per occurrence for bodily injury and for property damage.
- (2) One Million Dollars (\$1,000,000) general aggregate.

Franchisee shall also file with the City Clerk a certificate of insurance for a commercial automobile liability insurance policy written by a company authorized to do business in the State of Alabama with a rating of at least B+, covering all owned, non-owned, hired and leased vehicles operated by Franchisee, with a combined single limit of One Million Dollars (\$1,000,000) each accident for bodily injury and property damage.

Franchisee shall also maintain, and by its acceptance of any franchise granted hereunder, specifically agrees that it will continually maintain throughout the term of the franchise and any renewal thereof, workers compensation in compliance with the statutory requirements of the state(s) of operation and employers liability with a limit of Five Hundred Thousand Dollars (\$500,000) each accident/disease/policy limit.

The commercial general liability and commercial automobile liability insurance required pursuant to this section shall include the City of Calera and its officers, employees, board members and elected officials as additional insureds as their interests may appear under this Agreement and shall be kept in full force and effect by Franchisee during the existence of the franchise and until after the removal of all poles, wires, cables, underground conduits, manholes and any other conductors and fixtures installed by Franchisee incident to the maintenance and operation of the communications system as defined in this Agreement provided however, that any fiber optic cable and associated conduits, manholes, poles, wires, cables and other facilities which are provided to the City as part of this agreement shall not be removed without the written consent of the City. Failure to obtain and maintain continuously the required insurance shall constitute a substantial violation of this agreement. Upon receipt of notice from its insurer(s) Franchisee shall use commercially reasonable efforts to provide the City thirty (30) days prior written notice of cancellation of any coverage required herein.

Franchisee agrees to indemnify, keep and hold free and harmless the City from all liability and costs, including attorney's fees and court costs, pertaining thereto and arising out of or resulting from Franchisee's use and occupancy of the premises and the operations conducted thereon, and by its acceptance of the franchise, Franchisee agrees that it will pay all damages and penalties which the City may be legally required to pay as a result of the franchise. Franchisee further agrees that should any of its facilities installed pursuant to this franchise be damaged or destroyed or the network be disrupted or damaged by the City, its agents, employees, contractors or subcontractors, the Franchisee shall repair or replace such facilities at its own expense and shall waive any right, claim or action for damages or other available remedies which it may have against the City, its agents, employees, contractors or subcontractors. The foregoing sentence shall not extend to intentional, willful, grossly negligent or malicious damage to Franchisee property by City employees. The City will endeavor to use its best efforts to avoid damage to Franchisee's facilities, provided that Franchisee participates in Alabama Line Locators and has correctly identified the location of its facilities.

During construction or maintenance, if Franchisee or its employees damage to or break in any lines, cables, ducts, conduit or other facilities located in the City's rights-of-way, notice shall be given immediately to the affected party and to the City and Franchisee shall be solely responsible for cost of timely repairs

SECTION 8. NON-ASSIGNMENT.

(a) The rights granted by this franchise or any interest therein shall not be assigned or transferred to any other unrelated entity without the express written consent of the Mayor and Council. A written copy of any such proposed assignment must be filed with the City. Any required consent is to be evidenced by an ordinance or resolution of the Council that fully recites the terms and conditions, if any, upon which consent is given. No sale or transfer of the Agreement, as allowed hereunder, shall be effective unless and until the vendee or assignee has filed in the office of the City Clerk an instrument, duly executed, reciting the fact of such sale or assignment, accepting the terms of this Agreement and agreeing to perform all the conditions thereof, and the City has approved said transfer, which approval shall not be unreasonably withheld. The City shall take action on such request for approval of transfer within sixty (60) days of filing of all information required by this section. This section shall not apply in connection with execution of secured financing agreements made by the Franchisee.

A copy of the completed sales or transfer agreement, or a functionally equivalent instrument between the Franchisee and proposed Franchisee, shall be provided on a confidential basis to the City Attorney for review, so that the City may discover the assumption of obligations by the Franchisee and proposed Franchisee with respect to the fiber-based communications system.

