

STATE OF ALABAMA)
COUNTY OF MADISON)

PERMISSIVE USE AGREEMENT

This Agreement (“**Agreement**”) made and entered into on this the ____ day of April 2023, by and between the **CITY OF MADISON, ALABAMA**, a municipal corporation (“**City**”), and the **Huntsville Electric Utility Board**, a municipal public utility board created by the City of Huntsville, Alabama, (“**HU**”).

W I T N E S S E T H:

WHEREAS, HU owns a parcel of approximately two (2) acres of property with Parcel Identification Number 16-03-07-04-000-003.001 located on the northwest side of Mose Chapel Road in Madison, Alabama as depicted in **Exhibit A** to this Agreement (herein described as “the Property”);

WHEREAS, the City owns forty (40) acres of land adjacent to the Property located at the street address of 228 Mose Chapel Road, Madison Alabama;

WHEREAS, the City seeks use of the Property for the purpose or refurbishing and preparing the adjacent City property for a suitable public purpose that is expected to require entry, use and/or other operations upon to the Property;

WHEREAS, the parties contemplate a future agreement whereby HU may exchange the Property with the City for similar property suitable for the construction of a electric power substation within the City of Madison;

WHEREAS, the parties contemplate that this agreement shall serve as a temporary use agreement until such time that such exchange of property can be conducted between the City and HU.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants given by the parties hereto, it is understood and agreed as follows:

1. Permission to Enter: Subject to the conditions stated in this Agreement, HU grants the City permission and license to enter, use and/or conduct its operations on the Property. The City accepts the Property on the date hereof in its current, as-is, where-is condition. The City shall comply with all statutes, ordinances and requirements of all municipal, state and federal authorities now in force, or which may hereafter be in force, pertaining to the Property, occasioned by or affecting the use thereof by the City, including without limitation all environmental laws, rules, regulations and ordinances.

2. Permissive Use: HU's granting of the license for the City's use, right of entry and operations on the Property is permissive only and shall not be deemed to affect or diminish HU's right to the free and unfettered use of the Property except as otherwise expressly set forth in this Agreement.
3. Notice to Repair: If HU needs to maintain, repair, or replace utility lines located on the Property, HU will provide ten (10) days' prior written notice to the City of its need to do so.
4. Notice of Termination: Either party may provide notice to the other of termination of this Agreement within one-hundred and eighty (180) days of the date that the City shall be required to vacate the Property and/or cease to have permission to use the Property. This notice can be amended upon the written mutual agreement of the parties.
5. Emergencies: Notwithstanding the foregoing, in the event of an emergency, HU may immediately access the Property as reasonably necessary to address an emergency, without giving notice, provided that HU shall give notice to City as soon as is reasonably practicable given the circumstances. The determination of whether an emergency exists that requires immediate maintenance, repair, or replacement shall be solely within the discretion of HU.
6. Restoration: After HU completes any such maintenance, repair, or replacement within the Property it will restore affected landscaping, sidewalks, and other affected utilities' apparatus to their original condition; provided, however that HU shall not be responsible for restoring any alteration or damage to the Property caused by the City, all of which shall be performed by the City at its expense.
7. Hold Harmless; Attorney's Fees: To the extent allowed by law, City will indemnify, defend and hold HU harmless from any expense (including reasonable attorney's fees), claim, loss or damage of any kind associated with the permissive use of the Property other than damage caused by willful misconduct or gross negligence of HU. In case suit should be brought to enforce any rights under this Agreement or for any sum due hereunder, or because of any act which may arise out of the use or possession of the Property, by either party, the prevailing party shall be entitled to all costs incurred in connection with such action, including a reasonable attorney's fee.
8. Assignment: The City shall not assign this Agreement without prior written consent of HU, which consent may be withheld in HU's sole and absolute discretion. Any such assignment without consent shall be void and, at the option of HU, may terminate this Agreement.

[Signature pages follow.]

IN WITNESS WHEREOF, the parties have hereunder set their hands and seals on the date and year first above written.

IN WITNESS WHEREOF, the undersigned have set their hands and seals on this ____ day of April, 2023.

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

Attest:

By: _____
Paul Finley, Mayor

Lisa D. Thomas, City Clerk-Treasurer

Date: _____

STATE OF ALABAMA §

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COUNTY OF MADISON §

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I, the undersigned Notary Public, in and for said County, in said State, hereby certify that Paul Finley and Lisa D. Thomas, whose names as Mayor and the City Clerk-Treasurer, respectively, of the City of Madison, Alabama, are signed to the foregoing instrument, and who are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they, as such officers and with full authority, executed the same voluntarily for and as the act of the City of Madison, Alabama, a municipal corporation.

Given under my hand and official seal this ____ day of May, 2023.

Notary Public

**City of Huntsville, Alabama,
doing business as Huntsville Utilities**

Attest:

By: _____
Robert Wesley Kelley, President and CEO

Date: _____

STATE OF ALABAMA §
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COUNTY OF MADISON §

I, the undersigned, a Notary Public in and for said County, in said State, do hereby certify that Robert Wesley Kelley, whose name as President and CEO of the City of Huntsville, Alabama, an Alabama municipal corporation d/b/a Huntsville Utilities, is signed to the foregoing Agreement, who is known to me, acknowledged before me on this day that, being informed of the contents of this Agreement, he as such officer and with full authority, executed voluntarily on the day the same bears date.

Given under my hand this the _____ day of May 2023.

Notary Public

EXHIBIT A

Lot 1, according to the map of survey of Mose Chapel Park, Madison County, Alabama, as shown of record in the Office of the Judge of Probate of Madison County, Alabama in Plat book 34, Page 2.