

The City Council of the City of Tuskegee met in Special Session on Friday, July 27, 2018 at 1:30 PM in the Meeting Room on the 2<sup>nd</sup> Floor at the Municipal Complex located at 101 Fonville Street, Tuskegee, Alabama.

1. **CALL TO ORDER.** Mayor Lawrence F. Haygood, Jr.
2. **INVOCATION.** Repeated the Lord's Prayer in unison.
3. **PLEDGE OF ALLEGIANCE.** Repeated in Unison.
4. **ROLL CALL.** Jolai Jenkins, Recording Clerk.

**PRESENT**

Mayor Lawrence F. Haygood, Jr.  
Council Member at Large Annie L. Brown  
Council Member Frank Christopher Lee, II  
Council Member Shirley W. Curry

**ABSENT**

Council Member Ala Whitehead

5. **APPROVAL OF AGENDA.**

Motion was made by Council Member Lee to accept/approve the agenda as circulated. Council Member-at-Large Brown seconded the motion and all members voted aye. Mayor Haygood declared the motion carried.

6. **DISCUSSIONS:** CITY MANAGER / MAYOR.

- A. Resolution No. 2018-50. CDBG Project 2018 Neighborhood Project Application.

Motion was made by Council Member-at-Large Brown to accept/adopt Resolution 2018-50 as circulated regarding CDBG Project 2018 Neighborhood Project Application. Council Member Curry seconded the motion and all members voted aye. Mayor Haygood declared the motion carried.

**RESOLUTION NO. 2018-50**

2018 CDBG Neighborhood Revitalization Project

**WHEREAS**, the City of Tuskegee is eligible to request financial assistance through the PY 2018 Community Development Block Grant (CDBG) Fund as made available through the Housing and Community Development Act of 1974, as amended, and as administered by the Alabama Department of Economic and Community Affairs; and

**WHEREAS**, the City of Tuskegee has determined that the greatest community development need that can be addressed by the CDBG Fund is neighborhood revitalization to include street resurfacing and housing demolition.

**NOW, THEREFORE, BE IT RESOLVED** by the Tuskegee City Council as follows:

**THAT**, the City of Tuskegee shall submit an application for financial assistance to the Alabama Department of Economic and Community Affairs for an PY 2018 Community Development Block Grant in the amount of \$450,000 for the purpose of street resurfacing and housing demolition; and

**THAT**, the City of Tuskegee commits to provide a cash match in the amount of \$475,930.00 to complete the proposed activities; and

**THAT**, Bernard E. Houston, in his capacity as City Manager is hereby authorized and directed to execute all required application documents on behalf of the City of Tuskegee; and is authorized to take other necessary actions as may be required to implement the project with all due speed in the event of funding approval.

**ADOPTED and APPROVED** on this 27<sup>th</sup> day of July 2018.

CITY OF TUSKEGEE, ALABAMA

/s/ Lawrence F. Haygood, Jr.

Lawrence F. Haygood, Mayor

ATTEST:

/s/ Fartima B. Clark,

Fartima B. Clark, City Clerk

B. Resolution No 2018-51. Award for Professional Engineering Services.

Motion was made by Council Member-at-Large Brown to accept/adopt Resolution 2018-51 as circulated regarding Award for Professional Engineering Services. Council Member Curry seconded the motion and all members voted aye. Mayor Haygood declared the motion carried.

**RESOLUTION NO. 2018-51**

**2018 CDBG Neighborhood Revitalization Project –Professional Services Resolution**

**WHEREAS**, the City of Tuskegee contacted known qualified firms in order to obtain proposals for the provision of engineering services for a PY 2018 Community Development Block Grant Project; and

**WHEREAS**, based on the City's rating of all proposals received, using the City's rating system, Goodwyn, Mills and Cawood, Inc has been deemed most qualified for the services called for; and

**WHEREAS**, Goodwyn, Mills and Cawood, Inc is not debarred from working on federally funded projects per the SAM.GOV search results attached hereto; and

**WHEREAS**, it has been determined that it is in the best interest of the City of Tuskegee to award a contract to Goodwyn, Mills and Cawood, Inc for CDBG Application, and CDBG-Post Application services contingent upon awarding of the grant.

