

# CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number \_\_\_\_\_

Meeting Type: Regular

Meeting Date: 4/10/2014

Action Requested By:  
Engineering

Agenda Item Type  
Resolution

Subject Matter:

Agreement with The Building Church

Exact Wording for the Agenda:

Resolution authorizing the Mayor to enter into a Temporary Easement and Agreement between the City of Huntsville and The Building Church, Project No. 65-14-SP21

**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.

Agreement with The Building Church granting a temporary construction easement across Indian Creek Greenway near Slaughter Road for construction of sanitary sewer facilities. Account No. N/A. No City funds involved.

Associated Cost:

Budgeted Item: Select...

MAYOR RECOMMENDS OR CONCURS: Select...

Department Head: Kathy Metz

Date: 3/31/14

# ROUTING SLIP CONTRACTS AND AGREEMENTS

Originating Department: **Engineering**

Council Meeting Date: **4/10/2014**

Department Contact: **Lynn Majors**

Phone # **256-427-5201**

Contract or Agreement: **Temporary Easement and Agreement**

Document Name: **The Building Church TCE Project No. 65-14-SP21**

City Obligation Amount: **0**

Total Project Budget: **0**

Uncommitted Account Balance: **0**

Account Number: **N/A**

## Procurement Agreements

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

<b><u>Not Applicable</u></b>	<b>Grant Name:</b>
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Department	Signature	Date
1) Originating	<i>Kathryn Majors</i>	<i>3/31/14</i>
2) Legal	<i>Mary Clabo</i>	<i>4/2/14</i>
3) Finance	<i>[Signature]</i>	<i>4/3/14</i>
4) Originating		
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		

**RESOLUTION NO. 14-\_\_\_\_\_**

**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 Temporary Easement and Agreement between the City of Huntsville and The Building Church, an Alabama non-profit corporation, 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 "Temporary Easement and Agreement between the City of Huntsville, Alabama and The Building Church" consisting of ten (10) pages including Exhibit A, and the date of April 10, 2014, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, and 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 10th day of April, 2014.

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

**APPROVED** this the 10th day of April, 2014.

\_\_\_\_\_  
Mayor of the City of  
Huntsville, Alabama

STATE OF ALABAMA     )  
                                      )  
COUNTY OF MADISON    )

**TEMPORARY EASEMENT AND AGREEMENT**

This Temporary Construction Easement and Agreement (hereinafter referred to as "Agreement") made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2014, by and between the City of Huntsville, a municipal corporation within the State of Alabama, as Grantor, and The Building Church, an Alabama non-profit corporation as Grantee.

**WITNESSETH:**

**WHEREAS**, the Grantee is owner of property upon which it is constructing a church, ("the Church Property"); and

**WHEREAS**, the Grantor is the owner of certain lands immediately adjacent to the Church Property;

**WHEREAS**, in connection with the construction of its church the Grantee will be conducting certain activities on the Church Property that will require temporarily accessing certain portions of the Grantor's adjacent property; and

**WHEREAS**, a portion of Grantee's activities which require access to Grantor's property includes the installation of sanitary sewer improvements which are expected to become public infrastructure upon dedication and acceptance; and

**WHEREAS**, the Grantor is desirous of granting to Grantee a temporary, non-exclusive, construction easement over, under and upon those portions of Grantor's property hereinafter set forth for purposes of conducting those activities hereinafter described.

**NOW, THEREFORE**, in consideration of the foregoing clauses, which clauses are hereby made a part of this Agreement, the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby covenant and agree as follows:

1.     **Definitions.**   When used in this Agreement the following words, term or phrases shall have the following meanings unless the context clearly indicates otherwise:

*Burdened Property* means and refers to the Grantor's lands described in Exhibit A, which will be burdened by the Easement herein granted.

*Conjunctions.*   In a provision involving two or more items, conditions, provisions or events, which items, conditions, provisions or events are connected by the conjunction "and," "or" or "either . . . or," the conjunction shall be interpreted as follows:

(1) "And" indicates that all the connected terms, conditions, provisions or events apply.

(2) "Or" indicates that the connected terms, conditions, provisions or events apply singly or in any combination.

(3) "Either . . . or" indicates that the connected terms, conditions, provisions or events apply singly but not in combination.

*Easement* means and refers to collectively the Sanitary Sewer Construction Easement and the Grading Activity Easement.

*Grading Activity* means and refers to that portion of the grading activity conducted by the Grantee in connection with the improvements to the Church Property in accordance with approved plans and specifications within the lands described in Exhibit A hereto.

