

**ORDINANCE NO. 2024-191**

**AN ORDINANCE AMENDING THE TERMS OF A FRANCHISE FOR THE WATER AND WASTEWATER BOARD OF THE CITY OF MADISON FOR OPERATION OF ITS UTILITY SYSTEMS IN THE CITY OF MADISON**

**WHEREAS**, the City Council of the City of Madison, Alabama (hereinafter referred to as the “City”), by Ordinance No. 91-91 granted a franchise to the Water and Wastewater Board of the City of Madison, doing business as Madison Utilities (hereinafter referred to as “MU”), for operation of certain utility systems in the City and said franchise was accepted by MU; and

**WHEREAS**, by Ordinance No. 2015-078, the City last amended the franchise granted to MU; and

**WHEREAS**, the City and MU wish to amend the existing franchise agreement granted by revising the franchise fee paid to the City by MU and to repeal or supersede prior agreements, ordinances, resolutions, or franchises between the parties in conflict with this franchise.

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Madison, Alabama, that Ordinance No. 2015-078 by which a franchise for operation of certain utility systems in the City was granted to MU is amended to read as follows:

**SECTION 1.** The City, in consideration of the acceptance of all of the terms and conditions of this Ordinance by MU, hereby grants to MU, its successors and assigns, the right, privilege, authority and franchise to acquire, construct, own, maintain, enlarge, extend, improve and operate a water works plant and distribution system, a sanitary sewer plant and system, and such other utility systems as are authorized by the Certificate of Incorporation of MU and approved by the City Council of the City (collectively referred to herein as “utility systems”), all for the purpose of providing such utility services within the corporate limits of the City to commercial, industrial, institutional and residential users, and to use the streets, avenues, alleys, and public ways and places of the City for such purposes.

This section shall not be deemed, however, to extend the water service area of the Board so as to encroach on the water service area of another existing public utility which area is protected by state or federal law or an order of a court of competent jurisdiction in the absence of an agreement or court order authorizing such an extension.

**SECTION 2.** The City hereby grants to MU the right, privilege, authority and franchise at any time, and from time to time, during the period covered by this franchise to construct and extend its mains, pipes, conduits, lines, plants, and facilities over or under or along any street, avenue, alley, or public way or place in the City for the purpose of constructing, repairing, improving, maintaining, enlarging or extending its utility systems. The City reserves the right to require application for a permit for work undertaken on city streets under this franchise. No fee will be levied for such permits and issuance may not be unreasonably denied.

**SECTION 3.** The City hereby consents and agrees that the franchise hereby granted may be encumbered by any mortgage, deed, indenture of trust or other instrument executed by MU for

the purpose of securing funds with which to acquire, construct, enlarge, extend, improve, repair, maintain or operate said utility systems, that any such mortgage, deed, indenture of trust or other instrument shall constitute a lien on this franchise and that this franchise may be transferred or assigned subject to the conditions of such encumbrance, but shall not be transferred or assigned otherwise. Any existing encumbrance of a franchise now held by MU, made for the purpose of securing bonded indebtedness, shall be deemed, upon acceptance of this franchise by MU, to constitute a valid encumbrance of the franchise awarded by this Ordinance, to the extent necessary to continue said security.

**SECTION 4.** MU shall, and by accepting the franchise agrees that it will, operate and maintain its systems and keep them in good repair and operating condition so as adequately to supply the reasonable needs of the City and its inhabitants with utility services.

**SECTION 5.** By approval of this franchise by the City, and acceptance of this franchise by MU, it is agreed by and between MU and the City as follows:

- a. MU shall, and by accepting this franchise agrees that it will, timely and in a manner consistent with the City's details, specifications, and requirements, and subject to inspection and approval by the City, restore the subsurface, surface and paving of any street, avenue, alley, sidewalk, public way or place in the City excavated for purposes of construction, improving, maintaining, extending, repairing or enlarging or operating its utility systems to substantially the same condition as existed before the excavation was done. Upon completion of said work undertaken by MU, the repaired or restored surface shall be accepted into the City's maintenance system, subject to the maintenance period set out in sub-section (b) below.
- b. MU shall, and by accepting this franchise agrees that it will, maintain such restoration for a period of twenty-four (24) months from the date of repair work undertaken by MU. MU's maintenance responsibility hereunder, however, shall not apply to work undertaken to repair or restore a street, avenue, alley, sidewalk, public way or place after excavation associated with maintenance, repair, improvement, extension, enlarging or operating MU's utility systems, when the work is undertaken and completed by the City, a City contractor, or by any person or entity other than MU.
- c. Following acceptance into the City's maintenance program and after the expiration of the time period set forth in sub-paragraph b. MU shall have responsibility for repair of any street, avenue, alley, sidewalk, public way or place only to the extent that such repair is made necessary by excavation undertaken by MU to maintain, repair, replace, enlarge, extend or operate a water or sewer main or line under the street, avenue, alley, sidewalk, public way or place. Upon execution of any such repair by MU, a new twenty-four (24) month warranty period shall be applicable to MU's repair work. MU shall, and by accepting this franchise agrees that it will, bear all costs of relocation of water and sewer infrastructure required as a result of MU projects. The City will bear the cost of relocating water and sewer infrastructure required as a result of City projects provided, however, that to the extent that MU desires to enlarge, upgrade or improve the infrastructure to be relocated ("betterment") MU will bear the cost of the betterment.
- d. Nothing in this section shall be deemed to preclude any agreement by and between the City and MU beyond the terms of this franchise under which the City shall provide repair or relocation services required of MU hereunder on a fee for service basis.

- e. Nothing in this section shall be deemed to preclude any agreement by and between the City and MU beyond the terms of this franchise under which the City and MU jointly agree to the terms and conditions by which they will satisfy the requirements of paragraphs c. and d.

**SECTION 6.** MU shall, and by accepting the franchise agrees that it will 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 and for such other necessary purposes for which said hydrants may be employed by the City. The nature and extent of MU's inspection responsibilities hereunder, and any compensation which may be due from the City therefor, will be set out in a separately-executed agreement.

MU acknowledges that as additional consideration for MU's agreement to provide such service under the original franchise first approved by City Ordinance 91-91 and amended by City Ordinance 2015-078 all water and sewer improvements, including fire hydrants, which had been dedicated previously to the City pursuant to recorded plats of developments or subdivisions or by other method of conveyance were conveyed to MU. By accepting the franchise granted in 1991 by said ordinance MU agreed to forgive and forfeit any claim to any unpaid compensation or amount which may have been due from the City to MU pursuant to that certain July 1, 1964 agreement (the "1964 Agreement") between the Town of Madison and the Water Works and Sewer Board with respect to fire hydrants. Nothing in this amended franchise is intended to, nor shall be deemed to affect the forgiveness of claims under the 1964 Agreement or the conveyance of improvements as authorized by Ordinance 91-91 and Ordinance 2015-078. All new developments and subdivisions approved and accepted into the City maintenance system of the City shall be required to dedicate all sewer improvements and water improvements located within MU's water service area to MU and to include sufficient installed and operational fire hydrants, acceptable by City and MU standards so that no additional expense will be required either of the City or MU to provide adequate fire protection upon initial acceptance of such developments and subdivisions.

All records related to this Section shall be maintained by MU and made available to the Fire Chief or other City representative upon reasonable written request.

**SECTION 7.** As compensation to the City for this franchise, MU, in addition to the in-kind compensation provided in Section 6 above shall, and by acceptance of this franchise agrees that it will, pay to the City each year a sum equal to three percent (3%) of its gross revenues from sales of utility services for the preceding fiscal year (exclusive of non-rate or non-recurring revenue, availability, impact, development, administrative, tap or other similar fees) whether such sales occur within or outside the corporate limits of the City.

This franchise fee shall be subject to an off-set of fifty percent (50%) of all costs incurred by MU for the acquisition of property deemed mutually beneficial to both the City and MU in an amount not to exceed two hundred thousand dollars (\$200,000) for each fiscal year. The yearly fee shall be due and payable by September 1st next following the end of MU's fiscal year ending September 30.

**SECTION 8.** The rights, privileges, obligations, authority and franchise hereby granted to or imposed upon MU shall continue in force and effect for a period of thirty (30) years from the

date it is accepted by MU as evidenced by the authorized signature of the Chairman of MU below, unless amended by the City with the consent and acceptance of MU.

