

## Master Contract for Public Safety Services (Surveillance Equipment – Governmental)

**THIS MASTER CONTRACT FOR PUBLIC SAFETY SERVICES (SURVEILLANCE EQUIPMENT – GOVERNMENTAL)** (the "**Agreement**") made and entered into this \_\_\_\_\_ day of September, 2018, by and between the **CITY OF BIRMINGHAM, ALABAMA**, a municipal corporation ("**City**" or "**the City**") and **ALABAMA POWER COMPANY ("APC")**. (City and APC may be referred to individually as "**Party**" or collectively as "**Parties**").

**WHEREAS**, APC is committed to working with the City and others to improve public safety; and

**WHEREAS**, the City has desires to undertake a pilot program involving the acquisition, installation and support of a public safety camera surveillance system in order to promote, improve and enhance law enforcement and overall public safety in certain strategic areas of the City; and

**WHEREAS**, APC has been separately working with ShotSpotter and others to facilitate the provision of valuable public-safety related products or services in such strategic areas of the City.

**THEREFORE**, in consideration of the mutual covenants and agreements set forth herein, and the adequacy of which both APC and the City hereby acknowledge, the Parties do hereby intend to be legally bound and agree to the following:

**1. Agreement.** This Agreement establishes the terms and conditions under which APC will provide a pilot program of public safety-related services (collectively "**Services**") including the deliverables described in the attached Premises Exhibit (the "**Deliverables**") which involve the installation of surveillance equipment as part of a system that will be instrumental in promoting and maintaining public safety in the City. This Agreement shall apply to each of the pilot areas identified in the attached Premises Exhibit (collectively the "**Premises**"). Installation shall commence no later than ninety (90) days from the Effective Date of this Agreement. All capitalized terms defined in this Agreement are incorporated in and made a part of the Premises Exhibit and all capitalized terms not otherwise defined in this Agreement have the meanings ascribed to them in the Premises Exhibit attached hereto.

**2. Intent and Title. (a)** This Agreement concerns the provision of Services to the City by APC and is not a sale, lease, or licensing of goods, equipment, or property of APC of any kind. APC retains the sole and exclusive right, title, and interest in and to all of its goods, equipment, and property utilized in connection with the Services, including, without limitation, all poles, bases, wiring, conduit, fixtures, cameras, controls, and related items, other than the Content, as defined below (collectively, the "**APC Assets**"). APC, at its expense, may update, modify or replace any components as necessary or convenient in order to address regulatory requirements or for other reasons related to the provision of Services. Moreover, APC may remove the APC Assets upon termination of this Agreement.

**(b)** APC acknowledges that the City intends to use the APC Assets for the following purposes, although it exercises no control over and disclaims any responsibility for the City's use of the APC Assets for these purposes:

- **Post-Incident Investigation** – All cameras should be capable of producing footage which can be archived twenty-four (24) hours a day for the last thirty (30) days at the highest resolution available, providing detailed and fluid video information for incident investigation.
- **Emergency Operations Center** – Situational awareness in the field at the City's chosen monitoring station or at temporary command posts as may be needed.
- **Force Multiplier** – Cameras located strategically throughout the City to augment police force efforts.
- **Crime Deterrence** – Presence of City surveillance resources on the Premises has deterrent effect, thus helping prevent potential crimes before they occur.
- **Agency Cooperation** – Allows both Parties, where applicable or feasible, to instantly provide access to the cameras by third party agencies such as the Jefferson County Sheriff's Office, and state and local responders, in response to incidents.
- **Quality of Life** – Address quality of life by monitoring issues such as graffiti, loitering, panhandling, street gambling, illegal parking, prostitution, entering autos, drug dealing, etc.

**3. Content.** The Services will allow the City to retrieve, process, and/or access information including video recording, photographs, or other content ("**Content**"). The Services do not include any Content monitoring services by APC. APC acknowledges and agrees that all Content, including but not limited to recorded images, raw and recorded data, metadata, media artifacts and recordings and data files generated through the provision of Services, shall be owned by the City and, within sixty (60) days of expiration or termination of this Agreement, shall be provided to the City. During the Term plus sixty (60) days, the City grants APC and its subcontractor(s) a license to access and use the metadata solely for its provision of Services under this Agreement. The City is the owner of the Content and is solely responsible for the City's conduct and any consequences of the City accessing, retrieving, or making available such Content.

**(a) Content Access and Storage.** The City acknowledges and agrees that video Content may be received and stored on servers maintained by APC or third parties. The City consents and agrees, and grants a license during the Term plus sixty (60) days, that APC may store, or cause to be stored, video content from the Premises at APC's sole and exclusive discretion. The City acknowledges that its use of the Services requires the City to have access to the Internet to use an Internet-connected device capable of receiving the digital feed of Content provided by APC. The Content from the License Plate Recognition ("LPR") devices will be uploaded from the servers in the field to the Federal Bureau of Investigation's Criminal Justice Information Services ("CJIS") in the cloud (or compatible successor database as mutually agreed by the Parties). The City may then obtain the Content from the CJIS portal. The video feed Content from the surveillance cameras will be stored on the local servers and available to the City at its selected monitoring station through the Internet via a platform provided to the City by APC and its Representatives. The City agrees to keep access to the Content stored in such a way that it is protected by a password. The City is solely responsible for creating a password for access to the Content, for the security of the password the City uses to access its Content, and for the activities of all persons whom access the Content with the City's permission. The City is responsible for any storage beyond the receipt of the digital feed.

