



AGENDA
CITY COUNCIL MEETING
July 22, 2025

1. **Call to Order**
2. **Roll Call**
3. **Invocation/Pledge of Allegiance**
4. **Approval of minutes:**
 - A. July 14, 2025
5. **Mayor's comments:**
6. **Comments of the public:**
7. **Reports of Officers:**
8. **Hearing on petitions, applications, appeals communications, etc.:**
9. **Financial reports:**
10. **Resolutions, ordinances, orders & other busines:**
 - A. Approve Ordinance for Franchise Agreement with Alabama Fiber Network
 - B. Approve Ordinance for Franchise Agreement with JWEMC
 - C. Resolution - Surplus Property - '94 GMC Bucket Truck
 - D. **Executive Session** – To discuss the consideration the governmental body is willing to offer or accept when considering the purchase of real property, pursuant to Alabama Code § 36-25A-7(a)(6). (If needed)

Next meeting:

Appointed Vacancies:

Any person wishing to appear at the meeting shall notify the Clerk's office by 3 p.m. on the Friday preceding the meeting of their intent to speak and the subject matter they wish to address at the meeting.

BOARD VACANCIES	EXPIRED/UNEXPIRED	TERM ENDS

Applications are available at City Hall or on our website by going to Government and clicking on Board Information.

Work Session Agenda

July 22, 20255:30 PM

Any person wishing to appear at the meeting shall notify the Clerk's office by 3 p.m. on the Friday preceding the meeting of their intent to speak and the subject matter they wish to address at the meeting.

- A. Building Official to discuss Air BNBs with the council
- B. Mr. Underwood is questioning the prioritization and transparency of city spending, especially regarding the Sportsplex, flooding mitigation, and specific line items in the FY25 budget
- C. Jennifer Morgan is seeking transparency on municipal compensation practices and the use of federal COVID-related funds.

**MINUTES FROM A WORK SESSION OF THE
COUNCIL OF MUSCLE SHOALS, ALABAMA, HELD
July 14, 2025**

A. Boy Scout Recognition

The Mayor opened the session by recognizing the Boy Scouts who constructed a flag disposal box. The Council expressed appreciation for their community service and civic initiative.

B. Special Recognition by Mayor – Firefighters and First Responders

Last night's City Council meeting held a profoundly emotional and inspiring moment of recognition, as the Mayor and Council honored the bravery of Muscle Shoals firefighters and first responders for their unwavering service to the community.

Additionally, Representative Kerry "Bubba" Underwood recognized three Muscle Shoals Fire Department firefighters for their heroic off-duty actions while vacationing. The firefighters saved two lives from a rip tide while at the beach.

The Council and attendees offered a standing ovation to all first responders in attendance, emphasizing the City's deep gratitude and respect.

C. Presentation by Chelsea Lawson – Cramer Children's Center

Chelsea Lawson addressed the Council to request additional city support for the Cramer Children's Center. She emphasized the importance of continued community investment in child welfare and family services.

D. Jennifer Morgan – Community Storm Shelters

D. Jennifer Morgan – Community Development and Youth Retention

Although originally listed under the topic of community storm shelters, Ms. Jennifer Morgan focused her remarks on strategies to retain residents in the City of Muscle Shoals. She emphasized the importance of fostering a community that encourages young people to remain in the area after graduation and shared her perspective on how the City can continue to grow and thrive for future generations.

E. Mallory Johnson – Public Accountability Concerns

Mallory Johnson raised questions about the recent departure of city employee Ken Sockwell and requested more information regarding the circumstances. Mayor Lockhart interjected, stating that the matter was not within the purview of the City Council and did not constitute official council business. The Mayor affirmed that the issue would not be addressed during the work session.

F. William Underwood – Flooding Issues

Mr. William Underwood addressed the Council with remarks regarding stormwater

management and drainage across certain areas of Muscle Shoals. He emphasized the importance of continued investment in infrastructure improvements and encouraged the City to evaluate long-term solutions to mitigate localized flooding.

CITY OF MUSCLE SHOALS, ALABAMA

A Municipal Corporation

COUNCIL MEMBER – PLACE ONE

COUNCIL MEMBER – PLACE TWO

COUNCIL MEMBER – PLACE THREE

COUNCIL MEMBER – PLACE FOUR

COUNCIL MEMBER – PLACE FIVE

ATTEST:

Brittney Walker, City Clerk

**MINUTES FROM A REGULAR MEETING
OF THE COUNCIL OF MUSCLE SHOALS, ALABAMA, HELD
July 14, 2025**

Call to Order

The meeting was called to order by Council President Ken Sockwell.

Roll Call

The following Council Members were present:

- Chris Hall
- Gina Clark
- Willis Thompson
- Ken Sockwell
- Donnie Linley

A quorum was present.

Invocation / Pledge of Allegiance

The invocation was given by Chad Holden and the Pledge of Allegiance was led by Boy Scout Troop 284.

Approval of Minutes

Minutes from the Council meeting held on June 3, 2025 – Motion to approve by Donnie Linley; second by Chris Hall

Minutes from the Council meeting held on June 16, 2025 – Motion to approve by Donnie Linley; second by Chris Hall

Mayor's Comments

Mayor Mike Lockhart thanked the City of Muscle Shoals and noted how much he and the Council value the city employees. He also congratulated Chris Hall on being the only candidate to qualify for City Council Place One.

Reports of Officers

HR Director Jalen Johnson presented the updated Mosquito Truck Technician - Laborer Job Description.

Motion to approve: Gina Clark

Second: Donnie Linley

Motion carried unanimously.

Hearings on Petitions, Applications, Appeals, Communications, Etc.

Public Hearing for Rezoning of 4.5 Acres on Woodward Avenue (M-2 to B-2)

Roll Call Vote:

- Chris Hall – Aye
- Gina Clark – Aye
- Willis Thompson – Aye
- Ken Sockwell – Aye
- Donnie Linley – Aye

Passed unanimously.

Public Hearing for Rezoning of 603 Pilgrim Avenue (R-3 to B-2)

Roll Call Vote:

- Chris Hall – Aye
- Gina Clark – Aye
- Willis Thompson – Aye
- Ken Sockwell – Aye
- Donnie Linley – Aye

Passed unanimously.

Ordinance to Annex Property – Johnson (193 Lakeview Shores Drive)

Motion to approve: Gina Clark

Second: Donnie Linley

Motion carried unanimously.

Ordinance to Annex Property – Saint Development (Approx. 23.64 acres off Elledge Lane)

Motion to approve: Chris Hall

Second: Willis Thompson

Motion carried unanimously.

Resolutions, Ordinances, Orders & Other Business

First Reading of Franchise Agreement with Alabama Fiber Network

First Reading of Franchise Agreement with JWEMC

Notice from Mayor of One Person Filing Statement of Candidacy for Council Place 1 –
Presented by the Mayor

Resolution Declaring Council Place 1 Elected Without Opposition

Motion to approve: Gina Clark

Second: Willis Thompson

Motion carried unanimously.

Certificate of Election for Council Place 1 (Chris Hall)

Adjournment

The meeting was adjourned at 6:03 p.m.

CITY OF MUSCLE SHOALS, ALABAMA

A Municipal Corporation

COUNCIL MEMBER – PLACE ONE

COUNCIL MEMBER – PLACE TWO

COUNCIL MEMBER – PLACE THREE

COUNCIL MEMBER – PLACE FOUR

COUNCIL MEMBER – PLACE FIVE

ATTEST:

Brittney Walker, City Clerk

ORDINANCE NO. _____

AN ORDINANCE GRANTING A NON-EXCLUSIVE FRANCHISE TO FIBER UTILITY NETWORK INC. D/B/A ALABAMA FIBER NETWORK, ITS SUCCESSORS AND ASSIGNS (“FRANCHISEE”) FOR THE PURPOSE OF CONSTRUCTING AND MAINTAINING A FIBER-OPTIC INFRASTRUCTURE NETWORK WITHIN THE PUBLIC RIGHTS-OF-WAY WITHIN THE CITY OF MUSCLE SHOALS, ALABAMA

WHEREAS, the City of Muscle Shoals, Alabama (“Municipality” or “City”) has jurisdiction over the use of public rights-of-way in the City in which it now or hereafter holds any property interest, including, but not limited to public streets, roadways, highways, bridges, land paths, boulevards, avenues, lanes, alleys, sidewalks, circles, drives, public easements, public utility easements, dedicated utility strips, and rights-of-way dedicated for compatible uses now or hereafter held by City (but excluding City parks or recreation areas)(“**Public ROW**”); and

WHEREAS, (“the Franchisee”) desires to construct install, maintain, operate, and control a fiber optic infrastructure network in Public ROW (“**Network**”) for the purpose of offering communications services (“**Services**”), including broadband Internet access service as defined in 47 C.F.R. § 8.1(b) (“**Broadband Internet Services**”) and Voice over Internet Protocol services, but excluding multichannel video programming services over a cable system that would be subject to a cable franchise to residents and businesses in the City (“**Customers**”); and

WHEREAS, the Franchisee has requested a franchise from the City in order to construct and maintain a fiber-optic infrastructure network within the corporate limits of the City; and

WHEREAS, the City Council wishes to accommodate the Franchisee’s request and grant a franchise to allow Franchisee to construct and maintain a fiber-optic infrastructure network in accordance with the terms and conditions contained herein.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MUSCLE SHOALS, ALABAMA, AS FOLLOWS:

DEFINED TERMS

- A. “Broadband Services” means the transmission of information using optical fiber including without limitation internet services.
- B. “City” means the City of Muscle Shoals, Alabama.
- C. “Code” means the City of Muscle Shoals, Alabama Municipal Code of Ordinances, as may from time to time be amended.
- D. “Franchisee” means Fiber Utility Network, Inc. d/b/a/ Alabama Fiber Network and its successors and assigns.

- E. “Governing Body” or “City Council” means the City Council of the City of Muscle Shoals, Alabama.
- F. “Gross Revenues” means all local revenue, in whatever form and from all sources, determined in accordance with generally accepted accounting principles that is received or accrued by Franchisee from Franchisee’s provision of Broadband services within the City with a deduction for Franchisee’s uncollectible accounts, but without deduction for operating expenses, accruals, or any other expenditure. Notwithstanding the foregoing, Gross Revenue shall not include any taxes on Broadband services furnished by Franchisee that are imposed by any City, state, or other governmental unit and collected by Franchisee for such governmental unit.
- G. “Network Facilities” means equipment and facilities that may include fiber optic cables, lines, wires, or strands; conduits, vaults, access manholes and handholes; electronic equipment; power generators; batteries; pedestals; boxes; cabinets; vaults; and other similar facilities.
- H. “Person” means any natural or corporate person, business association or other business entity including, but not limited to, a partnership, sole proprietorship, political subdivision, public or private agency of any kind, utility, successor or assign of any of the foregoing, or any other legal entity.
- I. “Use Fee” means the fee paid by the Franchisee to the City for locating, maintaining and operating Network Facilities in the Rights-of-Way for the provision of Broadband Services.