After receipt of the petition for proposed transfer or assignment, the City Council may, as it deems necessary or appropriate, schedule a public hearing on the petition. Further, the City Council may review Franchisee's performance under the terms and conditions of this franchise. The Franchisee shall provide all requested assistance to the City Council in connection with any such inquiry and, as appropriate, shall secure the cooperation and assistance of all persons involved in said action.

Should the Franchisee sell, assign, transfer, convey or otherwise dispose of any of its rights or interests under this franchise or attempt to do so in violation of this requirement to obtain prior consent, the City may revoke this franchise for default and the purported sale, transfer, assignment or conveyance shall be null and void. For purposes of

clarity, Franchisee may assign, transfer or convey any of its rights or interest under this franchise without consent or approval of the City to any affiliated company, provided, however that Franchisee shall remain liable for the full performance of duties and obligations pursuant to this Franchise Agreement

(b) Franchisee will not lease any part of its fiber optics system pursuant to this franchise to any other unrelated company for providing cable television services to subscribers or customers within the City unless the lessee holds a valid cable television franchise with the City.

(c) In the event of a change in majority control of Franchisee, the system or the franchise granted herein that occurs after the effective date of the franchise, by act of Franchisee, by act of any person holding control of the Franchisee, the network or the franchise granted herein, by operation of law, or otherwise, Franchisee shall provide reasonable notice to the City. The requirements of this section shall also apply whenever any change in partial ownership is proposed which would result in a change of majority ownership or control of Franchisee, the system, the franchise granted herein or of any person holding control of Franchisee or in the system or in the franchise, and any other event which could result in a change in majority ownership or control of Franchisee, regardless of the manner in which such ownership or control is evidenced (e.g., stock, bonds, debt instruments or other indicia of ownership or control).

SECTION 9. LOCATION AND CONSTRUCTION OF FACILITIES.

- (a) Facilities maintained or installed by Franchisee within the City shall be so located and constructed as not to:
- (1) Interfere with usual travel (automotive and/or pedestrian) within the public rights-of-way;
 - (2) Interfere with the rights or reasonable convenience of property owners who adjoin such public rights-of-way;
 - (3) Interfere with access to or use of any water or fire hydrant;
 - (4) Obscure the vision of or interfere with the installation of any traffic control device or traffic or information sign or signal;
 - (5) Interfere with sight distance established by any ordinance or law;
 - (6) Obscure the light from any street light;
 - (7) Cross any water or sewer line except at a ninety degree (90°) angle, except in accordance with a specific permit for such crossing issued by the City;

- (8) Damage irrigation, landscaping or trees owned or maintained by the City;
- (9) Damage any communications lines owned or maintained by the City.
- (10) Interfere with the ability of the City to improve, expand and/or maintain its infrastructure including, but not limited to streets, sidewalks, water, sewer, and storm drainage structures.

(b) Placement of facilities in the paved sidewalk area is prohibited unless authorized by the City.

(c) The City shall have authority to require Franchisee to remove or relocate any facility located or maintained in violation of this section at Franchisee's sole expense. Such relocation or removal shall be completed with thirty (30) days of written notice from the City. In the event that thirty (30) days is not sufficient, Franchisee may in writing request an additional thirty (30) days to accomplish the relocation. The notice shall prescribe the area where the facility is located and any other special conditions deemed necessary by the City.

(d) Map of Network. Upon request, the Franchisee shall provide to the City's GIS representative per instructions from the City its fiber optics location data in conformance with data definition standards defined by the City GIS staff. The fiber optics location data layer shall be incorporated into the GIS data dictionary and any appropriate Franchisee documentation. The City shall provide GIS data to serve as the base for the fiber optics location data, if available. The City shall provide to the Franchisee existing data in a format agreed to by the City. Specific data layers that make up the base shall be defined in discussions with the Franchisee. At a minimum, the fiber optics location data layer shall represent the conduit duct banks, as well as overall size, material and configuration of the duct bank or any other underground burial and location of all aerial wiring. The fiber optics location data shall be returned to the City on the same type medium and format as previously identified.

After construction of new network facilities or extensions of existing network facilities, as a separate requirement, the Franchisee shall develop as built drawings and maps in a format as requested by the City and be provided to the City in that format.

