

RESOLUTION NO. 2014-_____

WHEREAS, the City of Huntsville Waterworks Utility Board has approved a contract and agreement between the City of Huntsville, a municipal corporation within the State of Alabama, d/b/a Huntsville Utilities, hereinafter referred to as "Utilities", and Madison County, Alabama, hereinafter referred to as "County", being dated April 9, 2014, whereby Utilities will provide and sell water to County, a copy of said contract entitled "Water Purchase Agreement" being attached hereto and made a part hereof; and

WHEREAS, said agreement and contract has been executed for and on behalf of County by Dale W. Strong, Chairman of the Madison County Commission, and attested by Kevin Jones, County Administrator, and requires the consent and approval of the City Council of the City of Huntsville, Alabama, and execution by the Mayor of the City of Huntsville to be a valid existing contract or agreement for and on behalf of the City of Huntsville;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that contact and agreement between the City of Huntsville, a municipal corporation within the State of Alabama, d/b/a Huntsville Utilities, and Madison County, Alabama, dated April 9, 2014 and entitled Water Purchase Agreement, a copy of which is attached to this Resolution be, and the same is hereby accepted and approved, and the Mayor of the City of Huntsville is hereby authorized and directed to execute the contract and agreement for and on behalf of the City of Huntsville.

BE IT FURTHER RESOLVED that said agreement identified as "Water Purchase Agreement" between the City of Huntsville, a municipal corporation within the State of Alabama, d/b/a Huntsville Utilities, and Madison County, Alabama with the date of May 8, 2014 appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this the _____ day of _____, 2014.

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

APPROVED this the _____ day of _____, 2014.

Mayor of the City of Huntsville,
Alabama

STATE OF ALABAMA

MADISON COUNTY

RESOLUTION OF THE MADISON COUNTY COMMISSION

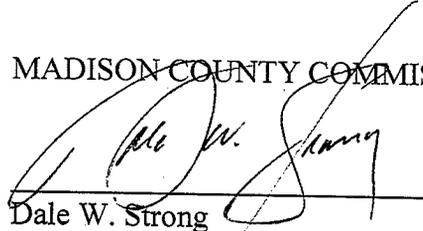
WHEREAS, the Madison County Commission wishes to enter into an agreement (the "Agreement") with the City of Huntsville d/b/a Huntsville Utilities (the "City") whereby Madison County will purchase water under a long term agreement from the City; and

WHEREAS, the Madison County Commission wishes to authorize the execution of the Agreement for and on behalf of Madison County.

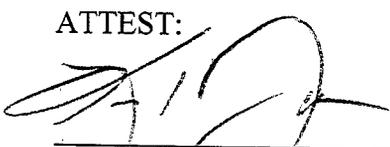
NOW, THEREFORE, BE IT RESOLVED BY THE MADISON COUNTY COMMISSION that Dale W. Strong, in his capacity as Chairman of the Madison County Commission, is authorized to execute the Agreement on behalf of Madison County, and County Administrator Kevin Jones is authorized to attest Chairman Strong's signature on said Agreement.

Done this 9th day of April, 2014.

MADISON COUNTY COMMISSION


Dale W. Strong
Chairman

ATTEST:


Kevin Jones
County Administrator

STATE OF ALABAMA)

COUNTY OF MADISON)

WATER PURCHASE AGREEMENT

THIS AGREEMENT made and entered into on this _____ day of _____, 2014, by and between the City of Huntsville, a municipal corporation within the State of Alabama, d/b/a Huntsville Utilities, hereinafter referred to as "Utilities," and Madison County, Alabama, hereinafter referred to as "County."