**4. Term.** Subject to the termination provisions set forth in Sections 18, 19, or 20 below, the term for the Agreement shall be for sixty (60) months, calculated from the date of the first monthly bill which shall be issued following installation verification as provided in the Premises Exhibit (the "**Term**").

#### **5. Payment.**

**(a) Payment and Invoices.** APC will invoice the City per the terms stated in the Premises Exhibit, subject to any change in the electric service charge dictated by the Alabama Public Service Commission, as described in the Premises Exhibit. City agrees to pay the monthly amount billed before City's next bill is issued by APC. If a balance is outstanding by the next bill date, City agrees to pay the greater of 1.5% of the unpaid balance or \$2.00.

**(b) Payment Default.** Notwithstanding Section 5(a) above, City is in default if City does not pay the entire amount owed within forty-five (45) days of billing. APC's waiver of any past default will not waive any other default. If default occurs, APC, at its discretion, may immediately terminate this Agreement, collect all past due amounts (including late fees), collect APC costs incurred (including, but not limited to removal costs, remaining subscription fees, etc.) at the time of termination or as a result of termination, subject to APC's obligation to make commercially reasonable efforts to mitigate costs, remove the Equipment from the Premises, and seek any other legal or equitable remedy.

#### **6. Miscellaneous Responsibilities of the Parties.**

**(a)** APC will be responsible for the Services performed under the terms of this Agreement. APC agrees not to disclose information identified by the City as proprietary to third parties, unless approved in advance by the City or required by law, as provided below.

**(b)** The City shall not be held liable or responsible for the maintenance and/or safety of the APC Assets placed upon the Premises in accordance with this Agreement. Subject to City's reasonable security obligations under Section 3 of the Premises Exhibit as well as APC's limited obligations for vandalism under Section 6(d), APC acknowledges that it assumes full responsibility for any loss or damage to the APC Assets not directly caused by the City, its agents, employees or contractors.

**(c)** The City agrees that its use of the Services and Content is at City's own risk. The City is solely responsible for any and all pictures, video, or other data that the City, or anyone the City allows to access and use the Content and Services, uploads, downloads, monitors, records, stores, posts, emails, transmits, discloses, or otherwise makes available using the APC Assets and Services, including any notifications or other activities required by applicable law or regulation.

(d) During this Agreement's Term, APC will be responsible for the cost of repairing or replacing any Equipment damaged or destroyed due to vandalism or willful abuse subject to an annual aggregate limit of Ten Thousand Five Hundred Dollars and no/100 (\$10,500) for all claims in a calendar year (with no carry over to the next year). Customer shall be responsible for APC's cost of repairing or replacing any Equipment damaged or destroyed due to vandalism or willful abuse that exceeds this amount in a calendar year during this Agreement's Term. For the purpose of this Section, the first calendar year shall begin on the Effective Date and end on December 1, 2018..

(e) APC shall be responsible for paying all sales, use, and other taxes which are applicable to APC Assets associated with this Agreement. APC makes no representation or warranty regarding treatment of this transaction by the Internal Revenue Service or the state of this Agreement under any federal or state tax law. As stated above, to the extent there is a change in law or interpretation that results in a new or increased tax applicable to APC Assets, APC will be responsible for paying it.

(f) The City's financial obligation to APC shall be limited to the amounts outlined in this Agreement.

(g) All Content and camera locations shall be deemed confidential (except to the extent they are publicly visible). Disclosure of any portion of the Content or the camera locations by APC or its personnel to any party other than the City shall be made only: (a) in connection with any law enforcement investigation or proceeding by a duly authorized law enforcement agency other than the City; and/or (b) pursuant to a court order or subpoena and, in either case, only after giving at least forty-eight (48) hours' notice to the City, unless otherwise required by law or law enforcement.

(h) APC shall be responsible, at its own cost, for all recruiting, hiring, training, educating and orienting of all personnel, all of whom shall be fully qualified and shall be authorized to perform the Services required.

**7. Premises Activity.** The City grants a non-exclusive license and right of access to APC, and its contractors and representatives, for the Term of the Agreement (and for a reasonable period after the Term of the Agreement, not to exceed ninety (90) days unless otherwise mutually agreed for the purpose of removing the APC Assets) to enter the Premises and perform all activities related to the provision of the Services, including the right to: (i) access the Premises with vehicles, the APC Assets, and other tools or equipment in order to install and connect the APC Assets; (ii) remove and disconnect pre-existing equipment where it is necessary or convenient to do so for the provision of Services; (iii) inspect, maintain, test, replace, repair, and remove APC Assets; (iv) provide electric energy in relation to the Services where necessary; and (v) conduct any other activities reasonably related to the provision of Services, including surveying, digging and excavation with tools, mechanized equipment and other machinery (activity items (i) – (v) collectively, the "**APC Activity**").

