

City Hall  
Fayette, Alabama  
April 12, 2022

A regular meeting of the City Council of the City of Fayette met at 5:00 o'clock, p.m. on April 12, 2022, in the Council Chambers of the City Hall.

Upon roll call the following were found to be present: Mayor Rod Northam, Councilmembers Virettia L. Whiteside, Tommy Williams, Aliska Hughes-Monroe and Jerry Nichols. Also present were City Clerk Dawn Clapp, Police Chief Danny Jenkins, Fire Chief Shannon Taylor, City Attorney Dale Lawrence and Junior City Council Mayor Shanti Enis. Councilmember Eddy Campbell was absent.

The opening prayer was given by Mr. John McPeek, a member of the Northport Church of God.

The Pledge of Allegiance was led by Councilmember Jerry Nichols.

Mayor Northam announced a quorum was present and the meeting was open for the transaction of business.

#### PUBLIC HEARING ON TRANSFER OF ALCOHOL LICENSE

Mayor Northam said this was the day and time for the public hearing on the transfer of the alcohol license from Fowler Oil Co. Inc., to Shreeji 428, Inc. No one appeared opposing the application for transfer.

#### APPROVAL OF MINUTES

Councilmember Nichols moved the minutes of the regular meeting held on March 22, 2022, be approved. Upon it being seconded by Councilmember Whiteside, it was unanimously approved.

Councilmember Whiteside moved the minutes of the special meeting held on March 28, 2022, be approved. Upon it being seconded by Councilmember Williams, it was unanimously approved.

#### PRESENTATION OF FUNDS TO LOCAL SCHOOLS AND CHAMBER OF COMMERCE

The Council presented Fayette County High School, Fayette Middle School and Fayette Elementary School with checks in the amount of \$5,000.00 each. Dr. Jeremy Madden (FCHS), Mr. Rodney Hannah (FMS) and Mr. Matthew Lindsey (FES) accepted the donations on behalf of their schools.

Mr. Lindsey thanked the Council for their support and stated the funds would be used for upgrading the school.

Mr. Hannah thanked the Council for their support and stated the funds would be used in the best interest of students.

Dr. Madden thanked the Council for their support and stated the funds would be used for ACT training at the school.

#### FAYETTE AREA CHAMBER OF COMMERCE

The Council presented Fayette Chamber of Commerce Executive Director Daniel White a \$5,000.00 check pursuant to the contract with the Chamber to provide services and programs for the promotion of the City and for recruiting industrial and manufacturing operations to locate within the City.

#### RAILS TO TRAILS PROJECT

Mr. Luke Porter updated the Council on the modifications to the Rails to Trails project. He said he shortened the trail from 2<sup>nd</sup> Avenue to Temple Avenue and he also took out some of the lighting. The total was reduced to \$299,360.45. Mayor Northam said the modifications would have to be submitted to ADECA for approval. Councilmember Nichols moved the City proceed with the modified Rails to Trail project. Upon the motion being seconded by Councilmember Whiteside, it was unanimously approved.

#### GUTHRIE SMITH PARK LIFT STATION UPGRADE PROJECT

Mr. Luke Porter said the Guthrie Smith Park lift station project was ready to proceed and he estimated the cost of the project to be approximately \$150,000.00. He stated he had run into some issues



with the Highway 159 lift station being placed within the State right of way on Highway 159. ALDOT would have to approve it and go through the permitting process.

Councilmember Whiteside moved to advertise for bids on the Guthrie Smith Park lift station. Upon the motion being seconded by Councilmember Nichols, the same was unanimously approved.

#### BYPASS PUMP AT GUTHRIE SMITH PARK LIFT STATION

Wastewater Superintendent Matt Buckner updated the Council on the bypass pump at the park. The monthly cost is \$2,300.00. He asked the Council to approve keeping the bypass pump until it was no longer needed. Councilmember Nichols moved to keep the bypass pump at the park until not needed. Upon the motion being seconded by Councilmember Williams, the same was unanimously approved.

