

RESOLUTION NO. 21-____

WHEREAS, the City Council (the “Council”) of the City of Huntsville, Alabama (the “City”), does hereby declare that the Mayor be and he is hereby authorized to execute on behalf of the City a Project Development Agreement (the “Development Agreement”) between the City and Project Laser Huntsville, LLC, a Delaware limited liability company (the “Company”), the form of which said agreement is attached hereto, with such changes thereto as the Mayor shall deem necessary or desirable (the “Development Agreement”), an executed copy of said Development Agreement being permanently kept on file in the Office of the City Clerk-Treasurer of the City;

NOW, THEREFORE, BE IT RESOLVED that the Council hereby authorizes and approves the Development Agreement, and that the Mayor be and he is hereby authorized to execute on behalf of the City the Development Agreement, 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 Development Agreement and the transactions and the obligations of the City therein contemplated.

ADOPTED this the 14th day of October, 2021

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

APPROVED this the 14th day of October, 2021

Mayor of the City of
Huntsville, Alabama

PROJECT DEVELOPMENT AGREEMENT

THIS PROJECT DEVELOPMENT AGREEMENT (the "Agreement") is hereby made and entered into on October 14th, 2021 (the "Effective Date") by and between the **CITY OF HUNTSVILLE**, an Alabama municipal corporation (the "City" or "Huntsville"), and **PROJECT LASER HUNTSVILLE, LLC**, a limited liability company organized under the laws of the State of Delaware (the "Company"). The Company and the City are herein together sometimes referred to collectively as the "Parties".

RECITALS

WHEREAS, the Company holds fee simple title to a site within the City consisting of approximately 120 acres located immediately North of Alabama Highway 20 and Interstate 565, all as more particularly described and shown on Exhibit A hereto (the "Site"), and has presented the City with proposed plans to design, develop, and construct thereon an approximately 1.0 million square foot Class A warehouse, logistics and fulfillment center (the "Mega Center") for lease to a national distributor of consumer goods (the "Tenant"); with the Company's acquisition of the Site and construction, development and equipping of the Mega Center for lease to the Tenant hereinafter collectively called the "Project"); and

WHEREAS, the Company has represented to the City that the Project, as currently planned, will require a minimum capital investment of approximately \$115.0 million; and

WHEREAS, to safeguard and expand employment opportunities, the provision of public services, and the overall quality of life for citizens of the City, the City has undertaken efforts since 2008 to diversify and expand its employment, tax and corporate citizen base by attracting to the City advanced manufacturing, aerospace technology, research and technology, entertainment, hotel/lodging, datacenters, and other types of enterprises, and the location of the Mega Center to the City is in furtherance of such efforts; and

WHEREAS, in order to enable the location and operation of the Mega Center within the Site, it is necessary that the City cause certain public roadway improvements (hereinafter defined as the "Public Roadway Improvements") to be constructed and developed, and to cause various utility lines to be extended to the Site for the operation of the Mega Center (hereinafter defined as the "Public Utilities Improvements"); and

WHEREAS, the agreements of the City to construct and develop the Public Roadway Improvements and the Public Utilities Improvements are determined by the City to be in the public interest and constitute a public purpose with no special rights or privileges being given to the Company or to any other single entity, person or enterprise.

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 the City, violates, constitutes a default under or a breach of (i) any agreement, instrument, contract, mortgage, ordinance, resolution or indenture to which the City is a party or to which the City or its assets or properties are subject; or (ii) any law, judgment, decree, order, ordinance, rule, regulation, consent or resolution applicable to the City or any of its assets or properties.

(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.

(d) Neither the execution and delivery of this Agreement, nor the performance hereof, by the City requires any further consent or approval hereof, public notice, or public hearing except for such consents, filings, notices and hearings described herein or already held or maintained.

(e) The City has immediately available funds sufficient to carry out its obligations hereunder, and does not require further approvals or appropriations in order to fund its obligations hereunder.

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 organized under the laws of the State of Delaware, is in good standing within the State of Alabama, 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 (i) the

Company's articles of incorporation, bylaws, and/or other organizational documents of the Company, (ii) any agreement, instrument, contract, mortgage or indenture to which the Company is a party or to which the Company or its assets are subject, or (iii) any law, judgment, decree, order, ordinance, rule, regulation, consent or resolution applicable to the Company or any of its assets.

(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 **OBLIGATIONS AND COMMITMENTS OF THE COMPANY** **REGARDING THE MEGA CENTER**

Section 2.1 General. The Company acknowledges that the citizens of the City anticipate the receipt of economic benefit to its local economy in return for the expenditure of public funds with respect to the Project and the other obligations of each herein contained, and the Company agrees to cause its contractors to diligently prosecute the acquisition, development, construction, equipping and operation of the Project. The Company has acquired the Site and shall cause the Mega Center to be constructed and developed thereon. The Mega Center is presently intended to consist of approximately 1.0 million square feet, and to result in approximately \$115.0 million of capital investment at the Site.

Section 2.2 Commencement of Construction; Completion Date. (a) The Company hereby covenants and agrees to Commence Construction of the Mega Center by not later than November 1, 2021 (the "Construction Commencement Date") and to have Completed Construction of the Mega Center by November 1, 2022 (the "Completion Date").