*Grading Activity Easement* means and refers to the temporary easement herein granted across the lands described in Exhibit A hereto for the limited purpose of conducting the Grading Activity.

*Greenway* means and refers to the Grantor's Indian Creek Greenway including all improvements and appurtenances thereto.

*Grantor* means and refers to the City of Huntsville, Alabama, and where necessary for the purposes of the administration and enforcement of this Agreement shall include the City's delegated authorities or representatives authorized to perform as contemplated.

*Grantor's Improvements* means and refers to collectively those improvements and appurtenances of the Grantors that are within, over, under or upon the Burdened Property including the Grantor's existing sanitary sewer facilities and the Greenway.

*Including or include* does not limit a term to a specified example.

*Offsite Improvements* means and refers to collectively the Sanitary Sewer Facilities and Grading Activity.

*Sanitary Sewer Construction Easement* means and refers to the temporary easement herein granted across the lands described in Exhibit A hereto for the limited purpose of installing the Sanitary Sewer Facilities to serve the Church Property in accordance with the approved plans and specifications.

*Sanitary Sewer Facilities* means and refers to that portion of the sanitary sewer facilities intended to serve the Church Property and which are to be installed by the

Grantee in accordance with approved plans and specifications within the lands described in Exhibit A hereto.

**2. Easement.**

(a) *Sanitary Sewer Construction Easement.* Subject to the terms and conditions of this Agreement, Grantor does hereby grant to the Grantee, its successors and assigns, a temporary, non-exclusive construction easement, including any rights and privileges reasonably necessary for the exercise of said easement (excluding, however, the right to interfere with the Grantor's existing sewer facilities, including without limitation their use, operation and maintenance), to that portion of the Burdened Property described in Exhibit A hereto, which is incorporated herein by reference, for the sole purpose of installing the Sanitary Sewer Facilities at Grantee's sole cost, expense and risk and for no other purpose.

(b) *Grading Activity Easement.* Subject to the terms and conditions of this Agreement, Grantor does hereby grant to the Grantee, its successors and assigns, a temporary, non-exclusive construction easement, including any rights and privileges reasonably necessary for the exercise of said easement (excluding, however, the right to interfere with the Grantor's existing sewer facilities, including without limitation their use, operation and maintenance) to that portion of the Burdened Property described in Exhibit A hereto, which is incorporated herein by reference, for the sole purpose of the Grading Activity at Grantee's sole cost, expense and risk and for no other purpose.

**3. Term.**

(a) *Sanitary Sewer Easement.*

(1) Subject to subparagraph (2) below, the Sanitary Sewer Easement rights granted hereunder shall be for a limited duration of 48 hours only. Grantee shall commence and complete the installation of the facilities and restoration required in accordance with paragraph 5 below within the 48-hour period, subject any extensions granted by the City Engineer, or his designee, (hereinafter referred to as "City Engineer") at his sole discretion, and subject to weather delays.

(2) At the time the Sanitary Sewer Facilities are television pipe inspected and air tested prior to their acceptance as public infrastructure into the Grantor's maintenance program and deficiencies are found to exist, the Grantee shall have, under the Easement rights granted herein and subject to the terms and conditions of this Agreement, an additional period of 48 hours to enter onto that portion of the Burdened Property described in Exhibit A hereto in order to correct the deficiencies found to exist. Such activity shall be subject to the same requirements as the initial construction of said facilities, including maintenance and restoration of the Greenway.

(b) *Grading Activity Easement.* The Grading Activity Easement rights granted hereunder shall commence on the date first written above and shall, unless



revoked sooner as hereinafter provided, terminate at such time as the Grading Activity, is complete, but no later than the date the Grantor accepts the Sanitary Sewer Facilities as public.

**4. Construction.**

(a) Grantee shall submit three (3) sets of detailed engineering drawings to the City Engineer for approval prior to commencing any work. No work shall begin until the City Engineer approves the detailed plans and issues written permission to proceed with construction. All work shall be done by a licensed general contractor and performed in accordance with the City of Huntsville Standard Specifications and all other requirements of the City of Huntsville, including construction methods approved by the City Engineer.

(b) Grantee shall notify the City Engineer at least two (2) days prior to beginning construction. In the event Grantee fails to give the City Engineer the required notification, then this Agreement, including the Easement rights granted hereunder, shall be automatically revoked, and acts contrary to said revocation will cause Grantee to be in default of this Agreement and the Grantor shall have the option of retaining all or any portion of any monies paid to the Grantor pursuant to paragraph 8 herein as liquidated damages.