**NOW, THEREFORE, LET IT BE RESOLVED** by the Council of the City of Tuskegee, Alabama as follows:

**SECTION 1.** That, based on the City's understanding of recent changes to the procurement policy of ADECA, the acceptance of the proposal of Goodwyn, Mills and Cawood, Inc for the provision of professional services for PY 2018 CDBG Project, has been determined to be in the best interest of the City of Tuskegee, and that the proposed fee has been accepted as reasonable based on the complexity of the project, ADECA's acceptable fee scale and the amount and nature of the local match to be provided by the City.

**SECTION 2.** That the City of Tuskegee hereby elects to select and award Goodwyn, Mills and Cawood, Inc for the provision of engineering services pending receipt of CDBG funds and ADECA contract approval as required.

**SECTION 3.** That this action is based on the current interpretation of ADECA procurement policy with is acknowledged by this resolution and ADECA policy and memorandum on file.

**SECTION 4.** That Bernard Houston, in his capacity as City Manager, is hereby authorized and directed to execute said contract on behalf of the City of Tuskegee.

**ADOPTED AND APPROVED** this 25<sup>th</sup> day of July, 2018.

CITY OF TUSKEGEE, ALABAMA

Lawrence F. Haygood, Jr. Mayor

ATTEST:

Fartima B. Clark, City Clerk

C. Charter Franchise Contract Agreement (2018).

Motion was made by Council Member Lee to accept/approve the 2018 Charter Communications Franchise Contract Agreement. Council Member-at-Large Brown seconded the motion and all members voted aye. Mayor Haygood declared the motion carried.

**FRANCHISE AGREEMENT**

**This Franchise Agreement** ("Franchise") is between the City of Tuskegee, Alabama hereinafter referred to as the "Grantor" and Charter Communications, L.L.C., locally known as CHARTER COMMUNICATIONS, hereinafter referred to as the "Grantee."

The Grantor hereby acknowledges that the Grantee has substantially complied with the material terms of the current Franchise under applicable law, and that the financial, legal, and technical ability of the Grantee is reasonably sufficient to provide services, facilities, and equipment necessary to meet the future cable-related needs of the community, and having afforded the public adequate notice and opportunity for comment, desires to enter into this Franchise with the Grantee for the construction and operation of a cable system on the terms set forth herein.

**1. Definitions:**

- a. "Cable Act" means the Cable Communications Policy Act of 1984, P.L. 98-549, 47 U.S.C. §521 Supp., as it may be amended or superseded.
- b. "Cable System," "Cable Service," and "Basic Cable Service" shall be defined as set forth in the Cable Act.
- c. "Franchise" means the authorization granted hereunder of a franchise, privilege, permit, license or otherwise to construct, operate and maintain a Cable System within the Service Area.
- d. "Gross Revenues" means any revenues, as determined in accordance with generally accepted accounting principles, received by the Grantee from the operation of the Cable System to provide cable service in the City, including, but not limited to, all Cable Service fees, franchise fees, late fees, installation fees, upgrade and downgrade fees, converter rental fees and lockout device fees. The term Gross Revenue shall not include: (1) any taxes, or assessment of general applicability collected by the Grantor from Subscribers on behalf of a government agency, and (2) unrecovered bad debt.
- e. "Service Area" shall mean the geographic boundaries of the Grantor.
- f. "Streets" means the public streets, avenues, highways, boulevards, concourses, driveways, bridges, tunnels, parks, parkways, waterways, alleys, all other rights-of-way and easements, including but not limited to public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses now or hereafter, and the public grounds, places or water within the geographic boundaries of Grantor.
- g. "Subscriber" means any person lawfully receiving any Cable Service from the Grantee.