~ W I T N E S S E T H ~

WHEREAS, Utilities operates and maintains a public water system which supplies potable water to customers located within the City of Huntsville, Alabama, and to other entities which are located in Madison County, Alabama and other adjacent areas; and

WHEREAS, County operates and maintains a public water system which provides water to residents and businesses in Madison County, Alabama; and

WHEREAS, Utilities is presently furnishing County with water at a supplemental rate according to the current rate schedule, with Madison County receiving water and distributing water through its distribution system which is owned and operated by Madison County; and

WHEREAS, Utilities is presently in the design and planning process of a new water treatment plant of a certain size and capacity to be constructed at or near Guntersville Dam in Marshall County, Alabama, with mains, pipes and related facilities being utilized to transport water to the City of Huntsville and Madison County, Alabama, all of which will provide additional water for the present and future customers of Utilities; said additional water facilities requiring Utilities to finance the same by borrowing money, issuing bonds or other instruments of indebtedness; and

WHEREAS, County and Utilities desire to enter into an agreement whereby County will purchase water under a long term agreement under terms and conditions as hereinafter set forth.

NOW, THEREFORE, in consideration hereof and in consideration of the benefits which will accrue to the County and the inhabitants thereof, the parties have agreed as follows:

1. Agreement for the Sale of Water. Utilities agrees to furnish to County at current metering locations and, at other future agreed upon metered locations, potable treated water in quantities as hereinafter provided, not to exceed the capacity or limitation of the metering devices as installed at the points of delivery as hereinafter agreed. For purposes of water supply planning, County's ground water supply will be considered to be its primary source of water. County, in its discretion, may use either treated water received hereunder or its ground water to meet the supply demands of its customers. All water provided under this Agreement must meet all Federal and State regulatory requirements in effect at the time the water is delivered to County. To the extent any conflict in the standards exists, the more stringent of the applicable standards shall apply. Utilities and County currently utilize free chlorine residual as the

distribution system disinfectant. Utilities may change the residual disinfectant as necessary to meet applicable water quality standards upon providing reasonable notice of the change to County.

2. Delivery Points. Initial delivery points of the water to be furnished by Utilities to County shall be at the present existing points of delivery as described below:

- Bob Wade – 8” meter (Memorial Parkway at Bob Wade Lane)
- PPG – 6” meter (Highway 72 East at Shields Road)
- Tech – 6” meter (Jordan Road at Shields Road)
- Liberty Hills – 8” meter (Liberty Hill road at Prosperity Drive)
- Old Highway 431 – 8” meter (Old Highway 431 at Highway 431 South)
- Taylor-Denton – 6” meter (Taylor-Denton Lane at Geddings-Lang Road)
- Nick Fitchard – 8” meter (Nick Fitchard Road at Highway 53).

Additional delivery points may be determined based on engineering modeling and water quality studies which may be jointly conducted by Utilities and County. If additional points of delivery are necessary or required, then the cost of providing additional delivery points will be paid for by the party requiring the delivery point.

3. Rates and Charges. The rates and charges initially charged shall be as follows:

Volume Charges				
Consumer Class	Effective October 2013	Effective October 2014	Effective October 2015	Effective October 2016
Multi Meter Sole Source				
First 5,000,000 gallons	\$1.91 per 1000 gallons	\$1.92 per 1000 gallons	\$1.94 per 1000 gallons	\$1.96 per 1000 gallons
Over 5,000,000 gallons	\$1.56 per 1000 gallons	\$1.58 per 1000 gallons	\$1.59 per 1000 gallons	\$1.61 per 1000 gallons
Customer Charges				
Meter Size	Effective October 2013	Effective October 2014	Effective October 2015	Effective October 2016
4 Inch	\$126.44	\$150.63	\$174.82	\$199.01
6 Inch	\$251.25	\$299.32	\$347.39	\$395.46
8 Inch	\$341.75	\$407.14	\$472.53	\$537.91
10 Inch	\$649.58	\$773.86	\$898.14	\$1022.42

The rates may be adjusted after the effective date of this Agreement. Any rate increase or decrease shall be made in conjunction with and at the same percentage as general rate increases made by Utilities to its other customers classified or defined as “multi meter sole source.” During February of each year during the term of this Agreement, County will request Utilities to provide a projection of any rate changes for the next fiscal year. If Utilities does not

respond within thirty (30) days, County will not be subject to any rate increase for the following fiscal year.

