

RESOLUTION 2019-318

A RESOLUTION FOR THE CITY OF SMITHS STATION, ALABAMA AUTHORIZING THE MAYOR TO ENTER INTO AN CONTRACTUAL AGREEMENT WITH ALABAMA POWER COMPANY TO INSTALL AND MAINTAIN PARKING LOT LIGHTING AT THE CITY OF SMITHS STATION GOVERNMENT CENTER.

BE IT RESOLVED AND ORDERED BY THE CITY COUNCIL OF SMITHS STATION, ALABAMA as follows:

WHEREAS, the Mayor and City Council of the City of Smiths Station are committed to providing the highest possible services to the citizens of Smiths Station and ensure the safety of all visitors to the Lee County Park; and

WHEREAS, The City does not possess the resources required to adequately install and maintain proper lighting in the designated parking lots at the Smith Station Government Center; and

WHEREAS, Alabama Power Company offers a program to which Alabama Power Company will install and maintain parking lot lighting as described and presented (Exhibit A); and

WHEREAS both parties agree to the terms of the contract "*Lighting Service NESC Lease Agreement*" Contract (Exhibit B).

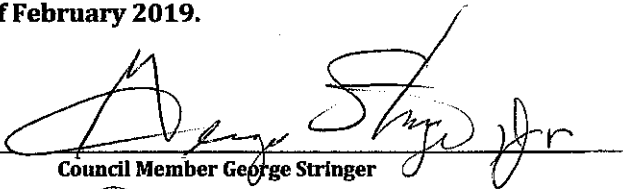
Now be it Resolved, the City of Smiths Station approves and authorized the Mayor to enter into an agreement with Alabama Power Company to execute the terms of this contract.

Now Therefore be it Ordained by the City Council of Smiths Station, Alabama, that this Resolution becomes Effective Immediately upon Adoption and Approval pursuant to §11-45-8, Code of Alabama 1975, as amended.

Approved and Adopted this the 12th day of February 2019.



F.L. "Bubba" Copeland, Mayor



Council Member George Stringer



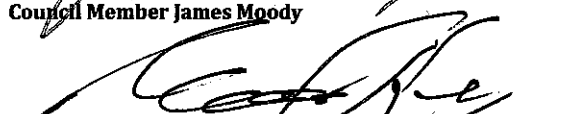
Council Member Morris Jackson



Council Member James Moody



Council Member Richard A. Cooley



Council Member Richard Key

ATTESTED:



Scott Johnston, City Clerk

SEAL:



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EXHIBIT A

**ALABAMA POWER COMPANY
PARKING LOT DESCRIPTION AND PRESENTATION**

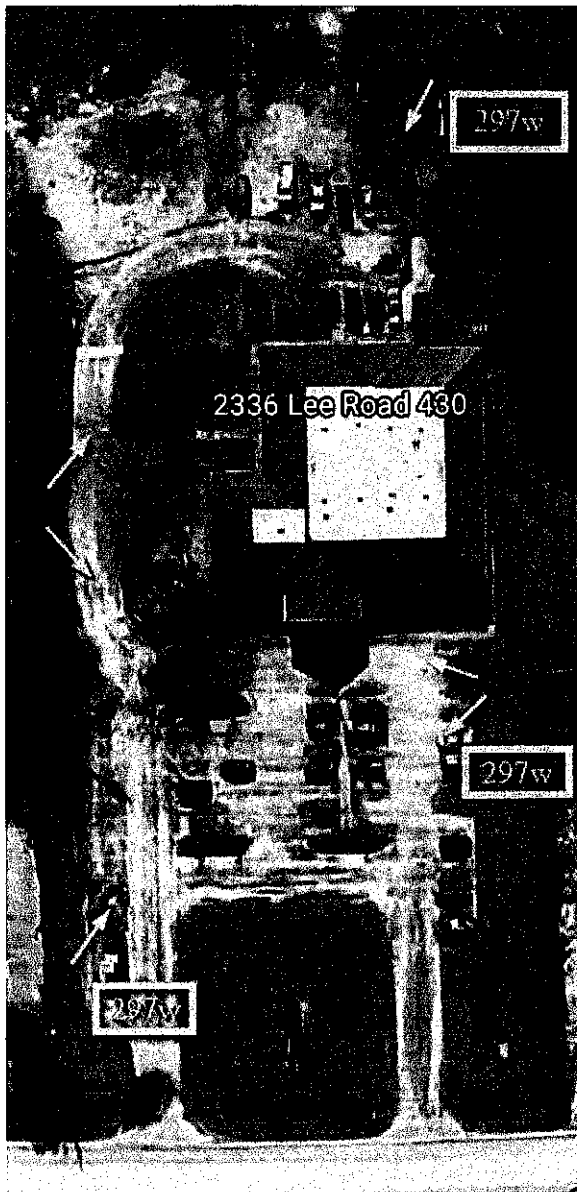
From: scottjohnston@smithsstational.gov
Sent: Tuesday, January 22, 2019 2:24 PM
To: Bubba Copeland
Subject: FW: LED lighting

