



Huntsville, Alabama

305 Fountain Circle
Huntsville, AL 35801

Cover Memo

Meeting Type: City Council Regular Meeting **Meeting Date:** 11/7/2024

File ID: TMP-4786

Department: Urban Development

Subject:

Type of Action: Approval/Action

Resolution to approve a Land Sale Incentive Agreement for conveyance by the City of a strip of real property for a commercial development project known as the old Lewter Hardware property, between the City of Huntsville and 223 Washington Huntsville, LLC.

Resolution No.

Finance Information:

Account Number: TBD

City Cost Amount: NA

Total Cost: NA

Special Circumstances:

Grant Funded: NA

Grant Title - CFDA or granting Agency: NA

Resolution #: NA

Location: (list below)

Address: Old Lewter Hardware property

District: District 1 District 2 District 3 District 4 District 5

Additional Comments:

RESOLUTION NO. 24-___

WHEREAS, 223 Washington Huntsville, LLC, a Delaware limited liability company (the "Company") holds fee simple title to certain real property in the downtown development area of the City (the "Development Site") upon which the Company plans to design, develop, construct, and install a five story office building and additional retail space (collectively, the "Development"); and

WHEREAS, for several years the City has explored opportunities to enhance economic development within its downtown area, and has determined that locating a project like the Development will promote and enhance many public benefits, including among others the City Benefits hereinafter described; and

WHEREAS, the Development will be constructed in accordance with heightened aesthetics as evidenced by plans the Company has developed in cooperation with the City (the "Development Plans"), which will include, among other things, an elevated sidewalk containing a patio area, retail entrances, and other features, which the Company and the City have determined is located, in part, on approximately 0.07 acres of City land approximately twenty feet wide that runs the length of the Development, all as more particularly described on Exhibit B to the Land Conveyance Incentive Agreement herein authorized (the "Adjacent Strip"); and

WHEREAS, the Company and the City have determined the Adjacent Strip must be conveyed to the Company in order for the Development to be constructed and developed in accordance with the Development Plans; and

WHEREAS, the City has determined to enter into a Land Conveyance Incentive Agreement between it and the Company, the form of which is attached hereto as Exhibit A (the "Land Incentive Conveyance Agreement"), to convey the Adjacent Strip for the Development; and

WHEREAS, the City expects the Development to expand and enhance the prosperity, contentment, and general welfare of the City and its citizens by, among other things (i) aiding in the elimination and remediation of blight and similar elements resulting from underuse of the Development Site; (ii) promoting enhancement and adaptive reuse of a high-visibility area of the City; (iii) helping improve the appearance and vibrancy of an underutilized area of the City; (iv) bringing substantial commercial activity to an underutilized area and fostering the use and development of underutilized commercial properties around the Development Site; (v) expanding commercial activity within the City; (vi) facilitating the growth and development of commercial sites and developments around the Development Site; (vii) supporting and expanding industrial and economic development within the City; and (viii) expanding jobs and employment opportunities within the City (collectively, the "City Benefits"); and

WHEREAS, the City Council of the City hereby further recites that the City's obligations under and in furtherance of the Land Conveyance Incentive Agreement and the transactions therein described are being undertaken pursuant to the authority of Amendment 772

to the Constitution of Alabama of 1901, as amended, recodified as Section 94.01 of the Official Recompilation of the Constitution of Alabama (“Amendment 772”), that such obligations are being undertaken by the City in furtherance of any power or authority authorized in Amendment 772, and that the City Council has determined that the expenditure of public funds and the conveyance of the Adjacent Strip for the purpose specified in the Land Conveyance Incentive Agreement will serve a valid and sufficient public purpose, notwithstanding any incidental benefit accruing to any private entity or entities;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Huntsville, Alabama, that the Council hereby authorizes and approves the Land Conveyance Incentive Agreement, and that the Mayor be, and he is hereby, authorized to execute, by and on behalf of the City, the Land Conveyance Incentive Agreement in substantially the form attached hereto and identified as “Land Conveyance Incentive Agreement”, with such changes thereto as shall be approved by the Mayor, along with such notices, certificates, instruments, agreements and other documents as shall be necessary or desirable in connection with the transactions contemplated by, or in furtherance of, the Land Conveyance Incentive Agreement.

