

ORDINANCE NO. 2023 – 5894
GRANTING A FRANCHISE TO SPIRE ALABAMA INC.
ITS SUCCESSORS AND ASSIGNS,
IN THE CITY OF PELL CITY, ALABAMA

BE IT ORDAINED by the City Council of the City of Pell City, Alabama, as follows:

Section 1. In consideration of the benefits to accrue to the City of Pell City, Alabama (the “City”) and the inhabitants thereof, Spire Alabama Inc., its successors and assigns (the “Company”) is hereby given, granted and vested with the rights, authority, privileges and franchises hereinafter set forth.

Section 2. The Company is hereby given, granted and vested with the right, authority, easement, privilege and franchise to construct, own, maintain, operate, extend and enlarge in the City a plant or system for the manufacture, transmission, distribution and sale of gas for all purposes whatsoever in the City and to the inhabitants thereof; and the consent of the City acting through the Mayor and the City Council, who are the proper authorities of the City, is hereby given to the Company to use the streets, avenues, alleys, ways, bridges, viaduct, underpass and other public places (“Public Right of Way”) in the City for any and all of the purposes referred to in this Ordinance.

Section 3. The Company is hereby granted and vested with the right, privilege and franchise to construct, erect, lay, install, renew, repair, maintain, operate, use and extend at any time, its mains, conduits, appliances, meters, sensors, routers, poles, antennae, and any and all other equipment, appurtenances and fixtures as may be reasonably necessary or desirable in the operation of a natural gas distribution system (the “Company Facilities”) under, along, above, and across any Public Right of Way in the City. To the extent permitted by Alabama law, the City will not vacate any Public Right of Way containing any Company Facilities without first advising the Company of its intention to vacate the Public Right of Way and cooperating with the Company in reasonable attempts to obtain the necessary property rights to maintain the Company Facilities in the Public Right of Way. Subject to applicable law, if the City undertakes any public improvement project that is required in the interest of public health, safety, welfare, necessity or convenience and that conflicts with existing Company Facilities, the Company shall make such changes as required to remove the conflict at the Company’s sole cost, expense and risk. The City shall provide the Company a minimum of one hundred and twenty (120) calendar days prior written notice (“Relocation Notice”) of such project requiring relocation of the Company’s Facilities. Subject to normal operating conditions that are within the Company’s control, the Company shall complete relocation of Company’s Facilities within the time period set forth in the Relocation Notice or such other time to which the parties may agree in writing.

Section 4. Prior to commencing any construction, maintenance, repair, removal, abandonment or relocation work in any Public Right of Way, the Company shall secure any permit required by City ordinance, if any (if and as so required, a “Permit”), before proceeding with any such work. In addition, the Company shall not cut or bore, in any manner whatsoever, any street or driveway located on or within any Public Right of Way within the City without first obtaining any Permit from the City. Any such Permit shall be obtained from the City’s Street Superintendent or his/her duly authorized representative prior to the commencement of the cutting and/or boring as required by City ordinance. Failure to obtain any Permit or comply with such Permit requirements shall subject the company to a potential work stoppage until all such Permits are obtained and, as set forth in Section 16-5 (c) of City ordinance, upon conviction of a misdemeanor therefore, certain expenses or fines. In addition to obtaining a Permit, the Company is required to deposit and continuously maintain with the City a good and sufficient bond in the minimum sum of \$25,000.00, or such other amount not to exceed \$100,000 as determined in the City’s sole discretion consistent with the requirements of Section 16-5(b)(2) of City’s Code of Ordinances and applicable law, with a surety company duly authorized to do business in the State of Alabama. Said bond shall be conditioned upon the principal faithfully observing all lawful ordinances and laws of the City and performing all work in a workmanlike manner. All work shall be inspected by the street superintendent or his/her duly authorized representative.

Notwithstanding the foregoing, City understands and acknowledges there may be instances when the Company is required to make emergency repairs. The Company will notify City prior to such

emergency repairs, if practicable, and will obtain any Permits in a reasonable time after notification to City.

Section 5. The Company shall at all times during the term of this franchise be subject to all lawful exercise of the police powers of the City in respect to the Public Right of Way, including, but not limited to, all lawful ordinances or regulations of general applicability that regulate the access and use of the Public Right of Way, except as provided for in this Contract, the applicable laws of the State of Alabama, or the orders, rules and regulations of the Alabama Public Service Commission.

