

ORDINANCE NO. 21-03

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

WHEREAS, Joe Wheeler Electric Membership Corporation and its wholly owned subsidiary, JWEMC Communications, LLC (hereinafter referred to collectively as the "the Grantee") desires to construct and maintain a fiber-optic transmission line within certain public rights-of-way within the Town of Eva, Alabama ("Town"); and

WHEREAS, the Grantee has requested a franchise from the Town in order to maintain and construct a fiber-optic transmission line within the corporate limits of the Town; and

WHEREAS, the Town Council wishes to accommodate the Grantee's request and grant a franchise to allow Grantee to maintain fiber-optic transmission lines in accordance with the terms and conditions contained herein.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF EVA, ALABAMA, AS FOLLOWS:

The Town Council of the Town does hereby grant to Grantee a non-exclusive franchise granting to Grantee the authority to maintain and construct a fiber-optic transmission line in the Town in and along certain rights-of-way, subject to the terms and conditions set forth in the following agreement:

AGREEMENT

This Agreement is entered into on this the 8th of June, 2021, by and between the Town of Eva, Alabama (hereinafter referred to as the "Town"), and Joe Wheeler Electric Membership Corporation and its wholly owned subsidiary, JWEMC Communications, LLC (hereinafter referred to collectively as the "the Grantee").

WITNESSETH:

The Town and the Grantee do hereby mutually covenant and agree as follows:

SECTION 1. Defined Terms. For purposes of this Agreement, the following terms, words and phrases shall have the meanings set forth below. When not inconsistent with the context, words used in the singular number shall include the plural number, and words in the

plural number shall include the singular.

1.1 "Town" means the Town of Eva, Alabama.

1.2 "Ordinances" means the ordinances of the Town of Eva, Alabama, as may be amended from time to time.

1.3 "Governing Body" or "Town Council" means the Town Council of the Town of Eva, Alabama.

1.4 "Grantee" is Joe Wheeler Electric Membership Corporation and its wholly owned subsidiary, JWEMC Communications, LLC or successors in interest, in accordance with the provisions of this franchise.

1.5 "Gross Revenues" means all local revenues, in whatever form and from all sources, determined in accordance with generally accepted accounting principles that are received or accrued by Grantee from the transmission of telephonic data or other electronic messages within the Town. Gross Revenue shall include all local revenues received from any person not in any way affiliated with Grantee, with a deduction for Grantee's uncollectible accounts, but without deduction for operating expenses, accruals, or any other expenditure. Notwithstanding the foregoing, Gross Revenue shall not include taxes or fees paid to governmental entities, or any revenues that are already included in the calculation of fees payable to the Town pursuant to the sale of electric utility services. The foregoing shall in no way be interpreted to allow Grantee to avoid the payment of franchise fees to Town for revenues it may derive from other telecommunications providers for such provider's use of Grantee facilities within the Town.

1.6 "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.

1.7 "Rights-of-way" means the surface and space above and below any public street, boulevard, road, highway, freeway, lane, alley, sidewalk, parkway, driveway, public ways, or other public rights of way, including, public utility easements, dedicated utility strips or rights of way dedicated for compatible uses held by the Town or location within the Town which shall entitle the Town and the Grantee to use the same for the purpose of installing, operating, repairing and maintaining the System.

1.8 "System" shall mean a system of pipes, transmission lines, meters, equipment and all other facilities associated with the operation of a fiber-optic transmission line by the Grantee in accordance with the terms and conditions contained in this Agreement.

1.9 "Telecommunications" means the transmission, between or among points

specified by the user, of information of the user's choosing (e.g., data, and voice), without change in the form or content of the information as sent and received.

1.10 "Telecommunication Service(s)" means the offering of Telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public.

1.11 "Telecommunication System" means the cables, wire, lines, towers, wave guides, optic fiber, antennae, and any associated converters, equipment or Facilities designated and constructed for the purpose of producing, receiving, amplifying or distributing Telecommunications to or from locations within the Town.

1.12 "Use Fee" means the fee paid by a Provider to the Town for locating, maintaining and operating Facilities in the Rights-of-Way.