- 2. Granting of Franchise.** The Grantor hereby grants to Grantee a non-exclusive Franchise which authorizes the Grantee to erect, construct, operate and maintain in, upon, along, across, above, over and under the Streets now in existence and as may be created or established during its terms; any poles, wires, cable, antennae, underground conduits, manholes, and other conductors, fixtures, equipment and other facilities used for the construction, operation and maintenance of the Cable System, upon the terms and conditions set forth herein. Nothing in this Franchise shall be construed to prohibit the Grantee from offering any service over its Cable System that is not prohibited by federal or state law.

3. **Term.** The Franchise shall be for a term of ten (10) years, commencing on the Effective Date of this Franchise as set forth in Section 16. This Franchise will be automatically extended for an additional term of five (5) years, unless either party notifies the other in writing of its desire to not exercise this automatic extension (and enter renewal negotiations under the Cable Act) at least three (3) years before the expiration of this Franchise. If such a notice is given, the parties will then proceed under the federal Cable Act renewal procedures.

4. **Use of the Streets and Dedicated Easements.**

- a. Grantee shall have the right to use the Streets of the Grantor for the construction, operation and maintenance of the Cable System, including the right to repair, replace and enlarge and extend the Cable System, provided that Grantee shall utilize the facilities of utilities when available on reasonable terms and conditions.
- b. The facilities of the Grantee shall be installed underground in those Service Areas where existing telephone and electric services are both underground at the time of system construction. In areas where either telephone or electric utility facilities are installed aerially at the time of system construction, the Grantee may install its facilities aerially with the understanding that at such time as the existing aerial facilities are required to be placed underground by the Grantor, the Grantee shall likewise place its facilities underground. In the event Grantor or any agency thereof directly or indirectly reimburses any utility for the placement of cable underground or the movement of cable, Grantee shall be similarly reimbursed.
- c. Grantee shall have the right to remove, trim, cut and keep clear of the Cable System, the trees in and along the Streets of the Grantor.

5. **Maintenance of the System.**

- a. Grantee shall at all times employ ordinary care in the maintenance and operation of the Cable System so as not to endanger the life, health or property of any citizen of the Grantor or the property of the Grantor
- b. All construction practices and installation of equipment shall be done in accordance with all applicable sections of the National Electric Safety Code.
- c. The Cable System shall be designed, constructed and operated so as to meet those technical standards adopted by the FCC relating to Cable Systems contained in part 76 of the FCC's rules and regulations as they may, from time to time, be amended.

6. **Service.**

- a. The Grantee shall continue to provide Cable Service to all residences within the Service Area where Grantee currently provides Cable Service. Grantee shall have the right, but not the obligation, to extend the Cable System into any other portion of the Service Area, including annexed areas. Cable Service offered to Subscribers pursuant to this Franchise shall be conditioned upon Grantee having legal access on reasonable terms and conditions to any such Subscriber's dwelling unit or other units wherein such Cable Service is provided.
- b. The Grantor shall promptly provide written notice to the Grantee of its annexation of any territory which is being provided Cable Service by the Grantee or its affiliates. Such annexed area will be subject to the provisions of this Franchise upon sixty (60) days' written notice from the Grantor, subject to the conditions set forth below and subsection (a) above. The Grantor shall also notify

Grantee in writing of all new street address assignments or changes within the Service Area. Grantee shall within ninety (90) days after receipt of the annexation notice, pay the Grantor franchise fees on revenue received from the operation of the Cable System to provide Cable Services in any area annexed by the Grantor if the Grantor has provided a written annexation notice that includes the addresses that will be moved into the Service Area in an Excel format or in a format that will allow Grantee to change its billing system. If the annexation notice does not include the addresses that will be moved into the Service Area, Grantee shall pay franchise fees within ninety (90) days after it receives the annexed addresses as set forth above. All notices due under this section shall be sent by electronic or certified mail, return receipt requested to the addresses set forth in Section 13 with a copy to the Director of Government Relations. In any audit of franchise fees due under this Agreement, Grantee shall not be liable for franchise fees on annexed areas unless and until Grantee has received notification and information that meets the standards set forth in this section.

