



Huntsville, Alabama

308 Fountain Circle
Huntsville, AL 35801

Cover Memo

Meeting Type: City Council Regular Meeting **Meeting Date:** 11/16/2023

File ID: TMP-3629

Department: General Services

Subject:

Type of Action: Approval/Action

Resolution authorizing the Mayor to enter into a Temporary Construction Easement Agreement between the City of Huntsville, Freedom Tower LLC and Brasfield & Gorrie LLC for the Office Building at Hays Farm.

Resolution No.

Finance Information:

Account Number: NONE

City Cost Amount: N/A

Total Cost: N/A

Special Circumstances:

Grant Funded: NONE

Grant Title - CFDA or granting Agency: N/A

Resolution #: N/A

Location: (list below)

Address: 1150 Haysland Road SW

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

Additional Comments:

Temporary Construction Easement for a parcel of land situated in Lot 1B of The Park Phase 3 at Hays Farm containing approximately 0278 acres.

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 Temporary Construction Easement Agreement between and among the CITY OF HUNTSVILLE, as Grantor, FREEDOM TOWER, LLC, an Alabama limited liability company, as Grantee, and BRASFIELD & GORRIE, L.L.C., a Delaware limited liability company, as General Contractor, on behalf of the City of Huntsville, which said Agreement is substantially in words and figures the same as that certain document attached hereto and identified as “Temporary Construction Easement Agreement between and among the City of Huntsville, Freedom Tower, LLC, and Brasfield & Gorrie, L.L.C.,” consisting of ten (10) pages, including exhibits, and the date of November 16, 2023, 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 after being signed by the Mayor, shall be permanently kept on file in the Office of the City Clerk of the City of Huntsville, Alabama.

NOW, THEREFORE, BE IT FURTHER RESOLVED, the Mayor be and he is hereby authorized to execute and exercise the Temporary Construction Easement Agreement on behalf of the City of Huntsville, with such changes, if any, as the Mayor deems desirable and necessary, including the authority to execute all other documents relevant or relating to effect and complete the temporary construction easement and the transaction contemplated therein.

ADOPTED this the 16th day of November, 2023.

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

APPROVED this the 16th day of November, 2023.

Mayor of the City of Huntsville,
Alabama

THIS INSTRUMENT PREPARED BY:
KATHERINE AMOS BEASLEY
ATTORNEY FOR GRANTOR
WILMER & LEE, PA
100 WASHINGTON STREET
HUNTSVILLE, ALABAMA 35801
256-533-0202

STATE OF ALABAMA

COUNTY OF MADISON

TEMPORARY CONSTRUCTION EASEMENT AGREEMENT

This TEMPORARY CONSTRUCTION EASEMENT AGREEMENT (“**Agreement**”) is executed to be effective as of the **16th** day of **November**, 2023 (the “**Effective Date**”), between and among, CITY OF HUNTSVILLE, an Alabama municipal corporation (“**Grantor**”), FREEDOM TOWER, LLC, an Alabama limited liability company (“**Grantee**”), and BRASFIELD & GORRIE, L.L.C., a Delaware Limited Liability Company (“**General Contractor**”) (Grantor, Grantee, and General Contractor are each sometimes referred to herein individually as a “**Party**” and collectively as the “**Parties**”).

RECITALS:

WHEREAS, Grantor owns that certain parcel of real property situated in the City of Huntsville in Madison County, Alabama, more particularly described on **Exhibit “A”** attached hereto (the “**Grantor Parcel**”); and

WHEREAS, Grantee owns that certain parcel of real property situated in the City of Huntsville in Madison County, Alabama, located adjacent to the Grantor Parcel, and more particularly described on **Exhibit “B”** attached hereto (the “**Grantee Parcel**”; and, together with the Grantor Parcel, the “**Parcels**”); and

WHEREAS, Grantee intends to construct a multi-story office building and other related improvements (the “**Project**”) upon the Grantee Parcel; and

WHEREAS, incident to the Project on the Grantee Parcel, FLORIDA MECHANICAL SYSTEMS, INC. (the “**Crane Contractor**”) pursuant to its agreement with the General Contractor, will assemble, use, operate, and later dismantle a temporary crawler crane (the “**Crane**”) on or around the Grantee Parcel, with the construction of the Project requiring the Crane to enter onto and upon a portion of the Grantee Parcel in order to perform certain construction activities related to and in furtherance of the Project; and

WHEREAS, Grantor is desirous of granting a temporary construction easement to Grantee for such purposes subject to and in accordance with this Agreement.