AGREEMENT

In consideration of the mutual promises made below, the City and Franchisee agree as follows:

1. Permission to Use and Occupy.

- 1.1 Permission to Use and Occupy Public ROW. Municipality grants Franchisee permission to use and occupy the Public ROW (the “**License**”) for the purpose of constructing, installing, repairing, maintaining, operating, and if necessary, removing the Network and the related Network Facilities (the “**Work**”). This Agreement and the License do not authorize Franchisee to use any property other than the Public ROW as agreed herein. Franchisee’s use of any other Municipality property, including poles and conduits, will be, subject to mutual agreement, governed under a separate written agreement regarding that use.
- 1.2 Subject to State of Alabama and Local Law. This Agreement and the License are subject to Municipality’s valid authority under the State of Alabama (at times, herein “State”) and local laws as they exist now or may be amended from time-to-time, and subject to the conditions set forth in this Agreement.

- 1.3 Subject to Municipality's Right to Use Public ROW. This Agreement and the License are subject and subordinate to Municipality's prior and continuing right to use the Public ROW, including constructing, installing, operating, maintaining, repairing, or removing sewers, water pipes, storm drains, gas pipes, utility poles, overhead and underground electric lines and related facilities, and other public utility and municipal uses.
- 1.4 Subject to Pre-Existing Property Interests. Municipality's grant of the License is subject to all valid pre-existing easements, restrictions, conditions, covenants, encumbrances, claims of title or other property interests that may affect the Public ROW. Franchisee will obtain at its own cost and expense any permission or rights as may be necessary to accommodate such pre-existing property interests.
- 1.5 No Grant of Property Interest. The License does not grant or convey any property interest.
- 1.6 Non-Exclusive. The rights granted to Franchisee pursuant to this Agreement are non-exclusive. Municipality expressly reserves the right to grant licenses, permits, franchises, privileges or other rights to any other individual, corporation, partnership, limited liability company, trust, joint stock company, business trust, unincorporated association, joint venture, governmental authority or other entity of any nature whatsoever ("**Person**"), as well as the right in its own name as a municipality, to use the Public ROW for similar or different purposes allowed Franchisee under this Agreement. This Agreement does not establish any priority for the use of the Public ROW by Franchisee or by any present or future franchisees or other permit holders. In the event of any dispute as to the priority of use of the Public ROW the first priority shall be to the public generally, the second priority to Municipality in the performance of its various functions, and thereafter, as between Franchisee and other franchisees and permit holders, as determined by Municipality in the exercise of its reasonable powers, including the police power and other powers reserved to and conferred on it by the State of Alabama consistent with the rights granted to Franchisee pursuant to this Agreement.
- 1.7 Backup Power. Franchisee shall not use a permanent or semi-permanent internal combustion engine (such as a gasoline or natural gas-powered electric generator) to provide backup power at any point or points on the Network Facilities without Municipality's prior written approval. Such approval may be granted subject to conditions, such as relating to testing times (e.g., not in the middle of the night), screening, noise levels, and temperature and safe discharge of hot exhaust gasses. Municipality hereby grants Franchisee approval to use backup power generating devices, including devices with permanent or semipermanent internal combustion engines, at its network hut sites and inside buildings or on land owned by Franchisee subject to the specific conditions provided for in the network hut leases entered into between Franchisee and Municipality for the use of land owned by Municipality, and any applicable building code requirements.

- 1.8 Limitation on Use Rights. Nothing in this Agreement shall be construed as requiring Franchisee to alter the manner in which Franchisee attaches equipment to the poles, if any poles are allowed by Municipality, or alter the manner in which it operates and maintains its equipment.

2. Franchisee's Obligations.

- 2.1 Individual Permits Required. Franchisee will obtain Municipality's approval of required individual encroachment, construction, repair and maintenance of the Network Facilities and other necessary permits before placing its Network Facilities in the Public ROW or other property of Municipality as authorized. Franchisee will pay all lawful permit, processing, field marking, engineering, and inspection fees associated with the issuance of individual permits by Municipality.
- 2.2 Franchisee's Sole Cost and Expense. Franchisee will perform the Work at its sole cost and expense.
- 2.3 Compliance with Laws. Franchisee will comply with all applicable federal, state and local laws, regulations and ordinances when performing the Work. Franchisee shall comply in all respects with all applicable codes. Franchisee will place its Network Facilities in conformance with the required permits, plans, and drawings approved by Municipality.
- 2.4 Reasonable Care. Franchisee will exercise reasonable care when performing the Work and will use commonly accepted practices and equipment to minimize the risks of personal injury, property damage, soil erosion, and pollution of surface or groundwater.
- 2.5 No Nuisance. Franchisee will maintain its Network Facilities in good and safe condition so that its Network Facilities do not cause a public nuisance.
- 2.6 No Burden on Public ROW; Minimum Interference. Franchisee shall not erect, install, construct, repair, replace or maintain the Network Facilities in such a fashion as to unduly burden the present or future use of the Public ROW. The Network Facilities shall be erected and maintained by Franchisee so as to cause the minimum interference with the use of the Public ROW and with the rights or reasonable convenience of property owners who adjoin any of the Public ROW. The location of Network Facilities within, on, over, under, across or through the Public ROW shall, in all cases, be subject to prior Municipality approval through the applicable permitting process.
- 2.7 Limitation on Franchise Rights. Except as may otherwise be agreed upon in writing by Municipality and Franchisee, the rights granted to Franchisee herein do not include the right to (i) excavate in, occupy or use any Municipality park, recreational areas or other Municipality property other than the Public ROW, or (ii) attach or locate any Network Facilities to or on, or otherwise utilize any of, any

Municipality-owned property or facilities or structures other than Public ROW, including without limitation light poles, towers, buildings and trees. The use of such Municipality-owned property or facilities by Franchisee shall be considered by Municipality on a case-by-case basis and may be subject to payment of additional compensation to Municipality. Similarly, the rights granted herein by Municipality to Franchisee do not include the right to situate any Network Facilities on poles or other property owned by entities other than Municipality and situated in the Public ROW. It shall be the responsibility of Franchisee to negotiate any pole-attachment agreements or similar agreements with the owners of such poles or facilities, and to pay to such owners any required compensation.

- 2.8 Preconstruction Meetings. Franchisee shall attend all reasonably necessary preconstruction meetings as mutually agreed with Municipality.
- 2.9 Restoration of Property. Franchisee shall restore and replace at its sole cost and expense, in a manner reasonably approved by Municipality, any public or private property, real or personal, or portion of the Public ROW, that is disturbed, damaged or injured by the construction, operation, maintenance or removal of the Network Facilities to at least as good condition as that which existed prior to the disturbance if such damage is directly caused by Franchisee's Work and no other Person (other than Franchisee's personnel, employees, agents, contractors, subcontractors or Affiliates) is responsible for the damage (e.g., where a Person other than Franchisee fails to accurately or timely locate its underground facilities as required by applicable law). Franchisee's obligation in this subsection shall be limited by, and consistent with, any applicable seasonal or other restrictions on construction or restoration work. Franchisee's restoration work shall start promptly but not more than sixty (60) days from Franchisee being notified of the problem in question. Upon the failure of Franchisee to effect such repair or restoration, Municipality may effect the same, and Franchisee shall promptly reimburse Municipality for Municipality's actual, reasonable, and documented costs in connection with such repair or restoration.
- 2.10 Emergency Notification. Franchisee shall provide Municipality throughout the Term of the Franchise with a twenty-four (24) hour emergency telephone number at which a representative of Franchisee (not voicemail or a recording) can be accessed in the event of an Emergency.
- 2.11 Duty to Underground. It is the policy of Municipality to have lines and cables placed underground to the greatest extent reasonably practicable, as determined by the Municipality. In furtherance of this policy, Franchisee agrees that it shall place its constructed lines and cables underground to the extent reasonably practicable, as determined by the Municipality, provided however the Franchisee's network hut sites may be above ground.
- 2.12 Discontinuance and Removal of the Network Facilities. Upon the revocation, termination, or expiration of this Agreement, unless an extension is granted by

Municipality in its discretion, Franchisee shall discontinue the provision of Services and all rights of Franchisee to use the Public ROW for the provision of Services shall cease. Franchisee, at the direction of Municipality, shall remove any portion of the Network Facilities and restore such Public ROW and other affected property in accordance with Section 2.9 hereof within the Public ROW. Alternatively, if mutually agreed by Franchisee and Municipality, such Network Facilities may be abandoned in place or transferred to Municipality. This Section 2.12 shall not apply to facilities constructed and owned by the Franchisee or an Affiliate of Franchisee, where such facilities are used by Franchisee or such Affiliate to lawfully provide other services. No surety on any right-of-way bond (“**ROW Bond**”) nor any letter of credit shall be discharged until Municipality has certified to Franchisee in writing that the Network Facilities has been dismantled, removed, and all other property restored, to the satisfaction of Municipality.

- 2.13 Tree Trimming. Franchisee may trim trees upon and overhanging the Public ROW so as to prevent the branches of such trees from coming into contact with the Network Facilities. Franchisee shall minimize the trimming of trees to trimming only those trees that are essential to maintain the integrity of the Network Facilities. Except in emergencies, (i) all trimming of trees in the Public ROW or on Municipal property shall have the prior approval of Municipality and shall be done under the direction of the Municipality's horticulturist, or in the event that office is vacant, the Municipality's Public Works director, and (ii) all trimming of trees on private property shall require the consent of the property owner, and it is Franchisee's responsibility to ensure such consent is valid and from the private property owner(s) of record. All trimming shall be done at the expense of Franchisee.

- 2.14 Location of Facilities. Franchisee shall keep accurate, complete, and current maps and records of the Network Facilities and all Franchisee facilities and, subject to applicable confidentiality provisions, shall make available electronic copies of such maps and records to Municipality, as set forth below.