SECTION 10. WORK IN PUBLIC RIGHT-OF-WAY: RESTORATION OF DAMAGED AREAS.

(a) All work shall be constructed, operated, maintained, repaired, renewed, modified and/or reconstructed by the Franchisee in strict conformity with the laws and regulations of the City in effect at the time of

such excavation or other work. Franchisee shall obtain any required permits in accordance with City code. In the event such requirements and specifications conflict in any respect with the legal requirements of any federal, state or municipal law or regulation, such legal requirements shall govern on all points of conflict, but in all other respects, the City's requirements and specifications shall apply.

(b) In emergencies involving service outages, Franchisee shall proceed with all necessary operations without first obtaining the permit, but shall obtain the required permit at its earliest opportunity.

(c) Immediately upon completion of repairs or installation of any facility, Franchisee shall refill and compact any trench or excavation to the standards required by the City and, if applicable, the State of Alabama Department of Transportation's "Standard Specifications of Roads and Structures." Franchisee shall promptly restore or replace any pavement, sidewalk, curb, gutter, grass, landscaping material or other materials or structure damaged in the course of its work at Franchisee's sole expense to the function, appearance, and condition in which it previously existed or better, to the City's reasonable satisfaction.

(d) In any case where a public right-of-way is being excavated, disturbed or encumbered by Franchisee, Franchisee shall take all precautions required by law, in particular, the Manual on Uniform Traffic Control Devices, or otherwise necessary or proper for the protection of the public and shall maintain adequate warning signs, barricades, signals, and other devices necessary or proper to give notice and warning to the public of the existence of actual conditions present. Nothing in this paragraph shall alter or waive any rights enjoyed by Franchisee or any other party under Alabama's underground damage prevention law (Ala. Code Title 37, Section 37-15-1, -11).

SECTION 11. ACQUISITION OF RIGHT-OF-WAY. In acquiring or widening public rights-of-way, the City shall determine the minimum right-of-way necessary to accommodate paved streets, pedestrian walkways, landscaping, traffic signals, drainage, water and sewer lines and other governmental facilities. The City shall not, however, be compelled to acquire any additional right-of-way to accommodate the needs of the Franchisee.

SECTION 12. RELOCATION OF FACILITIES. The use herein allowed is subject to the needs and requirements of the City in the operation of its right-of-way and in the improvement and use of its property. Franchisee shall relocate at no expense (direct or indirect) to the City any facilities installed or maintained in, on or under any right-of-way, as may be necessary to facilitate any public purpose whenever directed to do so by

City. Franchisee shall, within ninety (90) days of written notice from the City complete the relocation. Nothing in this Agreement is intended to eliminate or waive any right Company may have to reimbursement from other entities other than the City under applicable law or the terms of any public funding grant for a project, provided that such reimbursement does not result directly or indirectly in a cost to the City.

If Franchisee believes it will be unable to complete the relocation within ninety (90) days from receipt of notice from the City, Franchisee shall explain the reasons for its inability in detail and City and Franchisee shall attempt to agree on an alternate schedule, subject, however, it is the City's right to finally determine the schedule, as long as its decision is not unreasonable.

SECTION 13. TREES. Trimming of the trees and shrubbery within the public right-of-way to prevent contact with Franchisee's facilities shall be done only in accordance with standards approved by the City Engineer.

SECTION 14. CONSTRUCTION STAFFING. During the franchise term, Franchisee shall have sufficient full-time supervisors on staff solely to supervise construction plans and the construction practices of subcontractors. The Franchisee shall provide the means for immediate notification and communication by the City with the supervisor in the field by means of a pager, cellular phone or other similar means of communication during all phases of construction. All construction work or any other work performed by Franchisee, its employees, agents, its duly licensed contractors and sub-contractors shall be in compliance with the plans and specifications approved by the City, and shall be subject to all applicable ordinances, rules and regulations, including licensing and permitting, as well as any licensing and permitting fees charged to all persons and businesses for construction and street opening.

SECTION 15. FRANCHISE NOT A JOINT VENTURE. Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third persons or the public in the manner which would indicate any such relationship with the other.