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

NOW, THEREFORE, the Parties, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, do hereby grant and agree as follows regarding the Grantor Parcel:

1. **Grant of Temporary Construction Easement.** In consideration of a payment of Five Hundred and No/100 Dollars (\$500.00) (“**Easement Fee**”), from General Contractor to Grantor, along with other good and valuable consideration, Grantor hereby grants to Grantee and General Contractor, and its contractors, subcontractors, employees and assigns (collectively, the “**Permitted Users**”), a temporary construction easement to drive, use, and operate the Crane over, on, upon, and within a portion of the Grantor Parcel, as more particularly described in **Exhibit “C”** and as depicted in **Exhibit “D”** attached hereto and incorporated herein (“**Easement Area**”), to the extent required in connection with the operation or use of the Crane and/or construction of the Project (the “**Crane Easement**”).

2. **Termination.** The Crane Easement will automatically terminate upon the earlier of: (a) General Contractor’s removal and disassembly of the Crane from the Parcels, or (b) April 30, 2024. In the event the Crane has not been removed and disassembled by April 30, 2024, then this Agreement shall be automatically extended for an thirty (30) days, after which time the Crane Easement shall automatically terminate. Upon termination, the Easement Area shall be restored by the General Contractor and/or Crane Contractor to its current (“As-Is”) condition meaning the same or similar condition as existed on the Effective Date;; including, but not limited to, removal of any aggregate, crane mats, or other materials utilized in connection with the use or operation of the Crane and/or construction of the Project.

3. **Operation.** General Contractor shall cause its Crane Contractor to operate its crane in a safe and workmanlike manner and in accordance with all applicable laws and regulations. At all times during the use of the Crane Easement, General Contractor shall undertake all reasonable and prudent safety precautions to protect the Grantor Parcel, all property adjoining the Grantor Parcel, and all persons from any damage or injury that could occur during the use or operation of the Crane and the performance of construction activities relating to the Project. The Permitted Users shall not park or cause the crane to rest over any portion of the Grantor Parcel when the Crane is not in operation, except for temporary stoppages incidental to the active performance of work not to exceed thirty (30) minutes.

4. **Indemnification.** To the fullest extent permitted by Alabama law, Grantee and General Contractor shall defend, indemnify and hold harmless the Grantor from and against any and all bodily injury or property damage arising from, out of, or on account of Grantee, General Contractor, or their contractors, agents or employees in the exercise of the rights granted herein; provided, however, this paragraph does not indemnify Grantor against liability for damages arising out of bodily injury to persons or damage to property to the extent caused by or resulting from the intentional acts or negligence of Grantor, its agents, tenants, residents, employees, or invitees, or caused by or resulting from any violation of the terms or provisions of this Agreement. The indemnification obligation shall expire one (1) year after the removal of the tower crane used for the Project.

5. **Insurance.** During the term of this Agreement, General Contractor and Grantee shall maintain commercial general liability insurance of \$2,000,000.00 per occurrence and aggregate limits of \$4,000,000.00. Such insurance shall be maintained in full force and effect during the term of the Agreement. Grantee and General Contractor shall cause the Grantor to be named as additional insured under such policies. A certificate showing that such insurance

coverage is in effect, shall be delivered to Grantor, prior to commencing any work within the Easement Area before operating any Crane. Such insurance shall be maintained in full force and effect during the term of the Agreement.

6. **Permits and Safety Certificates.** Prior to erection or operation of the Crane, the Permitted Users shall obtain all permits required by law, including those required by the City of Huntsville, and all other applicable governmental authorities, and shall maintain permits at all times the Crane is in operation. General Contractor shall deliver a copy of all permits to Grantor upon request. The Permitted Users shall maintain appropriate safety certificates from all local, state, federal, and other associations, as may be required to certify or license the Crane. General Contractor shall report any inspection violation related to or reasonably affecting the operation of the Crane to Grantor within forty-eight (48) hours of receiving any such violation.

7. **Authority and Binding Effect.** The persons executing this Agreement warrant that they have the authority to do so. This Agreement binds and benefits the Parties and their respective successors and assigns, and all benefits and burdens created by this Agreement shall run with the land with respect to the Parcels and shall bind all successors in title thereto.

8. **Miscellaneous.** This Agreement shall not be modified, amended, or terminated without the prior written agreement of the Parties. This Agreement may be executed and delivered in multiple counterparts, which together shall constitute one single binding and enforceable agreement. This Agreement shall be governed by and construed in accordance with Alabama law, without regard to its conflict of law provisions.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the dates set forth below.

[Signatures and Acknowledgements appearing on the following pages.]

GRANTOR:

CITY OF HUNTSVILLE, an Alabama
municipal corporation

By: _____
Tommy Battle, Mayor

ATTEST:

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 the CITY OF HUNTSVILLE, an Alabama municipal corporation, are signed to the foregoing instrument, and who are known to me, acknowledged before me on this day that, being informed of the contents of this instrument, they, as such officers and with full authority, executed the same for and as the act of said City of Huntsville, an Alabama municipal corporation, as of the day the same bears date.