(b) If, due to the occurrence of a Force Majeure Event the Company is not able to Commence Construction of the Mega Center by the Construction Commencement Date, or to have Completed Construction of the Mega Center by the Completion Date, then for each day of the Force Majeure Event, each of the Construction Commencement Date and the Completion Date shall be extended by one day to address such condition before the Company shall be considered in default of Section 2.2 of this Agreement; provided, at the time of the Force Majeure Event the Company is claiming or anticipating the Company shall have first provided written notice to the City providing: (i) a description of the Force Majeure Event, (ii) an explanation of how the Company anticipates such event will affect the Company's ability to construct and develop the Mega Center, (iii) the actions the Company plans to undertake in order to address the conditions caused by the Force Majeure Event, and (iv) an estimate of how long the Company anticipates the Force Majeure Event will delay its efforts to construct and develop the Mega Center.

(c) As used in this Section 2.2:

(i) "Completed Construction" or "Complete Construction" shall be deemed to have occurred at such time as a certificate of occupancy shall have been delivered for the Mega Center;

(ii) "Commence Construction" or "Commenced Construction" shall be deemed to have occurred at such time as a building permit for the Mega Center has been issued and physical work has begun and continued on a regular basis, using appropriate equipment and manpower, to construct the Mega Center;

(iii) "Force Majeure Event" means an event and includes a material matter beyond the reasonable control of the Company (excluding unfavorable economic conditions), including acts of God, including without limitation earthquakes, fire, floods, tornadoes, hurricanes, and extreme weather conditions (but not including normal seasonal inclement weather); acts of terrorism, epidemics, quarantine restrictions, strikes, freight embargos, and national financial crises that limit normal extensions of credit to the Company for the Mega Center.

Section 2.3 Design Plan for Construction Permitting of the Mega Center. The Company shall be responsible for causing to be prepared and submitted to the City the design plan and other requirements for City construction permitting for the Mega Center (collectively, the "Design Plan").

Section 2.4 Construction Activities. (a) The Company shall cause any construction activities regarding the Mega Center to be conducted in material compliance with all applicable laws, ordinances, rules and regulations of any governmental authority, including, without limitation, all applicable licenses, permits, building codes, restrictive covenants, zoning and subdivision ordinances and flood, disaster and environmental protection laws. The Company shall require any architect, general contractor, subcontractor or other business performing any work in connection with the Mega Center to obtain all necessary permits, licenses and approvals to construct the same.

(b) At all times during the term of this Agreement, the Company shall be in material compliance with all applicable laws, ordinances, rules and regulations of the City and, further, shall be current in payment of any and all taxes, fees, and other charges imposed by the City, Limestone County and any other applicable local government entities unless such payments are the subject of a bona fide dispute and are being challenged by the Company.

Section 2.5 Donation of Right-of-Way and Utility and Drainage Easement Sites. Through a process of minor subdivision approved by the City, and the recording of a revised plat of the Site (the "Revised Plat"), there has been identified those portions of the Site determined by the City as reasonably necessary for public right-of-way (including without limitation for the Public Roadway Improvements) and for necessary utility and drainage easements in support of the City Work (as hereinafter defined), as more particularly shown on Exhibit B and Exhibit C hereto (collectively, the "Right-of-Way and Utility and Drainage Easement Sites"). The Parties hereto agree that the City shall receive from the owner of the land within which the Right-of-

Way and Utility and Drainage Easement Sites exist the easements and other required rights to the Right-of-Way and Utility and Drainage Easement Sites for the location and operation of the improvements constituting the City Work, all at no cost to the City. The City is not aware of any impediment or additional conveyance, easement or approval required by the Company for the City to begin the City Work on the Right-of-Way and Utility and Drainage Easement Sites; provided, however, that the City may require a grant of temporary construction easements from the owner of the land within which the Right-of-Way and Utility and Drainage Easement Sites exist, as more particularly shown on Exhibit D hereto (the "Temporary Easements") in order for the City to commence or complete the City Work.

ARTICLE III **OBLIGATIONS OF THE CITY**

Section 3.1 General. In consideration of, and in reliance on, the Company's commitments set forth in Section 2.2 of this Agreement, the City hereby agrees to cause to be constructed the Public Roadway Improvements and the Public Utilities Improvements (together, the "City Work") upon satisfaction of the conditions and obligations of the Company as herein set forth.

Section 3.2 Public Roadway Improvements. (a) The City hereby covenants and agrees, from and after the Effective Date, and as more particularly described in this Agreement (including the timeline for the Milestones as set forth in Section 3.6 hereunder and the conditions precedent elsewhere in this Agreement), to cause to be designed, developed and constructed (i) within a portion of the Site to be conveyed by the Company to the City as more particularly described in subsection (c) below, a new three-lane connector road that connects Old Highway 20 to the north of the Site, and Alabama Highway 20 to the south of the Site, as generally shown on Exhibit C hereto (the "Three-Lane Connector Road"), and (ii) within a portion of the Site to be conveyed by the Company to the City as more particularly set forth in subsection (c) below, a new two-lane, east-to-west access road located on the southernmost portion of the Site as generally shown on Exhibit C hereto (the "Two-Lane Access Road" and, together with the Three-Lane Connector Road, the "Public Roadway Improvements"). The City agrees to cause the Public Roadway Improvements to be completed as herein set forth as soon as reasonably possible, but in no event more than two hundred forty (240) days following the issuance of a notice to proceed by the City to the Selected Bidder (as hereinafter defined) and following the dedication to the City of all required public interests in real property constituting the necessary public rights-of-way for the construction, development and provision of the Public Roadway Improvements as set forth in Section 2.5 hereof.

