



DeltaCom Transport Engineering

BTOP Award: NT10BIX5570034

**REQUEST FOR QUALIFIED VENDORS
GENERAL CONTRACTOR SERVICES**

**Submittals are due no later than
Wednesday, August 18, 2010 at 5:00:00 PM EDT.**

To obtain documentation and to ensure receipt of Addenda, please be sure to frequently check DeltaCom's Vendors Relations website at http://www.deltacom.com/vendor_relations.html.

**PLEASE NOTE THE VENDOR IS ULTIMATLY RESPONSIBLE FOR VERIFYING THEY
HAVE ANY / ALL ADDENDA PRIOR TO THE PROPOSAL OPENING.**

PLEASE NOTE THAT ANY EMAIL(S) NOT CLEARLY IDENTIFIED WITH THE FOLLOWING INFORMATION MAY BE DEEMED UNRESPONSIVE AND NOT CONSIDERED.

Subject Line – “RFQV 2010-005 Vendor Name due date”

In the E-mail Body:

- Vendor Company Name
- Contact Name / Phone Number
- RFQV Due Date
- RFQV # 2010-005:REQUEST FOR QUALIFIED VENDORS –
GENERAL CONTRACTOR

Please note that all questions must be submitted to Neill Briggs via e-mail at Neill.Briggs@deltacom.com.

TABLE OF CONTENTS

CONTENTS

- A. GENERAL REQUIREMENTS
- B. INTRODUCTION
- C. REQUIREMENTS FOR QUALIFICATION PACKAGES
- D. METHOD OF SELECTION
- E. TERMS AND CONDITIONS
- F. INSURANCE REQUIREMENTS
- G. PROCEDURES FOR SUBMITTING QUALIFICATION PKGS
- H. VENDOR INFORMATION FORM
- I. CONSTRUCTION AGREEMENT

A. GENERAL REQUIREMENTS

- RFQV Requirements / Documentation can be obtained by viewing DeltaCom's Vendors Relations website at: http://www.deltacom.com/vendor_relations.html
- Any inquiries regarding this request should be directed to:

Neill Briggs
Transport Engineering
DeltaCom, Inc.
1809 Hillyer Robinson Pkwy
Anniston, AL 36207
E-mail: neill.briggs@deltacom.com
Phone: (256) 241-3756
- Qualifications will be received via e-mail at:

E-mail Address: neill.briggs@deltacom.com
- Qualification packages are due **Wednesday, August 18, 2010 no later than 5:00:00 PM EDT**. Qualification packages received after this time will be marked "LATE" and will NOT be considered.
- DeltaCom reserves the right to reject any or all qualification packages. Any objections to the requirements as set forth should be filed in writing prior to the deadline.
- No faxed qualification packages will be accepted.
- It is the intent of DeltaCom to prequalify Vendors¹ that are acceptable to bid on the upcoming bid for general contractor services.
- DeltaCom will evaluate all qualification packages that are submitted. All requirements in this RFQV should be satisfied to ensure that the response would qualify for consideration. DeltaCom desires to receive qualification packages only from Vendors who can demonstrate the specified requirements mentioned in this RFQV.

¹ The term "Vendor" includes the Vendor, contractor, subcontractor/s, and/or supplier/s the Vendor may utilize.

- DeltaCom shall not be liable for any expense incurred in connection with preparation of a response to this document. Vendors should prepare a straightforward and concise description of their ability to meet the requirements of this document.
- All requested information should be provided in order for a qualification package to be considered responsive. However, any Vendor that submits in its package to DeltaCom any information that is determined to be substantially inaccurate, misleading, exaggerated, or incorrect, shall be disqualified from consideration.
- This request is **NOT** a Bid; this is a request for qualification to pre-qualify Vendors prior to bidding the work.
- Addenda will be posted on the DeltaCom website (http://www.deltacom.com/vendor_relations.html) in a PDF format. PLEASE NOTE THE CONTRACTOR IS ULTIMATELY RESPONSIBLE FOR VERIFYING THEY HAVE RECEIVED ANY / ALL ADDENDA PRIOR TO THE DUE DATE OF THE QUALIFICATION PACKAGE.
- Feel free to contact Neill Briggs via email at neill.briggs@deltacom.com if any questions arise.

B. INTRODUCTION

DeltaCom is requesting qualifications for general contractor services for site preparation and utility construction for six locations in Tennessee. On March 2, 2010, DeltaCom received a stimulus grant that will enable a 544-mile fiber-optic network expansion in Eastern Tennessee to provide middle mile broadband services to community anchor institutions and last mile service providers in speeds up to 10Gbps. The network expansion project will add a new fiber-optic route to the DeltaCom network from Chattanooga through Knoxville, to Johnson City and Bristol Tennessee and add interconnection points to an existing fiber-optic route between Nashville and Knoxville. The new network will enable broadband access for a number of entities including educational and healthcare institutions and allow local Internet providers to connect to the DeltaCom network for intercity transport.

This stimulus grant is funded by the National Telecommunications and Information Administration (NTIA) a part of the Department of Commerce (DOC). NTIA and the DOC have certain contract requirements that must be placed in all funded contracts and there are some specific requirements that are included in projects funded by the stimulus program. The Vendor should be familiar with the ramification of dealing with these provisions and requirements.

Additional information can be found at <http://www2.ntia.doc.gov/>

C. REQUIREMENTS FOR QUALIFICATION PACKAGES

The following items require a response from your firm. If a response is not received then your submittal may be automatically disqualified and may not be considered. Please follow format below for your response.

DeltaCom requires qualification packages to be easy to understand. Do not include unnecessary or extraneous information. Include all information requested. Response to the following requirements should be concise and all reasonable care should be taken to limit responses to pertinent information. All additional company/marketing information is welcome and should be presented as attachments to the core response. To make it easier for the staff to review your proposal, list the item #, the information requested, and then follow with your response to each item.

Please respond by including but not limiting your response to the following:

Company Information –

1. List company name and length of time in business under same name.
2. List company location and length of time in that location.
3. List bonding capability and name of bonding company. Please include history of bonded projects in the last 5 years to include any claims filed. This information should be provided on the bonding company's letterhead.

This project will require a performance bond equal to the value of the contract. Provide evidence that you can satisfy these bonding requirements.

4. List the name of your Insurance carrier and applicable coverage. Include history of insurance in the last 5 years and any claims filed. This information should be provided on the insurance company's letterhead.
5. Provide your DUNS number and supporting documentation related to your financial stability for the last three years.
6. **This project will require a significant investment by the construction contractor for both labor and materials that may not be reimbursed until the work is completed and accepted by DeltaCom. Please indicate whether you understand and will comply.**
7. Provide a copy of your Tennessee general contractor's license.

Personnel -

8. Indicate the total number of full time employees.
9. Indicate the number of qualified personnel employed by Vendor and summary of qualifications by craft and experience for each.
10. Indicate the number of Project Managers employed by Vendor and summary of qualifications and experience for each. This information needs to include: names, resumes, length of time with firm, position history of employee since start of employment with your company, list of projects worked on in the last 5 years and all commercial related projects in general and all client references for these projects including contact name, address, phone number and email address.
11. Indicate if your firm will perform all work with its' own resources and workforces or if you anticipate employing any subcontractor(s). If subcontractors will be utilized, list the name and address of the subcontractor below along with a brief explanation of the activities the subcontractor(s) will perform. List additional subcontractor information and qualifications.

Safety –

12. Include a copy of company safety manual.
13. Include a list of OSHA violations within the past five (5) years and details of each occurrence and corrective actions taken.
14. Indicate that Vendor will abide by all applicable OSHA, State and DeltaCom Safety Rules and Regulations.
15. Indicate that Vendor will abide by all applicable provisions in the National Electric Code
16. Include a detailed explanation of how safety is incorporated into your organization. Meaning, where is the safety training performed, by who (internal or external) and how often and what type of training.
17. Include an explanation of what your company requires for safety documentation from the crews on a daily, weekly, monthly or annual basis (i.e. do you perform daily, weekly, monthly and/or annual safety meetings)

Experience -

18. Include details of previous commercial contracting experience including client names, contact person, phone numbers, and email addresses. Provide a listing of staff from your company that worked on these past projects and their role on the project.
19. Indicate if your firm is capable of receiving, managing and storing related construction materials in a secure location within the identified Tennessee cities for (Bristol, Johnson City, Morristown, Oak Ridge, Sweetwater, and Cleveland).
20. Provide examples of your company's ability to manage and track construction status to meet project schedules and keep costs within the budget. Please provide references that can verify these abilities.
21. Include methods and processes in place to keep projects on time and in budget.

General Statement of Work – Overview

22. The scope of this project will encompass the site preparation and utilities construction for the placement of a pre-cast concrete telecommunication shelter in the following six (6) Tennessee cities; Cleveland, Sweetwater, Oak Ridge, Morristown, Johnson City and Blountville.

23. Please indicate your understanding and ability to comply with the follow tasks or work elements. The work elements may vary in scope for each location. A detailed site specific scope of work will be available for each site in the bid package for qualified Vendors.