**7. Government Access Channel.**

- a. Grantee shall provide one (1) channel on the Cable System for the use by the Grantor for original, locally-produced, non-commercial, video programming for Government access programming. Programming shall be produced in Tuskegee, AL. The Government access channel may be placed on any tier of service available to all Subscribers, including the digital tier. The Grantor shall utilize the Government access channel as follows: the Grantor shall provide programming on the channel to occupy seventy percent (70%) of the hours between 11a.m. and 11p.m. for any twelve consecutive week period. A program may be repeated no more than two (2) times. Time allocated to character-generated or similar programming shall be excluded from the determination of when such channel is in use and programmed.
- b. In the event the programming levels set forth herein are not maintained or if the Grantor does not adequately use the Government access channel, Grantee reserves the right to have the channel returned to the Grantee for the Grantee's use. Grantee shall provide Grantor with sixty (60) days prior written notice informing Grantor when programming levels set forth herein are not being maintained. Grantee reserves the right to utilize the Government access channel only after Grantor has been notified and Grantor has not maintained programming levels set forth herein within sixty (60) days from receipt of said notice. In the event the Grantee exercises its right to again utilize said Government access channel after the sixty (60) day period elapses, the Grantee shall notify its customers of Grantor's intention to utilize the Government access channel by providing customers with a thirty (30) day prior written notice. In addition, the Grantee may use the designated channel during those hours that the Grantor is not using the Government access channel.
- c. The Grantor shall indemnify, save and hold harmless the Grantee from and against any and all liability resulting from the Grantor's use of the aforementioned Government access channel whether Grantor operates the Government access channel from Grantor's facilities or a third party's facilities. Grantee shall not be responsible for operating and managing the Government access channel including approving any Government access programming and/or for obtaining releases from programmers for any Government access programming. Grantor reserves the right to permit a third party to operate and manage the PEG channel on the Grantor's behalf. The Government access channel shall not be used for commercial purposes, including but not limited to advertising or leased access. Grantor agrees to notify any Person using the Government access channels of these non-commercial use requirements.

**8. Insurance/Indemnity.**

- a. The Grantee shall maintain throughout the term of the Franchise insurance in amounts at least as follows:

Workers' Compensation	Statutory Limits
Commercial General Liability	\$1,000,000 per occurrence, Combined Single Limit (C.S.L.) \$2,000,000 General Aggregate
Auto Liability including coverage on all owned, non- owned hired autos	\$1,000,000 per occurrence C.S.L.
Umbrella Liability	\$1,000,000 per occurrence C.S.L.

- b. The Grantor shall be added as an additional insured, arising out of work performed by Grantee, to the above Commercial General Liability, Auto Liability and Umbrella Liability insurance coverage.
- c. The Grantee shall furnish the Grantor with current certificates of insurance evidencing such coverage upon request.
- d. Grantee hereby agrees to indemnify and hold the Grantor, including its agents and employees, harmless from any claims or damages resulting from the actions of Grantee in constructing, operating or maintaining the Cable System. Grantor agrees to give the Grantee written notice of its obligation to indemnify Grantor within ten (10) days of receipt of a claim or action pursuant to this section. Notwithstanding the foregoing, the Grantee shall not be obligated to indemnify Grantor for any damages, liability or claims resulting from the willful misconduct or negligence of Grantor or for the Grantor's use of the Cable System.

