

BILL NO. 8ORDINANCE NO. 2011 08

AN ORDINANCE GRANTING THE FRANCHISE FOR THE MISSOURI-AMERICAN WATER COMPANY CONTAINING THE RIGHT TO USE, FOR A PERIOD OF TWENTY YEARS, THE PUBLIC RIGHTS-OF-WAY, THE STREETS, AVENUES, ALLEYS, PARKS AND OTHER PUBLIC PLACES FOR THE VILLAGE OF SADDLEBROOKE, MISSOURI, FOR THE PURPOSE OF INSTALLING, EXTENDING, MAINTAINING AND OPERATING WATER AND WASTEWATER SYSTEMS; REGULATING THE RIGHT TO USE AND EXCAVATE IN SAID STREETS AND OTHER PUBLIC PLACES, PROVIDING THAT THE COMPANY SHALL HOLD SAID VILLAGE HARMLESS FROM ALL DAMAGES FROM NEGLIGENCE IN THE CONSTRUCTION, MAINTENANCE AND OPERATION OF SAID WATER AND WASTEWATER SYSTEMS AND PROVIDING FOR THE ACCEPTANCE OF THE FRANCHISE BY SAID COMPANY.

BE IT ORDAINED BY THE VILLAGE BOARD OF TRUSTEES OF THE VILLAGE OF SADDLEBROOKE, MISSOURI AS FOLLOWS:

SECTION 1. In recognition of the benefits to the Village of Saddlebrooke, (hereinafter sometimes called the "Village"), and to its citizens to be derived from the continuation, extension and operation of the water and wastewater systems, including the distribution mains, pipe, hydrants, appurtenances and facilities of the water system and pipe, manholes, appurtenances and facilities of the wastewater system (collectively "Water and Wastewater Systems") within the Village, now owned and operated or to be owned and operated by the Missouri-American Water Company successors, legal representatives, and assigns (hereinafter sometimes called the "Company"), and as an inducement to said Company to carry out extension of said Water and Wastewater Systems, and to accept the terms and provisions of this franchise, the Village hereby grants its franchise to the Company including the rights to use the public rights-of-way, streets, avenues, alleys, parks and other public places within the Village as now bounded, and within any future extensions of its limits, for the purpose of installing, extending, maintaining or operating the Water and Wastewater Systems for a term or period of twenty (20) years after this Ordinance is passed and approved.

SECTION 2. Village and Company may agree in writing to extend the term of this franchise on substantially the same terms and conditions as set forth herein for additional 5 year extensions. Upon final termination or expiration of this Ordinance, Company shall be entitled to retrieve all materials, documents, programs, and products bearing, reflecting, or embodying the intellectual property of the Company. Notwithstanding the foregoing, at its discretion, Company may abandon underground main, pipe, facilities and equipment upon expiration of this Ordinance.

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SECTION 3. No person or corporation shall be permitted, and the Village shall not grant to any person or corporation, the right to install, extend or maintain any water, gas, electric, telephone, cable, sewer or other systems, or any pipe, mains, conduits, wires or appurtenances, so as to injure, damage or interfere with the Water and Wastewater Systems of the Company, nor shall the Village vacate away any rights of way containing any part of the Company's Water and Wastewater Systems without the Company's prior approval, nor shall any person or corporation be permitted or granted the right to interfere in any way with any of the rights granted hereunder to the Company to install, extend, maintain or operate its Water and Wastewater Systems or to use the public rights-of-way streets, avenues, alleys, parks and other public places as provided herein.

SECTION 4. Due to the nature of the Water and Wastewater Systems and the location of the Company's service areas, this franchise grant shall be deemed exclusive.

SECTION 5. There shall be no unreasonable or unnecessary obstruction of the public rights-of-way, streets, avenues, alleys, parks and other public places of said Village by said Company in constructing any of the work herein provided for, and in placing, taking up and repairing any part of the Company's Water and Wastewater Systems requisite for the service of the Water and Wastewater Systems, and the said Company after using said public rights-of-way, streets, avenues, alleys, parks and other public places, shall restore them within six months as nearly as practicable to their former condition, and shall hold the Village harmless for any and all damages arising from negligence of said Company in constructing, extending, or maintaining the Water and Wastewater Systems. For any failure on the part of the Company to comply with all provisions of this Section, the Village shall provide written notice to said Company of the existence of said failure, and Company shall attempt to remedy the failure in a timely manner. This Section shall not affect or repeal any ordinance of the Village that contains any reasonable regulations for the control and maintenance of the public rights-of-way, streets, avenues, alleys, parks and other public places in the Village shall be effective against the Company so far as such ordinances are reasonably applicable to the condition and business of the Company, and charges to the Company for any use of public rights-of-way shall be limited to reasonable administrative permit issuance codes.