ADOPTED this the 7th day of November, 2024

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

APPROVED this the 7th day of November, 2024

Mayor of the City of
Huntsville, Alabama

Exhibit A
Form of Land Conveyance Incentive Agreement

LAND CONVEYANCE INCENTIVE AGREEMENT

THIS LAND CONVEYANCE INCENTIVE AGREEMENT (this "Agreement") is hereby made and entered into on November 7th, 2024 (the "Effective Date") by and between the **CITY OF HUNTSVILLE**, an Alabama municipal corporation (the "City" or "Huntsville") and **223 WASHINGTON HUNTSVILLE LLC**, a Delaware limited liability company (the "Company"). Each of the City and the Company are sometimes herein referred to individually as a "Party", and, collectively, as the "Parties".

RECITALS

WHEREAS, the Company holds fee simple title to certain real property in the downtown development area of the City as more particularly described on Exhibit A hereto (the "Development Site") upon which the Company plans to design, develop, construct, install and operate a five story office building and approximately 4,900 square feet of retail space (collectively, the "Development"); and

WHEREAS, for several years the City has explored opportunities to enhance economic development within its downtown area, and has determined that locating a project like the Development will promote and enhance many public benefits, including among the City Benefits hereinafter described; and

WHEREAS, the Development will be constructed in accordance with heightened aesthetics as evidenced by plans the Company has developed in cooperation with the City (the "Development Plans"), which will include, among other things, an elevated sidewalk containing a patio area and other features, which the Parties have determined is located, in part, on land that is approximately twenty feet wide and runs the length of the Development, all as more particularly described on Exhibit B hereto (the "Adjacent Strip"), which the Parties have determined must be conveyed to the Company in order for the Development to be constructed in accordance with the Development Plans; and

WHEREAS, the City expects the Development to expand and enhance the prosperity, contentment, and general welfare of the City and its citizens by, among other things, (i) aiding in the elimination and remediation of blight and similar elements resulting from underuse of the Development Site; (ii) promoting enhancement and adaptive reuse of a high-visibility area of the City; (iii) helping improve the appearance and vibrancy of an underutilized area of the City; (iv) bringing substantial commercial activity to an underutilized area and fostering the use and development of underutilized commercial properties around the Development Site; (v) expanding commercial activity within the City; (vi) facilitating the growth and development of commercial sites and developments around the Development Site; (vii) supporting and expanding industrial and economic development within the City; and (viii) expanding jobs and employment opportunities within the City (collectively, the "City Benefits"); and

WHEREAS, the agreement of the City to convey the City Land to the Company is determined by the City to be in the public interest and is being made under and in furtherance of any power and authority authorized by Amendment 772 to the Constitution of Alabama of 1901,

recodified as Section 94.01 of the Constitution of Alabama of 2022 ("Amendment 772"), and the City has determined that the expenditure of public funds and use of public property for the purposes herein specified will serve a valid and sufficient public purpose, notwithstanding any incidental benefit accruing to any private entity or entities;

NOW, THEREFORE, for and in consideration of the foregoing premises, the covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby covenant, agree and bind themselves as follows:

ARTICLE I
REPRESENTATIONS AND WARRANTIES

Section 1.1 Representations and Warranties of the City. The City makes the following representations, warranties and findings:

(a) The City is duly organized as a municipal corporation under the laws of the State of Alabama and by action of its governing body has duly authorized the execution, delivery and performance of this Agreement.

(b) Neither the authorization, execution and delivery of, nor the performance of, this Agreement by City, violates, constitutes a default under or a breach of any agreement, instrument, contract, mortgage, indenture or other agreement to which the City is a party or to which the City or its assets or properties are subject.

(c) There is not now pending nor, to the knowledge of the City, threatened, any litigation affecting the City which questions (i) the validity or organization of the City, (ii) the members, titles or positions of the members of the governing body or the manner in which the officers of the City are selected or (iii) the subject matter of this Agreement.

Section 1.2 Representations and Warranties of the Company.

The Company hereby makes the following representations, warranties and findings:

(a) The Company is duly organized and validly existing as a limited liability company under the laws of the State of Delaware and has duly authorized its execution, delivery and performance of this Agreement.

(b) Neither the execution and delivery of this Agreement, nor the performance hereof, by the Company requires any consent of, filing with or approval of, or notice to, or hearing with any person or entity (including, but not limited to, any governmental or quasi-governmental entity) except for such consents, filings, notices and hearings described herein or already held or maintained.

(c) Neither the authorization, execution and delivery of, nor the performance of, this Agreement by the Company, violates, constitutes a default under or a breach of the Company's certificate of formation, operating agreement or other organizational documents of

the Company or any agreement, instrument, contract, mortgage or indenture to which the Company is a party or to which the Company or its assets are subject.

(d) There is not now pending nor, to the knowledge of the Company, threatened, any litigation affecting the Company which questions (i) the validity or organization of the Company, (ii) the titles or positions of the members of the Company or its officers or the manner in which they are elected or (iii) the subject matter of this Agreement.

ARTICLE II

Section 2.1 Conveyance of the Adjacent Strip. (a) Upon satisfaction of all of the following conditions (i) through (ii) in this Section 2.1, the City shall convey to the Company fee simple title to the Adjacent Strip pursuant to a statutory warranty deed in the form set forth on Exhibit C hereto, with such changes thereto as the Mayor (acting on behalf of the City) shall deem necessary or desirable and in furtherance of the terms and intentions of this Agreement (the "Deed"):

(i) the Company shall have obtained a final building permit and all other approvals required to Commence Construction (hereinafter defined) of the Development, and

(ii) the Company shall have provided a written certification to the City that the Company has obtained all cash funds, if any, and has finalized negotiations and signed all instruments for any financing required for any construction loan or other loan, for construction of the Development.

(b) The Adjacent Strip shall be conveyed to the Company at and for a price of \$10.00.

Section 2.2 As-Is Basis. The Adjacent Strip will be conveyed by the City on an "as-is" basis, and the City makes no representation or warranty concerning the Adjacent Strip, any conditions or other elements that may be on the Adjacent Strip, title to the Adjacent Strip or the suitability of the Adjacent Strip for the Development, it being the understanding of the Parties that the Company shall be solely responsible for evaluating the condition, title and suitability of the Adjacent Strip for the Development. The Company shall be solely responsible for obtaining any and all title insurance coverage desired by the Company with respect to the Adjacent Strip.

Section 2.3 The Development. The Company shall use its good faith efforts to Commence Construction of the Development within eighteen (18) months of the date of this Agreement (the "Commencement of Construction Deadline"). As used herein, "Commence Construction" or "Commenced Construction" shall mean the completion of the pouring of the foundation and footings for the Development.

Section 2.4 Return of the Adjacent Strip. In the event the Company fails to Commence Construction of the Development within two (2) years of receiving title to the Adjacent Strip, the Company shall remit and return the Adjacent Strip to the City, free of any and all liens,

encumbrances or other restrictions or entitlements that arose from and after the date the Adjacent Strip was conveyed by the City to the Company pursuant to the Conveyance Deed; provided, if the Company is then in the process of working to Commence Construction of the Development then this deadline may be extended for up to an additional 365 days by mutual agreement of the Parties (with the Mayor herein authorized to act on behalf of the City in agreeing to such an extension). The terms and conditions of this Section 2.4 shall survive the execution and delivery of this Agreement and the execution and delivery of the Deed.

ARTICLE III **MISCELLANEOUS PROVISIONS**

Section 3.1 Negation of Partnership. The Parties specifically acknowledge that no Party is acting as the agent of the other Party in any respect hereunder, and that each Party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. None of the terms or provisions of this Agreement shall be deemed to create a partnership or joint venture between or among the Parties, or cause them to be considered joint venturers or members of any joint enterprise. This Agreement is not intended and shall not be construed to create any third party beneficiary rights in any person who is not a party or a permitted transferee pursuant to this Agreement; and nothing in this Agreement shall limit or waive any rights any one or more of the Parties may have or acquire against any third person with respect to the terms, covenants or conditions of this Agreement.

Section 3.2 Severability. Invalidation of any of the provisions contained in this Agreement, or of the application thereof to any person, by judgment or court order, shall in no way affect any of the other provisions hereof or the application thereof to any other person or circumstance and the same shall remain in full force and effect, unless enforcement of this Agreement as so invalidated would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.

Section 3.3 Exhibits. The exhibits, to which reference is made herein, are deemed incorporated into this Agreement in their entirety by reference thereto.

Section 3.4 Amendment. Except as expressly provided in this Agreement, this Agreement may be modified or amended only by a written instrument, executed by each of the Parties to this Agreement.

Section 3.5 Entire Agreement. This Agreement and the exhibits hereto contain all the representations and the entire agreement among the Parties with respect to the subject matter hereof. Except as otherwise specified in this Agreement, any prior correspondence, memoranda, agreements, warranties or representations are superseded in total by this Agreement and exhibits hereto. Neither the conduct nor actions of the Parties, nor the course of dealing or other custom or practice between or among the Parties or any of them, shall constitute a waiver or modification of any term or provision of this Agreement.

Section 3.6 Ambiguity. The terms, conditions and provisions of this Agreement were agreed to in arm's length negotiations in which each Party was represented by independent counsel

of its own choosing. Accordingly, in the event of any ambiguity in this Agreement, such ambiguity shall not be resolved against any Party deemed the principal draftsman of this Agreement or the provision of this Agreement at issue.

Section 3.7 Counterpart Execution. For convenience, this Agreement may be executed by the Parties in multiple counterparts, each of which shall constitute an original, and all of which, when taken together, shall constitute one and the same Agreement.

Section 3.8 Liabilities of the City. The Company understands, acknowledges and agrees that the obligations of the City as set forth herein are limited by the limitations imposed on public bodies, municipalities and public corporations by the Alabama Constitution and under other applicable Alabama law.

Section 3.9 No Waiver. No consent or waiver, express or implied, by any Party hereto or to any breach or default by any other Party in the performance by such other Party of its obligations hereunder shall be valid unless in writing, and no such consent or waiver to or of one breach or default shall constitute a consent or waiver to or of any other breach or default in the performance by such other Party of the same or any other obligations of such Party hereunder. Failure on the part of any Party to complain of any act or failure to act of any other Party or to declare such other Party in default, irrespective of how long such failure continues, shall not constitute a waiver by such Party of its rights hereunder. The granting of any consent or approval in any one instance by or on behalf of any Party hereto shall not be construed to waive or limit the need for such consent in any other or subsequent instance.

IN WITNESS WHEREOF, the City and the Company have each caused this Agreement to be duly executed in its name, under seal, and the same attested, all by officers thereof duly authorized thereunto, and have caused this Agreement to be dated the Effective Date.

"CITY":

CITY OF HUNTSVILLE

ATTEST:

Shaundrika Edwards, City Clerk

By: _____
Tommy Battle, Mayor

(SEAL)

"COMPANY":

223 WASHINGTON HUNTSVILLE LLC, a
Delaware limited liability company

By: EMERGENT PROPERTIES MANAGER, LLC,
a Louisiana limited liability company

Its: Manager

By: FORMWORK DEVELOPMENT, LLC,
a Louisiana limited liability company

Its: Manager

By: _____
Name: David Hecht
Its: Manager

By: WJ PALMISANO, LLC,
a Louisiana limited liability company

Its: Manager

By: _____
Name: Wesley J. Palmisano
Its: Manager

EXHIBIT A
THE DEVELOPMENT SITE

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF MADISON, STATE OF ALABAMA AND IS DESCRIBED AS FOLLOWS:

ALL THAT PART OF A TRACT OF LAND BEING A PART OF BLOCK 302 ACCORDING TO THE QUIGLEY MAP OF THE CITY OF HUNTSVILLE, MADISON COUNTY, ALABAMA AND ALSO BEING THE SAME PROPERTY AS DESCRIBED IN TRACTS VI AND VII OF DEED BOOK 1057, PAGE 523, AND AS PLATTED IN DEED BOOK KKK, PAGE 587 AS RECORDED IN THE OFFICE OF THE JUDGE OF PROBATE OF MADISON COUNTY, ALABAMA, AND IS MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT A "PK" NAIL AT THE INTERSECTION OF THE NORTH RIGHT-OF-WAY OF HOLMES AVENUE AND THE WEST RIGHT-OF-WAY OF WASHINGTON STREET; THENCE ALONG THE WEST RIGHT-OF-WAY OF WASHINGTON STREET NORTH 32 DEGREES 44 MINUTES 35 SECONDS WEST 268.01 FEET TO A "PK" NAIL, BEING THE POINT OF BEGINNING OF SUBJECT TRACT; THENCE LEAVING SAID RIGHT-OF-WAY SOUTH 57 DEGREES 15 MINUTES 25 SECONDS WEST 153.53 FEET TO A "PK" NAIL; THENCE NORTH 32 DEGREES 44 MINUTES 35 SECONDS WEST 96.50 FEET TO A 1/2 INCH REBAR, BEING THE SOUTHWEST CORNER OF SUBJECT TRACT; THENCE NORTH 57 DEGREES 15 MINUTES 25 SECONDS EAST 153.53 FEET TO A "PK" NAIL ALONG THE WEST RIGHT-OF-WAY OF WASHINGTON STREET; THENCE ALONG SAID RIGHT-OF-WAY SOUTH 32 DEGREES 44 MINUTES 35 SECONDS EAST 96.50 FEET BACK TO THE POINT OF BEGINNING AND CONTAINING 0.34 ACRES, MORE OR LESS.

THE ABOVE-DESCRIBED PROPERTY DOES NOT CONSTITUTE THE HOMESTEAD OF ANY MARRIED GRANTOR OR ANY OF THEIR SPOUSES.

EXHIBIT B
THE ADJACENT STRIP

A parcel of land situated in Section 36, Township 3 South, Range 1 West of the Huntsville Meridian, Madison County, Alabama and being more particularly described as follows:

Being a portion of Lot 1, according to the Minor Plat of Lewter District West as recorded in Plat Book 2023, Page 255 in the Office of the Judge of Probate of Madison County, Alabama and also being a portion of the property described in a deed to the City of Huntsville as recorded in Deed Book 853, Page 1052 in the Office of the Judge of Probate of Madison County, Alabama and being more particularly described as follows:

Commence at the intersection of Northwesterly right-of-way line of Holmes Avenue Northeast and the Westerly right-of-way line of Washington Street; thence North 31 degrees 46 minutes 51 seconds West along said Westerly right-of-way line of Washington Street a distance of 379.52 feet to the Point of Beginning of the herein described tract and being a cut cross; thence South 58 degrees 43 minutes 25 seconds West (leaving aforementioned right-of-way line) a distance of 153.69 feet to a 5/8 inch rebar; thence North 31 degrees 52 minutes 18 seconds West a distance of 20.00 feet to a 1/2 inch rebar capped "HSM CA#1031"; thence North 58 degrees 43 minutes 25 seconds East a distance of 153.72 feet to said Westerly right-of-way line of Washington Street and being a 1/2 inch rebar capped "HSM CA#1031"; thence South 31 degrees 46 minutes 51 seconds East along said Westerly right-of-way line of Washington Street a distance of 20.00 feet to the Point of Beginning.

Containing 3,074 square feet or 0.07 acres, more or less.

**EXHIBIT C
FORM OF DEED**

THIS INSTRUMENT PREPARED BY:

Katherine Amos Beasley
Attorney for Grantor
Lanier Ford Shaver & Payne, PC
2101 W. Clinton Ave, Ste. 102
Huntsville, AL 35805
256-535-1100

STATE OF ALABAMA

COUNTY OF MADISON

STATUTORY WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, that in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration, to the undersigned, CITY OF HUNTSVILLE, an Alabama municipal corporation, herein referred to as the Grantor, in hand paid by the Grantee herein, the receipt of which is hereby acknowledged, the said Grantor does by these presents grant, bargain, sell and convey unto 223 WASHINGTON HUNTSVILLE, LLC, a Delaware limited liability company, herein referred to as the Grantee, the following described real estate lying and being in the County of Madison, State of Alabama, to-wit (the "Property"):

See Exhibit "1" attached hereto and incorporated herein, and said Property being further depicted in Exhibit "2" attached hereto and incorporated herein.