From: Connell, Nathan Clint <NCCONNEL@SOUTHERNCO.COM>
Sent: Tuesday, January 22, 2019 1:40 PM
To: scottjohnston@smithsstational.gov
Subject: LED lighting

Good Afternoon Scott,

Below is a sketch of the City Hall location. The red circles indicate existing poles while the green indicate locations where I could add new poles. The yellow arrows indicate how I propose to light your facility. The green arrows show where we could add lights. The most affordable option is to use the existing poles. To accomplish this you could use six flood fixtures. If you upgraded all these fixtures to the 297w Floods the monthly price would be \$502.29. If you used the 297w FI in the three locations I show and 218w FI in the other locations the price would be \$380.34. If you only use 218w FI in all six locations the monthly price would be \$258.39. I would not recommend using the lower lumen fixtures in the three areas as the distance to cover is so large. I did also show one fixture could be added to aim toward the HVAC units on the side of the building as well for an additional \$30 per month. If you would like to add poles and get even better lighting I can have an engineer do a estimate but the price will go up. Let me know which option works for you and I will write a contract.

Thanks,



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EXHIBIT B

**ALABAMA POWER COMPANY
LEASE AGREEMENT
CITY HALL**

Lighting Services NESC® Lease Agreement



Customer Legal Name City of Smiths Station DBA _____
 Service Address 2336 Lee Road 430 Smiths Station AL, 36877 County Lee
 Mailing Address PO Box 250 Smiths Station AL, 36877
 Email scottjohnston@smithsstational.gov Tel # (334) 663-1098 Alt Tel _____
 Tax ID _____ Business Description (624190) Other Individual and Family Services

Existing Customer? Yes ☒ No ☐ If Yes (and if possible), does Customer want Equipment added to an existing account? Yes ☒ No ☐ Existing Account 18975-15026
For informational purposes only

Equipment										
	Qty	Watts	Type	Description			OH/UG	M/UM	Equipment Amount (\$)	Estimated Regulated Charge (\$)*
(1)	3	297	Flood	Bronze LED	32,000-40,000 Lumens	4000K	OH	UM		
(2)	3	218	Flood	Bronze LED	23,000-32,000 Lumens	4000K	OH	UM		
(3)										
(4)										
(5)										
(6)										
(7)										
(8)										
(9)										
(10)										
Monthly Total *									\$344.10	\$36.24
									\$380.34	

Project Notes:	Premise: 189751500, NAIC: 624190
Remove: (4) APCO Leased (HID) fixtures	
Install: (6) APCO Leased (LED) fixtures	
Initial Term	60 months
Prepaid Amount	\$ n/a

* The Regulated Charge is subject to change at any time as dictated by the Alabama Public Service Commission. The amount shown is an estimate based on the Unmetered Outdoor Lighting (ODL) rate in effect at time of Agreement proposal; actual charges may vary.

Customer agrees to lease the Equipment referenced above from Alabama Power Company on the attached terms and conditions and authorizes all actions noted above.

Customer Authorized Signature		Alabama Power Company	
Sign Here _____	Date _____	Sign Here _____	Date _____
Print Name _____		Print Name Nathan C. Connell	
Print Title _____		Print Title Lighting Services	

APC Internal Use Only - APC Reference Number (if applicable):