(b) Upon the execution of this Agreement, the City shall cause to be prepared, at the City's sole cost and expense, plans, bid quantities and specifications for construction of the Public Roadway Improvements (the "Preliminary Public Roadway Improvements Plans and Specifications"). The City shall submit the Preliminary Public Roadway Improvements Plans and Specifications for review by the Company. If the Preliminary Public Roadway Improvements Plans and Specifications are not acceptable to the Company, the Company, within ten (10) business days of the Company's receipt of the Preliminary Public Roadway Improvements Plans and Specifications, (i) shall notify the City in writing (an "Objection

Notice") of those matters or items that are in conflict with the Company's concept for the Mega Center, and (ii) shall submit its proposed revisions and modifications to the City, at the sole cost and expense of the Company. Within ten (10) business days of the City's receipt of the Objection Notice and the revised Preliminary Public Roadway Improvements Plans and Specifications, the City shall notify the Company in writing of those matters or items that are not acceptable to the City. Each Party shall have succeeding periods of ten (10) business days to notify the other Party of further objections until such time as mutually agreeable, definitive plans and specifications for the Public Roadway Improvements (the "Public Roadway Improvements Plans and Specifications") have been agreed upon between the Parties. The Company's review or approval of the Public Roadway Improvements Plans and Specifications shall not constitute a representation or warranty by the Company that such plans, specifications or other documentation satisfy any applicable laws or other requirements, and the Company's review or approval thereof shall not make the Company otherwise liable with respect thereto. The City shall be solely responsible for determining whether the Public Roadway Improvement Plans and Specifications meet its needs, satisfy applicable laws and other requirements. The Company expressly disclaims any warranty with respect to the Public Roadway Improvement Plans and Specifications. The Parties shall work in good faith to finalize the Public Roadway Improvements Plans and Specifications as soon as reasonably possible following the execution of this Agreement, and in all events by no later than thirty (30) days following the Effective Date.

(c) The Company hereby covenants and agrees to grant, or cause to be granted, to the City (in addition to the Rights-of-Way and Utility Drainage Easement Sites), the Temporary Easements to the City that the City may reasonably determine as shall be necessary for the construction of the Public Roadway Improvements (the "Public Roadway Improvements Sites"). Without limiting the generality of the foregoing, in no event shall the City be obligated to pay the Company or any other person or entity for the Public Roadway Improvements Sites or for any such construction easements in relation to the Public Roadway Improvements Sites.

Section 3.3 Bidding of Public Roadway Improvements. (a) Once the final Public Roadway Improvements Plans and Specifications are approved and finalized in accordance with the provisions of Section 3.2(b) herein, the City shall begin the "bidding process" for the Public Roadway Improvements and solicit bids from qualified contractors, pursuant to Title 39 of the Code of Alabama 1975, as amended, for construction of the Public Roadway Improvements.

(b) The City shall manage the bidding process with the intention that the bidding process shall be concluded and contracts for construction of the Public Roadway Improvements shall be ready to be executed by the City and the Selected Bidder (as hereinafter defined) not more than sixty (60) days following the City Bidding Commencement Date as hereinafter defined (the "Bidding Period"). The City shall not be obligated to award a bid until items all items (*i.e.*, items 1 through 3) of Section 3.4(a) of this Agreement have been completed.

(c) The City shall have the power to select and award the bids per the City's sole discretion pursuant to Title 39 of the Code of Alabama 1975, as amended, for construction of the Public Roadway Improvements (the proposer of each bid so selected and awarded being the "Selected Bidder").

(d) The City shall pay all costs incurred by the City in constructing, installing, operating and maintaining the Public Roadway Improvements. To the extent the City determines that any additional public improvements on land owned by the Company or within a public right of way or easement may be required in the future to support the Mega Center, then the construction, installation, operation and maintenance of such improvements within the Site shall not be unreasonably challenged by the Company and any required or requested approval by the Company of such improvements shall not be unreasonably withheld, delayed or conditioned.

(e) The Parties hereto hereby covenant, determine and agree that the Public Roadway Improvements shall and at all times will be public roadways, and that neither the Company, the Tenant, or any other person or entity shall have any special rights, privileges or other arrangements respecting the use of any of the Public Roadway Improvements.

Section 3.4 City Bidding Commencement Date. (a) For purposes of this Agreement, the term "City Bidding Commencement Date" shall mean the latest date to occur of the following:

1. The date of delivery to the City by the Company of documentation evidencing its fee simple ownership of the Site.
2. The date of delivery to the City by the Company of a copy of an executed construction contract with a general contractor licensed by the State of Alabama for the construction of the Mega Center.
3. The date of delivery to the City of the easements, as determined in the reasonable discretion of the City, to and over the Right-of-Way and Utility and Drainage Easement Sites and the Public Roadway Improvements Sites, as well as the Temporary Easements heretofore described in this Agreement.

(b) Anything in this Agreement to the contrary notwithstanding, the City shall be under no obligation to execute any construction contracts or other agreements (less and except design agreements with third party design professionals), or sign any notices to proceed,

respecting the Public Roadway Improvements, or to otherwise commence construction of the Public Roadway Improvements or the other City Work, until all items (i.e., items 1 through 3) of Section 3.4(a) immediately above have been completed and satisfied, unless waived in writing by the City (with the Director of Urban Planning and Economic Development herein authorized to act on behalf of the City respecting any such waiver).

Section 3.5 Public Utilities Improvements. (a) The City hereby covenants and agrees to cause to be developed and installed public utilities to the boundary of the Site (such points as shall be mutually agreed to by the Parties) for electric, water, gas and sewer service provided by the City and/or through Huntsville Utilities (collectively, the "Public Utilities Improvements"); provided, the Company understands, acknowledges and agrees that electric service will be provided through Athens Utilities, which is not under the direct or indirect control of the City, and that the City cannot control, and makes no representation or commitment herein respecting, the timeframe for the provision of electric system utility improvements to or respecting the Site and the development thereon. The City will use its commercially reasonable good faith efforts to coordinate with Athens Utilities for the installation of the electric system utility improvements to avoid any delay in completion due to the City's contemporaneous development and installation of the water, gas and sewer service on the Site.

