**Intergovernmental Operating Agreement**

This Agreement is made and entered into as of May 1, 2017 (the Effective Date), by and among the South Georgia Governmental Services Authority, a Georgia Authority and body politic created by Act of the Georgia General Assembly (hereinafter "SGGSA"), City of Cairo, a Georgia municipal corporation (hereinafter "Cairo"), City of Camilla, a Georgia municipal corporation (hereinafter "Camilla"), City of Moultrie, a Georgia municipal corporation (hereinafter "Moultrie"), and City of Thomasville, a Georgia municipal corporation (hereinafter "Thomasville"), such Cities hereinafter being referred to as "Member Cities" or "Cities". This Agreement is an intergovernmental agreement and is made by and between the SGGSA and each of the Cities under the authority of Article 9, Section 3, paragraph I(a) of the Constitution of the State of Georgia.

1. **Definitions**. As used herein, the following terms shall have the meanings and uses thereinafter specified:

a. **Annual Budget** means with respect to Fiscal Year, the budget or amended budget adopted by the Board, which budget shall contain itemized estimates of Annual Cost and all anticipated revenues, income, or other funds to be applied to such Annual Cost.

b. **Annual Cost** means all costs and expenses attributable to the operation of the SGGSA including without limitations, salaries, performance bonuses, financing costs, debt service costs, office and equipment leases, reasonable reserves, fees for legal, accounting, consulting, and other services and all costs and expenses properly related to the conduct of the affairs of the SGGSA.

c. **Board** means, unless a Super Majority is required, a majority of the acting members of the Board of Directors of the South Georgia Governmental Services Authority, provided a quorum is present.

d. **Bond Resolution** means that certain Resolution of SGGSA authorizing the issuance of its Revenue Bonds in the principal amount of $30 million, dated as of March 16, 2017.

e. **Capital Improvements** means tangible assets having a cost greater than $5,000.00.

f. **City or Cities or Member City** shall mean a member or members of SGGSA.

g. **City's Municipal Network** means computer systems, telephone systems, SCADA systems and other facilities or services specific to the operations of the municipal network.

h. **Fiber Optic Based Broadband System** means facilities that provide products and services to include but not be limited to cable television, internet, telephone, telecommunications and digital data transfer services.

i. **Fiscal Year** means January 1 to December 31 of each year or such other twelve (12) month period designated by the SGGSA.

j. **Net Income** means income minus cost of goods sold, operating expenses, and other costs

k. **SGGSA** means the South Georgia Governmental Services Authority.

l. **Super Majority** means a vote of the SGGSA Board of Directors requiring greater than 75 percent of all members of the Board.

m. **Territory** as to any Member City, shall mean, for the purposes of billing by the SGGSA, the entire County in which such Member City is located.

2. **Term**. The Term of this Agreement shall begin on May 1, 2017 and shall terminate on April 30, 2027 unless otherwise earlier terminated pursuant to the terms of this Agreement.

3. **Grant of IRU (Indefeasible Rights of Use).**

a. Subject to the terms and conditions herein, the SGGSA hereby grants to each Member City the non-exclusive IRU of the Authority's Fiber Optic Based Broadband System for the purpose of serving such City's municipal network. This nonexclusive IRU granted to each Member City by the SGGSA also includes SGGSA owned facilities, buildings, co-locations and huts necessary for the purpose of serving the City's municipal network.

b. Subject to the terms and conditions herein, the City hereby grants to the SGGSA the non-exclusive IRU of certain supporting facilities, systems, buildings, co-locations and huts necessary for the purpose of serving the Fiber Optic Based Broadband System provided by SGGSA.

c. If for any reason the SGGSA is required to relocate all or any portion of the fiber optic link(s) or associated infrastructure granted under the IRU which serves the City's Municipal Network, the SGGSA shall give the City sixty (60) days prior notice of any such relocation.

d. If for any reason the City is required to relocate all or any portion of the fiber optic link(s) or associated infrastructure granted to the Authority under the IRU, the City shall give the SGGSA sixty (60) days prior notice of any such relocation.

e. Except as otherwise provided herein, no further consideration or payment is required for the grant of the IRU provided by either Party under this

Agreement.

f. Each Member City shall pay to SGGSA for any bandwidth, telephony service, Internet service or any other service provided by the SGGSA which such City utilizes for serving such City's Municipal Network, as per the Schedule of charges shown on Schedule 1 attached hereto.