2.14.1 Franchisee shall furnish "as-built" maps and records to Municipality in electronic, ESRI-compatible format (or in another mapping format mutually agreed to by the Parties). Franchisee shall provide Municipality copies of any new or revised "as-built" or comparable drawings as and if they are generated for portions of the Network Facilities located within Municipality and will provide them to Municipality upon reasonable request and on a mutually-agreed timetable (e.g., piecemeal following the closure of each permit, or all at once after all the Work is complete), subject to applicable confidentiality protections. Upon request by Municipality in an emergency, Franchisee, as soon as reasonably practicable, shall inform Municipality of any changes from such maps and records previously supplied and shall mark up any maps provided by Municipality so as to show the location of the Network Facilities.

2.14.2 The "as built" maps shall include at a minimum all Network Facilities located in a given segment, and facility routings and shall be drawn to scale.

2.14.3 Municipality agrees that Franchisee may provide route maps rather than the as-built maps specified above. "Route maps" means "as-built" maps with only the following information removed: information on the number of lines, whether the lines are copper or fiber and the nature of any electronics. Concrete pads for pedestals and enclosures for equipment or pedestals shall be shown on Route maps.

- 2.15 Utility Notification Program. Franchisee shall comply with applicable state and local utility location and notification laws.
- 2.16 Inspection by Municipality. Network Facilities shall be subject to inspection by Municipality to the extent reasonably requested by Municipality and reasonably necessary to assure compliance by Franchisee with the terms of this Agreement. Municipality shall inspect Network Facilities at reasonable, mutually agreed upon times and upon reasonable notice to Franchisee; provided, however, the inspection shall not interrupt or interfere with any services provided by Franchisee.
- 2.17 Franchise Fee. As consideration for the use of the City's Public ROW as set forth in this Agreement, the Franchisee shall pay the City a Use Fee of five percent (5%) of its Gross Revenues collected by the Franchisee during each calendar year of operation under this agreement based on unaudited financials. The Franchisee will pay the Use Fee collected from its Customers for the Broadband Services annually, within forty-five (45) days of the close of Franchisee's fiscal year, which ends December 31. Each Use Fee payment shall be accompanied by a certified report from a representative of the Franchisee, which shows the basis for the computation of all recurring monthly Broadband Service charges from the provision of Broadband Services to Persons located within the City limits during the Franchisee's fiscal year for which such payment is made. In the event that the Use Fee payment is not actually received by the City on or before the applicable due date set forth in this section or is underpaid, Franchisee shall pay in addition to the Use Fee payment, or sum due, interest from the due date at the state legal interest rate of 8% annually (Alabama Code § 8.8.1). If the Franchisee does not provide Broadband Services to Customer(s) within the municipal boundaries of the City, then the Franchisee shall pay the City annually (19¢) per linear foot for the use of the City's Public ROW once the fiber is lit and carrying traffic commercially. All amounts paid shall be subject to audit and recomputation by City and acceptance of any payment shall not be construed as an accord that the amount paid is in fact the correct amount. In the event the City should conduct a review of Franchisee's books and records and such review indicates a Use Fee underpayment of five percent (5%) or more during the entire period reviewed, the Franchisee shall assume all reasonable documented costs of such audit, and pay same upon demand by the City. All documents pertaining to financial matters, which may be the subject of an audit by the City, shall be retained by the Franchisee for a minimum period of six (6) years.

3. **Municipality's Obligations.**

- 3.1 Emergency Removal or Relocation by Municipality. In the event of a public emergency that creates an imminent threat to the health, safety, or property of Municipality or its residents, Municipality may remove or relocate the applicable portions of the Network Facilities without prior notice to Franchisee. Municipality will, however, make best efforts to provide prior notice to Franchisee before making an emergency removal or relocation. In any event, Municipality will promptly provide to Franchisee a written description of any emergency removals or relocations of Franchisee's Network Facilities. Franchisee will reimburse Municipality for its actual, reasonable, and documented costs or expenses incurred for any such work performed by Municipality, the direct cause of which was Franchisee's construction, installation, operation, maintenance, repair, or removal of its Network Facilities.
- 3.2 Relocation to Accommodate Governmental Purposes. If Franchisee's then- existing Network Facilities would interfere with Municipality's planned use of the Public ROW or other Municipality property for a legitimate noncommercial governmental purpose, such as the construction, installation, repair, maintenance, or operation of a new water, sewer, or storm drain line, or a public road, curb, gutter, sidewalk, park, or recreational facility, or in the event the affected Public ROW is lawfully vacated, eliminated, discontinued, or closed by the Municipality, Franchisee will, upon written notice from Municipality, relocate its Network Facilities at Franchisee's own expense to such other location or locations in the Public ROW as may be mutually agreed by the parties, taking into account the needs of the Municipality's governmental purpose and Franchisee's interest in maintaining the integrity and stability of its Network. Franchisee will relocate its Network Facilities within a commercially reasonable period of time agreed to by the parties, taking into account the urgency of the need for relocation, the difficulty of the relocation, and other relevant facts and circumstances, except that Municipality may not require Franchisee to relocate or remove its Network Facilities with less than one hundred eighty (180) days' notice. Upon the failure of Franchisee to relocate any Network Facilities within a reasonable period of time in accordance with this subsection, Municipality may effect such relocation, and Franchisee shall promptly reimburse Municipality for all actual, reasonable, and documented costs and expenses incurred by Municipality in connection with such relocation.
- 3.3 Relocation to Accommodate Non-Governmental Purposes. If Franchisee's then-existing Network Facilities would interfere with (a) Municipality's planned use of the Public ROW for a non-governmental (e.g., commercial) purpose, or (b) a third-party's use of the Public ROW, Franchisee will not be required to relocate its Network Facilities.
- 3.4 Non-Discrimination. Any agreements between Municipality and Franchisee that provide Franchisee access to public infrastructure, poles, conduits, assets, and

Public ROW will be available to other network operators that offer broadband Internet access services, on rates, terms, and conditions that are as favorable as those Municipality provides Franchisee for the same access.

4. Contractors and Subcontractors.

- 4.1 Use of Contractors and Subcontractors. Franchisee may retain contractors and subcontractors to perform the Work on Franchisee's behalf.
- 4.2 Contractors to be Licensed. Franchisee's contractors and subcontractors used for the Work will be properly licensed under applicable law, regulations and ordinances.
- 4.3 Authorized Individuals. Franchisee's contractors and subcontractors may submit individual permit applications to Municipality on Franchisee's behalf, so long as the permit applications are signed by individuals that Franchisee has authorized to act on its behalf via a letter of authorization provided to Municipality in the form attached as **Exhibit A ("Authorized Individuals")**. Municipality will accept for review permit applications under this Agreement submitted and signed by Authorized Individuals, and will treat those applications as if they had been submitted by Franchisee under this Agreement.

5. Defense and Indemnity.

- 5.1 Indemnification. Franchisee shall indemnify, defend, and hold harmless Municipality, and governmental subdivisions thereof, and its respective council members, officers, boards, commissions, attorneys, agents, and employees (hereinafter referred to as "Indemnitees"), from and against any and all liability, obligation, damages, penalties, claims, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys) arising from any third-party claim of personal injury or property damage that may be imposed upon, incurred by or be asserted against the Indemnitees by reason of any negligent act or omission of Franchisee, its personnel, employees, agents, contractors, subcontractors or affiliates, which may arise out of (i) the construction, installation, operation, maintenance or condition of the Network Facilities, or (ii) the Franchisee's failure to comply with any applicable Federal, State or local statute, ordinance or regulation ("**Third Party Legal Proceeding**"). Franchisee's indemnification obligation shall not extend to liability to the extent caused by the negligence or willful misconduct by any Indemnitee or any other third party (to the extent such third parties are not Franchisee personnel, employees, agents, contractors, subcontractors or affiliates as described above in this Section 5.1).
- 5.2 Assumption of Risk. Franchisee undertakes and assumes for its officers, agents, contractors and subcontractors and employees, all risk of dangerous conditions, if any, on or about any Municipality-owned or controlled property, including Public ROWs.

- 5.3 Defense of indemnitees. In the event any Third Party Legal Proceeding shall be brought against the Indemnitees upon written notice from Municipality in accordance with Section 5.4 hereof, Franchisee shall, at Franchisee's sole cost and expense, assume sole control of the indemnified portion of the Third Party Legal Proceeding, subject to the following: (i) Municipality may appoint its own non-controlling counsel, at its own expense; and (ii) any settlement requiring Municipality to admit liability, pay money, or take (or refrain from taking) any action, will require Municipality's prior written consent, not to be unreasonably withheld, conditioned, or delayed.
- 5.4 Notice, Cooperation and Expenses. Municipality must give Franchisee written notice of any Third-Party Legal Proceeding not later than twenty (20) days after Municipality becomes aware of the Third-Party Legal Proceeding. Municipality shall reasonably cooperate with Franchisee in the defense of the Third-Party Legal Proceeding and nothing herein shall be construed to prevent Municipality from appointing its own noncontrolling counsel at Municipality's sole cost and expense.
6. **ROW Bond.** Within thirty (30) days of the Effective Date, Franchisee shall provide Municipality with, and shall maintain, a ROW Bond from a surety company in the amount of One Hundred Thousand Dollars (\$100,000) and in a form reasonably acceptable to Municipality, as security for the faithful performance by Franchisee of the provisions of this Agreement.
- 6.1 The rights provided Municipality by this Section and its bond are in addition to all other rights of Municipality whether reserved by this Agreement or authorized by law, and no action, proceeding or exercise of a right with respect to such bond or guarantee shall affect any other rights Municipality may have, except that Municipality shall not be entitled to multiple remedies for the same violation.
7. **Insurance.**
- 7.1 Franchisee will carry and maintain:
- 7.1.1 Commercial General Liability (CGL) insurance, with policy limits not less than \$2,000,000 in aggregate and \$2,000,000 for each occurrence covering bodily injury and property damage with the following features: (a) CGL primary insurance endorsement; and (b) CGL policy will include an endorsement which names Municipality, its employees, and officers as additional insureds.
- 7.1.2 Workers' Compensation insurance with policy limits not less than the Municipality's requirements.
- 7.2 All insurance certificates, endorsements, coverage verifications and other items required pursuant to this Agreement will be provided to the City Clerk with Franchisee's acceptance of this Franchise. Franchisee shall annually provide Municipality with a certificate of insurance evidencing such coverage. Failure to

obtain and maintain any insurance policy required by this Section shall be deemed a material breach of this Agreement and shall be grounds for termination of this Agreement and the Franchise.