(b) The City hereby agrees, acting both independently and by and through Huntsville Utilities, at no cost to the Company, to provide utility improvements consisting of water, gas and sewer service lines and/or necessary utility upgrades for the Mega Center within one hundred twenty (120) days of the date when the Company has Commenced Construction of the Project. The Parties hereto hereby covenant, determine and agree that the Public Utilities Improvements will at all times be public infrastructure improvements and constructed as the City from time to time constructs and provides in connection with other users of its public utility systems, and that neither the Company, the Tenant or any other person or entity shall have any special rights, privileges or other arrangements respecting the use of the Public Utilities Improvements.

Section 3.6 Milestones for City Work. (a) The City agrees to meet, or to cause to be met, the following milestones (the "City Milestones") for the City Work:

#	City Work Project	Milestone	Date	%
1	Preparation of Public Roadway Improvements Plans and Specifications	Mutual agreement on final plans	Maximum of Effective Date + 30 days	100
2	City Bidding Commencement Date	City's solicitation of bids	Effective Date + 60 days	100
3	Contracts for construction of Public Roadway Improvements awarded to Selected Bidder	Contract Award	Maximum of 60 days from City Bidding Commencement Date	100
3a	ROW Acquisition from Company	Effective Date	Effective Date + 1 month	100
4	Commencement of Public Roadway Improvements	City commences	Maximum of 30 days from date of issuance of	100

		construction	notice to proceed	
5	Construction of Public Roadway Improvements	50% Completion	Date of issuance of notice to proceed for Public Roadway Improvements + 120 days	50
6	Water and Gas Public Utilities Improvements	50% Completion	Date of issuance of notice to proceed + 90 days	50
7	Public Utilities Improvements Consisting of Just Sewer Improvements	Completion	Date of issuance of notice to proceed + 150 days	100
8	Construction of Public Roadway Improvements	Completion	Date of issuance of notice to proceed for Public Roadway Improvements + 240 days	100

provided, the Company understands, acknowledges and agrees that electric service will be provided through Athens Utilities, which is not under the direct or indirect control of the City, and that the City cannot control, and cannot make and does not make a representation or commitment respecting, the timeframe for the provision of electric utility improvements to or respecting the Site and the Mega Center.

(b) The City shall provide periodic status reports to the Company detailing the City's progress with each of the Milestones. The City shall promptly provide all information reasonably requested by the Company in writing, which information the City has or can reasonably obtain, concerning the construction and development of the improvements with regards to the Milestones applicable to the City Work.

(c) If the City fails to meet a Milestone, and upon written notice of the same from the Company the City respecting the same is unable to meet such Milestone within thirty (30) days of the City's receipt of such written notice, the Company shall have the right either (i) to work with the City in the management of construction activities respecting such Milestone, and the City shall immediately provide all information requested by the Company that the City has or can reasonably obtain concerning the construction and development of the improvements for which such Milestone has not been timely satisfied (such improvements, the "Subject Improvements"); provided, however, the City shall remain responsible for payments to the Selected Bidder for completing the Subject Improvements, or (ii) to direct the City in writing to cease work on the Subject Improvements (and, thereby, cause the City's contractors, agents and employees, as the case may be, to cease work on the Subject Improvements) so that the Company may undertake to make, perform and complete the Subject Improvements at the sole cost and expense of the Company. The Company understands, acknowledges and agrees that the City shall not be responsible or otherwise liable in any manner to the Company, or to any affiliates, partners, contractors, agents, or other parties or entities, for any of the costs or

expenses incurred for or in connection with the design, development, construction, or installation of any roadway or utility improvements constructed by or at the direction of the Company pursuant to clause (ii) of this Section 3.7(c), all of which such costs shall be borne by the Company and all of which such improvements the City shall no longer be obligated to make or provide (anything in this Agreement to the contrary notwithstanding), provided however, that the City shall furnish the City's plans for the improvements to the Company, and allow the Company to use such plans at no cost to the Company. The City makes no representation or warranty as to the accuracy, reliability or suitability of any said plans, and expressly disclaims any liability arising from the Company's use thereof. The City shall further, to the extent permissible under applicable law, assign and transfer any construction permits to the Company in relation to the improvements (although the City may retain any such permits if needed for any of the remaining City Work). Any such improvements must be constructed in accordance with City standards for public dedication prior to the City accepting the same for dedication (any such dedication to be at no cost or expense of the City).

Section 3.7 Assistance with Permits. The City shall designate an officer to assist the Company with the process of applying for permits and licenses from the City for the construction and development of the Mega Center, it being the understanding of the Parties that the process for reviewing and approving such applications shall proceed in the normal course, and nothing herein shall be deemed a prior approval of, or waiver of any fees respecting, and requests or applications for permits and licenses of such activities. The Company further understands, acknowledges and agrees that the City will not waive any fees, access fees, or related expenses for any permits, licenses or approvals that must be obtained from the City or any other governmental authority in connection with any operation or activity at or in connection with the Mega Center.