Task or Work Element	Compliant (Y/N)
Completion, submission and approval of all required state and local permits; construction, electrical, mechanical and landscaping.	
Electrical work shall be in accordance with the National Electric Code in force.	
Removal of vegetation including trees from site within the fenced boundaries. Vegetation may be trimmed as needed outside the fence area up to the property boundary around the site. Typical lot site is less than one (1) acre.	
The site will be graded level for shelter and sloped as needed inside the fenced boundary and up to the property boundary (if required).	
Top 6 inches of soil (minimum) to be removed and vapor barrier and crushed gravel installed for shelter footings.	
Footings will be excavated for shelter foundation, generator pad and LPG tank pad.	
Trenches excavated for fiber conduits from building to handhold locations near fence boundary, typical depth to 36”.	
Trench excavated for underground utilities to building, typical depth 24”.	
Trench excavated for building halo ground around perimeter of fenced area, typical depth 18”.	
Fiber conduit, underground utilities and halo ground installed, backfill trenches.	
Concrete poured for shelter foundation pad, generator pad and LPG tank pad.	
Site prep to final grade.	
Electrical service and back-up generator automatic transfer switch installed/tested	
Mechanical service (LPG or natural gas as available) installation	
Fence post holes excavated, typical depth 18”.	
Crushed gravel placed inside fenced boundary and driveway.	
Commercial fence with gates installed (10’ height)	
Landscape vegetation planted around fence perimeter if required by local zoning.	
Completion of all requirements in order to obtain the certificate of occupancy from the local permitting authority.	

Progress Reports / Meetings –

24. Indicate if your firm agrees to provide a weekly written electronic construction progress report to DeltaCom Transport Engineering group.
25. Indicate if your firm is capable of providing a qualified individual to meet with DeltaCom Transport Engineering Group and associated parties to review schedule, performance and all other related logistics associated with this project on a weekly or as-needed basis for the duration of the project. This meeting may be in person or by conference call.

Additional Information –

26. Indicate if vendor has ever:
 - Refused to sign a Contract at the original bid?
 - Been declared in default on a Contract?
 - Been named as a party in a lawsuit?

If yes, please state reason and indicate resolution.
27. Provide (3) customer references and contact info (name of project, contact name, phone, and email address) for each that you are currently working for and are completing similar work for.
28. Indicate if your firm is a Drug-Free Workplace. The Bidder, its employees and subcontractors, shall be subject to background investigations and random drug testing. Bidder shall submit corporate policies that address these issues.
29. Indicate compliance with all EPA Regulations.
30. Indicate compliance with all Federal, State, and local laws and or ordinances.
31. Indicate compliance with following. If you answer yes to either, give the date of the termination order, or payment, describe the project involved, and explain the circumstances relating to same, including the names, addresses and phone numbers of persons who might be contacted for additional information.

Has your organization:

- a. ever been terminated on a contract for cause?
- b. within the last five years, made payment of actual and/or liquidated damages for failure to complete a project by the contracted date?

32. If your firm is pre-qualified to participate in the Bid process, explain in detail how you would complete all work and manage your resources to ensure a successful completion of the DeltaCom East TN Middle Mile Broadband Network project.
33. Indicate your firm has read and will comply with DeltaCom's standard construction agreement, "**Construction Agreement**," beginning on page 22 of this Request for Vendor Qualifications.

D. METHOD OF SELECTION

The intent of this Request for Qualified Vendors (RFQV) is to pre-qualify fiber optic cable installation Vendors. DeltaCom will evaluate the RFQVs in accordance with the criteria described herein. DeltaCom will provide solicitation packages to qualified Vendors. The winning bid, whose response conforms to all the terms and conditions of the solicitation packages as presented to qualified bidders, will be awarded a firm fixed price contract. DeltaCom's evaluation team will evaluate RFQV responses and any potential awards based upon the following factors; in accordance with the criteria described herein:

- 1) Quality Assurance
- 2) Technical Capability
- 3) Management Capability
- 4) Prior Experience
- 5) Past Performance
- 6) Price

In evaluating these factors DeltaCom will take into consideration both price and non price factors when selecting a Vendor for pre-qualifications and/or contract award. The selection of a Vendor shall not be solely based upon the lowest price rather selection shall be predicated upon the best overall value.

E. TERMS AND CONDITIONS

All Vendors² shall be subject to the terms and conditions of this agreement and adhere to the Federal Acquisition Regulations (FARs), Defense Federal Acquisition Regulations (DFARs), Defense Contract Audit Agency regulations or any other federal agency specific regulations related to this procurement. By submitting qualification to DeltaCom, the Vendor acknowledges and agrees that Vendor has read, understands, and will fully comply with each of the Terms and Conditions below.

1. DeltaCom reserves the right to accept or reject any qualification package.
2. DeltaCom reserves the right to request clarification of information submitted, and to request additional information from any vendor.
3. The contracted firm will correct any and all errors and omissions that they make, at their own expense.
4. DeltaCom reserves the right to cancel the contract with a 30-day notice if DeltaCom determines in its sole discretion that service is unsatisfactory.
5. The successful firms will not discriminate against any person in accordance with Federal laws and regulations.
6. **Reporting / Registration.** Vendor must provide reports to Deltacom within 5 days after each quarter (April 5th, July 5th, October 5th and January 5th). The reports shall include the following:
 - Vendor Dun and Bradstreet Data Universe Numbering System (DUNS) Number
 - Vendor organization name
 - Zip Code +4 of the Vendor Organization's Headquarters.
 - Description of the products and/or services provided by the Vendor (255 characters or less)
 - The amount invoiced to the Vendor (aggregate) that will be paid with American Recovery and Reinvestment Act ("Recovery Act" or "ARRA") Funds

First-Tier recipients must maintain registration in the Central Contactor Registration (www.ccr.gov) at all times during which Vendor has active federal awards funded with Recovery Act funds. A Dun and Bradstreet Data Universe Numbering System (DUNS) Number is one of the requirements for registration in the Central Contractor Registration.

7. **Required Use of American Iron, Steel and Manufactured Goods under Section 1605 of the Recovery Act.** Vendor must adhere to the Buy American clause detailed in Section 1605 of the Recovery Act. See limited waiver in FR 31410 (fiber optic, coaxial cable and cell towers not waived.) Vendor must comply with Recovery Act Award Terms - Addendum to Award Term A2.

² The term "Vendor" includes the Vendor, subcontractor/s, and/or supplier/s the Vendor may utilize.

8. **Wage Rate Requirements under Section 1606 of the Recovery Act.** Section 1606 of the Recovery Act requires that all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the Recovery Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. Pursuant to Reorganization Plan No. 14 and the Copeland Act, 40 U.S.C. 3145, the Department of Labor has issued regulations at 29 CFR Parts 1, 3, and 5 to implement the Davis-Bacon and related Acts. Regulations in 29 CFR 5.5 instruct agencies concerning application of the standard Davis-Bacon contract clauses set forth in that section. Federal agencies providing grants, cooperative agreements, and loans under the Recovery Act shall ensure that the standard Davis-Bacon contract clauses found in 29 CFR 5.5(a) are incorporated in any resultant covered contracts that are in excess of \$2,000 for construction, alteration or repair (including painting and decorating).

Vendors must prepare weekly certified payroll documentation using Form WH-347 (available at <http://www.dol.gov/whd/forms/wh347.pdf>), properly completed for laborers and mechanics performing activities covered by the Davis-Bacon Act requirements of the Recovery Act. This documentation shall be submitted on a weekly basis within 7 days of the regular payment date of the Vendor's payroll period. DeltaCom will review Vendor records on an ongoing basis per 29 C.F.R. §§ 3.3-3.4. DeltaCom must maintain the original Davis-Bacon Act payroll records the Vendor prepares. DeltaCom is not required to submit any of the payroll documents to the BTOP Grants Office unless the assigned Grants Officer makes a specific request for such records. DeltaCom must retain these records as provided in the Department of Commerce Uniform Administrative Requirements for Grants and Cooperative Agreements, 15 C.F.R. § 14.53 or 24.42, as applicable, generally for the later of three years after closeout of the award, or until any litigation, claim, or audit is resolved.

9. **New Use of the American Recovery and Reinvestment Act Logo on Construction Signs.** All projects which are funded by the Recovery Act shall display signage that features the Primary Emblem throughout the construction phase. The signage should be displayed in a prominent location on site. The Primary Emblem should not be displayed at a size less than 6 inches in diameter. The agency awarding funds will provide additional instructions regarding specifications.

10. **SEC. 1515 Access of Offices of Inspector General to Certain Records and Employees.** With respect to each contract or grant awarded using covered funds, any representative of an appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), is authorized:
 - (1) to examine any records of the contractor or grantee, any of its subcontractors or subgrantees, or any State or local agency administering such contract, that pertain to, and involve transactions relating to, the contract, subcontract, grant, or subgrant; and
 - (2) to interview any officer or employee of the contractor, grantee, subgrantee, or agency regarding such transactions.
11. **First Tier Subrecipients' Planning Activities.** Deltacom shall require first tier subrecipients to obtain a DUNS number (or update an existing DUNS record), and to register with the Central Contractor Registration (CCR) no later than the first time Recovery Act data requirements are due (October 10, 2009).
12. **Codes of Conduct.** The recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. The Code of Conduct should include but not necessarily be limited to the following:
 - (a) No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award.
 - (b) The officers, employees, and agents of the recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements.
 - (c) However, the recipient may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the recipient.
13. **Equal Employment Opportunity.** Vendor shall comply with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

14. **Copeland “Anti-Kickback” Act (18 U.S.C. 874 and 40 U.S.C. 276c).** Vendor contracts in excess of \$2000 for construction or shall comply with the Copeland “Anti-Kickback” Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to the DoC operating unit.
15. **Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333).** All contracts exceeding \$100,000 for construction contracts and for other contracts that involve the employment of mechanics or laborers shall include comply with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), as supplemented by Department of Labor regulations (29 CFR Part 5). Under Section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
16. **Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended.** Contracts of amounts in excess of \$100,000 shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to the DoC operating unit and the Regional Office of the Environmental Protection Agency (EPA).
17. **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).** Vendors who apply or bid for an award exceeding \$100,000 shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