- 7.3 **Contractors.** Franchisee's contractors and subcontractors working in the Public ROW shall carry in full force and effect commercial general liability, automobile liability and workers' compensation and employer's liability insurance commensurate with the scope of their work. In the alternative, Franchisee, at its expense, may provide such coverages for any or all its contractors or subcontractors (such as by adding them to Franchisee policies). Franchisee's contractors and subcontractors shall provide Municipality with certificates of insurance evidencing such coverage when applying for permits to work in the Public ROW.
- 7.4 **Insurance Primary.** Franchisee's insurance coverage shall be primary insurance with respect to Municipality, its officers, agents, employees, elected and appointed officials, departments, boards, and commissions (collectively "them"), but only for actions of Franchisee and for whom Franchisee is responsible. Any insurance or self-insurance maintained by any of them shall be in excess of Franchisee's insurance and shall not contribute to it (where "insurance or self-insurance maintained by any of them" includes any contract or agreement providing any type of indemnification or defense obligation provided to, or for the benefit of them, from any source, and includes any self-insurance program or policy, or self-insured retention or deductible by, for or on behalf of them).
8. **Term.** This Agreement is effective on the later of (a) the date the last party to sign executes this Agreement and (b) the date on which any implementing ordinance becomes effective in accordance with its terms and State law ("**Effective Date**"). This Agreement will expire automatically on the tenth (10th) anniversary of the Effective Date ("**Original Term**"), unless earlier terminated in accordance with the provisions herein.
9. **Termination.**
- 9.1 **Termination by Municipality.** Municipality may terminate this Agreement if Franchisee is in material breach of the Agreement, provided that Municipality must first provide Franchisee written notice of the breach and not less than one hundred eighty (180) days to cure, unless the cure cannot be reasonably accomplished in that time period, in which case the Municipality may in its discretion grant Franchisee additional time upon the request of Franchisee, provided that Franchisee must commence its efforts to cure within that time period and the cure period will continue as long as such diligent efforts continue, provided further if such period is anticipated to, or does, extend more than one hundred eighty (180) days, it shall be in the sole discretion of the Municipality whether to grant such cure extension beyond one hundred eighty (180) days. No termination under this subsection will be effective until the relevant cure period has expired.

9.2 Termination by Franchisee. Franchisee may terminate this Agreement for convenience upon one hundred eighty (180) days' written notice to Municipality. Franchisee may not abandon its Network or any portion thereof without compensating City for damages resulting from the abandonment, including all costs incident to removal of the Fiber Optic Infrastructure Network.

10. **Assignment.** Except as set forth below, neither party may assign or transfer its rights or obligations under this Agreement, in whole or part, to a third party, without the written consent of the other party. Any agreed upon assignee will take the place of the assigning party, and the assigning party will be released from all of its rights and obligations upon such assignment.

10.1 Following any assignment of this Agreement to an Affiliate, Franchisee will remain responsible for such Affiliate's performance under the terms of this Agreement. For purposes of this Section, (a) "Affiliate" means any Person that now or in the future, directly or indirectly controls, is controlled with or by, or is under common control with Franchisee; and (b) "control" means, with respect to: (i) a U.S. corporation, the ownership, directly or indirectly, of fifty percent (50%) or more of the voting power to elect directors thereof, or (ii) a non-U.S. corporation, if the voting power to elect directors thereof is less than fifty percent (50%), the maximum amount allowed by applicable law; and (iii) any other Person, fifty percent (50%) or more ownership interest in said Person, or the power to direct the management of such Person.

11. **Notice.** Every notice or response required by this Agreement to be served upon the City or the Franchisee shall be in writing and shall be deemed to have been duly given to the required party three (3) business days after having been posted in a properly sealed and correctly addressed envelope when hand delivered or sent by certified or registered mail, postage prepaid as follows:

The notices or responses to the City shall be addressed as follows:

City of Muscle Shoals, Alabama
ATTN: MAYOR
2010 E. Avalon Avenue
Muscle Shoals, Alabama 35661

The notices or responses to the Franchisee shall be addressed as follows:

Fiber Utility Network, Inc. d/b/a Alabama Fiber Network
103 Jesse Samuel Hunt Blvd.
Suite 203
Prattville, Alabama 36066
Attn: President

The City and the Franchisee may designate such other address or addresses from time to time by giving written notice to the other party as set forth in this section.

12. General Provisions

- 12.1 Franchise Records. Franchisee shall prepare and maintain any records or reports that are required of it by federal, State, or local law. Municipality shall have the right to obtain, in the format kept by Franchisee in the ordinary course of business, copies of such records and reports as appropriate and reasonably necessary to determine whether Franchisee is in compliance with this Agreement. Franchisee reserves the right to object to any request made under this Section as unnecessary, unreasonable, or inappropriate under the circumstances and to seek appropriate confidentiality protections for any information to be produced to Municipality.
- 12.2 Entire Franchise. This Agreement, including the Exhibits attached hereto, contains the entire agreement between the parties and all prior franchises, negotiations and agreements relating to the Network Facilities or provision of Broadband Services are merged herein and hereby superseded.
- 12.3 Conferences. As may be mutually agreed upon between the parties from time to time, the parties hereby agree to meet at reasonable times on reasonable notice to discuss any aspect of this Agreement, the provision of Broadband Services or the Network Facilities during the Term hereof.
- 12.4 Governing Law. This Agreement shall be deemed to have been made and shall be construed and interpreted in accordance with the law of the State of Alabama. Each party to this Agreement hereby irrevocably agrees that any legal action or proceeding arising out of or related to this Agreement or any of the agreements or transactions contemplated hereby shall be brought to the Circuit Court of Colbert County, Alabama and hereby expressly submits to the personal jurisdiction and venue of such courts for the purposes thereof and expressly waives any claim of improper venue and any claim that such courts are an inconvenient forum.
- 12.5 Waiver of Compliance. No failure by either party to insist upon the strict performance of any covenant, agreement, term or condition of this Agreement, or to exercise any right, term or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or such covenant, agreement, term or condition. No waiver of any breach shall affect or alter this Agreement, but each and every covenant, agreement, term, or condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof. Municipality may waive any obligation of Franchisee under this Agreement, in whole or in part, at any time, but such waiver must be in writing, and signed by the Municipality's Mayor or their designee.
- 12.6 Independent Contractor Relationship. The relationship of Franchisee to Municipality is and shall continue to be an independent contractual relationship,

and no liability or benefits, such as worker's compensation, pension rights or liabilities, insurance rights or liabilities or other provisions or liabilities, arising out of or related to a contract for hire or employer/employee relationship, shall arise or accrue to either party or either party's agents or employees as a result of the performance of this Agreement, unless expressly stated in this Agreement.

- 12.7 Severability. If any section, paragraph, or provision of this Agreement shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph, or provision shall not affect any of the remaining provisions of this Agreement.
- 12.8 Captions. All captions are for convenience of use and have no substantive effect.
- 12.9 Franchise Accepted. Franchisee further acknowledges by execution and delivery of this Agreement that it has carefully read the terms and conditions of this Agreement and the Ordinance and accepts the obligations imposed hereby and thereby regardless of whether such obligations are contained in this Agreement or the Ordinance, or both.
- 12.10 Binding Agreement. Subject to Section 2.3, the parties agree that this Agreement complies with State and Federal law as of the Effective Date and agree to be bound by the provisions hereof during the full term hereof, except that the parties also agree to recognize and be bound by any change in any State or Federal law, even if such law materially affects the terms of this Agreement.
- 12.11 Other Covenants. Franchisee for itself and its Affiliates covenants that Franchisee and its Affiliates shall not bring or support, directly or indirectly, any suit, claim, or proceeding (judicial or administrative) challenging any term of this Agreement or contending that Municipality or Franchisee did not have the authority to impose or agree to such terms.
- 12.12 Reserved Rights. Municipality reserves all rights and powers under (i) its police powers and (ii) powers conferred by Federal, State, or local law of which Municipality may not legally and contractually divest itself. In particular, Municipality reserves the right to alter, amend or repeal its municipal code as it determines shall be conducive to the health, safety and welfare of the public, or otherwise in the public interest; provided that any such alteration, amendment or repeal shall be applicable to all similarly situated franchisees of the Municipality, in such a manner and to such an extent so as not to place Franchisee at a material competitive disadvantage. In the event the municipal code or other applicable local law is amended in a manner that would materially alter Franchisee's rights and obligations under this Agreement, the Municipality will provide Franchisee with reasonable advance notice of such pending amendment and, upon written request of Franchisee, negotiate in good faith to modify this Agreement to ameliorate any adverse effects such amended municipal code provisions would have on Franchisee's performance under this Agreement. Municipality agrees that by

accepting this Agreement, Franchisee has not waived its right to object to the application to it of actions by Municipality pursuant to its reserved rights or police powers.

- 12.13 City Representative. The Mayor or designee as provided in writing by the Mayor to the Franchisee (the "City Representative"), shall be Municipality's representative for all purposes of this Agreement. Except where City Council action is required by this Agreement or by law, all decisions, judgments, approvals, requests, notices or other actions of Municipality required or permitted under this Agreement shall be made, obtained, issued or delivered or otherwise effected on behalf of Municipality by the Mayor, or his or her designee.
- 12.14 Authority. Franchisee represents, covenants and warrants to Municipality as of the Effective Date that: (a) Franchisee is duly constituted, in good standing and qualified to do business in the State of Alabama, (b) Franchisee will file when due all forms, reports, fees and other documents necessary to comply with applicable laws, and (c) the signatories signing on behalf of Franchisee have the requisite authority to bind Franchisee pursuant to Franchisee's organizational documents.
- 12.15 Publication. This Franchise shall be published in accordance with applicable local and state law and Grantee, shall pay the reasonable cost of any required publication of this Franchise.
- 12.16 Acceptance. Franchisee's acceptance of this Agreement shall be in writing in a form approved by the City attorney and shall be accompanied by delivery of a check, approved by the City, in the amount of Two Thousand Dollars (\$2,000.00) made payable to the City of Muscle Shoals, Alabama and shall serve to recover expenses incurred by the City in the granting of this Franchise. Said expenses shall include attorney's fees and consulting expenses incurred by the City.

Signed by authorized representatives of the parties on the dates written below.

CITY OF MUSCLE SHOALS, ALABAMA FIBER UTILITY NETWORK, INC.