Section 3.8 City Force Majeure Event. (a) If, due to the occurrence of a City Force Majeure Event, the City is not able to commence or complete the City Work, or any component thereof, within the timeframe otherwise herein provided for, then for each day of the City Force Majeure Event, each such target date shall be extended by one day to address such condition before the City shall be considered in default of its obligations under this Agreement; provided, at the time of the City Force Majeure Event the City is claiming or anticipating the City shall have first provided written notice to the Company providing: (i) a description of the City Force Majeure Event, (ii) an explanation of how the City anticipates such event will affect the City's ability to timely comply with its obligations respecting the provision of the City Work, (iii) the actions the City plans to undertake in order to address the conditions caused by the City Force Majeure Event, and (iv) an estimate of how long the City anticipates the City Force Majeure Event will delay its efforts to construct and develop the City Work.

(b) As used herein "City Force Majeure Event" shall mean and include a material matter beyond the reasonable control of the City (excluding unfavorable economic conditions), including acts of God, including without limitation earthquakes, fire, floods, tornadoes, hurricanes, and extreme weather conditions (but not including normal seasonal inclement weather); acts of terrorism, epidemics, quarantine restrictions, freight embargos, and national financial crises that limit normal extensions of credit to the City.

ARTICLE IV

EVENTS OF DEFAULT AND REMEDIES

Section 4.1 Events of Default by the City.

(a) Any one or more of the following shall constitute an event of default under this Agreement by the City (herein called a "City Event of Default") (whatever the reason for such event and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(i) A petition or answer is filed by the City proposing the adjudication of the City as a bankrupt or its reorganization, arrangement or debt readjustment under any present or future federal bankruptcy code or any similar federal or state law in any court, or if any such petition or answer is filed by any other person and such petition or answer shall not be stayed or dismissed within 60 days; or

(ii) Failure by the City to perform or observe any of its agreements or covenants contained in this Agreement, which failure shall have continued for a period of thirty (30) calendar days after written notice thereof from the Company, unless (A) the Company shall agree in writing to an extension of such period prior to its expiration, or (B) during such thirty (30) day period or any extension thereof, the City has commenced and is diligently pursuing appropriate corrective action.

(b) If a City Event of Default exists, the sole and exclusive remedy of the Company shall be mandamus for performance of the City obligation. The Company shall not be entitled to any other damages whatsoever, including, without limitation, incidental or consequential damages, whether arising at law or in equity.

Section 4.2 Events of Default by the Company.

(a) Any one or more of the following shall constitute an event of default under this Agreement by the Company (herein called a "Company Event of Default") (whatever the reason for such event and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(i) at any time prior to the completion by the Company of its obligations hereunder, the Company is dissolved or liquidated, or the filing by the Company of a voluntary petition in bankruptcy, or the Company seeking or consenting to or acquiescing in the appointment of a receiver of all or substantially all of its property, or the adjudication of the Company as a

bankrupt, or any assignment by the Company for the benefit of its creditors, or the entry by the Company into an agreement of composition with its creditors, or if a petition or answer is filed by the Company proposing the adjudication of the Company as a bankrupt or its reorganization, arrangement or debt readjustment under any present or future federal bankruptcy code or any similar federal or state law in any court, or if any such petition or answer is filed by any other person and such petition or answer shall not be stayed or dismissed within sixty (60) days; or

(ii) failure by the Company to perform or observe any of its agreements or covenants contained in this Agreement, which failure shall have continued for a period of thirty (30) calendar days after written notice thereof from the City, unless (A) the City shall agree in writing to an extension of such period prior to its expiration, or (B) during such thirty (30) day period or any extension thereof, the Company has commenced and is diligently pursuing appropriate corrective action; provided, however, failure of the Company to Commence Construction of the Mega Center by the Construction Commencement Date, Complete Construction of the Mega Center by the Completion Date shall not constitute a Company Event of Default.

(b) If a Company Event of Default exists, the City may proceed to protect its rights hereunder by suit in equity, or action at law or otherwise, to seek reimbursement of the City's costs of construction of the City Work. The City shall not be entitled to seek specific performance of any covenant or agreement of the Company herein contained. The Company shall not be liable for (i) any punitive, incidental, consequential, or other similar damages, whether arising at law or in equity or (ii) any damages, liabilities, fees, costs, expenses, penalties, diminishments in value, losses or payments (including any lost or foregone tax revenues) that exceed the costs incurred by the City to develop and construct the City Work.

Section 4.3 Remedies Subject to Applicable Law. All rights, remedies and powers provided in this Article IV may be exercised only to the extent the exercise thereof does not violate any applicable provision of law in the premises, and all the provisions of this Article VI are intended to be subject to all applicable mandatory provisions of law which may be controlling in the premises and to be limited to the extent necessary so that the same will not render this Agreement invalid or unenforceable.

ARTICLE V **MISCELLANEOUS PROVISIONS**

Section 5.1 Special Election by Company to Terminate Agreement. The Company shall have the right, at any time prior to the date the City signs a notice to proceed or otherwise awards the bid for the Public Roadway Improvements to the Selected Bidder, to terminate this Agreement by delivering written notice of such election to the City, in which event this

Agreement shall terminate and be of no further force or effect and the Parties shall have no obligations under this Agreement to one another.