APC, its contractors and subcontractors, shall obtain all necessary permits, approvals or licenses required in order to undertake any particular APC Activity. The City will not cause or permit any obstruction that may unreasonably interfere with APC's access to the APC Assets.

**8. Installation.** APC, or an APC-approved contractor, shall install the APC Assets in order to provide the Services. Subject to events of Force Majeure under Section 14(a), APC shall commence system installation within ninety (90) days following the Effective Date, or some additional period of time as may be agreed upon by both the City and APC. All equipment provided under this Agreement shall be delivered in operable and standard condition, complete and ready for operation, and APC shall assume all responsibility and risk of loss incident to said delivery.

(a) **City Provided Equipment.** APC or its approved contractors may, at APC's discretion, use the City-provided equipment ("**CPE**") at the Premises including secure field locations, wiring, etc. to provide the Services. APC shall be responsible for repairing CPE or for any damage to-CPE caused by the Services; otherwise, APC is not responsible for the repair or replacement of any CPE.

(b) **Underground Facility/Obstruction Not Subject to Dig Law.** To the extent any APC Activity may require excavation not subject to Alabama's Underground Prevention Legislation (Ala. Code §§ 37-15-1 - 37-15-11) ("**Dig Law**"), City must mark any private utility or facility (e.g., gas/water/sewer line; irrigation facility; low voltage data/communication line) or other underground obstruction at the Premises that is not subject to the Dig Law, that City may be able to identify after performing reasonable due diligence. In addition, APC will perform its own reasonable due diligence to identify and mark any additional facilities. To the extent APC causes or incurs damage due to an "Unforeseen Condition" (defined herein to include any subsurface rock, wetland, underground stream, buried waste, unsuitable soil, underground obstruction, archeological artifact, burial ground, threatened or endangered species, hazardous substance, etc. not properly marked or identified), provided City has done the reasonable due diligence to identify such conditions ahead of time, APC will then incur the costs of remediating such damage. APC may stop all APC Activity until it can safely and effectively remedy the condition.

(c) **Use of Right-of-Way** To the extent that the APC Activities may require the use the streets, avenues, alleys, or public places of the City, the City hereby grants its consent to such use as are necessary to provide the APC Activities. All excavations, construction activities, and aerial installations of APC Assets in the City Right-of-Way shall be carried on as to reasonably minimize interference with the use of the Right-of-Way and with the use of private property, in accordance with all applicable laws, ordinances and regulations of the City. APC shall use commercially reasonable efforts to coordinate construction, installation, repair, and maintenance of the APC Assets to minimize unnecessary disruption, including, as appropriate, coordination with applicable City departments and agencies. APC shall not interfere with the use or development of any property of the City or any other person, and promptly upon completion of construction, erection or installation of the APC Assets, APC shall, at its own cost and expense, promptly repair any damage to property reasonably determined to be resulting from such activity to original condition.

**9. Service Functionality.** The APC Assets access and use certain hardware, application services, components, and embedded software in connection with the Services. The APC Assets may contain software or firmware, and any such software and firmware shall remain the sole property of the software owner. APC, at no additional cost to the City, grants the City a non-exclusive, revocable (in the event of default by City or other termination / expiration of this Agreement) license during the Term of this Agreement solely to access and use the application services and software of APC, its vendors, or the applicable software owner to the extent specified in, and permitted by, this Agreement in connection with the Services during the Term of this Agreement (collectively, the "**Solution**"). APC represents and warrants that it has the right to grant the City such access to the Solution. The City shall not (i) decompile or reverse engineer the Solution or take any other action to discover the source code or underlying ideas or algorithm of any components thereof, (ii) copy any products or software of the Solution (other than the Content solely for purposes of accessing and using the Services), (iii) post, publish, or create derivative works based on the Solution, or (iv) remove any copyright notice, trade or service marks, brand names and the like from the Solution.

**10. Maintenance.** During this Agreement's Term and subject to the other provisions of this Agreement, APC will maintain the APC Assets and will bear the cost of routine repair or replacement of damaged or defective APC Assets as identified in the Premises Exhibit, provided that credits for Service Interruptions will be addressed in Section 11 below. The City must notify APC of any need for repair by calling the Business Service Center at 1-888-430-5787. APC shall have the right to contract with a third-party for maintenance, repairs, and other work relating to any and all APC Assets associated with the provision of Services pursuant to this Agreement.

**11. Interruption of Services.** The City understands Services are provided on an "as is" and "as available" basis and may be temporarily interrupted from time to time. APC understands that the Services are important to the City's law enforcement and public safety objectives and should remain functional to the greatest extent possible. The City is responsible for notifying APC if there is an interruption of Services. The City can provide such notice by calling the Business Service Center at 1-888-430-5787 during normal business hours to report the issue. If Service interruptions continue for nine (9) consecutive business days after APC's receipt of notice of such interruption from the City (the "**Service Restoration Date**"), APC will then begin a credit against the Monthly Charge for each day past the Service Restoration Date for which the Services have not been restored in an amount equal to Ten and No/100 Dollars (\$10.00) per camera per day for the rest of the month, not to exceed a total of Ten Thousand and No/100 Dollars (\$10,000.00) of reimbursement per month.