BY:

BY:

Mike Lockhart

Terry Metze

Title: Mayor

Title: Chief Executive Officer

ATTEST:

City Clerk

EXHIBIT A
FORM OF LETTER OF AUTHORIZATION

Alabama Fiber Network.
340 Technacenter Drive
Montgomery, Alabama 36117

City of Muscle Shoals
Attn: Building Official
2010 E. Avalon Avenue
Muscle Shoals, AL 35661

Dear Mr. Jones:

In accordance with Section 4.3 of the Broadband Services Franchise Agreement dated [REDACTED] between City of Muscle Shoals, Alabama and Alabama Fiber Network, hereby designates the following Authorized Individuals (as that term is defined in the Agreement), who may submit and sign permit applications on behalf of the Franchisee.

1. Name, Title
2. Name, Title
3. Name, Title
4. Name, Title

This authorization may be withdrawn or amended and superseded by a written amendment to this Letter of Authorization, which will be effective 24 hours after receipt by the Municipality.

Kind regards,

Terry Metze., CEO
Alabama Fiber Network

ORDINANCE NO. _____

AN ORDINANCE GRANTING A NON-EXCLUSIVE FRANCHISE TO JOE WHEELER ELECTRIC MEMBERSHIP CORPORATION AND ITS WHOLLY OWNED SUBSIDIARY, JWEMC COMMUNICATIONS, LLC, D/B/A FLASH FIBER, FOR THE PURPOSE OF CONSTRUCTING AND MAINTAINING A FIBER-OPTIC TRANSMISSION LINE WITHIN CERTAIN PUBLIC RIGHTS-OF-WAY WITHIN THE CITY OF MUSCLE SHOALS, ALABAMA

WHEREAS, the City of Muscle Shoals, Alabama (“Municipality” or “City”) has jurisdiction over the use of public rights-of-way in the City in which it now or hereafter holds any property interest, including, but not limited to public streets, roadways, highways, bridges, land paths, boulevards, avenues, lanes, alleys, sidewalks, circles, drives, public easements, public utility easements, dedicated utility strips, and rights-of-way dedicated for compatible uses now or hereafter held by City (but excluding City parks or recreation areas)(“**Public ROW**”); and

WHEREAS, Joe Wheeler Electric Membership Corporation and its wholly owned subsidiary, JWEMC Communications, LLC, d/b/a Flash Fiber (hereinafter referred to collectively as the (“the Franchisee”) desires to construct install, maintain, operate, and control a fiber optic infrastructure network in Public ROW (“**Network**”) for the purpose of offering communications services (“**Services**”), including broadband Internet access service as defined in 47 C.F.R. § 8.1(b) (“**Broadband Internet Services**”) and Voice over Internet Protocol services, but excluding multichannel video programming services over a cable system that would be subject to a cable franchise to residents and businesses in the City (“**Customers**”); and

WHEREAS, the Franchisee has requested a franchise from the City in order to construct and maintain a fiber-optic infrastructure network within the corporate limits of the City; and

WHEREAS, the City Council wishes to accommodate the Franchisee’s request and grant a franchise to allow Franchisee to construct and maintain a fiber-optic infrastructure network in accordance with the terms and conditions contained herein.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MUSCLE SHOALS, ALABAMA, AS FOLLOWS:

DEFINED TERMS

- A. “Broadband Services” means the transmission of information using optical fiber.
- B. “City” means the City of Muscle Shoals, Alabama.
- C. “Code” means the City of Muscle Shoals, Alabama Municipal Code of Ordinances, as may from time to time be amended.

- D. “Franchisee” means Joe Wheeler Electric Membership Corporation and its wholly owned subsidiary, JWEMC Communications, LLC, d/b/a Flash Fiber or successors in interest, in accordance with the provisions of this franchise.
- E. “Governing Body” or “City Council” means the City Council of the City of Muscle Shoals, Alabama.
- F. “Gross Revenues” means all local revenue, in whatever form and from all sources, determined in accordance with generally accepted accounting principles that is received or accrued by Franchisee from Franchisee’s provision of Broadband services within the City with a deduction for Franchisee’s uncollectible accounts, but without deduction for operating expenses, accruals, or any other expenditure. Notwithstanding the foregoing, Gross Revenue shall not include any taxes on Broadband services furnished by Franchisee that are imposed by any City, state, or other governmental unit and collected by Franchisee for such governmental unit.
- G. “Network Facilities” means equipment and facilities that may include fiber optic cables, lines, wires, or strands; conduits, vaults, access manholes and handholes; electronic equipment; power generators; batteries; pedestals; boxes; cabinets; vaults; and other similar facilities
- H. “Person” means any natural or corporate person, business association or other business entity including, but not limited to, a partnership, sole proprietorship, political subdivision, public or private agency of any kind, utility, successor or assign of any of the foregoing, or any other legal entity.
- I. “Use Fee” means the fee paid by the Franchisee to the City for locating, maintaining and operating Network Facilities in the Rights-of-Way.

AGREEMENT

In consideration of the mutual promises made below, the City and Franchisee agree as follows:

1. Permission to Use and Occupy.

1.1 Permission to Use and Occupy Public ROW. Municipality grants Franchisee permission to use and occupy the Public ROW (the “**License**”) for the purpose of constructing, installing, repairing, maintaining, operating, and if necessary, removing the Network and the related Network Facilities (the “**Work**”). This Agreement and the License do not authorize Franchisee to use any property other than the Public ROW as agreed herein. Franchisee’s use of any other Municipality property, including poles and conduits, will be, subject to mutual agreement, governed under a separate written agreement regarding that use.

1.2 Subject to State of Alabama and Local Law. This Agreement and the License are subject to Municipality’s valid authority under the State of Alabama (at times, herein “**State**”) and local laws as they exist now or may be amended from time-to-time, and subject to the conditions set forth in this Agreement.

1.3 Subject to Municipality's Right to Use Public ROW. This Agreement and the License are subject and subordinate to Municipality's prior and continuing right to use the Public ROW, including constructing, installing, operating, maintaining, repairing, or removing sewers, water pipes, storm drains, gas pipes, utility poles, overhead and underground electric lines and related facilities, and other public utility and municipal uses.

1.4 Subject to Pre-Existing Property Interests. Municipality's grant of the License is subject to all valid pre-existing easements, restrictions, conditions, covenants, encumbrances, claims of title or other property interests that may affect the Public ROW. Franchisee will obtain at its own cost and expense any permission or rights as may be necessary to accommodate such pre-existing property interests.

1.5 No Grant of Property Interest. The License does not grant or convey any property interest.

1.6 Non-Exclusive. The rights granted to Franchisee pursuant to this Agreement are non-exclusive. Municipality expressly reserves the right to grant licenses, permits, franchises, privileges or other rights to any other individual, corporation, partnership, limited liability company, trust, joint stock company, business trust, unincorporated association, joint venture, governmental authority or other entity of any nature whatsoever ("Person"), as well as the right in its own name as a municipality, to use the Public ROW for similar or different purposes allowed Franchisee under this Agreement. This Agreement does not establish any priority for the use of the Public ROW by Franchisee or by any present or future franchisees or other permit holders. In the event of any dispute as to the priority of use of the Public ROW the first priority shall be to the public generally, the second priority to Municipality in the performance of its various functions, and thereafter, as between Franchisee and other franchisees and permit holders, as determined by Municipality in the exercise of its reasonable powers, including the police power and other powers reserved to and conferred on it by the State of Alabama consistent with the rights granted to Franchisee pursuant to this Agreement.

1.7 Backup Power. Franchisee shall not use a permanent or semi-permanent internal combustion engine (such as a gasoline or natural gas-powered electric generator) to provide backup power at any point or points on the Network Facilities without Municipality's prior written approval. Such approval may be granted subject to conditions, such as relating to testing times (e.g., not in the middle of the night), screening, noise levels, and temperature and safe discharge of hot exhaust gasses. Municipality hereby grants Franchisee approval to use backup power generating devices, including devices with permanent or semi-permanent internal combustion engines, at its network hut sites and inside buildings or on land owned by Franchisee subject to the specific conditions provided for in the network hut leases entered into between Franchisee and Municipality for the use of land owned by Municipality, and any applicable building code requirements.

1.8 Limitation on Use Rights. Nothing in this Agreement shall be construed as requiring Franchisee to alter the manner in which Franchisee attaches equipment to the poles, if any poles are allowed by Municipality, or alter the manner in which it operates and maintains its equipment.

2. **Franchisee's Obligations.**

2.1 **Individual Permits Required.** Franchisee will obtain Municipality's approval of required individual encroachment, construction, repair and maintenance of the Network Facilities and other necessary permits before placing its Network Facilities in the Public ROW or other property of Municipality as authorized. Franchisee will pay all lawful permit, processing, field marking, engineering, and inspection fees associated with the issuance of individual permits by Municipality.

2.2 **Franchisee's Sole Cost and Expense.** Franchisee will perform the Work at its sole cost and expense.

2.3 **Compliance with Laws.** Franchisee will comply with all applicable federal, state and local laws, regulations and ordinances when performing the Work. Franchisee shall comply in all respects with all applicable codes. Franchisee will place its Network Facilities in conformance with the required permits, plans, and drawings approved by Municipality.

2.4 **Reasonable Care.** Franchisee will exercise reasonable care when performing the Work and will use commonly accepted practices and equipment to minimize the risks of personal injury, property damage, soil erosion, and pollution of surface or groundwater.

2.5 **No Nuisance.** Franchisee will maintain its Network Facilities in good and safe condition so that its Network Facilities do not cause a public nuisance.

2.6 **No Burden on Public ROW; Minimum Interference.** Franchisee shall not erect, install, construct, repair, replace or maintain the Network Facilities in such a fashion as to unduly burden the present or future use of the Public ROW. The Network Facilities shall be erected and maintained by Franchisee so as to cause the minimum interference with the use of the Public ROW and with the rights or reasonable convenience of property owners who adjoin any of the Public ROW. The location of Network Facilities within, on, over, under, across or through the Public ROW shall, in all cases, be subject to prior Municipality approval through the applicable permitting process.

2.7 **Limitation on Franchise Rights.** Except as may otherwise be agreed upon in writing by Municipality and Franchisee, the rights granted to Franchisee herein do not include the right to (i) excavate in, occupy or use any Municipality park, recreational areas or other Municipality property other than the Public ROW, or (ii) attach or locate any Network Facilities to or on, or otherwise utilize any of, any Municipality-owned property or facilities or structures other than Public ROW, including without limitation light poles, towers, buildings and trees. The use of such Municipality-owned property or facilities by Franchisee shall be considered by Municipality on a case-by-case basis and may be subject to payment of additional compensation to Municipality. Similarly, the rights granted herein by Municipality to Franchisee do not include the right to situate any Network Facilities on poles or other property owned by entities other than Municipality and situated in the Public ROW. It shall be the responsibility of Franchisee to negotiate any pole-attachment agreements or similar agreements with the owners of such poles or facilities, and to pay to such owners any required compensation.