#### POLICE DEPARTMENT REPORT

Police Chief Danny Jenkins presented the police report for March 2022. The report was as follows: 28 incidents investigated; 10 accidents; 92 traffic citations; 126 traffic warnings and 22 arrests.

#### FIRE DEPARTMENT REPORT

Fire Chief Shannon Taylor presented the fire report for March 2022. The Fire Department received 13 calls.

#### AQUATIC BIDS UPDATE

Fire Chief Shannon Taylor reported only one potential bidder had requested a bid packet for the improvements at the Aquatic Center.

#### EMPLOYEE PAY INCREASE

Mayor Northam requested Mr. Kyle Taylor, an employee in the Street & Sanitation Department, receive a \$0.56 per hour raise starting the pay period beginning April 14, 2022. Councilmember Whiteside moved the Council approve the requested pay increase for Mr. Kyle Taylor. Upon the motion being seconded by Councilmember Nichols, the same was unanimously approved.

#### CDL STARTING PAY

Mayor Northam reported the City was trying to fill positions in the Street & Sanitation Department with individuals who had a commercial driver's license (CDLs). He stated certain City vehicles required a driver with CDLs to drive them. He said the City was having trouble attracting CDL drivers at the current rate of pay. He asked the Council to approve the starting pay be set at \$14.00 per hour for drivers with CDLs. Councilmember Nichols moved to set the starting pay for a driver with CDLs in the Street & Sanitation Department at \$14.00 per hour. Upon the motion being seconded by Councilmember Whiteside, the same was unanimously approved.

#### ALABAMA POWER EASEMENT TO SERVE ONYX DIGITAL FARMS

Mayor Northam presented an easement to the Council for their review. The easement would allow Alabama Power Company to place a power line across City property to serve the Onyx Digital Farms building. Councilmember Nichols moved the easement be approved and the Mayor authorized to execute the easement upon behalf of the City. Upon the motion being seconded by Councilmember Williams, the same was unanimously approved.

#### RESOLUTION 2022-03

Mayor Northam presented Resolution 2022-03 to the Council for their consideration. Resolution 2022-03 is as follows:

#### **RESOLUTION 2022-03**

#### **A RESOLUTION GRANTING THE TRANSFER OF THE ALCOHOL LICENSE OF FOWLER OIL CO., INC., TO SHREEJI 428, INC**

---

***BE IT RESOLVED,*** by the City Council of the City of Fayette, Alabama, as follows:

That the application requesting that the City Council of the City of Fayette grant the transfer of the alcohol license to **Shreeji 428, Inc.**, of the license currently held by **Fowler Oil Co., Inc.**, to sell alcoholic beverages (050 - *Retail Beer – Off Premises Consumption Only*) at the following location: Shree Mart, 1341 North Temple Avenue, Fayette, Alabama 35555, be and is hereby approved.



**ADOPTED AND APPROVED** by the City Council of the City of Fayette, Alabama, on this 12<sup>th</sup> day of April, 2022.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

Councilmember Nichols moved the Council adopt Resolution 2022-03. Upon the motion being seconded by Councilmember Whiteside, the same was unanimously approved.

**AIR EVAC CONTRACT**

Mayor Northam stated the Air Evac contract is up at the end of the month. He stated the rate had not changed.

**ORDINANCE 2022-03**

Mayor Northam presented Ordinance 2022-03 to the Council for their consideration. Ordinance 2022-03 is as follows:

**ORDINANCE NO. 2022-03**

**AN ORDINANCE GRANTING A FRANCHISE TO TOMBIGBEE ELECTRIC COOPERATIVE, INC. ON BEHALF OF ITSELF AND ITS OPERATING AFFILIATES TO OPERATE AND MAINTAIN A BROADBAND INTERNET AND TELECOMMUNICATIONS SYSTEM ("THE SYSTEM") IN THE CITY OF FAYETTE, ALABAMA ("THE CITY").**

\_\_\_\_\_  
THE CITY hereby ordains that it is in the public interest to grant Tombigbee Electric Cooperative, Inc., a Franchise to operate the System pursuant to the terms and conditions contained herein.