4. **Operation, Maintenance, and Repair of the Fiber Optic Based Broadband System**

a. The SGGSA shall own, operate, maintain, and repair the Fiber Optic Based Broadband System, and any cost of such maintenance and repair shall be paid by the SGGSA. The SGGSA shall have full and complete control and responsibility for determining any network and service configuration or designs, routing configurations, regrooming, rearrangement or consolidation of channel or circuits, and all related functions in the operation of the System.

b. The SGGSA shall perform the upgrade, repair, maintenance, replacement, or restoration of the Fiber Optic Based Broadband System pursuant to this Agreement in a manner that equals or exceeds normal and customary practices in the telecommunications industry. The costs associated with such upgrade, repair, maintenance, replacement, or restoration of the Fiber Optic Based Broadband System shall be as approved, from time to time, by the Board.

c. Capital improvements to the Fiber Optic Based Broadband System shall not exceed accumulated budget depreciation (unallocated depreciation for Capital Improvements may be carried over from one year to the next), unless approved by a Super Majority vote of the Board.

d. The SGGSA, in fulfillment of its duties and obligations herein contained, may employ or contract with persons, private corporations, and/or governmental entities for the furnishing of such functions, including without limitation, one or more of the Member Cities.

5. **Billing and Collection of Revenues**.

a. Each Member City shall act as billing agent for the SGGSA for the SGGSA's customers in such City's Territory. As such, the City will be responsible for billing and collecting for services provided by the SGGSA.

b. The City shall maintain monthly records of accounts receivable billed on behalf of the SGGSA, and no later than the tenth ($10^{th}$) day of each month shall transfer an amount equal to the preceding month's billed receivables to the SGGSA, whether such receivables are collected or not.

c. SGGSA shall adopt a credit policy as to the addition of any new customers,

and any Member City shall be allowed to remove a customer in its Territory upon request of such Member City.

d. SGGSA shall bill for services furnished in an area not designated as a City's Territory.

6. **Budgeting and Finance**. The SGGSA staff will prepare and submit to the Board a proposed Annual Budget and the Board shall adopt an Annual Budget prior to the commencement of the next succeeding Fiscal Year. From time to time during any Fiscal Year, the Board may adopt an amended Annual Budget to reflect changes in anticipated revenue and expenses. The Annual Budget shall contain all of the SGGSA's expected revenues and expenses for such Fiscal Year, including without limitation, reserves for potential expenses in subsequent Fiscal Years.

7. **Records and Accounts; Annual Audit**. The SGGSA shall keep accurate records and accounts. Said accounts shall be subject to an annual audit by a firm of independent certified public accountants experienced in accounting for governmental or nonprofit entities to be submitted to the Board within 180 days after the close of each Fiscal Year.

8. **Net Income Distributions**. Subject to any contrary or conflicting provisions of the bond covenants, within 45 days following the end of each month, the SGGSA shall pay to each Member City net income based on the following methodology. For purposes hereof, net income shall mean the system income remaining after deducting the operating expenses of the system, payment of the debt service on the bonds, balancing the reserve account, payment of the renewal and extension fund and deducting depreciation reserves.

a. For Cable Television, net income shall be allocated to the Member City based on the percentage of cable subscribers in the City's Territory as reported by the SGGSA for programming fees as compared to total cable subscribers in the Territory of all Member Cities. The net income distribution shall be based on the number of subscribers as reported for programming for the preceding month.