SECTION 2. Grant of Authority. The Town hereby grants to the Grantee the non-exclusive authority to construct, install and maintain and operate a fiber-optic transmission line in and along the Rights-of-way in the Town (hereinafter referred to as the "System"). The Grantee shall obtain the approval of the Mayor or his designee of the location of the System before constructing, expanding or extending the System within the Town pursuant to this Agreement. The Grantee shall not provide Video Services within the Town pursuant to this Agreement. The Grantee shall be required to enter into a separate Cable Television franchise agreement with the Town if the Grantee chooses to provide video services. This Franchise does not authorize the deployment of a Small Cell System and/or Distributed Antenna System "DAS" serving one or more wireless service providers.

2.1 Prior to the commencement or continuation of any construction or operation in the Town, the Grantee shall be duly authorized to do business in Alabama and shall have received any necessary certificate of public convenience and necessity or other required authorization from Alabama Public Service Commission, the Federal Communications Commission or other authorized regulatory body. Evidence that such authority has been acquired or that it is not required shall be filed with the Town upon request of the Town.

2.2 All work in the Right-of-Way shall be in accordance with the Ordinance and all other applicable state and federal standards, codes and ordinances, and will be done under the general supervision of the Town. Grantee shall apply for and obtain all required permits from Town as specified in the Ordinances before Grantee shall undertake any construction in the Right-of-Way. All new construction will, unless specifically authorized by the Town, be placed underground if the Town deems necessary for the public convenience and safety and generally to control and regulate the use of the streets as required by Section 11-43-62 of the Alabama Code. The placement of above ground pedestals, meter bases and related equipment shall be permitted only as specifically set forth in approved permits and only at the direction of the Town with respect to the acceptable location for such facilities. The foregoing notwithstanding, Grantee shall be permitted to, and may, in its discretion, construct or install its fiber optic lines and associated equipment and appurtenances above ground or on existing utility poles within its existing service

area where its existing electric power transmission lines, equipment and appurtenances are installed above ground or on utility poles as of the date of this agreement and, also, where above ground or pole mounted installation is otherwise permitted within Grantee's service area by Town's ordinances, subdivision regulations or other Town regulations or requirements. Grantee shall not install any such lines, equipment or appurtenances in any location where the above said ordinances, regulations or requirements prohibit or do not specifically permit such installation or construction. Grantee shall have no obligation to service all areas where underground installation is required.

SECTION 3. Compensation.

3.1 As consideration for the use of the Town's Rights-of-ways as set forth in this Agreement, the Grantee shall pay the Town a franchise fee of five percent (5%) of its Gross Revenues during each calendar year of operation under this franchise. Such payments shall be made quarterly during each calendar year, within forty-five (45) days of the close of each quarter transmitted by check or electronic funds transfer to a bank account designated by the Town. Each franchise fee payment shall be accompanied by a certified report from a representative of the Grantee, which shows the basis for the computation of all monthly service charges revenue from providing local Telecommunications Services to Persons located within the Town limits during the period for which such franchise fee payment is made. In the event that franchise fee payment is not actually received by the Town on or before the applicable due date set forth in this section or is underpaid the Grantee shall pay in addition to the payment, or sum due, interest from the due date at the state legal interest rate of 6% annually (Alabama Code § 8.8.1).

3.2 All amounts paid shall be subject to audit and recomputation by Town 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 Town should conduct a review of Grantee's books and records and such review indicates a franchise fee underpayment of five percent (5%) or more during the entire period reviewed, the Grantee shall assume all reasonable documented costs of such audit, and pay same upon demand by the Town. All documents pertaining to financial matters, which may be the subject of an audit by the Town, shall be retained by the Grantee for a minimum period of six (6) years.

SECTION 4. Duration and Term. The franchise granted hereunder shall be for an initial term of five (5) years (the "Initial Term") commencing on the effective date of this Ordinance and Agreement, unless otherwise lawfully renewed, revoked or terminated as herein provided. Upon the expiration of the Initial Term, the Grantee or the Town shall have the option to renew this Agreement by giving written notice, sixty (60) days before the expiration of the Initial Term, to the other party of that party's intent to renew this Agreement.

SECTION 5. Grant of Non-Exclusive Authority. The right to use and occupy the rights-of-way for the purposes herein set forth shall not be exclusive, and the Town reserves the right to grant the use of said Rights-of-way to any person at any time and for any lawful purpose. This Agreement shall not be construed to create any rights beyond the terms, conditions and periods

set forth in this Agreement, except as provided herein. The Town does not warrant any of the rights granted by this Agreement.

