

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number _____

Meeting Type: Regular

Meeting Date: 9/12/2013

Action Requested By:
Legal

Agenda Item Type
Resolution

Subject Matter:

Agreement between the City and the Board of Education.

Exact Wording for the Agenda:

Resolution authorizing the Mayor to execute an Agreement between the City of Huntsville and the Huntsville City Board of Education.

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.

[Empty box for providing details on why the action is required, recommended, and what council action will provide, allow, and accomplish.]

Associated Cost:

Budgeted Item: Yes

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head: _____

Date: _____

RESOLUTION NO. 13-____

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and is hereby authorized to enter into a Agreement by and between the City of Huntsville, and the Huntsville City Board of Education, on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to that certain document attached hereto and identified as "Agreement between the City of Huntsville and The Huntsville City Board of Education," consisting of _____ (____) pages and the date of September 12, 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 document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this the 12th day of September, 2013.

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

APPROVED this the 12th day of September, 2013.

Mayor of the City of
Huntsville, Alabama

AGREEMENT

THIS AGREEMENT ("Agreement") made and entered into by and among The **Huntsville City Board of Education**, a political subdivision of the State of Alabama (the "Board"); and **The City of Huntsville, Alabama**, a municipal corporation in the State of Alabama (the "City").

RECITALS

A. The Board and the City have heretofore entered into that certain nonbinding Memorandum of Understanding (including all schedules, exhibits, and attachments thereto) which is attached hereto as Exhibit A and incorporated herein by reference (the "MOU-B/C");

B. The Board and the City desire to adopt the terms and conditions set forth in the MOU-B/C as the terms of a contract to be binding upon the Board and the City pursuant to and in accordance with this Agreement;

NOW THEREFORE, for and in consideration of good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and the mutual benefits and burdens of the parties as set forth herein, the parties agree as follows:

1. Except as provided in Section 2 hereof, the MOU-B/C, including without limitation all of the terms, conditions, provisions and other matters set forth therein and all of the schedules, exhibits, and attachments thereto, is hereby incorporated herein by reference and adopted and made binding in its entirety as if set out in full herein, except as expressly modified hereby. All terms used herein, unless otherwise defined herein, shall have the meaning ascribed to them in the MOU-B/C.

2. Any provision or statement of the MOU-B/C regarding the nonbinding nature thereof, including without limitation, the statement that the MOU-B/C "creates no contractual obligation" set forth in the second paragraph of the MOU-B/C, is hereby deleted and of no further force or effect.

3. The parties acknowledge and agree that (i) this Agreement constitutes a binding agreement of the parties regarding the matters set forth in the MOU-B/C; and (ii) any and all actions or conditions required to be completed or satisfied prior to the execution of this Agreement have been fully and finally completed and satisfied in all respects.

4. The Board agrees that all necessary Board actions have been taken to provide the Superintendent of the Board with the authority to execute this Agreement thereby binding the Board to the agreements, representations, covenants, obligations and other provisions of this Agreement.

5. The City agrees that all necessary City actions, including without limitation all necessary actions by the City Council, have been taken to provide the Mayor of the City with the authority to execute this Agreement thereby binding the City to the agreements, representations, covenants, obligations and other provisions of this Agreement.

6. The parties, amending the time for Closing on the School Site as set out in the MOU-B/C, agree that the closing (the "Closing Date") of the conveyance of the School Site from the City to the Board shall occur not later than ten (10) business days next following both (a) the closing on the School Site sale to the City by Hylis and (b) the City's receipt of the approved LOMAR-F with respect to the School Site. The Existing School Property conveyances by the Board to the City shall occur in accordance with the MOU-B/C.

7. The Board, at its cost and expense, shall order and procure any and all commitments and/or policies of title insurance pertaining to the School Site and the City, at its cost and expense, shall order and procure any and all commitments and/or policies of title insurance pertaining to the existing J.O. Johnson High School property and the existing Virgil I. Grissom High School property to be conveyed from the Board to the City at closing (the "Existing School Property").