18. **Debarment and Suspension (E.O.s 12549 and 12689)** No contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement programs in accordance with E.O.s 12549 and 12689, "Debarment and Suspension" as implemented by DoC regulations at 15 CFR part 26. This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors with awards that exceed the simplified acquisition threshold shall provide the required certification regarding its exclusion status and that of its principal employees. [63 FR 47156, Sept. 4, 1998, as amended at 66 FR 49828, Oct. 1, 2001]
19. **Federal Acquisition Regulations.** Vendors must comply with FAR PART 49 - Terminations, FAR PART 28 - Bonds & Insurance and FAR PART 4.7 - Record Retention.
20. **Certification Regarding Lobbying--Lower Tier Covered Transactions.** Vendors bidding for a lower tier covered transaction (except procurement contracts for goods and services under \$25,000 not requiring the consent of a DOC official) are subject to 2 CFR Part 1326, Subpart C "Governmentwide Debarment and Suspension Nonprocurement." In addition, Vendors bidding for a lower tier covered transaction for a subaward, contract, or subcontract greater than \$100,000 of Federal funds at any tier are subject to 15 CFR Part 28, "New Restrictions on Lobbying." Vendors should familiarize themselves with these provisions, including the certification requirement. Therefore, applications for a lower tier covered transaction must include a Form CD-512, "Certification Regarding Lobbying--Lower Tier Covered Transactions," completed without modification.
21. **Disclosure of Lobbying Activities.** For all lower tier covered transactions (subawards, contracts, and subcontracts) exceeding \$100,000 in Federal funds, the subaward, contract, or subcontract is subject to 31 U.S.C § 1352, as implemented at 15 CFR Part 28, "New Restrictions on Lobbying." The Vendor shall submit a completed "Disclosure of Lobbying Activities" (Form SF-LLL) regarding the use of non-Federal funds for lobbying. The Form SF-LLL shall be submitted within 15 days following the end of the calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed.
22. **Whistleblower Protection Act Requirement.** The Vendor shall comply with the Whistleblower Protection requirements of the American Recovery and Reinvestment Act (Recovery Act), Section 553 of Division A, Title XV, Public Law 111-5.

23. **Confidentiality.** The nature of the work performed and any information belonging to DeltaCom with which Vendor may or have become familiar will be treated as confidential. Confidential information includes, Inventions, prices, costs, business affairs, DeltaCom lists, vendor lists, business plans, services and products being provided or in development, including the quantity, technical configuration, type, destination, location and amount of use of any telecommunications service subscribed to by a DeltaCom (such as telephone numbers called by a DeltaCom and/or services purchased by DeltaCom), process information, trade secrets, technical information, product design information and copyrights and other proprietary information (collectively, “Confidential Information”). Vendor recognizes this information to be valuable, special and unique assets of DeltaCom. Vendor agrees that Vendor will not at any time or in any manner, either directly or indirectly, use any Confidential Information for Vendor’s own benefit, or divulge, disclose, or communicate in any manner any Information to any third party without the prior written consent of DeltaCom.
24. **Assignment of Invention.** Vendor agrees to transfer and assign and hereby do transfer and assign to DeltaCom or its successors the entire right, title and interest for the entire world in and to all data, software, designs, models, processes, patents, copyrights, drawings, documents, inventions and discoveries made or conceived by Vendor, solely or jointly with DeltaCom, in the course of performing services on behalf of DeltaCom, or with the use of materials or facilities of DeltaCom during the period of the Agreement or any extension or renewals thereof.

F. INSURANCE REQUIREMENTS

If awarded the Contract, Vendor shall, at its own expense, maintain in effect insurance coverage with limits not less than those set forth herein:

- a. Worker's compensation insurance with statutory limits as required by the laws and regulations applicable to the employees, subcontractors and agents of Vendor or its subcontractors who are engaged in the performance of this service agreement;
- b. Employer's liability Insurance, for employee bodily injuries and deaths, with limits of \$500,000 per occurrence;
- c. Commercial general liability insurance, covering claims for bodily injury, death and property damage, including comprehensive form, premises and operations, independent contractors, products and completed operations, personal injury, contractual, and broad form property damage liability coverage, with limits of \$1,000,000 per occurrence.
- d. Comprehensive automobile liability insurance, covering owned, non-owned, hired and other vehicles, with combined single limits of \$1,000,000.

All such policies of insurance shall provide that the same shall not be cancelled nor the coverage modified nor the limits change without first giving thirty (30) days prior written notice thereof to DeltaCom. All liability insurance policies shall be written on an "occurrence" policy form and shall name DeltaCom its successors and/or assigns, as additional insureds, as its interest may appear. No such cancellation, modification or change shall affect Vendor's obligation to maintain the insurance coverage required by this agreement. Vendor shall be responsible for payment of any and all deductibles from insured claims under its policies. Vendor shall furnish to DeltaCom a certificate of insurance as evidence of compliance with the aforementioned requirements ten (10) business days after being awarded a contract.

THERE ARE ABSOLUTELY NO EXCEPTIONS TO THESE REQUIREMENTS.

G. PROCEDURES FOR SUBMITTING QUALIFICATION PACKAGES

Each Vendor must carefully follow all instructions included within the formal solicitation documents regarding the proper submission of a response. **Failure to comply with conditions set forth in the solicitation may result in disqualification.** All DeltaCom solicitations require the vendor to submit a response to the e-mail address below.

E-Mail Address: Neill.Briggs@deltacom.com

- Qualification packages should be submitted at the above address no later than **August 18, 2010 at 5:00:00 PM EDT** to be considered. Responses received after this time will be marked **LATE**.
- Responses will be retained as property of DeltaCom.
- Responses should generally be less than 20 pages total not including any attachments and shall outline the tasks mentioned. This is not a strict limitation on the number of pages. However, DeltaCom does not wish to receive irrelevant extraneous information. Please only include pertinent information in your response.
- Responses should contain an electronic signature of an authorized representative of the responding firm(s).
- DeltaCom is not liable for any costs incurred by firms submitting qualification packages.
- All or a portion of the contents of the Qualification Package of the successful firm may become part of any subsequent contractual obligation.

H. VENDOR INFORMATION FORM

The undersigned, on behalf of the respondent, certifies that: (1) this information is made without previous understanding, agreement or connection with any person, firm, or corporation providing a response to the same document; (2) is in all respects fair and without collusion or fraud; (3) the person whose signature appears below is legally empowered to bind the firm in whose name the response is entered; (4) they have read the complete Request for Proposal and understand all provisions; (5) if officially proposed in response to any Request for Proposal accepted by Columbia County, the capabilities identified are guaranteed as written and will be implemented as stated; and (6) mistakes in writing of the submitted response will be their responsibility.

Contractor Registered Name

Type of Organization (check one):

____ Sole Proprietorship ____ Partnership ____ Corporation ____ Public Corporation

Authorized Contact Name Printed Title

Authorized Signature Date

Mailing Address Physical Headquarter Address

City/State/Zip City/State/Zip+4

Phone Number Fax Number

Company Website Address E-Mail

Tax I.D. Number DUNS Number General Nature of Business

I. CONSTRUCTION AGREEMENT

THIS CONSTRUCTION AGREEMENT (this "Agreement") is made and entered into this ____ day of _____, 20__ by and between DeltaCom, Inc. (the "Company"), an Alabama corporation, and if applicable, on behalf of its affiliates Interstate FiberNet, Inc. and/or Business Telecom, Inc., and _____ (the "Contractor"), a _____ corporation.

In consideration of the mutual covenants and agreements set forth herein, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1 SCOPE OF WORK

1.01 The Contractor shall provide the necessary personnel, services, transportation, equipment, storage, and staging facilities to satisfactorily and expeditiously accomplish the various projects (each, a "Project"), as agreed to by the parties from time and described in a Statement of Work. Such performance by the Contractor shall hereinafter be referred to as the "Work" and shall adhere to the written specifications provided by the Company. All Work shall be performed and payments shall be made in accordance with the terms of this Agreement and any Statement of Work. The Contractor warrants that it shall complete all Work in a good and workmanlike manner, free from defects and in accordance with good usage and accepted practices in the community in which the Work is performed and in the most expeditious and economical manner consistent with the applicable Statement of Work and the interests of the Company. The Contractor shall be responsible for the Work for a period of twelve (12) months after Final Acceptance (as defined in Article 19 hereof), subject to the terms of Article 14 hereof.

1.02 As further described in Article 16 hereof, the Company shall make available to the Contractor all materials and supplies necessary in connection with the Work (the "Company Materials"), with the exception of those materials and supplies to be furnished by the Contractor as set forth in the Statement of Work (the "Contractor Materials"). The Company shall also provide the Contractor with all technical information, data, technical support or assistance it may have or have access to as may be required by the Contractor to complete the Work in accordance with the Statement of Work. The Contractor shall provide (a) the Contractor Materials, (b) all equipment necessary in connection with the Work, and (c) all labor necessary in connection with the Work.

1.03 The Contractor Materials shall conform to the respective specifications therefore set forth in the Statement of Work. The Contractor warrants that all Contractor Materials utilized in connection with the Work shall be merchantable, fit for their intended use, in new and unused condition and free from defects in material, workmanship, or design. Good title to such Contractor Materials shall be conveyed to the Company upon payment of the Price hereunder, free and clear of any and all liens, charges, claims, or encumbrances. The Contractor, to the extent permitted, hereby assigns to the Company all warranties, if any, given to the Contractor by its vendors with respect to the Contractor Materials, which warranties may be enforced and reassigned by the Company.