Minimum Charge: County agrees that it will take and pay for a minimum of 2,000,000 gallons per day (hereinafter the "Minimum Daily Volume"). A day shall be considered 24 hours measured from midnight until midnight. The minimum charge paid by County shall be in accordance with the above rate schedule. The minimum charge amount per day shall be paid by County whether or not County takes and receives the Minimum Daily Volume. In the event that County usage exceeds 4,000,000 gallons on any single day (the "Maximum Daily Volume"), then beginning on the first day of the following month, the Minimum Daily Volume to be taken and paid for by County shall increase to 50% of peak daily usage experienced in the prior month. The Maximum Daily Volume will remain at all times hereunder two times the Minimum Daily Volume. For example, if the County takes 5,000,000 gallons on July 15, then on August 1, the Minimum Daily Volume will be 2,500,000 per calendar day, and the Maximum Daily Volume will be 5,000,000 gallons per calendar day. In the event that a manmade or natural disaster other than a drought (a "Disaster Event") causes the Maximum Daily Volume to be exceeded, County shall immediately notify Utilities. County and Utilities shall evaluate the cause of the excess usage. In the event that the cause of the excess usage is determined to be a Disaster Event which was not caused by County, the Minimum Daily Volume shall not be adjusted to determine if it is a result of a Disaster Event. The minimum charge amount, as established in this manner, shall be in effect for the term of this Agreement and County is to pay the minimum daily amount as established together with all amounts in excess of the minimum daily established amount as set forth in the above schedule of rates and charges. In the event that Utilities or the City of Huntsville, by annexation or otherwise, decreases the number of persons or entities receiving water from County, the Minimum Daily Volume and Maximum Daily Volume shall be decreased beginning on the first day of the month following the decrease in persons or entities receiving water from the County. The decrease shall be established by determining the average daily volume of water consumed by those persons and entities for the 12-month period preceding the date that the persons or entities cease receiving water from the County (hereinafter, the "Average Loss"). The Minimum Daily Volume shall be decreased by the Average Loss. The Maximum Daily Volume will be two times the adjusted Minimum Daily Volume.

4. Rules and Regulations. All water provided by Utilities to County shall be in accordance with such rules and regulations as are now in existence or from time to time may be adopted by Utilities which shall include, but not be limited to, discounts, payment for service, termination of water services for non-payment, and such other matters as determined and implemented by Utilities.

5. Interruption of Water Supply. Utilities shall not be responsible for any interruption of the supply of water by reason of riot, insurrection, labor dispute, war, natural and man-made disaster or other reason of like nature not the fault of Utilities. In the event of a water shortage requiring restriction of the volume of water usage by various persons or entities served by Utilities, County shall be subject to such restrictions to the same extent as other customers of Utilities. Utilities may not restrict County's supply while not imposing like restrictions on other Utilities' customers.

6. Maintaining of County System. Utilities shall provide, install, and maintain a backflow prevention device, a pressure reducing device, and meters at points of delivery as specified herein. All reasonable costs in connection with the installation of the aforesaid shall be paid for, in advance, by County. All cost of maintaining County's water system shall be paid by County. All cost of maintaining the utilities water system shall be paid by Utilities.

7. Ownership. Ownership of, and responsibility for maintenance of, all pipes, mains, meters, equipment, and appurtenances installed by Utilities and used to establish the furnishing of water to County or to any of Utilities' customers shall remain at all times and be in Utilities. This Agreement is for the purchase and sale of water and is not to be construed or interpreted as granting unto County the right to receive or purchase any portion of the capacity or ownership of any of Utilities' treatment or supply facilities which would include, but not be limited to, the new proposed Guntersville Dam Treatment Facilities.

8. Prior Agreements. All prior agreements between County and Utilities pertaining to County's purchase of water from Utilities are hereby rescinded and all agreements for Utilities furnishing water to County shall be under the terms and conditions of this Agreement.

9. Terms of Agreement. This Agreement shall commence on the _____ day of _____, 2014, and shall continue for a period of thirty (30) years.