SECTION 16. FRANCHISEE FEE; CONDITIONS.

(a) As consideration for this franchise, the Franchisee shall pay to the City an amount equal to five percent (5%) of the gross revenue, as defined herein.

(b) In consideration of the agreement of the Franchisee to make such franchise payments, the City agrees that no additional business license fee shall be imposed upon or required of the Franchisee by the City

during the term of this franchise. This provision shall not exempt the property of the Franchisee from lawful ad valorem taxes and local improvement district assessments. This provision shall also not exempt the Franchisee from conditions, exactions, fees and charges, which are generally applicable during Franchisee's real property development or use as required by the City's ordinances. This provision shall also not exempt the Franchisee's contractors from obtaining appropriate business license(s) and paying all applicable fees associated with said business license(s).

(c) Commencing the month following the month this franchise becomes effective, the franchise fee shall be paid quarterly on the 20th day of April, July, October and January; such fee shall be for revenues received by the Franchisee for the preceding quarter. The Franchisee shall furnish to the City with each payment of compensation required by this section a written statement, showing the amount of gross revenue of the Franchisee within the City for the period covered by the payment. Such statement will be accorded confidential treatment to the extent permitted by law. Upon receipt of such payment the City shall issue a receipt to the Franchisee. Nothing herein shall preclude the Franchisee and the City from agreeing to a revised payment schedule.

(d) On or before the first (1st) day of March of each succeeding year, the Franchisee shall submit to the City, a statement of the franchise fee actually due to the City based upon the actual gross revenue for the previous calendar year, together with a check for any amount due from the Franchisee or a statement for any amount due from the City. Such statement will be accorded confidential treatment to the extent permitted by law.

(e) Acceptance by the City of any payment due under this section shall not be deemed to be a waiver by the City of any breach of this franchise occurring prior thereto, nor shall the acceptance by the City of any such payments preclude the City from later establishing that a larger amount was actually due, or from collecting any balance due to the City.

(f) As used in this section, gross revenue shall mean all revenues (exclusive of sales tax) collected by Franchisee from the provision of telecommunications services pursuant to this franchise within the corporate limits of the City, including, but not limited to:

- (1) All revenues from installation service charges,
- (2) All revenues from connection or disconnection fees,

- (3) All revenues from penalties or charges to customers for checks returned from banks, net of bank costs paid, and penalties, interest or charges for late payment,
- (4) All revenues from equipment sold or rented to customer upon customer premises,
- (5) All revenues from authorized rental of conduit space located within the corporate limits of the City,
- (6) All revenues from authorized rentals of any portion of the Company's network within city's rights-of-way, including plant, facilities, or capacity leased to others.
- (7) All 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 excludable from gross revenue, and
- (8) The value of any free services provided by Franchisee except (1) those free services required under this agreement; (2) services provided as a credit against non-recurring charges imposed on Franchisee's customers by a local exchange carrier for converting circuits to Franchisee.

Notwithstanding the foregoing, gross revenue *does not include*: (i) Any tax of general applicability imposed upon the Franchisee; (ii) any regulatory fees or surcharges collected from customers as well as amounts reflecting cost-recovery of regulatory fees and surcharges (iii) those revenues that the Franchisee receives from another telecommunications service provider and upon which the other telecommunications service provider has paid or will pay a franchise fee; (iv) pass through revenues which are in turn paid to a local exchange carrier for interconnection for long distance service; and (v) revenues that the Franchisee receives from its corporate parent, subsidiary, or affiliate.

Payment of money under this section shall in no way limit or inhibit any of the privileges or rights of the City of Calera, whether under this franchise or otherwise. Nothing in this section is intended to alter, amend modify or expand the taxes and fees that may lawfully be assessed on Franchisee's business activities under this franchise under applicable law. Except as provided elsewhere in this franchise, all payments made by franchisee to the City pursuant to this franchise shall be made to the Director of Finance. Nothing in this Agreement shall be construed to prevent Franchisee from passing through some or all of the franchise fee to its customers.

Any transactions which have the effect of circumventing payment of required franchise fees and/or evasion of payment of franchise fees by non-collection or non-reporting of gross receipts, bartering, or any other means which evade the actual collection of revenues for business pursued by Franchisee are prohibited and shall constitute a default of this agreement.

