

**ROUTING SLIP
CONTRACTS AND AGREEMENTS**

Originating Department: Legal

Council Meeting Date: 6-13-13

Department Contact: Peter Joffrion

Phone # 427-5026

Contract or Agreement: Air Rights Lease

Document Name: Air Rights Lease with Health Care Authority

City Obligation Amount: _____

Total Project Budget: _____

Uncommitted Account Balance: _____

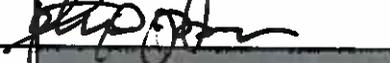
Account Number: _____

Procurement Agreements

<u>Not Applicable</u>	<u>Not Applicable</u>
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Grant-Funded Agreements

<u>Not Applicable</u>	Grant Name: _____
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Department	Signature	Date
1) Originating		6-7-13
2) Legal		6-7-13
3) Finance 		6/10
4) Originating		6-7-13
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number _____

Meeting Type: Regular

Meeting Date: 6/13/2013

Action Requested By:
Legal

Agenda Item Type
Resolution

Subject Matter:

Air Rights Lease with Health Care Authority

Exact Wording for the Agenda:

Resolution authorizing the Mayor to enter into a lease agreement for Air and Space Rights between the City of Huntsville and the Health Care Authority of the City of Huntsville – Gallatin Street Air Space and Rights. (City Attorney)

Note: If amendment, please state title and number of the original

Item to be considered for: Action

Unanimous Consent Required: No

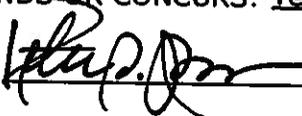
Briefly state why the action is required; why it is recommended; what Council action will provide, allow and accomplish and; any other information that might be helpful.

Associated Cost:

Budgeted Item: Yes

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head: _____



Date: 6-10-13

RESOLUTION NO. 13-_____

WHEREAS, THE HEALTH CARE AUTHORITY OF THE CITY OF HUNTSVILLE, an Alabama health care authority (the "Authority"), desires to construct an elevated, enclosed structure for utilities ingress, egress and transmission over a portion of Gallatin Street;

WHEREAS, to construct said elevated structure, the Authority must obtain certain air space and rights above said portion of Gallatin Street as more particularly described in the Lease Agreement attached hereto (the "Air Space and Rights");

WHEREAS, the City Council of the City of Huntsville finds: (1) that construction, operation, use, maintenance, repair and replacement of said elevated structure will benefit the City of Huntsville and the public, (2) that the Air Space and Rights are no longer needed for public or municipal purposes, and (3) that the retention of the Air Space and Rights will not benefit the City of Huntsville or the public.

NOW, THEREFORE, 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 lease agreement of said Air Space and Rights on behalf of the City of Huntsville, a municipal corporation within the State of Alabama, which said lease agreement is substantially in words and figures similar to that certain document attached hereto and identified as "Lease Between the City of Huntsville and The Health Care Authority of the City of Huntsville - Gallatin Street Air Space and Rights," consisting of ten (10) pages including Exhibit A, and the date of June 13, 2013, 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 Lease Agreement being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this the 13th day of June, 2013.

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

APPROVED this the 13th day of June, 2013.

Mayor of the City of
Huntsville, Alabama

STATE OF ALABAMA)
)
 COUNTY OF MADISON) **LEASE AGREEMENT BETWEEN THE CITY
) OF HUNTSVILLE AND THE HEALTH CARE
) AUTHORITY OF THE CITY OF HUNTSVILLE –
) GALLATIN STREET AIR SPACE AND RIGHTS**

LEASE AGREEMENT

THIS LEASE AGREEMENT (the “Lease”) is made and entered into as of the _____ day of June, 2013, by and between the CITY OF HUNTSVILLE, a municipal corporation within the State of Alabama, as Lessor (the “Lessor”), and THE HEALTH CARE AUTHORITY OF THE CITY OF HUNTSVILLE, an Alabama health care authority, as Lessee (the “Lessee”).