**SECTION 1. Grant of Franchise.** The City hereby grants to Tombigbee Electric Cooperative, Inc., (hereafter "Tombigbee") the right, privilege and authority to construct, install, maintain, operate, upgrade, replace, renovate, adjust, protect, support, raise, lower, disconnect, remove and relocate its cables, poles, pedestals, boxes, wires, conduits, conductors, pipes and related appurtenances ("Facilities") for its System in, under, along, over and across the present and future streets, alleys and public ways of the City ("Public Ways"), for the purpose of providing broadband internet and telecommunication services to the City's inhabitants and businesses.

**SECTION 2. Acceptance by Tombigbee** . Within sixty (60) days after the passage of this Ordinance by the City, Tombigbee shall file a signed copy thereof with the City Clerk, otherwise the Ordinance and the rights granted herein shall be null and void.

**SECTION 3. Term.** The Term of this Franchise is five years (5) years commencing on the date of acceptance by Tombigbee as set forth in Section 2, above.

**SECTION 4. Franchise Fee.** There will be no franchise fee charged.

**SECTION 5. Non-Exclusive Franchise.** The right to use and occupy the Public Ways of the City shall be nonexclusive, and the City reserves the right to use the Public Ways for itself or any other entity. The City's use, however, shall not unreasonably interfere with Tombigbee's Facilities.

**SECTION 6. City Regulatory Authority.** The City reserves the right to adopt such additional ordinances and regulations as may be deemed necessary in the exercise of its police power for the protection of the health, safety and welfare of its citizens and their properties consistent with applicable federal and state law.

**SECTION 7. Indemnification.** The City shall not be liable for any property damage or loss or injury to or death of any person that occurs in the construction, operation or maintenance by Tombigbee of its Facilities. Tombigbee shall indemnify, defend and hold the City harmless from and against third party claims, demand, liens and all liability or damage or whatsoever kind on account of Tombigbee's use of the Public Ways. The City shall: (a) give prompt written notice to Tombigbee of any claim, demand or lien with respect to which the City seeks indemnification hereunder; and (b) permit Tombigbee to assume the defense of such claim, demand, or lien. Tombigbee shall not be subject to liability for any settlement made without its consent. Notwithstanding the other provisions contained herein, Tombigbee shall in no event be required to indemnify the City for any claims, demands, or liens arising from the negligence or wrongful actions or inactions of the City, its officials, boards, commissions, agents, contractors, and/or employees.

**SECTION 8. Insurance Requirements.** Tombigbee will maintain in full force and effect for the Term of the Franchise, at Tombigbee expense, a comprehensive liability insurance policy written by a company authorized to do business in the State of Alabama, or will provide self-insurance reasonably satisfactory to the



City, protecting it against liability for loss, personal injury and property damage occasioned by the operation of the System by Tombigbee. Such insurance will be in an amount not less than \$1,000,000.00. Tombigbee will also maintain Worker's Compensation coverage throughout the term of this Franchise as required by law.

**SECTION 9. Plan, Design, Construction and Installation of Tombigbee's Facilities.**

**9.1** All Facilities under authority of this Ordinance shall be used, constructed and maintained in accordance with applicable law.

**9.2** Tombigbee shall, prior to commencing new construction or major reconstruction work in Public Ways or other public places, apply for any required permit from the City, which permit shall not be unreasonably withheld, conditioned, or delayed. Tombigbee will abide by all applicable ordinances and reasonable rules, regulations and requirements of the City consistent with applicable law, and the City may inspect the manner of such work and require remedies as may be reasonably necessary to assure compliance. Notwithstanding the foregoing, Tombigbee shall not be obligated to obtain a permit to perform emergency repairs.

**9.3** To the extent practical and consistent with any permit issued by the City, all Facilities shall be located so as to cause minimum interference with the Public ways and shall be constructed, installed, maintained, renovated or replaced in accordance with applicable and lawful rules, ordinances, and regulation of the City.

**9.4** If, during the course of work on its Facilities, Tombigbee causes damage to or alters the Public Way or other public property, Tombigbee shall replace and restore such Public Way or public property at Tombigbee's expense to a condition reasonably comparable to the condition that existed immediately prior to such damage or alteration.