If as a result of such audit or any other review, the City determines that the Franchisee has underpaid its fees by ten percent (10%) or more for any twelve (12) month period, then in addition to making full payment of the relevant obligation, the Franchisee shall reimburse the City for all of the reasonable costs associated with the audit or review, including all reasonable out-of-pocket costs for attorneys, accountants, and other consultants.

The City may collect the costs associated with such audit or review either through the draw-down of the security required in Section 6, or through other means as allowed by law.

If as a result of such audit or other review, the City determines that the Franchisee has underpaid its fees for any twelve (12) month period, the Franchisee shall pay interest on such underpayment at the rate of ten percent (10%) interest or prime plus two percent (2%), whichever is greater. The underpayment and interest thereon may be collected by the City through the drawdown of the security required in Section 6, or through other means as allowed by law.

SECTION 17. ACCOUNTS AND OTHER RECORDS AND REPORTS AND INVESTIGATIONS.

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

(b) Franchisee shall keep complete and accurate books of account and records of its business and operations pursuant to this franchise agreement in accordance with generally accepted accounting principles, subject to approval by the City.

(c) Franchisee 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 Franchisee pertaining to this franchise. Franchisee shall fully cooperate in making available its records and otherwise assisting in these activities.

(d) The City may, at any time, make inquiries pertaining to Franchisee's operation of its network within the City of Calera. Franchisee shall respond to such inquiries on a timely basis.

SECTION 18. NATURE OF FRANCHISE FEE PAYMENTS.

(a) Nothing in this Section is intended to alter, amend, modify or expand the taxes and/or fees that may lawfully be assessed on Franchisee's business activities under this franchise pursuant to applicable law.

(b) The payment of a franchise fee by the Franchisee in no way limits the right of the City to charge fees for any permits the Franchisee is required to obtain for any construction project.

SECTION 19. FORFEITURE AND TERMINATION.

(a) In addition to all other rights and powers of the City, the City reserves the right to forfeit and terminate this franchise and all rights and privileges of the Franchisee in the event of a material or substantial breach of its terms and conditions including, but not limited to, the following:

- (1) The appointment of a receiver or trustee in bankruptcy to take over and conduct the business of the Franchisee;
- (2) A failure to begin construction of the fiber optics system within twelve (12) months of the effective date of this franchise;
- (3) A failure to provide insurance, bonds, certificates of deposit or letters of credit as required herein;
- (4) A failure to pay the required franchise fee or provide to the City as required herein;
- (5) Permitting the use of its fiber optics system or facilities in any manner that would avoid or seek to avoid the need for a franchise with the City for the business of another person; or
- (6) A failure to operate the fiber optics system for a period of six (6) months.

(b) The Franchisee shall not be excused by mere economic hardship, nor by nonfeasance or malfeasance of its directors, officers, agents, subcontractors or employees.

(c) The City shall notify the Franchisee in writing of any breach specifying the nature of the breach. The Franchisee shall have thirty (30) days after the date of such notice to come back into compliance unless such period is extended by the City. Should the Franchisee fail or refuse to comply with the notice given by the City, the City may consider the franchise in default and pursue remedies as it determines. If the remedy elected by the City is to forfeit and terminate this franchise, the Franchisee may request an appeal of such decision to the Council of the City of Calera which appeal must be filed in writing with the City Clerk no later than ten (10) days after the date of written notice of forfeiture and termination to the Franchisee. The Council shall set a public hearing on such appeal within thirty days after notice of appeal is received.

SECTION 20. REMEDIES AND PENALTIES NOT EXCLUSIVE. All remedies and penalties under this franchise are cumulative and not exclusive, and the recovery or enforcement by one available remedy or imposition of any penalty is not a bar to recovery or enforcement by any other such remedy or imposition of any other penalty. The City reserves the right to enforce the penalty provisions of any ordinance or resolution and to avail itself of any and all remedies available at law or in equity. Failure to enforce shall not be construed as a waiver of a breach of any term, condition or obligation imposed upon the Franchisee by or pursuant to this franchise. A specific waiver of a particular breach of any term, condition or obligation imposed upon the Franchisee by or pursuant to this franchise shall not be a waiver of any other or subsequent or future breach of the same or any other term, condition or obligation, or a waiver of the term, condition or obligation itself.