(c) In addition to any other or additional construction or installation requirements, the Greenway will be cut a minimum width of 20 feet and replaced in kind with asphalt immediately upon backfilling the storm sewer and sanitary sewer trenches.

**5. Restoration.** Upon completion of the work contemplated hereunder or in the event this Agreement is terminated or revoked, the Grantee shall restore the Burdened Property, including Grantor's Improvements, to its original condition. Such restoration includes replacing the base of the Greenway, repaving the Greenway, re-seeding the area, restoring the berms, and repairing or replacing any damaged or destroyed property. All restoration work shall be performed to the specifications and instructions of the City Engineer, and shall be subject to his inspection and approval. Failure to complete the restoration to the satisfaction of the City Engineer within the time specified by the City Engineer shall cause Grantee to be in default of this Agreement and the Grantor shall, in addition to any other available remedies in law or equity, have the option of retaining all or any portion of any monies paid to the Grantor pursuant to paragraph 8 herein as liquidated damages.

**6. Conditions.** During any construction and installation, Grantee shall do each of the following:

(a) In connection with the Sanitary Sewer Easement, post appropriate signs to warn Greenway users of construction and closures of the Greenway to through pedestrian traffic, including cordoning off the Greenway with safety fencing, cones and warning signs to warn pedestrians of the closure.

(b) Limit the closure of the Greenway to twelve (12) hours maximum per crossing.

(c) Maintain the Greenway during construction of the Sanitary Sewer Facilities, including restoration and correction of deficiencies in the Sanitary Sewer Facilities contemplated under subparagraph 3(a)(2) above, until approval of the work by the City Engineer. After backfill is performed on each crossing of the Greenway, Grantee shall provide and maintain a temporary walk consisting of densely compacted graded stone in order to provide a smooth walking surface. The temporary walk shall be maintained until such time that the permanent surface is completed on the Greenway walking path.

(d) Keep the construction area safe. All excavations during construction shall be secured off and protected.

7. **Emergency work.** Notwithstanding anything to the contrary in this Agreement, in the event the Grantor through its City Engineer, in his discretion, has to perform any emergency work to make the area safe or complete any undone work, then the cost incurred by the Grantor will be deducted from the security established in paragraph 8.

8. **Security.** Grantee shall provide to the Grantor, at the time of execution of this Agreement by the parties, as security for the satisfactory compliance with the terms of this Agreement, the sum of Five Thousand (\$5,000) Dollars, which shall be in the form of a cashiers check or letter of credit from a local financial institution suitable in form and content to the City Attorney, or his designee. In the event Grantee complies fully with the terms of this Agreement, then the Grantor shall refund or release the security posted by the Grantee pursuant to this paragraph 8.

9. **Remedies; revocation.** In addition to any other remedies available to the Grantor in law or equity, in the event Grantee shall fail to abide by any terms of this Agreement, then it shall be in default and the Grantor shall have the option of revoking the Agreement and terminating the Easement granted hereunder or retaining all or any portion of any monies paid to the Grantor pursuant to paragraph 8 herein as liquidated damages. In the event this Agreement is revoked or otherwise terminated, Grantee shall immediately commence to restore the Burdened Property as provide for in paragraph 4 and 5 above.

10. **Grantor's existing sewer facilities.** Notwithstanding anything to the contrary in this Agreement, the Grantee's exercise of its Easement rights shall at all times be subordinate to and shall not interfere with the Grantor's existing sewer facilities, including their use, operation and maintenance. The Grantor shall continue to have full use and enjoyment of the Burdened Property throughout the term of the Easement unless inconsistent with the rights granted thereby.

11. **Indemnification; insurance.**



(a) The Grantee, for itself and its successors and assigns, agrees: (1) that Grantor, its successors and assigns, and their respective officials, officers, employees, agents, contractors, and subcontractors (hereinafter referred to collectively as "Grantor" for purposes of this paragraph 11) shall have no liability for any reason whatsoever to the Grantee, its successors and assigns, arising from this Agreement and the Easement rights granted hereunder; (2) that Grantee, its successor and assigns, shall bear full responsibility for the use and enjoyment of the Burdened Property; and (3) that Grantee, its successors and assigns, shall and do hereby agree to indemnify and hold harmless the Grantor from and against any and all claims, actions, judgments, damages, fines, costs, liabilities, interest or losses (including reasonable attorneys' fees and expenses and court costs and fees), together with all costs and expenses of any kind or nature, which arise directly or indirectly out of this Agreement and from Grantee's exercise of its Easement rights, including Grantee's intentional or negligent acts or failures to act, either sole or concurrent, with respect to the use, occupancy or possession of the Burdened Property, and the construction of the Offsite Improvements (including the intentional or negligent acts or failures to act, either sole or concurrent, of Grantee's employees, agents, contractors, subcontractors, tenants, subtenants, invitees, licensees, transferees, successors or assigns). This paragraph shall survive the termination of this Agreement whether by revocation or otherwise.