**9.5** Tombigbee shall have the right to excavate the Public Ways subject to reasonable conditions and requirements of the City. Before installing new underground facilities or replacing existing underground facilities, each party shall first notify the other of such work in accordance with applicable law, such as but not limited to, Alabama's excavation and demolition laws set forth in Alabama Code (1975) §37-15-1 *et seq.* In no event will the City be required to secure Tombigbee's permission or consent to operate or construct in the City's Public Ways. To the extent practicable under the circumstances, each party may allow the other party, at its own expense, to share the trench for laying its own facilities therein, provided that such action will not unreasonably interfere with the first party's use of the trench for unreasonably delay project completion.

**9.6** Nothing in this Ordinance shall be construed to prevent the City from constructing, maintaining, repairing, or relocating its sewers, streets, water mains, sidewalks, or other public property. However, before commencing any work within a Public Way that may affect Tombigbee's Facilities, the City shall give written notice to Tombigbee CenturyLink in accordance with applicable law, such as but not limited to, Alabama's excavation and demolition laws set forth in Alabama Code (1975) §37-15-1 *et seq.* The two parties shall work together to ensure that all of their facilities are protected and the project is completed.

**9.7** Tombigbee shall not attach to, or otherwise use or commit to use, any pole owned by City until a separate pole attachment agreement has been executed by the parties.

**SECTION 10. Relocation of Facilities.**

**10.1** Relocation for the City. Tombigbee shall, upon receipt of advance written notice of not less than one hundred twenty (120 days), protect, adjust, support, raise, lower, temporarily disconnect, relocate or remove any Tombigbee property located in a Public Way when required by the City consistent with its police powers. Tombigbee shall be responsible for any costs associated with these obligations to the same extent as other users of the respective Public Way and as otherwise required by applicable state or federal law.

**10.2** Relocation for a Third Party. Tombigbee shall, at the request of any person holding a lawful permit issued by the City, protect, adjust, support, raise, lower, temporarily disconnect, relocate or remove any Tombigbee property located in a Public Way, provided that the cost of such action is borne by the person requesting it and Tombigbee is given reasonable advance written notice. In such situation, Tombigbee may also require advance payment. For purposes of this subsection 12.2, "reasonable advance written notice" shall mean no less than thirty (30) days for a temporary relocation, and no less than one hundred twenty (120) days for a permanent relocation.

**10.3** Alternatives to Relocation. Tombigbee may, after receipt of written notice requesting a relocation of Facilities, submit to the City written alternatives to such relocation. Such alternatives shall include the use and operation of temporary transmitting facilities in adjacent Public Ways. The City shall promptly evaluate such alternatives and advise Tombigbee in writing if one or more of the alternatives are suitable. If requested by the City, Tombigbee shall promptly submit additional information to assist the City in making such evaluation. The City shall give each alternative proposed by Tombigbee full and fair consideration. In the event the City ultimately determines that there is no other reasonable alternative, Tombigbee shall relocate the components of the System as otherwise provided herein. Notwithstanding the foregoing, Tombigbee shall in all cases have the right to abandon the Facilities.

**SECTION 11. Vegetation Management.** Tombigbee shall have the authority to trim trees and other natural growth in the Public Ways in order to access and maintain the Facilities in compliance with applicable law and industry standards. This grant shall in no way impose a duty on Tombigbee; instead, this grant gives permission to Tombigbee should Tombigbee elect to conduct such activities from time-to-time in order to access and maintain its Facilities.

**SECTION 12. Renewal.** At least one hundred twenty (120) days prior to the expiration of this Franchise, Tombigbee and the City shall either agree to extend the Term or use best faith efforts to negotiate a replacement Franchise agreement.



### **SECTION 13. Revocation of Franchise for Noncompliance.**

**13.1** In the event that the City believes that Tombigbee has not complied with the terms of the Franchise, the City shall informally discuss the matter with Tombigbee. If these discussions do not lead to resolution of the problem, the City shall notify Tombigbee in writing of the exact nature of the alleged noncompliance.