SECTION 6. In consideration of the right to use the public rights-of-way, streets, avenues, alleys, parks and other public places as herein provided, the Company shall supply consumers within the limits of the Village under the applicable schedule of water or wastewater rates as now or hereafter approved by the Public Service Commission of Missouri.

SECTION 7. Relocation of Water and Wastewater Systems. If, at any time, the Village, deeming it advisable to improve any of its streets, avenues, alleys, roads or public property, by grading or re-grading, planking or paving same, or altering, changing, repairing or re-improving same, and the Company's Water and Wastewater Systems are (1) located in right-of-way affected by the Village's proposed improvement and (2) directly and physically interfere with the Village's proposed improvements, the Company, upon 60 day advanced written notice by the Village, shall, at its own expense, so move such part of its Water and Wastewater Systems as may be necessary to conform to such new grades as may be established, or place such part of its Water and Wastewater Systems in such location or position as shall cause the least interference with any improvements or work thereon as contemplated by the Village. The Village shall provide another place in right-of-way for the Company to relocate its Water and Wastewater Systems or, alternatively, the Village will obtain appropriate easements

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to facilitate relocation. Any relocation shall be done within a reasonable time of the Company receiving notice consistent with any limitations the Company may have for operation of the Water and Wastewater Systems. The Company shall only be responsible to pay its costs of removal or relocation in the event that its Water and Wastewater Systems directly and physically interfere with the Village's improvement plans. For the purposes of this paragraph, "direct and physical interference" means the Company's Water and Wastewater Systems will come into physical contact with or will strike against the City's improvements, but does not include constructability issues or interference with proposed construction methods. Moreover, Company shall not be responsible for relocation or removal costs when the Village initiates a public improvement project but later abandons the project mid-course, in which case the Village shall reimburse the Company for any costs incurred by the Company in connection with the Village's project.

SECTION 8. The Village shall, so far as possible, and within its corporate powers, adopt and enforce ordinances that will protect the Company in the safe and unmolested exercise of its franchise and rights hereunder, and against fraud and imposition, and against injury to the Company's property, and waste of water by consumers. The Village shall not enact any ordinances inconsistent with the rights and privileges herein granted. The Company may make and enforce, as part of the conditions upon which it may supply water or wastewater services to consumers, all necessary and reasonable rules and regulations governing the consumption of water, tapping of mains and the maintenance and operation of its Water and Wastewater Systems, not inconsistent with this Ordinance, it being understood that such rules and regulations must be approved by the Public Service Commission before they become effective.

SECTION 9. Emergency Work. In the event of any emergency in which any part of the Company's Water and Wastewater Systems located in or under any street, breaks, are damaged, or if the Company's construction area is otherwise in such a condition as to immediately endanger the property, life, health or safety of any individual, the Company shall immediately take proper emergency measures to repair its Water and Wastewater Systems, to cure or remedy the dangerous conditions for the protection of the property, life, health or safety of individuals without first applying for and obtaining permission from the Village

SECTION 10. Street Vacations. The Village may have occasion to vacate certain streets, public ways or areas that have some part of the Company's Water and Wastewater Systems located thereon. The Village agrees to exert reasonable good faith efforts to reserve an easement for the Company's Water and Wastewater Systems when a street, public way or area is vacated. If it is not feasible for the Village to reserve an easement for the Company's facilities, the proponents of the vacation shall be required (by the Village) as part of land use or other permitting approvals, to reimburse the Company all costs to relocate said facilities. The provisions of this Section shall survive the expiration, revocation, or termination of this franchise agreement.

SECTION 11. Gross Receipts Tax. By the fifteenth (15th) day of the month following each month of the year, the Company shall submit to the Village a report of gross receipts from the sale of water within the limits of the Village for the immediately preceding month, along with a check for five percent (5%) of the gross amount. This Section is subject to the Company's tariffs on billing of gross receipts taxes. The Village may modify or terminate this tax upon 120 days notice to the Company, subject to any requirements for the Village to pass a new ordinance to make such changes effective.

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SECTION 12. Septic Tank Design. Upon request, the Company will assist the Architecture Committee with developing an approved septic tank design on behalf of the Village Board of Trustees.

