

This instrument prepared by Brian Kilgore, City Attorney, City of Madison Legal Department, 100 Hughes Road, Madison, AL 35758

STATE OF ALABAMA)
COUNTY OF LIMESTONE)

PERMISSIVE USE AGREEMENT

This Permissive Use Agreement (**herein the “Agreement”**) made and entered into on this the 10th day of June 2024, by and between the **City of Madison, Alabama**, a municipal corporation (**herein the “City”**), and the **Water and Wastewater Board of the City of Madison, Alabama** a municipal public utility board created by the City of Madison, Alabama, (**herein “Madison Utilities”**).

W I T N E S S E T H:

WHEREAS, Madison Utilities currently owns property (herein “the Property”) near the intersection of Brownsferry Road and Burgreen Road (herein “the Intersection”) that is more specifically described as:

TRACT 1:

A PART OF SECTION 1, TOWNSHIP 4 SOUTH, RANGE 3 WEST LIMESTONE COUNTY, ALABAMA. BEING MORE PARTICULARLY DESCRIBED AS COMMENCING AT A CALCULATED POINT AT THE NORTHEAST CORNER OF THE NORTHWEST ¼ OF SAID SECTION 1. THEN N89°01'58"W A DISTANCE OF 305.00 FEET TO A POINT. THEN S00°34'55"E A DISTANCE OF 39.98 FEET TO AN IRON SET ON THE SOUTH RIGHT OF WAY OF HUNTSVILLE BROWNSFERRY ROAD (THIS IRON AND ALL OTHER IRONS REFERRED TO AS "SET" ARE ½ INCH DIAMETER REBAR WITH A RED PLASTIC CAP STAMPED ALLEN CA 1005 LS) THE POINT OF BEGINNING.

THEN FROM THE POINT OF BEGINNING AND LEAVING SAID SOUTH RIGHT OF WAY S00°35'58"E A DISTANCE OF 15.01 FEET TO AN IRON SET. THEN N89°02'00"W A DISTANCE OF 1193.67 FEET TO AN IRON SET. THEN N00°59'49"E A DISTANCE OF 15.00 FEET TO AN IRON SET ON THE SOUTH RIGHT OF WAY OF HUNTSVILLE BROWNSFERRY ROAD. THEN ALONG

SAID RIGHT OF WAY S89°02'00"E A DISTANCE OF 1193.25 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.41 ACRES MORE OR LESS.

TRACT 2:

A PART OF SECTION 1, TOWNSHIP 4 SOUTH, RANGE 3 WEST LIMESTONE COUNTY, ALABAMA. BEING MORE PARTICULARLY DESCRIBED AS COMMENCING AT A CALCULATED POINT AT THE NORTHEAST CORNER OF THE NORTHWEST ¼ OF SAID SECTION 1. THEN N89°01'58"W A DISTANCE OF 305.00 FEET TO A POINT. THEN S00°34'55"E A DISTANCE OF 39.98 FEET TO AN IRON SET ON THE SOUTH RIGHT OF WAY OF HUNTSVILLE BROWNSFERRY ROAD (THIS IRON AND ALL OTHER IRONS REFERRED TO AS "SET" ARE ½ INCH DIAMETER REBAR WITH A RED PLASTIC CAP STAMPED ALLEN CA 1005 LS) THE POINT OF BEGINNING.

THEN FROM THE POINT OF BEGINNING AND ALONG SAID RIGHT OF WAY S89°02'00"E A DISTANCE OF 275.01 FEET TO AN IRON SET ON THE WEST RIGHT OF WAY OF BURGREN ROAD. THEN LEAVING SAID SOUTH RIGHT OF WAY AND ALONG SAID WEST RIGHT OF WAY S00°35'58"E A DISTANCE OF 15.01 FEET TO AN IRON SET. THEN LEAVING SAID RIGHT OF WAY N89°02'00"W A DISTANCE OF 275.01 FEET TO AN IRON SET. THEN N00°35'58"W A DISTANCE OF 15.01 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.09 ACRES MORE OR LESS (collectively, the "**Property**").

and;