## 9. **Revocation.**

- a. Prior to revocation or termination of the Franchise, the Grantor shall give written notice to the Grantee of its intent to revoke the Franchise on the basis of a pattern of substantial noncompliance with a material provision of the Franchise. The notice shall set forth the exact nature of the noncompliance. The Grantee shall have sixty (60) days from such notice to either object in writing and to state its reasons for such objection and provide any explanation or to cure the alleged noncompliance. If Grantee has not cured the breach within such sixty (60) day time period or if the Grantor has not otherwise received a satisfactory response from Grantee, the Grantor may then seek to revoke the Franchise at a public hearing. The Grantee shall be given at least thirty (30) days prior written notice of such public hearing, specifying the time and place of such hearing and stating its intent to revoke the Franchise.
- b. At the hearing, the Grantor shall give the Grantee an opportunity to state its position on the matter, present evidence and question witnesses, after which it shall determine whether or not the Franchise shall be revoked. The public hearing shall be on the record and a written transcript and a certified copy of the findings shall be made available to the Grantee within ten (10) business days. The Grantee may appeal such determination to an appropriate court, which shall have the power to review the decision of the Grantor de novo.
- c. Upon revocation of the Franchise, Grantee may remove the Cable System from the Streets of the Grantor, or abandon the Cable System in place.

10. **Equal Protection.** If any other provider of cable services or video services (without regard to the technology used to deliver such services) is lawfully authorized by the Grantor or by any other state or federal governmental entity to provide such services using facilities located wholly or partly in the public rights-of-way of the Grantor, the Grantor shall, within thirty (30) days of a written request from Grantee, modify this Franchise to insure that the obligations applicable to Grantee are no more burdensome than those imposed on the new competing provider. If the Grantor fails to make modifications consistent with this requirement,

Grantee's Franchise shall be deemed so modified thirty (30) days after the Grantee's initial written notice. As an alternative to the Franchise modification request, the Grantee shall have the right and may choose to have this Franchise with the Grantor be deemed expired thirty (30) days after written notice to the Grantor. Nothing in this Franchise shall impair the right of the Grantee to terminate this Franchise and, at Grantee's option, negotiate a renewal or replacement franchise, license, consent, certificate or other authorization with any appropriate government entity. Nothing in this Section 9 shall be deemed a waiver of any remedies available to Franchisee under federal, state or municipal law, including but not limited to Section 625 of the Cable Act, 47 U.S.C. § 545

11. **Compliance with Laws.** Grantor and Grantee shall conform to all applicable state and federal laws and rules regarding cable television as they become effective. Grantee shall also conform with all generally applicable Grantor ordinances, resolutions, rules and regulations heretofore or hereafter adopted or established during the entire term of the Franchise. In the event of a conflict between Grantor ordinances, resolutions, rules or regulations and the provisions of this Franchise, the provisions of this Franchise shall govern.
12. **Change in Law.** Notwithstanding any other provision in this Franchise, in the event any change to state or federal law occurring during the term of this Franchise eliminates the requirement for any person desiring to provide video service or Cable Service to obtain a franchise from the Grantor, then Grantee shall have the right to terminate this Franchise and operate the system under the terms and conditions established in applicable law. If Grantee chooses to terminate this Franchise pursuant to this provision, this Franchise shall be deemed to have expired by its terms on the effective date of any such change in law, whether or not such law allows existing franchise agreements to continue until the date of expiration provided in any existing franchise.
13. **Confidentiality.** If Grantee provides any books, records or maps to the Grantor, the Grantor agrees to treat as confidential such books, records or maps that constitute proprietary or confidential information. Until otherwise ordered by a court or agency of competent jurisdiction, the Grantor agrees that, to the extent permitted by state and federal law, it shall deny access to any of Grantee's books, records or maps marked confidential to any person.
14. **Notices, Miscellaneous.**
  - a. Unless otherwise provided by federal, state or local law, all notices, reports or demands pursuant to this Franchise shall be in writing and shall be deemed to be sufficiently given upon delivery to a Person at the address set forth below, or by U.S. certified mail, return receipt requested, nationally or internationally recognized courier service such as Federal Express or electronic mail communication to the designated electronic mail address provided below. Grantee shall provide thirty (30) days written notice of any changes in rates, programming services or channel positions using any reasonable written means. As set forth above, notice served upon the Grantor shall be delivered or sent to:

