



Huntsville, Alabama

305 Fountain Circle
Huntsville, AL 35801

Cover Memo

Meeting Type: City Council Regular Meeting **Meeting Date:** 7/23/2026

File ID: TMP-7215

Department: Legal

Subject:

Type of Action: Approval/Action

Ordinance concerning a Franchise Agreement between the City of Huntsville, Alabama, and Limestone County Water and Sewer Authority.

Ordinance No. 26-615

Finance Information:

Account Number: TBD

City Cost Amount: NA

Total Cost: NA

Special Circumstances:

Grant Funded: NA

Grant Title - CFDA or granting Agency: NA

Resolution #: NA

Location: (list below)

Address: NA

District: District 1 ☐ District 2 ☐ District 3 ☐ District 4 ☐ District 5 ☐

Additional Comments:

ORDINANCE NO. - _____

BE IT ORDAINED by the City Council of the City of Huntsville, Alabama, as follows:

Section 1. Limestone County Water and Sewer Authority, an Alabama public corporation organized and existing under Section 11-88-1 *et seq.* of the Code of Ala. 1975, as amended, ("LCWSA"), is granted a non-exclusive franchise to use the City's rights-of-way for the sole purpose of constructing, improving, enlarging, extending, installing, operating, repairing, and maintaining the facilities of its water system and sewer system in order to serve its customers in accordance with and subject to the provisions, terms, and conditions of the **FRANCHISE AGREEMENT BETWEEN THE CITY OF HUNTSVILLE, ALABAMA AND LIMESTONE COUNTY WATER AND SEWER AUTHORITY** to be entered into by and between the City and LCWSA ("Franchise Agreement").

Section 2. The City and LCWSA did heretofore enter into that certain Asset Purchase Agreement dated December 16, 2010, (see Resolution No. 10-1019) as amended by that certain Amendment to Asset Purchase Agreement dated January 12, 2012 (see Resolution No.12-41), (the "Sewer System Purchase Agreement") for the sale of certain sewer assets to the City. As a part of the consideration for the franchise, Section 4.1.2(b) of the Franchise Agreement further amends said Sewer System Purchase Agreement to extend the "Seller Restriction Period", as defined in the Sewer System Purchase Agreement, to end on January 19, 2062 (the "Revised Seller Restriction End Date").

Section 3. The Mayor of the City of Huntsville, Alabama, is hereby authorized, for and on behalf of the City, to enter into and execute the Franchise Agreement with LCWSA, which said Franchise Agreement shall be in a form substantially similar to that certain agreement attached hereto and identified as **"FRANCHISE AGREEMENT BETWEEN THE CITY OF HUNTSVILLE, ALABAMA AND LIMESTONE COUNTY WATER AND SEWER AUTHORITY"** consisting of _____ () pages, including Exhibit A, and the date of _____ appearing on the margin of the first page, together with the signature of the President or President Pro Tempore of the City Council, with an executed copy of said Franchise Agreement being kept on file permanently in the Office of the City Clerk of the City of Huntsville. The City Clerk is authorized to attest thereto.

Section 4. The Franchise Agreement shall become effective in accordance with its terms.

Section 5. LCWSA shall assume all publication costs with respect to this Ordinance, including the Franchise Agreement, or a synopsis thereof, as such publication is required by law.

ADOPTED this the ____ day of _____, 2026.

President of the City Council of
the City of Huntsville, Alabama

APPROVED this the ____ day of _____, 2026.

Mayor of the City of Huntsville,
Alabama

FRANCHISE AGREEMENT BETWEEN
THE CITY OF HUNTSVILLE, ALABAMA
AND LIMESTONE COUNTY WATER AND
SEWER AUTHORITY

FRANCHISE AGREEMENT

This **Franchise Agreement** (hereinafter-“Franchise” or “Agreement”) is made and entered as of the ____ day of _____, 2026, by and between the City of Huntsville, Alabama (“City”), and Limestone County Water and Sewer Authority (“Franchisee”), an Alabama public corporation authorized to do business in the State of Alabama, (the City or Franchisee being hereinafter referred to individually as “Party” and collectively as the “Parties”).

WHEREAS, the Franchisee is a public corporation organized and existing under Section 11-88-1 *et seq.* of the Code of Ala. 1975, as amended (the “**Enabling Legislation**”); and

WHEREAS, the Franchisee desires to use and occupy, or continue to use and occupy, the Rights-of-Way with its Facilities in order to provide Water Service and Sewer Service to its Customers; and

WHEREAS, the Rights-of-Way are a limited and valuable resource that the City holds in trust for the public; and

WHEREAS, the City has the authority to grant franchises to use and occupy the Rights-of-Way for such use as proposed by the Franchisee, to manage and control the Rights-of-Way, and to obtain compensation for such use; and

WHEREAS, the grant of a franchise for the use and occupancy of the Rights-of-Way confers considerable value upon the Franchisee; and

WHEREAS, the City intends to exercise the full scope of its municipal powers, including both its police powers and contracting authority, to promote the public interest and to protect the health, safety, and welfare of the citizens of the City; and

WHEREAS, the City is desirous of granting Franchisee a non-exclusive franchise to use the City’s Rights-of-Way for the purposes hereinafter set forth, subject to the terms and conditions of this Agreement; and

WHEREAS, Franchisee has agreed to accept the use of the Rights-of-Way in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing clauses, which clauses are hereby made a part of this Agreement, the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby covenant and agree as follows:

SECTION 1. GENERAL PROVISIONS; WARRANTIES OF THE FRANCHISEE

1.1 Definitions and Rules of Construction. The following words, terms, and phrases, when used in this Agreement, including the foregoing recitals, shall have the meanings ascribed to them in this Section 1.1, except where the context clearly indicates a different meaning or unless otherwise more specifically defined in this Agreement. Words in the single number include the plural number, and words in the plural number include the singular. The words “shall” and “will” are mandatory, and the word “may” is permissive. Words not defined shall be given their common and ordinary meaning.

Applicable Law means the laws of the State of Alabama, including the Alabama Constitution of 1901, as amended, the Code of Ala. 1975, and all rules, orders, and requirements of applicable agencies of the State of Alabama; all applicable requirements of federal law and all applicable rules, orders, and requirements of any federal agency; and all applicable City Laws, all as either now in affect or adopted subsequent to this Franchise and all amendments that may be applicable to the foregoing.

City means the City of Huntsville, Alabama, and where necessary for the purposes of the administration and enforcement of this Agreement shall include the City’s delegated authorities or representatives authorized to perform as contemplated.

City Clerk means the City Clerk of the City.

City Engineer means the City Engineer for the City or his or her designee.

City Laws mean the duly adopted laws and legislation of the City, including the Code of Ordinances of the City and any codes, regulations, standards, or specifications adopted by reference; the subdivision regulations and any other such rules or regulations that departments, agencies, commission, boards, or bureaus of the City are authorized to establish; and all resolutions, regulations, standards, specifications, and procedures, including those governing traffic control within the City, established by the City for property under its control or jurisdiction; all of which are as amended or as may from time to time be amended or superseded.

City Systems means facilities, infrastructure, or other improvements used for providing public services that are owned or operated by the City (including, without limitation, the City d.b.a. Huntsville Utilities), or any agency thereof, including water, gas, electric, sanitary sewer, and storm drainage facilities.

Code of Ala. 1975 means the Code of Alabama, 1975, as now or hereafter amended. Any reference to an act found in the Code of Ala. 1975 by short title is a reference to such act as amended.

Confidential Information means any written, non-verbal, information or communication for which there is sound legal basis to assert that such information or communication is confidential or proprietary in nature and which has been clearly and conspicuously marked as such by the Party asserting its proprietary or confidential status. This Agreement, including the consideration flowing to either Party under this Agreement, is not considered to be confidential information.

Conjunctions. In a provision involving two or more items, conditions, provisions, or events, which items, conditions, provisions, or events are connected by the conjunction “and,” “or,” or “either . . . or,” the conjunction shall be interpreted as follows:

- (1) “And” indicates that all the connected terms, conditions, provisions, or events apply.
- (2) “Or” indicates that the connected terms, conditions, provisions, or events apply singly or in any combination.
- (3) “Either . . . or” indicates that the connected terms, conditions, provisions, or events apply singly but not in combination.

Coverage Period shall have the meaning given to such term in Section 3.2.1.

Customers mean those Persons who are resale customers or retail residential, commercial, or industrial customers, served by or using the Franchisee’s Facilities that are located in all or any portion of the Rights-of-Way.

Effective Date means the date of publication under Section 2.4.

Exigent Circumstances means circumstances which exist or are reasonably likely to occur as a result of the Franchisee’s failure to perform as contemplated or required under this Franchise and, as a result, there is a threat to public health or safety or a substantial likelihood of significant damage to public or private property which necessitates immediate action in order to avoid such threat or damage.

Existing Facilities mean all or any portion of the tangible components of the Franchisee’s Water System or Sewer System in the Rights-of-Way that the Franchisee establishes to the reasonable satisfaction of the City were installed prior to the City’s annexation of the area into the corporate limits of the City. The term shall not include those portions of the Franchisee’s Water System or Sewer System which can be demonstrated to be located on private property outside of the public rights-of-way or public utility easements of a county or the City. The term shall also not include an extension, expansion or enlargement of the Existing Facilities that are located in the Rights-of-Way in the Franchise Area.

Facilities mean (i) the Existing Facilities and (ii) all or any portion of the tangible components of the Franchisee’s Water System or Sewer System, including pipes, mains, meters, fire hydrants, and attachments and other associated equipment and appurtenances, allowed by the City to be installed in the Rights-of-Way pursuant to this Agreement.

Franchise or **Agreement** are synonymous terms, and each means this Agreement and any amendments, exhibits, or appendices hereto.

Franchise Administrator means the Director of Economic and Urban Development , or his or her designee.

Franchise Area has the meaning given to such term in Section 7.1.

Franchisee means the Limestone County Water and Sewer Authority, its successors and assigns, including successors to assignees of those portions of the Franchisee that constitute any part or parts of the Water System or Sewer System subject to this Franchise.

Franchise Fee has the meaning given to such term in Section 4.1.1.

Gender. Words of one gender include all other genders and also include firms, partnerships, corporations, and other legal entities, as appropriate.

Hazardous Substance means any hazardous, toxic, or dangerous substance, material, waste, pollutant, or contaminant. The term shall also be interpreted to include any substance which, after release into the environment, will or may reasonably be anticipated to cause death, disease, injury, sickness, illness, behavior abnormalities, or genetic abnormalities.

In or within. The terms **in** or **within**, when used in conjunction with Rights-of-Way, means over, above, in, within, on, or under a Right-of-Way.

Include. The term **include**, or its derivations, does not limit a term to a specified example.

Indemnitees has the meaning given to such term in Section 3.1.1.

Person means any human being, any governmental or political subdivision or public agency, any public or private corporation, any partnership, any firm, association or other organization, any receiver, trustee, assignee, agent, or other legal representative of any of the foregoing or any other legal entity.

Rights-of-Way means the surface of and the space above and below any public street, public road, public highway, public freeway, public lane, public way, public alley, public sidewalk, public boulevard, public parkway, public drive, public utility easement (to the extent of the City's interest or authority), or public right-of-way now or hereafter held by the City which shall, within its proper use and meaning, entitle the Franchisee to the use thereof for the purpose of exercising the rights granted under this Agreement. This term shall not include the following: (1) Any state or federal rights-of-way or any property owned or controlled by any Person other than the City, except as provided by Applicable Law or pursuant to an agreement between the City and any such Person; (2) Property, such as City parks, City property, or public works facilities, owned or leased by the City that is not used or is not typically used as rights-of-way for vehicular or pedestrian transport or the installation of utility distribution facilities; or (3) City property, including streets and public utility easements, conveyed or dedicated to the City which contain, or are intended to contain, the City's sanitary sewer facilities or other facilities of the City, and which, in the City Engineer's sole determination could not also accommodate the Facilities safely or without interfering with the function, operation, or maintenance of, or access to, the City's facilities.

Rights-of-Way Management means the exercise of the City's police powers for the purpose of managing and controlling the use and occupancy of the Rights-of-Way, and other such public ways over which the City has been delegated such authority, in order to keep them functioning and operational for their dedicated or intended purpose; maintain them in good condition, order, and repair; control the orderly flow of vehicle and pedestrian traffic; administer the use thereof for public and private users including users' facilities; preserve the public asset; recover costs; and such other acts reasonably necessary to protect the public health, safety, and welfare.

ROW Ordinance refers to an ordinance or ordinances which the City may adopt concerning Rights-of-Way Management within the City.

Sewer Service means all services involved in collecting, transporting, treating, and disposing of sanitary sewage and the performing of all functions and activities reasonably incident to the operation of a sewer system.

Sewer System means a sanitary sewer system, including mains, laterals, sewage disposal plants, and sewage treatment plants and all appurtenances to such a system and all properties, rights, easements, and franchises deemed necessary or desirable by the authority for use in rendering sewer services.

Sewer System Franchise Area has the meaning given to such term in Section 7.3.1.

Water Service means the providing, furnishing, supplying, or distributing of water and the performing of all of the functions and activities reasonably incident to the operation of a water system, including the provision of water to a fire protection authority to be used in the rendition of fire protection service.

Water System means land, plants, systems, facilities, buildings, and other property, or any combination of any thereof, which are used or useful or capable of future use in providing, furnishing, supplying, or distributing water, including but not limited to water supply systems, water distribution systems, reservoirs, wells, intakes, mains, laterals, aqueducts, pumping stations, standpipes, filtration plants, purification plants, meters, valves, and all necessary appurtenances and equipment, and all properties, rights, easements, and franchises deemed necessary or desirable by the authority for use in rendering water service.

Water System Franchise Area has the meaning given to such term in Section 7.2.1.

Technical POC has the meaning given to such term in Section 13.8.3.

1.2 Exhibits. The exhibits or appendices attached to this Agreement are expressly incorporated herein by reference as if fully set forth herein.

1.3 Warranties of the Franchisee. The Franchisee makes the following representations, warranties, and covenants as the basis for the benefits and obligations contained in this Franchise:

1.3.1 The Franchisee is a public corporation under the laws of the State of Alabama and has the power and authority to own its properties, to carry on its business as now being conducted, to operate its Water System and Sewer System, to execute and deliver the acceptance of this Franchise, to carry out the transactions contemplated hereby, and to perform and carry out all obligations on its part to be performed under and pursuant to this Franchise.

1.3.2 The Franchisee, as of the date of this Franchise, has adequate financial resources to construct, operate and maintain that portion of its Water System in the Water System Franchise Area and Sewer System in the Sewer System Franchise Area in accordance with the provisions of this Franchise, and knows of no technical or legal impediment which would prevent it from performing as contemplated in this Agreement.

1.3.3 The Franchisee is not prohibited from executing and delivering the acceptance of this Franchise and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Franchise. The Franchise Area is within the areas which the Franchisee is authorized to serve in accordance with the Enabling Legislation.

1.3.4 All corporate actions and consents required on the Franchisee's part to execute and deliver the acceptance of this Franchise have been completed.

1.3.5 The Franchisee, during the term of this Franchise, will comply with all Applicable Laws concerning the construction and operation of its Water System and Sewer System, including all requirements to obtain and comply with the conditions of applicable certificates, licenses, permits, and other governmental approvals and applicable environmental-related requirements.

1.3.6 To the extent the Franchisee's Facilities occupy or will occupy that portion of a Right-of-Way that is inside a public utility easement burdening private property, the Franchisee warrants that it is a utility or otherwise has the right to use and occupy such easement.

The foregoing representations, warranties, and covenants are material to this Franchise. A breach of any of the covenants, warranties, or representations in Sections 1.3.1 through 1.3.4 above shall constitute a non-curable default under this Franchise, and shall entitle the City to immediately terminate the Franchise for cause. A breach of any of the covenants, warranties, or representations in Sections 1.3.5 or 1.3.6 above shall constitute a curable default under this Franchise, wherein following written notice, the Franchisee will have reasonable time to cure such default. Failure to cure in a reasonable time (given the nature of such alleged default) shall entitle the City to immediately revoke this Franchise for cause. In the event this Franchise is revoked pursuant to this Section 1.3, the Franchisee hereby agrees that the disposition of the Facilities in the Rights-of-Way in the Franchise Area shall be governed by the applicable provisions of **Exhibit A**.

SECTION 2. FRANCHISE GENERALLY

2.1 Grant of Franchise.

2.1.1 Subject to the provisions of this Franchise and based on the representations,

warranties, and covenants of the Franchisee herein, the City hereby grants the Franchisee, where the City has the right and authority to do so, for a period of thirty (30) years from the Effective Date, the non-exclusive right to: (a) use and occupy the Rights-of-Way in the Water System Franchise Area for the sole purpose of constructing, improving, enlarging, extending, installing, operating, repairing, and maintaining the Facilities of its Water System in order to serve its Customers; and (b) use and occupy the Rights-of-Way in the Sewer System Franchise Area for the sole purpose of constructing, improving, enlarging, extending, installing, operating, repairing, and maintaining the Facilities of its Sewer System in order to serve its Customers. In addition to any permitting or approvals required in **Exhibit A**, the Franchisee shall promptly notify the Franchise Administrator of any additions to or expansions or extensions of the Facilities. The Franchisee may do all reasonable things necessary or customary to accomplish the above-stated purpose, subject however, to the provisions of this Agreement and to such lawful regulations as may be adopted by separate ordinance and as may currently or hereafter exist under Applicable Law. Nothing in this Agreement shall be construed to grant to the Franchisee exclusive service territories.

2.1.2 Subject to the approval of the City Engineer, the Franchisee shall have the right to discharge its water supply to and into the City's storm water system while performing water system flushing and other activities, provided any water discharged to the City's storm water system must comply with all applicable federal and state water quality standards and the City's NPDES permit relating to the City's storm water system.

2.1.3 Subject to Section 5 of this Agreement and the City's reservations thereunder, nothing in the Agreement shall be construed to limit the Franchisee's ability to, from time to time, declare, make, and enforce reasonable rules and regulations as a condition for its sale or distribution of water to any Person.

2.1.4 Subject to the Section 5 of this Agreement and the City's reservations thereunder, nothing in this Agreement shall be construed to: (i) limit the Franchisee's right to assess reasonable fees and charges for its services and for all water furnished by it under this Agreement, (ii) obligate the Franchisee to furnish water to any Person until reasonably satisfied of their financial responsibility; or (iii) prohibit the Franchisee from requiring reasonable security to insure payment for services to be furnished under this Agreement.

2.1.5 By granting this Franchise, the City is not assuming any risks or liabilities therefrom, which shall be solely and separately borne by the Franchisee. The Franchisee agrees and covenants to, at its sole cost and expense, take all necessary and prudent steps to protect, support, and keep safe from harm its Water System and Sewer System, or any parts thereof, when necessary to protect the public health and safety. The City makes no express or implied representation or warranty regarding its rights to authorize the construction of any portion of the Facilities on any particular segment of the Rights-of-Way or the location or dimensions of any particular segment of the Rights-of-Way. The burden and responsibility for making all such determinations in advance of construction shall be entirely upon the Franchisee.

2.1.6 This Franchise shall not convey title, equitable or legal, in the Rights-of-Way, and the Franchisee acknowledges it receives under this Franchise only the right to use and occupy the Rights-of-Way in the Franchise Area for the purposes and for the period stated in this Franchise and as may be further limited by the specific terms of this Franchise or by Applicable Law. None

of the rights granted herein shall affect the City's jurisdiction over its Rights-of-Way or other property. The use of the Rights-of-Way authorized by this Franchise shall in all matters be subordinate to the City's use and rights.

2.2 Construction; ROW Ordinance; Crossing Facilities.

2.2.1 Construction in and use of the Rights-of-Way and related activities for the Franchisee's Facilities shall be governed by **Exhibit A**. The Franchisee shall be responsible for any construction or construction-related activity, including restoration and repair of the Rights-of-Way, performed by itself or by others on its behalf.

2.2.2 The Franchisee acknowledges that the City may enact a ROW Ordinance during the term of this Franchise which may generally apply to construction and other related activity within the Rights-of-Way, including the contemplated activity of the Franchisee within corporate limits of the City. To the extent any provisions of this Franchise conflict with the provisions of the ROW Ordinance, the Franchisee agrees to be bound by the ROW Ordinance, unless this Franchise or the ROW Ordinance expressly provides otherwise. Nothing in this Section 2.2.2 shall be construed to prevent the Franchisee from challenging, in a court of competent jurisdiction, the validity of any such ROW Ordinance to the extent it conflicts with the Franchisee's rights under Applicable Law.

2.2.3 Subject to applicable provisions of this Agreement and Applicable Law, including health and spacing requirements of the Alabama Department of Environmental Management, the Parties agree to cooperate in the event there is a need for one Party in the installation of its service lines to cross the existing service lines of the other Party in order to efficiently serve their respective customers.

2.3 Existing Facilities.

2.3.1 The Franchisee hereby acknowledges, agrees, warrants, and represents, each of the following:

(a) Installation of the Existing Facilities pre-dated the City's annexation of the area in which the Existing Facilities are located. It shall be the responsibility of the Franchisee to establish to the reasonable satisfaction of the City that the facilities existed before annexation.

(b) The City shall have at least the same rights over the Existing Facilities as Applicable Law allows or does not prohibit, and the City, in addition to those rights already exercised in this Franchise with regard to the Existing Facilities, hereby reserves the right to exercise its rights at any time and from time to time with regard to the Existing Facilities.

(c) The Franchisee will not extend, expand or enlarge its Existing Facilities in the Rights-of-Way without promptly giving written notice thereof to the Franchise Administrator. Such extension, expansion or enlargement shall be subject to the provisions of this Franchise, including, without limitation, the provisions of **Exhibit A**, in accordance with Applicable Law.

2.3.2 Should the City annex additional property during the term of this Franchise which includes a portion of the Water System or Sewer System of the Franchisee which is located in the Rights-of-Way, such additional portion shall, *ipso facto*, be included within the term "Existing Facilities" and shall be subject to the applicable provisions of this Franchise.

2.4 Effective Date. The Effective Date of the Franchise granted to the Franchisee hereunder shall be the date of publication in accordance with Section 14.2.