(b) Nothing contained in this paragraph 11 shall be construed as a waiver of any immunity of statutory protection of the Grantor and no third party may expand any recovery against the Grantor due to the Grantee's duty of indemnification.

(c) Grantee, its successors and assigns, shall obtain and maintain in full force and effect insurance coverage, written on an occurrence basis, adequate to cover its obligations under this paragraph 11 and shall name the Grantor as additional insureds thereunder.

12. **Field changes.** Except for the Burdened Property, Grantee shall not have the right to use or access any other portion of the Grantor's adjacent property or to interfere with the Grantor's use of it property; provided, however, in the event there is a field change of the location of the Offsite Improvements which is approved by the City Engineer then such property, should it be outside the Burdened Property but within the Grantor's adjacent property, shall automatically be added to the property burdened by the Easement and shall be subject to this Agreement. Grantee shall not create or allow to exist any nuisance or trespass upon the Burdened Property. In the event the City Engineer, in his sole discretion, believes that any activity relative to the construction of the Offsite Improvements is a threat to the health or safety of the general public or a threat to public property, including Grantor's Improvements, then the City Engineer may immediately require the termination of such activity.

13. **Points of contact/notice.**

(a) All notices or demands pursuant to the Agreement shall be in writing and shall be deemed given if personally delivered or mailed via electronic mail, first class mail, or certified mail, return receipt requested to the following addresses:

If to Grantor, to: Kathy Martin  
Engineering Division  
City of Huntsville  
320 Fountain Circle  
Huntsville, AL 35801  
256-427-5300 Tel  
256-427-5325 FAX  
kathy.martin@huntsvilleal.gov

If to Grantee, to: Building Church  
C/O David Pursifull  
106 Lake Crest Circle  
Madison, AL 35758  
Tel 256-225-9715  
Fax 256-325-1744  
Email david@buildingchurch.tv

All notices shall be deemed effective, if personally delivered, upon delivery; if by first class mail, 3 days after mailing; if by electronic mail, upon receipt of proof of delivery; and if mailed by certified mail, upon return receipt.

(b) The persons designated above shall be the points of contact for purposes of administering this Agreement.

#### 14. **Miscellaneous.**

(a) *Rights and remedies not waived.* The rights and remedies of the Grantor shall be cumulative and in addition to any other rights and remedies provided by law or equity. A waiver of a breach or violation of any provision of this Agreement shall not constitute a waiver of any other breach or violation.

(b) *Interpretation; jurisdiction; venue.* This Agreement shall be construed, controlled, enforced, governed and interpreted in accordance with its plain meaning in accordance with the internal laws of the State of Alabama, without regard to principles of conflicts of laws. For any action concerning this Agreement (1) jurisdiction shall be in the appropriate state or federal courts sitting in Alabama and (2) venue (i) in Alabama state courts shall be in Madison County, Alabama and (ii) in Alabama federal courts shall be in the United States District Court for the Northern District of Alabama, Northeastern Division.

(c) *Captions.* The paragraph and subparagraph captions contained in this Agreement are for convenience only and shall not be considered in the construction or interpretation of any provision hereof.

(d) *Entire agreement.* This Agreement constitutes the entire agreement between the Grantor and Grantee with respect to the subject matter contained herein and supersedes all prior or contemporaneous discussions, agreements, or representations of or between the parties hereto regarding the subject matter hereof.

(e) *Amendment.* This Agreement may be amended or modified only by a written instrument executed by both parties.

(f) *Binding effect.* This Agreement shall be binding upon and for the benefit of each of the parties hereto and their respective successors and assigns and any parents, subsidiaries or affiliated corporations or entities, as applicable.

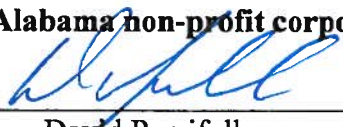
**IN WITNESS WHEREOF**, each party hereto have hereunto set their hands and seals as of the day and year first written above.