**12. Access to APC Assets.** Nothing in this Agreement shall convey to the City the right to attach or affix anything to the APC Assets. If the City desires to attach or affix anything to the APC Assets, the City must first call the Business Service Center at 1-888-430-5787 and obtain APC's written consent.

**13. Internet/Broadband Connectivity.**

(a) As part of the Services, APC will provide an Internet broadband connection for the Service as noted in the Premise Exhibit. The Internet connection is not available for any use other than to connect the server. The City must have an Internet broadband connection to access the Services. The Services use Internet bandwidth, the amount of which may vary based upon the City's use of the Services. APC is not responsible for any degradation of performance or function of other Internet-connected devices due to Internet bandwidth used by City's access of the Services. City acknowledges the Services may not function when the Internet connection is not operating or is otherwise unavailable for any reason, including network outages, cable cuts, network maintenance, network congestion, equipment failures, Force Majeure events, etc. Transmission of wireless signals can be further affected by radio signal strength and availability at the Premises. The City is responsible for immediately notifying APC of any system failure or malfunction, including a broadband or signal interference or transmission failure. Video and other Internet-dependent components of the Services and transmission of surveillance content to a remote storage site will not function without a functioning Internet connection. The City must have a separate Internet broadband connection to access the Content, and APC is not responsible for issues associated with City's separate Internet broadband connection.

(b) APC shall verify that the installation and operation of the APC Assets has been designed so as not to cause any material interference with City's public safety communications system, traffic light signal system, or other City communications

infrastructure operating on spectrum where the City is legally authorized to operate. With respect to APC Assets, APC will address any interference issues within its reasonable control promptly upon discovery or notice of same. APC, in the performance and exercise of its rights and obligations under this Agreement, shall not impede, obstruct or otherwise interfere in any manner with the installation, existence and operation of any other facility in the City Rights-of-Way, including sanitary sewers, water mains, storm water drains, gas mains, poles, aerial and underground electrical infrastructure, cable television and telecommunication wires, public safety and City networks, and other telecommunications, utility, or municipal property without the express written approval of the owner or owners of the affected property or properties, except as permitted by applicable laws and this Agreement. APC shall make best efforts to operate its APC assets in a manner that will not cause radio frequency, electrical, radio or intermodulation interference to the City or other licensees of the City Right-of-Way in their use of any equipment or their conduct of any activity on the City Right-of-Way pursuant to agreements which pre-date the installation and operation of APC's Assets at any time during or after installation or operation of APC's Assets. In the event that APC's Assets interfere with the City's traffic light signal system, public safety radio system, or other City communications infrastructure operating on spectrum where the City is legally authorized to operate, APC will promptly respond to the City's request to address the source of the interference as soon as practicable, but in no event later than seventy-two (72) hours of receiving written notice, pursuant to protocol outlined below. During such 72-hour period, APC shall perform an assessment of the source of the interference, and thereafter, APC will promptly take all steps necessary within its reasonable control to correct such interference. If such interference cannot be eliminated within ten (10) days of APC's assessment, APC shall suspend operations (transmissions) at the affected Premises, except for brief periods for testing, while the interference problems are studied and a means to eliminate the problem is found. Any such method for correction of an interference problem must be reasonably acceptable to both the City and APC. If the interference complained of cannot be eliminated after sixty (60) additional days, despite its good faith efforts, APC will remove the equipment which caused the interference from the Premises, or at its option, terminate this Agreement. APC shall have the right to terminate this Agreement upon ten (10) days written notice to the City if another user of the Right-of-Way causes interference with APC's operations, and such interference is not corrected within thirty (30) days following the notice to such third-party user causing the interference. In the event that APC experiences interference caused by a third-party licensee, APC agrees that it shall seek recourse solely from such third party; provided that City will make reasonable efforts to support and assist APC's efforts, and to use any remedies reasonably available to it to address the third-party interference issue. No compensation shall be due from the City for damages, including, but not limited to, lost or anticipated profits. If interference is caused by a third-party user and cannot be eliminated, APC and City shall decide whether or not to remove the affected APC Assets, and no reduction to the compensation due to APC shall be necessary. APC shall have the sole burden of, and be responsible for all costs associated with, alleging and proving that another user of the Right-of-Way is causing significant interference.

(c) The Service includes standard data encryption and password protection. The City must provide any additional protections of the servers and the Content to the extent at which the City requires such, and is solely responsible for the security of its digital feed from the local storage servers to its monitoring stations.

#### **14. Disclaimer: Limitation of Liability; Damages.**

(a) APC does not represent or warrant that the Services will prevent or reduce crime or otherwise, or that the Services will in all cases provide the protection for which it is installed or intended, or that the Services will be uninterrupted or error-free. Further, expressly excluded from this Agreement (and hereby waived by City) are any implied or express warranties of merchantability or fitness or suitability for a particular purpose. APC assumes no liability for interruption of Services due to strikes, riots, fires, floods, lightning, earthquakes, power failures, interruption or unavailability of telephone, internet, or other communication services, acts of God, or for any other cause beyond the control of APC ("**Force Majeure**"). APC is not required to supply the Services to the City while any such interruption continues. This Agreement may be suspended or terminated at the option of either party if the APC Assets within the Premises are destroyed by fire, lightning or other catastrophe, or so substantially damaged that it is impractical to continue the Services. This Agreement, or its application to particular Premises of the City, may be canceled by the City upon written notice in the event that the Premises being monitored are destroyed by fire, storm damage or other catastrophe; provided, that the notice is given by City to APC within ten (10) days of such event. In either event, any advance payments made by the City to APC for Services which would have been rendered during the suspension or subsequent to the cancellation shall be refunded to the City.