2.5 Non-Exclusive Franchise. The Franchise granted to the Franchisee hereunder is not an exclusive franchise. The City specifically reserves the right to grant, at any time and from time to time, such additional franchises, licenses, use agreements, or other rights to use the Rights-of-Way for any purpose as determined by the City, and to any other person, including itself, as it deems appropriate, subject to Applicable Law.

2.6 Operation After Expiration of Term; Holding Over. In the event the 30-year term of this Franchise has expired, without having been revoked or otherwise terminated for cause, and a new or renewed franchise has not been entered into by the Parties, then this Franchise shall continue in full force and effect until such time as either Party provides the other with sixty (60) days advance written notice of that Party's desire to terminate this Franchise.

SECTION 3. INDEMNIFICATION AND INSURANCE

3.1 Indemnification; Non-Liability.

3.1.1 *Indemnification.* Subject to Section 3.1.2 and Applicable Law, the Franchisee, by its acceptance of this Franchise, agrees to and does hereby indemnify, defend, and hold the **City and the City d.b.a. Huntsville Utilities, and their respective present and future officers, elected or appointed officials, council, boards, commissions, agents, representatives, volunteers performing authorized city functions, and employees**, (hereinafter referred to collectively as "**Indemnitees**") whole and harmless from and against all claims, costs, losses, expenses through appeal (including reasonable attorneys' fees and costs or expenses incidental to the investigation of claims and lawsuits), demands, payments, suits, actions, recoveries, penalties, fines, liabilities, judgments, and damages, of any nature and description, including any suit or claim for personal injury, property damage, defamation, antitrust, errors and omission, theft, fire, royalties, license fees, or infringement of copyright or patent rights, resulting from, by reason of, or arising out of, directly or indirectly: (1) the Franchisee's actions in breach of this Agreement, (2) any act or omission of the Franchisee, its agents, employees, representatives, contractors, or sub-contractors in the installation, construction, operation, use, location, testing, repair, maintenance, removal, or abandonment of the Franchisee's Facilities, or from the existence of the Franchisee's Water System or Sewer System, including its Facilities, in the City, or any portion thereof, and the products contained in, transferred through, released, or escaped from said Facilities, (3) any failure by the Franchisee to comply with any Applicable Law, or (4) the Franchisee's breach of any environmental laws applicable to the Facilities or from any release of a Hazardous Substance on or from the Facilities or other activity related to this Franchise by the Franchisee, its agents, contractors, or subcontractors, which includes: (a) liability for a governmental agency's costs of removal or remedial action for Hazardous Substances; (b) damages to natural resources caused by

Hazardous Substances, including the reasonable costs of assessing such damages; (c) liability for any other person's costs of responding to Hazardous Substances; (d) liability for any costs of investigation, abatement, correction, cleanup, fines, penalties, or other damages arising under any environmental laws; and (e) liability for personal injury, property damage, or economic loss arising under any statutory or common-law theory.

3.1.2 *Limitation of Liability.*

(a) The City shall be responsible for its own acts of negligence or intentional or willful misconduct committed by the City for which the City is legally responsible, subject to defenses and limitations of liability provided by law; provided, however, in no event shall the Indemnitees be liable to the Franchisee or its affiliates, officers, directors, agents, employees, customers, tenants, licensees, contractors, subcontractors, or assigns for any special, indirect, or consequential damages whatsoever arising in any manner.

(b) The Franchisee shall not be liable to the Indemnitees for any special, indirect, or consequential damages whatsoever arising out of, or in connection with, this Agreement. The foregoing limitation does not apply to actual and direct damages.

3.1.3 *Defense.* With respect to the Franchisee's indemnity obligations set forth above, the Franchisee shall provide the defense of any claims brought against the Indemnitees by selecting counsel of the Franchisee's choice to represent the Indemnitees and defend the claim, subject to the consent of the City, which shall not be unreasonably withheld. Nothing herein shall be deemed to prevent the City from cooperating with the Franchisee and participating in the defense of any litigation by its own counsel at its own cost and expense, provided, however, that after consultation with the City, the Franchisee shall have the right to defend, settle, or compromise, at its cost and expense, any claim or action arising hereunder, and the Franchisee shall have the authority to decide the appropriateness and the amount of any such settlement, and any such settlement shall include at a minimum a full and final release of all applicable claims against the Indemnitees and shall include a provision that the settlement does not constitute an admission of wrongful conduct by the Indemnitees. In the event that the terms of any such settlement do not include said release, the Franchisee shall not settle the claim or action. All of the Franchisee's right to enter a settlement shall entail only payment of monetary amounts by the Franchisee or obligations to be performed fully by the Franchisee, and under no circumstances shall the Franchisee have the power to bind the City to any obligation to pay any monetary amounts, perform any particular action, or refrain from performing any action (although the City may in its discretion independently agree to any such condition.)

3.1.4 *Indemnification Not Limited.* The indemnification obligation of the Franchisee hereunder is not limited in any way by limitation of the amount or type of damages or compensation payable by or for the Franchisee under worker's compensation, disability or other employee benefits acts, or the acceptance of insurance certificates required by this Agreement, or the terms, applicability, or limitations of any insurance held by the Franchisee. The indemnification by the Franchisee shall apply to all damages, penalties, and claims of any kind suffered regardless of whether such insurance policies shall have been determined to be applicable to any such damages or claims for damages.

3.1.5 *No Waiver of City Rights.* The City does not and shall not waive any rights against the Franchisee which it may have by reason of this indemnification or because of the acceptance by the City of the Franchisee's deposit with the City of any of the insurance policies described in this Agreement. This Section 3.1 is not, as to third parties, a waiver of any defense or immunity otherwise available to the City, and the Franchisee in defending any action on behalf of the City shall be entitled to assert every defense or immunity that the City could assert in its own behalf. This Franchise shall not be interpreted to constitute a waiver by the City of any of its defenses of immunity or limitations on liability under Applicable Law.

3.1.6 *Survival.* The provisions of this Section 3.1 shall survive the termination of this Franchise.

3.2 Insurance.

3.2.1 *Commercial General Liability.* The Franchisee shall, at its sole expense, maintain, throughout the term of this Franchise and any extension or renewal thereof, and such other period of time during which the Franchisee operates or is engaged in the removal of the Facilities (hereinafter referred to as "**Coverage Period**"), Commercial General Liability Insurance using carriers licensed in the State of Alabama and maintaining a Best rating of not less than "A." Such insurance shall include coverage for premises and operations, underground, collapse and explosion, and products and completed operations, independent contractors, contractual, personal and advertising injury, and broad form property damage and shall name as Additional Insureds the City and the City d.b.a. Huntsville Utilities and their respective present and future officers, elected or appointed officials, council, boards, commissions, agents, representatives, volunteers performing authorized city functions, and employees. Such insurance shall be in the amount of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate covering bodily injury, including death, and property damage. If the Franchisee employs independent contractors, the Franchisee shall insure that these contractors maintain appropriate levels of insurance and that the City is named as an additional insured under each policy. Insurance will be written on an occurrence basis.

3.2.2 *Business Automobile Liability.* The Franchisee shall, at its sole expense, maintain during the Coverage Period Business Automobile Liability insurance with a limit of One Million Dollars (\$1,000,000) combined single limit for bodily injury, including death and property damage covering owned, leased, non-owned, and hired automobiles used in conjunction with its operations under this Franchise. Coverage for loading and unloading shall be provided under either automobile liability or general liability policy forms. Such insurance shall name the City and the City d.b.a. Huntsville Utilities, and their respective present and future officers, elected or appointed officials, council, boards, commissions, agents, representatives, volunteers performing authorized city functions, and employees as Additional Insureds.

3.2.3 *Workers' Compensation and Employer's Liability.* The Franchisee shall, at its sole expense, maintain, during the Coverage Period, Workers' Compensation coverage as prescribed by the laws of the State of Alabama and Employer's Liability coverage in an amount of not less than One Million Dollars (\$1,000,000).

3.2.4 *Umbrella or Excess Liability.* The Franchisee shall, at its sole expense, maintain during the Coverage Period Umbrella or Excess Liability insurance in the amount of Two Million Dollars (\$2,000,000). Such insurance shall name the City and the City d.b.a. Huntsville Utilities and their respective present and future officers, elected or appointed officials, council, boards, commissions, agents, representatives, volunteers performing authorized city functions, and employees as Additional Insureds.

3.2.5 *Evidence of Insurance; Deductibles; Approval; Reservation.* On or before filing its acceptance of this Franchise and upon each policy renewal, the Franchisee shall, at no cost to the City, furnish to the City Certificates of Insurance (or proof of self-insurance) evidencing all of the aforementioned types and limits of insurance to be in effect. The City reserves the right to require complete, certified copies of all required insurance policies or proof of self-insurance at any time and from time to time, at no cost to the City. The Franchisee has the right to maintain reasonable deductibles and the City reserves the right to review such deductibles. The City reserves the right to review these insurance requirements during the coverage period and to adjust insurance coverages and their limits when deemed necessary and prudent by the Franchise Administrator based upon changes in statutory law, court decisions, or the claims history of the Franchisee.

3.2.6 *Maintenance of Insurance Policies; the Franchisee's Coverage Primary.* The liability insurance policies required under this Section 3.2, if any, shall be maintained by the Franchisee through the Coverage Period. Each such policy of insurance shall provide that it not be cancelled, not renewed, nor materially changed without sixty (60) days' written notice to the City. An endorsement shall be provided which states that the Franchisee's coverage is primary and any other insurance carried by the City, if applicable to a loss, is excess.

3.2.7 *No Limit of Liability.* The legal liability of the Franchisee to the City and any person for any of the matters that are the subject of the insurance policy(ies) required by this Section 3.2, shall not be limited by said insurance policy(ies) or by the recovery of any amounts there under.

3.2.8 *Certificate of Insurance.* Certificates of insurance, if any, shall name the City and the City d.b.a. Huntsville Utilities and their respective present and future officers, elected or appointed officials, council, boards, commissions, agents, representatives, volunteers performing authorized city functions and employees as Additional Insureds, in the case of Commercial General Liability, Business Automobile Liability, and Umbrella or Excess Liability insurance. Worker's Compensation and Employer's Liability insurance shall waive rights of subrogation in favor of the City. Each policy shall contain a provision that coverage afforded under the policies will not be cancelled, changed, or not renewed unless at least sixty (60) days prior written notice has been given to the City. All subsequent notices or certificates shall be delivered to the Franchise Administrator and the City Clerk at 305 Fountain Circle, Huntsville, Alabama 35801. All deductibles under said policy shall be the sole responsibility of the Franchisee.

3.2.9 *Self-Insurance.* Notwithstanding any other provision to the contrary, the Franchisee has the option, at any time throughout the coverage period to self-insure any or all of the types or limits of insurance coverage described in this Section 3.2 and shall provide the City

with a statement certifying such self-insurance, which self-insurance must be approved by the City and which approval will not be unreasonably withheld.

3.3 Reserved.

3.4 Right to Require Replacement of Insurance. If the financial conditions of any insurance company issuing an insurance policy pursuant to this Section 3 materially and adversely change, the Franchise Administrator may, at any time, require that any such insurance policy be replaced with such other insurance policy consistent with the requirements set forth in this Section 3.