Section 5.2 Restrictions on Assignment. (a) The Company shall not have the right to assign, delegate, or otherwise transfer its rights or obligations under this Agreement without the prior written consent of the City prior to having Completed Construction of the Mega Center unless either (1) Panattoni Development Company, Inc. ("Panattoni"), or an Affiliate thereof, is the developer of the Project and the City receives written notice from the Company or from the Tenant showing Tenant's written approval of such transfer or (2) the City receives written notice from the Company or from the Tenant showing Tenant's written approval of such transfer and the agreement by Tenant to be jointly responsible for satisfying the Company's obligations under this Agreement (or other written evidence of such approval and agreement by Tenant acceptable to the City), and such assignment is to an Affiliate of the Company, and any purported assignment, transfer, encumbrance or hypothecation of this Agreement or any of the rights or obligations hereunder in violation of this Section 5.1 shall be null and void and of no force or effect, provided, however, so long as either (1) Panattoni, or an Affiliate thereof, is the developer of the Project and the City receives written notice from the Company or Tenant showing Tenant's approval of such transfer or (2) the City receives written notice from the Company or Tenant showing Tenant's approval of such transfer and agreement by Tenant to be jointly responsible for satisfying the Company's obligations under this Agreement (or other written evidence of such approval and agreement acceptable to the City), the Company shall have the right to assign, delegate or otherwise transfer its rights or obligations under this Agreement without the prior written consent of the City, but with prior written notice to the City naming the assignee or transferee: (a) to any Affiliate of the Company; (b) to the Tenant or any of the Company's or the Tenant's contractors or agents, so long as in each case described in this clause (b) prior to or contemporaneously with such assignment the City receives written correspondence from the Tenant consenting to such transfer or assignment (or other written evidence of such consent or approval acceptable to the City), the City hereby acknowledging and consenting (without further notice or consent required) to the Company's delegation of its obligations under this Agreement to Tenant as of the date hereof and the Tenant's agreement to be responsible to the Company for the performance thereof under a separate written agreement between the Company and the Tenant; (c) to any mortgagee of the Company (whether via collateral assignment or the enforcement thereof); or (d) in connection with any merger, consolidation, reorganization, sale of all or substantially all of its assets or any similar transaction, so long as in each case described in this clause (d) prior to or contemporaneously with such assignment the City receives written correspondence from the Tenant consenting to or otherwise approving of the transfer of ownership or other rights of the Company that results in the assignment of this Agreement (or other written evidence of such consent or approval acceptable to the City). As used in this Section 5.2: (i) "Control", when used with respect to any entity, means the power to direct the management and policies of such entity directly through the ownership of voting securities; and the terms "Controlling" and "Controlled" have meanings correlative to the foregoing; and (ii) "Affiliate" of any specified entity shall mean any other entity directly or indirectly Controlling or Controlled by or under direct or indirect common with, or which directly or indirectly owns voting securities of an entity directly or indirectly Controlled by, such specified entity.

(b) The Company shall have the right to assign or otherwise transfer its rights or obligations under this Agreement per its sole discretion following such time as the Company shall have Completed Construction of the Mega Center.

(c) The Parties hereby covenant and agree that the Tenant is the intended tenant for the Mega Center.

Section 5.3 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 5.4 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 5.5 Exhibits. The exhibits, to which reference is made herein, are deemed incorporated into this Agreement in their entirety by reference thereto.

Section 5.6 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.

Section 5.7 Entire Agreement. This Agreement contains 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 5.8 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 5.9 Further Assurances; Covenant to Sign Documents. Each party shall take all actions and do all things, and execute, with acknowledgment or affidavit if required, any and all documents and writings, which may be necessary or proper to achieve the purposes and objectives of this Agreement.

Section 5.10 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 5.11 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 Constitution of the State of Alabama and under other applicable Alabama law.

Section 5.12 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 be construed to waiver or limit the need for such consent in any other or subsequent instance.

Section 5.13 Notices.

(a) All notices, demands, consents, certificates or other communications hereunder shall be in writing, shall be sufficiently given and shall be deemed given when delivered personally to the party or to an officer of the party to whom the same is directed, or mailed by registered or certified mail, postage prepaid, or sent by overnight courier, addressed as follows:

(1) If to the City:

The City of Huntsville
308 Fountain Circle
Huntsville, AL 35801
Attn: Shane Davis, Director for Urban Planning
and Economic Development

(2) If to the Company:

Project Laser Huntsville LLC
125 S. Wacker Drive, Suite 1220
Chicago, Illinois 60606
Attn: _____

With a copy to:
Panattoni Development Company, Inc.
35 Music Square East, Suite 301
Nashville, Tennessee 37203
Attn: Jeff Konieczny, Senior Development Manager

(b) Any such notice or other document shall be deemed to be received as of the date delivered, if delivered personally, or as of three (3) days after the date deposited in the mail, if mailed, or the next business day, if sent by overnight courier.

(c) Notices may be either: (i) delivered by hand; (ii) delivered by a nationally recognized overnight courier which maintains evidence of receipt; or (iii) sent by facsimile transmission with a confirmation copy delivered the following day by a nationally recognized overnight courier which maintains evidence of receipt. Notices shall be effective on the date of receipt. If any Notice is not received or cannot be delivered due to a change in address of the receiving party, of which notice was not properly given to the sending party, or due to a refusal to accept by the receiving party, such Notice shall be effective on the date delivery is attempted.

Section 5.14 Survival of Covenants. The covenants in this Agreement shall not terminate until they have been fully performed or have expired by their terms.

Section 5.15 Venue. Each of the City and Company irrevocably submits to the jurisdiction of the Alabama state courts sitting in Limestone County, Alabama (collectively, the "Courts") over any suit, action or proceeding arising out of or relating to this Agreement or any of the transaction undertaken in connection therewith (an "Agreement Action"); (b) waives, to the fullest extent permitted by law, any objection or defense that such Party may now or hereafter have based on improper venue, lack of personal jurisdiction, inconvenience of forum or any similar matter in any Agreement Action brought in any of the Courts; and (c) agrees that final judgment in any Agreement Action brought in any of the Courts shall be conclusive and binding upon such Party and may be enforced in any other court to the jurisdiction of which the City or the Company is subject, by a suit upon such judgment.