1.04 The Contractor shall, at all times, keep all areas where it is conducting the Work, including, without limitation, all roads, streets, driveways and surrounding environs, free and clear of all waste, trash, rubbish and debris caused by the Work and related activities, and shall exercise due care to preserve and avoid injury or any hazardous conditions with respect to all private and public property, including, without limitation, any and all road and highway improvements, trees, shrubs, and other vegetation. All waste material must be stockpiled or placed in refuse bins no less than twice a week. Any and all fines levied by any governmental or regulatory agency or body due to improper construction methods (other than in accordance with the Statement of Work) or conditions of the site will be the responsibility of the Contractor. Any and all fines or fees levied by any governmental or regulatory agency or body otherwise imposed in connection with restrictive covenants or zoning regulations will also be the responsibility of the Contractor. Upon completing any portion of the Work, the Contractor shall remove from the Work area all such waste, trash, rubbish and debris, as well as all tools, equipment, and materials, and shall restore such area to at least as good a condition and appearance as existed prior to the performance of the Work, except for the presence of warning signs described in the Statement of Work (all of the foregoing referred to herein as "Cleanup").

ARTICLE 2 PRICE

For the full satisfactory performance of all the requirements of this Agreement, the Company shall pay the rates as set forth in the applicable Statement of Work (the "Price"), which rates include all state and local sales, excise and use taxes and all other federal, state and local taxes and fees, all of which taxes and fees shall be paid by the Contractor and reimbursed by the Company (excluding any taxes imposed on the Contractor's net income).

East Tennessee Middle Mile project; BTOP Award: NT10BIX5570034

Payment for services provided under this Agreement shall be on a unit price basis as set forth in the Statement of Work; *provided however*, that the Contractor shall be reimbursed for any material or supplies furnished in addition to the material and supplies set forth in the Statement of Work at cost plus ten percent (10%). The Contractor shall provide to the Company together with invoicing a valid receipt for such additional materials or supplies.

**ARTICLE 3
PAYMENT**

3.01 The Contractor shall be paid the Price as set forth in Article 2 hereof in accordance with the provisions of the Statement of Work and of this Article 3.

3.02 The Company may make the following deductions from any payment due the Contractor (the "Deductions"):

(a) Any and all costs and expenses incurred by the Company in performing obligations that were required under this Agreement to be performed by the Contractor but that were not, in the sole judgment of the Company, so performed;

(b) Any and all damages, costs and expenses for which the Contractor is otherwise liable under this Agreement or at law or in equity; and

(c) Any premiums paid by the Company for replacement insurance coverage pursuant to Article 11 hereof.

No deduction by the Company pursuant to this Agreement shall constitute a waiver of any other right or remedy of the Company.

3.03 Any and all savings attributable to elimination of portions of the Work, reduction in the scope of the Work or cost-savings substitutions shall inure solely to the benefit of the Company.

**ARTICLE 4
SUBCONTRACTORS**

4.01 The Contractor shall not subcontract any part of the Work without the prior written consent of the Company as to both the subcontracting of the Work and the identity of the subcontractor. Any subcontractor used in the performance of any part of the Work shall be duly licensed where applicable and insured in the state where the Work is being performed. All subcontractors' and sub-subcontractors' warranties and guarantees shall be underwritten by the Contractor, who shall obtain and deliver the same to the Company before the work will be deemed finished and accepted. All work performed by a subcontractor shall be deemed Work performed by the Contractor and shall not release the Contractor from its obligations under the Agreement.

4.02 All subcontracts with subcontractors approved by the Company shall provide that the subcontractors shall be subject to all provisions set forth in this Agreement insofar as they are applicable to the Work to be done under such subcontracts. Any subcontract shall be immediately terminated by the Contractor whenever the Company shall certify to the Contractor in writing that, in the Company's opinion, the Work of the subcontractor is unsatisfactory or unnecessarily delayed or that the subcontractor has violated any of the provisions of this Agreement.

4.03 If the Contractor subcontracts in violation of this Article 4, the Company may, at its option, terminate this Agreement and shall thereupon be relieved from all liability hereunder to the Contractor or its purported subcontractor.

**ARTICLE 5
CONTRACTOR METHOD OF OPERATION**

5.01 Within five (5) days after receipt from the Company of written notice to proceed with a Project and before construction begins, the Contractor shall have in place:

(a) A completely staffed and centrally located project management office devoted to the Work.

(b) Completely staffed warehousing and storage areas of sufficient size and quantity to safely offload and securely store cable and conduit and all other Company Materials, Contractor Materials and equipment necessary for the completion of the Work.

(c) All Contractor Materials, equipment and personnel necessary for the completion of the Work, in accordance with the Statement of Work.

East Tennessee Middle Mile project; BTOP Award: NT10BIX5570034

5.02 A pre-construction meeting shall be held the work day before construction begins at the Contractor's project management office with all construction personnel in attendance to discuss construction techniques and safety rules.

5.03 The Contractor shall name one (1) person as the "Project Manager" (the initial Project Manager being named in the applicable Statement of Work), who shall have the authority to act for and legally commit the Contractor. All official communications between the Company and the Contractor shall be via the Project Manager. The Company shall have the right to require removal and substitution of the Project Manager for any reason whatsoever. If, in the reasonable opinion of the Company, the progress of the work is not satisfactory or the progress schedule of the Work is not being observed, the Company may require the Contractor to supply, employ and be represented by additional supervisory personnel, as approved by the Company, which approval will not be unreasonably withheld, at the site after the start of the construction and throughout the progress of the Work until Final Acceptance (as defined in Section 19.03). Any and all additional supervisory personnel shall be employed and supplied by the Contractor at the site no later than five (5) days after written request therefor by the Company.

5.04 All Contractor technical coordination, as well as review of all Work during the term of this Agreement, shall be conducted by or under the supervision of the Company's Construction Program Manger (the initial Construction Program Manager being named in the Statement of Work).

5.05 The Contractor shall submit copies of all correspondence to the Company in accordance with the provisions of Article 30 hereof.

5.06 The Contractor shall check all materials, equipment and labor entering into the Work and shall keep such full detailed accounts (in addition to the weekly reports required pursuant to Article 6 hereof) as may be necessary for proper financial management under this Agreement in such manner as approved by the Company. The Contractor agrees to provide the Company, promptly upon request, any documentation, including copies of contracts, payment records and the like, which may be reasonably requested by the Company in connection with any requisition for payment under this Agreement.

5.07 The Contractor shall employ in the Work only employees who are competent and otherwise satisfactory. Upon the Company's request, the Contractor will remove from any activities directly or indirectly related to the Work any employee whom the Company deems incompetent or otherwise unsatisfactory. At every work site, there shall be a competent foreman who is acceptable to the Company and who has authority to act for the Contractor in all matters pertaining to this Agreement. Non-working supervisors shall be on-site, based on the number of crews in use. Supervisors and foremen shall be available on a seven-day, twenty-four-hour basis via two-way radio or pocket pagers supplied by the Contractor. Unless and until a work schedule is approved by each of the Company and the Contractor prior to the commencement of the Work, the Contractor shall determine, in its sole discretion, the number of work crews which shall be required and the number of hours each crew will work in order to complete the Work as scheduled.

5.08 In the event that a shortage of labor, materials, or equipment shall occur at any time during the performance of the Work, the Contractor agrees that it shall not furnish any lesser number of employees, materials, or equipment for the performance of the Work than it is furnishing to any other construction project of comparable size and complexity for which it is then serving as contractor in the Work area.

ARTICLE 6
SCHEDULES AND REPORTS

The Contractor shall provide to the Company a weekly report indicating progress for that week. These reports shall be detailed in nature and adequate to provide the management of the Company with the necessary facts to accurately assess progress and problem areas including proposed problem solutions.

ARTICLE 7
CONTRACTOR LIABILITY; LIQUIDATED DAMAGES

THE CONTRACTOR UNDERSTANDS AND ACKNOWLEDGES THAT THE COMPANY IS RELYING ON THE CONTRACTOR'S ABILITY TO MEET THE WORK REQUIREMENTS OF THIS AGREEMENT AND, FURTHER, THAT THE FAILURE OF THE CONTRACTOR TO COMPLY WITH THE WORK REQUIREMENTS WOULD RESULT IN IRREPARABLE HARM TO THE COMPANY. ACCORDINGLY, THE CONTRACTOR AGREES TO PAY TO THE COMPANY, AS LIQUIDATED DAMAGES, THE SUM OF ONE THOUSAND AND 00/100 DOLLARS (\$1,000.00) PER DAY FOR EACH AND EVERY DAY, EXCLUDING SATURDAYS, SUNDAYS AND LEGAL HOLIDAYS, THAT THE CONTRACTOR FAILS TO HAVE ALL OF THE WORK COMPLETED IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT FOR ANY REASON OTHER THAN EXCUSABLE DELAYS AS SET FORTH IN ARTICLE 13 HEREOF; *PROVIDED HOWEVER*, THAT THE COMPANY HAS NOT CAUSED SUCH FAILURE OF THE CONTRACTOR TO COMPLETE BY HAVING BREACHED OR DEFAULTING IN THE COMPANY'S OBLIGATIONS HEREUNDER. THE COMPANY AND THE CONTRACTOR AGREE THAT SAID SUM IS HEREBY FIXED AND AGREED TO AS LIQUIDATED DAMAGES, AND NOT AS A PENALTY, BECAUSE OF THE DIFFICULTY IN ASCERTAINING THE LOSS AND DAMAGE WHICH WOULD BE SUFFERED BY THE COMPANY BY REASON OF THE CONTRACTOR'S FAILURE TO MEET THE WORK REQUIREMENTS. NOTHING IN THIS ARTICLE 7 SHALL LIMIT THE RIGHTS OF THE COMPANY TO PURSUE ITS REMEDIES AS DESCRIBED IN SECTION 8.02 HEREOF. THE COMPANY SHALL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES ARISING UNDER THIS AGREEMENT.