3.5 Notice and Survival of Requirements.

3.5. Each such insurance policy shall contain a covenant or endorsement of the insurer to provide sixty (60) days advance written notice by certified mail of such insurer's intention to cancel, substantially change, or not to renew such policy to both the Franchise Administrator, the City Clerk, and the Franchisee; provided, however, in the event said policy fails to so contain a notice provision to the Franchise Administrator and the City Clerk, then the Franchisee shall be responsible for the same. The Franchisee shall, in the event of any such notice, obtain, pay premiums for, and file with the Franchise Administrator and the City Clerk written evidence of the issuance of replacement policies prior to the expiration of any such policy. Failure to carry or keep insurance in force throughout the period set forth in Section 3.5.2 shall constitute a default under this Agreement.

3.5.2 The indemnity and insurance provisions contained herein shall survive the termination of this Franchise by at least a period of two (2) years and shall continue for as long as the Franchisee's Facilities shall remain in or on the Franchise Area, if there are pending matters covered by said provisions, or until the parties execute a new franchise which modifies or terminates these indemnity and insurance provisions.

3.6 Commencement of Work. The Franchisee shall not commence any work within the Rights-of-Way, including the work of installing or constructing any Facilities, until the insurance requirements of this Section 3 have been complied with. The City, through the Franchise Administrator, reserves the right to stop any work related to the Facilities until proper evidence of insurance is furnished.

SECTION 4. CONSIDERATION

4.1 Consideration.

4.1.1 Franchise Fee.

(a) *Gross Revenues Defined.* The term "Gross Revenues" shall be construed to mean any and all forms of compensation in any form whatsoever received directly by the Franchisee, or by any affiliate, (after adjustments for the net write off of uncollectible accounts and corrections of bills theretofore rendered) from (i) the retail sale of Water Service to Franchisee's Customers in the Water Service Franchise Area; (ii) the retail sale of Sewer Service

to Franchisee's Customers in the Sewer Service Franchise Area; and (iii) the lease of the Facilities, or any portion thereof.

(b) *Franchise Fee.* As compensation for the rights and privileges granted by this Franchise, the Franchisee shall pay to the City a monthly "Franchise Fee" of six percent (6%) of Gross Revenues for each prior calendar month. The Franchise Fee shall be paid within sixty (60) days following the Franchisee's determination of each month's Gross Revenues, which shall be no later than sixty (60) days after the last day of the month for which the Franchise Fee is due. Each payment shall be accompanied by a brief report by the Franchisee signed by an official of the Franchisee who shall certify to its accuracy, showing the basis for the computation and such other relevant facts as may reasonably be required by the City. At the request of the City, payments will be made electronically if technically feasible and at no cost to the Franchisee. The City may require the Franchisee to submit a statement, certified as true by an independent auditor or chief financial officer of the Franchisee, setting forth its Gross Revenues by category, and describing what revenues were included and excluded in calculating the Franchise Fee, and any adjustments made to Gross Revenues. The request shall be made by the City no later than thirty (30) days after the given monthly Franchise Fee payment is received, and the Franchisee shall have thirty (30) days to respond.

4.1.2 *Additional Consideration.*

(a) *Fire protection.*

(1) As additional consideration for the rights and privileges granted by this Franchise the Franchisee agrees to be responsible for the operation, maintenance, and costs associated with fire hydrants, and related equipment and appurtenances, (collectively referred to herein as "fire hydrant" or "hydrant") within the Franchise Area, including costs of relocation as determined pursuant to Section 1.4 of **Exhibit A**, that are installed by the Franchisee or by third-parties on behalf of the Franchisee. The Franchisee agrees to inspect, properly maintain, extend, replace, improve as necessary, and supply a continuous water supply to a system of fire hydrants sufficient to provide fire protection for the City in a manner that (i) is sufficient to provide a fire-flow as based on the then-current applicable standards adopted by the state fire marshal, and (ii) that complies with and all applicable City Laws.

(2) The City's Huntsville Fire and Rescue Department shall have the right to, at any time and from time to time, conduct such testing or other activity relative to a fire hydrant as may be required or prudent in order to maintain the City's Public Protection Classification (PPC) issued by the Insurance Services Office (ISO). The City's Huntsville Fire and Rescue Department shall provide the Franchisee with a written notice of any deficiencies found in a hydrant, or its operation, and provide a reasonable time within which to cure said deficiencies. The Franchisee shall promptly notify the City's Huntsville Fire and Rescue Department of any deficiencies the Franchisee finds in a hydrant, or its operation, and upon receipt of such notice the City's Huntsville Fire and Rescue Department may provide the Franchisee a written timeline for remedying the said

deficiencies. Should the Franchisee fail to remedy the noticed deficiencies within the prescribed period of time, the City shall have the right, but not the obligation, to perform said remediation and invoice the Franchisee for the costs thereof, including labor and materials. The Franchisee shall pay the invoiced amount within 30 days from the date of the invoice. Franchisee will notify the City's Huntsville Fire and Rescue Department in writing of corrected deficiencies.

(b) *Extension of Seller Restriction Period under Sewer System Purchase Agreement.*

(1) The Parties heretofore entered into that certain Asset Purchase Agreement dated December 16, 2010, as amended by that certain Amendment to Asset Purchase Agreement dated January 12, 2012 (the "Sewer System Purchase Agreement") for the sale of certain sewer assets to the City. Section 4.10 of the Sewer System Purchase Agreement provides for a period commencing on the Closing Date (as such term is defined in the Sewer System Purchase Agreement) and ending 25-years thereafter (such period defined in the Sewer System Purchase Agreement as the "Seller Restriction Period") during which the Franchisee covenanted and agreed not to provide, and is prohibited from providing, sewer service in the "Service Area" (as such area is defined and established in the Sewer System Purchase Agreement) to the City's then-current customers, or, in the case of prospective customers, without providing notice to the City and giving the City the opportunity to provide service.

(2) As a part of the consideration to be paid by the Franchisee for the agreement of the City to provide the Franchise herein provided, the City and the Franchisee have determined and agreed to extend the Seller Restriction Period, which was to end on January 19, 2037 (twenty-five years after the Closing Date of January 19, 2012) for an additional 25-years so that the Seller Restriction Period ends on January 19, 2062 (the "Revised Seller Restriction End Date").

(3) Acting pursuant to the terms of Section 7.1 of the Sewer System Purchase Agreement, the City and the Franchisee do hereby modify and amend the Sewer System Purchase Agreement, including without limitation Section 4.10 of the Sewer System Purchase Agreement, so that the Seller Restriction Period commences on the Closing Date (as defined in the Sewer System Purchase Agreement) and ends on the Revised Seller Restriction End Date. The Parties do hereby further amend the Sewer System Purchase Agreement to extend the term of such agreement at least through the Revised Seller Restriction End Date. The Sewer System Purchase Agreement, as amended hereby, is hereby ratified and affirmed by the Parties.

4.2 Inspection and audit; verification.

4.2.1 *Inspection and audit.* Subject to Section 4.2.2, the City shall have the right to inspect and audit, no more than one time per calendar year, upon reasonable written notice, at the Franchisee's offices where such records are located and during normal business hours, such reasonable business records relevant to calculating the Franchise Fee in the form and manner as

solely prescribed by the City to verify compliance with the use fee or other payment requirements of this Agreement.

4.2.2 Verification.

(a) Should the Franchisee's business records be located in another city or state, the Franchisee shall, upon the request of the City, make such records or information available to the City at a convenient location in the City within a time agreed to by the City. Each Party shall pay its own costs and expenses incurred in connection with any such audit, except in the event there is a final and non-appealable determination of an underpayment of five percent (5%) or more of the amount that was due and payable to the City, in which case, in addition to making full payment of the relevant obligation, the Franchisee will promptly pay to the City the actual costs and expenses incurred by the City associated with the audit, including attorneys' fees and the professional services of the auditor to perform the audit; provided, however, the Franchisee's obligations to pay such costs and expenses shall be capped at \$15,000.00 for any one audit. The City may not retain any person or entity to perform the audit whose compensation for performing the audit is dependent in any manner upon the outcome of any such audit, including the audit findings, the recovery of fees, or the recovery of any other payments.

(b) Any additional amount alleged to be due to the City as a result of an audit shall not be deemed finally due and payable unless and until determined in accordance with this Section 4.2(b). The City shall provide the Franchisee with written notice of any claimed deficiency, accompanied by a copy of the audit report and all supporting documentation reasonably necessary for the Franchisee to evaluate the claim. The Franchisee shall have sixty (60) days following receipt of such notice to, at its own cost and expense, review the audit findings or conduct or have conducted its own audit, and either (i) remit payment of the undisputed portion of the deficiency, if any, or (b) deliver to the City a written notice disputing all or any portion of the claimed deficiency, together with all supporting documentation reasonably necessary for the City to evaluate the dispute, including a copy of any audit report performed by or on behalf of the Franchisee. Upon receipt of a notice of dispute, the Parties shall resolve such dispute in accordance with the dispute resolution procedures provided in Section 8. The Franchisee shall not be required to pay any disputed amounts unless and until there is a final resolution of the dispute in accordance with Section 8.

4.3 Final payment. Notwithstanding anything to the contrary in this Section 4, in the event the Franchisee quits its operations or system within the City, whether by transfer or otherwise, it shall make a final payment of any amounts owed to the City within ninety (90) calendar days thereof, and shall provide a report for the calendar year through the date of cessation of the operations or system, which report shall contain the information and certification required hereinabove.

4.4 Evasion of Franchise Fee Prohibited. Any transactions effected with the intent of circumventing payment of the Franchise Fee, including evasion of payment of the Franchise Fee by non-collection or non-reporting of Gross Revenues, bartering, or any other means which evade the actual collection of revenues for business pursued by the Franchisee, are prohibited.

4.5 Affiliate Revenue. Revenue of an affiliate shall be included in the calculation of Gross Revenues to the extent the treatment of such revenue as revenue of the affiliate has the effect (whether intentional or unintentional) of evading the payment of fees herein which would otherwise be paid under this Agreement.

4.6 No Waiver of City rights. No acceptance of any payment by the City shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the City may have for further or additional sums payable under the provisions of this Agreement. All amounts paid shall be subject to audit and recomputation by the City in compliance with this Agreement.

4.7 Reserved.

4.8 Reserved.

4.9 Application of Interest. In the event any payment is not made on the due date, interest on the amount due shall accrue from such date at the annual rate comparable to the then-current rate used by City for late payment of delinquent taxes.

4.10 City office for payment. Unless otherwise provided for by the Finance Director or his/her designee or subordinate, all remittances for the monies due according to the terms of this Agreement are to be made payable to the City of Huntsville, Alabama, and mailed to:

City of Huntsville, Alabama
Finance Director
ATTN: Revenue Division
P. O. Box 308
Huntsville, AL 35804

Such remittances shall clearly identify or reference this Agreement.

4.11 Reservation of Right. The City specifically reserves the right to impose a fee or tax, as allowed by law, on any new or existing business undertaking of the Franchisee that is operated within the City. The City may otherwise separately regulate and obtain compensation for any other use of the Rights-of-Way than those specifically authorized herein.

SECTION 5. REGULATION BY THE CITY

5.1 Compliance with all City Laws.

5.1.1 In performing any activity set forth in this Franchise, the Franchisee shall, unless preempted by federal or state law, comply with all City Laws, including City ordinances, codes, resolutions, regulations, standards, specifications, and procedures, including those governing traffic control within the City, subdivision regulations, and those established by the City for property under its control or jurisdiction, as such may be amended from time to time. Where there

is a conflict between this Franchise and applicable City Laws, the more restrictive shall apply except where otherwise expressly provided or allowed.

5.1.2 The City hereby reserves the right, at any time and from time to time, to amend or adopt rules, regulations, or codes with respect to the installation, connection, maintenance, and servicing of fixtures, pipes, appliances, and equipment within the City. In the event of any conflict between any rules or regulations of the Franchisee pursuant to the Enabling Legislation and those adopted by the City, those adopted by the City shall apply and shall be controlling, unless the Franchisee's is more restrictive.

5.2 Exercise of the City's Police Power. The City makes the grant of this Franchise without reducing its police powers and expressly reserved to the City is the right to adopt and enforce, now and in the future, in addition to the provisions of this Franchise and existing laws, ordinances, standards, codes, procedures, and regulations, such additional laws, ordinances, codes, procedures, and regulations as it may find necessary in the exercise of its police power to provide for the health, safety, and welfare of the public.

SECTION 6. COMPLIANCE WITH APPLICABLE LAWS

6.1 Compliance with Industry Standards and Applicable Laws. In carrying out any authorized activities under the privileges granted herein, the Franchisee shall meet generally accepted industry standards and comply with all Applicable Laws of any governmental entity with jurisdiction over the Facilities located in the Rights-of-Way and their operation. This shall include all Applicable Laws existing at the Effective Date of this Franchise or that may be subsequently enacted by any governmental entity with jurisdiction over the Facilities in the Rights-of-Way including their construction, use, operation, maintenance, and repair, including all requirements to obtain and comply with the conditions of applicable certificates, licenses, permits, and governmental approvals and applicable environmental-related requirements.

6.2 Compliance with Hazardous Substance Standards. The Franchisee shall take measures which will result in its Facilities and their operations meeting the standards imposed by applicable City, county, state, and federal air, water, and noise pollution laws and regulations and laws and regulations governing the transportation of Hazardous Substances. Upon the City's request, the Franchisee will respond to the City's reasonable questions regarding such measures.

6.3 Unfair Discriminatory Practices Prohibited. In the performance of this Franchise, the Franchisee shall not discriminate unfairly against any person on the ground of or because of race, creed, color, national origin or ancestry, gender, religion, political opinion or affiliation, income of residents in any area of the City, or age. The Franchisee shall comply at all times with all other valid applicable federal, state, and local laws and all federal and state executive and administrative orders relating to non-discrimination.

6.4 The Franchisee Responsible for Compliance. The City, by its entering into this Agreement, granting this Franchise, and its regulation of the Franchisee, does not accept any responsibilities for compliance with Applicable Law by the Franchisee, which shall remain the sole responsibility of the Franchisee.

6.5 Construction of Agreement. This Agreement will be construed in a manner consistent with all Applicable Laws.

SECTION 7. FRANCHISE AREA

7.1 Franchise Area. The **Franchise Area** means the Water System Franchise Area and the Sewer System Franchise Area.

7.2 Water System Franchise Area.

7.2.1 The Water System Franchise Area means that portion of the corporate limits of the City, as such limits may be modified, by annexation or otherwise, from time to time, wherein the Franchisee has the lawful authority under its certificate of incorporation (as such may be amended from time to time) to render Water Service less and except the **City d.b.a. Huntsville Utilities Water Service Area**, as that term is defined in Section 7.2.2 below.

7.2.2 The “City d.b.a. Huntsville Utilities Water Service Area” means the geographic area depicted on **Exhibit B**, which area is the area wherein the Franchisee sold, assigned, or otherwise transferred to the City, inclusive of the City d.b.a. Huntsville Utilities, its Water System (see City Resolution No. 19-189)(hereinafter referred to as the “Water System Transfer Agreement”).

7.2.3 The Franchisee covenants and agrees that it has no remaining portions of its Water System in the City d.b.a. Huntsville Utilities Water Service Area and that it does not have the plans or ability to provide or make available Water Service in the City d.b.a. Huntsville Utilities Service Area.

7.3 Sewer System Franchise Area.

7.3.1 The Sewer System Franchise Area means, for those areas wherein the Franchisee has the lawful authority under its certificate of incorporation (as such may be amended from time to time) to render Sewer Service, only the following:

(a) Those portions of the Rights-of-Way within the corporate limits of the City which contain the Franchisee’s Existing Facilities. Should the Franchisee propose to extend, enlarge, or expand its Existing Facilities into other portions of the Rights-of-Way within the corporate limits of the City that are not otherwise within the Sewer System Franchise Area, it may do so upon the adoption of a resolution by the City Council approving same; in which case the Sewer System Franchise Area shall be expanded accordingly and shall automatically become a part of and subject to this Franchise and incorporated herein.

(b) Those areas within the corporate limits of the City, as such limits may be modified, by annexation or otherwise, from time to time, wherein the Franchisee has the right to provide its Sewer Service and does actually provide its Sewer Service in accordance with that certain Asset Purchase Agreement between Franchisee and the City (City Resolution No. 10-1019, as amended by City Resolution 12-41)(hereinafter referred to as the “Sewer System Purchase Agreement”).

7.3.2 As of the Effective Date of this Agreement, the Parties understand and agree that the Franchisee has not installed any of its Sewer System Facilities in the Rights-of-Way and that it has no current plans to do so. However, both Parties agree and acknowledge there is a potential, either through the annexation of Existing Facilities or in accordance with the Sewer System Purchase Agreement, for the Franchisee's Sewer System Facilities to be located in the Rights-of-Way.

SECTION 8. DISPUTE RESOLUTION

8.1 Dispute Resolution. In the event of a dispute between the City and the Franchisee arising by reason of this Franchise, upon the written request of either party, the representatives of the parties shall meet within thirty (30) days and make a good faith effort to achieve a solution of the dispute. If the parties are unable to resolve the dispute between themselves, they may mutually agree to refer the matter to a mediator to facilitate further discussion. The parties may jointly select a mediator, or if the parties are unable to agree upon a mediator, the parties shall jointly obtain a list of five (5) qualified mediators and alternately strike mediators on that list until one remains. A coin toss shall determine who may strike the first name. If a party fails to notify the other party of which mediator it has stricken within two (2) business days, the other party shall have the option of selecting the mediator from those mediators remaining on the list. The parties will equally share the fees and expenses of the mediator. If a mediator is not used or if the parties are unable to resolve the dispute within thirty (30) days after first meeting with the mediator, either party may then pursue any available judicial remedies as may be permitted by law or equity, or otherwise proceed according to the provisions of this Franchise.

8.2 Revocation Held in Abeyance. In the event the parties are attempting to resolve a dispute as set forth in this Section 8, then any revocation proceedings arising from the dispute shall be held in abeyance during such period except in the case of Exigent Circumstances.

SECTION 9. OVERSIGHT

9.1 Franchise Administrator. The Franchise Administrator is hereby authorized to administer and enforce this Agreement on behalf of the City.

9.2 Records and Reports; Confidential Information.

9.2.1 The Franchisee shall cooperate with the Franchise Administrator with respect to the administration of this Franchise and to this end, subject to Section 9.2.2 concerning Confidential Information, shall furnish or make available to the Franchise Administrator upon request, at no cost to the City, such records, reports, and other information reasonably necessary, as determined by the Franchise Administrator, for the administration of this Franchise and in such form and manner as prescribed by the City.

9.2.2 Confidential Information.

(a) *Acceptance of public records law.* The Franchisee acknowledges and understands that the City, as a municipality, is subject to laws governing the disclosure of public records

including disclosure or release of the contents of this Agreement. The City will comply with Applicable Law concerning Confidential Information, clearly marked as such by the Franchisee. Notwithstanding anything to the contrary in this Agreement, all obligations of the City in this section are subject to, and limited by, the requirements of Alabama open records laws. The Parties agree that this Franchise is a public record, subject to disclosure.

(b) *Release of Confidential Information.* Where the release of Confidential Information to a third party is necessary for Rights-of-Way Management purposes, the City and the Franchisee shall mutually agree on what, if any, such information can be released to the third party. The City will confer with the Franchisee prior to releasing any Confidential Information.

(c) *City responsibility.* The City's responsibility to maintain Confidential Information as set forth in this section shall not apply to any such information which (i) becomes publicly available other than through the disclosing Party; (ii) is required to be disclosed by Applicable Law or by administrative or judicial order; (iii) is independently developed by the receiving Party; or (iv) becomes available to the receiving Party without restriction from a third party.

(d) *Disclosure of Confidential Information.* Notwithstanding anything to the contrary in this Agreement, the City may disclose, as necessary, any Confidential Information to its officials, officers, boards, commissions, agencies, employees, agents, representatives, or contractors, including the City d.b.a Huntsville Utilities, in order to administer or enforce this Agreement, or otherwise for Rights-of-Way Management purposes.

(e) *Continuing obligation concerning Confidential Information.* The provisions of this section shall survive expiration, termination, or revocation of this Agreement.

SECTION 10. VIOLATIONS AND REMEDIES

10.1 Remedies Not Exclusive; Attorneys' Fees. In addition to any rights set out elsewhere in this Franchise, or other rights it may possess at law or equity, or under the penal laws of the state or the City, the City reserves the right to apply any remedies, alone or in combination, in the event the Franchisee violates any material provision of this Franchise. The remedies provided for in this Franchise are cumulative and not exclusive; the exercise of one remedy shall not prevent the exercise of another, or any rights of the City at law or equity or otherwise.

10.2 Revocation. Subject to Section 10.5, in addition to any rights set out elsewhere in this Franchise, or other rights it may possess at law or equity, the City may revoke this Franchise as follows:

(a) If the Franchisee materially breaches or otherwise fails to perform, comply with, or otherwise observe any of the terms and conditions of this Franchise, or fails to maintain all required licenses and approvals from federal, state, and local jurisdictions, and fails to cure such breach or default;

(b) If the Franchisee is found to have practiced any fraud or deceit upon the City or any Customer;

(c) If the Franchisee is found to have knowingly misrepresented a material fact in the negotiation of, renegotiation of, or renewal of this Franchise;

(d) If the Facilities are abandoned either during construction before becoming operational or after becoming operational for a period of ninety (90) consecutive days; or

(e) If the Franchisee has engaged in an evasion or attempt to evade any material provision of this Franchise and fails or refuses to cure it within a reasonable period of time not less than thirty (30) days.

10.3 Cure. Where the Franchisee is given a right to cure under the terms of this Franchise, it shall perform such cure within thirty (30) days of the City's providing the Franchisee written notice thereof, or such additional time as the Franchise Administrator may allow for good cause shown; provided, however, in the event of Exigent Circumstances, the Franchisee may be required to remediate or eliminate the threat or danger in a shorter period of time as deemed appropriate under the circumstances by the City, through the Franchise Administrator.

10.4 Non-Waiver. The City's failure to exercise a particular remedy at any time shall not waive the City's right to revoke, assess penalties, or assert that or any other remedy at law or equity for any future breach or default of the Franchisee.

