

STATE OF ALABAMA
ST. CLAIR COUNTY

The City Council of the City of Pell City met in a regularly scheduled work session at City Hall at 5:30 p.m. on Monday, April 24, 2023. Present were Council President Alverson, Councilmembers Jay Jenkins, Ivi McDaniel, Blaine Henderson, and Jason Mitcham. Those present constituting the entirety of the Council, Council President Alverson opened the meeting for discussion.

The invocation was led by Pastor Donald Gover.

The pledge to the American Flag was led by City Manager Brian Muenger.

The City Clerk had roll call for attendance.

There were no comments regarding the bills on file.

There were no comments regarding the minutes from the regularly scheduled council meetings held on March 27, 2023 and April 10, 2023.

Casey Cambron addressed the Council regarding a User Agreement for Lakeside Live Music Fest. Mr. Cambron advised they would like to set up the park on Friday night as set up for vendors as well as having live music playing during this time. He confirmed the event would not be open to the public during this time. Park and Recreation Director Bubba Edge advised that the 16th of September had been reserved for the event but stated the 15th of September had not been reserved. Mr. Edge expressed his concern with closing Lakeside Park on Friday night. City Manager Brian Muenger advised Mr. Cambron to meet with Mr. Edge to confirm the details for the 15th of September. Mr. Muenger also advised the user agreement shall be amended to include the 15th of September as a set up day only.

Casey Cambron addressed the Council regarding a User Agreement for the Block Party. Mr. Cambron advised the set up was essentially the same as previous years, but due to the jail location it would be moved East a couple of blocks. City Clerk Sheree Pruitt advised Mr. Cambron that the Alcohol Vendor for the event would be required to go through the same process as required by the ABC Board. Casey confirmed he would also be sure to communicate with the Fire Chief and Police Chief to ensure a smooth set-up.

Park and Recreation Director Bubba Edge addressed the Council regarding awarding the Bid for the replacement of the Senior Center Roof. Mr. Edge stated the bids were opened on April 18, 2023 at 10:00 a.m. He advised the invitation to bid was e-mailed to seven contractors, posted on the City's bulletin board as well as the City's Website but only received one bid response. He confirmed the budgeted amount was less than the bid received due to the change in material. Mr. Edge advised the PBR panel was the typical and recommended commercial material. He advised the bid amount was \$30,145 with the required warranties. City Manager Brian Muenger confirmed with Mr. Edge that the Senior Center would not be required to close during the replacement of the roof.

Brad McGiboney, attorney for QuikTrip addressed the Council regarding their request for an Alcohol License for Retail Beer (Off Premises Only) and a Retail Table Wine (Off Premises Only) for the location at 685 Mineral Springs Road. Mr. McGiboney advised the proposed opening date was July 3rd for training employees and open to the public on August 2nd. City Clerk Sheree Pruitt advised that the background investigation was conducted by Lt. Vince Warrington and was recommended for approval.

City Manager Brian Muenger addressed the Council regarding the appointment of the Municipal Court Judge. He advised the code required the appointment of a part-time municipal court judge every two years. Mr. Muenger confirmed that Judge Hufford had been serving as the Municipal Court Judge since July 2018 and was desirous of the reappointment by the City Council.

City Manager Brian Muenger addressed the Council regarding a final plat for property located at 119 Windsor Drive. Mr. Muenger advised the plat had been recommended for approval by the Planning Commission as well as a variance approved by the Board of Zoning Adjustments regarding the side set-backs. He confirmed the portion to be built upon was located outside of the flood plain. Mr. Muenger stated there were no public improvements necessary which allowed the approval of the preliminary and final plat at the same time.

City Manager Brian Muenger addressed the Council regarding an amended final plat for the Noon Development located on Dr. John Haynes Drive. He advised the request was to shift the boundary on the western side of the parcel. Mr. Muenger confirmed the boundary line would be moved approximately 40 feet.

City Manager Brian Muenger addressed the Council regarding an agreement with VC3 for IT support services. He advised the master service agreement had been reviewed, revised and approved by the City Attorney. City Clerk Sheree Pruitt advised there was a slight increase of the monthly cost currently being paid. She advised Council that VC3 was a company that offered a variety of services on several levels and was a company that services could grow as the needs of the City grew. Ms. Pruitt confirmed personnel was not satisfied with the level of customer service that was received by the current provider. Mr. Muenger stated that a portion of the increase in price was due to the upgrade of space on the server.

City Manager Brian Muenger addressed the City Council regarding a franchise agreement with Spire formerly known as Alagasco. He advised the franchise agreement was not just about money but also about the relocation of utilities at no cost to the City upon appropriate notice as dictated in the franchise agreement.