SECTION 6. Reservation of Regulatory and Police Powers. The Town, by the granting of this franchise and approving this Agreement, does not surrender or to any extent lose, waive, impair or lessen the lawful powers and rights now, or which may be hereafter, vested in the Town under the Constitution and the statutes of the State of Alabama to regulate the use of its Rights-of-way by the Grantee or any person or to charge reasonable compensation for such use, and the Grantee, by its acceptance of this franchise and Agreement, agrees that all lawful powers and rights, regulatory power, police power or otherwise, that may be from time to time vested in or reserved to the Town, shall be in full force and effect and subject to the exercise thereof by the Town at any time. The Grantee is deemed to acknowledge that its rights are subject to the regulatory and police powers of the Town to adopt and enforce ordinances necessary for the safety and welfare of the public and agrees to comply with all applicable laws and ordinances enacted by the Town pursuant to such powers.

Any conflict between the provisions of this Agreement and any other present or future lawful exercise of the Town's police powers shall be resolved in favor of the latter.

SECTION 7. Standards of Service.

7.1 Conditions of Street Occupancy. All portions of the System and all associated equipment installed or erected by the Grantee pursuant to this Agreement shall be located so as to cause minimum interference with the proper use of the Rights-of-way and with the rights and reasonable convenience of property owners who own property that adjoins any of such Rights-of-way. Grantee shall present to the Mayor or his designee plats of all installations to be installed or constructed listing anticipated types of equipment and facilities, properly identifying and describing them by appropriate symbols and marks, and including annotations of all public ways, streets and roads where the work is anticipated. Maps shall be presented in a scale that allows proper review and interpretation and will be filed no less than ten (10) working days before any installation of said cable or equipment or facilities. Grantee shall obtain formal approval prior to the commencement of construction. Should the Town require any plan additions or modifications prior to issuing formal approval, the Town will promptly notify the Grantee thereof. The Grantee shall provide the Mayor's designee digital as-built drawings within six (6) months of the completion of the construction. Final drawings will be supplied in Autocad using NAD 83 coordinates, GIS format, and/or such other digital formats as are reasonably acceptable to the Parties.

7.2 Restoration of Rights-of-way. If during the course of the Grantee's construction, operation or maintenance of the System there occurs a disturbance of any Rights-of-way by the Grantee, it shall, at its expense, replace and restore such Rights-of-way to a condition comparable to the condition of the Rights-of-way existing immediately prior to such disturbance to the satisfaction of the Town. The Grantee shall re-sod disturbed grassed areas and replace all excavated areas, structures, and landscaping to original or better condition in order to minimize

the disruption of public property. The work to be done under this Agreement, and the restoration of Rights-of-way as required herein, must be completed within the dates specified in any permits authorizing the work. The Grantee shall perform the work according to the standards and with the materials specified or approved by the Mayor or his designee.

7.3. Relocation at Request of the Town. Upon its receipt of reasonable notice, not to be less than forty-five (45) days, except where emergency conditions require shorter notice, the Grantee shall, at its own expense, protect, support, temporarily disconnect, relocate in the Rights-of-way, or remove from the Rights-of-way, any property of the Grantee when lawfully required by the Town by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, electrical or telecommunications lines, when such installation or construction is being done directly by or for the Town. Should the Grantee refuse or fail to remove its equipment or plant as provided for herein within forty-five (45) days after written notification, the Town shall have the right to do such work or cause it to be done, and the reasonable cost thereof shall be chargeable to the Grantee.

7.4 Trimming of Trees and Shrubbery. The Grantee shall reasonably compensate the Town for any damages, in such amounts as determined by the Town, caused by trimming, cutting or removing trees or shrubbery, or shall, at its own expense, replace all trees or shrubs damaged as a result of any construction, installation, repair or maintenance of the System undertaken by the Grantee to the satisfaction of the Town.

7.5 Safety and Permit Requirements. Construction, installation, repair and maintenance of the System shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial compliance with applicable federal, state, and local laws, rules and regulations, including all permit requirements and ordinances adopted by the Town which are now in effect or are hereafter adopted. The System or parts thereof shall not unreasonably endanger or interfere with the safety of persons or property in the area.

