

ANTENNA ATTACHMENT AGREEMENT

This Antenna Attachment Agreement (“Agreement”) is made as of this ____ day of _____, 2023 (the “Effective Date”), by and between the CITY OF MADISON, an Alabama municipal corporation, 100 Hughes Road, Madison, Alabama 35758 (“CITY”), and the Water and Wastewater Board of the City of Madison, doing business as Madison Utilities, an Alabama public corporation (“MU”).

RECITALS

WHEREAS, MU is an Alabama public corporation organized and incorporated by the CITY to provide water and wastewater services to customers lying within its Service Area, including the corporate limits of the City of Madison; and

WHEREAS, MU operates under a franchise agreement granted by the CITY for the operation of water and wastewater utility systems in the CITY, most recently pursuant to City Ordinance No. 2015-78 (the “Franchise Ordinance” or “Franchise Agreement”); and

WHEREAS, the CITY owns and operates certain streetlights on City-owned Light Poles located within the corporate limits of the CITY (as hereinafter defined); and

WHEREAS, MU has need of access to the CITY’s street light poles for the installation, maintenance and operation of certain antennas (as hereinafter defined); and

WHEREAS, subject to the terms and conditions of this Agreement, the CITY is willing to allow MU to use City-owned Light Poles for MU’s Antennas (as defined below).

NOW, THEREFORE, for good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Definitions.

1.1 "Agency" means any governmental agency or quasi-governmental agency other than CITY or MU, including the FCC and the PUC.

1.2 "Agreement" means this Attachment Agreement.

1.3 “Antennas” means antenna and accessory equipment for receiving and/or transmitting data by antenna, radio, or other similar media in connection with its adoption of a process for remote reading of utility meters via radio transmissions.

1.4 "Fee" means any assessment, license, charge, fee, imposition, tax or levy lawfully imposed by any governmental body.

1.5 "Laws" means any and all judicial decisions, statutes, constitutions, ordinances, resolutions, regulations, rules, tariffs, administrative orders, certificates, orders, or other requirements of any Agency having joint or several jurisdiction over the parties to this Agreement, including, without limitation, the National Electrical Safety Code and the National Electric Code, in effect either at the time of execution of this Agreement or at any time during the presence of Antennas in the Public Right-of-Way.

1.6 "Light Pole" or "City-owned Light Pole" means the street light poles installed, owned, maintained, and operated by the City of Madison within the Public Right-of-Way, including any Replacement Light Pole approved and accepted by the City.

1.7 "Person" means an individual, a corporation, a limited liability company, a general or limited partnership, a sole proprietorship, a joint venture, a business trust, and any other form of business association.

1.8 "Provision" means any agreement, clause, condition, covenant, qualification, restriction, reservation, term, or other stipulation in this Agreement that defines or otherwise controls, establishes, or limits the performance required or permitted by either party to this Agreement. All Provisions, whether covenants or conditions, shall be deemed to be both covenants and conditions.

1.9 "Safety Regulation" means any and all safety-related judicial decisions, statutes, constitutions, ordinances, resolutions, regulations, rules, tariffs, administrative orders, certificates, orders, or other requirements of any Agency having joint or several jurisdiction over the parties to this Agreement, including, without limitation, the Occupational Safety and Health Administration, in effect either at the time of execution of this Agreement or at any time during the presence of Antennas in the Public Right-of-Way.

2. TERM. This initial term of this Attachment Agreement shall commence on the "Effective Date" for a period of ten (10) years. If no actions are taken by the parties to terminate the agreement upon the termination of the term, the agreement shall automatically renew for one additional ten (10) year term.

3. SCOPE OF AGREEMENT.

3.1 General Scope of Rights. Any and all rights expressly granted to MU under this Agreement, which shall be exercised at MU's sole cost and expense, shall be subject to the prior and continuing right of CITY to use the City-owned Light Poles, and further shall be subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances and claims of title which may affect the City-owned Light Poles.

3.2 Prior Review and Approval. MU shall present the City with a map designating the proposed locations for antennas, picture(s) substantially depicting the model of antennas proposed for the installation and detail the number of antenna(s) to be installed no

later than thirty (30) days in advance the proposed installation. The City shall have fourteen (14) days to review MU's installation plan and provide MU approval or denial of the plan. Furthermore, the City may condition approval of the installation plan upon the City's required changes to the installation plan. In the event that the City takes no action within thirty (30) days from submission of an installation plan, it shall be deemed that the City approves said plan.