Section 6. Whenever the Company shall cause any opening or alteration to be made in any Public Right of Way in the City for the purpose of laying, setting, maintaining, operating or repairing any Company Facilities, the work shall be completed within a reasonable time and the Company shall, upon the completion of such work, restore such portion of the Public Right of Way to as good a condition as is reasonably practicable as it was before the opening or alteration was made. While the work is being performed, Company will use temporary repairs to the Public Right of Way being opened or altered to ensure safe and appropriate access by the public. If the City notifies the Company of the City's intent to pave or improve certain Public Infrastructure, subject to the Company's safety and reliability obligations, the Company will use commercially reasonable efforts to prioritize any Company work needed on Company Facilities in the areas so noticed by the City in an effort to complete said work prior to the commencement of the City's paving or improvement project. If the Company shall fail to promptly perform any restoration to Public Right of Way required as a result of Company's work in the Public Right of Way, then after written request of the City and a reasonable opportunity to satisfy that request, the City shall have the right to put the Public Right of Way back into condition as good as that prevailing prior to Company work, if reasonably practicable to do the same and thereafter require Company to reimburse City for such reasonable restoration costs. The Company and the City shall continuously be members of Alabama 811 or an approved equivalent and shall at all times comply with Sections 37-15-1, et. seq. of the *Code of Alabama*, as amended. The Company will use commercially reasonable efforts to maintain current maps and records showing the location of Company Facilities within Public Right of Way. Upon the City's reasonable request in furtherance of its municipal purposes, Company will make the reasonably necessary portion of such maps and records available to the City at a mutually agreed upon location, for viewing, but, for public safety, confidentiality, and proprietary reasons, the Company will not be required to provide copies of its maps and records to the City.

Section 7. The Company shall maintain in full force and effect during the term of this franchise, comprehensive general liability insurance in the amount of Five Million Dollars (\$5,000,000) combined single limit for bodily injury, and property damages. Such insurance may be satisfied in whole or in part (a) under any plan of self-insurance which the Company or any Company affiliate may have in force and effect from time to time, or (b) under any primary or umbrella policies that include other properties and provide separate coverage for the Company Facilities provided that all of the foregoing requirements are satisfied. Upon City's request not more than once per year, Company will provide City with evidence that Company has satisfied this requirement.

Section 8. The Company shall indemnify, defend and hold the City and its officers, boards, commissions, elected and appointed officials and representatives and employees (collectively, the "Indemnified Parties") harmless from and against any and all lawsuits, claims, causes of action, actions, liabilities, demands, damages, judgments, settlements, losses and expenses (including attorney's fees and disbursements of counsel) that any of the Indemnified Parties may sustain or incur to the extent arising out of the negligence of the Company, its subcontractors, employees and agents in the construction and maintenance of the Company Facilities on the City's property. The Company shall not be required to indemnify, defend or hold harmless the Indemnified Parties attributable to the negligence or misconduct of the Indemnified Parties or any unaffiliated third parties.

Section 9. The Company shall have the power and authority, subject to the supervision of the Alabama Public Service Commission or other duly constituted governmental authority vested with the power now vested in the Alabama Public Service Commission to supervise and regulate public utilities in the State of Alabama, to make, adopt and enforce rates, rules and regulations for the furnishing of gas and for the reasonable operation of its plant and system and shall have the right at all reasonable hours to have access to its gas pipes and the meters of any consumer for the

purpose of making repairs and other proper purposes. City will not prohibit the Company from making connections of the Company Facilities to new customers or providing service to new accounts within the territorial limits of City.

Section 10. Neither acceptance of, nor compliance with, the provisions of this ordinance shall in any wise impair or affect, or constitute or be construed as a relinquishment or waiver of, any right, permission or authority which the Company, its successors or assigns, may have independently of this ordinance; nor shall any use by the Company, its successors or assigns, of public property or places in the City, as authorized by this ordinance or service rendered by the Company, its successors or assigns, in said City, be treated as use solely of the rights, permission and authority provided for by this ordinance or as service referable solely to this ordinance or to any obligation of service consequent upon acceptance thereof or as in any wise indicating non-use of, non-compliance with, any obligation incident to, any right, permission or authority vested in the Company, its successors or assigns, independently of this ordinance; and the acceptance provided for in Section 15 of this ordinance, and each and every compliance with the provisions of this ordinance or with any obligation arising from acceptance thereof, shall be subject to, and conditioned by, the provisions of this Section 10, with the same force and effect as though each of the provisions of this section were expressly incorporated in such acceptance and expressly declared by the acceptor, its successors or assigns, at and prior to the time of such compliance by it, as conditions of such compliance.

Section 11. All ordinances and parts of ordinances in conflict with this ordinance or with any of its provisions are, to the extent of such conflict, hereby repealed.

Section 12. The duration of this franchise shall be for a period of ten (10) years from the date of its adoption by the City Council.

Section 13. As a condition to the continued existence of the franchise herein granted and as compensation or consideration for the granting thereof, the Company agrees by its acceptance hereof that it will pay to the City, a franchise fee of one percent (1%) of gross gas sales revenues received by the Company from the sale and delivery of gas during the preceding calendar year to customers within the corporate limits of the City. The Company will pay the franchise fee due under this Ordinance for any given calendar year on or before March 1 of the following year. In the event that a Franchise Fee payment or other sum due is not received by the City on or before the date due, or is underpaid by 10% or more as determined by audit described below, the Company shall pay in addition to the payment, or sum due, interest from the due date at the state legal interest rate of 6% annually, as set forth in Section 8-8-1 of the *Code of Alabama*, as amended. The Company will also pay a privilege or license tax of 3% of gross receipts in the City pursuant to the terms of Section 11-51-129 of the *Code of Alabama*, as amended. In addition, the Company, upon sixty (60) days advance written notice from City, will pay 1.5% of gross receipts in the event the City should establish a police jurisdiction as permitted by and pursuant to the terms of Section 11-11-51-91 of the *Code of Alabama*, as amended. The City will have the right to audit the franchise fees no more than once each calendar year upon at least 10 business days prior written notice to the Company; provided, however that any such audit will be limited to the most recent three years. The city will bear the costs of any audit, including reasonable expenses of the Company in assisting the city with said audit, except that if an audit reveals an aggregate underpayment by the Company of 10% or more for the scope of the audit, then Company will be responsible for its own costs and City's reasonable out of pocket costs associated with the audit. Any undisputed underpayments will be paid to the city on or before 30 days after written notice to the Company.

