

STATE OF ALABAMA )  
COUNTY OF ST CLAIR )  
 )  
CITY PELL CITY )

ORDINANCE NO. 2022-5820  
TELECOMMUNICATIONS  
FRANCHISE AND  
CONSENT ORDINANCE

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AN ORDINANCE GRANTING TO BRIGHTSPEED OF ALABAMA, LLC F/K/A CENTURYTEL OF ALABAMA, LLC, A FRANCHISE TO CONSTRUCT, INSTALL, MAINTAIN AND OPERATE FACILITIES IN THE PUBLIC RIGHTS-OF-WAY FOR THE PROVISION OF SERVICES IN THE CORPORATE LIMITS OF THE CITY OF PELL CITY, ALABAMA; TO PROVIDE FOR THE PAYMENT OF COMPENSATION FOR THE USE OF THE PUBLIC RIGHTS-OF-WAY; AND OTHER APPROPRIATE REGULATIONS.

**WHEREAS**, Brightspeed of Alabama, LLC, *f/k/a* CenturyTel of Alabama, LLC, has requested the consent of the City of Pell City, Alabama (“City”) to use the public Rights-of-Way of the City to construct, install, maintain, and operate its facilities for use in providing Telecommunications Services within the City; and

**WHEREAS**, other telecommunications providers either have or are likely to seek similar authority; and

**WHEREAS**, it is the policy of the City to permit such use of the Rights-of-Way for the provision of Telecommunications Services, subject to the duty of the City to manage its Rights-of-Way, and to require fair and reasonable compensation from telecommunications providers for the use thereof consistent with all applicable law;

**NOW THEREFORE**, be it ordered and ordained by the council of the City of Pell City, Alabama as follows:

#### SECTION 1. DEFINITIONS.

The following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words in the singular number include the plural number, and words in the plural number include the singular number. The word “shall” is always mandatory and not merely directory. The word “may” is directory and discretionary and not mandatory. Words not defined shall be given their common and ordinary meaning.

A. “Code” means the City of Pell City, Alabama Municipal Code of Ordinances, as may from time to time be amended.

B. “Company” means Brightspeed of Alabama, LLC, *f/k/a* CenturyTel of Alabama, LLC a company organized and existing under the laws of the Louisiana and duly authorized to do business in Alabama, its successors and assigns.

C. “City” means the City of Pell City, Alabama.

D. “Right-of Way” or “Rights-of-Way” means any street or area over which the City has authority which is dedicated to public use for pedestrian and vehicular movement, which may also accommodate public utilities.

E. “Telecommunications Services” shall be defined consistent with Alabama Code § 37-2A-2, as the offering of telecommunications for a fee directly to the public, or to any classes of users as to be effectively available directly to the public, regardless of the facilities used. The term does not include the provision of commercial mobile service under Section 332(c) of the Federal Communications Act of 1934. “Telecommunications Services” does not include cable television services. Cable television services may only be provided in the City pursuant to separate franchise pursuant to applicable state and federal law.

#### SECTION 2. GRANT OF FRANCHISE.

Pursuant to Alabama Constitution of 1901, Article XII, § 220, there is hereby granted to Brightspeed of Alabama, LLC, f/k/a CenturyTel of Alabama, LLC, its successors and assigns, the non-exclusive right, power and authority to construct, install, maintain, and operate in the Rights-of-Way and other approved public places of the City, Company's lines, poles, wires, cables, and other telecommunications facilities and to use those facilities to render Telecommunication Services within the corporate limits of the City.

### SECTION 3. ACCEPTANCE BY COMPANY.

Within sixty (60) days after the passage of this Ordinance by the City, Company shall file a signed copy thereof with the City Clerk, otherwise the Ordinance and the rights granted herein shall be null and void.