WITNESSETH:

FOR AND IN CONSIDERATION of (a) the Rent herein reserved and to be paid to Lessor by Lessee, (b) the herein contained demise, lease, and rent of the Leased Premises by Lessor to Lessee, (c) the mutual agreements, covenants and terms of this Lease, (d) the execution, acknowledgment and delivery of this Lease by Lessor and by Lessee and (e) other good and valuable consideration, the receipt and sufficiency of all of which is hereby expressly acknowledged by Lessor and Lessee, and intending to be legally bound hereby, Lessor and Lessee agree and covenant with and unto each other, as follows:

1. **Demise:** Lessor hereby demises, leases and rents unto Lessee, its successors and assigns, as Lessee, for itself and its successors and assigns, hereby leases and rents from Lessor, subject to the restrictions and limitations regarding use thereof as provided in Section 2, below, the following-described real property situated, lying and being in the City of Huntsville, County of Madison, State of Alabama, to-wit:

Real property described in Exhibit “A” attached hereto and, by this reference, incorporated herein and made a part hereof, and denominated as the “Leased Premises.”

TO HAVE AND TO HOLD unto Lessee, its successors and assigns, the Leased Premises upon the agreements, covenants and terms set forth herein.

2. **Use of Leased Premises:** Lessee shall use the Leased Premises solely for the purpose of construction, operation, use, maintenance, repair and replacement of an elevated and enclosed structure for utility installations, pipes and wiring, together with any appurtenances, equipment, facilities and systems necessary to carry out any of the foregoing permitted purposes (collectively referred to herein as the “airspace facility” or “facility”). In no event shall Lessee use the Leased Premises for any other purpose, including, but not limited to, the installation, erection, or display of any sign or advertisement. Lessee shall, at its expense, comply with all present and future federal, state, and local laws, ordinances, rules and regulations in connection with its lease and use of the Leased Premises. Lessee shall not use the Leased Premises for an illegal purpose or violate any statute, regulation, rule, or order of any government body nor create or allow to exist any nuisance or trespass nor do any act on or about the Leased Premises or bring anything onto or into the Leased Premises which will in any way increase the rate of insurance on the Leased Premises nor damage or deface the Leased Premises.

3. **Term:** The term of this Lease is for ninety-nine (99) years commencing at 8:00 a.m. CST on the 1st day of June, 2013, and ending at 7:59 a.m. CST on the 1st day of June, 2112.

**_____
 President of the City Council of the
 City of Huntsville, Alabama
 Date: _____**

4. **Rent:** As monetary consideration of and for this Lease, Lessee has this day paid Lessor the sum of Ninety-nine and No/100 Dollars (\$99.00), the receipt and sufficiency of which are hereby expressly acknowledged by Lessor and by Lessee as a good, valuable and binding consideration of and for this Lease.

5. **Disclaimer of Liability and Indemnification:** Lessor shall not at any time be liable to Lessee or to any other person or entity for any loss, injury, death or damage regardless of the cause. Lessee shall defend, indemnify and hold harmless Lessor from and against any and all liability, loss or damage which Lessor may incur as a result of claims, demands, costs (including attorneys' fees) or judgments against it arising from Lessee's lease and use of the Leased Premises.

6. **Notices:** All notices or demands hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail return receipt requested, to the following addresses:

If to Lessor, to: Office of the City Attorney
for the City of Huntsville, Alabama
Attention: City Attorney
308 Fountain Circle
Huntsville, AL 35801

If to Lessee, to: The Health Care Authority of the
City of Huntsville
Attention: Chief Executive Officer
101 Sivley Road
Huntsville, Alabama 35801

7. **Legal Authority:** Lessor covenants, represents and warrants with and unto Lessee, its successors and assigns, that (i) Lessor has all necessary authority and power to enter into this Lease and to lease the Leased Premises, (ii) this Lease has been duly authorized and approved by Lessor in accordance with applicable law as evidenced by Ordinance No. 13-_____ of the City Council of the City of Huntsville, Alabama, and (iii) the Leased Premises are surplus and not needed for public or municipal purposes. Lessor acknowledges that Lessee, for Lessee and for Lessee's successors and assigns, is detrimentally relying upon Lessor's foregoing covenants, representations and warranties (1) in entering into this Lease and (2) in constructing, using and maintaining substantial costly and valuable improvements within the Leased Premises. Lessee represents that it has all necessary authority and power to enter into this Lease.

8. **Access to Facility:** The proposed airspace facility shall be designed and constructed in a manner which will permit access to the facility for the purpose of inspection, maintenance and reconstruction when necessary.

