

STATE OF ALABAMA

MADISON COUNTY

RESOLUTION OF THE MADISON COUNTY COMMISSION

WHEREAS, Madison County, Alabama (“Madison County”) has the legal responsibility to manage the access, occupancy and use of public roads and rights-of-way, including the number, type and location of competing public and private uses within the public roads or rights-of-way; and

WHEREAS, the Madison County Commission (the “Commission”) recognizes the need for infrastructure development to support centralized sanitary sewer treatment facilities in unincorporated areas of Madison County; and

WHEREAS, the “Policy on Sewer Lines in Rights-of-Way for Public Roads,” which was effective on September 1, 2006, does not encourage and facilitate the development of “private” centralized sanitary sewer treatment facilities; and

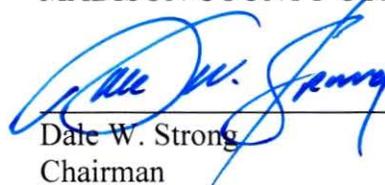
WHEREAS, in an effort to encourage such development, the Commission desires to provide a low cost solution for sewer providers to construct and operate sanitary sewer infrastructure utilizing public roads and rights-of-way.

NOW, THEREFORE, BE IT RESOLVED BY THE MADISON COUNTY COMMISSION as follows:

1. The “Policy on Sewer Lines in Rights-of-Way for Public Roads,” effective September 1, 2006, is hereby repealed.
2. The Policy attached hereto as Exhibit “A” regarding Sanitary Sewer Infrastructure (including sewer lines, pumps, manholes and facilities or equipment customarily necessary for operation of a sanitary sewer collection system) constructed, installed or maintained in or along public roads and rights-of-way in unincorporated areas of Madison County is hereby adopted.

DONE this 17<sup>th</sup> day of December, 2014.

MADISON COUNTY COMMISSION

  
Dale W. Strong  
Chairman

ATTEST:

  
Kevin Jones  
County Administrator

## **EXHIBIT A**

### **MADISON COUNTY, ALABAMA RIGHT-OF-WAY MANAGEMENT POLICY REGARDING SANITARY SEWER INFRASTRUCTURE**

1. This policy is intended only to provide for right-of-way management related to construction, installation, operation, repair and maintenance of privately owned sanitary sewer infrastructure in public rights-of-way. This policy does not create any obligation or duty of Madison County, Alabama (hereinafter referred to as "Madison County") to construct, install, operate, repair or maintain Sanitary Sewer Infrastructure, as defined herein, to provide sewer service to citizens of Madison County or to regulate, in any manner, the cost, fees or charges assessed to citizens of Madison County who utilize the services of a private sanitary sewer provider.

2. Madison County makes no representation that it owns any particular right-of-way. Madison County makes no representation that it has the legal right to grant permission to place sewer lines, pumps, manholes and facilities or equipment customarily necessary for operation of a sanitary sewer collection system (hereinafter referred to as "Sanitary Sewer Infrastructure") in any particular right-of-way. A Sewer Operator placing Sanitary Sewer Infrastructure in the right-of-way of a public road in Madison County does so at the sole risk of the Sewer Operator.

3. A Sewer Operator desiring to place Sanitary Sewer Infrastructure in the right-of-way of a public road in Madison County must first obtain a permit from Madison County. The Sewer Operator must complete such forms and supply such engineering plans, drawings and other engineering and financial information as required by the Madison County Engineer (hereinafter referred to as the "County Engineer") or the Commission. The Sewer Operator must furnish, at a minimum, to the County Engineer detailed engineering drawings prepared by an engineer registered and licensed in the State of Alabama depicting the proposed vertical and horizontal location of the Sanitary Sewer Infrastructure within the right-of-way. Any variation

from the approved plans must be approved by the County Engineer. Upon receipt and review of the engineering drawings and supporting documents, the County Engineer will present the Sewer Operator's request for a permit to the Commission for consideration at a regularly scheduled meeting of the Madison County Commission (hereinafter referred to as the "Commission"). The Commission may exercise its discretion to approve or deny the request for a permit based on its legal right to regulate public roads within Madison County. No work by a Sewer Operator may begin in the right-of-way until a permit is issued. If a Sewer Operator begins work in the right-of-way before a permit is issued, Madison County may deny the request for that reason.

4. The County Engineer shall make reasonable rules and regulations with regard to the construction, installation, operation and maintenance of Sanitary Sewer Infrastructure within the right-of-way of public roads within Madison County. The County Engineer shall also have the right to inspect the infrastructure and to require as built drawings or other documents, in a form acceptable to the County Engineer, which are relevant to the operation of the Sanitary Sewer Infrastructure at any time.

5. Permits may not be transferred without the written approval of Madison County.

6. The Sewer Operator must have located within Madison County employees or a contractor who shall maintain the infrastructure on a 24-hour per day, seven-day per week basis, and must, at all times, provide a valid telephone contact for emergency maintenance.

7. As a condition precedent to issuance of a permit allowing installation of Sanitary Sewer Infrastructure, the Sewer Operator must execute an indemnification agreement in the form attached hereto as Exhibit "1."

8. The Sewer Operator must have in effect prior to the issuance of a permit and at all times thereafter commercial general liability insurance with a carrier acceptable to Madison

County and with coverage for the operation of Sanitary Sewer Infrastructure in the right-of-way of a public road. The policy shall have limits of \$1,000,000 for any single occurrence and \$3,000,000 in the aggregate for each policy period, with Madison County, the County Commission and their officials and employees named as additional insureds. The Sewer Operator must provide a copy of its insurance certificate with the permit application. The Sewer Operator must provide a valid insurance certificate during the month of January for each year that the Sewer Operator operates or maintains Sanitary Sewer Infrastructure within public rights-of-way in the unincorporated areas of Madison County.

9. Madison County, the Commission and their officials and employees are not liable to the Sewer Operator for any damage to any Sanitary Sewer Infrastructure within the rights-of-way of public roads in Madison County which occurs in the course of maintenance or improvement of the said rights-of-way, roadways, water lines or other utilities which are located within the said rights-of-way.

10. If Madison County desires to improve or otherwise change a public road, the drainage along a public road or any Madison County owned facilities in Madison County where a Sewer Operator has placed Sanitary Sewer Infrastructure within the right-of-way, the Sewer Operator, at its sole expense and within 30 days of receiving written notice from the County Engineer, must physically locate all infrastructure owned or operated within a Madison County right-of-way by the Sewer Operator by placing orange wood stakes or other visible markers along the route of any underground infrastructure at a minimum of 50-foot intervals. In the event that the County Engineer determines the Sewer Operator's infrastructure will interfere with Madison County's planned work, the Sewer Operator must relocate its Sanitary Sewer Infrastructure within 120 days of receipt of written notice and demand for relocation from the

County Engineer. Madison County will cooperate with the Sewer Operator to furnish the Sewer Operator additional right-of-way in which to relocate the Sanitary Sewer Infrastructure. However, Madison County does not guarantee the availability of such additional right-of-way.

11. The Sewer Operator must repair and restore to their original condition within 30 days the right-of-way and any lawns, gardens, fences or other such items in any way damaged by the installation, operation or maintenance of the sewer line or infrastructure located in the right-of-way of a public road in Madison County. No trees larger than six (6) feet tall may be cut by the Sewer Operator without the written permission of the County Engineer. Before commencing construction, installation, operation, repair or maintenance of Sanitary Sewer Infrastructure within the right-of-way of public roads in Madison County, the Sewer Operator must post a bond, Letter of Credit or cash payment with the County Engineer in an amount equal to 150% of the estimate of the Sewer Operator's engineer's, approved by the County Engineer, of the cost to repair and restore the right-of-way and any lawns, garden fences or other items damaged by the Sewer Operator, which bond, in no case, shall be less than \$5,000. The bond shall be returned to the Sewer Operator upon completion to the satisfaction of the County Engineer of all repairs and restoration necessitated by the Sewer Operator's activities.

12. A Sewer Operator in the installation, operation and maintenance of Sanitary Sewer Infrastructure located within the rights-of-way of public roads within Madison County may not cut, but must bore and case under roads and bore under concrete or asphalt driveways, unless said costs are unusual and impractical. Exceptions to these requirements must be approved by the County Engineer.