### SECTION 4. TERM.

The non-exclusive franchise and consent granted by this Franchise shall be in force and effect for an initial term of ten (10) years, and shall continue in force and effect thereafter until properly terminated by either party. Either party may terminate the Franchise at the end of its initial ten (10) year term, or at any time thereafter, by giving written notice of its intention to do so no less than ninety (90) days before the proposed date of termination. It is understood and agreed that the decision of whether to renew or to terminate this Franchise pursuant to this section shall be made by those elected officials then in office under such circumstances as may then obtain, and that the Company has no reasonable expectation of renewal or non-termination.

### SECTION 5. COMPLIANCE WITH APPLICABLE LAWS, CODES AND ORDINANCES.

All work in the Right-of-Way of the City shall be in accordance with the Code and all other applicable state and federal standards, codes and ordinances, and will be done under the general supervision of the City. All new construction will, unless specifically authorized by the City, be placed underground if the City deems necessary for the public convenience and safety and generally to control and regulate the use of the streets as required by Section 11-43-62 of the Alabama Code. The placement of above ground pedestals, meter bases and related equipment shall be permitted only as specifically set forth in approved permits and only at the direction of the City with respect to the acceptable location for such facilities. Any necessary aboveground construction will, wherever practicable, utilize existing utility poles. No Right-of-Way used by the Company shall be obstructed longer than necessary during its work of construction or repair, and shall be restored to the same good order and condition as when said work was commenced. However, should any such damage occur, the Company shall repair the same as promptly as possible, and, in default therefore, and after appropriate notice the City may make such repairs and charge the reasonable cost thereof to and collect the same from the Company.

### SECTION 6. CONSTRUCTION AND INSTALLATION OF FACILITIES.

A. Company shall, prior to commencing new construction or major reconstruction work in Public Ways or other public places, apply for any required permit from the City, which permit shall not be unreasonably withheld, conditioned, or delayed. Company will abide by all applicable ordinances and reasonable rules, regulations and requirements of the City consistent with applicable law, and the City may inspect the manner of such work and require remedies as may be reasonably necessary to assure compliance. Notwithstanding the foregoing, Company shall not be obligated to obtain a permit to perform emergency repairs.

B. If, during the course of work on its Facilities, Company causes damage to or alters the Public Way or other public property, Company shall replace and restore such Public Way or public property at Company's expense to a condition reasonably comparable to the condition that existed immediately prior to such damage or alteration. If not repaired in a reasonable time, the City, after appropriate notice may make such repairs and charge the reasonable cost thereof to and collect the same from the Company.

C. Company shall have the right to excavate the Public Ways subject to reasonable conditions and requirements of the City. Before installing new underground facilities or replacing existing underground facilities, Company shall first notify the city of such work in

accordance with applicable law, such as, but not limited to, Alabama's excavation and demolition laws set forth in Alabama Code (1975) § 37-15-1, *et seq.* In no event will the City be required to secure Company's permission or consent to operate or construct in the City's Public Ways. To the extent practicable under the circumstances, each party may allow the other party, at its own expense, to share a trench for laying its own facilities therein, provided that such action will not unreasonably interfere with the first party's use of the trench or unreasonably delay project completion.

D. Nothing in this Ordinance shall be construed to prevent the City from constructing, maintaining, repairing, or relocating its sewers, streets, water mains, sidewalks, or other public property. However, before commencing any work within a Public Way that may affect Company's Facilities, the City shall give written notice to Company in accordance with applicable law, such as, but not limited to, Alabama's excavation and demolition laws set forth in Alabama Code (1975) § 37-15-1, *et seq.*, and all such work shall be done, insofar as practicable, in such a manner as not to obstruct, injure, or prevent the free use and operation of either Party's Facilities.

E. Company shall not attach to, or otherwise use or commit to use, any pole owned by City until a separate pole attachment agreement has been executed by the parties.

#### SECTION 7. RELOCATION OF FACILITIES.

A. Relocation for the City. Company shall, upon receipt of advance written notice of not less than thirty (30) days, protect, adjust, support, raise, lower, temporarily disconnect, relocate or remove any Company property located in a Public Way when required by the City consistent with its police powers. Company shall be responsible for any costs associated with these obligations to the same extent as other users of the respective Public Way and as otherwise required by applicable state or federal law.