7.6 Minimum Standards. In the event there is a conflict between the standards adopted by the Grantee and any applicable federal, state or local standards, including ordinances adopted by the Town, the stricter standard shall apply.

7.7 Obstructions of Rights-of-Way.

A. Except in the case of an emergency, or with the approval of the Mayor or his designee, no Rights-of-way obstruction or excavation may be performed when seasonally prohibited or when conditions are unreasonable for such work.

B. Grantee shall not so obstruct the Rights-of-way so as to interfere with the natural, free and clear passage of water through the gutters, drains, ditches or other waterways. The Grantee shall clear the streets of any drill mud, debris and other obstructions that accumulate as a result of the Grantee's construction activities, and will not permit its activities to create a hazard

to any persons or property. In the event that any such drill mud, debris or other obstruction caused by the Grantee's activities encroaches upon the street, the Grantee shall take immediate corrective action to remove the same.

7.8 Safety Requirements.

A. The Grantee shall at all times employ the highest degree of care as is commensurate with the practical operation of its business and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries or nuisances to the public.

B. The Grantee shall install and maintain the System in accordance with the requirements of all applicable regulations of the Town, which may be amended from time to time, and in such manner that its operations will not interfere with any installations of the Town or of a public utility serving the Town. Grantee shall meet all Town and State requirements for traffic control and notify the Town at least twenty-four (24) hours prior to the commencement of work, except in cases of emergency. The Grantee shall, on the request of any Person holding a permit to move a building temporarily raise or lower its wires to facilitate the moving of such buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by the Person requesting the same, and the Grantee shall have the authority to require such payment in advance. The Grantee shall be given at least ten (10) business days advance notice to arrange such temporary wire alterations.

C. All construction, installation, maintenance, and operation of the Telecommunications System or of any facilities employed in connection therewith shall be in compliance with the provisions of the National Electrical Safety Code as prepared by the National Bureau of Standards, the National Electrical Code of the National Council of Fire Underwriters, any standards issued by the FCC or other federal or state regulatory agencies in relation thereto, and local zoning regulations. The Grantee shall comply with ordinances, rules, and regulations established by the Town pursuant to the lawful exercise of its police powers and generally applicable to all users of the Rights-of-way.

D. The Grantee shall maintain a force of employees at all times sufficient to provide safe, adequate and prompt service for the System.

7.9 Least Disruptive Technology. The Grantee is encouraged to perform construction and maintenance of the System in a manner resulting in the least amount of damage and disruption to the rights-of-ways. The Grantee will be required to use trenchless technology for any portion of construction or maintenance projects which lie beneath the paved or improved portion of any roadway to which this Agreement applies, unless otherwise approved by the Town Council. The Town may require trenchless technology in other locations, where circumstances prevent or make open-cut methods impractical. The Grantee may use either the open-cut method or trenchless technology for construction outside the paved or improved portion of any roadway to which this Agreement applies. The Grantee shall use directional boring in all areas where no

conduit exists, unless otherwise required or approved by the Town. Grantee shall meet all Town and State requirements for traffic control and notify the Town at least twenty-four (24) hours prior to the commencement of work, except in cases of emergency. The foregoing notwithstanding, Grantee shall be permitted to, and may, in its discretion, construct or install its fiber optic lines and associated equipment and appurtenances above ground or on existing utility poles within its existing service area where its existing electric power transmission lines, equipment and appurtenances are installed above ground or on utility poles as of the date of this agreement and, also, where above ground or pole mounted installation is otherwise permitted within Grantee's service area by Town's ordinances, subdivision regulations or other Town regulations or requirements. Grantee shall not install any such lines, equipment or appurtenances in any location where the above said ordinances, regulations or requirements prohibit or do not specifically permit such installation or construction. Grantee shall have no obligation to service all areas where underground installation is required.

Section 8. Enforcement and Termination of Agreement.

8.1 Notice of Violation. In the event the Grantee has not complied with the terms of this Agreement, the Town shall notify the Grantee in writing of the nature of the alleged noncompliance.

8.2 Right to Cure or Respond. The Grantee shall have thirty (30) days from receipt of the notice described in Section 8.1: (a) to respond to the Town by contesting the assertion of noncompliance, (b) to cure such default, or (c) in the event that, by the nature of default, such default cannot, for reasons beyond the control of the Grantee, be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the Town of the steps being taken and the projected date that they will be completed.