WHEREAS, the City of Madison has need for use of a portion of the Property at the intersection of Brownsferry Road and Burgreen Road to accommodate the construction of a Roundabout traffic improvement (herein "the Roundabout"), which portion of the Property (herein "the Subject Property"), is more particularly described as:

That certain real property being situated in the Northwest quarter of Section 1, Township 4 South, Range 3 West, more particularly described as follows:

Commence from the capped rebar set said point being the Point of Commencement (said point having the coordinates of N: 1721130.731, E: 2179674.770; thence S 79°54' 18" W a distance of 27.99 feet to a point said point being the Point of Beginning (said point offset 38.71' RT and perpendicular to the centerline of Huntsville Brownsferry Road at approximate station 73+30.00); thence S 00°04'39" E a distance of 15.02 feet to a point (said point offset 53.73' RT and perpendicular to the centerline of Huntsville Brownsferry Road at approximate station 73+30.00); thence S 89°57'22" W a distance of 15.00 feet to a point (said point offset 53.70' RT and perpendicular to the centerline of Huntsville Brownsferry Road at approximate station 73+15.00); thence N 00°04'39" W a distance of 15.02 feet to a point (said point offset 38.68' RT and perpendicular to the centerline of Huntsville Brownsferry Road station 73+15.00); thence S 89°57'43" E a distance of 15.00 feet to the Point of Beginning, containing 0.005 acres, more or less.

WHEREAS, it is necessary for the City to utilize the Subject Property for the construction of the Roundabout; and,

WHEREAS, the City's proposed use of the Subject Property may be accommodated by Madison Utilities, consistent with Madison Utilities' fee simple ownership and use of the Property, subject to the terms of this Agreement.

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, Madison Utilities grants the City permission to enter, use and/or construct the Roundabout using, in part, the Subject Property.
2. Permissive Use: That Madison Utilities acquiescence to the City's use, right of entry and operations on the Subject Property is permissive only and shall not be deemed to affect or diminish Madison Utilities' right to the free and unfettered use of the Subject Property, as to which Madison Utilities will continue to hold title and be the fee simple owner, subject only to the City's use of the Subject Property for the purposes of constructing, operating, and maintaining the Roundabout.
3. Utility Easements. To the extent that any utility desires use of any part of the Subject Property, the City shall notify Madison Utilities of the request, and Madison Utilities may, but shall not be required to, consider a permissive use agreement for location of such utilities on the Subject Property on such terms as may be determined by Madison Utilities, provided that, (a) the utility holds a franchise from the City of Madison, and (b) the proposed use of the Subject Property by the utility shall not interfere with or impede current or future plans of Madison Utilities for use of the Subject Property
4. Notice to Repair: If the City of Madison needs to maintain, repair, or replace the Roundabout located on the Subject Property, the City will provide thirty (30) days' prior written notice to Madison Utilities.
5. Emergencies: Notwithstanding the foregoing, in the event of an emergency, except in case of an emergency, the City will provide as much notice to Madison Utilities as is reasonably possible under the circumstances. However, under no circumstances will the City undertake any repair, construction, or maintenance work in the area of any utilities located by Madison Utilities on the Subject Property, without prior notice to Madison Utilities. The determination of whether an emergency exists that requires immediate maintenance, repair, or replacement shall be solely within the discretion of the City.
6. Hold Harmless: To the extent allowed by law, the City will indemnify and hold Madison Utilities harmless from any expense of any kind associated with the permissive use of the Property other than damage caused by willful misconduct or gross negligence of Madison Utilities.

[Signature pages follow.]

IN WITNESS WHEREOF, the undersigned have set their hands and seals on this ____ day of June 2024.

**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 §

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 June 2024.

Notary Public

**Water and Wastewater Board of the City of
Madison, Alabama**

Attest:

By: _____
Terris Tatum, Chairman

Emory DeBord, Secretary

Date: _____

STATE OF ALABAMA §

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COUNTY OF MADISON §

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I, the undersigned, a Notary Public in and for said County, in said State, do hereby certify that Terris Tatum, whose name as Chairman of Madison 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 June 2024.

Notary Public