ARTICLE 8
EVENTS OF DEFAULT; REMEDIES

8.01 The Contractor shall be in default under this Agreement upon the happening of any of the following events or conditions ("Events of Default"):

(a) The Contractor shall fail to commence the Work as required by a Statement of Work, or shall fail to complete, in accordance with the schedules described in a Statement of Work, any portion of the Work with the result that the Company determines that the completion of the Work will be delayed beyond the date specified in the applicable Statement of Work.

(b) The Contractor shall in any way act or fail to act, or undergo any change in condition (financial or otherwise), so as, in the Company's sole judgment, to affect adversely the Contractor's ability to meet and carry out its obligations under this Agreement.

(c) Any representation or warranty of the Contractor made herein shall prove to have been incorrect or misleading or breached in any respect on or as of the date as of which made.

(d) The Contractor or any of its affiliates shall at any time fail to observe, satisfy, or perform any term, covenant or agreement contained in the Agreement or in any other agreement between the Contractor or any of its affiliates and the Company or any of its affiliates.

(e) The Contractor shall for any reason become ineligible for or otherwise be unable to obtain any form of insurance or bonding required and in the amounts required by this Agreement.

(f) Any License (as defined in Article 10), agreement or contract that is material to the Contractor's ability to perform its obligations under this Agreement shall be suspended, revoked, or terminated.

(g) Ownership or control of the Contractor shall be sold, assigned or otherwise transferred (including by operation of law).

(h) A decree or order for relief of the Contractor shall be entered by a court of competent jurisdiction in any involuntary case involving the Contractor under any bankruptcy, insolvency, or other similar law now or hereafter in effect, or a receiver, liquidator, assignee, custodian, trustee, sequestrator, or other similar agent for the Contractor or for any substantial part of the Contractor's assets or property shall be appointed, or the winding-up or liquidation of the Contractor's affairs shall be ordered, or any action by any creditor of the Contractor preparatory to or for the purpose of commencing any such involuntary case, appointment, winding-up or liquidation shall be taken.

(i) The Contractor shall commence a voluntary case under any bankruptcy, insolvency or other similar law now or hereinafter in effect, or the Contractor shall consent to the entry of an order for relief in an involuntary case under any such law or to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator or other similar agent for the Contractor or for any substantial part of the Contractor's

assets or property, or the Contractor shall make any general assignment for the benefit of creditors, or the Contractor shall fail generally to pay or admit its inability to pay its debts as such debts come due.

(j) The Contractor shall be dissolved or shall lose its corporate or legal status by forfeiture or by any judicial or administrative proceeding or otherwise.

8.02 Upon the occurrence of any Event of Default the Company may, at its option and upon notice to the Contractor, exercise any one or more of the following rights and remedies: notify the Contractor of the termination of this Agreement, upon the receipt of which notice by the Contractor this Agreement shall be terminated; reduce or eliminate to any extent the Company deems appropriate, and in such specific areas as the Company deems appropriate, the Work to be performed by the Contractor; perform or arrange for the performance by others of any remaining Work; and exercise any or all other rights and remedies available under this Agreement (including under Section 3.03) or at law or in equity. The Company shall have no liability to the Contractor for any damages suffered by the Contractor as a result of such exercise of the Company's rights. The Contractor shall be liable to the Company for any damages suffered by the Company as a result of the Contractor's default and in excess of any amounts otherwise owing to the Contractor but unpaid as of the date of such default and set off.

8.03 In the event that the Company should exercise any one or more of the foregoing rights or remedies, the Company shall, within ninety (90) days after such exercise and subject to the requirements and limitations of Article 3 hereof, make final payment to the Contractor for all Work satisfactorily performed by the Contractor up to the time of such exercise of the Company's rights, less (i) any damages sustained by the Company as a result of the Contractor's default and (ii) any Deductions (as defined in Section 3.02 hereof).

8.04 Any right which the Company may have to stop the Contractor from performing the Work shall not give rise to a duty on the part of the Company to exercise this right for the benefit of the Contractor or any other person or entity.

8.05 In the event this Agreement is terminated due to an Event of Default, the Contractor agrees to make available to the Company, upon written request of the Company and on a prompt basis, copies of all contracts, subcontracts, payment records, drawings, instructions, memoranda and other records in the Contractor's possession relating to the performance of the Work under this Agreement.

ARTICLE 9

PUBLIC RELEASE OF INFORMATION

The Contractor shall obtain the written approval of the Company concerning the timing and content of news releases, articles, brochures, advertisements, speeches and other information releases concerning the Work performed or to be performed hereunder by the Contractor or any of its employees, vendors, subcontractors, or consultants, prior to the release of such information.

ARTICLE 10

COMPLIANCE WITH LAWS AND REGULATIONS

10.01 This Agreement is subject to all applicable federal, state, and local statutes, ordinances, laws, rules, or regulations. The Contractor shall assure that all Work is done in strict compliance with all federal, state and local laws, regulations and ordinances, and with the National Electric Safety Code, all pole- attachment agreements, right-of-way agreements and other agreements to which the Company is a party in connection with the Work, and all applicable utility practices. The Contractor has obtained all franchises, licenses, permits (other than permits specifically related to Work), certificates, consents, approvals and authorizations (collectively, the "Licenses") necessary for the Contractor to lawfully perform its obligations under this Agreement, and it shall maintain the Licenses and renew the Licenses as and when appropriate, and it shall obtain such additional Licenses as may at any time become necessary for it to lawfully perform its obligations under this Agreement.

10.02 The Company has obtained or will obtain on a timely basis all special permits, pole-attachment agreements, rights-of-way and other rights necessary to permit performance of the Work. The Contractor shall have no obligation to obtain any such special permits, pole-attachment agreements or rights-of-way agreements, but shall comply in all respects with the requirements of such permits and agreements obtained by the Company.

ARTICLE 11

INDEMNIFICATION; INSURANCE

11.01 The Contractor shall indemnify and hold harmless the Company, the owner of any property on which Work is performed, and all their respective directors, officers, partners, agents, servants, subsidiaries, affiliates, employees, or any of them, from and against any and all claims, demands, actions, losses, damages, assessments, charges, liabilities, costs and expenses (including, without limitation, interest, penalties and attorneys'

fees and disbursements) which may at any time be suffered or incurred by, or be asserted against, any one or more of them, directly or indirectly, on account of or in connection with:

(a) The Contractor's default under any provision herein, breach of any warranty or representation herein, failure in any way to perform any obligation hereunder or failure to conform to any applicable statute, ordinance, law, rule or regulation of any governmental authority in connection with the Work;

(b) Any injury (including death) to any person (including, without limitation, any employee of the Contractor and any third person), and any damage to or loss of use of any property, arising out of or in any way relating to the Contractor's performance or non-performance on or in connection with the Work or pursuant, directly or indirectly, to this Agreement;

(c) Any assertion by an employee or former employee of the Contractor, or any of its subcontractors, for which the Contractor's liability to such employee or former employee would otherwise be limited to payments under applicable state Worker's Compensation or similar laws;

(d) Any and all penalties imposed on account of the violation of any applicable statute, ordinance, law, rule, regulation, condition or requirement in any way related, directly or indirectly, to the Contractor's performance of the Work; or

(e) Any and all claims, liens and/or suits for labor and materials furnished by the Contractor or any subcontractor or used in the performance of the Work or otherwise.

The Contractor shall promptly notify the Company of any claim, demand or action arising out of or in any way relating to the Work or this Agreement, shall permit the Company to participate in the defense of any such claim, demand or action and shall not settle any such claim, demand or action without prior written consent of the Company.

11.02 Without limiting the generality of Section 11.01 above, the Contractor agrees to take out, pay for, and at all times during the term of the Agreement, maintain such public, contingent (where applicable, professional malpractice) and employer's liability insurance as will protect the Contractor and the Company from claims under Worker's Compensation and other employee benefit acts. Such insurance shall include Comprehensive General Liability and Property Damage, including automobile, products, completed operations and broad form contractual covering liability assumed by the Contractor under this Agreement.

Without limitation, the Contractor shall maintain insurance coverage and minimal limits of liability as follows:

(a) Worker's Compensation and Employer's Liability Insurance for its employees in such amounts as may be required by the applicable state law in the state or states in which the Work is being performed, or other state or federal law that may be applicable in the performance of this Agreement.

(b) Business Automobile Liability Insurance for any automobile used in connection with the Work with limits of not less than \$1,000,000.00 for each injured person and \$1,000,000.00 for each occurrence, and insurance against liability for damage to any property of third persons with a limit of not less than \$1,000,000.00 for each occurrence, or a combined single limit of \$1,000,000.00.

(c) Comprehensive General Liability and Property Damage Insurance with limits of not less than \$1,000,000.00. Comprehensive General Liability and Property Damage Insurance shall include wording that the policy will be extended to provide coverage for "X-C-U" (the Explosion, Collapse and Underground coverage normally excluded in construction General Liability classifications, which exclusion shall be eliminated and full coverage provided. The Contractor shall also provide Professional Liability Insurance including Contractual Liability, Completed Operations Liability and Personal Injury Liability with a combined single limit of \$1,000,000.00.

