

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
Water and Wastewater Board of the City of Madison (dba Madison Utilities)  
and the City of Madison, Alabama**

This memorandum will serve as an understanding between the Water and Wastewater Board of the City of Madison, doing business as Madison Utilities (hereinafter, "MU") and the City of Madison, Alabama (hereinafter the "City"), (collectively, the "Parties") regarding regular and periodic inspection and flow testing of fire hydrants in the City of Madison, Alabama (hereinafter the "MOU").

**1.0 INTRODUCTION**

The City has granted a franchise to MU to provide water and sewer service to residents of the City of Madison. The City and the Board last entered into such a franchise agreement by the City's approval of Ordinance 2015-78 on March 23, 2015, which franchise was accepted by MU on April 6, 2015 (the "2015 Franchise Agreement"). Under Section 6 of the 2015 Franchise Agreement, MU agreed that it would inspect, maintain, extend, replace, improve as necessary, and supply continuous water supply to a system of fire hydrants sufficient to provide fire protection for the City. MU has adequately fulfilled its obligation to provide the described fire hydrant inspection and maintenance program under the Franchise Agreement.

However, under current Insurance Service Organization ("ISO") Fire Suppression Rating Schedule ("FSRS") used for calculating the City's Public Protection Classification ("PPC"), also referred to as a fire score, or fire rating, additional points are available for increasing the frequency of inspection and flow testing of fire hydrants serving the City. Increasing the frequency of inspection and flow testing could have a positive impact on the City's ISO fire rating. The Madison Fire Department ("MFD") has expressed interest in participating in an enhanced Fire Hydrant Inspection and Flow Testing program in order to potentially improve the City's ISO fire rating.

**2.0 AUTHORITY**

Each of the parties to this Agreement covenants that it has full authority to enter into this MOU. The undersigned covenant that they have authority to enter into this agreement on behalf of the parties.

**3.0 TERM AND TERMINATION**

*3.1 Term*

This MOU shall have a term of five years, subject to earlier termination as provided herein, and may be renewed at the option either party for three (3) successive terms of five years each.

### 3.2 Termination

This MOU may be terminated by either party at any time, with or without cause, on thirty (30) days' notice to the other party.

## 4.0 RESPONSIBILITIES OF THE PARTIES

### 4.1 City Responsibilities

MFD employees of the City, following adequate training by MFD employees who are knowledgeable of this agreement and proper hydrant testing protocol, will assume responsibility for a City Fire Hydrant Inspection and Flow Testing Program ("City Testing Program") of all MU fire hydrants within the City on such frequency as may be determined to be advantageous to the City's objective to improve and/or maintain its ISO fire rating.

Before any MFD personnel participates in the City Testing Program, he/she will actively participate in and complete training provided by MFD under this MOU regarding the proper means and methods of inspecting and conducting flow testing of hydrants. New MFD personnel who have not received training established by MFD hereunder, may engage in the City Testing Program only under the direction and supervision of MFD personnel who have completed the training, until training for new personnel can be scheduled and completed.

The City Testing Program, at a minimum, will include the following, as to each hydrant inspected or tested:

Hydrant Inspection (**no less than annually**) includes:

- Visual Inspection
- To the extent necessary and permitted by City ordinance or regulations, clearing away and removing any vegetation, ant beds, or other impediments to use and operation of the hydrant
- Removing, greasing and replacing the caps on all nozzles on the hydrant
- Planning for handling or appropriately deflecting water discharge from the hydrant during inspection to avoid risk of disruption of vehicular or pedestrian traffic, formation of ice (in winter), erosion or damage to public or private property
- With caps in place, opening the hydrant operating nut ("valve") to test for leaks
- Removing caps and opening the hydrant operating nut to flush the hydrant
- **Closing the operating nut or valve SLOWLY to avoid potential creation of water hammer that could damage MU's supply lines.**
- Assuring that the hydrant valve is properly closed and sealed without leaks
- Collecting, removing any equipment used in the inspection, cleaning the area and restoring any damage, erosion, or standing water, to pre-inspection condition.
- Immediately reporting to MU any failure or inability to properly seat the hydrant valve without leaks.
- If a hydrant is defective or otherwise inoperable, "black-bagging" the hydrant and notifying MU within 48 hours that the hydrant is out of service.