For any period of performance or cure under this Agreement, the time period within which Franchisee is to perform or cure, as the case may be, shall be extended, without liability to Franchisee, for at least as long as Franchisee's ability to perform or cure is delayed for reasons beyond Franchisee's control provided that Franchisee shall employ all commercially reasonable efforts to eliminate or mitigate the impact of said reasons and to thereafter reasonably accelerate, where feasible, its performance or cure.

Prior to taking any adverse action against Franchisee or this franchise, City shall provide Franchisee with such notice and due process, including a reasonable period of time to cure, as is required by applicable law, but in all cases no less than reasonable notice and opportunity to cure.

SECTION 21. CONTINUING OBLIGATION. In the event the Franchisee continues to operate all or any part of the network after the terms of this franchise agreement expire or are terminated, and before any renewal of the franchise by the City, then the Franchisee shall continue to comply with all applicable provisions of this franchise, including, without limitation, all compensation and other payment provisions of this franchise, throughout the period of such continued operation, provided that any such continued operation shall in no way be construed as a renewal or other extension of this franchise.

SECTION 22. LIMITATION ON PRIVILEGES. All rights, authority and grants herein contained or conferred are also conditioned upon the understanding and agreement that these privileges in the rights-of-way and other public ways of the City are not to operate in any way so as to be an enhancement of the franchise's properties or values or to be an asset or item of ownership in any appraisal thereof.

SECTION 23. CONFIDENTIALITY.

To the fullest extent permissible under applicable law, the City shall protect from disclosure any confidential, proprietary information, including maps, submitted to or made available by the Franchisee to the City under this Agreement, provided that the Franchisee notifies the City of, and clearly labels, the information which the Franchisee deems to be confidential, proprietary information as such. Such confidential, proprietary information shall include, but not be limited to any customer names and lists, financial information, technical information or maps regarding placement of equipment with the exception of any map(s) attached to the Agreement, or other information clearly identified as "Confidential" pertaining to services provided to its customers. Confidential, proprietary information disclosed by Franchisee to the City shall be regarded as confidential, proprietary as to third parties. If the City receives a request to disclose such information, the City shall notify Franchisee of such request and allow Franchisee a reasonable opportunity to defend its information from disclosure. It is understood that the City is an Alabama Municipal Corporation and subject to public records disclosure rights, duties and obligations established the by Alabama Code. All parties understand that the City must and will comply with appropriate open records and public writings requests

SECTION 24. CAPTIONS. The captions given to various provisions of this franchise are for purposes of convenience only and are to have no impact upon the interpretation of any such provisions.

SECTION 25. ENTIRE AGREEMENT. This franchise, with its exhibits, comprises the entire agreement between the City and the Franchisee for purposes of this franchise and supersedes any prior agreements or understandings between the parties with respect to the subject matter hereof.

SECTION 26. COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES. Franchisee shall, at all times during the term of its franchise, be subject to the present ordinances, resolutions, rules, regulations, and laws of the City of Calera and of the State of Alabama, and to the provisions of any further ordinance, resolution, rule, regulation, or law of the City or of the State of Alabama, so far as they may be applicable.

SECTION 27. ALABAMA LAW GOVERNS. In any controversy or dispute under this franchise, the laws and jurisdiction of the State of Alabama shall apply to the extent such law has not been superseded or preempted.

SECTION 28. NOTICE. Any notice required or permitted under this franchise shall be deemed given if sent by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

To the City:

City of Calera
Attn: Mayor Graham
7901 Highway 31
Calera, Alabama 35040

To the Franchisee:

MCImetro Access Transmission Services Corp.
Attn: Franchise Manager
600 Hidden Ridge
Irving, TX 75038

With copies to (except for invoices):

Verizon
1320 N. Courthouse Road, Suite 900
Arlington, VA 22201
Attn: Vice President and Deputy General Counsel

or such other address as may be designated in the future in writing by either party.