B. Relocation for a Third Party. Company shall, at the request of any person holding a lawful permit issued by the City, protect, adjust, support, raise, lower, temporarily disconnect, relocate or remove any Company property located in a Public Way, provided that the cost of such action is borne by the person requesting it and Company is given reasonable advance written notice. In such situation, Company may also require advance payment. For purposes of this subsection 12.2, "reasonable advance written notice" shall mean no less than fourteen (14) days for a temporary relocation, and no less than one hundred twenty (120) days for a permanent relocation.

C. Alternatives to Relocation. Company may, after receipt of written notice requesting a relocation of Facilities, submit to the City written alternatives to such relocation within five (5) business days after receipt of written notice from the City. Such alternatives shall include the use and operation of temporary transmitting facilities in adjacent Public Ways. The City shall evaluate such alternatives and advise Company in writing if one or more of the alternatives are suitable. If requested by the City, Company shall promptly submit additional information to assist the City in making such evaluation. The City shall give each alternative proposed by Company full and fair consideration. In the event the City ultimately determines that there is no other reasonable alternative, Company shall relocate the components of the System as otherwise provided herein.

D. Abandonment. Company may not abandon the System, its equipment, or its facilities, without having first given three (3) months written notice to City. Company may not abandon its System, its equipment, or its facilities without compensating City for damages resulting from the abandonment, including all costs incident to removal of the its facilities from the rights-of-way.

#### SECTION 8. TREE TRIMMING.

Under the supervision and direction of the City, or any City official to whom said duties have been or may be delegated by the City, Company shall have the authority to trim trees and other natural growth in the Public Ways in order to access and maintain the Facilities in compliance with applicable law and industry standards. This grant shall in no way impose a duty

on Company; instead, this grant gives permission to Company should Company elect to conduct such activities from time-to-time in order to access and maintain its Facilities.

#### SECTION 9. FRANCHISE FEES.

Throughout the Term of this Franchise, Company shall pay the City five percent (5%) of the gross receipts received by the Company for the provision of Telecommunications Services within the City. Payment shall be made quarterly within thirty (30) days after the end of each quarter. Gross receipts shall include any and all revenue received by the Company from the provision of Telecommunications Services in the City. The Company shall also pay all such ad valorem taxes, service fees, sales taxes, or other taxes and fees as may now or hereafter be lawfully imposed on other businesses within the City. Simultaneously with the submission of the quarterly Franchise Fee, the Company shall provide to the City a statement of all Gross Revenue collected by the Company from the provision of Telecommunication Services in the City for the quarter, showing the basis for the computation. Each payment must be received by the city on the due date. The Company shall pay the City an additional charge of one percent (1%) per month, for each month the total amount due the City is not received. The City shall have the right, upon written notice to inspect the Company's income records pertaining to Gross Revenues due to the City, and shall have the right to audit and recompute any amounts determined to be payable hereunder, and to demand any such amount from the Company. Additional amounts determined by such an audit or re-calculation to be owed to the City shall be payable to the City immediately upon written request and provision to the Company of the findings of such audit or re-calculation. If such audit or re-calculation determines that the annual fee hereunder was underpaid by more than five percent (5%), the costs and expenses of such audit or re-calculation shall be borne by the Company.

#### SECTION 10. INSURANCE.

Company shall, at its sole expense take out and maintain during the term of this Franchise public liability insurance with a company licensed to do business in the State of Alabama with a rating by A.M. Best & Co. of not less than "A" that shall protect the Company, City and its officials, officers, directors, employees and agents from claims which may arise from operations under this Franchise, whether such operations be by the Company, its officials, officers, directors, employees and agents or any subcontractors of Company. This liability insurance shall include, but not be limited to, protection against claims arising from bodily and personal injury and damage to property, resulting from Company's vehicles, products and operations. Company shall maintain, throughout the term of the Franchise, liability insurance insuring Company and the City in the minimum amounts of Two Million and No/100 Dollars (\$2,000,000) for bodily injury or death to anyone person; Two Million and No/100 Dollars (\$2,000,000) for bodily injury or death resulting from any one accident; and Three Million and No/100 Dollars (\$3,000,000) in the form of an umbrella policy. The City shall be named as an additional insured on all such policies and the policy shall contain an endorsement which provides that the coverage is primary insurance for acts of the Company or those for whom the Company is responsible. The Company shall provide City thirty (30) days advance written notice prior to any cancellation of the insurance policy, if there is a lapse in coverage. The Company shall submit to City documentation of the required insurance, including copy of the policy endorsement showing that the City is an additional insured.