8. The closing costs associated with the conveyance of the School Site from the City to the Board shall be paid by the Board and the closing costs associated with the conveyance of the Existing School Property from the Board to the City shall be paid by the City. The term "closing costs" shall include, but is not limited to, percolation tests fees, property evaluation costs and expenses, document recording fees and deed and mortgage recordation taxes payable to the Probate Judge of Madison County, Alabama, and other governmental authorities for recording of documents, the cost of preparation of all documents to be used in the transaction evidenced hereby, all charges associated with the financing of the acquisition of the School Site and the Existing School Property, and generally all costs and expenses associated with or resulting from the conveyance of the School Site from the City to the Board and the conveyance of the Existing School Property from the Board to the City. Appraisal fees for the Existing School Property shall be paid in accordance with the MOU-B/C. The Grantor in each instance shall pay the cost of preparation of the warranty deeds. "Closing costs" shall not include the attorneys fees incurred by the Board or the City. The parties acknowledge that based on their investigation, there will be no ad valorem tax due with respect to the School Site for the 2014 tax year beginning October 1, 2013, and the School Site will not be subject to roll back taxes due to the fact that the School Site has been under current use assessment by Hylis, Inc. Should any roll back tax become due and payable with respect to the School Site, the Board and the City agree that ½ of such roll back shall be paid by the City and ½ of such roll back shall be paid by the Board.

9. On the Closing Date, the City shall deliver to the Board the following:
- i. A statutory warranty deed in form and substance the same as the deed from Hylis conveying the School Site to the City.
 - ii. All other documents deemed reasonably necessary by City and Board to consummate the transaction evidenced hereby in accordance with this Agreement including, but not limited to closing statements, Internal Revenue Service Reporting forms, and affidavits, certificates and documents required for compliance with 2008 Alabama Acts 504.
 - iii. A First American Title Insurance Company seller/owner affidavit.

10. On the Closing Date, the Board shall deliver to the City the following:

- i. The purchase price for the School Site.

11. Upon the Closing Date, the City shall deliver to the Board full and exclusive possession of the School Site.

12. On the dates established for closings of the Existing School Property, Board shall deliver to City the following:

- i. A statutory warranty deed in form and substance as agreed to by the City and the Board conveying the subject Existing School Property to the Board

- ii. All other documents deemed reasonably necessary by City and Board to consummate the transaction evidenced hereby in accordance with this Agreement including, but not limited to closing statements, Internal Revenue Service Reporting forms, and affidavits, certificates and documents required for compliance with 2008 Alabama Acts 504.

- 13.iii A First American Title Insurance Company seller/owner affidavit in form and substance the same as the seller/owner affidavit delivered by City to the Board for the School Site closing. On the dates established for closings of the Existing School Property, City shall deliver to Board the following:

- i. The purchase price for the subject Existing School Property.

14. Should the Board or the City cause, create, permit and/or suffer any duty, liability, obligation, or responsibility to any other person, firm, or entity for payment of any broker's fee, commission, finder's fee, sales commission or other compensation, regarding either the School Site or the Existing School Property, such party shall forever protect, defend, indemnify and hold harmless the other party from and against any and all such duty, liability, obligation, and responsibility.

15. The parties agree that this Agreement is binding on the parties and inures to the benefit and burden of the parties hereto.

16. All notices, requests, demands, and other communications hereunder shall be in writing and shall be deemed to have been duly given and delivered upon personal delivery or, if mailed, upon depositing such notice in the United States mail, return receipt requested, with first class postage prepaid thereon, and

- (i) if mailed to the City, addressed to:

The Mayor of the City of Huntsville
308 Fountain Circle
Huntsville, Alabama 35801

(ii) if mailed to the Board, addressed to:

The Superintendent of The Huntsville City Board of Education
200 White Street
Huntsville, Alabama 35801

With a copy to:

J. R. Brooks
Y. Albert Moore
Lanier Ford Shaver & Payne P.C.
2101 Clinton Ave W
Suite 102 (P.O. Box 2087)
Huntsville, Alabama 35801 (35804)

Any party may change the address to which notices are to be delivered to such party, by notice given in accordance with this section to the other party.

- 17. The recitals set forth above are an integral part of this Agreement.
- 18. Time is of the essence in this Agreement.
- 19. Each of the agreements, representations, covenants, obligations and other provisions of this Agreement shall survive (i) the execution and delivery of this Agreement, (ii) the execution and delivery of the schedules, exhibits, and attachments hereto, and (iii) the execution and delivery of all documents and deeds necessary for the consummation of the transactions herein contemplated.
- 20. This Agreement, and the exhibits, attachments, and schedules hereof or referred to herein or therein, constitute the complete agreement of the parties with respect to the subject matter hereof and supersede any and all prior discussions, negotiations and understandings related thereto.
- 21. This Agreement may be amended, modified or supplemented only in writing executed by each of the parties hereto.
- 22. This Agreement may be executed in one or more counterparts, which, when taken together, shall constitute one and the same Agreement, and facsimile signatures may be accepted as original signatures.

IN WITNESS WHEREOF, the parties hereto have each caused this Agreement to be executed by their duly authorized representatives on separate counterpart signature pages attached hereto, and this Agreement shall be effective as of the date of the last signature hereto.

(Signatures begin on the following page)

AGREEMENT

[COUNTERPART SIGNATURE PAGE OF THE BOARD]

The Huntsville City Board of Education

E. Casey Wardynski
Superintendent

Date of Execution: _____

STATE OF ALABAMA)

:

MADISON COUNTY)

I, the undersigned, a notary public in and for said county in said state, hereby certify that E. Casey Wardynski, whose name as Superintendent of The Huntsville City Board of Education, 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 said instrument, he, in his capacity as such Superintendent, and with full authority, executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this _____ day of _____, 2013.

Notary Public

[NOTARIAL SEAL]

My commission expires: _____

AGREEMENT

[COUNTERPART SIGNATURE PAGE OF THE CITY]

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

By: _____
Tommy Battle, Mayor (SEAL)

Date of execution: _____

ATTEST:

By: _____
Charles Hagood, City Clerk-
Treasurer

STATE OF ALABAMA)

:

MADISON COUNTY)

I, the undersigned, a notary public in and for said county in said state, hereby certify that Tommy Battle, whose name as Mayor of The City of Huntsville, Alabama, 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 said instrument, he, in his capacity as such Mayor, and with full authority, executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this _____ day of _____, 2013.

Notary Public

[NOTARIAL SEAL]

My commission expires: _____

EXHIBIT A

MOU-B/C
(See attached)

**MEMORANDUM OF UNDERSTANDING
BETWEEN BOARD AND CITY REGARDING
ACQUISITION OF TWO NEW HIGH SCHOOL SITES BY BOARD
SALE OF TWO EXISTING HIGH SCHOOL SITES BY BOARD TO CITY and
CONSTRUCTION OF ROADS AND RELATED INFRASTRUCTURE AT SOUTH HIGH
SCHOOL SITE BY CITY**

THIS MEMORANDUM OF UNDERSTANDING ("MOU-B/C") made and entered into by and between **The Huntsville City Board of Education**, a political subdivision of the State of Alabama, (the "Board"), and **The City of Huntsville, Alabama**, a municipal corporation in the State of Alabama (the "City").

The Board, and the City, understand, acknowledge, and agree, that this MOU-B/C creates no contractual obligation but merely presents the framework pursuant to which the Board's Superintendent and the City's Mayor will recommend that costs and responsibility be allocated by and between the Board and the City for (a) the acquisition of real property by the Board for a new south Huntsville high school (b) the acquisition of real property by the Board for a new north Huntsville high school site (c) the acquisition of road rights of way and utility and drainage easements by the City to support the new south Huntsville high school, (d) the cost of engineering, design, and installation of the road and utility infrastructure to support the new south Huntsville high school and (e) the sale of the existing Virgil I. Grissom High School and J.O. Johnson High School campuses by the Board to the City.

The Board, the City and Hylis, Inc. ("Hylis") have heretofore entered into a Memorandum of Understanding ("MOU"), a copy of which is attached hereto as Exhibit "M", initialed by the parties, and by this reference incorporated herein. The Real Estate Purchase Option Agreement entered into between the Board and Lucile C. Lacy, Individually and as Personal Representative of the Estate of Gladys J. Lacy, Deceased and Walter L. Lacy ("Lacy Option"), is attached hereto as Exhibit "L", initialed by the parties and by this reference incorporated herein.

In furtherance of the foregoing, the Board and the City agree as follows:

1. Provided the School Site is deemed by Board to be a satisfactory and acceptable site for a high school, City shall purchase the School Site from Hylis as set out in Section 5 of the MOU for the sum of \$2,531,267.00. Within thirty (30) days thereafter, Board shall purchase the School Site from City for \$2,531,267.00, construct a replacement high school on the School Site, and discontinue use of the present Virgil I. Grissom High School. Hylis represents that the School Site was appraised on behalf of Hylis, Inc., for \$9,830,000.00 as of January 30, 2013.
2. Provided the Premises described in the Lacy Option is deemed to be a satisfactory and acceptable site for a grades 7-12 school, Board shall purchase the Premises, construct a replacement grades 7-12 school on the Premises described in the Lacy Option, and discontinue use of the present J. O. Johnson High School. Board represents that the Premises described in the Lacy Option was appraised on behalf of the Board for \$688,000.00 as of April 24, 2013.

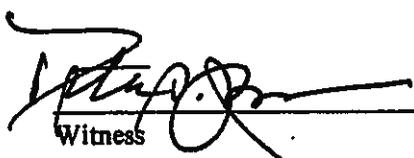
3. The City will coordinate with Hylis for the engineering and design of the Haysland Road extension and the Connector Road, and the related infrastructure in the vicinity of the School Site, as contemplated by Sections 10 and 11 of the MOU, with Hylis paying directly to its engineering firm the fees and expenses associated with such engineering and design.
4. The City shall pay for the installation of the roads and related infrastructure as contemplated by Section 11 of the MOU (when such payment becomes due).
5. Upon the acceptance of the Haysland Road extension (approximately 3,870 linear ft), the Connector Road (approximately 1195 linear ft), and the related infrastructure, all as contemplated by Section 11 of the MOU into the City's maintenance program, the sums paid by the City pursuant to paragraph 4 of this MOU-B/C shall be determined (hereinafter "City's Road and Infrastructure Expenditure".) The cost of the Haysland Road extension and related infrastructure exceeding an extension of 3870 linear feet, shall not be included in the City's Road and Infrastructure Expenditure.
6. City shall acquire from Board the existing campuses of the present Virgil I. Grissom High School and J.O. Johnson High School for a total of \$8,000,000.00. The City's Road and Infrastructure Expenditure shall be credited to the benefit of the City against the purchase price of the Board's existing Virgil I. Grissom High School and J.O. Johnson High School campuses to be paid to the Board. City shall pay the balance due (\$8,000,000.00 less the City's Road and Infrastructure Expenditure) to Board on October 1, 2016 or the date both campuses are conveyed to City, whichever occurs later.
7. Within 45 days of the Board's acquisition of the School Site, Board shall obtain from Garrett & Associates Appraisals a fair market value appraisal of the existing Virgil I. Grissom High School Site, the cost of such appraisal to be paid one-half by the Board and one-half by the City. Closing of the purchase of the existing Virgil I. Grissom High School Site by the City from the Board shall occur within ninety (90) days of the occupancy of the school constructed by the Board on the School Site.
8. Within 45 days of the Board's acquisition of the Premises described in the Lacy Option, Board shall obtain from Garrett & Associates Appraisals a fair market value appraisal of the existing J.O. Johnson High School Site, the cost of such appraisal to be paid one-half by the Board and one-half by the City. Closing of the purchase of the existing J.O. Johnson High School Site by the City from the Board shall occur within ninety (90) days of the occupancy of the school constructed by the Board on the Premises described in the Lacy Option.
9. Board shall retain the right to participate by having a representative present in all design meetings pre-bid, and construction meetings post bid, for the Haysland Road extension and the Connector Road extension to protect its interest in the management of the City's Road and Infrastructure Expenditure which is credited against the City's \$8,000,000.00 commitment arising under this MOU-B/C. Board shall not, however, have any decision making authority regarding the design and construction of the Haysland Road extension and the Connector Road, and such authority shall remain solely with City.

IN WITNESS WHEREOF, the parties hereto have caused this MOU-B/C to be executed by their duly authorized representatives, and this MOU-B/C to be dated as of the date of the last signature.



Witness

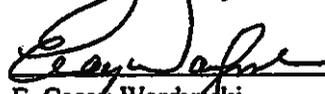
Witness



Witness

Witness

The Huntsville City Board of Education



E. Casey Wardynski
Superintendent

Date of Execution: 5-13-2013

The City of Huntsville, Alabama



Tommy Battle
Mayor

Date of Execution: 5-3-13

ROUTING SLIP CONTRACTS AND AGREEMENTS

Originating Department: Legal

Council Meeting Date: 9/12/2013

Department Contact: Peter Joffrion

Phone # 427-5026

Contract or Agreement: Agreement with the Board of Education

Document Name: Agreement with the Board of Education

City Obligation Amount: _____

Total Project Budget: _____

Uncommitted Account Balance: _____

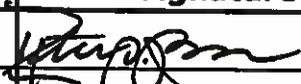
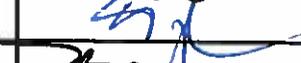
Account Number: _____

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		9.6.13
2) Legal		9-6-13
3) Finance 		9/6
4) Originating		9-6-13
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		