(b) In no event will either Party be liable for any loss of profits, loss of use, business interruption, or indirect, special, incidental or consequential damages of any kind in connection with or arising out of the furnishing, performance or use of the Services performed hereunder. Except as otherwise provided in this Agreement, the liability of APC is hereby limited to (i) with respect to Services purchased by the City to the annual amount paid by the City for Services or (ii) with respect to any other liability, to proven direct damages. To the extent permitted by law, APC disclaims any liability with respect to the unauthorized use of Content not due to the fault of APC.

(c) APC shall defend, indemnify, and hold harmless the City, and its agents, employees and elected and appointed officials (hereinafter the "**City Indemnitees**") from and against all demands, actions, damages, judgments, expenses (including but not limited to attorney's fees, expert fees, court costs and other litigation costs), losses, and claims (including those for bodily

injury, sickness, disease or death, or to injury to, destruction or loss of use of tangible property) (collectively hereinafter "Claims") by any third parties (including any employee, subcontractor or representative of APC (hereafter a "APC Representative") that arises out of, relates to, results from, or is attributable to (a) APC's breach of the Agreement, provided that such breach is judged to be a proximate cause of the claim; or (b) the gross negligence or willful misconduct of APC resulting from: (i) APC's performance or failure to perform its obligations under this Agreement; (ii) any conditions in or about the Premises that APC or any APC Representative may encounter; or (iii) the use or occupancy of the Premises by APC or APC Representatives. This indemnification obligation shall not include Claims that are allegedly caused in part by the negligence, gross negligence or willful misconduct of a City Indemnitee(s).

**15. APC Asset Protection and Damage.** During the Term of this Agreement, in the event of any work or digging near the APC Assets, the City (or any person or entity working on the City's behalf) must: (i) provide notices and locate requests by calling Alabama 811 or 1-800-292-8525; and (ii) provide notices to other utilities or operators as required by the Dig Law.

**16. Agreement Not Insurance Policy.** It is understood and agreed by and between the Parties that:

(a) APC is not an insurer, nor is this Agreement intended to be an insurance policy or substitute for an insurance policy. Insurance, if any, may be obtained by the City.

(b) Charges by APC under this Agreement are based solely upon the limited value of the limited Services and are unrelated to the value of the Premises or the property located on the Premises.

**17. Events of Default.** Each of the following shall be an "Event of Default" under this Agreement:

(a) Failure by either Party to perform or observe any agreement, covenant or condition required by this Agreement to be performed or observed by such Party, which failure shall have continued for a period of thirty (30) days after written notice from the non-defaulting Party specifying, in reasonable detail, the nature of such failure and requiring it to perform or observe the agreement, covenant or condition with respect to which it is delinquent, shall have been given to the defaulting Party by the non-defaulting Party unless (i) the non-defaulting Party shall agree in writing to an extension of such period prior to its expiration, or (ii) during such thirty (30) day period or any extension thereof, the defaulting Party has commenced and is diligently pursuing appropriate corrective action, or (iii) the defaulting Party is time-prevented from performing or observing the agreement, covenant or condition with respect to which it is delinquent by any event of Force Majeure, adverse economic conditions or any other condition or event beyond the reasonable control of the defaulting Party.

(b) Any material warranty or representation by or on behalf of either Party contained in this Agreement, or in any other document furnished by such Party in connection with this Agreement or the Services being made or received;

(c) Institution by either Party of proceedings for such Party to be adjudicated bankrupt or insolvent, or consent by APC to the filing of a bankruptcy or insolvency proceeding against it, or the filing by APC of a petition or answer or consent seeking relief under Title 11 of the United States Code, as now constituted or as amended, or any other applicable federal or state bankruptcy or other similar law, or consent by APC to the institution of proceeding thereunder or to the filing of any such petition, or consent by APC to the appointment of, or the taking of possession of any of its property by a receiver, trustee, custodian or assignee in bankruptcy or insolvency of APC of an interest in all or a major part of its property, or an assignment by APC for the benefit of its creditors, or a written admission by APC of its inability to pay its debts generally as they become due, or the taking of any corporate action by APC in furtherance of any of the foregoing events or actions;

(d) The entry of a decree or order by a court of competent jurisdiction for relief in respect of APC or adjudging APC to be a bankrupt or insolvent or approving as properly filed a petition seeking the arrangement, adjustment or composition of its obligations under Title 11 of the United States Code, as now constituted or as amended, or any other applicable federal or state bankruptcy or other similar law, which decree or order shall have continued undischarged or unstayed for a period of sixty (60) days; or the entry of a decree or order of a court of competent jurisdiction for the appointment of a receiver, trustee, custodian or assignee in bankruptcy or insolvency for APC or for all or a major part of its property, which decree or order shall have remained in force undischarged or unstayed for a period of sixty (60) days; or

(e) The City's nonpayment of a Monthly Charge within the time periods and obligations set forth in Section 5(b).

