

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, December 19, 2022. 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 Councilmember Blaine Henderson.

Pastor Donald Gover invited the Council to the Unity Breakfast that was scheduled for January 16, 2023 at 8:00 a.m. and thanked them for their consideration of sponsoring a table.

The City Clerk had roll call for attendance.

There were no comments regarding the bills on file.

Ashley St. John with Bain & Company presented the Audit for FY21 Audit. Assistant Finance Director Teresa Brakefield stated the FY22 audit was being prepared and confirmed she hoped to have it completed by the Summer of 2023. She advised that once the FY22 audit is completed the City should be back on track with the audits. City Manager Brian Muenger advised he did not think there was anything that would be a surprise in the FY21 Audit.

Mr. Ron Helms with Union State Insurance presented the proposal received from Alabama Municipal Insurance Corporation. He confirmed the following regarding City Policies:

- Property – including but not limited to buildings, contents, etcetera held approximately \$76 million dollars in values
 - Basic inflation clause was 3% due to increased construction costs
 - \$6 million dollar increase in value of property from previous year
 - Off set premiums by increased deductible from \$2,500 to \$5,000
- Employee Benefits - \$4m liability coverage
- Law Enforcement Liability
 - Based on state claim average which was approximately \$5m
 - Premium increased but not necessarily warranted based on actions of PCPD
- Automobile – Covers All Vehicles
 - Increased by 14 vehicles but also removed 14 vehicles
- Equipment
 - Policy pays dollar for dollar
 - Does not depreciate
- Inland Marine – Covers anything not included in property and automobile
 - Total increase of \$867
- Employee Dishonesty
 - No Change
- Liability Increased with underlying policies
- Municipal Complex
 - Required to provide earthquake and flood
- Total Premium increase approximately 4%

Mr. Helms explained the proposal was to roll into a three-year cycle which would require an approval of a six-month policy which would renew on July 1st instead of January 1st. He advised the City would receive a discount for a three-year cycle.

City Manager Brian Muenger stated the budgeted amount for insurance premiums was \$304,500, which was less than the proposed cost. He also advised there was an increase in the deductible for property damage from \$1,000 to \$2,500. Mr. Muenger stated the Police Department had a

number of accidents but confirmed it did not have a factor on the increase of the Law Enforcement Liability Premium.

There was no discussion regarding the vacation of a portion of 2nd Avenue South, which recommended to the City Council with recommendation for approval from the Planning Commission.

City Manager Brian Muenger addressed the Council regarding the annual appropriation for the Center for Education and Performing Arts and a fee schedule modification. He advised the amended fee schedule would include a fee for rentals that stayed later than allowed. Mr. Muenger advised that e-signatures would be allowed on rental agreements, and explained that the Board of Education expressed concern regarding the gymnasium floor. He stated the Board of Education advised they had spent approximately \$25,000 repainting the floor and advised that any events that would require a set up that weighed more than 100 pounds must be preapproved by CEPA. Mr. Muenger confirmed the appropriation funds were budgeted in the operating budget for FY22/23. Councilmember Henderson advised that Dr. Martin stated that the heavy items itself was not the problem but the individuals that toss the heavy items around on the floor.

City Manager Brian Muenger addressed Council regarding the declaring of office space located at the municipal complex no longer needed for municipal purposes. Mr. Muenger advised that Wesley Savage had requested to lease office space. He stated the rent was \$225 plus a security deposit and confirmed there was language in the lease to allow it to be terminated upon thirty days written notice by either party.

City Manager Brian Muenger addressed the Council regarding a franchise agreement with Brightspeed of Alabama, LLC. He advised the City had been working with Greg Fender of Local Government Services and confirmed the City's franchise agreement with Centurytel had been lapsed for years. Mr. Muenger stated Brightspeed of Alabama, LLC had been submitted a new franchise agreement, which included language stating the City would not be responsible for the cost of relocating fiber lines and audit costs would be placed upon the franchisee. He confirmed the agreement would be for ten years and was a non-exclusive franchise agreement. Mr. Muenger confirmed the lease of office space at the municipal complex with a separate matter.

City Manager Brian Muenger addressed the Council regarding an agreement with Brightspeed of Alabama, LLC for services. He advised Brightspeed was more aggressive in pricing. Mr. Muenger advised if approved the cost of internet would decrease and the upload and download speed would increase to one gigabyte with dedicated fiber. Mr. Muenger advised the agreement would need to have final approval of the City Attorney.

City Manager Brian Muenger addressed the Council regarding position description changes. He advised there had been some proximity requirements of residency which has proposed issues in the past. Mr. Muenger advised the proposed language was as follows and that it be retroactive for all applicable classified positions if there was proximity language provided in the position description:

Within six (6) months from date of hire residence must be established within the City Limits of Pell City or within a distance that allows for a response time of thirty (30) minutes or less to City Hall.