Section 14. This Ordinance shall be published in accordance with the applicable provisions of Section 11-45-8 of the *Code of Alabama*, as amended. Such publication shall be done by the City Clerk of the City and thereafter the City Clerk shall enter upon the minutes of the City, immediately after the place where this Ordinance is recorded, a certificate setting forth that such Ordinance was published in accordance with the terms hereof and the laws of the State of Alabama. The expense of such publication shall be paid by the Company.

Section 15. Upon filing by the Company with the Clerk of the City of a written acceptance of this Ordinance and of the franchise granted hereby, and this Ordinance, when so published and accepted by the Company shall constitute a contract between the City and the Company and their respective successors and assigns, effective from the date that this Ordinance was passed.

Section 16. The enactment of this franchise in the manner hereinabove provided shall have the effect of terminating any other franchise heretofore granted by the City and then held by the Company covering the distribution of gas in the City and territory contiguous thereto.

Section 17. If any provision of this ordinance, or the application of such provision to particular circumstances, shall be held invalid, the remainder of this ordinance, or the application of such provision to circumstances other than those as to which it is held invalid, shall not be affected thereby.

ADOPTED AND APPROVED this the 24th day of April 2023.



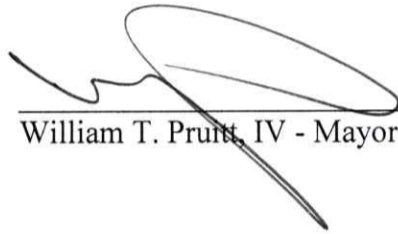
W. Judge Alverson - Council President

ATTEST:



Sheree D. Pruitt - City Clerk

APPROVED this 24th day of April 2023.



William T. Pruitt, IV - Mayor

ATTEST:



Sheree D. Pruitt - City Clerk

CERTIFICATION

I, Sheree D. Pruitt, Clerk of the City of Pell City, Alabama, do hereby certify that the above Ordinance was duly adopted by the City Council of the City of Pell City, Alabama, at a regular meeting held on the 24th day of April, 2023 and that the same has been published in accordance with the law in the see public place on the 25th day of April, 2023.

Witness my hand and the seal of said City of Pell City this 25th day of April, 2023



Sheree D Pruitt
Clerk of the City of Pell City, Alabama

City of Pell City
Notice of Adoption of Ordinance

Notice is hereby given of the title and of a general summary of the subject matter contained in **Ordinance No. 2023 - 5895**, duly adopted and approved by the City Council of the City of Pell City on April 24, 2023. A complete copy of the Ordinance is available for public inspection during normal and regular business hours in the office of the City Clerk of the City of Pell City, at 1905 1st Avenue North, Pell City, Alabama 35125.

The title of the Ordinance is:

GAS FRANCHISE ORDINANCE NO. 2023 - 5895
FOR THE
CITY OF PELL CITY, ALABAMA
AND
SPIRE ALABAMA, INC.

AN ORDINANCE GRANTING A FRANCHISE TO SPIRE ALABAMA, INC. TO
CONSTRUCT, OPERATE, AND MAINTAIN A GAS SYSTEM IN THE CITY OF PELL
CITY, ALABAMA; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF
THE FRANCHISE; PROVIDING FOR REGULATION AND USE OF THE SYSTEM AND
THE PUBLIC RIGHTS-OF-WAY.

A general summary of the subject matter of the Ordinance is contained in its title.

This notice constitutes compliance with Section 11-45-8 of the Alabama Code.

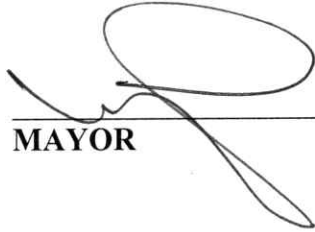
The above and foregoing Ordinance, after having been first introduced by Council President Alverson, Councilmember Mitcham made a motion to suspend the rules, seconded by Councilmember Jenkins, Councilmember Mitcham made a motion to adopt the ordinance, seconded by Councilmember Henderson and was adopted by the following roll call vote:

<u>AYES</u>	<u>NAYS</u>	<u>ABSENT/ABSTAIN</u>
Councilmember McDaniel	None	None
Councilmember Mitcham		
Councilmember Henderson		
Councilmember Jenkins		
Council President Alverson		

WHEREUPON, the Council President declared the motion carried and Ordinance adopted, this the 24th day of April 2023.

ADOPTED:

Sheree D Pruitt
CITY CLERK


MAYOR