10.5 Revocation Process.

10.5.1 Prior to revoking this Franchise pursuant to Section 10.2, the City shall give forty-five (45) days advance written notice to the Franchisee of its intention to revoke this Franchise and the reason(s) therefor. Within fifteen (15) days from the date of said notice, the Franchisee may request in writing with the Franchise Administrator that a hearing be set on the matter and shall provide a written statement in its defense together with any documentation supportive thereof. Upon receipt of the Franchisee's request for a hearing, a hearing shall be scheduled before the City Council acts to revoke this Franchise, unless Exigent Circumstances dictate otherwise in which case a post-revocation hearing will be scheduled as soon as possible after the revocation. At any revocation hearing, the Franchisee shall be provided with an opportunity to be heard on the matter and may present evidence on its behalf.

10.5.2 Upon finding that the stated-basis for revocation exists, the City Council then may terminate this Franchise forthwith or may allow the Franchisee additional time to cure the non-compliance, in such manner and upon such reasonable terms and conditions as the City may direct, and if the Franchisee fails to cure within the additional cure period, then the no further hearing shall be required and the City may then take action to revoke this Franchise.

10.5.3 Where the City finds that the Franchisee's non-compliance was due to any cause beyond the Franchisee's reasonable control or not reasonably foreseeable, such inability to perform shall be deemed to be excused and no action shall be taken to revoke this Franchise, provided the

Franchisee has notified the City in writing within the fifteen (15) day period set forth in Section 10.5.1. Such causes beyond the Franchisee's reasonable control or not reasonably foreseeable shall include those set forth in Section 13.4 concerning force majeure.

10.5.4 In the event of revocation of this Franchise pursuant to Section 10.2, the Franchisee shall, subject to Applicable Law governing the Facilities, immediately discontinue operation of the Facilities. Once Franchisee's rights to operate in the Franchise Area have been revoked, the Franchisee shall comply with the provisions of this Franchise regarding removal or abandonment of Facilities, subject to Applicable Law governing the Facilities. In the event Applicable Law compels the continuance of the Franchisee's operations of the Facilities in the Franchise Area, in whole or part, the City, subject to Applicable Law, reserves the right in the case of revocation to exercise any or all authority it may have under Applicable Law over the Facilities in the Franchise Area and over the Franchisee as a result of its use and occupancy of the Rights-of-Way in said area.

10.5.5 Termination of this Franchise, by revocation or otherwise, shall not release the Franchisee from any liability or obligation with respect to any matter occurring prior to such termination, nor shall such termination release the Franchisee from any obligation to remove or secure the Facilities pursuant to this Franchise and to restore the Franchise Area.

SECTION 11. NON-WAIVER

11.1 Effect of Franchise. Except as authorized by Applicable Law, the granting of this Franchise shall not waive, abridge, release, limit, surrender, impair, remove, or subordinate:

(a) Any right, power, duty, or jurisdiction now or hereafter possessed by the City under Applicable Law.

(b) Any right, power, duty, or jurisdiction now or hereafter possessed by the State of Alabama, or any officer, agency, department, or commission thereof.

(c) Any provision of any constitution, statute, or order of a competent authority.

(d) Any obligation or duty now or hereafter imposed by Applicable Law or by order of a competent authority; or

(e) Any right of the City or the Franchisee to obtain judicial review of any judgment or decree of a judicial tribunal or any order of a competent authority.

11.2 Continuing Obligation to Comply. The Franchisee shall not be excused from complying with any of the terms and conditions of this Agreement by any failure of the City upon one or more occasions to insist upon or to seek compliance with any such terms or conditions, nor shall such failure on the part of the City be construed or held to be a waiver of the City's rights thereafter to strictly enforce any provision of this Agreement, or a waiver of any legal or equitable rights or remedies the City may have in this Agreement or Applicable Law.

SECTION 12. TRANSFER OF FRANCHISE; BANKRUPTCY

12.1 Consent of City Required.

12.1.1 The Franchisee shall not, without prior written approval by the City, sell, assign, transfer, or convey in any manner this Franchise or any of the rights or privileges granted hereunder to another entity (including any successor or assign of the Franchisee) which approval shall not be unreasonably withheld; provided, however, that nothing herein shall be construed to prevent the Franchisee from giving a mortgage, deed of trust, voluntary lien or other encumbrance on any of its facilities or assets, which do not include the rights and privileges granted under this Franchise, to secure indebtedness lawfully authorized. Any sale or other transfer of some or all of the Franchisee's Facilities in the Franchise Area shall not be deemed to be a transfer of this Franchise with respect to such Facilities.

12.1.2 Subject to the foregoing, the Franchisee and any proposed assignee or transferee shall provide and certify the following to the City not less than one hundred twenty (120) days prior to the proposed date of transfer: (a) complete information setting forth the nature, terms, and conditions of the proposed assignment or transfer; (b) all information reasonably required by the City with respect to the proposed assignee or transferee; (c) any other information reasonably required by the City, including information about the proposed assignee's or transferee's safety record; and (d) an application fee which shall be set by the City, plus any other costs actually and reasonably incurred by the City in processing and investigating the proposed assignment or transfer.

12.1.3 Consent for transfer may be subject to demonstration that the assignee or transferee has the legal, technical, financial, and other requisite qualifications to carry on the activities of the Franchisee.

12.1.4 Any transfer or assignment of this Franchise without the prior written consent of the City may be voidable at the election of the City and may result in revocation of this Franchise.

12.1.5 Subject to Applicable Law, in the event the Franchisee desires to sell or otherwise transfer some or all of its Facilities in the Franchise Area, the City shall have a right of first refusal to acquire said Facilities from the Franchisee.

12.2 Continuation of Franchise. This Franchise shall be binding on the successors and assigns of the City and of the Franchisee, except that this Franchise shall terminate if a sale, transfer, or assignment, as described in Section 12.1, is not approved by the City.

12.3 Bankruptcy.

12.3.1 The Franchisee shall immediately notify the City in writing if it: files a voluntary petition in bankruptcy, a voluntary petition to reorganize its business, or a voluntary petition to effect a plan or other arrangement with creditors; files an answer admitting the jurisdiction of the Court and the material allegations of an involuntary petition filed pursuant to the Bankruptcy Code, as amended; or is adjudicated bankrupt, makes an assignment for the benefit of creditors, or applies

for or consents to the appointment of any receiver or trustee of all or any part of its property including all or any parts of its business operations or Water System or Sewer System within or affecting the Franchise Area.

12.3.2 Upon the foreclosure or other judicial sale of all or a substantial part of the Franchisee's business operations or Water System or Sewer System within or affecting the Franchise Area, or upon the termination of any lease covering all or a substantial part of the Water System or Sewer System within or affecting the Franchise Area, or upon the occasion of additional events which effectively cause termination of the Franchisee's rights or ability to operate the Water System or Sewer System within or affecting the Franchise Area, the Franchisee shall notify the City of such fact, and such notification or the occurrence of such terminating events shall be treated as a notification that an assignment or transfer requiring the consent of the City hereunder has taken place, and the provisions of this Franchise governing the consent of the City to such assignment or transfer of the Franchisee shall apply.

12.3.3 Subject to preemptive federal bankruptcy laws, the City shall have the right to cancel this Franchise one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of the Franchisee, whether in receivership, reorganization, bankruptcy, or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless:

(a) Within one hundred twenty (120) days after the election or appointment, such receiver or trustee shall have fully complied with all of the provisions of this Franchise and remedied any existing violations and/or defaults; and

(b) Within said one hundred twenty (120) days, such receiver or trustee shall have executed an agreement, duly approved by the court having jurisdiction, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Franchise granted to the Franchisee except where expressly prohibited by Applicable Law.

SECTION 13. MISCELLANEOUS

13.1 Applicable Law/Jurisdiction/Venue. This Franchise is made in, and thus shall be construed, controlled, enforced, governed, and interpreted in accordance with its plain meaning in accordance with the internal laws of, the State of Alabama, without regard to principles of conflicts of laws, except to the extent the Supremacy Clause of the United States Constitution requires application of federal law. For any action concerning this Franchise (a) jurisdiction shall be in the appropriate state or federal courts sitting in Alabama and (b) venue (i) in Alabama state courts shall be in Madison County, Alabama and (ii) in Alabama federal courts shall be in the United States District Court for the Northern District of Alabama, Northeastern Division.

13.2 Captions. The paragraph captions and headings in this Agreement are for convenience and reference purposes only and shall not affect in any way the meaning of interpretation of this Agreement.

13.3 Calculation of Time. Where the performance or doing of any act, duty, matter, payment, or thing is required hereunder and the period of time or duration for the performance or during thereof is prescribed and fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period or duration of time. When the last day of the period falls on Saturday, Sunday, or a legal holiday, that day shall be omitted from the computation.

13.4 Force Majeure. The Franchisee shall not be held in default under, or in noncompliance with, the provisions of this Franchise, nor suffer any enforcement or penalty relating to noncompliance or default (including revocation of this Franchise), where such noncompliance or alleged defaults occurred or were caused by strike, riot, war, earthquake, flood, unusually severe rain or snow storm, hurricane, tornado or other catastrophic act of nature, labor disputes, pandemics, failure of utility service necessary to operate the Facilities, governmental, administrative, or judicial order or regulation, or other event that is reasonably beyond the Franchisee's ability to anticipate or control. This provision also covers work delays which are determined by the City Engineer to be caused by waiting for other utility providers to perform or which are due to the unavailability of materials or qualified labor to perform the work necessary.

13.5 No Third-Party Beneficiaries. Nothing in this Franchise is or was intended to confer third-party beneficiary status on any member of the public to enforce the terms of this Franchise.

13.6 Independent Contractors. The Franchisee shall be obligated to ensure that any independent contractors or subcontractors that perform any type of service including construction on behalf of the Franchisee shall be subject to the indemnification and insurance provisions of this Franchise included in Section 3.

13.7 Legal Relations.

13.7.1 Nothing contained in this Franchise shall be construed to create an association, trust, partnership, agency relationship, or joint venture or to impose a trust, partnership, or agency duty, obligation, or liability on or with regard to any party. Each party shall be individually and severally liable for its own duties, obligations, and liabilities under this Franchise.

13.7.2 The Franchisee accepts the Rights-of-Way in an "as is" condition. The Franchisee agrees that the City has never made any representations, implied or express warranties or guarantees as to the suitability, security, or safety of the Franchisee's location of Facilities or the Facilities themselves in the Rights-of-Way or possible hazards or dangers arising from other uses of the Rights-of-Way or other public property by the City, other utilities, or other users including the general public. The Franchisee shall remain solely and separately liable for the function, testing, maintenance, replacement, or repair of the Facilities or other activities permitted under this Franchise.

13.7.3 This Franchise shall not create any duty of the City or any of its present or future officers, elected or appointed officials, employees or agents and no liability shall arise from any action or failure to act by the City or any of its present or future officers, elected or appointed officials, employees or agents in the exercise of powers reserved to the City. Further, this

Agreement is not intended to acknowledge, create, imply or expand any duty or liability of the City with respect to any function in the exercise of its police power or for any other purpose. Any duty that may be deemed to be created in the City shall be deemed a duty to the general public and not to any specific party, group, or entity.