3.3 Specific Attachment Rights. CITY hereby authorizes and permits MU to attach, install, operate, maintain, remove, reattach, reinstall, relocate, and replace antennas on City-owned Light Poles. Any work performed pursuant to the rights granted under this Attachment Agreement shall be subject to the prior review and approval of the CITY. MU shall perform all work in a good and workmanlike manner and shall ensure that Antennas installed by MU are safe and free of material defect in workmanship, material and design. MU shall maintain, at its sole cost and expense, all Antennas in good and safe condition and repair.

3.4 Non-Interference. Except as permitted by applicable Laws or this Agreement, in the performance and exercise of its rights and obligations under this Agreement, MU shall not interfere in any manner with the existence and operation of any and all public and private rights-of-way, poles, aerial and underground electric, lighting fixtures, luminaires, cable television, and other telecommunications and CITY property without the express written approval of the owner or owners of the affected property or properties. Similarly, CITY shall not install or operate any equipment or engage in any activity that will create interference for MU's Antennas.

3.5 Compliance with Laws. MU shall comply with all applicable Laws, and shall obtain and comply with all applicable permits, franchise agreements, right-of-way agreements, and other conditions or restrictions applicable to the Facilities, in the exercise and performance of its rights and obligations under this Agreement.

3.6 Compliance with Safety Regulations. MU shall comply with all applicable Safety Regulations including specifically and without reservation or limitation those of the Occupational Safety and Health Administration of the United States Department of Labor, in the exercise and performance of its rights and obligations under this Agreement. MU shall provide to CITY, upon request of the CITY, certification from an independent testing laboratory confirming the radio-frequency energy emitted by any Antenna installed on City-owned Light Poles is below the maximum standard threshold level established for safe human approach and contact.

4. FEES AND TAXES.

4.1 MU Responsible for Applicable Fees. MU shall be solely responsible for the payment of all lawful Fees in connection with the exercise of MU's rights under this Agreement.

4.2 Monthly Fees for Use of City-owned Light Poles.

\$25.00 per attached Antenna per month, paid annually in arrears.

Initial monthly fees for each attached Antenna shall be due and payable at the end of the CITY's fiscal year and shall be due for only the full months during the fiscal year during which each Antenna was attached. At the end of each CITY fiscal year, MU will prepare and provide to CITY a list of the total number of attached antennas and the months during the previous fiscal year when said antennas were attached to a CITY street light pole. The total of monthly fees due for such attached antennas for the months during which each antenna was attached, shall be paid to CITY by MU within thirty (30) days of the end of the CITY's fiscal year.

5. REMOVAL AND RELOCATION OF ANTENNAS.

5.1 Relocation of Antennas at CITY's Request. MU agrees to relocate an Antenna, at its own expense, at CITY's direction, upon thirty (30) business days' prior written notice in situations described in subsection (a) below, and immediately in situations described in subsections (b) and (c) below, whenever CITY reasonably determines that the relocation is needed:

- (a) to facilitate or accommodate the construction, completion, repair, relocation or maintenance of City-owned Light Poles or project;
- (b) because the Antenna is interfering with or adversely affecting proper operation of City-owned Light Poles or CITY services; or
- (c) to protect or preserve the public health or safety.

CITY agrees to use reasonable efforts to recommend or advise MU of the nearest available structure to which the Antenna can be relocated. If MU shall fail to relocate any Antennas as requested by CITY in accordance with the foregoing sentence, CITY shall be entitled to relocate the Antennas at MU's sole cost and expense.

5.2 Relocation of Antennas at MU's Request. In the event MU desires to relocate an Antenna from one City-owned Light Pole to another, MU shall so advise CITY. CITY will use its reasonable efforts to accommodate MU by making another functionally equivalent City-owned Light Pole Facility available for use in accordance with and subject to the terms and conditions of this Agreement.

5.3 Abandonment. In the event that any Antenna subject to this Agreement is abandoned and no longer placed in service for a period of six (6) months or more, MU shall promptly notify CITY, and CITY, at its option, may require MU to promptly remove the abandoned Antenna(s) at MU's sole cost and expense or dedicate the same to CITY. CITY shall not issue notice to MU that CITY intends to exercise the option to require removal or dedication of Antennas, unless and until CITY first gives thirty (30) days' prior written notice to MU to remove the Antenna(s). If MU shall fail to remove the Antenna(s) as required by CITY, CITY shall be entitled to remove the Antenna(s) at MU's sole cost and expense. MU shall execute such documents of title as will convey all right, title, and interest in the abandoned Antenna(s), but in no other MU property, intellectual or otherwise, to CITY.