8.3 Public Hearing. In the event the Grantee fails to respond to the notice described in Section 8.1 or contests the assertion of noncompliance pursuant to the procedures set forth in Section 8.2, or in the event the alleged default is not remedied within thirty (30) days or by the date projected pursuant to 8.2(c) above, the Town shall schedule a public hearing to investigate the default. Such public hearing shall be held at the next regularly scheduled meeting of the Town which is scheduled at a time not less than five (5) business days therefrom. The Town shall notify the Grantee in writing of the time and place of such meeting and provide the Grantee with an opportunity to be heard.

8.4 Enforcement. In the event the Town, after such meeting, determines that the Grantee is in default of any provision of this Agreement, the Town may pursue any or all of the following remedies:

A. Seek specific performance of any provision which reasonably lends itself to such a remedy;

B. Make a claim against any surety or performance bond which may be

required to be posted;

C. Restrain by injunction the default or reasonably anticipated default by the Grantee of any provision of this Agreement;

D. Seek any other available remedy permitted by law or in equity;

E. In the case of a material default of this Agreement, declare the Agreement to be revoked in accordance with the following:

(1) The Town shall give written notice to the Grantee of its intent to revoke the Franchise on the basis of noncompliance by the Grantee. The notice shall set forth the exact nature of the noncompliance. The Grantee shall have thirty (30) days from such notice to object in writing and to state its reasons for such objection. In the event the Town has not received a satisfactory response from the Grantee, it may then seek termination of this Agreement at a public meeting. The Town shall cause to be served upon the Grantee, at least ten (10) days prior to such public meeting, a written notice specifying the time and place of such meeting and stating its intent to seek such termination.

(2) At the designated meeting, the Town shall give the Grantee an opportunity to state its position on the matter, after which it shall determine whether or not this Agreement shall be terminated. The Grantee may appeal such determination to an appropriate state or federal court or agency which shall have the power to review the decision of the Town and to modify or reverse such decision as justice may require. Such appeal must be taken within thirty (30) days of the issuance of the determination by the Town.

(3) The Town may, in its sole discretion, take any lawful action which it deems appropriate to enforce the Town's rights under this Agreement in lieu of revocation of the Agreement.

8.5 Impossibility of Performance. The Grantee shall not be held in default or noncompliance with the provisions of this Agreement, nor suffer any enforcement or penalty relating thereto, where such noncompliance or alleged defaults are caused by strikes, acts of God, power outages or other events reasonably beyond its ability to control.

SECTION 9. Default.

9.1 Each of the following shall constitute a material default by the Grantee:

A. Failure to make any payments to the Town required to be made as set forth in this Agreement;

B. Failure to maintain a liability insurance policy that is not cured within thirty (30) days following written notice to the Grantee;

C. Failure to provide or furnish any information required under this Agreement to the Town that is not cured within thirty (30) days following written notice to the Grantee;

D. Any breach or violation of any ordinance, rule or regulation or any applicable safety or construction requirements or regulations that present a threat to health or safety that has not been cured within thirty (30) days written notice;

E. The occurrence of any event relating to the financial status of the Grantee which may reasonably lead to the foreclosure or other judicial or non-judicial sale of all or any material part of the System or the assets of the Grantee;

F. The condemnation by a public authority, other than the Town, or sale or dedication under threat or in lieu of condemnation, of all or substantially all of the facilities; or

G. If (a) the Grantee shall make an assignment for the benefit of creditors, shall become and be adjudicated insolvent, shall petition or apply to any tribunal for, or consent to, the appointment of, or taking possession by, a receiver, custodian, liquidator or trustee or similar official pursuant to state or local laws, ordinances or regulations of any substantial part of its property or assets, including all or any part of the System; (b) a writ of attachment, execution, distraint, levy, possession or any similar process shall be issued by any tribunal against all or any material part of the Grantee's property or assets; (c) any creditor of the Grantee petitions or applies to any tribunal for the appointment of, or taking possession by, a trustee, receiver, custodian, liquidator or similar official for the Grantee or for any material parts of the property or assets of the Grantee under the law of any jurisdiction, whether now or hereafter in effect, and a final order, judgment or decree is entered appointing any such trustee, receiver, custodian, liquidator or similar official, or approving the petition in any such proceeding; or (d) any final order, judgment or decree is entered in any proceedings against the Grantee decreeing the voluntary or involuntary dissolution of the Grantee.