Hydrant Flow Testing (**no less than once each five years**) includes:

- All steps provided above for Hydrant Inspection
- Conducting hydrant flow test in compliance with the American Water Works Association (AWWA) Manual of Water Supply Practices M17 "Fire Hydrants: Installation, Field Testing, and Maintenance (5<sup>th</sup> Edition), or as said manual may be revised or amended during the term of this MOU.
- Reporting to MU any issues relating to water flow to a hydrant within 48 hours of the flow test.
- At its option, the City may paint hydrant bonnets for the purpose of color-coding them to denote applicable flow rates of hydrants based on data obtained by hydrant flow testing. If the City chooses to do so, it will take all responsibility for adhering to a standard protocol for color-coding of hydrant bonnets, for assuring that the paint on bonnets is properly maintained, and for providing MU with copies of all documentation of all flow rate classifications maintained by the City.

No less than annually, the City will provide MU with a copy of all recorded raw data, and any compilation or reporting thereof into a report, ISO Fire Rating Application or other presentation or record, which data, information, or documents obtained or created in connection with operation of the City Testing Program.

To the extent that the City acquires or maintains a hydrant numbering, location, or classification system, or GIS data relating to location or classification of hydrants, the City will provide that information or data to MU in its native format and update such data no less frequently than annually. This information should include data relating to private or "silver" hydrants, to the extent that such data is maintained by the City.

The City will bear financial responsibility for damage to MU hydrants, water mains or supply lines, or water quality caused by negligent hydrant inspection or flow testing by City personnel. Upon notification or discovery of any such damage, MU will make necessary repairs and will notify the City of the actual labor and material costs incurred as a result of the damage. Unless responsibility for the damage is contested by the City as provided herein, payment will be due to MU from the City within thirty (30) days of its receipt of notice of such costs. If any such cost remains unpaid for any fiscal year in which this MOU is in effect, MU shall deduct all unpaid repair costs incurred by MU during the fiscal year from the annual franchise fee payment otherwise due to the City under the 2015 Franchise Agreement.

Subject to applicable law, the City will indemnify and hold MU harmless from any liability or costs associated with claims of any third-party arising from the City's engagement in hydrant inspection or flow testing under this Agreement.

The City's responsibility for payment of damage claims and indemnification under this section 4.1 shall survive any expiration or termination of this MOU.

#### 4.2 MU Responsibilities

MU will provide technical assistance as needed or requested by the City to assist the City with:

- Location information regarding all fire hydrants located in the City
- Technical information or specifications regarding fire hydrants owned and maintained by MU
- Updates to training advice, consultation, or resources regarding best practices for inspection and flow testing under the City Testing Program
- Location and other relevant information regarding new hydrants accepted into MU's maintenance system
- Updates from AWWA regarding hydrant inspection or flow testing procedures.

MU will promptly respond to repair or replace any "black-bagged" hydrant taken out of service, or other hydrant in need of repair, based on any report made to MU by the City or which is otherwise brought to MU's attention. MU will also promptly consider and seek to implement, appropriate and reasonable solutions to any reported inadequate flow issues related to hydrants operated within MU's water system within the City. This obligation, however, does not extend to private, or "silver hydrants" which have not been accepted into MU's maintenance system and are the responsibility of private owners.

MU will provide all hydrant inspection and flow testing for MU hydrants located outside of the City.

Upon notification or discovery of damage to its hydrants, water distribution system, or diminution of water quality resulting from negligent hydrant inspection or flow testing by the City, MU will make necessary repairs and will notify the City of and provide documentation for the actual labor and material costs incurred as a result of the damage, for which the City will have responsibility to reimburse MU as provided in this Agreement.

Upon the termination or expiration of this MOU, MU will resume provision of hydrant inspection and flow testing required in its judgment to adequately and properly maintain its system of fire hydrants consistent with its prior practices in fulfillment of the requirements of the 2015 Franchise Agreement.