#### SECTION 11. INDEMNIFICATION.

Company shall indemnify, defend and hold City, its officers, boards, commissions, agents and employees (collectively the "Indemnified Parties") harmless from and against any and all lawsuits, claims, causes of action, actions, liabilities, demands, damages, judgments, settlements, disability, losses, expenses (including attorneys' fees and disbursements of counsel) and costs of any nature that any of the Indemnified Parties may at any time suffer, sustain or incur arising out of, based upon or in any way connected with: 1) the Right of Way; or 2) the exercise of any rights under the Franchise by the Company. The indemnification obligations of Company set forth in this Franchise are not limited in any way by the amount or type of damages or compensation payable by or for Company under workers' compensation, disability or other employee benefit acts, acceptance of insurance certificates required under this Franchise or the terms, applicability or limitations of any insurance held by Company. Company shall not be required to indemnify the City for lawsuits, claims, causes of action, actions, liabilities, demands,

damages, judgments, settlements, disabilities, losses, expenses (including attorneys' fees and disbursements of counsel) and costs of any nature caused by the gross negligence or willful misconduct on the part of the City or its officials, boards, commissioners, agents, or employees.

#### SECTION 12. REVOCATION OF FRANCHISE.

A. In the event that the City believes that Company has not complied with the terms of the Franchise, the City shall informally discuss the matter with Company. If these discussions do not lead to resolution of the problem, the City shall notify Company in writing of the exact nature of the alleged noncompliance.

B. Company shall have thirty (30) days from receipt of the written notice described in subsection 12.1 to either respond to the City, contesting the assertion of noncompliance, or otherwise initiate reasonable steps to remedy the asserted noncompliance issue, notifying the City of the steps being taken and the projected date that they will be completed.

C. In the event that Company does not comply with subsection 12.2, above, the City shall schedule a public hearing to address the asserted noncompliance issue. The City shall provide Company at least ten (10) days prior written notice of and the opportunity to be heard at the hearing.

D. Subject to applicable federal and state law, in the event the City, after the hearing set forth in subsection 12.3, determines that Company is noncompliant with this Ordinance, the City may:

1. Seek specific performance of any provision which reasonably lends itself to such remedy, as an alternative to damages; or
2. Commence an action at law for monetary damages or other equitable relief; or
3. In the case of substantial noncompliance with a material provision of the Ordinance, seek to revoke the Franchise in accordance with subsection 12.5.

4. Should the City seek to revoke the Franchise after following the procedures set forth above, the City shall give written notice to Company. Company shall have ninety (90) days from receipt of such notice to object in writing and state its reason(s) for such objection. Thereafter, the City may seek revocation of the Franchise at a public hearing. The City shall cause to be served upon Company, at least thirty (30) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise. At the designated hearing, the City shall give Company an opportunity to state its position on the matter, after which the City shall determine whether or not the Franchise shall be revoked. Company may appeal the City's determination to an appropriate court. Such appeal must be taken within sixty (60) days of the issuance of the City's determination. The City may, at its sole discretion, take any lawful action which it deems appropriate to enforce its rights under this Ordinance in lieu of revocation.

#### SECTION 13. SALE OR TRANSFER.

Company's right, title, or interest in the Franchise shall not be sold, transferred, assigned, or otherwise encumbered without notice to the City, except when said sale, transfer, assignment, or encumbrance is to an entity controlling, controlled by, or under common control with Company, or for transfers in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of Company in the Franchise or Facilities in order to secure indebtedness.