SECTION 10. Work in Rights-of-Way. Prior to any excavation within the Rights-of-way, the Grantee shall obtain a permit from the Town pursuant to this Agreement, and the work shall be performed in accordance with all applicable ordinances and codes and any subsequent ordinances or regulations that may be adopted by the Town. Repair and replacement of the Rights-of-ways due to the Grantee's installation, removal, relocation, maintenance and repair of its System or facilities shall be accomplished to the satisfaction of the Town.

SECTION 11. Insurance. The Grantee shall maintain in full force and effect, at its own cost and expense, a comprehensive general liability insurance policy in the amount of \$1,000,000.00 for bodily injury and property damage per person and \$3,000,000.00 as to each occurrence, satisfactory to the Town. In addition, the Grantee shall obtain worker's compensation coverage as required by the laws of the State of Alabama. The Town shall be named as an additional insured on the policy, and the Grantee shall provide the Town with a

certificate of insurance designating the Town as an additional insured on each policy and extension or renewal thereof. An endorsement shall be included with the policy that states that the policy shall not be cancelled without giving thirty (30) days written notice of such cancellation to the Town.

SECTION 12. Indemnity and Hold Harmless. The Grantee agrees to indemnify, defend, and hold harmless the Town, its elected officers, employees, agents, and representatives, against all claims, costs, losses, expenses, demands, actions, or causes of action, including reasonable attorney's fees and other costs and expenses of litigation, which may be asserted against or incurred by the Town or for which the Town may be liable, which arise from the negligence or willful misconduct, of the Grantee, its employees, agents, or subcontractors arising out of the construction, operation, maintenance, upgrade, repair or removal of Facilities except for those claims, costs, losses, expenses, demands, actions, or causes of action which arise solely from the negligence, willful misconduct, or other fault of the Town. The Town does not and shall not waive any rights against the Grantee which it may have by reason of this indemnification, or because of the acceptance by, or the Grantee's deposit with the Town of any of the insurance policies described in this Agreement. The indemnification by the Grantee shall apply to all damages, penalties and claims of any kind, regardless of whether any insurance policy shall have been determined to be applicable to any such damages or claims for damages.

SECTION 13. Disclaimer of Warranties. The Town makes no representation or warranty regarding its rights to authorize the installation or operation of the System on any particular Right-of-way, and the burden and responsibility for making such determination in advance of the installation shall be upon the Grantee. This Agreement shall not be construed to deprive the Town of any rights or privileges which it now has, or may hereafter have, to regulate the use and control of its streets.

SECTION 14. Warranties and Representations. The Grantee hereby agrees, represents and warrants that it is legally authorized to enter into this Agreement in accordance with all applicable laws, rules and regulations. Furthermore, the Grantee further agrees, represents and warrants that this Agreement is legal, valid and binding, and that it is required to obtain authorization and consent from the Town prior to the construction, installation, operation or maintenance of the System.

SECTION 15. Other Obligations. Obtaining a franchise pursuant to this Agreement does not relieve the Grantee of its duty to obtain all other necessary permits, licenses, authority and the payment of fees required by any other Town, county, state or federal rules, laws or regulations, and the Grantee is responsible for all work done in the Rights-of-way pursuant to this Agreement, regardless of who performs the work.

SECTION 16. Payment of Costs. The Grantee shall be responsible for all costs associated with the installation, repair and maintenance of the System and all associated equipment including, but not limited to (1) the costs to repair the Rights-of-way due to the installation, repair and maintenance of the System, and (2) the costs incurred in removing or

relocating any portion of the System or facilities constructed when required by the Town.

SECTION 17. Priority of Use. This Agreement does not establish any priority for the use of the Rights-of-way by the Grantee or any present or future franchisees or permit holders. In the event of any dispute as to the priority of use of the Rights-of-way, the first priority shall be to the public generally, the second priority to the Town, the third priority to the State of Alabama and its political subdivisions in the performance of their various functions, and thereafter, as between franchisees and other permit holders, as determined by the Town in the exercise of its powers, including the police powers and other powers reserved to and conferred on it by the State of Alabama.