#### 5.0 MISCELLANEOUS

##### 5.1 *City Testing Program as Compliance with MU inspection responsibility.*

For and during the term of this MOU and any extensions thereof, the City Testing Program conducted by the City as provided in this MOU will be deemed by the parties to satisfy any inspection responsibility MU owes to the City under the 2015 Franchise Agreement, as to fire hydrants located within the City. The City Testing Program does not relieve MU of its on-going responsibility to properly maintain, extend, replace, improve as necessary, and supply continuous water supply to its system of fire hydrants sufficient to provide fire protection for the City, as

required by the 2015 Franchise Agreement. MU may, however, rely on reports from the City and the City's inspection of MU fire hydrants, regarding the need for hydrant repair or maintenance.

## **5.2     *Immigration Provision.***

By signing this contract, the contracting parties affirm, for the duration of the MOU, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the state of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the MOU and shall be responsible for all damages resulting therefrom.

## **6.0     NOTICES**

Notices under this MOU shall be sent the following addresses:

City of Madison  
c/o Mayor's Office  
Madison Municipal Complex  
100 Hughes Road  
Madison, AL 35758

With a copy to:  
Legal Department  
Madison Municipal Complex  
100 Hughes Road  
Madison, AL 35758

Madison Utilities  
c/o General Manager  
101 Ray Sanderson Drive  
Madison, AL 35758

With a copy to:  
Lanier Ford Shaver & Payne, P.C.  
2101 Clinton Avenue W. Suite 102  
Huntsville, AL 35805

## **7.0     SUCCESSORS IN INTEREST**

The provisions of this MOU shall be binding upon and inure only to the benefit of the parties to the MOU and shall not be assigned to any other party without express written approval of the other parties.

## 8.0 COMPLIANCE WITH GOVERNMENT REGULATIONS

Each party to this MOU agrees to comply with federal, state, and local laws, codes, regulations, and ordinances applicable to the work performed under this MOU.

## 9.0 SEVERABILITY

If any provision of this MOU is declared by a court having jurisdiction to be illegal, unenforceable, or in conflict with any law, the validity of the remaining terms and provisions shall not be affected; the rights and obligations of the parties shall be construed and enforced as if the MOU did not contain the particular provision held to be invalid.

## 10.0 AMENDMENTS

The terms and conditions of this MOU shall not be waived, altered, modified, supplemented, or amended in any manner whatsoever without prior written approval of the parties hereto.

## 11.0 GOVERNING LAW AND DISPUTE RESOLUTION


This MOU shall be governed by and construed in accordance with the laws of the State of Alabama.

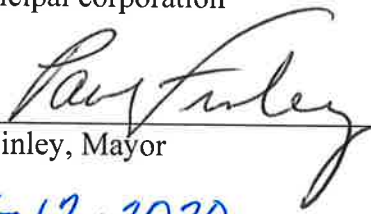
The parties shall endeavor to resolve any dispute arising out of or relating to this MOU by mediation under the Alabama Civil Mediation Rules. Unless the parties agree otherwise, the mediator will be selected from the Alabama Civil Mediators Roster.

Any controversy or claim arising out of or relating to this MOU or the breach, termination or validity thereof, which remains unresolved thirty (30) days after conclusion of a mediation conducted under applicable rules, shall be resolved by arbitration by a sole arbitrator in accordance with the applicable rules of the American Arbitration Association. Judgment upon the award rendered by the arbitrator may be entered by any court having jurisdiction thereof.

**CITY OF MADISON, ALABAMA**  
a municipal corporation

ATTEST:


  
Melanie A. Williard,  
City Clerk Treasurer

  
Paul Finley, Mayor  
05-12-2020  
Date

**WATER AND WASTEWATER BOARD  
OF THE CITY OF MADISON  
doing business as MADISON UTILITIES**

ATTEST:

  
Emory DeBord, Secretary

  
Terris Tatum, Chairman  
5/5/20  
Date