**18. Termination for Default.**

(a) The City reserves the right to terminate and cancel this Agreement upon an Event of Default by APC which is not cured in accordance with Section 17. Under such circumstances, the City shall be under no obligation to pay to APC any amount due under the Agreement unless the City finds APC has partially performed said Agreement and said partial performance

benefits the City, under which circumstances the City shall pay to APC that portion of the Monthly Charge which the part performance bears to the total performance, less all damages and losses suffered by the City as a result of APC's failure to perform.

Termination for cause will result in APC being deemed non-responsible and may result in the rejection of any future bids/proposals submitted by APC for a period of time in the future to be determined by the City of Birmingham Purchasing Agent.

(b) If an Event of Default by the City occurs, APC may elect to immediately terminate this Agreement and remove any of all APC Assets from the Premises and shall be entitled to seek any and all available remedies provided by law, including, without limitation, the right to collect all past due amounts (including late fees if applicable).

**19. Termination for Convenience.** Either Party may terminate this Agreement at any time for convenience by giving the other Party sixty (60) calendar days' written notice. Notice of termination shall be by certified mail. Upon receipt of the notice of termination, APC shall cease work, wrap up, and conclude work without undertaking any new orders, tasks or work. APC shall then promptly submit its termination claim to the City to be paid to APC. The City will pay APC for all Services provided and accepted prior to termination.

**20. Termination by Mutual Consent.** This Agreement may be terminated with the mutual consent of both Parties, upon such terms and conditions as may be mutually agreed.

**21. Offset for Overdue Fees, Taxes, Etc.** Pursuant to Executive Order of the Mayor of Birmingham No. 76-09 (effective as of August 21, 2009), APC acknowledges and agrees that the City has the right to deduct from the total amount of consideration to be paid, if any, to APC under this Agreement all unpaid, delinquent, or overdue license fees, taxes, fines, penalties and other amounts due the City from APC.

**22. Immigration Law Compliance.**

(a) APC represents and warrants that it does not knowingly employ, hire for employment, or continue to employ, in Alabama, an "unauthorized alien," as defined by the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, § 31-13-1, et seq., Code of Alabama 1975, as amended (the "Act").

(b) APC represents and warrants that it will enroll in the E-Verify program prior to performing any work on the project in Alabama and shall provide documentation establishing that APC is enrolled in the E-Verify program. During the performance of this Agreement, APC shall participate in the E-Verify program as required under the terms of the Act and shall verify every employee in Alabama that is required to be verified according to the applicable federal rules and regulations.

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

**23. Miscellaneous.** Either Party may update administrative or contact information (e.g., address, phone, email) at any time by written notice to the other Party. In this Agreement, "including" means "including, but not limited to." If a court rules an Agreement provision unenforceable to any extent, the rest of that provision and all other provisions remain effective. No oral conditions, warranties or modifications hereto shall be valid between the Parties. This Agreement may be amended only by a written instrument executed by both Parties.

**24. Licenses.** Before commencing any of the Services, APC, at its expense, will secure and maintain in full force and effect throughout the Term of this Agreement all licenses, permits or other governmental authorizations needed to provide the Services, including without limitation, a business license issued by the City.

**25. Choice of Law/Venue.** This Agreement shall be governed in all respects by the laws of the State of Alabama. Venue for litigation of any dispute arising out of this Agreement shall be in a federal or state court of competent jurisdiction located in Jefferson County, Alabama.

**26. Non-appropriation of Funds.** In the event no funds or insufficient funds are appropriated and budgeted by the City in any fiscal year for costs under this Agreement, then the City shall immediately notify APC of such occurrence and this Agreement shall terminate on the last day of the fiscal period for which appropriations were received without penalty or expense to the City of any kind whatsoever, except as to costs or portions of costs herein agreed upon, which shall include agreed-upon equipment and

installation costs for which funds shall have been appropriated and budgeted or are otherwise available. In the event of such termination, the City agrees to peaceably surrender use of the APC Assets to APC on the date of such termination.

**27. Assignment.** This Agreement may not be assigned to any other party without prior written approval of the other party. The Agreement may not be assigned by APC to any party who was rejected because it was not a responsive or responsible bidder.

**28. Participation of Historically Underutilized Business Enterprises.** APC acknowledges and agrees that the City, as a matter of public policy, encourages participation of minority-and women-owned and other disadvantaged business enterprises to the maximum extent possible. This policy includes historically under-utilized business enterprises such as architectural firms, engineering firms, investment banking firms, other professional service providers, and construction contractors as part of the City's business, economic and community revitalization programs.

**29. Non-Discrimination.** APC will not discriminate against any employee or applicant for employment because of race, color, religion, sex, gender identity, sexual orientation, disability, familial status, or national origin. APC will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, gender identity, sexual orientation, disability, familial status, or national origin. Such action shall include but not be limited to the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. APC agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. In the event of APC's noncompliance with the nondiscrimination clauses of this Agreement, this Agreement may be canceled, terminated or suspended in whole or in part and APC may be declared ineligible for further municipal contracts.