2.8 Preconstruction Meetings. Franchisee shall attend all reasonably necessary preconstruction meetings as mutually agreed with Municipality.

2.9 Restoration of Property. Franchisee shall restore and replace at its sole cost and expense, in a manner reasonably approved by Municipality, any public or private property, real or personal, or portion of the Public ROW, that is disturbed, damaged or injured by the construction, operation, maintenance or removal of the Network Facilities to at least as good condition as that which existed prior to the disturbance if such damage is directly caused by Franchisee's Work and no other Person (other than Franchisee's personnel, employees, agents, contractors, subcontractors or Affiliates) is responsible for the damage (e.g., where a Person other than Franchisee fails to accurately or timely locate its underground facilities as required by applicable law). Franchisee's obligation in this subsection shall be limited by, and consistent with, any applicable seasonal or other restrictions on construction or restoration work. Franchisee's restoration work shall start promptly but not more than sixty (60) days from Franchisee being notified of the problem in question. Upon the failure of Franchisee to effect such repair or restoration, Municipality may effect the same, and Franchisee shall promptly reimburse Municipality for Municipality's actual, reasonable, and documented costs in connection with such repair or restoration.

2.10 Emergency Notification. Franchisee shall provide Municipality throughout the Term of the Franchise with a twenty-four (24) hour emergency telephone number at which a representative of Franchisee (not voicemail or a recording) can be accessed in the event of an Emergency.

2.11 Duty to Underground. It is the policy of Municipality to have lines and cables placed underground to the greatest extent reasonably practicable, as determined by the Municipality. In furtherance of this policy, Franchisee agrees that it shall place its constructed lines and cables underground to the extent reasonably practicable, as determined by the Municipality, provided however the Franchisee's network hut sites may be above ground.

2.12 Discontinuance and Removal of the Network Facilities. Upon the revocation, termination, or expiration of this Agreement, unless an extension is granted by Municipality in its discretion, Franchisee shall discontinue the provision of Services and all rights of Franchisee to use the Public ROW for the provision of Services shall cease. Franchisee, at the direction of Municipality, shall remove any portion of the Network Facilities and restore such Public ROW and other affected property in accordance with Section 2.9 hereof within the Public ROW. Alternatively, if mutually agreed by Franchisee and Municipality, such Network Facilities may be abandoned in place or transferred to Municipality. This Section 2.12 shall not apply to facilities constructed and owned by the Franchisee or an Affiliate of Franchisee, where such facilities are used by Franchisee or such Affiliate to lawfully provide other services. No surety on any performance bond nor any letter of credit shall be discharged until Municipality has certified to Franchisee in writing that the Network Facilities has been dismantled, removed, and all other property restored, to the satisfaction of Municipality.

2.13 Tree Trimming. Franchisee may trim trees upon and overhanging the Public ROW so as to prevent the branches of such trees from coming into contact with the Network Facilities. Franchisee shall minimize the trimming of trees to trimming only those trees that are essential to maintain the integrity of the Network Facilities. Except in emergencies, (i) all trimming of trees in the Public ROW or on Municipal property shall have the prior approval of Municipality and shall be done under the direction of the Municipality's horticulturist, or in the event that office is vacant, the Municipality's Public Works director, and (ii) all trimming of trees on private property shall require the consent of the property owner. All trimming shall be done at the expense of Franchisee.

2.14 Location of Facilities. Franchisee shall keep accurate, complete, and current maps and records of the Network Facilities and all Franchisee facilities and, subject to applicable confidentiality provisions, shall make available electronic copies of such maps and records to Municipality, as set forth below.

2.14.1 Franchisee shall furnish "as-built" maps and records to Municipality in electronic, ESRI-compatible format (or in another mapping format mutually agreed to by the Parties). Franchisee shall provide Municipality copies of any new or revised "as-built" or comparable drawings as and if they are generated for portions of the Network Facilities located within Municipality and will provide them to Municipality upon reasonable request and on a mutually-agreed timetable (e.g., piecemeal following the closure of each permit, or all at once after all the Work is complete), subject to applicable confidentiality protections. Upon request by Municipality in an emergency, Franchisee, as soon as reasonably practicable, shall inform Municipality of any changes from such maps and records previously supplied and shall mark up any maps provided by Municipality so as to show the location of the Network Facilities.

2.14.2 The "as built" maps shall include at a minimum all Network Facilities located in a given segment, and facility routings and shall be drawn to scale.

2.14.3 Municipality agrees that Franchisee may provide route maps rather than the as-built maps specified above. "Route maps" means "as-built" maps with only the following information removed: information on the number of lines, whether the lines are copper or fiber and the nature of any electronics. Concrete pads for pedestals and enclosures for equipment or pedestals shall be shown on Route maps.

2.15 Utility Notification Program. Franchisee shall comply with applicable state and local utility location and notification laws.

2.16 Inspection by Municipality. Network Facilities shall be subject to inspection by Municipality to the extent reasonably requested by Municipality and reasonably necessary to assure compliance by Franchisee with the terms of this Agreement. Municipality shall inspect Network Facilities at reasonable, mutually agreed upon times and upon reasonable notice to Franchisee; provided, however, the inspection shall not interrupt or interfere with any services provided by Franchisee.

2.17 Franchise Fee. As consideration for the use of the City's Public ROW as set forth in this Agreement, the Franchisee shall pay the City a Use Fee of five percent (5%) of its Gross Revenues collected by the Franchisee during each calendar year of operation under this agreement based on unaudited financials. The Franchisee will pay the Use Fee collected from its Customers for the Broadband Services annually, within forty-five (45) days of the close of Franchisee's fiscal year, which ends June 30. Each Use Fee payment shall be accompanied by a certified report from a representative of the Franchisee, which shows the basis for the computation of all recurring monthly Broadband Service charges from the provision of Broadband Services to Persons located within the City limits during the Franchisee's fiscal year for which such payment is made. In the event that the Use Fee payment is not actually received by the City on or before the applicable due date set forth in this section or is underpaid, Franchisee shall pay in addition to the Use Fee payment, or sum due, interest from the due date at the state legal interest rate of 8% annually (Alabama Code § 8.8.1). If the Franchisee does not provide Broadband Services to any Customer(s) or to any location within the municipal boundaries of the City, then the Franchisee shall pay the City annually (19¢) per linear foot for the use of the City's Public ROW once the fiber is lit and carrying traffic commercially. All amounts paid shall be subject to audit and recomputation by City and acceptance of any payment shall not be construed as an accord that the amount paid is in fact the correct amount. In the event the City should conduct a review of Franchisee's books and records and such review indicates a Use Fee underpayment of five percent (5%) or more during the entire period reviewed, the Franchisee shall assume all reasonable documented costs of such audit, and pay same upon demand by the City. All documents pertaining to financial matters, which may be the subject of an audit by the City, shall be retained by the Franchisee for a minimum period of six (6) years.

3. **Municipality's Obligations.**

3.1 Emergency Removal or Relocation by Municipality. In the event of a public emergency that creates an imminent threat to the health, safety, or property of Municipality or its residents, Municipality may remove or relocate the applicable portions of the Network Facilities without prior notice to Franchisee. Municipality will, however, make best efforts to provide prior notice to Franchisee before making an emergency removal or relocation. In any event, Municipality will promptly provide to Franchisee a written description of any emergency removals or relocations of Franchisee's Network Facilities. Franchisee will reimburse Municipality for its actual, reasonable, and documented costs or expenses incurred for any such work performed by Municipality, the direct cause of which was Franchisee's construction, installation, operation, maintenance, repair, or removal of its Network Facilities.

3.2 Relocation to Accommodate Governmental Purposes. If Franchisee's then-existing Network Facilities would interfere with Municipality's planned use of the Public ROW or other Municipality property for a legitimate noncommercial governmental purpose, such as the construction, installation, repair, maintenance, or operation of a new water, sewer, or storm drain line, or a public road, curb, gutter, sidewalk, park, or recreational facility, or in the event the affected Public ROW is lawfully vacated, eliminated, discontinued, or closed by the Municipality, Franchisee will, upon written notice from Municipality,

relocate its Network Facilities at Franchisee's own expense to such other location or locations in the Public ROW as may be mutually agreed by the parties, taking into account the needs of the Municipality's governmental purpose and Franchisee's interest in maintaining the integrity and stability of its Network. Franchisee will relocate its Network Facilities within a commercially reasonable period of time agreed to by the parties, taking into account the urgency of the need for relocation, the difficulty of the relocation, and other relevant facts and circumstances, except that Municipality may not require Franchisee to relocate or remove its Network Facilities with less than one hundred eighty (180) days' notice. Upon the failure of Franchisee to relocate any Network Facilities within a reasonable period of time in accordance with this subsection, Municipality may effect such relocation, and Franchisee shall promptly reimburse Municipality for all actual, reasonable, and documented costs and expenses incurred by Municipality in connection with such relocation.

3.3 Relocation to Accommodate Non-Governmental Purposes. If Franchisee's then-existing Network Facilities would interfere with (a) Municipality's planned use of the Public ROW for a non-governmental (e.g., commercial) purpose, or (b) a third-party's use of the Public ROW, Franchisee will not be required to relocate its Network Facilities.

3.4 Non-Discrimination. Any agreements between Municipality and Franchisee that provide Franchisee access to public infrastructure, poles, conduits, assets, and Public ROW will be available to other network operators that offer broadband Internet access services, on rates, terms, and conditions that are as favorable as those Municipality provides Franchisee for the same access.

4. Contractors and Subcontractors.

4.1 Use of Contractors and Subcontractors. Franchisee may retain contractors and subcontractors to perform the Work on Franchisee's behalf.

4.2 Contractors to be Licensed. Franchisee's contractors and subcontractors used for the Work will be properly licensed under applicable law, regulations and ordinances.

4.3 Authorized Individuals. Franchisee's contractors and subcontractors may submit individual permit applications to Municipality on Franchisee's behalf, so long as the permit applications are signed by individuals that Franchisee has authorized to act on its behalf via a letter of authorization provided to Municipality in the form attached as **Exhibit A** ("**Authorized Individuals**"). Municipality will accept for review permit applications under this Agreement submitted and signed by Authorized Individuals, and will treat those applications as if they had been submitted by Franchisee under this Agreement.