5.4 Repair of Damage. Whenever the removal or relocation of Antennas is required under this Agreement, and any Facility is damaged in the process thereof, MU, at its

sole cost and expense, shall promptly repair and return the Facility, in which the Antennas are located, to a safe and satisfactory condition in accordance with applicable Laws, normal wear and tear excepted. If MU does not repair the site as just described, then CITY shall have the option to perform or cause to be performed such reasonable and necessary work on behalf of MU and charge MU for the proposed costs to be incurred, or the actual costs incurred by CITY, at CITY's standard rates. Upon the receipt of a demand for payment by CITY, MU shall reimburse CITY for such costs.

6. INDEMNIFICATION AND LIMIT ON LIABILITY.

6.1 Indemnification. MU will defend CITY from any claim for (i) death of or bodily injury to a CITY employee or third party that is caused by MU's gross negligence or intentional torts, or (ii) physical damage to tangible personal property owned by CITY or a third party that is caused by MU's gross negligence or intentional torts and will pay costs and damages awarded against CITY (or settled) in any such action that are specifically attributable to MU's gross negligence or intentional torts; subject, however, to applicable limitations of liability under paragraph 6.2 below, and under Alabama law.

As a condition to MU's indemnity obligations under this Agreement, CITY will provide MU with prompt written notice of the claim, permit MU to control the defense, settlement, adjustment or compromise of the claim and provide MU with reasonable assistance in connection with such defense. CITY may employ counsel at its own expense to assist it with respect to any such claim.

THIS SECTION CONSTITUTES MU'S SOLE AND EXCLUSIVE OBLIGATION WITH RESPECT TO THIRD PARTY CLAIMS BROUGHT AGAINST CITY.

6.2 Limitation on Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR INCIDENTAL, SPECIAL, CONSEQUENTIAL (INCLUDING LOSS OR CORRUPTION OF DATA OR LOSS OF REVENUE, SAVINGS OR PROFITS) OR EXEMPLARY DAMAGES, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, THE AGGREGATE LIABILITY OF EACH PARTY AND ITS AFFILIATES AND ITS AND THEIR OFFICERS, DIRECTORS, EMPLOYEES OR OTHER REPRESENTATIVES, ARISING IN ANY WAY IN CONNECTION WITH THIS AGREEMENT—WHETHER UNDER CONTRACT LAW, TORT LAW, WARRANTY OR OTHERWISE—SHALL NOT EXCEED THE TOTAL AMOUNT PAID BY MU TO CITY HEREUNDER.

7. INSURANCE.

7.1 General Insurance Requirements. MU shall obtain and maintain at all times during the term of this Agreement Commercial General Liability insurance and Commercial Automotive Liability insurance protecting MU in an amount of not less than one million dollars (\$1,000,000) per occurrence (combined single limit), including bodily injury and property damage, and not less than one million dollars (\$1,000,000) annual aggregate, for each personal injury liability and products-completed operations. Such insurance shall name CITY, its officers and employees as additional insureds for liability arising out of MU's performance of work under this Agreement. Coverage shall be on an occurrence form and in accordance with the limits and provisions specified herein. Claims-made policies are not acceptable. Such insurance shall not be canceled until CITY has received at least thirty (30) days' advance written notice of such cancellation.

7.2 Certificate of Insurance. MU shall file the required original certificate(s) of insurance with endorsements with CITY, subject to CITY's prior approval, which shall clearly state:

7.2.1 Policy number; name of insurance CITY; name and address of the agent or authorized representative; name and address of insured; project name and address; policy expiration date; and specific coverage amounts;

7.2.2 That CITY shall receive thirty (30) days prior notice of cancellation, ten (10) days for nonpayment of premium; and

7.2.3 That MU's insurance is primary as respects any other valid or collectible insurance that CITY may possess, including any self-insured retentions CITY may have, and any other insurance CITY does possess shall be considered excess insurance only and shall not be required to contribute with this insurance.

The certificate(s) of insurance with endorsements and notices, shall be mailed to CITY to the person to whom notices are directed as per Section 8 below.

7.3 Workers' Compensation Insurance. MU shall obtain and maintain at all times during the term of this Agreement statutory workers' compensation and employer's liability insurance in an amount not less than five hundred thousand dollars (\$500,000), and furnish CITY with a certificate showing proof of such coverage.

7.4 Deductibles; Severability of Interest. Any deductibles or self-insured retentions shall be the responsibility of MU. "Cross liability", "severability of interest" or "separation of insureds" clauses shall be made a part of the Commercial General Liability and Commercial Automobile Liability policies.