**SECTION 9.** By approval of this franchise by the City, and acceptance of this franchise by MU, it is agreed by and between MU and the City as follows:

- a. that this franchise supersedes and replaces any prior franchise granted to MU, or its predecessors, by the City, (except for provisions of Section 6 of Ordinance 91-91 related to conveyance of improvements and forgiveness of claims related to fire hydrant maintenance);
- b. that the Amended Forbearance Agreement entered into between the City and MU executed on May 23, 1995, as amended on February 26, 1996, shall be rendered null and void and of no effect whatsoever; and
- c. that the Water and Sewer Infrastructure Relocation and Forbearance Agreement by and between the parties adopted pursuant to Resolution No. 2011-150-R on June 28, 2011, expired on its terms as of September 30, 2013, and all requirements of each party thereunder have been satisfied as of the date of the acceptance of this franchise; and
- d. that the City undertook public debt through the issuance of \$9,600,000 of its General Obligation Warrants, Series 1990, principally for the purpose of funding construction of water and sewer infrastructure; that this debt was undertaken pursuant to and contemporaneously with the approval of its authorization to levy an additional 5 ½ mill tax by City Ordinance 89-11, and that the City has paid debt service on and has retired or will retire all debt undertaken by the City for said purposes; and
- e. that notwithstanding any provisions of Ordinance 89-11, City Resolution 89-12-R or Resolution 89-23-R which have been, or may in the future be, construed to require the City to specially earmark any portion of the City's additional 5 ½ mill ad valorem tax levied in accordance with or under the authority of said ordinance and resolutions, the City's fulfillment of its obligation to pay debt service on the referenced Series 1990 warrants and any refunding thereof satisfactorily fulfills the City's obligations to earmark proceeds of the additional 5 ½ mill ad valorem tax and any further or additional financial assistance to MU from the proceeds of said tax is deemed unnecessary pursuant to the terms of City Resolution 89-12-R; and
- f. that MU, for itself, its successors in interest and assigns, foregoes any claim to any proceeds heretofore or hereafter received by the City from the additional 5 ½ mill ad valorem tax approved by Ordinance 89-11 other than for the purpose of payment of debt service on the City's General Obligation Warrants, Series 1990; and
- g. that the City is forever released and discharged by MU from any obligation to pay proceeds of the additional 5 ½ mill ad valorem tax directly to MU, whether by Ordinance 89-11, Resolution 89-12-R, or Resolution 89-23-R, by that certain agreement by and between MU and the City dated June 13, 1989 as approved by City Ordinance 89-25, or by any other resolution, ordinance, or agreement.

**SECTION 10.** The franchise granted by this Ordinance shall be deemed effective upon written acceptance of the franchise pursuant to a resolution of MU. Said written acceptance shall be filed with the City Clerk-Treasurer of the City of Madison, Alabama, within ninety (90) days

from the adoption of this Ordinance. If this franchise is not so accepted by MU within such time, this Ordinance shall be deemed null, void and of no effect whatsoever.

**SECTION 11.** This Ordinance shall be effective upon adoption by the City Council and formal acceptance by MU as provided in Section 10. The Ordinance shall be published one time in the Madison County Record, a newspaper of general circulation in the City of Madison.

**SECTION 12.** The provisions of this Ordinance are intended to be severable and, if any one or more thereof should be held invalid for any reason, the rest shall nevertheless stand and be fully effective.

**SECTION 13.** All Ordinances or resolutions in conflict with this Ordinance are hereby repealed to the extent of such conflict.

**READ, APPROVED, and ADOPTED** this 24th day of June 2024.

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***Ranae Bartlett, Council President***  
**City of Madison, Alabama**

**ATTEST:**

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***Lisa D. Thomas, City Clerk-Treasurer***  
**City of Madison, Alabama**

**Approved:**

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***Paul Finley, Mayor***  
**City of Madison, Alabama**

**Water and Wastewater Board of the City of  
Madison, Alabama**

**Attest:**

By: \_\_\_\_\_  
Terris Tatum, Chairman

\_\_\_\_\_  
Emory DeBord, Secretary

Date: \_\_\_\_\_

**STATE OF ALABAMA** §  
§  
**COUNTY OF MADISON** §

I, the undersigned, a Notary Public in and for said County, in said State, do hereby certify that Terris Tatum, whose name as Chairman of Madison Utilities, is signed to the foregoing Agreement, who is known to me, acknowledged before me on this day that, being informed of the contents of this Agreement, he as such officer and with full authority, executed voluntarily on the day the same bears date.

Given under my hand this the \_\_\_\_\_ day of June 2024.

\_\_\_\_\_  
Notary Public