TERMS and CONDITIONS

1. **Lighting Equipment Lease.** This Lease Agreement ("Agreement") states the agreed terms and conditions upon which Alabama Power Company ("APC") will: (i) lease to "Customer" (identified on Page 1) the "Equipment" referenced on Page 1 for use at the stated "Service Address" (the "Premises"); and (ii) provide electric service to operate the Equipment. The "Equipment" includes all poles, bases, wiring, conduit, fixtures, controls, and related items necessary to provide lighting service through the listed fixtures, unless expressly noted otherwise in "Project Notes." Customer acknowledges that regulatory change during the Agreement term may require APC to modify or replace some Equipment.
2. **Intent and Title.** This Agreement is not a sale of the Equipment to Customer. Customer expressly acknowledges that APC retains title to the Equipment and agrees that this Agreement only gives Customer the right to use the Equipment during the Agreement term, so long as Customer complies with all terms and conditions. Customer acknowledges that the Equipment, although attached to real property, always will remain the exclusive personal property of APC and that APC may remove the Equipment when this Agreement ends. Customer authorizes APC, without further consent or action, to file any UCC financing statement or security agreement relating to the Equipment and agrees that APC may record those documents. APC makes no representation or warranty regarding treatment of this transaction by the Internal Revenue Service or the status of this Agreement under any federal or state tax law; Customer enters into this Agreement in sole reliance upon Customer's own advisors.
3. **Term.** The initial Agreement term is stated on Page 1, calculated from the date of the first monthly bill. After the initial term, this Agreement automatically renews on a month-to-month basis until terminated by either party by providing written notice of intent to terminate to the other party at least 30 days before the desired termination date. APC's address for notice is P.O. Box 2641, Birmingham, Alabama 35203; Customer's mailing address is noted on Page 1.
4. **Payment.** APC will invoice Customer per the terms stated on Page 1, subject to any change in the electric service charge dictated by the Alabama Public Service Commission. Customer agrees to pay the amount billed by the due date (20 days after billing date). Applicable taxes included in the Equipment price are subject to change at any time. If a balance is outstanding past the due date, Customer agrees to pay the greater of 1.5% of the unpaid balance or \$2.00 and acknowledges that APC may require Customer to pay a deposit of up to two times the Estimated Monthly Charge in order to continue service. If applicable, Customer must provide a copy of its Alabama sales tax exemption certificate.
5. **Premises Activity.** Customer grants a license and right of access to APC, and its contractors and representatives, to enter the Premises with vehicles and equipment to: (i) install and connect the Equipment and, if applicable, remove or disconnect existing equipment (collectively, the "Installation"); (ii) inspect, maintain, test, replace, repair, or remove the Equipment; (iii) provide electric service for the Equipment; or (iv) conduct any other Agreement-related activity (items—(iv) collectively, the "APC Activity"). Customer will not cause or permit any obstruction that may interfere with APC's access to the Equipment. Customer represents that the individual signing this Agreement on its behalf has authority to do so and that it has express authority from all Premises owners (and any other party with rights in the Premises) to enter into this Agreement and to authorize the APC Activity. Customer is solely responsible for safety of the Premises and agrees that APC has no obligation to ensure the safety of the Premises or persons or property entering onto Customer's Premises.
6. **Installation.** Customer represents that: (i) the Premises' final grade will vary no more than 6 inches from the grade existing at the time of Installation; and (ii) if applicable and required for proper Installation, Premises property lines will be clearly marked before Installation.
 - A. **Customer Work.** If APC, upon Customer's request, allows Customer to perform any part of the Installation (including trenching) itself or through a third party, Customer warrants that the work will meet APC's installation specifications (which APC will provide to Customer and are incorporated by this reference). Customer is responsible for all reasonable additional costs arising from Customer's non-compliance with APC's specifications or lack of timely (i.e., 10 days) notice to APC that APC's Installation activity can commence.
 - B. **Underground Facility/Obstruction Not Subject to Dig Law.** Because APC Activity may require excavation not subject to the Alabama's Underground Prevention Legislation (Ala. Code §§ 37-15-1 - 37-15-11) ("Dig Law"), Customer must mark any private utility or facility (e.g., gas/ water/sewer line; irrigation facility; low voltage data/communication line) or other underground obstruction at the Premises that is not subject to the Dig Law. If APC causes or incurs damage due to Customer's failure to mark a private facility or obstruction before APC commences Installation, Customer is responsible for all damages and any resulting delay.