SUBJECT TO those ad valorem taxes not yet due and payable, those matters that would be reflected by a current survey of the Property, and all easements, restrictions, and rights of way of record ("Permitted Exceptions"); LESS AND EXCEPT AND RESERVING UNTO Grantor all existing easements and rights-of-way of record in favor of Grantor.

TO HAVE AND TO HOLD the Property unto said Grantee, its successors and assigns forever.

Grantor makes no representation, warranty, or covenant respecting the nature of the quality of the title to the Property hereby conveyed or the condition thereof, other than that Grantor has neither permitted or suffered any lien, encumbrance, or adverse claim to the Property since the date of acquisition thereof by Grantor except as otherwise set forth herein.

IN WITNESS WHEREOF, Grantor has caused this Statutory Warranty Deed to be duly executed on this _____ day of _____, 2024.

GRANTOR:

CITY OF HUNTSVILLE, an Alabama municipal corporation

By: _____
Tommy Battle, Mayor

ATTESTED:

By: _____
Shaundrika Edwards, City Clerk

STATE OF ALABAMA
COUNTY OF MADISON

I, the undersigned, a notary public in and for said County, in said State, hereby certify that Tommy Battle and Shaundrika Edwards, whose names as Mayor and City Clerk, respectively, of City of Huntsville, an Alabama municipal corporation are signed to the foregoing document, 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 for and as the act of said municipal corporation on the day the same bears day.

GIVEN under my hand and official seal this the _____ day of _____, 2024.

Notary Public
My Commission Expires: _____

Pursuant to and in accordance with Section 40-22-1 of the Code of Alabama (1975), the following information is offered in lieu of submitting Form RT-1:

Grantor's Address: 305 Fountain Circle, PO Box 308, Huntsville, AL 35801
Grantee's Address: 1730 Tchoupitoulas St., New Orleans, LA 70130
Property Address: +/- 0.07 acres located off Washington Street NE
(PPIN 581708 and portion of PPIN 128367)
Tax Assessor Value: \$44,220.00

Exhibit "1"
(Legal Description of the Property)

A parcel of land situated in Section 36, Township 3 South, Range 1 West of the Huntsville Meridian, Madison County, Alabama and being more particularly described as follows:

Being a portion of Lot 1, according to the Minor Plat of Lewter District West as recorded in Plat Book 2023, Page 255 in the Office of the Judge of Probate of Madison County, Alabama and also being a portion of the property described in a deed to the City of Huntsville as recorded in Deed Book 853, Page 1052 in the Office of the Judge of Probate of Madison County, Alabama and being more particularly described as follows:

Commence at the intersection of Northwesterly right-of-way line of Holmes Avenue Northeast and the Westerly right-of-way line of Washington Street; thence North 31 degrees 46 minutes 51 seconds West along said Westerly right-of-way line of Washington Street a distance of 379.52 feet to the Point of Beginning of the herein described tract and being a cut cross; thence South 58 degrees 43 minutes 25 seconds West (leaving aforementioned right-of-way line) a distance of 153.69 feet to a 5/8 inch rebar; thence North 31 degrees 52 minutes 18 seconds West a distance of 20.00 feet to a 1/2 inch rebar capped "HSM CA#1031"; thence North 58 degrees 43 minutes 25 seconds East a distance of 153.72 feet to said Westerly right-of-way line of Washington Street and being a 1/2 inch rebar capped "HSM CA#1031"; thence South 31 degrees 46 minutes 51 seconds East along said Westerly right-of-way line of Washington Street a distance of 20.00 feet to the Point of Beginning.

Containing 3,074 square feet or 0.07 acres, more or less.

Exhibit "2"
(Sketch of the Property)