9. **Abandonment or Nonuse; Termination:** In the event of (a) Lessee's abandonment of the Leased Premises, or (b) Lessee's non-use of the Leased Premises for the facility for a period of in excess of twelve (12) consecutive months, Lessor shall have the right to terminate this Lease. Upon termination of this Lease by Lessor due to Lessee's abandonment or specified period of non-use of the Leased Premises, Lessee shall remove the facility completely from the Leased Premises at Lessee's sole expense. If Lessee fails to so remove the facility from the Leased Premises within a reasonable period of time following such termination due to abandonment or specified period of nonuse, Lessor may cause the facility to be removed from the Leased Premises and bill the costs of such removal to Lessee.

10. Maintenance by Lessee: The facility to occupy the airspace will be maintained so as to assure that the structures and the area within the public right-of-way boundaries will be kept in good condition, both as to safety and appearance, and that such maintenance will be accomplished in a manner so as to cause no unreasonable interference with use of the public right-of-way. In the event Lessee fails in its maintenance obligations, Lessor shall have the right to enter the premises to perform such work, and bill the Lessee and Lessee shall promptly reimburse Lessor for the costs incurred.

11. Recordation: Lessee may, at its cost and expense, cause the original of this Lease to be filed for record, recorded, and indexed under Lessor's and Lessee's names in the real estate records in the Office of the Judge of Probate of Madison County, Alabama.

12. Assignment and Subletting: Lessee shall not, by operation of law or otherwise, assign this Lease in whole or part, or sublet the Leased Premises, without the prior consent of Lessor's City Council in each instance, except in connection with the sale, merger, reorganization or reincorporation of Lessee.

13. Electrical Power and Other Necessary Utilities: Lessee shall be responsible for obtaining and maintaining any utility service to the Leased Premises that it desires.

14. General Provisions: This Lease, along with all exhibits and attachments or other documents affixed hereto or referred to herein (including, without limitation, the legal description of the Leased Premises), embodies the entire agreement, intent and understanding of Lessor and Lessee as to the transaction contemplated and evidenced hereby and merges herein all prior and contemporaneous agreements, covenants, discussions, representations, statements and understandings heretofore made between Lessor and Lessee as to such transaction, whether written, oral or both. Any agreements, covenants, representations, statements or understandings by and between Lessor and Lessee as to such transaction not contained herein are and shall be null and void, unenforceable and of no force and effect. Neither this Lease nor any covenant, provision or term hereof, shall be amended, changed or modified in any respect, nor may any novation or waiver regarding the same be effectuated, without Lessor and Lessee first executing a writing, in equal dignity to this Lease, embodying their complete and full agreement and understanding as to such amendment, change, modification, novation or waiver. This Lease and all of its covenants, provisions and terms, are to be construed, controlled, enforced, governed and interpreted in accordance with its plain meaning by and under the laws of the United States of America and of the State of Alabama. As this Lease has been drafted jointly by Lessor and Lessee, after extensive consultation with their respective counsel, no presumption against the draftsmen of this Lease shall be indulged in the construction and/or interpretation hereof. Lessor's and Lessee's respective successors and assigns shall be fully bound by this Lease and each and every covenant, provision and term hereof just as they are bound. Each and every covenant, provision and term of this Lease inures, and shall inure, to the benefit of Lessor and Lessee and their respective successors and assigns.

IN WITNESS WHEREOF, Lessor and Lessee have caused these presents to be executed by their respective duly authorized officers as of the _____ day of June, 2013.

ATTEST:

THE CITY OF HUNTSVILLE, ALABAMA
a municipal corporation within the
State of Alabama, Lessor

By: _____
Charles E. Hagood,
As its City Clerk-Treasurer

By: _____
Thomas M. Battle, Jr.,
As its Mayor

THE HEALTH CARE AUTHORITY OF
THE CITY OF HUNTSVILLE,
an Alabama health care authority, Lessee

ATTEST:

By: _____

As its: _____

By: _____

As its: _____

THIS INSTRUMENT WAS JOINTLY PREPARED BY: (1) J. CLARK PENDERGRASS, OF LANIER FORD SHAVER & PAYNE P.C., ATTORNEYS-AT-LAW, 2101 WEST CLINTON AVENUE, SUITE 102, HUNTSVILLE, ALABAMA 35805, TELEPHONE NUMBER: (256) 535-1100 AND (2) PETER S. JOFFRION, CITY ATTORNEY FOR THE CITY OF HUNTSVILLE, ALABAMA, POST OFFICE BOX 308, HUNTSVILLE, ALABAMA 35804, TELEPHONE NUMBER: (256) 427-5026.