Grantor:	City of Tuskegee Lawrence F. Haygood, Jr. Mayor 101 Fonville Street Tuskegee, AL 36083
Email:	<a href="mailto:thaygood@tuskegeecalabama.gov">thaygood@tuskegeecalabama.gov</a> <a href="mailto:lhaygood@tuskegee.edu">lhaygood@tuskegee.edu</a>
Grantee:	Charter Communications Director, Government Affairs 3000 Riverchase Galleria, Suite 610

Email: Birmingham, AL 35244  
taylor.vice@charter.com

Copy to: Charter Communications  
Attn: Vice President, Government Affairs  
12405 Powerscourt Drive  
St. Louis, MO 63131

- b. All provisions of this Franchise shall apply to the respective parties, their lawful successors, transferees and assigns.
- c. If any particular section of this Franchise shall be held invalid, the remaining provisions and their application shall not be affected thereby.
- d. In the event of any conflict between this Franchise and any Grantor ordinance or regulation, this Franchise will prevail.

15. **Force Majeure.** The Grantee shall not be held in default under, or in noncompliance with the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Grantee to anticipate and control. This provision includes, but is not limited to, severe or unusual weather conditions, fire, flood, or other acts of God, strikes, work delays caused by failure of utility providers to service, maintain or monitor their utility poles to which Grantee's Cable System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

16. **Franchise Fee.**

- a. Grantee shall pay to the Grantor annually an amount equal to five percent (5%) of the Gross Revenues for such calendar year, transmitted by electronic funds transfer to a bank account designated by Grantor. Franchise fees may be passed through to Subscribers as a line item on Subscriber bills or otherwise as Grantee chooses, consistent with federal law.
- b. The amount of franchise fee and the method of calculation shall be competitively neutral when compared to the amount or method of calculation of the franchise fee in any other cable franchise or authorization to provide video service granted by Grantor. In the event any other cable franchise or authorization to provide video service provides for a lesser franchise fee than this Franchise, Grantee's obligation to pay a Franchise Fee under this Section 15 shall be reduced by an equivalent amount.
- c. Each year during which the Franchise is in force, Grantee shall pay Grantor no later than forty-five (45) days after the end of each calendar year the franchise fees required by this section. The Grantor shall have the right to review the previous year's books of the Grantee to the extent necessary to ensure proper payment of the fees payable hereunder.

17. **Effective Date.** The Franchise granted herein will take effect and be in full force from such date of acceptance by Grantee recorded on the signature page of this Franchise.

18. **Acceptance and Entire Agreement.** The Grantor and the Grantee, by virtue of the signatures set forth below, agree to be legally bound by all provisions and conditions set forth in this Franchise. The Franchise constitutes the entire agreement between the Grantor and the Grantee. No modifications to this Franchise may be made without an appropriate written amendment signed by both parties. Any determination by the



Grantor regarding the interpretation or enforcement of this Franchise shall be subject to de novo judicial review. If any fee or grant that is passed through to Subscribers is required by this Franchise, other than the franchise fee, such fee or grant shall go into effect sixty (60) days after the Effective Date of this Franchise.

Considered and approved this 27<sup>th</sup> day of July, 2018.

CITY OF TUSKEGEE, ALABAMA  
Signature: /s/ LAWRENCE F. HAYGOOD, JR.

Name/Title: Lawrence F. Haygood, Jr., MAYOR

Accepted this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, subject to applicable federal, state and local law.

MARCUS CABLE OF ALABAMA, LLC  
By: Charter Communications, Inc., its Manager

Signature: \_\_\_\_\_

Name/Title: \_\_\_\_\_

7. **OTHER BUSINESS.** NONE

8. **ADJOURNMENT.**

There being no further matters to come before the Council at this time, Council Member Brown moved to adjourn at 2:20 PM. Mayor Haygood declared the meeting adjourned.

CITY OF TUSKEGEE, ALABAMA

\_\_\_\_\_  
Lawrence F. Haygood, Jr., Mayor

ATTEST:

\_\_\_\_\_  
Jolai Jenkins, Recording Clerk

\_\_\_\_\_  
Fartima B. Clark, City Clerk