#### SECTION 14. AMENDMENT.

Amendments to the terms and conditions contained herein shall be mutually agreed upon by the City and Company and formally adopted by the City Council as an ordinance amendment.

#### SECTION 15. ANNEXATION.

When any territory is approved for annexation to the City, the City shall within ten (10) business days provide by certified mail to Company: (a) each site address to be annexed as

recorded on City assessment and tax rolls; (b) a legal description of the proposed boundary change; and (c) a copy of the City's ordinance approving the proposed annexation.

SECTION 16. NOTICES.

Any notice required or permitted to be given hereunder shall be deemed sufficient if given by a communication in writing and shall be deemed to have been received (a) upon personal delivery or actual receipt thereof or (b) within two (2) business days after such notice is deposited in the United States Mail, postage prepaid, certified, and addressed to the Parties as set forth below:

CITY:

City of Pell City  
ATTN: City Manager  
1905 1<sup>st</sup> Avenue North  
Pell City, AL 35125

BRIGHTSPEED OF ALABAMA, LLC:

Law Department  
1120 South Tryon Street, Ste. 700  
Charlotte, NC 28203

SECTION 17. GENERAL PROVISIONS.

A. No Waiver of Rights. Neither the City nor Company shall be excused from complying with any of the terms and conditions contained herein by any failure of the other, or any of its officers, employees, or agents, upon any one or more occasions to insist upon or to seek compliance with any such terms and conditions. Each party expressly reserves any and all rights, remedies, and arguments it may have at law or equity, without limitation, and to argue, assert, and/or take any position as to the legality or appropriateness of any provision in this Ordinance that is inconsistent with State or Federal law, as may be amended.

B. Publication. In accordance with Alabama Statute, the City shall be responsible for publication of this Ordinance, and any amendments thereof. Brightspeed shall be responsible for payment of all necessary and reasonable costs of publication of this Ordinance, and any amendments thereof.

C. Severability.

If any section, sentence, paragraph, term or provision hereof is for any reason determined to be illegal, invalid, or superseded by other lawful authority, including any state or federal regulatory authority having jurisdiction thereof, or unconstitutional, illegal or invalid by any court of common jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise or any renewal or renewals thereof.

**SIGNATURE PAGE TO FOLLOW**

ADOPTED AND APPROVED by the City Council of the City of Pell City this 19<sup>th</sup>  
day of December 2022.

ATTEST:

CITY OF PELL CITY, ALABAMA

By: Sheree D Pruitt

By: [Signature]

Its: City Clerk

Its: Mayor

ACCEPTED: This Franchise is accepted, and we agree to be bound by its terms and conditions.

BRIGHTSPEED OF ALABAMA, LLC  
f/k/a CENTURYTEL OF ALABAMA, LLC

Date: 18 day of January, 2022<sup>3</sup>

By: Danny Wells

Its: Right of Way Agent

SWORN TO BEFORE ME this 18<sup>th</sup> day of January, 2022<sup>3</sup>.

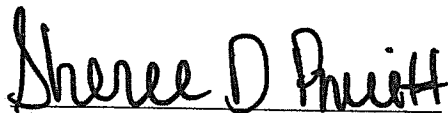
Melissa Michelle Sowers  
NOTARY PUBLIC

2/12/2026  
My Commission Expires:

STATE OF NEW MEXICO  
NOTARY PUBLIC  
MELISSA MICHELLE SOWERS  
Commission #: 1121565  
Expiration Date: 02/12/2026

**CERTIFICATION**

I, Sheree D. Pruitt, Clerk of the City of Pell City, hereby certify that the above Ordinance was duly adopted by the City Council of the City of Pell City at a regular meeting held on the 20th day of December 19, 2022, and that the same has been published by posting in accordance with §11-45-8, Ala. Code 1975, by posting a copy of the Ordinance in three public places within the municipality, one of which was the Mayor's office in the City, on this the 19th day of January, 2023. I further certify and confirm that the City shall take reasonable steps to maintain the posting for not less than 30 days. In addition, the City shall include a copy of this Ordinance on its website for 30 days.

  
City Clerk