**13.2** Tombigbee shall have thirty (30) days from receipt of the written notice described in subsection 15.1 to either respond to the City, contesting the assertion of noncompliance, or otherwise initiate reasonable steps to remedy the asserted noncompliance issue, notifying the City of the steps being taken and the projected date that they will be completed.

**13.3** In the event that Tombigbee does not comply with subsection 15.2, above, the City shall schedule a public hearing to address the asserted noncompliance issue. The City shall provide Tombigbee at least ten (10) days prior written notice of and the opportunity to be heard at the hearing.

**13.4** Subject to applicable federal and state law, in the event the City, after the hearing set forth in subsection 15.3, determines that Tombigbee is noncompliant with this Ordinance, the City may:

- A. Seek specific performance of any provision which reasonably lends itself to such remedy, as an alternative to damages; or
- B. Commence an action at law for monetary damages or other equitable relief; or
- C. In the case of substantial noncompliance with a material provision of the Ordinance, seek to revoke the Franchise in accordance with subsection 15.5.

**13.5.** Should the City seek to revoke the Franchise after following the procedures set forth above, the City shall give written notice to Tombigbee. Tombigbee shall have ninety (90) days from receipt of such notice to object in writing and state its reason(s) for such objection. Thereafter, the City may seek revocation of the Franchise at a public hearing. The City shall cause to be served upon Tombigbee, at least thirty (30) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise. At the designated hearing, the City shall give Tombigbee an opportunity to state its position on the matter, after which the City shall determine whether or not the Franchise shall be revoked. Tombigbee may appeal the City's determination to an appropriate court, which shall have the power to review the decision of the City de novo. Such appeal must be taken within sixty (60) days of the issuance of the City's determination. The City may, at its sole discretion, take any lawful action which it deems appropriate to enforce its rights under this Ordinance in lieu of revocation.

**13.6.** Notwithstanding the foregoing provisions in this Section 13, Tombigbee does not waive any of its rights under applicable law.

**SECTION 14. No Waiver of Rights.** Neither the City nor Tombigbee shall be excused from complying with any of the terms and conditions contained herein by any failure of the other, or any of its officers, employees, or agents, upon any one or more occasions to insist upon or to seek compliance with any such terms and conditions. Each party expressly reserves any and all rights, remedies and arguments it may have at law or equity, without limitation, and to argue, assert, and/or take any position as to the legality or appropriateness of any provision in this Ordinance that is inconsistent with State or Federal law, as may be amended.

**SECTION 15. Transfer of Franchise.** Tombigbee's right, title or interest in the Franchise shall not be sold, transferred, assigned, or otherwise encumbered without notice to the City, except when said sale, transfer, assignment, or encumbrance is to an entity controlling, controlled by, or under common control with Tombigbee, or for transfers in trust, by mortgage, by other hypothecation, or by assignment of any rights, title or interest of Tombigbee in the Franchise or Facilities in order to secure indebtedness.

**SECTION 16. Amendment.** Amendments to the terms and conditions contained herein shall be mutually agreed upon by the City and Tombigbee and formally adopted by the City Council as an ordinance amendment.

**SECTION 17. Notices.** Any notice required or permitted to be given hereunder shall be deemed sufficient if given by a communication in writing and shall be deemed to have been received (a) upon personal delivery or actual receipt thereof or (b) within three (3) business days after such notice is deposited in the United States Mail, postage prepaid, certified, and addressed to the Parties as set forth below:

City of Fayette  
Attn: Dawn Clapp, City Clerk  
203 Temple Ave. N.  
Fayette, Alabama 35555

Tombigbee Electric Cooperative, Inc.  
Attn: Manager  
P.O. Box 610  
Guin, Alabama 35563

**SECTION 18. Publication.** In accordance with Alabama Statute, the City shall be responsible for publication of this Ordinance, and any amendments thereof. Tombigbee shall be responsible for payment of all necessary and reasonable costs of publication of this Ordinance, and any amendments thereof.