Given under my hand and official seal this the _____ day of _____, 2023.

NOTARY PUBLIC
My commissioner expires: _____

[Grantee Signature Page to Temporary Crane Easement Agreement.]

GRANTEE:

FREEDOM TOWER, LLC, an Alabama
limited liability company

By: _____
Name: _____
Its: _____

STATE OF ALABAMA

COUNTY OF MADISON

I, the undersigned Notary Public in and for said county in said state, hereby certify that _____, whose name as _____ of FREEDOM TOWER, LLC, an Alabama limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, s/he, as such _____ and with full authority, executed the same voluntarily for and as the act of said limited liability company on the day the same bears date.

Given under my hand this ____ day of _____, 2023.

Notary Public
My commission expires: _____

GENERAL CONTRACTOR:

BRASFIELD & GORRIE, L.L.C., a
Delaware Limited Liability Company

By: _____

Name: _____

Its: _____

STATE OF ALABAMA

COUNTY OF MADISON

I, the undersigned Notary Public in and for said county in said state, hereby certify that _____, whose name as _____ of BRASFIELD & GORRIE, L.L.C., a Delaware Limited Liability Company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such _____ and with full authority, executed the same voluntarily for and as the act of said limited liability company on the day the same bears date.

Given under my hand this ____ day of _____, 2023.

Notary Public

My commission expires: _____

EXHIBIT "A"

(Legal Description of Grantor Parcel)

Lot 1B, according to that Minor Plat of The Park Phase 3 at Hays Farm, as recorded in Plat Book 2022, Pages 402-403 of the Probate Records of Madison County, Alabama.

EXHIBIT “B”

(Legal Description of Grantee Parcel)

Lot 1A, according to that Final Plat of The Park Phase 4 at Hays Farm, as recorded in Plat Book 2023, Pages 266-267 of the Probate Records of Madison County, Alabama.

EXHIBIT "C"

(Legal Description of Easement Area)

A parcel of land situated in Lot 1B of The Park Phase 3 at Hays Farm (Plat book 2022, Page 402) being in Section 31, Township 4 South, Range 1 West of the Huntsville Meridian, Madison County, Alabama more particularly described as follows:

Beginning at the southwest corner of Lot 5B of The Park Phase 3 at Hays Farm (plat book 2022 page 402); thence run South 25 degrees 29 minutes 08 seconds East 40.00 feet; thence run South 65 degrees 47 minutes 23 seconds West 221.71 feet; thence run 91.28 feet along a curve to the right having a radius of 490.00 feet, a delta angle of 10 degrees 40 minutes 24 seconds, and a chord bearing and distance of South 70 degrees 45 seconds 44 minutes West 91.15 feet; thence run North 03 degrees 41 minutes 34 seconds East 42.15 feet to the south line of Lot 1A of The Park Phase 4 at Hays Farm (plat book 2023 page 266); thence run 68.22 feet along the south line of Lot 1A of said The Park Phase 4 at Hays Farm (plat book 2023 page 266) and a curve to the left having a radius of 450.00 feet, a delta angle of 08 degrees 41 minutes 12 seconds, and a chord bearing and distance of North 70 degrees 07 minutes 59 seconds East 68.16 feet; thence run North 65 degrees 47 minutes 23 seconds East 223.94 feet along the south line of Lot 1A of said The Park Phase 4 of Hays Farm (plat book 2023 page 266) back to the Point of Beginning.

Said parcel containing 0.278 acres (12,101 square feet) more or less.

SUBJECT PROPERTY
0.278 ACRES
12,101 SQ. FT.

BOUNDARIES AND DISTANCES:
 - North boundary: N 03°41'34"E 42.15'
 - East boundary: E 03°41'34"W 156.33'
 - South boundary: S 65°41'23"E 223.94' (DECS)
 - West boundary: W 65°41'23"E 223.94' (DECS)
 - West boundary curve data:
 - CB = 170°07'59"E
 - CH = 8.22"
 - L = 8°41'12"
 - Δ = 6°41'12"
 - R = 450.00'
 - R = 490.00'
 - Δ = 10°40'24"
 - L = 91.28'
 - T = 45.77'
 - CHRD BR = 57°45'44"W
 - CHRD DIST = 91.15'

POINT OF BEGINNING
SURFCEMENTED SUB OF
THE PARK PHASE 3 AT HAYS FARM
(PLAT BOOK 2022 PAGE 402)
SECTION 31, T4S, R1E
MADISON COUNTY, ALABAMA

SCHOOL CAMPUS

LINE TABLE

16-05-31-0-000-0852031
CHARTSVILLE, AL
DEED BOOK 2023 PAGE 18213

LINE TABLE		
LINE	DIRECTION	IDENTITY