5. Defense and Indemnity.

5.1 Indemnification. Franchisee shall indemnify, defend, and hold harmless Municipality, and governmental subdivisions thereof, and its respective council members, officers, boards, commissions, attorneys, agents, and employees (hereinafter referred to as "Indemnitees"), from and against any and all liability, obligation, damages, penalties, claims, costs, charges, losses and expenses (including, without limitation, reasonable fees

and expenses of attorneys) arising from any third-party claim of personal injury or property damage that may be imposed upon, incurred by or be asserted against the Indemnites by reason of any negligent act or omission of Franchisee, its personnel, employees, agents, contractors, subcontractors or affiliates, which may arise out of (i) the construction, installation, operation, maintenance or condition of the Network Facilities, or (ii) the Franchisee's failure to comply with any applicable Federal, State or local statute, ordinance or regulation (“**Third Party Legal Proceeding**”). Franchisee's indemnification obligation shall not extend to liability to the extent caused by the negligence or willful misconduct by any Indemnitee or any other third party (to the extent such third parties are not Franchisee personnel, employees, agents, contractors, subcontractors or affiliates as described above in this Section 5.1).

5.2 Assumption of Risk. Franchisee undertakes and assumes for its officers, agents, contractors and subcontractors and employees, all risk of dangerous conditions, if any, on or about any Municipality-owned or controlled property, including Public ROWs.

5.3 Defense of indemnitees. In the event any Third Party Legal Proceeding shall be brought against the Indemnites upon written notice from Municipality in accordance with Section 5.4 hereof, Franchisee shall, at Franchisee's sole cost and expense, assume sole control of the indemnified portion of the Third Party Legal Proceeding, subject to the following: (i) Municipality may appoint its own non-controlling counsel, at its own expense; and (ii) any settlement requiring Municipality to admit liability, pay money, or take (or refrain from taking) any action, will require Municipality's prior written consent, not to be unreasonably withheld, conditioned, or delayed.

5.4 Notice, Cooperation and Expenses. Municipality must give Franchisee written notice of any Third-Party Legal Proceeding not later than twenty (20) days after Municipality becomes aware of the Third-Party Legal Proceeding. Municipality shall reasonably cooperate with Franchisee in the defense of the Third-Party Legal Proceeding and nothing herein shall be construed to prevent Municipality from appointing its own non-controlling counsel at Municipality's sole cost and expense.

6. **Performance Bond.** Within thirty (30) days of the Effective Date, Franchisee shall provide Municipality with, and shall maintain, a performance bond from a surety company in the amount of Fifty Thousand Dollars (\$50,000) and in a form reasonably acceptable to Municipality, as security for the faithful performance by Franchisee of the provisions of this Agreement.

6.1 The rights provided Municipality by this Section and its bond are in addition to all other rights of Municipality whether reserved by this Agreement or authorized by law, and no action, proceeding or exercise of a right with respect to such bond or guarantee shall affect any other rights Municipality may have, except that Municipality shall not be entitled to multiple remedies for the same violation.

7. **Insurance.**

7.1 Franchisee will carry and maintain:

7.1.1 Commercial General Liability (CGL) insurance, with policy limits not less than \$2,000,000 in aggregate and \$2,000,000 for each occurrence covering bodily injury and property damage with the following features: (a) CGL primary insurance endorsement; and (b) CGL policy will include an endorsement which names Municipality, its employees, and officers as additional insureds.

7.1.2 Workers' Compensation insurance with policy limits not less than the Municipality's requirements.

7.2 All insurance certificates, endorsements, coverage verifications and other items required pursuant to this Agreement will be provided to the City Clerk with Franchisee's acceptance of this Franchise. Franchisee shall annually provide Municipality with a certificate of insurance evidencing such coverage. Failure to obtain and maintain any insurance policy required by this Section shall be deemed a material breach of this Agreement and shall be grounds for termination of this Agreement and the Franchise.

7.3 **Contractors.** Franchisee's contractors and subcontractors working in the Public ROW shall carry in full force and effect commercial general liability, automobile liability and workers' compensation and employer's liability insurance commensurate with the scope of their work. In the alternative, Franchisee, at its expense, may provide such coverages for any or all its contractors or subcontractors (such as by adding them to Franchisee policies). Franchisee's contractors and subcontractors shall provide Municipality with certificates of insurance evidencing such coverage when applying for permits to work in the Public ROW.

7.4 **Insurance Primary.** Franchisee's insurance coverage shall be primary insurance with respect to Municipality, its officers, agents, employees, elected and appointed officials, departments, boards, and commissions (collectively "them"), but only for actions of Franchisee and for whom Franchisee is responsible. Any insurance or self-insurance maintained by any of them shall be in excess of Franchisee's insurance and shall not contribute to it (where "insurance or self-insurance maintained by any of them" includes any contract or agreement providing any type of indemnification or defense obligation provided to, or for the benefit of them, from any source, and includes any self-insurance program or policy, or self-insured retention or deductible by, for or on behalf of them).

8. **Term.** This Agreement is effective on the later of (a) the date the last party to sign executes this Agreement and (b) the date on which any implementing ordinance becomes effective in accordance with its terms and State law ("**Effective Date**"). This Agreement will expire automatically on the tenth (10th) anniversary of the Effective Date ("**Original Term**"), unless earlier terminated in accordance with the provisions herein. At the end of the Original Term of this Franchise, the Franchisee shall have the right to request a renewal of the franchise for an additional term. The Franchisee shall provide written notice of its intent to seek renewal to the City's designated representative no less than six (6) months prior to the expiration of the Original Term. The City and Franchisee shall engage in good faith negotiations to finalize the terms and conditions of a potential renewal agreement.

9. **Termination.**

9.1 Termination by Municipality. Municipality may terminate this Agreement if Franchisee is in material breach of the Agreement, provided that Municipality must first provide Franchisee written notice of the breach and not less than one hundred eighty (180) days to cure, unless the cure cannot be reasonably accomplished in that time period, in which case the Municipality may in its discretion grant Franchisee additional time upon the request of Franchisee, provided that Franchisee must commence its efforts to cure within that time period and the cure period will continue as long as such diligent efforts continue, provided further if such period is anticipated to, or does, extend more than one hundred eighty (180) days, it shall be in the sole discretion of the Municipality whether to grant such cure extension beyond one hundred eighty (180) days. No termination under this subsection will be effective until the relevant cure period has expired.

9.2 Termination by Franchisee. Franchisee may terminate this Agreement for convenience upon one hundred eighty (180) days' written notice to Municipality. Franchisee may not abandon its Network or any portion thereof without compensating City for damages resulting from the abandonment, including all costs incident to removal of the Fiber Optic Infrastructure Network.

10. **Assignment.** Except as set forth below, neither party may assign or transfer its rights or obligations under this Agreement, in whole or part, to a third party, without the written consent of the other party. Any agreed upon assignee will take the place of the assigning party, and the assigning party will be released from all of its rights and obligations upon such assignment.

10.1 Following any assignment of this Agreement to an Affiliate, Franchisee will remain responsible for such Affiliate's performance under the terms of this Agreement. For purposes of this Section, (a) "Affiliate" means any Person that now or in the future, directly or indirectly controls, is controlled with or by, or is under common control with Franchisee; and (b) "control" means, with respect to: (i) a U.S. corporation, the ownership, directly or indirectly, of fifty percent (50%) or more of the voting power to elect directors thereof, or (ii) a non-U.S. corporation, if the voting power to elect directors thereof is less than fifty percent (50%), the maximum amount allowed by applicable law; and (iii) any other Person, fifty percent (50%) or more ownership interest in said Person, or the power to direct the management of such Person.

11. **Notice.** Every notice or response required by this Agreement to be served upon the City or the Franchisee shall be in writing and shall be deemed to have been duly given to the required party three (3) business days after having been posted in a properly sealed and correctly addressed envelope when hand delivered or sent by certified or registered mail, postage prepaid as follows:

The notices or responses to the City shall be addressed as follows:

City of Muscle Shoals, Alabama
ATTN: MAYOR
2010 E. Avalon Avenue
Muscle Shoals, Alabama 35661

The notices or responses to the Franchisee shall be addressed as follows:

JWEMC
ATTENTION: Gene Kanikovsky, CEO
25700 AL-24
Trinity, AL 35673

The City and the Franchisee may designate such other address or addresses from time to time by giving written notice to the other party as set forth in this section.

12. General Provisions

12.1 Franchise Records. Franchisee shall prepare and maintain any records or reports that are required of it by federal, State, or local law. Municipality shall have the right to obtain, in the format kept by Franchisee in the ordinary course of business, copies of such records and reports as appropriate and reasonably necessary to determine whether Franchisee is in compliance with this Agreement. Franchisee reserves the right to object to any request made under this Section as unnecessary, unreasonable, or inappropriate under the circumstances and to seek appropriate confidentiality protections for any information to be produced to Municipality.

12.2 Entire Franchise. This Agreement, including the Exhibits attached hereto, contains the entire agreement between the parties and all prior franchises, negotiations and agreements relating to the Network Facilities or provision of Broadband Services are merged herein and hereby superseded.

12.3 Conferences. As may be mutually agreed upon between the parties from time to time, the parties hereby agree to meet at reasonable times on reasonable notice to discuss any aspect of this Agreement, the provision of Broadband Services or the Network Facilities during the Term hereof.

12.4 Governing Law. This Agreement shall be deemed to have been made and shall be construed and interpreted in accordance with the law of the State of Alabama. Each party to this Agreement hereby irrevocably agrees that any legal action or proceeding arising out of or related to this Agreement or any of the agreements or transactions contemplated hereby shall be brought to the Circuit Court of Colbert County, Alabama and hereby expressly submits to the personal jurisdiction and venue of such courts for the purposes thereof and expressly waives any claim of improper venue and any claim that such courts are an inconvenient forum.

12.5 Waiver of Compliance. No failure by either party to insist upon the strict performance of any covenant, agreement, term or condition of this Agreement, or to exercise any right, term or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or such covenant, agreement, term or condition. No waiver of any breach shall affect or alter this Agreement, but each and every covenant, agreement, term, or condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof. Municipality may waive any

obligation of Franchisee under this Agreement, in whole or in part, at any time, but such waiver must be in writing, and signed by the Municipality's Mayor or their designee.

12.6 Independent Contractor Relationship. The relationship of Franchisee to Municipality is and shall continue to be an independent contractual relationship, and no liability or benefits, such as worker's compensation, pension rights or liabilities, insurance rights or liabilities or other provisions or liabilities, arising out of or related to a contract for hire or employer/employee relationship, shall arise or accrue to either party or either party's agents or employees as a result of the performance of this Agreement, unless expressly stated in this Agreement.