10. Approval of Madison County. Prior to this Agreement taking effect, the County Commission of Madison County will cause to be passed and published a Resolution setting forth the terms and conditions of this Agreement, which Resolution will authorize Madison County to execute this Agreement for and on behalf of Madison County, and to be attested by officials of Madison County, Alabama.

11. Approval of the City of Huntsville. This Agreement is subject to the City Council of the City of Huntsville ratifying and approving the same, which ratification and approval will be evidenced by a Resolution or Ordinance passed by the City Council of the City of Huntsville.

12. No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the parties hereto. Nothing in this Agreement is intended to relieve or discharge the obligation or liability of any third party to either Utilities or County. This Agreement does not create any duty, liability or standard of care to any person or entity that is not a party hereto.

13. Successors and Assigns. Whenever in this Agreement County or Utilities is named or referred to, it shall be deemed to include the respective successor, successors, or assigns of either, and all rights, privileges and obligations herein conferred shall bind and inure to the benefit of such successor, successors, or assigns of said County or Utilities.

14. Governing Law. It is agreed that this Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Alabama.

15. Accounts and Records of Utilities. Utilities agrees to keep proper financial and operating records pursuant to law, and in accordance with generally accepted accounting principles pertaining to Utilities' performance of its obligations under this Agreement. Utilities

agrees to provide daily usage data to County via electronic notification to frederickmucke@madisoncountyal.gov. Records reflecting daily usage shall be maintained by Utilities for a minimum period of three years.

16. Assignment. Neither party may assign this Agreement without the written consent of the other party.

17. Notice. Except as otherwise provided, any notice required herein shall be delivered in person or mailed by certified mail, return receipt requested, as follows or to such addresses as either party may subsequently specify in writing to the other:

To County:

Jeff Rich
County Attorney
100 Northside Square
Huntsville, Alabama 35801

To Utilities:

Huntsville Utilities
Jay C. Stowe
COO Huntsville Utilities
PO Box 2048
Huntsville, Alabama, 35804

18. Termination.

(a) This Agreement may be terminated by the mutual consent of the governing bodies of the parties.

(b) This Agreement may be terminated by either party after the first five (5) years of the term of the Agreement by providing to the other party a written notice of termination at least thirty-six (36) months in advance of the termination date. It is the intent of the parties that the earliest termination date under this provision would be five years after the effective date of this Agreement.

(c) Nothing contained in this Section 18 is intended to limit any right to terminate this Agreement as provided in any other Section of this Agreement.

19. Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof.

20. No Waiver by Failure to Act. No failure, delay, forbearance or indulgence on the part of either party in insisting upon the strict performance of any provision, or in exercising any option, right, power, privilege or remedy hereunder, shall operate or be construed as a waiver or relinquishment thereof, or as an acquiescence in any breach, nor shall any single or partial

exercise of any option, right, power, privilege or remedy hereunder preclude any other or further exercise thereof or the exercise of any option, right, power, privilege or remedy.

CITY OF HUNTSVILLE, d/b/a HUNTSVILLE UTILITIES

By: _____
Its: _____

MADISON COUNTY, ALABAMA

Dale W. Strong, Chairman
Madison County Commission

ATTEST:

Kevin Jones
County Administrator

STATE OF ALABAMA)

COUNTY OF MADISON)

I, the undersigned authority in and for said county and state, hereby certify that _____, whose name as _____ of the City of Huntsville, a municipal corporation within the State of Alabama, d/b/a Huntsville Utilities, is signed to the foregoing Agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of same, he, as such officer, and with full authority, executed the same voluntarily for and as the act of the City of Huntsville d/b/a Huntsville Utilities.

GIVEN under my hand and official seal, this ____ day of _____, 2014.

NOTARY PUBLIC
My commission expires: _____

STATE OF ALABAMA)

COUNTY OF MADISON)

I, the undersigned authority in and for said County and State, hereby certify that Dale W. Strong, whose name as Chairman of the Madison County Commission, 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 same he, as such officer, and with full authority, executed the same voluntarily for and as the act of Madison County, Alabama.

GIVEN under my hand and official seal, this ____ day of _____, 2014.

NOTARY PUBLIC
My commission expires: _____