SECTION 18. Notice. Every notice or response required by this Agreement to be served upon the Town or the Grantee 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 Town shall be addressed as follows:

Town of Eva
Mayor
P. O. Box 68
Eva, Alabama 35621

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

JWEMC
ATTENTION: George Kitchens
25700 AL-24
Trinity, AL 35673

The Town and the Grantee 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.

SECTION 19. Application. The terms and conditions contained in this Agreement shall apply to all areas within the corporate limits of the Town and those areas annexed by the Town after the passage and approval of this Ordinance and Agreement.

SECTION 20. Acceptance. The Grantee's acceptance of this Agreement shall be in writing in a form approved by the Town attorney and shall be accompanied by delivery of all payments, insurance certificates, applications, acceptance fees and performance of other requirements relating to commencement of construction as set forth in this Agreement.

SECTION 21. Assignment. The Grantee's interest in this Agreement shall not be sold,

transferred, assigned or otherwise encumbered or disposed of, either by forced or voluntary sale or otherwise, without the prior written consent of the Town Council, which shall not be unreasonably withheld. The Town reserves the right to be reimbursed by the Grantee for costs incurred by it in reviewing the request for transfer of ownership.

SECTION 22. "Most Favored Nation" Clause.

22.1 Notwithstanding any other provision of this Franchise the Town reserves the right to grant a franchise to, or enter into an agreement with, one or more telecommunications service providers to use the Rights-of-Way to provide Telecommunication Services within the Town. If the Town grants such a franchise or enters into such an agreement with another telecommunications service provider to use the Rights-of-Way to provide Telecommunication Services to any part of the Town in which the Grantee is actually providing Telecommunication Services and, such franchise or agreement, in the reasonable opinion of the Grantee, contains more favorable or less burdensome than those contained in this Franchise, then the Grantee may provide written notice to the Town stating the specific terms and/or conditions in the competitive franchise or agreement that are more favorable or less burdensome than those contained in this Franchise. Upon receipt of such notice, the Grantee and Town agree to open discussion and consider modifications to this Franchise in order to insure a competitive environment between the providers of Telecommunications Services or similar services with any amendments subject to the mutual agreement of both parties within ninety (90) days after the Grantee submits a written request to the Town. Town shall take official action with regard to the requested amendment within the ninety (90) day period. The Grantee and the Town agree that this section does not required a word for word identical franchise or agreement for a new telecommunications service provider so long as the regulatory and financial burdens on each entity are materially equivalent.

22.2 The Town will provide the Grantee a copy of all franchise agreements or amendments of franchise agreements entered into hereafter by the Town for the provision of telecommunication or similar services to any part of the Town in which the Grantee is actually providing the telecommunication service.

SECTION 23. Miscellaneous. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in singular number shall be held to include the plural and vice versa, unless context requires otherwise. The captions used in connection with the sections of this Agreement are for convenience only and shall not be deemed to construe or limit the meaning of the language contained in this Agreement, or be used in interpreting the meanings and provisions of this Agreement.

SECTION 24. Rules of Construction. The parties hereto acknowledge that each party and its counsel have had the opportunity to review and revise this Agreement, and the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits thereto.

SECTION 25. Governing Law. This Agreement shall be deemed to have been made in the State of Alabama and the validity of the same, its construction, interpretation, enforcement and the rights of the parties hereunder, shall be determined under, governed by and construed in accordance with the substantive laws of the State of Alabama, without giving effect to any choice of law provisions arising thereunder.

SECTION 26. Severability Clause. If any part, section or subdivision of this Ordinance shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this Ordinance, which shall continue in full force and effect notwithstanding such holding.

SECTION 27. Repealer Clause. Any Ordinance heretofore adopted by the Town Council of the Town of Trinity, Alabama, which is in conflict with this Ordinance is hereby repealed to the extent of such conflict.

SECTION 28. Effective Date. This Ordinance shall become effective only upon receipt of a written unconditional acceptance by the Grantee of the terms and conditions contained herein within thirty (30) days of the passage of this Ordinance, followed by its publication according to law after receipt of such acceptance.

ADOPTED and APPROVED this 8 day of June, 2021.

TOWN OF EVA, ALABAMA

BY: 

Gary Livingston, Mayor


Kathy T. Nelson, Town Clerk

Kathy T. Nelson
Notary Public, Alabama State at Large
My Commission Expires October 21, 2024