STATE OF ALABAMA)
)
COUNTY OF MADISON)

I, _____, a Notary Public in and for said County in said State, hereby certify that Thomas M. Battle, Jr. and Charles E. Hagood, whose names as Mayor and Clerk-Treasurer, respectively, of the City of Huntsville, a municipal corporation within the State of Alabama, are signed to the foregoing Lease Agreement, and who are known to me, acknowledged before me on this day that, being informed of the contents of the foregoing Lease Agreement, they, as such officers and with full authority, executed the same voluntarily for and as the act of the City of Huntsville, a municipal corporation within the State of Alabama, as of the day the same bears date.

GIVEN under my hand and official seal on this the ____ day of June, A.D., 2013.

My Commission Expires:

State of Alabama
County of Madison [SEAL]

STATE OF ALABAMA)
)
COUNTY OF MADISON)

I, _____, a Notary Public in and for said County in said State, hereby certify that _____ and _____, whose names as _____ and _____, respectively, of The Health Care Authority of the City of Huntsville, an Alabama health care authority, are signed to the foregoing Lease Agreement, and who are known to me, acknowledged before me on this day that, being informed of the contents of the foregoing Lease Agreement, they, as such officers and with full authority, executed the same voluntarily for and as the act of The Health Care Authority of the City of Huntsville, an Alabama health care authority, as of the day the same bears date.

GIVEN under my hand and official seal on this the ____ day of June, A.D., 2013.

My Commission Expires:

State of Alabama
County of Madison [SEAL]

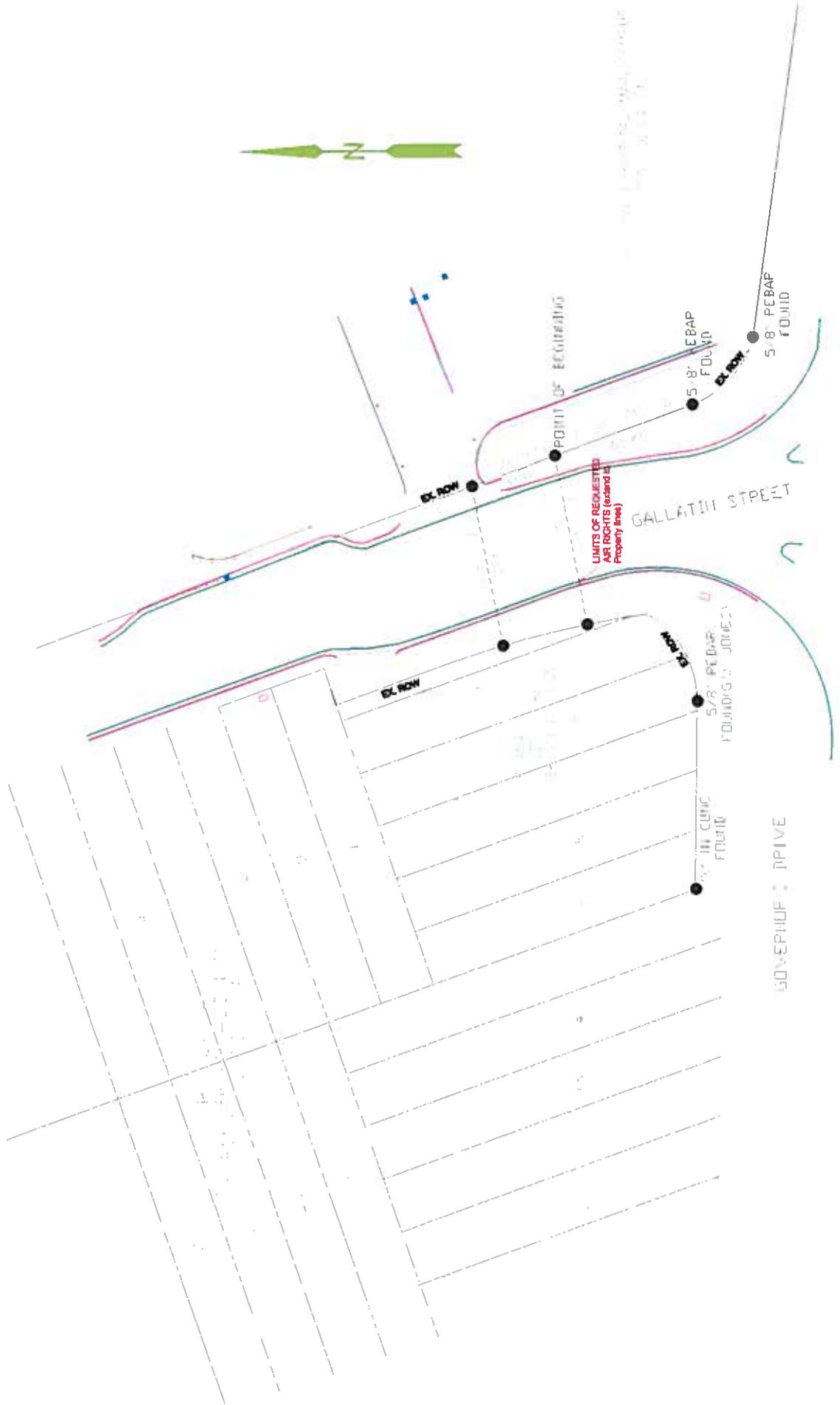
EXHIBIT "A"

