



Huntsville, Alabama

308 Fountain Circle
Huntsville, AL 35801

Cover Memo

Meeting Type: City Council Regular Meeting **Meeting Date:** 7/13/2023

File ID: TMP-3123

Department: Public Works

Subject:

Type of Action: Approval/Action

Resolution authorizing the Mayor to enter into a Memorandum of Agreement between the City of Huntsville, Alabama and The Alabama School of Cyber Technology and Engineering for Clearing, Grubbing and Grading of the property.

Type of Document: Resolution No.

Finance Information:

Account Number: N/A

City Cost Amount: N/A

Total Cost: 106,500.00

Special Circumstances:

Grant Funded: N/A

Grant Title - CFDA or granting Agency: N/A

Resolution #: N/A

Location: (list below)

Address: 229 Wynn Drive, NW Huntsville, Alabama 35805

District: District 1 ☐ District 2 ☐ District 3 ☐ District 4 ☒ District 5 ☐

Additional Comments:

RESOLUTION NO. 23-____

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and he is hereby authorized to enter into a Memorandum of Agreement by and between the City of Huntsville and The Alabama School of Cyber Technology and Engineering, 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 as that certain document attached hereto as identified as “Memorandum of Agreement by and between the City of Huntsville and The Alabama School of Cyber Technology and Engineering.” consisting of four (4) pages, and the date of July 13, 2023, appearing on the margin of the first page, together with the signature of the President of the City Council, and an executed copy of said document after being permanently kept on file in the Office of the City Clerk of the City of Huntsville, Alabama; and

BE IT FURTHER RESOLVED that any monetary proceeds arising out of the terms of this Memorandum of Agreement, less purchase of construction materials and supplies and equipment rental for this project, be allocated to purchase of Public Works capital equipment and fleet.

ADOPTED this the 13th day of July, 2023.

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

APPROVED this the 13th day of July, 2023.

Mayor of the City of Huntsville,
Alabama

**MEMORANDUM OF AGREEMENT
BETWEEN THE CITY OF HUNTSVILLE,
ALABAMA AND THE ALABAMA SCHOOL
OF CYBER TECHNOLOGY AND
ENGINEERING**

STATE OF ALABAMA

COUNTY OF MADISON

MEMORANDUM OF AGREEMENT

THIS AGREEMENT, made and entered into this 13th day of July, 2023, by and between Alabama School of Cyber Technology and Engineering, a public educational and constitutional instrumentality of the State of Alabama, hereinafter referred to as “ASCTE”, and the City of Huntsville, a municipal corporation in the State of Alabama, hereinafter referred to as the “City”.

WITNESSETH:

WHEREAS, ASCTE owns the site (hereinafter referred to as the “Property”) located at 229 Wynn Drive, Huntsville, AL 35805, and has the need for Clearing and Grubbing, and Grading 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, ASCTE desires to engage the City for Clearing, Grubbing and Grading 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. Description of the Work. The City will complete the Work, which consists of the following components.

- a) Mobilization to site.
- b) Management of Project.

President or Pro Tem of the City Council
of the City of Huntsville, Alabama
Date: _____

- c) Clearing and Grubbing of approximately 2 acres in soccer field location as shown on the map attached hereto as Exhibit A.
- d) Strip 6" of Topsoil where proposed field to be located, and stockpile onsite.
- e) Cut and Fill to proposed elevations.
- f) Respread stockpile topsoil across proposed field.

2. Exclusions to Base Price Estimate

- a) Permits, License or ATC Fees
- b) Breaking or excavating of rock, either trench or mass
- c) Engineering/Construction staking for project
- d) Any undercut of unsuitable material
- e) Landscaping and Irrigation

3. Timeline. The City will commence the Work on or before June 15, 2023 and will complete the Work on or before Sept 15, 2023.

4. Cost of the Work. ASCTE shall pay the City One Hundred, Six Thousand and Five Hundred Dollars (\$106,500.00) 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 ASCTE.

5. The City understands that ASCTE 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 ASCTE Property. City understands that neither it, nor its employees, agents, or representatives, will be covered under any insurance policies held by ASCTE in the event that any City employee, representative, or agent is injured while on the ASCTE Property.

6. Termination. ASCTE 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. ASCTE 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. ASCTE 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 ASCTE Premises.

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. ASCTE 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.

9. Loss of City's Property. ASCTE 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. 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.

11. 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.

12. 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 ASCTE. Any attempted assignment, subcontract, or delegation under this MOA shall be void and of no effect.

13. 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.

14. 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.

15. Governing Law. This MOA shall be governed by and construed in accordance with the laws of the State of Alabama. Venue to enforce any provision of this Agreement shall in the state or federal courts sitting in Madison County, Alabama.

16. 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 13th day of July, 2023.

CITY OF HUNTSVILLE, ALABAMA

By: _____
Tommy Battle
Its: Mayor

ATTEST:

By: _____
Shaundrika Edwards
Its: City Clerk

**ALABAMA SCHOOL OF CYBER
TECHNOLOGY AND ENGINEERING**

By: _____
Its: