

ORDINANCE COVER SHEET

Bill No. 2019-71

Ordinance No. 3573

“AN ORDINANCE PROVIDING FOR WATERWORKS AND SEWER SYSTEMS FOR THE CITY OF BOLIVAR, MISSOURI, AND GRANTING TO LIBERTY UTILITIES (MISSOURI WATER) CORP., ITS SUCCESSORS AND ASSIGNS, THE EXCLUSIVE RIGHT OF PROVIDING A WATERWORKS SYSTEM AND A SEWER SYSTEM TO SERVE THE CITY OF BOLIVAR, MISSOURI AND ITS INHABITANTS, AND THE RIGHT TO CONSTRUCT, MAINTAIN, AND OPERATE A SYSTEM OF WATERWORKS FACILITIES AND SEWER FACILITIES IN, UPON, ACROSS, ALONG AND UNDER THE HIGHWAYS, STREETS, AVENUES, ROADS, ALLEYS, LANES, WAYS, UTILITY EASEMENTS, PARKWAYS AND OTHER PUBLIC GROUNDS OF THE CITY OF BOLIVAR, MISSOURI.”

Filed for public inspection on November 26th, 2019.

First reading _____ In Full; By Title on November 27th, 2019.

Second reading _____ In Full; By Title on November 27th, 2019.

Vote by the Board of Aldermen on November 27th, 2019:

6 Aye; 0 Nay; 1 Absent; 1 Abstain.

Approved by the President of the Board of Aldermen, as Acting Mayor November 27th, 2019.

_____ Vetoed by the Mayor on _____.

Board of Aldermen Vote to Override Veto on _____.

_____ Aye; _____ Nay; _____ Abstain

Bill Effective Date: November 27th, 2019.

“AN ORDINANCE PROVIDING FOR WATERWORKS AND SEWER SYSTEMS FOR THE CITY OF BOLIVAR, MISSOURI, AND GRANTING TO LIBERTY UTILITIES (MISSOURI WATER) CORP., ITS SUCCESSORS AND ASSIGNS, THE EXCLUSIVE RIGHT OF PROVIDING A WATERWORKS SYSTEM AND A SEWER SYSTEM TO SERVE THE CITY OF BOLIVAR, MISSOURI AND ITS INHABITANTS, AND THE RIGHT TO CONSTRUCT, MAINTAIN, AND OPERATE A SYSTEM OF WATERWORKS FACILITIES AND SEWER FACILITIES IN, UPON, ACROSS, ALONG AND UNDER THE HIGHWAYS, STREETS, AVENUES, ROADS, ALLEYS, LANES, WAYS, UTILITY EASEMENTS, PARKWAYS AND OTHER PUBLIC GROUNDS OF THE CITY OF BOLIVAR, MISSOURI.”

BE IT ORDAINED BY THE CITY COUNCIL (hereinafter referred to as “Council”) OF THE CITY OF BOLIVAR, MISSOURI:

Section 1. There is hereby granted to Liberty Utilities (Missouri Water) Corp, a limited liability company organized and existing under the laws of the State of Missouri, its successors and assigns (hereinafter, individually and collectively, referred to as “Company”), the right, authority, privilege and franchise to serve the City of Bolivar, Missouri (hereinafter referred to as “City”) in the providing of waterworks and sewer service, and in the providing of such service to construct, maintain and operate a system of mains, service pipes, and all other necessary and appropriate equipment and facilities (collectively, the “Service Facilities”) for the distribution of potable water and the collection, treatment and disposal of sewage, in, upon, under, along, across and over the highways, streets, avenues, roads, alleys, lanes, ways, utility easements, parkways and other public grounds in the present or future corporate limits of the City, for the supplying and selling of waterworks and sewer services to said City and the inhabitants, institutions and businesses thereof, and for such purposes to construct, lay down, maintain, and operate all necessary Service Facilities as may be necessary for the provision of such waterworks and sewer services to said City and the inhabitants thereof for domestic, commercial, industrial and institutional uses, and other purposes for which it is or may hereafter be used. Title to all Service Facilities installed, constructed, maintained and/or operated by Company, wherever situated, under this Ordinance shall be and remain in Company, and its successors and assigns.

Section 2. The franchise shall take effect upon the written acceptance by Company of the terms and conditions of this Ordinance (the date of such acceptance, the “Effective Date”), and shall continue and remain in force for a term of twenty (20) years, as permitted by Section 71.530, Revised Statutes of Missouri.

Section 3. As consideration for the grant of the franchise and rights herein and for the use by Company of the streets, roads, highways, alleys, public ways and other real property owned or controlled by the City, Company shall pay to City a franchise fee equal to zero percent (0%) for the first seven (7) years, and five percent (5%) for the eighth and all succeeding years, of Company’s gross revenues derived from the provision of waterworks and sewer services within the city limits of the City during the preceding calendar year. The franchise fee

prescribed herein shall be paid to City quarterly during the eighth (8th) and each succeeding calendar year after the Effective Date. Payments at the beginning and end of the franchise shall be prorated. The City shall have access at all reasonable times, upon reasonable advance notice, to the relevant books of the Company for the purpose of ascertaining the amount of franchise fee due the City. The franchise fee provided herein, together with any and all City sales taxes collected by Company, and any and all ad valorem taxes assessed by the City against Company's property, shall constitute the only amounts for which Company shall be obligated to pay to the City and shall be in lieu of any and all other costs, levies, assessments, fees or other amounts, of any kind whatsoever, that the City, currently or in the future, may otherwise charge Company or assess against Company's property.

Section 4. If during the term of this franchise the boundaries of the City are expanded, then any extension of service to the newly incorporated areas by Company shall be subject to the terms and conditions of this grant. City will promptly notify Company in writing of any geographic areas annexed by the City during the term hereof ("Annexation Notice"). Any such Annexation Notice shall be sent to Company by certified mail, return receipt requested, and shall contain the effective date of the annexation, maps showing the annexed area and such other information as Company may reasonably require in ascertaining whether there exist any customers of Company receiving waterworks or sewer service in said annexed area. To the extent there are such Company customers therein, then the gross revenues of Company derived from the provision of waterworks and sewer service to such customers shall become subject to the franchise fee provisions hereof effective on the first day of Company's billing cycle immediately following Company's receipt of the Annexation Notice. The failure by City to advise Company in writing through proper Annexation Notice of any geographic areas which are annexed by City shall relieve Company from any obligation to remit any franchise fees to City based upon gross revenues derived by Company from the provision of waterworks or sewer service to customers within the annexed area until City delivers an Annexation Notice to Company in accordance with the terms hereof.

Section 5. All Service Facilities laid, constructed and maintained by virtue of this Ordinance, shall be so laid, constructed and maintained in accordance with any applicable statutes of the State of Missouri and the rules and regulations of the Missouri Public Service Commission (the "Missouri Regulatory Authority") and of any other governmental regulatory commission, board or agency having jurisdiction over the Company. Said facilities shall be constructed so as not to interfere with the drainage of said City or unreasonably interfere with or injure any other improvement which said City has heretofore made or may hereafter make in, upon or along any highway, street, avenue, road, alley, lane, way, utility easement, parkway, or other public ground, or unnecessarily impede or obstruct such highways, streets, avenues, roads, alleys, lanes, ways, utility easements, parkways and other public grounds of said City, and shall conform to the grade as then or hereafter established. Company agrees to attempt to utilize known right-of-way whenever practical before resorting to right of condemnation to which Company may be entitled to utilize by law. City acknowledges that Company is assuming ownership and operation of Service Facilities constructed by City or its contractors prior to the date hereof, and Company shall not be in breach of this Ordinance by virtue of the pre-existing condition of the Service Facilities.

Section 6. When the streets, avenues, alleys and other public ways are opened, or any other opening is made by Company within the City, whether the same be made for the purpose of laying, constructing, replacing or repairing the Service Facilities, Company shall place and maintain necessary safety devices, barriers, lights and warnings to properly notify persons of any dangers resulting from such entrances, and shall comply with applicable safety regulations required by federal, state and local laws.

Section 7. Whenever Company wishes to enter upon any highway, street, avenue, road, alley, lane, way, utility easement, parkway, or other public ground for the purpose of constructing, replacing or repairing any Service Facilities, it will, if City desires, notify City and file a plan or map of the proposed work, if practicable, before commencing same. Whenever any highway, street, avenue, road, alley, lane, way, utility easement, parkway or other public way shall be entered, dug up or disturbed by Company, Company shall, at its expense and as soon as possible after the work is completed, restore such highway, street, avenue, road, alley, lane, way, utility easement, parkway, or other public ground in as good condition as existed before the work was done and to the reasonable satisfaction of City. In the event Company shall fail to fulfill its obligations under this Section, City, after giving Company reasonable written notice, and failure of Company to make such repairs or restoration, may make the necessary restoration or repairs itself and Company shall be liable for the cost of same.

The provisions of this Section 7 shall not be applied or interpreted in such a way as to prevent or delay Company work that may be required as a result of any emergency, leak or other immediate hazard or danger. Likewise, the provisions of this Section anticipate that Company shall not be unreasonably denied permission to perform necessary work.