8. NOTICES. All notices which shall or may be given pursuant to this Agreement shall be in writing and delivered personally or transmitted: (i) through the United States mail, by registered or certified mail, postage prepaid; (ii) by means of prepaid overnight delivery service; or (iii) by facsimile transmission, if a hard copy of the same is followed by delivery through the U. S. mail or by overnight delivery service as just described, as follows:

CITY: CITY OF MADISON
ATTN: Mayor
Madison Municipal Complex
100 Hughes Road
Madison, AL 35758

with a copy to: CITY ATTORNEY
Madison Municipal Complex
100 Hughes Road
Madison, AL 35758

MU: WATER AND WASTEWATER BOARD OF THE CITY OF MADISON
dba Madison Utilities
101 Ray Sanderson Drive
Madison, AL, 35758

Notices shall be deemed given upon receipt in the case of personal delivery or facsimile, three (3) days after deposit in the mail, or the next day in the case of overnight courier. Either party may from time to time designate any other address for this purpose by written notice to the other party in the manner set forth above.

9. TERMINATION. This Agreement may be terminated by either party upon a default of any material covenant or term hereof by the other party, which default is not cured within forty-five (45) days of receipt of written notice of default (or, if such default is not curable within forty-five (45) days, if the defaulting party fails to commence such cure within forty-five (45) days or fails to thereafter diligently prosecute such cure to completion).

Further, this Agreement may be terminated by MU upon reasonable notice by MU to CITY in the event the Prime Contract is terminated or expires for any reason other than a default thereunder by MU.

10. MISCELLANEOUS PROVISIONS.

10.1 Assignment; Successors and Assigns. This Agreement shall not be assigned by MU nor shall MU sublet or sublicense its interest herein without the written consent of CITY having been first obtained, except MU may, upon reasonable written notice to CITY

and provided that MU is not in default under this Agreement, assign this Agreement and all of MU's rights and/or obligations hereunder (i.e., no partial assignments) to Customer provided further that such assignment shall only become effective upon the execution by Customer and the CITY of a consent and assumption agreement in form and substance mutually acceptable to said parties. Upon execution of such consent and assignment agreement MU shall be released from any and all obligations under this Agreement.

10.2 Non-Exclusivity. MU understands that this Agreement does not provide MU with exclusive use of any City-owned Light Poles and that CITY shall have the right to permit other providers of telecommunications services to install equipment or devices on City-owned Light Poles, provided such other providers' equipment will not cause interference to MU's Antennas. In addition, CITY agrees to advise such other providers of telecommunications services utilizing City-owned Light Poles of the presence or planned deployment of Antennas on City-owned Light Poles.

10.3 Entire Understanding. This Agreement contains the entire understanding between the parties with respect to the subject matter herein. There are no representations, agreements or understandings (whether oral or written) between or among the parties relating to the subject matter of this Agreement which are not fully expressed herein.

10.4 Amendments. This Agreement may not be amended except pursuant to a written instrument signed by both parties.

10.5 Severability. If any one or more of the provisions of this Agreement shall be held by court of competent jurisdiction in a final judicial action to be void, voidable, or unenforceable, such provision(s) shall be deemed severable from the remaining provisions of this Agreement and shall in no way affect the validity of the remaining portions of this Agreement.

10.6 Contacting MU. MU shall be available to the staff employees of CITY 24 hours a day, 7 days a week, regarding problems or complaints resulting from the attachment, installation, operation, maintenance, or removal of the Antennas on City-owned Light Poles. CITY may contact MU at telephone number 256-772-0253 regarding such problems or complaints.

10.7 Governing Law. This Agreement shall be governed and construed by and in accordance with the laws of the State of Alabama without reference to its conflicts of law principles.

10.8 Incorporation of Exhibits. Exhibits, if any, referred to in this Agreement and any addenda, attachments, and schedules which may, from time to time, be referred to in any duly executed amendment to this Agreement are by such reference incorporated in this Agreement and shall be deemed a part of this Agreement.

10.9 Notice of Antenna Displacement. To the extent CITY has actual knowledge thereof, CITY will attempt to inform MU of the displacement of any City-owned Light Pole on which any Antenna is located.

10.10 Waiver of Breaches. The waiver by either party of any breach or violation of any Provision of this Agreement shall not be deemed to be a waiver or a continuing waiver of any subsequent breach or violation of the same or any other Provision of this Agreement.

10.11 Alabama Immigration Provision. By signing this agreement, the contracting parties affirm, for the duration of the agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom.

10.12 Section Headings. Section headings are included for convenience of reference only.

AUTHORIZED SIGNATURES

In order to legally bind themselves to the terms and conditions of this Attachment Agreement, the duly authorized representatives of the parties have signed their names below effective as of the Effective Date.

Water and Wastewater Board of the
City of Madison, dba Madison Utilities

City of Madison, an Alabama Municipal
Corporation

By: _____ By: _____

Emory DeBord

Paul Finley

Title: General Manager

Title: Mayor