 - C. **Unforeseen Condition.** The estimated charges shown on Page 1 include no allowance for any subsurface rock, wetland, underground stream, buried waste, unsuitable soil, underground obstruction, archeological artifact, burial ground, threatened or endangered species, hazardous substance, etc. not properly marked or identified ("Unforeseen Condition"). If APC encounters an Unforeseen Condition, APC, in its sole discretion, may stop all APC Activity until Customer either remedies the condition or agrees to reimburse all APC costs arising from the condition. Customer is responsible for all costs of Equipment modification or change requested by Customer or dictated by an Unforeseen Condition or circumstance outside APC's control.
7. **Equipment Protection and Damage.** After Installation and throughout this Agreement's term, in the event of any work or digging near the Equipment, Customer (or any person or entity working on Customer's behalf) must: (i) provide notices and locate requests by calling Alabama 811 or 1-800-292-8525; and (ii) provide notices to other utilities or operators as required by the Dig Law. As between Customer and APC, Customer is responsible for all damages arising from failure to comply with applicable law or for Equipment damage caused by anyone other than APC (or an APC contractor or representative).
8. **Maintenance.** During this Agreement's term, APC will maintain the Equipment and will bear the cost of routine repair or replacement. Customer must notify APC of any need for Equipment repair by calling the Business Service Center at 1-888-430-5787.
9. **Disclaimer: Damages.** APC makes no covenant, warranty, or representation of any kind (including warranty of fitness for a particular purpose or of merchantability) regarding the Equipment or any APC Activity. Customer also acknowledges that, due to the unique characteristics of the Premises, Customer's needs, or Equipment choice, the Equipment may not follow IESNA guidelines. Customer waives any right to consequential, special, indirect, treble, exemplary, incidental, punitive, loss of business reputation, or loss of use (including loss of revenue, profits, or capital costs) damages in connection with the Equipment or this Agreement, or arising from damage, hindrance, or delay involving the Equipment or this Agreement, whether or not reasonable, foreseeable, contemplated, or avoidable.
10. **Indemnity.** To the fullest extent allowed by law, Customer agrees to indemnify, release, hold harmless, and, at APC's request, defend APC and its affiliates and contractors (and their officers, directors, employees, representatives, and agents) from or against any loss, damage, cost, expense, or liability (including actual attorneys' fees reasonably incurred and all expenses of investigation and defense) for any damage or claim for personal or bodily injury (including death), property damage (including loss of use), monetary damage, or equitable relief caused by or arising out of any misrepresentation or act or omission of Customer involving this Agreement, the Equipment, or the Premises, whether or not caused by or arising out of the joint, concurrent, or contributory (but not sole) negligence of APC.
11. **Default.** Customer is in default if Customer does not pay the entire amount owed within 45 days of billing. APC's waiver of any past default will not waive any other default. If default occurs, APC, at its discretion, may immediately terminate this Agreement, collect all past due amounts (including late fees) and all amounts due for the Equipment during the remaining Agreement term, remove the Equipment from the Premises, and seek any other available remedy.
12. **Miscellaneous.** This Agreement contains the parties' entire agreement relating to the Equipment and replaces any prior agreement, written or oral. Only a written amendment signed by each party can modify this Agreement, except that either party may update administrative or contact information (e.g., address, phone, website) at any time by written notice to the other party. Customer will not assign, in whole or in part, this Agreement or its Agreement rights or obligations without APC's prior written consent. No assignment, whether with or without consent, relieves Customer of its Agreement obligations. Customer must provide advance notice of a change in control of all, or substantially all, of Customer's ownership or interest in the Premises. In this Agreement, "including" means "including, but not limited to." Alabama law governs this Agreement. If a court rules an Agreement provision unenforceable to any extent, the rest of that provision and all other provisions remain effective.

CITY OF SMITHS STATION
P. O. BOX 250
Smiths Station, Alabama 36877

Resolution 2019-318

CERTIFICATION

I, Scott E. Johnston, City Clerk of the City of Smiths Station, Alabama hereby certify the attached to be a true and correct copy of the resolution adopted by the City Council of Smiths Station, Alabama at the regular meeting held **February 12, 2019** as same appears in minutes of record of said meeting and published by posting copies thereof on **February 13, 2019** at the public places listed below, which copies remained posted for five business days, through **February 20, 2019**. The resolution will remain posted for a minimum of thirty days.

City Hall 2336 Lee Road 430
Rainbow Foods 2461 Lee Road 430
Terry's Grocery, 9309 Lee Road 246
U.S. Post Office, 2720 Lee Road 430

Smiths Station, AL 36877
Smiths Station, AL 36877
Smiths Station, AL 36877
Smiths Station, AL 36877



Scott Johnston, City Clerk

Seal:

