

RESOLUTION NO. 22-93

WHEREAS the City Council of the City of Huntsville, Alabama, does hereby declare in accordance with Code of Alabama (1975) that the Mayor be, and is hereby authorized to enter into a Memorandum of Agreement between the City of Huntsville, Alabama and The Board of Trustees of The University of Alabama for and on behalf of the University of Alabama in Huntsville, on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said Memorandum of Agreement is substantially in words and figures similar to that certain document attached hereto and identified as a “Memorandum of Agreement between the City of Huntsville, Alabama and The Board of Trustees of The University of Alabama for and on behalf of the University of Alabama in Huntsville,” consisting of five (5) pages and the date of February 10, 2022, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this the 10th day of February, 2022.

President of the City Council of
the City of Huntsville, Alabama

APPROVED this the 10th day of February, 2022.

Mayor of the City of Huntsville,
Alabama

**MEMORANDUM OF AGREEMENT
BETWEEN THE CITY OF HUNTSVILLE,
ALABAMA AND THE BOARD OF TRUSTEES
OF THE UNIVERSITY OF ALABAMA, FOR
AND ON BEHALF OF THE UNIVERSITY OF
ALABAMA IN HUNTSVILLE**

STATE OF ALABAMA

COUNTY OF MADISON

MEMORANDUM OF AGREEMENT

THIS AGREEMENT, made and entered into this 10th day of February, 2022, by and between The Board of Trustees of The University of Alabama, a public educational and constitutional instrumentality of the State of Alabama, incorporated by statute, for and on behalf of The University of Alabama in Huntsville, hereinafter referred to as "UAH", and the City of Huntsville, a municipal corporation in the State of Alabama, hereinafter referred to as the "City".

WITNESSETH:

WHEREAS, UAH owns the site formerly known as "Executive Plaza" (hereinafter referred to as the "Property") located at 555 Sparkman Drive, Huntsville, AL 35816, and has the need to demolish and remove all vertical structures from the Property so that it may be used for educational purposes; and,

WHEREAS, the City has the experience, knowledge, manpower and resources to accomplish the said demolition and removal; and,

WHEREAS, UAH desires to engage the City to demolish and remove the vertical structures on the Property (hereinafter the "Work"); and,

WHEREAS, the City agrees to complete the Work pursuant to the terms and conditions set forth herein; and

WHEREAS, the parties mutually desire to execute this Memorandum of Agreement to set forth in writing their commitments and obligations to each other.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

1. Pre-Mobilization Items. UAH will complete the following items prior to mobilization by the City:

a) Disconnect all utilities.

**President of the City Council of the City
of Huntsville, AL**
Date: February 10, 2022

- b) Complete asbestos abatement on all structures. (Subject to the approval of the City's Director of Natural Resources.)

2. Description of the Work. The City will complete the Work, which consists of the following components.

- a) Complete the Work as identified in the drawing package entitled Demolition Plans for UAH Executive Plaza and dated November 9, 2021. The drawing package is attached hereto as Exhibit A.
- b) Remove all vertical structures from the Property including concrete slabs and foundations.
- c) Remove all underground utilities within 5'-0" outside of the building footings.
- d) Conduct selective tree removal. UAH will mark all trees scheduled for removal prior to the start of demolition efforts.
- e) The City of Huntsville will not seed/straw areas of pavement disturbed during demolition. The majority of paved areas should have gravel base (to remain) beneath the asphalt to be removed.
- f) The City will provide temporary erosion and storm water pollution control provisions during demolition. UAH will be responsible for installing all permanent erosion and storm water pollution prevention measures after the City completes demolition efforts.
- g) The City will be responsible for monitoring the project site during working hours. At the end of each day, the City will leave the project site safe and secure.

3. Timeline. The City will commence the Work on or before February 1, 2022 and will complete the Work on or before May 14, 2022.

4. Cost of the Work. UAH shall pay the City One Million Nine Hundred Seventy-eight Thousand Five Hundred Dollars (\$1,978,500.00) for the completion of the Work. One half of the total sum shall be due and payable upon the execution of this MOA by the last party to execute it, and one half shall be due upon completion of the Work to the reasonable satisfaction of UAH.

5. Worker's Compensation / No UAH Insurance Coverage. The City agrees to provide workers' compensation insurance coverage (either through an outside insurer or through self-insurance) to each of its employees responding under this MOA and recognizes that supervision of individual employees and will be provided by their regular supervisors.

The City understands that UAH is not responsible for providing medical care or coverage for medical expenses if any City employee, agent, or other representative is injured while conducting activities on the UAH Property. City understands that neither it, nor its employees, agents, or representatives, will be covered under any insurance policies held by UAH in the event that any City employee, representative, or agent is injured while on the UAH Property.

6. Termination. UAH reserves the right to terminate this MOA at any time with or without cause, in whole or in part, by thirty (30) days' written notice to the City. Upon receipt by

the City of the "Notice of Termination," the City shall discontinue all services with respect to the MOA. UAH shall only be responsible for the payment on a pro rata basis for all services rendered by the City prior to the date of termination. The University shall not be responsible for any other payment under this Agreement, and may be entitled to a refund of any prior advance payments depending on the amount of services rendered at the date of termination.