13.8 Notices.

13.8.1 All notices or demands pursuant to this Franchise shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested to the following addresses:

If to the City, to:	Franchise Administrator c/o City Engineer City of Huntsville 305 Fountain Circle Huntsville, AL 35801
---------------------	---

With a copy to:	City Attorney City of Huntsville 305 Fountain Circle Huntsville, AL 35801
-----------------	--

If to the Franchisee, to:	Limestone County Water and Sewer Authority 17218 US-72 Athens, AL 35611
---------------------------	---

The Franchisee's Technical Point of Contact:	President 17218 US-72 Athens, AL 35611
---	--

13.8.2 All notices or demands shall be deemed effective if personally delivered, upon delivery, and if mailed, certified mail, return receipt requested, three (3) days after mailing. The City or the Franchisee may from time to time designate in writing any other address for this purpose to the other party; provided, however, in no event will either the City or the Franchisee be required at any time to send any notices or demands to more than two (2) designated addresses even in the event that this Franchise is transferred or assigned in whole or part. It shall be the duty of the Franchisee to promptly update in writing any changes in its contact information provided above, and failure to do so shall not render ineffective the notice or demand sent by the City and shall constitute a material violation of the Agreement.

13.8.3 The Franchisee shall designate and the City or any other governmental entity may contact the Franchisee's technical point of contact identified above in order to coordinate projects, works, improvements, or any other such construction activity, including in an emergency ("Technical POC"). The Franchisee shall provide updates on the Technical POC to the Franchise Administrator promptly. The Technical POC shall be an individual located at a local Limestone County office. For Rights-of-Way Management purposes, any notice required to be given by the City to the Franchisee shall be accomplished by sending such notice to the Technical POC on record with the Franchise Administrator.

13.9 Time of the Essence. Whenever this Franchise sets forth a time for any act to be performed, such time shall be deemed to be of the essence, and any failure to perform within the allotted time may be considered a material violation of this Franchise.

13.10 Binding. This Franchise and all of the terms and provisions shall be binding upon and inure to the benefit of the respective successors and assignees of the parties.

13.11 Authority. The Franchisee represents and warrants that it has full authority to enter into and to perform this Franchise, that it is not in default or violation of any permit, license, or similar requirement necessary to carry out the terms hereof, and that no further approval, permit, license, certification, or action by a governmental authority is required to execute and perform this Franchise, except such as may be routinely required and obtained in the ordinary course of business.

13.12 Entire Agreement. This Franchise and the exhibits hereto represent the entire understanding and agreement between the parties with respect to the subject matter and it supersedes all prior oral negotiations between the parties. This Franchise may be amended, supplemented, modified, or changed in like manner.

13.13 Taxes. Nothing herein shall be construed to relieve the Franchisee from any obligation under Applicable Law for the payment of all ad valorem, property, use, and other taxes applicable to its system, Facilities, or services. To the extent taxes or other assessments are imposed on the City by taxing authorities other than the City on the use of City property as a result of the Franchisee's use or occupation of the Rights-of-Way for its Facilities located in the Rights-of-Way, the Franchisee shall be responsible for payment of such taxes.

13.14 Severability. If any term, condition, or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be rendered invalid or unenforceable as in conflict with any law, rule, or regulation of a superior governmental body, the remainder hereof and the application of such term, condition, or provision to persons or circumstances, other than those as to whom it shall be held invalid or unenforceable, shall not be affected thereby, and this Agreement and all the terms, provisions, and conditions thereof shall, in all other respects, continue to be effective and to be complied with, and to this end the provisions hereof are declared to be severable. In the event that such law, rule, or regulation is subsequently repealed, rescinded, amended, or otherwise changed so that the provision which had been held invalid or modified is no longer in conflict with the law, rules, and regulations then in effect, said provision shall thereupon return to full force and effect and shall thereafter be binding on the Franchisee and the

City. In the event any change effects the enforcement of a material provision of this Agreement, the City or the Franchisee may notify the other and seek negotiation to revise this Agreement.

SECTION 14. ACCEPTANCE AND PUBLICATION

14.1 Acceptance. By its execution of this Agreement the Franchisee agrees to an unconditional acceptance of its terms and conditions and warrants that the person executing the Agreement on its behalf is duly authorized to do so. No later than 30 days after its execution of this Agreement, or such extension of such time as may be allowed by the Franchise Administrator, the Franchisee shall provide the Franchise Administrator with proof of insurance coverage, and other requirements as may be included in this Agreement.

14.2 Publication. This Agreement, or a synopsis of this Agreement, shall be published in accordance with applicable state law. Such publication shall be done by or at the direction of the City Clerk, and the expense thereof shall be paid in advance by the Franchisee, or the Franchisee shall make arrangements with the newspaper(s) to be billed directly at its expense.

IN WITNESS WHEREOF, the Parties hereto, by their duly authorized representatives, have caused this Agreement to be executed under their respective seals as of the date first written above.

[Signatures on following pages]

Limestone County Water and Sewer Authority

By: _____ [SEAL] Date: _____
Name: Daryl Williamson
Title: Chief Executive Officer

STATE OF _____ §
COUNTY OF _____ §

I, the undersigned Notary Public, in and for said County in said State, hereby certify that Daryl Williamson, whose name as Chief Executive Officer of Limestone County Water and Sewer Authority is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such Chief Executive Officer and with full authority, executed the same voluntarily for and as the act of said authority, as of the day the same bears date.

Given under my hand and official seal this _____ day of _____, 2026.

NOTARY PUBLIC

[Signatures continued]

**City of Huntsville, Alabama,
a municipal corporation**

By: _____ [SEAL] Date: _____
Tommy Battle, Mayor
City of Huntsville, Alabama

Attest:

_____ Date: _____
Shaundrika Edwards, City Clerk
City of Huntsville, Alabama

STATE OF ALABAMA §
§
COUNTY OF MADISON §

I, the undersigned Notary Public in and for said County in said State, hereby certify that Tommy Battle, whose name as Mayor of the City of Huntsville is signed to the foregoing instrument, and Shaundrika Edwards, whose name as City Clerk of the City of Huntsville is signed to the foregoing instrument, both of whom being known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they, in their respective capacities as Mayor of the City of Huntsville and City Clerk of the City of Huntsville, executed the same voluntarily for and as the act of the City of Huntsville, Alabama, a municipal corporation, as of the day the same bears date.

Given under my hand this the _____ day of _____, 2026.

NOTARY PUBLIC

EXHIBIT A

CONSTRUCTION AND USE OF THE RIGHTS-OF-WAY

1.1 Location of Facilities.

1.1.1 Subject to regulation under the ROW Ordinance, Facilities shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained, and functioning in accordance with good engineering practices and so as to avoid unreasonable interference with or causing damage to public improvements, including City Systems, or the facilities of others in the Rights-of-Way and in a manner that will not unreasonably interfere with the usual and customary uses in the Rights-of-Way, including pedestrian and vehicular traffic, utilities, and traffic control systems. All such work must be performed by qualified maintenance and construction personnel.

1.1.2 Facilities may be located on Rights-of-Way within the Franchise Area at locations as determined by the City Engineer and shall be subject to permit or approval conditions of the City Engineer. The City Engineer may deny the Franchisee the right to install its Facilities in the Rights-of-Way at locations where, the City Engineer reasonably determines that to do so would unreasonably: (a) interfere with the existing or planned use of the proposed route; (b) pose a hazard to the public health or safety; (c) constitute an impermissible burden on the City or its property; or (d) otherwise interfere with the dedicated or intended purpose of the Rights-of-Way or City Systems.

1.1.3 With the exception of components that are traditionally installed above ground such as fire hydrants, blow offs, vault lids, risers, pump stations, generators, electrical control panels, power meters, telephone connections, automated reading equipment and appurtenances, and utility markers, all Facilities and equipment to be installed within the Rights-of-Way shall be installed underground; provided, however, that such Facilities may be installed above ground if so authorized by the City Engineer, which authorization shall not be unreasonably withheld, conditioned or delayed, consistent with the provisions of City Laws.

1.2 Construction and Maintenance.

1.2.1 The Franchisee's activity within the Rights-of-Way in the Franchise Area shall be subject to each of the provisions of this Section 1.2 of this Exhibit.

1.2.2 All construction, maintenance, repair, or operation undertaken by the Franchisee, upon the Franchisee's direction or on the Franchisee's behalf, shall be completed in a workmanlike manner.

1.2.3 Except in the case of an emergency or routine maintenance, prior to commencing any construction, repair, or maintenance work in the Franchise Area, the City Engineer may, at his or her sole option, but is not obligated to, require the Franchisee to first file with the City Engineer, subject to his or her approval (which shall not be unreasonably withheld, conditioned, or delayed), such detailed plans, specifications, and profiles of the intended work as may be reasonably required by the City Engineer. The City Engineer may require such additional information, plans, or specifications as are in his or her opinion necessary to protect public or private facilities or the

public health or safety during the construction, repair, or maintenance work and for the remaining term of this Franchise.

1.2.4 All construction, repair, or maintenance work shall be performed in conformity with the plans and specifications filed with and approved or permitted by the City Engineer, except in instances in which deviation may be allowed by the City Engineer thereafter in writing pursuant to an application by the Franchisee, or as a field change approved by the City Engineer and incorporated into the “as built”.

1.2.5 All Facilities and components thereof used in construction, repair, or maintenance activities within the Franchise Area shall comply with Applicable Law, including applicable federal and state regulations, as may be from time to time amended.

1.2.6 Except in the event of an emergency, the Franchisee shall provide the City Engineer at least ten (10) days written notice prior to any construction, repair, or maintenance, or other substantial activity, other than routine inspections and maintenance, by the Franchisee, its agents, employees, or contractors of the Franchisee’s Facilities within the Rights-of-Way in the Franchise Area.

1.2.7 Work shall only commence upon the issuance of applicable permits or approvals by the City Engineer and payment of any applicable permitting fees, which permitting or approval shall not be unreasonably withheld, conditioned, or delayed. However, in the event of an emergency requiring immediate action by the Franchisee for the protection of the Facilities, the City’s property or other persons or property, the Franchisee may proceed without first obtaining the normally required permits or approvals. In such event the Franchisee must (a) take all necessary and prudent steps to protect, support, and keep safe from harm its Facilities, or any part thereof; the City’s property including City Systems; or other persons or property, and to protect the public health and safety; and (b) as soon as possible thereafter, must obtain any required permits or approvals and comply with any mitigation requirements or other conditions in the after-the-fact permit or approval.

1.2.8 Unless such condition or regulation is in conflict with a federal requirement, the City Engineer may condition the granting of any permit or other approval that is required under this Franchise, in any manner reasonably necessary for the safe use and management of the Rights-of-Way or the City’s property including, by way of example and not limitation, bonding, maintaining proper distance from other utilities, protecting the continuity of pedestrian and vehicular traffic, requiring employing the least disruptive technology, and protecting any Rights-of-Way improvements, City Systems, private facilities, and public safety.

1.2.9 The Franchisee shall continuously be a member of the Alabama One Call, and shall comply with all applicable rules and regulations. In addition to providing the City with written notice as set forth in Section 1.2.6 of this Exhibit, the Franchisee, upon the request of the City Engineer, shall, prior to commencing any construction, repair, or maintenance within the Franchise Area, provide reasonable notice to those owners or other persons in control of property in the Franchise Area when such activity will affect access to or otherwise impact their property.

1.2.10 The City Engineer may require that the Franchisee install markers demarcating a pipeline’s location to be placed on the surface and at intervals established by the City Engineer so

as to provide clear warning of the presence of such pipeline but in a manner that does not interfere with trails or other public uses in that area. Additionally, the City Engineer may require the Franchisee to place continuous underground markers demarcating a pipeline's location each time the Franchisee digs to such pipeline for any reason.