"Air Space and Rights"

All air space and rights located within that certain area (a) the lower plane exterior boundary of which is described as an elevation of 645.15 feet, and the upper horizontal plane exterior boundary of which is described as an elevation of 671.43, both above mean sea level, and (b) the vertical plane exterior boundaries of which are described as the vertical planes extended upward from the surface of the ground of the external boundaries of the following described tract or parcel of real property:

All that part of Northeast Quarter of Section 1, Township 3 South, Range 1 West of the Huntsville Meridian, City of Huntsville, Madison County, Alabama more particularly described as follows:

Commencing at a 5/8" rebar found on the Easterly right of way of Gallatin Street(Alabama State Plane Coordinates-East Zone NAD 1983 North 1,536,186.457 East 431,525.379); thence along said Easterly right of way North 20 degrees 10 minutes 15 seconds West 65.86 feet to the Point of Beginning; thence leaving said Easterly right of way South 79 degrees 35 minutes 17 seconds West 77.25 feet to a point on the Westerly right of way of Gallatin Street; thence along said Westerly right of way and around a curve to the left having a radius 454.72 feet, a chord bearing N 13 degrees 58 minutes 25 seconds West, and a chord distance 38.98 feet to a point; thence leaving said Westerly right of way North 79 degrees 35 minutes 17 seconds East 72.98 feet to a point on the Easterly right of way of Gallatin Street; thence along said Easterly right of way South 20 degrees 10 minutes 15 seconds East 39.48 to the Point of Beginning, containing 0.066 acres (2,911.76 sq. ft.), more or less.



100' Easement, 100' Easement
100' 01' 00' 00'

POINT OF BEGINNING

5/8' PEABAP FOUND

5/8' PEABAP FOUND

LIMITS OF REQUESTED ASR RIGHTS (enclosed in Property lines)