7. Compliance with Rules and Regulations. The City agrees to comply with federal, state and local laws, codes, regulations, and ordinances applicable to the activities performed under this MOA on the UAH Premises. The City shall abide by and ensure its employees, agents, and representatives abide by all applicable UAH policies and all directives of UAH and its employees and staff.

- a) Immigration Law Compliance Provision. By signing this MOA, the City affirms, for the duration of the MOA, that it 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, if the City is found to be in violation of this provision, it shall be deemed in breach of the MOA and shall be responsible for all damages resulting therefrom.

8. Allocation of Risk. The City represents that it has the knowledge, skills, and ability to perform the Work. The City shall be responsible, at all times, for the supervision and control, and the safety, of its employees, agents, and representatives while participating in the Work. City shall be liable for the performance, conduct and negligence of its own personnel. City shall further be responsible for any and all injuries, claims, and damages suffered by City's employees, agents, and representatives while on the Property or any third parties injured as a result of the Work. UAH shall not, under any circumstance, be responsible for any claims, damages or liability related to the Work to be performed by the City on the Property. City agrees that, in the event of any accident of any kind on UAH's premises involving any of its employees or agents, City will immediately notify UAH's Vice President for Finance and Administration and thereafter furnish a full written report of such accident.

9. Loss of City's Property. UAH shall have no responsibility for the loss, theft, or mysterious disappearance of or damage to equipment, tools, materials, supplies, and other personal property of the City or its employees or agents.

10. Licenses and Permits. City shall, at its sole expense, procure and keep in effect all necessary permits and licenses required for its performance under this MOA, and it shall post or display in a prominent place such permits and/or notices as are required by law.

11. Nondiscrimination. City agrees that it shall not, with respect to any activity carried out on the premises of UAH or relating in any way to this MOA, discriminate unlawfully on the basis of race, color, national origin, religion, sex (including marital or parental status), pregnancy, sexual orientation, gender identity, age, disability, citizenship status, genetic information, or protected veteran status. This nondiscrimination requirement encompasses unlawful harassment, including sexual harassment and sexual violence, an extreme form of hostile environment sexual

harassment. Additionally, UAH is an affirmative action employer of women, protected minorities, qualified individuals with a disability, and protected veterans.

12. Indemnification. To the extent allowed by Alabama law, City agrees to indemnify and hold harmless, assume liability for, and defend UAH, The Board of Trustees of The University of Alabama, and its officers, employees, students, and agents, from and against any and all actions, claims, liabilities, assertions of liability, losses, damages, costs, and expenses, which in any manner arise or are alleged to have arisen, from the direct or indirect acts, omissions or wrongful conduct of City or its employees, agents, or representatives, in connection with the Work.

13. Independent Contractor Status. The parties are independent contractors with respect to each other, and neither shall be deemed an employee, agent, partner or legal representative of the other for any purpose or shall have any authority to create any obligation on behalf of the other. Neither party intends to grant any third-party beneficiary rights as a result of this MOA.

14. Severability. If any provision of this MOA is declared by a court having jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected; the rights and obligations of the parties shall be construed and enforced as if the MOA did not contain the particular provision held to be invalid.

15. Assignment. City may not assign, subcontract, or delegate performance of any of its rights or obligations under this MOA in whole or in part without first obtaining the prior written approval of UAH. Any attempted assignment, subcontract, or delegation under this MOA shall be void and of no effect.

16. Waiver. The failure of any party to assert a right hereunder or to insist upon compliance with any term or condition of this MOA shall not constitute a waiver of that right, term, or condition nor excuse a similar subsequent failure to perform any such term or condition.

17. Amendments. The terms and conditions of this MOA shall not be waived, altered, modified, supplemented, or amended in any manner whatsoever without prior written approval of the parties hereto.

18. Governing Law. This MOA shall be governed by and construed in accordance with the laws of the State of Alabama. Notwithstanding anything to the contrary, UAH does not waive and specifically reserves all immunities to which it is entitled by the constitution, laws, and statutes of the United States and the State of Alabama, including, without limitation, the immunities contained within Article 1, section 14, of the Constitution of Alabama.

19. This MOA supersedes all prior agreements, understandings, representations, warranties, requests for proposal and negotiations, if any.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on this the 10th day of February, 2022.

CITY OF HUNTSVILLE, ALABAMA

By: _____
Tommy Battle
Its: Mayor

ATTEST:

By: _____
Kenneth Benion
Its: Clerk-Treasurer

**THE BOARD OF TRUSTEES OF THE
UNIVERSITY OF ALABAMA, FOR
AND ON BEHALF OF THE
UNIVERSITY OF ALABAMA IN
HUNTSVILLE**

By:  _____
Its: _____

The Parties agree that any form of electronic signature, including but not limited to signatures via facsimile, scanning, or electronic mail, may substitute for the original signature and shall have the same legal effect as the original signature.