**30. Representation and Warranties of APC.** APC makes the following representations and warranties as the basis for its undertakings pursuant to this Agreement:

(a) APC is a public utility under the law of the State of Alabama and has the power to enter into and to perform and observe the agreements and covenants on its part contained in this Agreement.

(b) The execution and delivery of this Agreement by or on behalf of APC has been duly authorized by the appropriate APC employees with authority to enter into this Agreement as binding;

(c) The execution and performance of this Agreement by APC do not constitute and will not result in the breach or violation of any contract, lease, mortgage, bond, indenture, franchise, permit or agreement of any nature to which APC is a party.

(d) APC certifies that it has not employed or retained any company or person to solicit or secure its selection to enter into this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, the City shall have the right to terminate the Agreement without liability at its discretion.

(e) There are no outstanding judgments, orders, writs, injunctions, or decrees of any government entity, no pending Legal Proceedings or material threats of Legal Proceedings, against or affecting APC before or by any court, board, commission or agency whatsoever which would have a material effect on APC's performance of its obligations under this Agreement. For purposes of this Agreement, "Legal Proceedings" shall mean an action, litigation, arbitration, administrative proceeding, claim and other legal or equitable proceeding of any kind.

(f) APC and its APC Representatives have the expertise and qualifications to perform the Services described in this Agreement. APC is familiar with all Federal, State, local, and municipal laws, codes, ordinances, rules, and regulations which in any manner affect those engaged or employed in the work, or the materials or equipment used in or upon the Services or in any way affect the Services.

(g) APC acknowledges that it is not a debarred Federal contractor.

**30. Notices.** All notices, reports, documents and invoices related to this Agreement provided hereunder shall be mailed by regular, registered or certified mail, postage prepaid, or delivered by hand, addressed as follows:

If to the City:

City of Birmingham  
Attention: Mayor Randall L. Woodfin  
710 North 20<sup>th</sup> Street  
Third Floor – City Hall



Birmingham, Alabama 35203

With a copy to:

City of Birmingham  
Attention: Police Chief  
1710 1st Avenue North  
Birmingham, Alabama 35203

And a copy to:

City of Birmingham  
City Attorney  
710 North 20<sup>th</sup> Street, Room 600  
Birmingham, Alabama 35203  
Attention: James C. Stanley

If to APC:

Alabama Power Company  
700 18<sup>th</sup> Street North  
Birmingham, Alabama 35203  
Attention: Lighting Services Department.

**31. Successors and Assigns.** Subject to any provision under this Agreement restricting assignment or subcontracting, the provisions of this Agreement shall be binding upon and inure to the benefit of the respective successors, assigns, heirs, and personal representatives of the parties to this Agreement.

**32. Audit and Inspection of Records.** APC shall permit the authorized representative of the City to inspect and audit all relevant data and records of APC and any subcontractor relating to the performance under this Agreement from the date of the Agreement through and until the expiration of three (3) years after completion of the Agreement. The inspection and audit provided in this section does not include an audit of the manufacturer's cost and/or profit.

**33. Effective Date.** This Agreement will be effective on the date when it has been signed by the last party whose signing makes the Agreement fully executed (the "Effective Date").

**34. Relationship of Parties.** The City and APC agree that nothing contained in this Agreement nor any act of APC or of the City shall be deemed or construed by either of the parties hereto or by third persons to create any relationship of third party beneficiary hereof, or of principal and agent, or of a limited or a general partnership, or of a joint venture, or of any association or relationship between APC and the City other than as set forth herein. It is understood by the parties that APC is an independent contractor with respect to the City. Neither the City nor any of its agents shall have control over the conduct of APC or any of APC's employees, agents or subcontractors except as herein set forth. The City will not provide fringe benefits, including health insurance benefits, paid vacation, or any other employee benefit, for the benefit of APC, its agents or employees. APC shall not at any time or in any manner represent that it or any of its agents or employees are in any manner agents or employees of the City.

**35. Entire Agreement.** This Agreement contains the entire agreement of the Parties and there are no other promises or conditions in any other agreement whether oral or written. This Agreement supersedes any prior written or oral agreements between the parties. In all matters, the Parties enter into this Agreement in sole reliance upon their own advisors and not on any statements or representations (written or oral) of the other Party or any of its representatives or agents.

[Remainder of Page Intentionally Left Blank]

[Signatures Begin on Following Page]

IN WITNESS WHEREOF, APC and the City have caused this Agreement to be executed by their authorized representatives.

ATTEST:

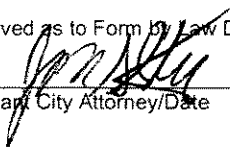
CITY OF BIRMINGHAM, ALABAMA

By: \_\_\_\_\_  
Lee Frazier, City Clerk

By: \_\_\_\_\_  
Randall L. Woodfin, Mayor

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

Approved as to Form by Law Department:

  
\_\_\_\_\_  
Assistant City Attorney/Date

ALABAMA POWER COMPANY

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

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

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

## PREMISES EXHIBIT

Alabama Power Company (“**APC**”) and the City of Birmingham (“**the City**”) agree that the Master Contract for Public Safety Services (Surveillance Equipment – Governmental) dated as of the Effective Date (as defined in the Agreement) (“**Agreement**”) shall apply to the Premises and Deliverables identified below.