11.03 Each insurance policy described above shall be primary insurance written on an occurrence basis to the full limits of liability set forth above with an insurance carrier or carriers satisfactory to the Company, and shall name the Company as an additional insured. Each policy shall provide that no change, cancellation, or non-renewal shall become effective except after thirty (30) days prior written notice from the insurance company to the Company of such change, cancellation, or non-renewal. In the event of any change, cancellation, or non-renewal not acceptable to the Company, the Company may demand that the Contractor obtain replacement coverage. If the Contractor fails to obtain replacement coverage within ten (10) days after such demand by the Company, the Company may obtain replacement coverage and deduct all premiums thereof from amounts otherwise due the Contractor.

11.04 The Contractor shall provide proof to the Company of such insurance prior to commencement of Work.

11.05 In the event the Company has other valid insurance, such insurance shall be treated as excess insurance only.

ARTICLE 12
PERFORMANCE AND PAYMENT BOND; ACTIONS UPON TERMINATION

12.01 The Contractor shall provide to the Company, within five (5) days after written notice to proceed as described in a Statement of Work and before construction starts, a surety bond from a recognized construction bonding firm, acceptable to the Company, in the amount of the estimated aggregate Price to be payable by the Company to the Contractor pursuant to each Statement of Work. This surety bond shall be cashable by the Company in whole or in part upon the occurrence of an Event of Default, as defined in Section 8.01. The surety bond shall remain in effect until Final Acceptance (as defined in Section 19.03), whereupon the surety bond or balance remaining thereof shall be released to the Contractor. The surety bond shall be adjusted accordingly to reflect price changes pursuant to Article 18 of this Agreement.

12.02 If this Agreement is terminated as provided in Section 8.02 hereof, the Company, in addition to any other rights provided in this Agreement, and without prejudice to its rights under Section 8.02, may require the Contractor to deliver to the Company, in the manner and to the extent directed by the Company, Company Materials and Contractor Materials which the Contractor has acquired for the performance of such part of this Agreement as has been terminated; and the Contractor shall, upon the direction of the Company, protect and preserve property in the possession of Contractor in which the Company has an interest and deliver same pursuant to the Company's direction.

12.03 Should the Company's cost in completing the terminated portion of the Work exceed the value of the surety bond, or balance thereof, the Contractor shall be liable for those excess costs, including the cost of correcting any Work that has been previously done by the Contractor in such a manner as to have not been acceptable to the Company pursuant to this Agreement.

ARTICLE 13
EXCUSABLE DELAYS

Acts of God or of the public enemy, acts of the government in its sovereign capacity, fires, floods, explosions, earthquakes, wars, epidemics, quarantine restrictions, or other causes beyond the control of a party hereto, which cause failure to perform hereunder, and which in every case is beyond the reasonable control and without the fault or negligence of such party or its subcontractors and vendors hereunder, shall constitute an excusable delay for such party, if notice thereof is given to the other party within three (3) days after such event shall have occurred. In event of delay resulting from any of the above causes, Work requirements shall be extended by an equivalent number of days. Notwithstanding the foregoing, the Company shall have the right to terminate this Agreement should any delays exceed fifteen (15) days, in accordance with Sections 8.02 and 12.02 hereof.

ARTICLE 14
INSPECTION; REJECTION OF WORK; CORRECTION OF WORK

14.01 The Company may inspect all Work done by the Contractor and may reject any or all of the Work if the same is not in accordance with the applicable specifications and the detail construction prints contemplated by the Statement of Work or with the other terms and conditions of this Agreement. The Company and any other person designated by it shall have, for the purpose of inspection, free and safe access at any and all times to the Work performed or being performed.

14.02 At any time, the Company may reject any or all of the Work if the same is not in accordance with the specifications and detail construction prints contemplated by the Statement of Work. The Contractor shall, at the Contractor's own expense, repair, or replace any Work rejected within seven (7) days after receiving written notice from the Company of the rejection if notice is given during the performance of the Work. If the notice is given at any time following Final Acceptance (as defined in Section 19.03), the Contractor shall repair or replace any Work rejected within fifteen (15) days after receiving written notice. Notwithstanding the foregoing, in the event a hazardous situation arises after Final Acceptance (as defined in Section 19.03) and the Contractor is unwilling or unable to make the necessary repairs immediately for any reason, the Company has the right to cause the damage to be repaired.

14.03 If the Contractor fails to promptly complete the repair or replacement of the Work as described above, the Company may make such repairs or replacements and recover from the Contractor the cost of making the

East Tennessee Middle Mile project; BTOP Award: NT10BIX5570034

same and the damage, if any, resulting therefrom or the Company may deduct the cost of making the same and the damage, if any, resulting therefrom from any amount due or to become due to the Contractor under this Agreement. Notwithstanding the foregoing, the Company shall also be entitled to apply any amounts necessary under the surety bond and warranty bond as set forth in Section 12.01 and Article 20, respectively, hereof to remedy any failure of the Contractor to satisfy its obligations herein or to remedy any defect in the performance of the Work by the Contractor.

ARTICLE 15

RESPONSIBILITY FOR SPECIFICATIONS AND DRAWINGS

15.01 The Contractor shall be responsible for the verification of any and all specifications, drawings, or other pertinent data or information supplied by the Company pursuant to this Agreement, as described in the Statement of Work, and shall immediately report in writing any conflict, error or discrepancy which the Contractor may discover.

15.02 The Company's approval of any data or information supplied by the Contractor shall not relieve the Contractor from responsibility for any deviations from the requirements of this Agreement, unless the Contractor has advised the Company in writing of such deviations at the time of data or information submissions, and the Company has given written approval to the specific deviations.

ARTICLE 16

COMPANY-FURNISHED MATERIALS

16.01 The Company shall deliver all Company Materials to be used in connection with and under the terms of this Agreement to the storage facilities to be furnished by the Contractor specified in the Statement of Work. The performance dates for the Work to be furnished by the Contractor under this Agreement are based upon the expectation that the Company Materials shall be so available by such dates. In the event that the Company Materials are not so available by such dates, the Company shall, upon timely request made by the Contractor, make a determination of the delay, if any, to the Contractor resulting therefrom, and shall equitably adjust performance dates. The Contractor shall be responsible for all arrangements relating to picking up the Company Materials at such storage facilities.

16.02 Title to, and all rights of ownership in, all Company Materials delivered to the Contractor shall at all times remain with and in the Company; and the Contractor hereby waives and releases any present or future lien or other claim of right or entitlement to all or any portion of the Company Materials. The Contractor shall be responsible for all Company Materials delivered to it and for all Contractor Materials, and shall bear all risk of loss with respect thereto. It shall be the Contractor's responsibility to store all Company Materials, all Contractor Materials and all Contractor equipment in a secure place or places during construction. Any in-place or stored Company Materials or Contractor Materials that disappear or become defective prior to Final Acceptance (as defined in Section 19.03) by the Company shall be replaced or repaired at the Contractor's expense without Company reimbursement.

16.03 The Company, at the time of receipt, shall carefully examine all Work and shall note any damages and/or deficiencies on a receiver slip. The Contractor shall be responsible for any and all correction or replacement of the damaged items as is deemed appropriate by the Company and shall bear all costs in connection therewith. The Contractor shall purchase replacement items only from vendors approved by the Company.

16.04 The Company shall back test each section of cable after splicing. In the event continuity tests fail, the Contractor shall promptly perform the necessary exposure of the affected area(s) for applicable repair or replacement at the sole expense of the Contractor.

ARTICLE 17
ACCESS TO WORK IN PROGRESS AND DATA

17.01 All Work in progress under this Agreement and documentation generated from the Agreement effort by the Contractor and its subcontractors, including all design and specifications documentation, are subject to continuous examination, evaluation, and inspection by the Company and its designated representatives at any reasonable hour and upon reasonable notice during the term of this Agreement. Thereafter, to the extent that such documentation is of a type normally retained by the Contractor, such documentation shall continue to be available for such purposes. The Company or any of its officers, employees, representatives or agents shall not be required to execute a release or waiver of any personal rights in connection with such examination, evaluation or inspection.

17.02 This Article shall be inserted in all subcontractor agreements issued by the Contractor.

ARTICLE 18
CHANGES

18.01 The Company may, by written change order, make reasonable changes within the general scope of this Agreement, including all Statements of Work hereto, in drawings, designs and specifications, by requiring additional Work or by directing the omission of Work. If any such change causes an increase or decrease in the cost of, or the time required for, the performance of this Agreement, an equitable adjustment shall be made in the price, or completion date or schedule, or both, and this Agreement shall be modified in writing accordingly. Any claim for adjustment or an increase in price by the Contractor under this paragraph shall be deemed waived unless asserted in writing within thirty (30) days after the date of receipt by the Contractor of the change order. The amount of the claim shall be stated when it is submitted, or at a later date, not to exceed thirty (30) days after the date of assertion of the claim, which later date shall be requested at the time of such submission. Any disputes concerning such claims shall be resolved in accordance with Article 27 hereof. Nothing in this paragraph shall excuse the Contractor from promptly proceeding with the Agreement and each Statement of Work as changed.

18.02 Verbal directives concerning changes shall not be accepted by the Contractor, and the Company will not be obligated to pay for extra Work performed by the Contractor as a result of verbal directives.

ARTICLE 19
INSPECTION AND FINAL ACCEPTANCE

19.01 Inspections on an ongoing basis will be made by the Company or its designated representatives at the Contractor's Work sites. All inspections at the Contractor's Work sites by the Company or its designated representatives may be made with or without a Contractor's representative. The Company shall inform the Contractor in writing of those particulars in which the requirements of the Agreement are not met, and the Contractor shall promptly remedy such particulars.

19.02 Remedy of any particular referred to in Section 19.01 shall be accomplished by the Contractor, at the Contractor's sole expense, promptly upon receipt of notice thereof.