SECTION 29. EFFECTIVE DATE AND PUBLICATION. After the execution hereof, this franchise shall be published once in a weekly newspaper published in Shelby County, Alabama at Franchisee's expense, and shall not take effect until such publication or thirty (30) days after the Ordinance authorizing this franchise, whichever is later.

SECTION 30. MODIFICATION. This franchise, including all documents specifically incorporated herein, cannot be changed orally but only by an agreement in writing properly executed by the parties.

SECTION 31. SEVERABILITY. Should any part, term or provision of this franchise be held invalid or unenforceable by any court of competent jurisdiction, such part, term, or provision shall be deemed a separate, distinct and independent provision and such holding shall not invalidate or render unenforceable any other provision of this franchise.

SECTION 32. RIGHT TO NOTICE AND CURE. Other provisions herein to the contrary notwithstanding, prior to exercising its right to terminate or revoke this Agreement as provided herein, the City shall first give written notice to Franchisee setting out the circumstance or basis on which the City has the right to terminate or revoke this Agreement, and the Franchisee shall have a period of thirty (30) days after the receipt of the notice within which to cure, correct, or resolve the circumstance or basis, and if the Franchisee is successful in the cure, correction, or resolution thereof, then the City shall not exercise its right to terminate or revoke this Agreement. If the Franchisee has commenced the cure, correction or resolution within thirty (30) days after its receipt of notice, but additional time is necessary to the completion thereof, then Franchisee shall have an additional thirty (30) days or such addition time upon which the parties can agree, not to be unreasonably withheld by either party, to accomplish the cure, correction, or resolution.

SECTION 33. RESERVATION OF RIGHTS The City, through the granting and approving of this Agreement, does not surrender or to any extent lose, waive, impair or lessen the lawful powers and rights now, or which may be hereafter, vested in the City under the Constitution and the statutes of the State of Alabama to regulate the use of its rights-of-way by the Company or any person or to charge reasonable compensation for such use, and the Company by its acceptance of this right-of-way use agreement and Agreement, agrees that all lawful powers and rights, regulatory power, police power or otherwise, that may be from time to time vested in or reserved to the City, shall be in full force and effect and subject to the exercise thereof by the City at any time. The Company is deemed to acknowledge that its rights are subject to the regulatory and police powers of the City to adopt and enforce ordinances necessary for the safety and welfare of the public and agrees to comply with all applicable laws and ordinances enacted by the City pursuant to such powers. Any conflict between the provisions of the Agreement and any other present or future lawful exercise of the City's police powers shall be resolved in favor of the latter.

It is hereby reserved to Franchisee every right and privilege available to Franchisee under applicable law, and Franchisee by its execution of this Agreement, shall not be deemed in any way to waive, relinquish, release or abrogate any of its lawful rights and privileges; provided, however, that notwithstanding the foregoing, Franchisee acknowledges and agrees that the terms and conditions of this franchise are a binding obligation of Franchisee, and its successors and assigns for the term hereof. IN WITNESS WHEREOF, the parties have executed this franchise as of the 18th day of March, 2019.

Council Member Bradshaw moved that unanimous consent of the Council be given for immediate action upon Ordinance No. 2019-03. Council Member Busby seconded said motion and upon vote, the results were as follows:

AYES: Montgomery, Watts, Bradshaw, Graham, Busby, Turner

NAYS: None

Thereupon, the Mayor declared said motion carried and unanimous consent given for the consideration of said Ordinance.

Council Member Turner moved that Ordinance No. 2019-03 be adopted. Council Member Watts seconded said motion and upon vote, the results were as follows:

AYES: Montgomery, Bradshaw, Graham, Watts, Busby, Turner

NAYS: None

Mayor Graham declared Ordinance No. 2019-03 adopted.

Adopted this 18th day of March, 2019.

Connie B. Payton, City Clerk

Jon G. Graham, Mayor

(Franchisee)

By: _____

Its: _____

Witness

EXHIBIT 1

(Build-Out Plan)

**MCImetro Access Transmission Services Corp. d/b/a Verizon Access Transmission Services
License Area Planned Fiber Routes
City of Calera, AL**

