

RESOLUTION NO. 160719-1

BE IT RESOLVED by the Board of Directors (herein called "the Directors") of THE UTILITIES BOARD OF THE CITY OF FOLEY (herein called "the Board") as follows:


Section 1. **Findings.** The Board has ascertained and does hereby find and declare as follows:

- (a) For a number of years, it has been the practice of the Board to pay to the City of Foley (herein called "the City"), during each fiscal year of the City commencing on October 1, and ending on the next succeeding September 30, a percentage of the Board's retained earnings from the operation of the Board's water works plant and distribution system, its electric generation, transmission and distribution system, its sanitary sewer system and its natural gas transmission and distribution system (herein together called "the Utilities Systems") at the end of the fiscal year of the Board ending on the immediately preceding June 30, in twelve equal monthly payments, to be used by the City for any lawful purpose;
- (b) The City has indicated its desire that the Board continue its policy of making payments to the City of a percentage of retained earnings from the operation of the Utilities Systems at the end of each fiscal year. The Board is willing to commit to continue such payments in consideration for the continued use of the public streets in the City for the operation and maintenance of the Utilities systems pursuant to the ordinances of the City authorizing the Board to use the public streets in the City.

Section 2. **Authorization of Franchise Payment Agreement.** The Chairman of the Directors is hereby authorized and directed to execute and deliver, for and in the name and behalf of the Board, a Franchise Payment Agreement in substantially the form, marked Exhibit A, which is attached to the minutes of the meeting of the Directors at which this resolution is adopted and which is hereby made a part of this Resolution as if set out in full herein. The Secretary of the Board is hereby authorized and directed to affix the corporate seal of the Board to the said Franchise Payment Agreement and to attest the same.

ADOPTED, by the Board of Directors of the Utilities Board of the City of Foley on this the 19th day of July, 2016.

ATTEST:


Chairman of the Board of Directors


Secretary

Resolution 160719-1 EXHIBIT A

FRANCHISE PAYMENT AGREEMENT

This FRANCHISE PAYMENT AGREEMENT between the City of Foley, Alabama, a municipal corporation under the laws of the State of Alabama (herein called "the City") and the Utilities Board of the City of Foley, a public corporation organized under the laws of the State of Alabama (herein called "the Board"),

RECITALS:

The Board is a public corporation organized by the City under the provisions of Act No. 175 adopted at the 1951 Regular Session of the Legislature of Alabama (now codified as Article 9 of Chapter 50 of Title 11 of the Code of Alabama 1975) by proceedings taken by the governing body of the City and a Certificate of Incorporation filed in the Office of the Judge of Probate of Baldwin County, Alabama, on May 30, 1952. Pursuant to the provisions of the said Act No. 175 and its Certificate of Incorporation, the Board owns and operates a water works plant and distribution system (herein called "the Water Works System"), an electric generation, transmission and distribution system (herein called "the Electric System"), a sanitary sewer system (herein called "the Sewer System") and a natural gas transmission and distribution system (herein called "the Gas System"). The Board also owns and operates a cable television system (herein called "the Cable System").

Pursuant to Ordinances Numbered 73, 74, 75 and 76 of the City, adopted by the governing body of the City on June 2, 1952 (herein called "the Franchise Ordinances"), the City granted franchises to the Board for the purpose of operating and maintaining the Water Works System, the Electric System, the Sewer System and the Gas System (herein together called "the Utilities Systems") along the public rights of way within the City, without limit as to term.

For a number of years it has been the practice of the Board to pay to the City, during each fiscal year of the City commencing on October 1, and ending on the next succeeding September 30, a percentage of the Board's retained earnings from the operation of the Utilities Systems at the end of the fiscal year of the Board ending on the immediately preceding June 30, in twelve equal monthly payments, to be used by the City for any lawful purpose.

The City has indicated its desire that the Board continue its policy of making payments to the City of a percentage of retained earnings from the operation of the Utilities Systems at the end of each fiscal year. The Board is willing to commit to continue such payments in consideration for the continued use of the public streets in the City for the operation and maintenance of the Utilities Systems pursuant to the Franchise Ordinances.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Board do hereby agree as follows:

Resolution 160719-1 EXHIBIT A

Section 1. Payment of Percentage of Retained Earnings to City. The Board agrees that, during each fiscal year of the City beginning on October 1, 2016, and on each October 1 thereafter during the term of this Agreement, the Board will pay to the City an amount equal to 4.25% of the retained earnings of the Board at the end of the fiscal year of the Board ending on the immediately preceding June 30, in twelve equal installments, due on the first day of each calendar month. All payments to be made by the Board hereunder shall be made out of funds of the Board remaining in each calendar month after the satisfaction by the Board of the requirements of that certain Trust Indenture dated as of August 1, 1996, between the Board and Regions Bank, as heretofore or hereafter supplemented, and any other indenture or resolution of the Board pursuant to which the Board has issued or may hereafter issue any obligations payable out of the revenues from the Utilities Systems. "Retained earnings" of the City from the operation of the Utilities Systems shall be determined by the Board at the end of each fiscal year of the Board and shall be thereafter confirmed by the Board's independent auditors. For purposes of this Agreement, "retained earnings" shall be calculated without regard to any revenues or expenses attributable to the operation of the Cable System.

Section 2. Continuation of Franchises. In consideration of the agreement of the Board to make the payments to the City required by Section 1 of this Agreement, the City agrees to take such action as may be necessary to keep the Franchise Ordinances in full force and effect.

Section 3. Term. This Agreement shall remain in effect for a term of twenty years from October 1, 2016.

Section 4. Severability. In the event that any provision hereof shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Franchise Payment Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of this the _____ day of _____, 2016.

CITY OF FOLEY

By: _____
Mayor

Attest:

City Clerk

THE UTILITIES BOARD OF THE
CITY OF FOLEY

By: Barbara Ingram
Chairman of the Board of Directors

Attest:

Bradley Pitt
Secretary