19.03 When the Contractor has completed all of the Work (including, without limitation, all Cleanup), and delivered to the Company all documentation and as-built drawings, together with a sworn, notarized statement by the Contractor that all valid bills for all of the Work have been paid and that the Contractor knows of no liens which are or could be applied as a result of non-payment pertaining thereto, the Contractor shall be entitled to notify the Company in writing that the Work is ready for inspection, test, and final acceptance. When the Contractor so notifies the Company that the Work is ready for inspection, test, and final acceptance in accordance with the Statement of Work, the Company shall promptly conduct such an inspection and direct the conduct of such test, and shall determine whether all such documentation and drawings and such statement has been received. Within thirty (30) days thereafter, the Company either shall accept the Work in writing or notify the Contractor in writing of those particulars in which the Work or completion of all other matters described above is unacceptable. The Contractor shall correct particulars in accordance with Article 14 of this Agreement. Upon remedy of such particulars to the satisfaction of the Company, the Work shall be accepted by the Company in writing, hereinafter referred to as "Final Acceptance". Final Acceptance shall not affect the obligations of the Contractor under Articles 1, 14, and 20 or under any other provision of this Agreement.

19.04 The Company may, in its sole discretion, accept the Work or any part thereof prior to its completion in strict accordance with the requirements of this Agreement upon demonstration to the satisfaction of the Company that such work is suitable for the operation for which the Company intends to use it (hereinafter referred to as a "Qualified Acceptance"). The Company shall have the right to free access and use of any items for which Qualified Acceptance has been made; *provided however*, that such Qualified Acceptance shall not constitute Final Acceptance and shall not relieve the Contractor from any of its obligations under this Agreement, including,

but not limited to, the requirements for completing the Work in strict accordance with the requirements of this Agreement.

ARTICLE 20
WARRANTY BOND

The Contractor shall warrant the Work to be in conformance with the Statement of Work and all specifications to be free from all defects. The Contractor shall provide a warranty bond to the Company from a recognized bonding agency, acceptable to the Company, in the amount of five percent (5%) of the estimated total Price under each Statement of Work. Such bond shall remain in effect until after the first anniversary of Final Acceptance. Such bond shall serve as surety to provide funds for correction of any deficiencies which the Contractor does not correct with diligence or at all. The Company may also cash such bond upon thirty (30) days written notice to the Contractor in the event of negligence of the Contractor or upon occurrence of an event described in Sections 8.01(h), 8.01(i), or 8.01(j).

ARTICLE 21
RIGHT TO TERMINATE

21.01 In addition to the termination rights specified in other sections of this Agreement, the Company shall be entitled to terminate this Agreement in whole or in part for its convenience by written notice to the Contractor, at any time prior to Final Acceptance. In the event of such termination by the Company, it is agreed that the termination charges shall be negotiated but shall not exceed one hundred ten percent (110%) of the total costs, both direct and indirect, actually incurred, with respect to the period ending on the date of termination, by the Contractor in the performance of this Agreement, including reasonable costs incurred with respect to Contractor's termination and settlement with subcontractors as a result of such termination.

21.02 Upon any such termination, the Contractor's direct and indirect costs shall be determined in accordance with the Contractor's standard accounting practice and verified by the Contractor's independent certified public accountants. The Company shall pay the Contractor the negotiated termination charges within forty-five (45) days following submission of such total costs certified to the Company by the Contractor's independent certified public accountants. Final payment shall be in the amount of the total termination costs, less the following:

- (a) Amounts previously paid by the Company to the Contractor pursuant to this Agreement;
- and
- (b) Any Deduction (as defined in Section 3.02 hereof).

21.03 Nothing contained in this Article 21 shall relieve the Contractor of its obligation to mitigate any and all damages it may incur as the result of the Company's termination hereunder.

ARTICLE 22
ASSIGNMENT AND DELEGATION

Except for subcontractors satisfying the requirements of Article 5 hereof, the Contractor shall not assign or delegate this Agreement or any of its rights, duties or obligations hereunder or under any subordinate agreement or any order placed under this Agreement or subordinate agreements to any other company or person without the prior express written approval of the Company. The Company shall be entitled to assign all or any portion of its rights pursuant to this Agreement.

ARTICLE 23
INDEPENDENT CONTRACTOR CONTROL OF
WORK, SAFETY AND PROTECTION

23.01 The Contractor is and shall remain an independent contractor, shall have full direction, control, and responsibility for the labor and equipment supplied in the course of performing the Work, and shall perform the Work in an entirely safe, proper, and secure manner. Nothing contained herein shall be deemed to create a relationship between the Company and the Contractor of employer and employee, master and servant, principal and agent, contractor and subcontractor, coventurers, partners or any similar relationship within the meaning of any law or otherwise. The employees of the Contractor shall be solely the employees of the Contractor, and shall not be deemed in any way or for any purpose to be employees of the Company. This Agreement shall not constitute either party hereto as the agent of or principal for the other.

23.02 The Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. The Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to: (a) all employees and the public and other persons at the Work sites or nearby, (b) all Work equipment and Contractor Materials and all

Company Materials which the Contractor has obtained from the Company, whether in storage on or off the Work sites, and (c) other real or personal property at the Work sites or adjacent thereto.

23.03 In emergencies affecting the safety of persons, work, or property at the Work sites or adjacent thereto, the Contractor, without special instruction or authorization of the Company, is obligated to act, at its discretion, to prevent threatened damage, injury, or loss.

23.04 If, in the reasonable opinion of the Company, the Contractor is not using the utmost care so as to prevent damage, injury, loss, or danger to any person or property, the Company may order the Work stopped and not resumed until, in the Company's sole judgment, proper means and methods have been adopted by the Contractor to ensure the performance of the Work in such a manner that will prevent any threatened damage, injury, loss, or danger. In the event of any such stoppage of the Work, the Contractor shall not be entitled to any delays or extensions of schedule pursuant to this Agreement.

23.05 All machinery and equipment and all other physical hazards shall be guarded and dealt with in accordance with the most recent edition of the "Manual of Accident Prevention in Construction" of the Associated General Contractors of America (unless such instructions conflict with federal, state, or local laws or regulations) and shall comply with all federal, state and local safety laws and building and construction codes.

ARTICLE 24 EXTRA WORK

No payments will be considered by the Company for any extra work beyond the Work as defined herein, unless such extra work and applicable costs have been approved in writing by the Company or have been authorized by an appropriate change order to the Statement of Work pursuant to Article 18.

ARTICLE 25 REPRESENTATIONS, WARRANTIES AND COVENANTS

The Contractor hereby represents, warrants and covenants to the Company that:

(a) The Contractor is a corporation duly organized, validly existing and in good standing under the laws of the state of its incorporation, is qualified to do business and possesses a valid contractor's license in the state and municipality where the Work is being performed and has the full and unrestricted power and authority, corporate and otherwise, to execute and perform this Agreement and any other instruments or agreements executed in connection herewith, and to incur the obligations provided for herein and therein, all of which have been duly and validly authorized by all proper and necessary actions, all of which actions are in full force and effect. This Agreement constitutes a valid binding obligation of the Contractor, enforceable in accordance with its terms.

(b) The Contractor has inspected and is familiar with the Statement of Work. The Contractor and all personnel to be employed by the Contractor in the performance of the Work are experienced in and are familiar with and understand the construction procedures, techniques, equipment and costs involved in the completing the Work, and are familiar with the National Electric Safety Code and with the requirements of working with states, cities, counties and utilities in connection with the Work. The Contractor has available sufficient personnel to perform all Work required by this Agreement.

(c) The Contractor is financially solvent and possesses sufficient financial resources, including, without limitation, access to credit, for the timely fulfillment of all its obligations under this Agreement.

(d) All equipment, including all equipment described in Article 1 of this Agreement, necessary to permit the Contractor to perform the Work in accordance with the requirements of this Agreement shall be provided by the Contractor, and shall be in good operating condition. The Contractor shall also have adequate backup equipment in order to complete the Work in accordance with the requirements of this Agreement notwithstanding failures of equipment. The Contractor has provided to the Company and its representatives an opportunity to inspect the equipment (including backup equipment) to be made available and utilized by the Contractor in connection with the Work, and hereby represents and warrants that all such equipment shall continue to be made available and utilized in connection with the Work until completion in full of all of the Contractor's obligations under this Agreement.

(e) During the performance of the Work pursuant to this Agreement, the Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.

ARTICLE 26
OTHER RIGHTS AND REMEDIES

The rights and remedies herein reserved to the Company shall be cumulative and additional to any other or further rights and remedies provided at law or in equity.