b. For Internet service, net income shall be allocated to the City based on the percentage of internet subscribers in the City's territory as reported monthly by the SGGSA to the National Cable Television Cooperative (NCTC) or its successor, as compared to total internet subscribers in the Territory of all Member Cities. The net income distribution shall be based on the number of subscribers as reported to the NCTC for the preceding month.

c. For Broadband Telephony service, net income shall be allocated to the City based on the percentage of telephony subscribers in the City's Territory on the first day of each month, as compared to total telephone subscribers in the Territory of all Member Cities. The net income distribution shall be based on the number of subscribers recorded in the preceding month.

d. For Telecommunications and Complex Technology service, net income shall be allocated to the City based on the percentage of revenue billed

monthly in the City's Territory as compared to the total revenue billed monthly for such services in the Territory of all Member Cities. The net income distribution shall be based on the percentage of revenue recorded for the preceding month.

e. Any changes to the methodology for the distribution of net income shall require a Super Majority vote of the Board.

f. The methodology for the allocation of net income for any new service(s) offered in the future shall be approved by a Super Majority of the Board.

g. A City's existing customer, which also has a premise being served by the SGGSA outside of any City's Territory, shall be treated as if such premise is inside the City's Territory.

9. **Indemnification**.

a. To the extent permitted by law, each Party hereto does hereby release and agree to indemnify, defend, protect, and hold harmless the other Party, its employees, elected officials, appointed officials, directors, agents, representatives (including attorneys), shareholders and affiliates, from and against any and all liability, cots, damages, fees, fines, penalties, legal expenses (including but not limited to attorneys' fees) and all claims, suits, or other action, arising in whole or in part, directly or indirectly from:

i. To the extent permitted by law, any injury, loss or damage to any person, tangible property or components of any person or entity, to the extent any such injury, loss or damage arises out of or results from the negligent or willful act(s) or omission(s) of the indemnifying party, its officers, employees, servants, affiliates, agents, or contractors in connection with its performance under this Agreement so long as same is unmixed with any negligence or willful act of the indemnified party which contributed to such injury, loss, or damage; and

ii. Any claims, liabilities, or damages which are proximately caused by any violation by the indemnifying party of regulations, rules, statutes or court orders of any local, state or federal governmental agency, court or body in connection with the party's performance under this Agreement.

b. Nothing contained herein shall operate as a limitation on the right of any party hereto to bring an action for damages against any third party, including indirect, special or consequential damages, based on any acts or missions of such third party as such acts or omissions may affect the operation or use of the components described herein.

c. Every obligation of indemnification contained in this Section shall include indemnity against all legal costs (including, but not limited to, reasonable attorneys' fees) related to an indemnified party's attempt to enforce such indemnification against an indemnifying party.

10. **Benefit Plans**. It is anticipated that upon termination of the Intergovernmental Management Agreement between SGGSA and Thomasville, or earlier as permitted therein, SGGSA will employ persons to provide some or all the services specified in such Management Agreement. At any time that the Board so elects, it may establish an investment fund for the Board's use in subsequently establishing an employee retirement plan and other employee benefits. Such investment fund shall only be established and funded to the extent moneys for such purpose have been budgeted in any annual or amended annual budget.

11. **Insurance**. The SGGSA shall provide such insurance as the Board may determine, from time to time, to insure its assets from risks such as fire, theft, acts of God, terrorism, and its business operations from risks such as strike, business interruption, changes in statute or government regulation and to cover its exposure to others for damage claims from willful or negligent acts or other causes.

12. **Divestiture**. The SGGSA may not divest itself of all or a substantial portion of the Fiber Optic Based Broadband System (which for purposes hereof also includes a substantial portion of the system located in any Member City) until such time as none of the SGGSA's Revenue bonds remain outstanding only then if a Super Majority vote of the Board approves of such divestiture.

13. **Confidentiality**. The Parties shall use their best efforts to maintain any confidential or proprietary information furnished by any of them and shall use reasonable efforts to protect them from being made available to competitors, the general public or others, subject, however to any mandatory disclosure pursuant to Georgia's Open Records Act.