**GRANTOR:**  
**CITY OF HUNTSVILLE, ALABAMA,**  
**A municipal corporation**

By: \_\_\_\_\_ [SEAL]  
Tommy Battle  
As its: Mayor

ATTEST: \_\_\_\_\_  
Charles E. Hagood  
As its: City Clerk-Treasurer

**GRANTEE:**  
**THE BUILDING CHURCH.**  
**an Alabama non-profit corporation**

By:  [SEAL]  
David Pursifull  
As its: CEO and President

[acknowledgements on next page]

STATE OF ALABAMA       )  
                                      )  
COUNTY OF MADISON     )

I, \_\_\_\_\_, a Notary Public in and for said County in said State, hereby certify that Tommy Battle 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 instrument, and who are known to me, acknowledged before me on this day that, being informed of the contents of the foregoing instrument, 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 \_\_\_\_\_, A.D., 2014.

My Commission Expires:

\_\_\_\_\_  
Notary Public  
State of Alabama  
County of Madison     [SEAL]

STATE OF ALABAMA       )  
                                      )  
COUNTY OF MADISON     )

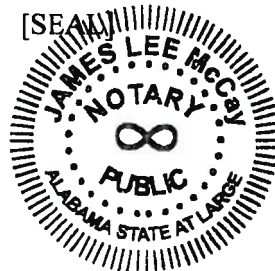
I, James Lee McCay, a Notary Public in and for said County in said State, hereby certify that David Pursifull, whose name as CEO and President of The Building Church, an Alabama non-profit corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the foregoing instrument, he, as such CEO and President, and with full authority, executed the same voluntarily for and as the act of the said corporation.

GIVEN under my hand and official seal on this the 11<sup>th</sup> day of March, A.D., 2014.

My Commission Expires:

5/1/17

James Lee McCay  
Notary Public  
State of Alabama  
County of Madison



This instrument prepared by:  
K. Claudia Anderson  
Assistant City Attorney  
City of Huntsville  
308 Fountain Circle  
Huntsville, AL 35801  
256-427-5026

Exhibit A

ALL THAT PART OF SECTION 2, TOWNSHIP 4 SOUTH, RANGE 2 WEST OF THE HUNTSVILLE MERIDIAN, MADISON COUNTY, ALABAMA, AND MORE PARTICULARLY DESCRIBED AS:

COMMENCING FROM THE PURPORTED CENTER OF THE SOUTH BOUNDARY OF SECTION 2, TOWNSHIP 4 SOUTH, RANGE 2 WEST OF THE HUNTSVILLE MERIDIAN, MADISON COUNTY, ALABAMA, THENCE NORTH 87 DEGREES 48 MINUTES 57 SECONDS EAST, A DISTANCE OF 35.00 FEET TO A 1/2 INCH REBAR FOUND, ON THE PRESENT EAST RIGHT-OF-WAY OF SLAUGHTER ROAD, THENCE ALONG SAID EAST RIGHT-OF-WAY, NORTH 01 DEGREES 22 MINUTES 03 SECONDS EAST, A MEASURED DISTANCE OF 1998.32 FEET TO A 1/2 INCH REBAR FOUND, THENCE CONTINUE ALONG THE EAST RIGHT-OF-WAY OF SLAUGHTER ROAD, NORTH 02 DEGREES 51 MINUTES 30 SECONDS EAST, A MEASURED DISTANCE OF 664.62 FEET TO A 5/8 INCH REBAR FOUND, THENCE LEAVING SAID EAST RIGHT-OF-WAY, SOUTH 88 DEGREES 40 MINUTES 33 SECONDS EAST, A MEASURED DISTANCE OF 1303.24 FEET TO A 1-1/2 INCH REBAR FOUND AND THE POINT OF BEGINNING.

THENCE FROM THE POINT OF BEGINNING, NORTH 74 DEGREES 58 MINUTES 04 SECONDS EAST A DISTANCE OF 164.70 FEET TO A POINT;

THENCE SOUTH 15 DEGREES 01 MINUTES 56 SECONDS EAST, A DISTANCE OF 38.06 FEET TO A POINT;

THENCE SOUTH 74 DEGREES 58 MINUTES 04 SECONDS WEST, A DISTANCE OF 174.96 FEET TO A POINT;

THENCE NORTH 00 DEGREES 03 MINUTES 12 SECONDS EAST A DISTANCE OF 39.42 FEET TO THE POINT OF BEGINNING AND CONTAINING 6,465 SQUARE FEET