12.7 Severability. If any section, paragraph, or provision of this Agreement shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph, or provision shall not affect any of the remaining provisions of this Agreement.

12.8 Captions. All captions are for convenience of use and have no substantive effect.

12.9 Franchise Accepted. Franchisee further acknowledges by execution and delivery of this Agreement that it has carefully read the terms and conditions of this Agreement and the Ordinance and accepts the obligations imposed hereby and thereby regardless of whether such obligations are contained in this Agreement or the Ordinance, or both.

12.10 Binding Agreement. Subject to Section 2.3, the parties agree that this Agreement complies with State and Federal law as of the Effective Date and agree to be bound by the provisions hereof during the full term hereof, except that the parties also agree to recognize and be bound by any change in any State or Federal law, even if such law materially affects the terms of this Agreement.

12.11 Other Covenants. Franchisee for itself and its Affiliates covenants that Franchisee and its Affiliates shall not bring or support, directly or indirectly, any suit, claim, or proceeding (judicial or administrative) challenging any term of this Agreement or contending that Municipality or Franchisee did not have the authority to impose or agree to such terms.

12.12 Reserved Rights. Municipality reserves all rights and powers under (i) its police powers and (ii) powers conferred by Federal, State, or local law of which Municipality may not legally and contractually divest itself. In particular, Municipality reserves the right to alter, amend or repeal its municipal code as it determines shall be conducive to the health, safety and welfare of the public, or otherwise in the public interest; provided that any such alteration, amendment or repeal shall be applicable to all similarly situated franchisees of the Municipality, in such a manner and to such an extent so as not to place Franchisee at a material competitive disadvantage. In the event the municipal code or other applicable local law is amended in a manner that would materially alter Franchisee's rights and obligations under this Agreement, the Municipality will provide Franchisee with reasonable advance notice of such pending amendment and, upon written request of Franchisee, negotiate in good faith to modify this Agreement to ameliorate any adverse effects such amended

municipal code provisions would have on Franchisee's performance under this Agreement. Municipality agrees that by accepting this Agreement, Franchisee has not waived its right to object to the application to it of actions by Municipality pursuant to its reserved rights or police powers.

12.13 Representation Regarding Ethical Standards for Municipality Officers and Employees and Former Municipality Officers and Employees. Franchisee represents that to the best of its knowledge, it has not (1) provided an illegal gift or payoff to a Municipality officer or employee or former Municipality officer or employee, or his or her relative or business entity; (2) retained any person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, other than bona fide employees or bona fide commercial selling agencies for the purpose of securing business; (3) breached any of the ethical standards set forth in the Municipality's conflict of interest ordinance; or (4) influenced, and hereby promises that it will not knowingly influence, a Municipality officer or employee or former Municipality officer or employee to breach any of the ethical standards set forth in the Municipality's conflict of interest ordinance.

12.14 City Representative. The Mayor, or his or her designee as provided in writing by the Mayor to the Franchisee (the "City Representative"), shall be Municipality's representative for all purposes of this Agreement. Except where City Council action is required by this Agreement or by law, all decisions, judgments, approvals, requests, notices or other actions of Municipality required or permitted under this Agreement shall be made, obtained, issued or delivered or otherwise effected on behalf of Municipality by the Mayor, or his or her designee.

12.15 Authority. Franchisee represents, covenants and warrants to Municipality as of the Effective Date that: (a) Franchisee is duly constituted, in good standing and qualified to do business in the State of Alabama, (b) Franchisee will file when due all forms, reports, fees and other documents necessary to comply with applicable laws, and (c) the signatories signing on behalf of Franchisee have the requisite authority to bind Franchisee pursuant to Franchisee's organizational documents.

12.16 Publication. This Franchise shall be published in accordance with applicable local and state law and Grantee, shall pay the reasonable cost of any required publication of this Franchise.

12.17 Franchisee's acceptance of this Agreement shall be in writing in a form approved by the City attorney and shall be accompanied by delivery of a check, approved by the City, in the amount of Three Thousand Dollars (\$3,000.00) made payable to the City of Muscle Shoals, Alabama and shall serve to recover expenses incurred by the City in the granting of this Franchise. Said expenses shall include attorney's fees and consulting expenses incurred by the City.

SIGNATURE PAGE TO FOLLOW

ADOPTED AND APPROVED this _____ day of _____, 2025.

CITY OF MUSCLE SHOALS, ALABAMA

BY: _____
Its: Mayor

ATTEST:

CITY CLERK

APPROVED AND ACCEPTED:

Joe Wheeler Electric Membership Corporation

BY: Gene Kanikovsky
ITS: Manager and CEO

Date: _____

JWEMC Communications, LLC

BY: Gene Kanikovsky
ITS: Manager and CEO

Date: _____

EXHIBIT A
FORM OF LETTER OF AUTHORIZATION

City of Muscle Shoals
Attn: Building Official
2010 E. Avalon Avenue
Muscle Shoals, AL 35661

Dear Mr. Jones:

In accordance with Section 4.3 of the Broadband Services Franchise Agreement dated [REDACTED] between City of Muscle Shoals, Alabama and Joe Wheeler Electric Membership Corporation, JWEMC, hereby designates the following Authorized Individuals (as that term is defined in the Agreement), who may submit and sign permit applications on behalf of the Franchisee.

1. Name, Title
2. Name, Title
3. Name, Title
4. Name, Title

This authorization may be withdrawn or amended and superseded by a written amendment to this Letter of Authorization, which will be effective 24 hours after receipt by the Municipality.

Kind regards,

Gene Kanikovsky, CEO
Joe Wheeler Electric Membership Corporation

STATE OF ALABAMA

COLBERT COUNTY

RESOLUTION NO. - _____

**A RESOLUTION AUTHORIZING THE SURPLUS OF A 1994 GMC BUCKET TRUCK
BY THE PARKS AND RECREATION DEPARTMENT.**

WHEREAS, the City Council has been informed by the Parks & Recreation Department Head that a 1994 GMC Buck Truck designated as 1GDKC34F3RJ515996 herein after as described and previously used in the performance of duties at the Muscle Shoals Parks & Recreation is no longer required for use by the City personnel; and

WHEREAS, the City Council has determined that the said items of property are surplus property and the City has no further use for said items of property due to their age and condition and it is not economical for the City to retool or refit the said items of property in order that they be able to be placed in service in the performance of city business;

NOW, THEREFORE, BE IT RESOLVED, the City Council of the City of Muscle Shoals, Alabama does hereby determine that the following described truck thereto be declared surplus property and disposed of by the department head of Parks & Recreation in a manner that will require no further expenditure by the City nor expose the City to any liability in the further use of or operation of said items of property; and the Council does hereby authorize the department head to dispose of said equipment as surplus property and the Council so finds the following equipment is surplus property:

1994 GMC Buck Truck designated as 1GDKC34F3RJ515996.

ADOPTED AND APPROVED this 21st day of July, 2025.

CITY OF MUSCLE SHOALS
a Municipal Corporation

Ken Sockwell, Council President

ATTEST:

Brittney Walker, City Clerk



THE CITY OF MUSCLE SHOALS
2010 E Avalon Ave.
Muscle Shoals | AL | 35661

REQUEST TO BE PLACED ON THE CITY COUNCIL AGENDA

Today's Date: 17 July 2025

Time: 0840

Name: WM Underwood

Address: 2410 Village Loop Dr.

Phone #: 256-810-1791

Date to Address Council: 21 July 25

Subject (must be completed): Sports plex, Budget,

Flooding at Beacon Point, Purchase

of Furniture City Hall, Purchase of

land Sports plex 1.3 million to city Engineer

Specific Questions: Money meter budget 21-2025

New Tahoes, Flooding Beacon Pt, Grass

Sevay cist Solar Farm, Flooding at

Lake Lockhart Swamp at Swamp Sockport

land deals Sports Plex - Furniture Deals

WM Underwood Signature City Hall

NOTE: By signing this form, you are agreeing to not exceed a 5-minute presentation to the Mayor and Council. This form must be submitted to the City Clerk's Office by 3:00 PM on the Friday preceding the meeting of your intent to speak. Please mail this form to: City Clerk, 2010 E Avalon Ave., Muscle Shoals, AL, 35661, or fax it to (256) 386-9201.



City of Muscle Shoals

2010 East Avalon Avenue, Muscle Shoals, AL 35661

(256) 383-5675 | www.cityofmuscleshoals.com

Request to be Placed on the City Council Agenda

Today's Date: 07/16/2025

Time: 04:07PM

Full Name: Jennifer Morgan

Address: 2500 Avalon Avenue Apt o7 Muscle Shoals, AL 35661

Phone Number: 256-247-8738

Email (optional): jennifer.morgan@usi.com

Date of Council Meeting: 07/21/2025

Subject of Presentation:

Municipal Salary & Resource Evaluation

Specific Questions or Points to Address:

What is the primary reason the City of Muscle Shoals hired Auburn University to conduct a pay study for city employees?

Was the cost covered by City Funds, Covid-19 relief funds or by another source?

What changes, if any, has the city made based on Auburn University's recommendations?

Were there any salary adjustments, reclassifications, or new policies put into place as a result?

Acknowledgment & Signature:

By signing below, I acknowledge that:

- My presentation to the Mayor and City Council will not exceed 5 minutes.
- This completed form must be submitted to the City Clerk's Office by 3:00 PM on the Friday prior to the scheduled



THE CITY OF MUSCLE SHOALS
2010 E Avalon Ave.
Muscle Shoals | AL | 35661

REQUEST TO BE PLACED ON THE CITY COUNCIL AGENDA

Today's Date: 07/16/2025

Time: 10:06 AM

Name: Jennifer Morgan

Address: 2500 Avalon Avenue Apt O7, Muscle Shoals, AL 35661

Phone #: 256-247-8738

Date to Address Council: 07/21/2025

Subject (must be completed): Covid Relief and APRA Funds

Specific Questions: How much total Covid-19 relief and APRPA funding has the City of Muscle Shoals received to date? Can the city provide a detailed breakdown of how those funds have been allocated or spent so far? Were any of the funds used to provide premium pay, bonuses, or wage increases for city employees? If so, which departments or positions received them?

Jennifer Morgan Signature

NOTE: By signing this form, you are agreeing to not exceed a 5-minute presentation to the Mayor and Council. This form must be submitted to the City Clerk's Office by 3:00 PM on the Friday preceding the meeting of your intent to speak. Please mail this form to: City Clerk, 2010 E Avalon Ave., Muscle Shoals, AL, 35661, or fax it to (256) 386-9201.