1.2.11 Nothing in this Franchise shall be deemed to impose any duty or obligation upon the City to determine the adequacy or sufficiency of the Franchisee's plans and designs or to ascertain whether the Franchisee's proposed or actual construction, testing, maintenance, repairs, replacement, or removal is adequate or sufficient or in conformance with the plans and specifications reviewed by the City.

1.2.12 The Franchisee shall be solely and completely responsible for workplace safety and safe working practices for those performing on its behalf, including its employees and contractors on its job sites within the Franchise Area, including safety of all persons and property during the performance of any work.

1.2.13 Notwithstanding anything to the contrary contained in this Section 1.2 of this Exhibit, the City Engineer's prior approval shall not be required for accessing existing Facilities in such a manner so as to: (i) not interfere with the use of, or other facilities in, the Rights-of-Way, (ii) not have the likelihood of creating a threat to the public health or safety, and (iii) require restoration or repair of the Rights-of-Way. Provided the foregoing conditions are met, such accessing includes accessing existing subsurface Facilities through existing manholes or handholes; routine repair and maintenance of existing Facilities; running underground service lines outside the roadway limits, which encompasses the roadway and its shoulder, to individual customers; or replacement of existing Facilities that does not appreciably alter their location, or enlarge or expand their occupancy of the Rights-of-Way.

1.2.14 The City Engineer may, at any time and from time to time, issue a stop work order for construction of all or any portion of the Facilities when the City Engineer determines that the activity has caused, or is likely to cause, a situation to exist that poses a clear and immediate danger: (a) to life or health, (b) of a significant loss of property or services, or (c) of significant damage to or destruction of the Rights-of-Way. The order may be issued, at the City Engineer's option, on the construction site or to the Franchisee's Technical POC.

1.3 Restoration.

1.3.1 Upon completion of any work requiring the opening of any Right-of-Way, the Franchisee shall, at its sole costs and expense, restore the same, including paving and its foundations, to as good condition or better condition as formerly, without affecting, altering, or disturbing in any way existing City Systems or other existing facilities or systems including electric, sanitary sewer, storm drainage, water, gas, telephone, and cable, and shall exercise reasonable care to maintain the same for one (1) year thereafter in good condition. The Franchisee shall replace any property corner monuments, survey reference or hubs that were disturbed or destroyed during the Franchisee's work in the Franchise Area. All restoration shall be done in a manner consistent with Applicable Laws and to the City Engineer's satisfaction and specifications.

1.3.2 Restoration work shall be completed as promptly as weather permits, and if the Franchisee shall not promptly perform and complete the work, remove all dirt, rubbish, equipment,

and material, and put the Right-of-Way in good condition, the City shall have the right to put it in good condition at the expense of the Franchisee; and the Franchisee shall, upon invoicing by the City, pay to the City within thirty (30) days of invoicing, the cost of such work done for or performed by the City, including its administrative expense and overhead, together with ten percent (10%) additional as liquidated damages. This remedy shall be in addition to any other remedy available to the City.

1.4 Relocation of Facilities.

1.4.1 The Franchisee's Facilities within the Rights-of-Way in the Franchise Area shall be subject to each of the provisions of this Section 1.4 of this Exhibit.

1.4.2 For purposes of this Section 1.4 of this Exhibit the term "public purpose" is defined as activity conducted by or on behalf of the City, including the City d.b.a. Huntsville Utilities where appropriate, which relates to the City's exercise of its police powers for the public health, safety, or general welfare, and public infrastructure projects, public building projects, and other public improvements funded in whole or part by the City.

1.4.3 The Franchisee shall be required, at its own cost, expense, and risk, to promptly protect, support, temporarily disconnect, relocate in, or remove from the Rights-of-Way (collectively referred to hereinafter for purposes of this Section 1.4 as "relocate" or "relocation"), any Facilities whenever required by the City Engineer upon reasonable notice applicable to the conditions warranting such action and as then reasonably determined by the City Engineer, by reason of traffic conditions, an emergency situation, public safety, unreasonable interference with the function of public works of the City, changes in the grade or location of streets, or other public purpose. The City Engineer will use his or her best efforts to coordinate such activity with the Franchisee upon the request of the Franchisee, including discussions of the least disruptive process. Nothing in this Section 1.4.3 of this Exhibit shall be construed to prevent the Franchisee from receiving cost reimbursement or funds under federal or state grants or programs so long such reimbursement or funds are not at the City's expense, except as may be required otherwise by Applicable Law.

1.4.4 Notice of the required action shall be given by the City Engineer to the Franchisee and shall contain the basis for the required action, the required commencement and completion dates, and the required action. The time allowed for performance shall be as determined by the City Engineer and shall take into account, among other things, the nature and scope of the request, any relevant information or limitations provided by the Franchisee, whether any emergency exists, and the requirements of the public purpose necessitating the required action. The Franchisee may request reasonable extensions of its performance period based on then-current relevant factors.

1.4.5 The City retains the right and privilege to move any Facilities at the Franchisee's sole cost, expense, and risk, located in the Rights-of-Way as the City may determine to be necessary, appropriate, or useful in response to any life-threatening emergency. The City will endeavor to notify and consult with the Franchisee's identified Technical POC if there is a potential that its Facilities will be impacted. Nothing herein shall be construed to create any duties or obligations on the City to so notify the Franchisee nor shall the City, its officials, officers, agents, employees, contractors, subcontractors, or volunteers be in any way liable to the Franchisee for any failure to notify the Franchisee.

1.4.6 In the event that after notice the Franchisee fails to perform the required action within the specified time, absent any extensions granted by the City Engineer pursuant to this Franchise, the Franchisee shall have thirty (30) days to cure the noncompliance. Thereafter, if the Franchisee fails to so cure, the City Engineer may, at the sole cost, expense, and risk of the Franchisee, perform or have performed the required action, without being liable to the Franchisee, and invoice the Franchisee therefor. In addition to or in the alternative, the City Engineer may invoice the Franchisee, for any costs or expenses, including construction delays, suffered by the City that are attributable to said failure, which invoiced amount shall be paid by the Franchisee within thirty (30) days from notice of same, or, in the alternative, assess liquidated damages of \$250 per diem.

1.4.7 Subject to the cost provisions of Section 1.4.3 of this Exhibit, in the event the City relocates the Rights-of-Way where the Franchisee's Facilities are located, the City shall work cooperatively with the Franchisee in determining a viable and practical route within which the Franchisee may relocate its Facilities, in order to minimize costs while meeting City's project objectives. Nothing herein shall be construed to prevent the Franchisee from continuing to occupy with its Facilities abandoned rights-of-way as may be allowed under applicable state law.

1.5 Public Works and Improvements Not Affected by Franchise. With regard to the Franchise Area, the City reserves the right to (a) construct, install, maintain, and operate any public improvement, work, or facility, and (b) do any work that the City may find desirable in any Right-of-Way.

1.6 Street Improvements, Paving or Resurfacing. The City may endeavor to provide the Franchisee with notice of plans for street improvements where paving or resurfacing of a permanent nature is involved for Rights-of-Way housing the Facilities in the Franchise Area to the extent the Franchisee has identified said Rights-of-Way as housing its Facilities. The notice may generally contain the nature and character of the improvements, the streets upon which the improvements are to be made, the extent of the improvements, and the time when the City will start the work, and, if more than one street is involved, the order in which this work is to proceed. Upon receipt of said notice the Franchisee may make any additions, alterations, or repairs to its Facilities the Franchisee deems necessary in advance of the City's improvements. In cases where streets are at final width and grade, and the City has installed underground sewer and water mains and service connections to the property line abutting the streets prior to a permanent paving or resurfacing of such streets, and the Franchisee's main is located under such street, the Franchisee may be required to install service connections prior to such paving or resurfacing, whenever it is apparent that service will be required during the five (5) years following the paving or resurfacing.

1.7 Environment, Public Safety, and Toxic Compliance. The Franchisee will comply with all Applicable Law pertaining to environmental protection, public safety, toxic waste, fire hazard, Hazardous Substances, and related standards and requirements. The City reserves the right to establish safety rules and regulations governing the Facilities.

1.8 Reserved.

1.9 Abandoned Facilities; Removal.

1.9.1. Upon abandonment, whether voluntary or involuntary, of construction or of all or any portion of the Facilities, or where this Franchise is no longer in effect for whatever reason including its revocation, the City Engineer, at his or her sole discretion, may, subject to Applicable Law, require the Franchisee, upon the City Engineer's written request and within a reasonable time as determined by the City Engineer, to remove from the Rights-of-Way, at the Franchisee's own cost and expense, all or any portion of its Facilities; provided, however, the removal requirement shall not apply to buried Facilities which the City Engineer reasonably determines should not be removed or when the City Engineer otherwise gives written consent to the Franchisee's written request to allow such Facilities to remain in place, subject to any modifications the City Engineer deems reasonably necessary to protect public health or safety or otherwise serve the public interest. If the City Engineer determines that the buried Facilities can or should be abandoned in place, the ownership of such Facilities in the Rights-of-Way shall transfer to the City if the City Council adopts a resolution accepting the transfer of ownership, in which case the Franchisee shall have no further obligation or liability therefor.

1.9.2 In removing the Facilities, the Franchisee shall, at its own cost and expense, refill and compact any or all excavation that shall be made by it and restore the Rights-of-Way and other property to the reasonable satisfaction of the City Engineer to substantially the same condition as existed immediately prior to the Facilities being removed or as otherwise provided for in Section 1.3 governing restoration of property. If the Franchisee fails to comply with the said removal or modification order pursuant to this section, the City may, or may contract to, do so at the Franchisee's cost, expense, and risk, without assuming or having any liability to the Franchisee, and invoice the Franchisee therefor; which invoiced amount shall be paid by the Franchisee within thirty (30) days from notice of same.

1.9.3 The Franchisee shall comply with Applicable Laws in the abandonment of its Facilities. The Franchisee shall maintain records describing the exact location of all abandoned and retired Facilities within the City, produce such records at the City's request, and comply with the location requirements of Applicable Law, with respect to all Facilities including abandoned and retired Facilities.

1.9.4 The Franchisee shall be responsible for any environmental review required for the abandonment of any Facilities and the payment of any costs of such environmental review. The Parties expressly agree that this Section 1.9.4 of this Exhibit shall survive the termination of this Franchise.

1.10 Maps and "As Built".

1.10.1 The Franchisee shall maintain on file with the City at all times a current map or set of maps where the features are properly geo-referenced, via electronic format suitable to the City's GIS Director or where such electronic formatting is not reasonably available on paper format, drawn to scale showing the location of the Facilities and all equipment installed or in place in the Rights-of-Way, to the extent reasonably available. The maps shall be updated throughout the term of this Franchise to keep the City current with all Facilities locations.

1.10.2 The Franchisee shall also provide detailed as-built design drawings showing the size, depth, and location of all pipes, valves, gauges, other service appurtenances, and Facilities, where reasonably available.

1.10.3 Within thirty (30) days of completing any construction, repair, or maintenance, or any other substantial activity within the Franchise Area, the Franchisee shall provide updated and corrected as-built drawings and mapping as required under this Section 1.10 of this Exhibit.

EXHIBIT B
CITY d.b.a. HUNTSVILLE UTILITIES WATER SERVICE AREA
(on page following)