**SECTION 19. Severability.** If any section, sentence, paragraph, term or provision hereof is for any reason determined to be illegal, invalid, or superseded by other lawful authority, including any state or federal regulatory authority having jurisdiction thereof, or unconstitutional, illegal or invalid by any court of common jurisdiction, such portion shall be deemed separate, distinct, and independent provision, and such determination



shall have no effect on the validity of any other section, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise or any renewal or renewals thereof.

CONSIDERED and APPROVED this \_\_\_\_\_ day of April, 2022.

CITY OF FAYETTE

By: \_\_\_\_\_  
Rod Northam, Mayor

ACCEPTED BY TOMBIGBEE ELECTRIC COOPERATIVE, INC.

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

Councilmember Nichols moved the Council unanimously consent to consider Ordinance 2022-03. Upon the motion being seconded by Councilmember Williams, it was unanimously approved.

Councilmember Nichols moved the Council adopt Ordinance 2022-03. Upon the motion being seconded by Councilmember Whiteside, the same was unanimously adopted.

#### APPROVAL OF FINANCIAL STATEMENT

Councilmember Whiteside moved the City's financial statement be approved. Upon the motion being seconded by Councilmember Nichols, the same was unanimously approved.

#### APPROVAL OF MUNICIPAL COURT FINANCIAL STATEMENT

Councilmember Nichols moved the Municipal Court financial statement be approved. Upon the motion being seconded by Councilmember Whiteside, the same was unanimously approved.

#### APPROVAL OF PARK & RECREATION FINANCIAL STATEMENT

Councilmember Nichols moved the Park & Recreation financial statement be approved. Upon the motion being seconded by Councilmember Whiteside, the same was unanimously approved.

#### REPORT OF MAYOR

Mayor Northam announced the new business of FC Elite Gymnastics, Fayette Abrasive Blasting, Eve Cole, Faye Vape and Lightfoot Collectibles.

Mayor Northam stated the APCO Foundation had awarded a \$250.00 grant to the Fayette County Historical Society.

Mayor Northam stated the City had received the Gold Award from AMIC for its low loss ratio.

Mayor Northam announced rubbish pickup would be the same day as garbage pickup.

Mayor Northam thanked everyone who participated in Cleanup Day on April 9<sup>th</sup>.

Mayor Northam announced Job Shadow Day was April 14<sup>th</sup>.

Mayor Northam said the "Market on Main" event would be held on April 23 from 9:00 to 6:00.

#### REPORT OF CITY CLERK

City Clerk Dawn Clapp reported for the month of March, the City received \$265,393.00 in non-designated sales tax and the ½¢ sales tax for the hospital generated \$43,130.00 for a combined total of \$308,524.00. She reported the City received \$10,429.00 in alcohol taxes. She also reported the City received \$20,209.00 in online sales tax.

### REPORT OF JUNIOR MAYOR

Junior Mayor Shanti Enis reported the Junior City Council will have games at the "Market on Main". She stated they have been working on applications for membership on the Junior City Council.

### REPORT OF COUNCILMEMBER WILLIAMS

Councilmember Williams expressed sympathy to Councilmember Nichols in the loss of his father. He thanked the Junior City Council for their help with the cleanup. He also congratulated firefighter Tyler Galloway on completing firefighter training.

### EXECUTIVE SESSION

Councilmember Whiteside moved the Council go into executive session to discuss preliminary negotiations involving matters of trade or commerce in which the governmental body is in competition with private individuals or entities or other governmental bodies. The City Attorney said the discussions would have a detrimental effect upon the competitive position of the City and upon the location, retention, expansion or upgrading of a business entity within the City if disclosed outside of the executive session. Upon the motion being seconded by Councilmember Nichols, it was unanimously approved.

Councilmember Whiteside moved the Council come out of executive session. Upon the motion being seconded by Councilmember Nichols, the same was unanimously approved.

### ADJOURNMENT

There being no further business to come before the Council, upon the motion to adjourn being made by Councilmember Whiteside and seconded by Councilmember Nichols, it was unanimously approved.

---

Mayor

Attest:

---

City Clerk