14. **Default**.

a. In the event of a material breach of this Agreement by a Party hereto, any non-breaching Party may give written notice of such breach to the breaching Party with a written demand that such breach be cured within 30 days of the giving of such notice.

b. Any Party hereto which does not cure a material breach within said cure period shall be liable for any costs or expenses resulting from said uncured breach, including reasonable attorneys fees. In addition, if monetary damages are an inadequate remedy for such breach, any aggrieved Party may also seek equitable remedies such as injunctions, restraining orders, and specific performance.

c. No Party hereto shall claim or be entitled to the defense of sovereign immunity in the event enforcement of the provisions hereof is sought by any other Party hereto.

15. **Notice**. Any notices shall be given in the same manner as provided in the Intergovernmental Agreement for Asset Purchase effective as of May 1, 2017, among the parties hereto.

16. **Governing Law**. This Agreement has been entered into in the State of Georgia and shall be governed by the laws thereof.

17. **Approvals**. When the governing authority of any Party hereto shall give its approval to the execution hereof a copy of same shall be furnished to all other Parties hereto.

18. **Non-waiver**. No delay or failure by any party to exercise any right under this Agreement, no custom or practice of the parties at variance with the terms hereof shall constitute a waiver, and no partial or single exercise of such right, shall constitute a waiver of that or any other right, unless otherwise expressly provided herein.

19. **Recitals and Headings**. The recitals in this Agreement are incorporated herein by reference and shall constitute a material part of this Agreement. Headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.

20. **No Presumption of Construction**. The parties have had the opportunity to negotiate the terms of this Agreement and to review this Agreement before its execution. Should there be any claim or contention of ambiguity of any provision hereof, there shall be no presumption of construction in favor of or against any of the parties.

21. **Invalidity**. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

22. **Time**. Time is of the essence of this Agreement.

23. **Entire Agreement**. This Agreement contains the entire understanding of the parties hereto and all prior representations, understandings and agreements are hereby merged herein and no different understanding shall be of any force and effect unless in writing and signed by the parties hereto subsequent to the date hereof.

**In Witness Thereof**, the Parties hereto have hereunto set their hands and seals as the date placed next to each signature.

| **South Georgia Governmental Services Authority** (Seal) | **City of Cairo** (Seal) |
|---|---|
| By: | By: |
| Attest: | Attest: |
| Date: 4-20-17 | Date: April 20, 2017 |

**City of Camilla**

(Seal)

By: _____

Attest: Cheryl Ford

Date: 04-21-2017

**City of Moultrie**

(Seal)

By: _____

Attest: Dina Culverson

Date: 4-20-17

**City of Thomasville**

(Seal)

By: _____

Attest: Felicia Brannen

Date: 04-20-2017

## Schedule 1

1) Municipal related services include; LAN/WAN, metro-Ethernet, data circuits, DS1, or other telecommunication circuits. These type circuits include but are not limited to support SCADA, PBX, city network, video cameras, AMI/AMR, security systems, etc. Each of these shall be $100 monthly recurring charge per individual circuit paid to SGGSA.

2) A flat campus internet rate shall be applied to each city based on the size of Municipal operation and internet connectivity capacity. Thomasville $1000 monthly recurring charge for 1000Mbp and Moultrie, Cairo and Camilla at $450 monthly recurring charge each for 100Mbp.

3) Each member city shall contribute to the SGGSA $300 monthly recurring charge per fully populated PRI span providing voice services to the city's municipal telephone PBX. This rate shall be the same for comparably sized SIP trunks; base rate does not include Long Distance charges to be paid at $.005 above wholesale LD costs incurred by SGGSA

4) A flat fee of $750 monthly recurring charge paid by SGGSA to each member city for warehouse space allocations of Broadband and telecommunications inventory. This rate shall be the same for each member since the inventories are fairly comparable for each.