City Manager Brian Muenger addressed the Council regarding the sponsorship of two tables for the Martin Luther King, Jr. Unity Breakfast. He advised the cost would be \$280.00 and confirmed the Council had participated in previous years.

City Manager Brian Muenger addressed the Council regarding the appointment of Darren Blakely to the Industrial Development Board. He advised the position had been properly advertised and stated that Mr. Blakely had presented an application for the position.

City Manager Comments: Mr. Muenger thanked the finance department and staff for their hard work and expressed his appreciation for all the time that had been put forth.

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, December 19, 2022. Present were Council President Jud Alverson, Councilmembers Jay Jenkins, Ivi McDaniel, Blaine Henderson, and Jason Mitcham. Those present constituting the entirety of the Council, the following business was transacted:

The City Clerk had roll call for attendance.

On motion of Councilmember Henderson, seconded by Councilmember Mitcham, 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 Henderson, seconded by Councilmember Mitcham, the Council unanimously approved the FY21 Audit as presented.

On motion of Councilmember Mitcham, seconded by Councilmember McDaniel, the Council unanimously approved the proposal received from AMIC for a six month policy to expire on June 30, 2023 and renew on July 1st, 2023 for a three year term.

Now was the time set aside for a public hearing regarding the vacation of a portion of 2nd Avenue South. Council President Alverson opened the Public Hearing at 6:21 p.m., there being no one present, the Public Hearing was closed at 6:21 p.m.

Council President Alverson introduced the following Resolution:

RESOLUTION NO. 2022 - 5818

A RESOLUTION AUTHORIZING THE VACATION OF A PORTION OF 2ND AVENUE SOUTH IN THE CITY OF PELL CITY, ALABAMA

WHEREAS, a petition submitted and executed on behalf of the Pell City Board of Education, the owner of all of the lands abutting the following described street and street right-of-way, situated in the City of Pell City, Alabama and known as 2nd Avenue South, requesting the vacation of a portion of said street, has been duly presented to the City Council of the City of Pell City, Alabama, for the assent and approval of said governing body, said petition with map attached being hereto affixed, marked Exhibit A and made a part hereof; and,

WHEREAS, in accordance with applicable Alabama law, notice of said request for vacation and relocation was published and a hearing was held on the 19th day of December, 2022; and,

WHEREAS, the street or portion thereof proposed to be vacated is more particularly described as follows:

Vacation Portion of 2nd Avenue South:

A part of 2nd Avenue South and being more particularly described as Commence at an existing railroad spike at the Southwest corner of Lot 7, Block 13 of Griffith Addition to Pell City, said subdivision being on record in the Office of the Judge of Probate of St. Clair County, Alabama and run South 89° 52' 00" East along the South line of Block 13 and the North right-of-way of 2nd Avenue south for 290.51 feet, thence South 00° 09' 20" West for 34.45 feet to a point on the Pell City School Board property, thence North 87° 36' 20" West along the School Board property for 290.74 feet, thence North 00° 09' 55" East for 22.98 feet to the Point of Beginning. The above containing 0.19 acres, 8,341 square feet.

WHEREAS, it appears to the City Council of the City of Pell City, Alabama, that the vacation of said street and street right-of-way is in order and that convenient and reasonable means

of ingress and egress is afforded to all other non-abutting property owners owning properties in the vicinity of said street and street right-of-way.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Pell City, Alabama, that the vacation of the hereinabove described street is assented to and approved and same is hereby vacated pursuant to the applicable provisions of Alabama law.

BE IT FURTHER RESOLVED that the City of Pell City, Alabama, remise, release, and quitclaim to the Pell City Board of Education whatever right, title and interest the said City of Pell City, Alabama, may have acquired in and to the above-described portion of 2nd Avenue South by virtue of the dedication or other vacation of said part or portion of said street and street right-of-way, or otherwise, and that the Mayor of the City of Pell City, Alabama, is authorized to execute a Quitclaim Deed to the forenamed parties or persons carrying out the intention of this paragraph and that the City Clerk be and she is hereby authorized and directed on behalf of the City of Pell City, Alabama, to attest the same.

BE IT FURTHER RESOLVED that the City Council of the City of Pell City hereby consents the vacation of the above-described portion of 2nd Avenue South in the petition filed by the Board of Education.

ADOPTED AND APPROVED this the 19th day of December, 2022.

On motion of Councilmember Mitcham, seconded by Councilmember Henderson, the Council unanimously approved **RESOLUTION NO. 2022 – 5818** authorizing the vacation of a portion of 2nd Avenue South. On roll call those voting aye: Councilmembers Mitcham, Henderson, Jenkins, McDaniel and Council President Alverson. Those voting nay: None.