ARTICLE 27
ARBITRATION

27.01 Any dispute, controversy or claim arising out of, connected with or relating to the Agreement, its performance or the breach thereof which cannot be settled by mutual agreement of the Parties shall be resolved by final and binding arbitration by a panel of one (1) arbitrator in accordance with and subject to R-11 (Appointment from National Roster) or, if proceeding under the Expedited Procedures, E-4 (Appointment and Qualifications of Arbitrator) of the Commercial Arbitration Rules of the American Arbitration Association ("AAA") then in effect with such arbitration to be conducted in Huntsville, Alabama. The Parties may, only by mutual written agreement, use an arbitrator not presented on the roster submitted by the AAA. Discovery as permitted by the Federal Rules of Civil Procedure then in effect will be allowed to the extent consistent with the purpose of the arbitration and as allowed by the arbitrators. The Federal Rules of Evidence will apply to any arbitration hearing. Judgment upon the award rendered in any arbitration may be entered in any court having jurisdiction thereof, or application may be made to such court for a judicial acceptance of the award and an enforcement, as the law of the state having jurisdiction may require or allow. The fact that arbitration is or may be allowed will not impair the exercise of any termination rights under the Agreement. The Parties agree that this arbitration provision has been included to rapidly and inexpensively resolve any disputes between them with respect to the Agreement, and that this provision shall be grounds for dismissal of any court action commenced by either Party with respect to the Agreement, other than (i) actions to compel a Party to comply with these dispute resolution procedures; (ii) actions specified in this provision; (iii) post-arbitration actions seeking to enforce an arbitration award; (iv) a dispute, controversy or claim relating to a breach or alleged breach on the part of either Party regarding confidential information; (v) a suit, action or proceeding to compel a Party to comply with its obligations to indemnify the other party pursuant to the Agreement; or (vi) a suit, action or proceeding arising out of or related to any Party's intellectual property rights. The Parties shall keep confidential, and shall not disclose to any person, except as may be required by law, the existence of any controversy hereunder, the referral of any such controversy to arbitration or the status or resolution thereof. The procedures specified in this provision shall be the sole and exclusive procedures for the resolution of an arbitrable dispute; provided, however, that a Party, without prejudice to these procedures, may file a complaint or seek a temporary restraining order, preliminary injunction, or other provisional judicial relief, if in its sole judgment such action is necessary to avoid irreparable damage or to preserve the status quo. The Contractor agrees to indemnify the Company for any costs associated with the Contractor's violation of this Arbitration provision.

27.02 All arbitrators appointed pursuant to this Article 27 shall be knowledgeable and experienced in the field of construction practices and contract law.

27.03 The parties hereto agree to abide by all awards and decisions rendered in an arbitration proceeding in accordance with this Article 27, and all awards and decisions may be filed by the prevailing party with any court having jurisdiction over the person or property of the other party as a basis for judgment and the issuance of execution thereon.

27.04 The fees of the arbitrator(s) and related expenses of arbitration shall be apportioned among the parties as determined by the arbitrator(s).

27.05 Unless otherwise agreed by the parties to the arbitration, all hearings shall be held, and all submissions shall be made by the parties, within thirty (30) days of the date of the selection of the last arbitrator, and the decisions of the arbitrator(s) shall be made within thirty (30) days after the later of the date of the closing of the hearings or the date of the final submissions by the parties.

27.06 The parties consent to the jurisdiction of the courts located in Madison County, Alabama, and of the United States District Court of the Northern District of Alabama, for all purposes in connection with the arbitration. The parties consent that any process or notice of motion or other application to either of said courts, and any paper in connection with arbitration, may be served by certified mail, return receipt requested, or by personal service, or in such other manner as may be permissible under the rules of the applicable court or arbitration tribunal, provided a reasonable time for appearance is allowed.

ARTICLE 28
APPLICABLE LAW

This Agreement shall be interpreted, construed and governed by the laws of the State of Alabama (exclusive of the choice of law rules thereof).

ARTICLE 29
ORDER OF PRECEDENCE

This Agreement and the Statement of Work and any attachments attached hereto are intended to complement each other. Accordingly, it is intended that their respective provisions be applied and interpreted together in connection with the Project as an integrated document. However, in the event of any ambiguity arising from a conflict between the statements made in this Agreement and the Statement of Work hereto, the following order of precedence shall prevail:

- 1. Agreement
- 2. Statement of Work

ARTICLE 30
AUTHORIZATIONS AND NOTICES

30.01 For the purpose of this Agreement, individuals for the Company and the Contractor will be identified in the Statement of Work who are authorized, pursuant to the procedures established in this Agreement, to make determinations under or changes in the Agreement or Statement of Work and submit notices in connection therewith and to exchange technical information between the parties. It is understood that the representatives authorized to exchange technical information do not have the authority to make formal changes to the Agreement, including technical specifications and performance obligations. Any such changes must be authorized in writing by the persons designated as the Project Manager in the applicable Statement of Work.

30.02 All notices, demands, requests or other communications which may be or are required to be given, served, or sent by either party to the other party pursuant to this Agreement shall be in writing and shall be mailed by first-class, registered or certified mail, return receipt requested, postage prepaid, or transmitted by hand delivery or telegram, addressed as follows:

If to the Company:

DeltaCom, Inc.
1793 O.G. Skinner Drive, Suite B
West Point, Georgia 31833
Attention: Frank Wilcox
Facsimile No.: (706) 385-8810

with a copy (which shall not constitute notice) to:

DeltaCom, Inc.
General Counsel's Office
7037 Old Madison Pike
Huntsville, Alabama 35806
Facsimile No.: (256) 382-3936

If to the Contractor:

30.03 Each party may designate by written notice a replacement for any person specified in Section 30.02, and a new address to which any notice, demand, request or communication may thereafter be so given, served or sent. Each notice, demand, request, or communication which shall be mailed, delivered or transmitted in the manner described in Section 30.02 shall be deemed sufficiently given, served, sent and received for all purposes at such time as it is delivered to the addressee (with the return receipt, the delivery receipt or the affidavit of messenger being deemed conclusive evidence of such delivery) or at such time as delivery is refused by the addressee upon presentation.

ARTICLE 31
SEVERABILITY

If any part of any provision of this Agreement or any other agreement, document or writing given pursuant to or in connection with this Agreement shall be invalid or unenforceable under applicable law, said part shall be ineffective to the extent of such invalidity or unenforceability only, without in any way affecting the remaining parts of such provision or the remaining provisions of this Agreement. In the event such invalid or unenforceable provision is considered an essential element of this Agreement, the parties hereto shall negotiate in good faith a replacement provision.

ARTICLE 32
SURVIVAL

It is the express intention and agreement of the parties hereto that all covenants, agreements, statements, representations, warranties and indemnities made in this Agreement shall survive the execution and delivery of this Agreement, the completion of all Work, and Final Acceptance of all Work or the termination, cancellation or expiration of this Agreement.

ARTICLE 33
WAIVER

Neither the waiver by either of the parties hereto of a breach of or a default under any of the provisions of this Agreement, nor the failure of either of the parties, on one or more occasions, to enforce any of the provisions of this Agreement or to exercise any right, remedy or privilege hereunder shall thereafter be construed as a waiver of any subsequent breach or default of a similar nature, or as a waiver of any of such provisions, rights, remedies or privileges hereunder.

ARTICLE 34
BINDING EFFECT

Subject to any provisions hereof restricting assignment, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

ARTICLE 35
AMENDMENT

No amendment, modification or discharge of this Agreement, and no waiver hereunder, shall be valid or binding unless set forth in writing and duly executed by the party against whom enforcement of the amendment, modification, discharge or waiver is sought.

ARTICLE 36
CONFIDENTIALITY

The Contractor agrees that the terms of this Agreement, and any modifications hereto, and any information exchanged between the parties, including, but not limited to any blueprints, graphs, drawing, renderings, instructions, direction, designs, written specifications and the like (except information which is in the public domain), in any form, is confidential information ("Confidential Information"). The Contractor agrees that during the effective term of this Agreement and for a period of three (3) years thereafter, it will not, without the prior written consent of the Company: (i) use any portion of such Confidential Information for any purpose other than performance pursuant to this Agreement; or (ii) disclose any portion of such Confidential Information to a third party; *provided however*, that the Contractor may disclose Confidential Information to the extent such disclosure is required by law, including federal and state securities laws, and/or a governmental or regulatory authority. The obligations to protect Confidential Information shall remain in effect except to the extent that such Confidential Information (a) becomes generally available to the public other than as a result of unauthorized disclosure by the Contractor or (b) has been released without similar restriction by the Company to another person or entity. Confidential Information of a tangible nature shall remain the property of the Company, and shall be returned to the Company upon termination of this Agreement. The Contractor agrees to safeguard Confidential Information utilizing the same degree of care utilized by the recipient Party in protecting its own confidential information.

ARTICLE 37
ENTIRE AGREEMENT

This Agreement (including the Statement of Work) constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and it supersedes all prior oral or written agreements, commitments and understandings with respect to the matters provided for herein. All specifications, reports, drawings, sketches, notes or other documents produced by or for the Contractor (or for its benefit) under this Agreement are and shall remain the property of the Company.

**ARTICLE 38
HEADINGS**

Article and section headings contained in this Agreement are inserted for convenience of reference only, and shall not be deemed to be a part of this Agreement for any purpose, and shall not in any way define or affect the meaning, construction or scope of any of the provisions hereof.

**ARTICLE 39
LIMITATION ON BENEFITS OF THIS AGREEMENT**

It is the explicit intention of the parties hereto that no person or entity other than the parties hereto is or shall be entitled to bring any action to enforce any provision of this Agreement against any of the parties hereto, and that the covenants, undertakings, and agreements set forth in this Agreement shall be solely for the benefit of, and shall be enforceable only by, the parties hereto (or their respective successors and assigns as permitted hereunder).

**ARTICLE 40
EXERCISE OF RIGHTS**

No failure or delay on the part of a party hereto in exercising any right, power or privilege hereunder and no course of dealing between the parties hereto shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein expressly provided are cumulative and not exclusive of any other rights or remedies which a party would otherwise have at law or in equity or otherwise.

**ARTICLE 41
COUNTERPARTS**

To facilitate execution, this Agreement may be executed in as many counterparts as may be required; and it shall not be necessary that the signatures of or on behalf of each Party appear on each counterpart, but it shall be sufficient that the signature of or on behalf of each Party appear on one or more counterparts. All counterparts shall collectively constitute a single agreement, and the signature page may be delivered by one Party to any other Party via facsimile transmission. It shall not be necessary in any proof of this document to produce or account for more than the number of counterparts containing the respective signatures of or on behalf of all the Parties.