SECTION 13. Antenna, Signage and Fences. The Village grants Company permission: 1) to install or lease space for antenna and related equipment on Company's facilities for wireless communication or other uses and the right to retain any payments for Company's sole use and benefit; 2) to place its name on any elevated tank and install security signage on its property; and 3) to install fencing around its facilities for security reasons.

SECTION 14. After the passage and approval of this Ordinance, the Village shall supply to the Company a certified copy of this Ordinance. Thereupon within one hundred (100) days after the delivery of such certified copy of the Ordinance, the Company, by proper order and resolution of its Board of Directors, shall accept the terms and provisions of this Ordinance and shall sign and deliver an appropriate deed of acceptance thereof binding itself to carry out the terms and provisions of the franchise as herein embodied, which deed of acceptance shall be duly signed by its President or Vice-President, sealed with its corporate seal and attested by the signature of its Secretary or Assistant Secretary, and the original thereof be delivered to Chairman of the Board of Trustees of the Village.

The term of twenty (20) years herein provided for shall commence upon the date this Ordinance is signed and approved by the Chairman of the Board of Trustees of the Village.

SECTION 15. Modification. The Village and the Company hereby reserve the right to alter, amend or modify the terms and conditions of this franchise upon written agreement of both parties to such alteration, amendment or modification.

SECTION 16. Neither acceptance of nor compliance with the provision of this Ordinance, nor exercise of any right granted hereby, shall in any way impair or affect, or constitute or be construed as a relinquishment or waiver of, any right, permission or authority which the Company, its successors or assign, may have independently of this Ordinance. Nor shall any use by the Company, its successors or assigns, of public property or places in the Village, as authorized by this Ordinance, or service rendered by said Company, its successors or assigns, in the Village, be treated as use solely of the rights, permission and authority provided for by this Ordinance or as service referable solely to this Ordinance or to any obligation of service consequent upon acceptance thereof or as in any ways indicating non-use of, or non-compliance with any obligation incident to, any right, permission or authority vested in the Company, its successor or assigns, independently of this Ordinance; and the acceptance provided for in Section 14 of this Ordinance, and each and every compliance with the provisions of this Ordinance or with any obligation arising from acceptance thereof, shall be subject to, and conditioned by, the provisions of this Section 16, with the same force and effect as though each of the provisions of this Section were expressly incorporated in such acceptance and expressly declared by the acceptor, its successor or assign, at and prior to the time of such compliance by it, as conditions of such compliance.

SECTION 17. All Ordinances or parts of Ordinances, insofar as they conflict with this Ordinance, are hereby repealed.

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SECTION 18. If any provisions of this Ordinance, or the application of such provision to particular circumstances, shall be held invalid, the remainder of this Ordinance, or the application of such provision to circumstances other than those as to which it is held invalid, shall not be affected thereby.

SECTION 19. This Ordinance shall take effect as, from and after its passage by a majority vote of the Board of Trustees, the yeas and nays entered upon the journal, and approval by the Chairman of the Board of Trustees; provided, however, that the franchise granted hereby shall not be effective, and this Ordinance shall become null and void, if the terms of the franchise agreement are not accepted by the Company as provided in Section 14.

SECTION 20. Assignment. This franchise agreement may not be assigned or transferred without the written approval of the Village, except the Company may freely assign this franchise agreement in whole or in part to a parent, subsidiary, or affiliated corporation or as part of any corporate financing, reorganization or refinancing and provided that the Village's approval shall not be unreasonably withheld. In the case of transfer or assignment as security by mortgage or other security instrument in whole or in part to secure indebtedness, such consent shall not be required unless and until the secured party elects to realize upon the collateral. The Company shall provide prompt, written notice to the Village of any such assignment.

PASSED BY THE BOARD OF TRUSTEES THIS 7th DAY OF December, 2011.

APPROVED BY THE CHAIRMAN THIS 8th DAY OF December, 2011.

Carol Gaines

Chairman, Board of Trustees
Name, Title

ATTEST:

Jan Seautman
Village Clerk

Be it remembered that the above ordinance was enacted by the Village of Saddlebrooke on the date indicated above, by a vote of the governing body of the Village as follows:

Those voting "aye" were: Gary Franklin, Carol Gaines, Sean Prewitt
Gary Riess, and Jerry Sears

Those voting "nay" were: None

Jan Seautman
Village Clerk