1. **Location:** APC shall provide the Services to the City for the pilot in the following neighborhoods of Birmingham: Central Park, Ensley, Gate City, and Kingston, and at the locations shown on maps to be created by the Parties and treated as confidential information.
2. **Deliverables:** APC’s Services provided to the City shall include APC’s use of the following Deliverables: (1) surveillance cameras; (2) backhaul network; (3) installation and configuration; (4) maintenance and repair; and (5) electric service for this surveillance service (under existing tariffs and services agreements apart from this Agreement). More specifically, the products and services are as follows:

Cameras and connectivity (24 Pan, Tilt, Zoom (PTZ) cameras, 17 Dome cameras, and 54 LPR cameras on 64 poles totaling 95 cameras and 182 video streams):

- 64x Video Point of Distribution base units (1 per pole)
- 24x Axis Q6000/Q6055 (360 degree 8MP camera with 2MP advanced PTZ)
- 15x Axis P3707 8MP (360 degree multi-sensor)
- 2x Axis P3227 5MP (fixed dome)
- 54x SharpV AutoVu LPR cameras

Backhaul network connection and storage:

- 4x Backhaul Links
- 4x 2U Storage server 90TB each (1 server installed locally in each region)
- 1x Enterprise server
- 5x Managed rackmount switch
- 4x Rackmount 2000VA UPS
- 18x Wireless point to point/point to multipoint unlicensed band radios
- 108x Point to Point/Point to Multipoint millimeter wave Radio Links
- 3x Fiber internet and ethernet service with 200Mbps x 200Mbps Bandwidth
- 1x Fiber internet and ethernet service with 100Mbps x 100Mbps Bandwidth

Annual Subscription:

- Genetec Security Center base package software subscription
  - Plan Manager (map showing all integrated cameras)
  - ShotSpotter integration module
  - Camera licenses
  - 5x Desk client connections
  - 5x Mobile client connections
  - 5x Web client connections
  - Site and camera Federation
- Genetec AutoVu (LPR) Managed Service Government Compliant 2.0

Training and Education of Personnel:

- APC shall be responsible, at its own cost, for providing fully qualified and authorized personnel to perform the Services required. Such training, education, and orientation will occur on a quarterly basis; any more frequent training requested by City may be provided at additional cost to City.

3. **Content.** Local storage on-premises has been selected to store the content. The City will be responsible for housing and for protecting and securing the four on-premises servers.
4. **Moving Equipment.** If the City desires to relocate any piece of equipment (e.g., a camera or other device), the City must first call the Business Service Center at 1-888-430-5787 and obtain APC's written consent. If the equipment in question has not yet been installed, APC will relocate the equipment for no additional cost to the City as long as APC can ensure good signal quality in the requested new location. If the equipment in question has already been installed, APC will perform up to five (5) separate equipment moves (i.e., moving one camera or piece of equipment one time equals one equipment move) at no additional cost to the City during the Term; provided that: (i) a clear line of sight is maintained, and (ii) radios prescribed operate at a Sub 6 Frequency and within 10 Kilometers of each other. If conditions (i) and (ii) are not met, any relocations of equipment will result in additional charges to the City. In addition, any equipment relocations requested by the City after five (5) equipment relocation have been requested during the Term will result in additional charges to the City.
5. **Verification of Surveillance Equipment Installed:** Each Party will appoint representative(s) (the "**Representative**") to verify the completion of the installation and functionality of the cameras (the "**Surveillance Equipment**"). The Parties will jointly perform the verification by counting the Surveillance Equipment (the "**Equipment Count**"). The Equipment Count will be compiled by each Parties' Representative(s) based on a mutually agreed upon method. The Equipment Count will be conducted within thirty (30) days of completion of each of the designated pilot neighborhood areas containing at least fifteen (15) cameras (the "**Grid Area**"). The Parties will appoint additional Representatives as necessary to complete the Equipment Count. Following agreement by both Parties that the Equipment Count is correct, APC will send electronic notification to the City as of the date of the Equipment Count. APC will update billing following such verification.

In the event that the Equipment Count is not completed within thirty (30) days of completion of a Grid Area, billing will be updated based on APC's installation completion count until such time as verification can be completed. Any discrepancies will be mutually resolved and billing will be adjusted accordingly.

6. **Payment Terms:** The total "**Monthly Charge**" for the Services and Deliverables identified above, which includes regulated electric service, shall be as follows: **\$56,000\*\***

**\*\* The actual regulated cost for electric service to the Surveillance Equipment will be calculated using the applicable tariffs approved by the Alabama Public Service Commission at the time of billing. Such laws, rules, regulations, and rate schedules are subject to change during the Term of this Agreement as provided by law. Thus, the regulated cost (and therefore the total monthly cost) may vary slightly from the estimates provided above.**

During installation, the Monthly Charge shall be prorated ("**Prorated Monthly Charge**") each month based on the completion of Grid Areas. Such Prorated Monthly Charge shall increase by the total number of Grid Areas completed until reaching the total Monthly Charge.