On motion of Councilmember Jenkins, seconded by Councilmember McDaniel, the Council unanimously approved the annual appropriation for the Center for Education and Performing Arts (CEPA) as well as the presented fee schedule. On roll call those voting aye: Councilmembers Mitcham, Henderson, Jenkins, McDaniel and Council President Alverson. Those voting nay: None.

Council President Alverson introduced the following Ordinance:

ORDINANCE NO. 2022 – 5819

AN ORDINANCE DECLARING CERTAIN REAL PROPERTY NO LONGER NEEDED FOR PUBLIC OR MUNICIPAL PURPOSES AND AUTHORIZING THE LEASE OF SAID PROPERTY BY THE CITY OF PELL CITY, ALABAMA

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PELL CITY, ALABAMA, AS FOLLOWS:

1. It is hereby established and declared that the following described real property of the City of Pell City, Alabama, is no longer needed for public or municipal purposes, to-wit: one (1) office suite located on the second floor in the Municipal Complex of the City of Pell City, 1000 Bruce Etheredge Parkway, Pell City, Alabama 35128, containing approximately 150 square feet.

2. The City of Pell City, Alabama, having received an offer from Wesley Savage to lease that real property described in Section 1, above, it is hereby declared to be in the best interest of the public and the City of Pell City, Alabama, to lease said real property to Wesley Savage under the following terms and conditions, to-wit:

- Approximately 150 square feet of office space located on the second floor of the Municipal Complex together with the right to use in common with Lessor, its employees, invitees, and customers, and Lessor's other tenants and their employees, invitees, and customers, the conference room and restroom facilities located on the second floor of the Municipal Complex for a term of one (1) year. Annual rent for months one (1) through twelve (12) will be in the amount of \$2,700.00, payable in advance in equal monthly

installments of \$225.00, beginning on the first day of the month of this Lease and continuing on the same day of each month thereafter for the entire term of the lease.

3. Pursuant to the authority granted by § 11-47-21, Ala. Code 1975, the Mayor of the City of Pell City, Alabama, is hereby directed to execute the lease agreements, in form and substance as attached hereto as Exhibit A, in the name of the City of Pell City, Alabama, by and between the City and Riverbank Properties, LLC.

4. Severability. If any part, section, or provision of this Ordinance shall hereafter be declared unconstitutional or invalid for any reason, such declaration shall not affect the validity of any other section or provision of this Ordinance, which shall continue in full force and effect notwithstanding such holding.

5. Repeal of Conflicting Ordinances. Any Ordinance, Resolution, or previous Council authorization in conflict with this Ordinance shall be and is hereby repealed on the effective date of this Ordinance.

6. Effective Date. This Ordinance shall become effective immediately upon approval and publication as required by law.

Councilmember Jenkins 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 Henderson. On roll call vote those voting aye being: Councilmember Jenkins, 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, Henderson, Mitcham, and Council President Alverson. Nays: None. Council President Alverson declared the motion approved and the Ordinance adopted.

Council President Alverson Introduced the following Ordinance:

STATE OF ALABAMA)	ORDINANCE NO. <u>2022-5820</u>
COUNTY OF ST CLAIR)	TELECOMMUNICATIONS
)	FRANCHISE AND
CITY PELL CITY)	CONSENT ORDINANCE

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 of 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 1st 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.

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 Henderson. On roll call vote those voting aye being: Councilmember Jenkins, Henderson, Mitcham, and Council President Alverson. Nays: None. Council President Alverson declared the motion approved.

Councilmember Jenkins then moved that said Ordinance be now placed upon its final passage and adopted. The motion was seconded by Councilmember Mitcham. 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, Henderson, Mitcham, and Council President Alverson. Nays: None. Council President Alverson declared the motion approved and the Ordinance adopted.

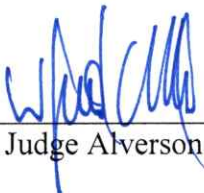
On motion of Councilmember Jenkins, seconded by Councilmember Mitcham, the Council unanimously approved **RESOLUTION NO 2022 – 5821** authorizing an agreement with Brightspeed of Alabama, LLC for services.

On motion of Councilmember Mitcham, seconded by Councilmember Henderson, the Council unanimously approved position description changes as presented with regard to the residency proximity.

On motion of Councilmember Henderson, seconded by Councilmember Jenkins, the Council unanimously authorized the purchase of two tables in the amount of \$280.00 for the Martin Luther King, Jr. Unity Breakfast.

On motion of Councilmember Mitcham, seconded by Councilmember McDaniel, the Council unanimously approved the appointment of Mr. Darren Blakely to the Industrial Development Board.

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