Utility Superintendent James Hadaway addressed the City Council regarding the acquisition property located on Highway 78 for the New Eden Lift Station. Mr. Hadaway stated approval had been received from the previous owners of the property, but confirmed those individuals were no longer the owner of the property. City Manager Brian Muenger stated the City was hopeful to be able to work through the legal council for the current property owners, but advised it was necessary the Council Act on the request that was before them to as to not delay the project. City Attorney John Rea provided different routes that could be taken to acquire the property.

City Manager Comments: None.

Mayor Comments: None.

The City Council of the City of Pell City met in a regularly scheduled council meeting at City Hall immediately following the work session on Monday, April 24, 2023. Present were Council President Jud Alverson, Councilmembers Jay Jenkins, Ivi McDaniel, Blaine Henderson, and Jason Mitcham. Those present constituting a quorum of the Council, the following business was transacted:

The City Clerk had roll call for attendance.

On motion of Councilmember Henderson, seconded by Councilmember McDaniel, the Council unanimously approved the Agenda as presented.

On motion of Councilmember Mitcham, seconded by Councilmember Henderson, the Council unanimously approved the payment of bills on file.

On motion of Councilmember Jenkins, seconded by Councilmember Henderson, the Council unanimously approved the minutes from the regularly scheduled Council Meetings held on March 27, 2023 and April 10, 2023.

On motion Councilmember Mitcham, seconded by Councilmember Henderson, the Council unanimously approved **RESOLUTION NO. 2023 – 5887** authorizing a User Agreement with Five16 for the use of Lakeside Park to host Lakeside Live on September 16th, 2023 with the necessary revisions to add September 15, 2023 as a day for vendors to set-up.

On motion Councilmember Jenkins, seconded by Councilmember Mitcham, the Council unanimously approved **RESOLUTION NO. 2023 – 5888** authorizing a User Agreement with the Chamber of Commerce for the Block Party on June 3rd, 2023.

On motion Councilmember McDaniel, seconded by Councilmember Jenkins, the Council unanimously approved **RESOLUTION NO. 2023 – 5889** awarding the bid for the replacement of the Senior Center Roof to Advantage Roofing Plus.

On motion Councilmember Mitcham, seconded by Councilmember Henderson, the Council unanimously approved an ABC License for QuikTrip located at 685 Mineral Springs Road for Retail Beer (off premise) and Retail Wine (off premise).

On motion Councilmember Henderson, seconded by Councilmember McDaniel, the Council unanimously approved **RESOLUTION NO. 2023 – 5890** authorizing the reappointment of Municipal Court Judge Brandi Hufford for an additional two years.

On motion Councilmember Mitcham, seconded by Councilmember Jenkins, the Council unanimously approved **RESOLUTION NO. 2023 – 5891** authorizing a Final Plat for Jay and Erin Hardin for property located on Windsor Drive.

On motion Councilmember Mitcham, seconded by Councilmember McDaniel, the Council unanimously approved **RESOLUTION NO. 2023 – 5892** authorizing a Final Plat for Noon Development for property located on Dr. John Haynes Drive.

On motion Councilmember Mitcham, seconded by Councilmember McDaniel, the Council unanimously approved **RESOLUTION NO. 2023 – 5893** authorizing an agreement with VC3 for IT Support Services.

Council President Alverson introduced the following Ordinance:

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 compete 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.

Councilmember Mitcham moved that all rules and regulations, which unless suspended would prevent the immediate consideration and adoption of said Ordinance, be suspended and that unanimous consent to the immediate consideration and adoption of said Ordinance be given. The motion was seconded by Councilmember Jenkins. On roll call vote those voting aye being: Councilmember Jenkins, McDaniel, Henderson, Mitcham, and Council President Alverson. Nays: None. Council President Alverson declared the motion approved.

Councilmember Mitcham then moved that said Ordinance be now placed upon its final passage and adopted. The motion was seconded by Councilmember Henderson. The question being put as to the adoption of said motion and the passage of said Ordinance, on roll call vote, the motion was unanimously approved. On roll call vote those voting aye being: Councilmember Jenkins, McDaniel, Henderson, Mitcham, and Council President Alverson. Nays: None. Council President Alverson declared the motion approved and the Ordinance adopted.

On motion of Councilmember Henderson, seconded by Councilmember Mitcham, the Council adjourned, subject to the call of Council President Alverson.



W. Judge Alverson - Council President

ATTEST:



Sheree D. Pruitt - City Clerk