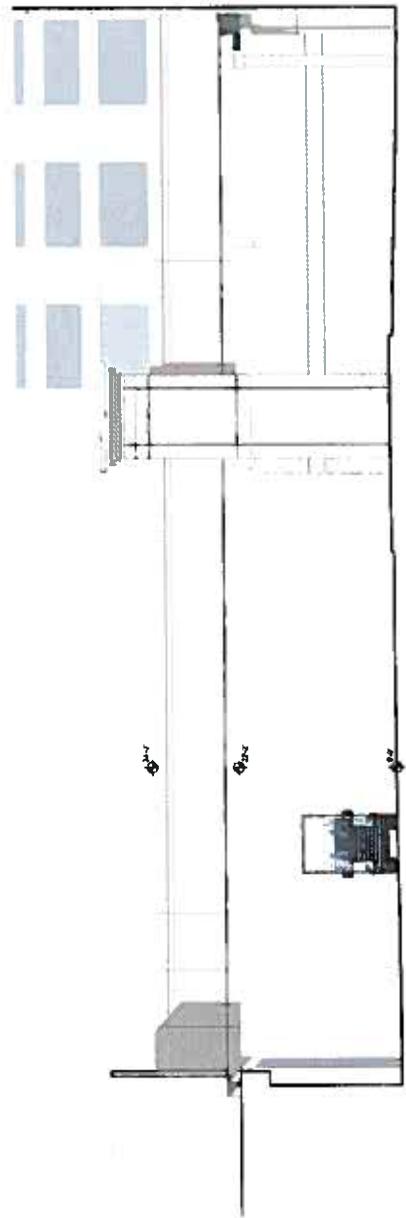
GALLATH STREET

EX. ROW

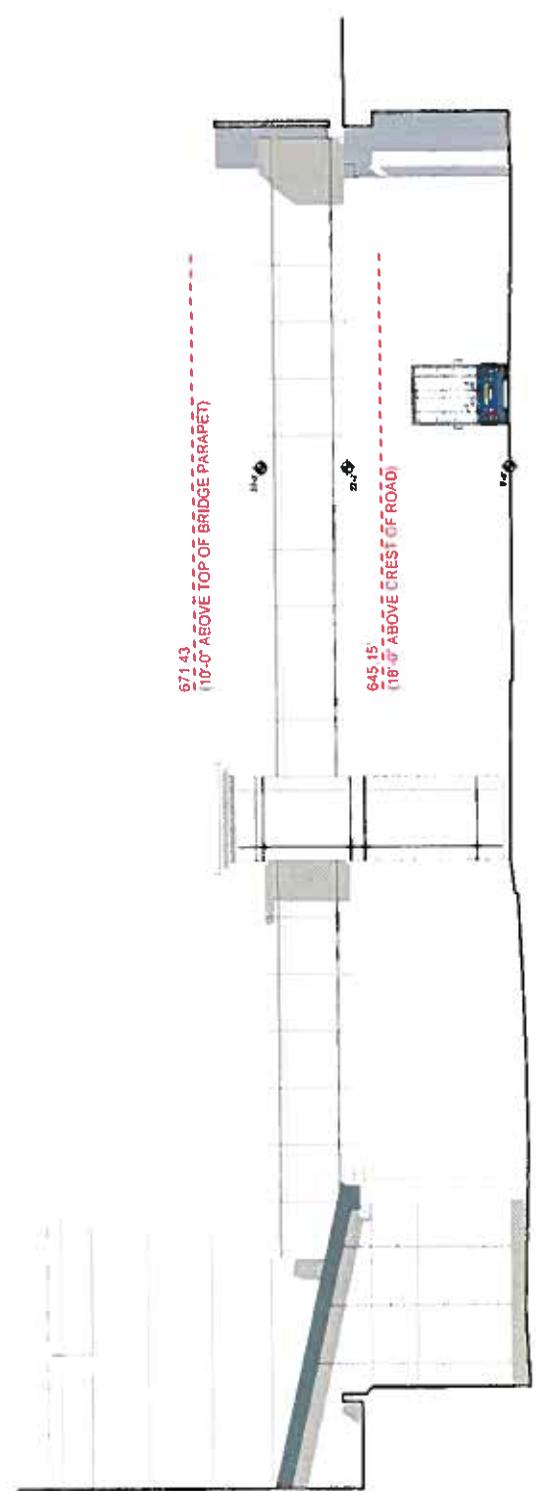
5/8' PEABAP FOUND

1/2' IN CLINIC FOUND

GOVERNOR DRIVE



SOUTH BRIDGE ELEVATION
1/8" = 1'-0"



NORTH BRIDGE ELEVATION
1/8" = 1'-0"

New Utility Bridge

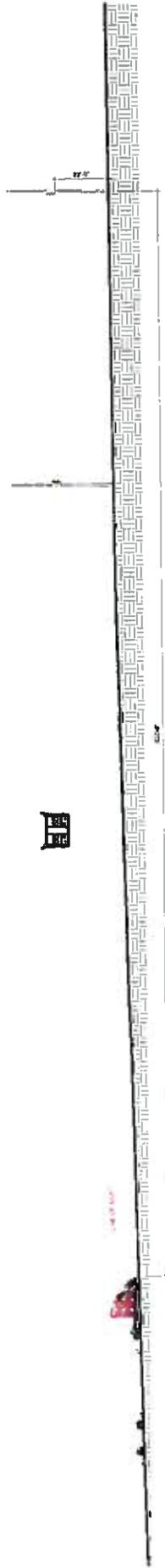


GROUND LEVEL PLAN
1/16" = 1'-0"



SITE MAP

New Utility Bridge



SECTION THROUGH GALLATIN STREET
1" = 20' @



VIEW FROM GOVERNOR'S MEDICAL TOWER



VIEW DOWN GALLATIN STREET - 450 FT FROM INTERSECTION

New Utility Bridge