13. Any permit granted to a Sewer Operator regarding Sanitary Sewer Infrastructure within the right-of-way of a public road in Madison County is revocable by the Commission, with cause as determined solely by Madison County.

14. The Sewer Operator must have, comply with and maintain valid permits from the Alabama Department of Environmental Management (“ADEM”) and all other required governmental agencies for the treatment, transport and discharge of all wastewater, sewage, effluent or other substances placed or allowed in the right-of-way of public roads within Madison County. If a Sewer Operator’s permit expires for any reason, the operator shall have 30 days to cure this violation of this Policy.

15. During construction, operation and maintenance of Sanitary Sewer Infrastructure within the right-of-way of public roads within Madison County, traffic control devices shall be used by the Sewer Operator in accordance with the latest edition of the Manual On Uniform Traffic Control Devices for Streets and Highways (“MUTCD”), as last revised, and in accordance with all laws, local ordinances and all requirements of the County Engineer.

16. The permit does not constitute or grant to the Sewer Operator any right, title, property interest, claim or control in or to any part of the right-of-way of the public road.

17. The installation of Sanitary Sewer Infrastructure and related work covered by the permit shall be completed within one year from the date shown on the permit, or as otherwise provided for by the County Engineer. Otherwise the permit becomes null and void. Once work is initiated, the Sewer Operator shall pursue the work continuously and diligently until completion. The Sewer Operator shall obtain approval from appropriate authorities prior to interruption of any services (such as water, electrical, cable, etc.) to citizens of Madison County caused by the Sewer Operator.

18. Water, Sewer and Fire Protection Authorities and governmental entities are exempt from the bond requirement in Paragraph 12.

19. This Policy shall take effect on January 1, 2015.

20. This Policy does not apply to subdivisions where Sanitary Sewer Infrastructure is in existence at the time a subdivision is approved by the Commission and the rights-of-way are dedicated to public use.

**EXHIBIT 1**  
**INDEMNIFICATION AGREEMENT**

\_\_\_\_\_ (insert legal name) ("Sewer Owner"), whose address is \_\_\_\_\_ (insert full address) agrees to indemnify and save harmless Madison County, Alabama, the Madison County Commission (the "Commission"), individual members of the Commission and any agents, officers or employees of the Commission (collectively, "Madison County") against all loss and damage, including damage to person or property, arising from any act by, or negligence of, the Sewer Owner or its contractors or subcontractors or the officers, agents or employees of either, while in or about any right-of-way or easement owned by Madison County related to installation, maintenance or operation of a sanitary sewer system, or any component thereof, within the right-of-way or easement or arising from any accident or any injury not caused by any act of Madison County.

In performing any work within the right-of-way or easement related to installation, maintenance or operation of a sanitary sewer, or component thereof, Sewer Owner will conform to and observe all laws applicable to such work and will further protect all buildings and other adjacent property to the extent required by such laws, ordinances, building codes, rules and regulations and, at all times, will keep Madison County indemnified against and discharged of any charge or liability in favor of the owners or occupants of such adjacent premises arising out of such operations by Sewer Owner and will pay and discharge all liability and damages occasioned to any person or persons resulting from such installation, operation or maintenance of any sewer system, or component thereof, within any right-of-way or easement owned by Madison County.

If Madison County, in the enforcement of any part of this Indemnification Agreement, shall incur necessary expenses or become obligated to pay attorneys' fees or court costs, Sewer Owner agrees to reimburse Madison County attorneys' fees and/or costs within ten (10) days after receiving written notice from Madison County of incurring such expenses, costs or obligations.

This Indemnification Agreement shall be governed by and construed in accordance with the laws of the State of Alabama, from this the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Signature  
By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Phone Number: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

STATE OF ALABAMA     )

COUNTY OF MADISON    )

I, the undersigned Notary Public, in and for said County and in said State, hereby certify that \_\_\_\_\_, whose name as \_\_\_\_\_ of \_\_\_\_\_, is signed to the foregoing conveyance and who is known to me, acknowledged before me on this day, that, being informed of the contents of such conveyance, he/she, as such representative and with full authority, executed the same voluntarily for and as the act of said entity.

Given under my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(SEAL)

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_