Section 8. Company shall at all times indemnify and hold harmless City from and against any and all lawful claims for injury to any person or property by reason of Company or its employees' negligence in the installing and maintenance of said Service Facilities, guarding trenches and excavation while said Service Facilities are being installed or subsequent extensions, repairs or alterations are being made or generally in the operation and maintenance of said Service Facilities, provided Company shall have been notified in writing of any claim against City on account thereof, and shall have been afforded the opportunity fully to defend the same. This indemnity clause shall apply solely to the extent such injury to any person or property is caused by the negligence of Company. This indemnity clause shall not apply to the extent any such claim and/or injury is caused by actions or inaction of City, any contractors, subcontractors, consultants or other parties retained by City, or any other third party not affiliated with Company. City acknowledges that Company is assuming ownership and operation of Service Facilities constructed by City or its contractors prior to the date hereof, and this indemnity clause shall not apply to claims or injuries arising out of the pre-existing condition of the Service Facilities.

Section 9. City and Company hereby agree that this Ordinance shall from time to time be subject to rules and regulations adopted by Company and approved by the Missouri Regulatory Authority or any other regulatory body having jurisdiction thereof during the term of this Ordinance, and shall also be subject to all rules and regulations adopted and approved by the Missouri Regulatory Authority or any other regulatory body of jurisdiction, and that all such

rules and regulations shall be and become a part of this Ordinance to the same extent and with the same effect as if said rules and regulations were herein set out in full. Company shall not be obligated or required to make any extension of Service Facilities except in accordance with the provisions relating thereto adopted or approved by the Missouri Regulatory Authority, or any other regulatory body having jurisdiction thereof during the term this Ordinance.

Section 10. Nothing herein contained shall be construed as preventing Company from installing, placing, replacing, taking up, repairing or removing Service Facilities, from using any easements for utility service which are shown on any plats of any portion of said City heretofore or hereafter platted or recorded or any such easement which may hereafter be created, granted or dedicated for any such utility purposes by any person, firm or corporation whatsoever.

Section 11. If any section, or portion of any section, of this Ordinance shall hereafter be declared or determined by any court of competent authority to be invalid, Company and City at their election may ratify or conform the remaining portions of this Ordinance, and upon such ratification or confirmation the remaining portions of this Ordinance shall remain in full force and effect.

Section 12. Company shall, within ninety (90) days after the passage of the Ordinance, file with the City Clerk or other appropriate official of City its unconditional acceptance, signed by its President or Vice President, of the terms and conditions of this Ordinance. After filing of such acceptance, this Ordinance shall constitute a contract between the parties thereto and shall, subject to the rights and powers vested in the Missouri Regulatory Authority or such other regulatory body of the State of Missouri as may hereafter succeed to the rights and powers of the Missouri Regulatory Authority or as may exercise statutory jurisdiction of companies furnishing waterworks or sewer service in the State of Missouri, be the measure of the rights, powers, obligations, privileges and liabilities of said City and of said Company. Company, by its acceptance of the provisions of this Ordinance, binds itself to provide the necessary water and sewer service contemplated in this Ordinance, continuing without substantial interruption, except for the cause beyond its control, until the expiration or termination of this grant in accordance with law. In the event that said Company fails to file said written acceptance within the time hereinbefore specified, this grant shall be void and of no effect.

Section 13. Company shall not be required to perform any covenant or obligation in this Ordinance, or be liable in damages to City, so long as the performance or non-performance of the covenant or obligation is delayed, caused or prevented by an act of God, force majeure or by the other party. An "act of God" or "force majeure" is defined for purposes of this Ordinance as strikes, lock-outs, sit-downs, material or labor restrictions by any governmental authority, unusual transportation delays, riots, floods, washouts, explosions, earthquakes, fire, storms, weather (including wet grounds or inclement weather which prevents construction), acts of the public enemy, wars, terrorism, insurrections, and/or any other cause not reasonably within the control of Company or which by the exercise of due diligence Company is unable wholly or in part, to prevent or overcome.

Section 14. All the privileges given and obligations created by this Ordinance shall be binding upon the successors and assigns of Company. Company may transfer or assign the

franchise created by this agreement to any other person, proprietorship, partnership, firm or corporation.

Section 15. This Ordinance is effective upon its passage, and in the event Company accepts the franchise herein granted within the time and in the manner hereinbefore set forth, the franchise shall become effective as of the Effective Date.



Justin Ballard

**President of the Board of Aldermen, as
Acting Mayor**

Paula Henderson

Paula Henderson, City Clerk