Section 5.16 No Third-Party Beneficiaries. This Agreement is intended only for the benefit of the signing Parties hereto, and neither this Agreement, nor any of the rights, interest or obligations hereunder, is intended for the benefit of any other person or third-party.

IN WITNESS WHEREOF, the City and 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 date and year first above written.

"CITY":

CITY OF HUNTSVILLE

ATTEST:

Kenneth Benion
City Clerk

(SEAL)

By: _____

Tommy Battle
Mayor

"COMPANY":

PROJECT LASER HUNTSVILLE, LLC,
a Delaware limited liability company

By: _____

Its: _____

EXHIBIT A
THE SITE



Exhibit A

EXHIBIT B
RIGHT-OF-WAY AND UTILITY DRAINAGE EASEMENT SITES

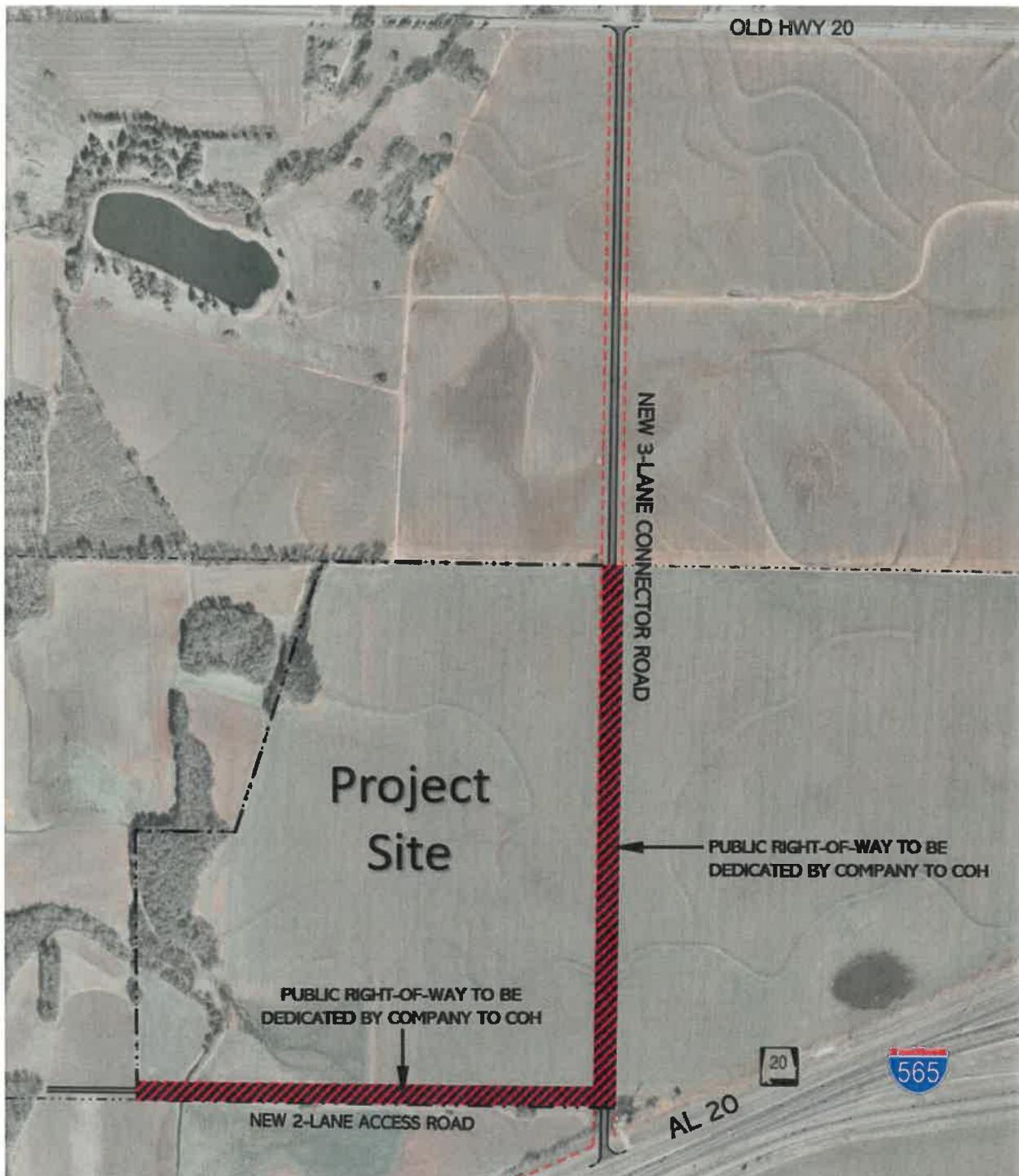


Exhibit B

EXHIBIT C
PUBLIC ROADWAY IMPROVEMENTS



Exhibit C

Exhibit D
TEMPORARY EASEMENTS

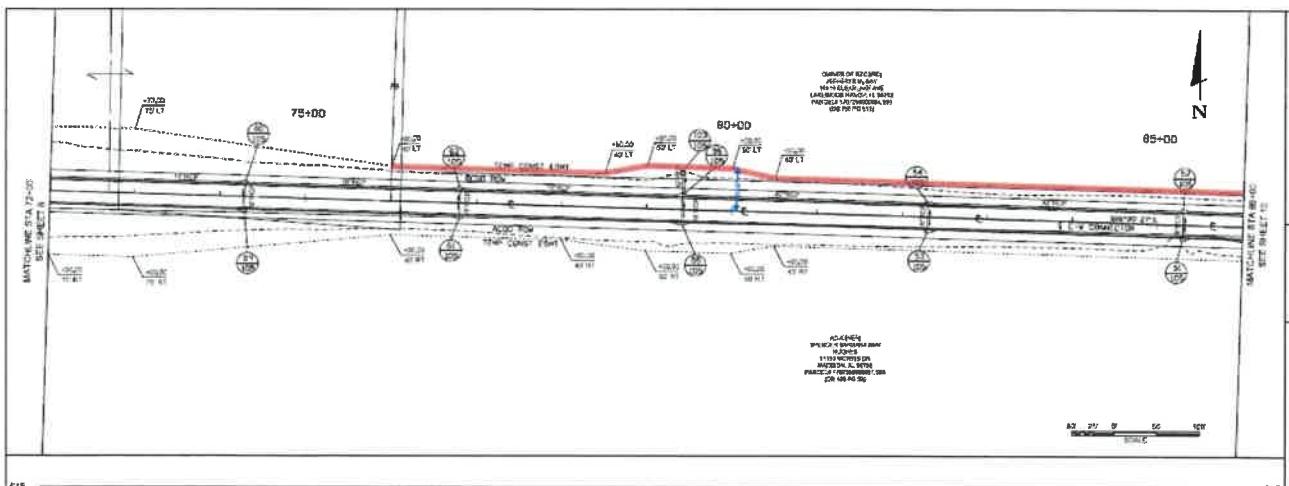
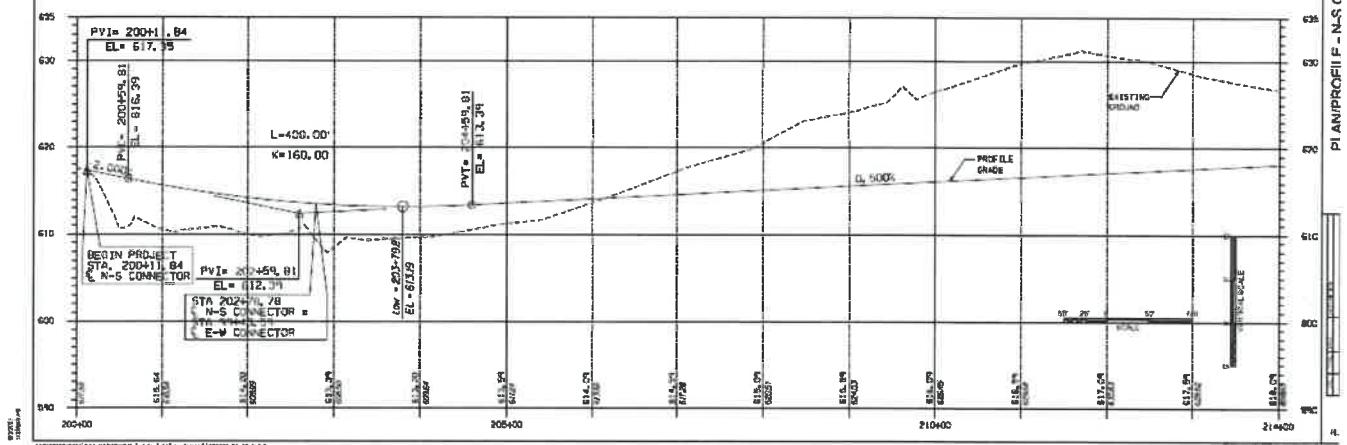
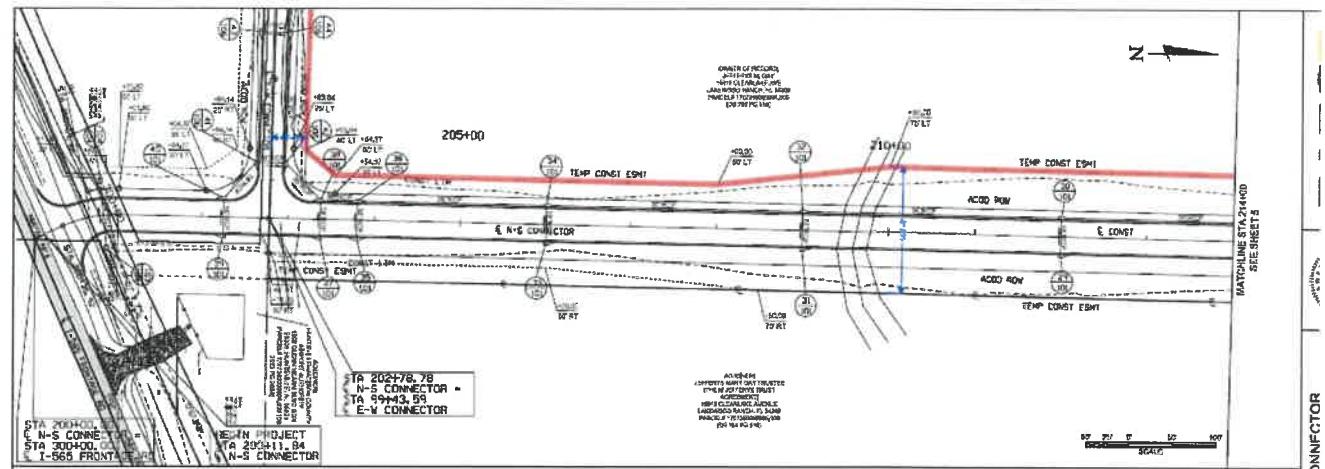


Exhibit D

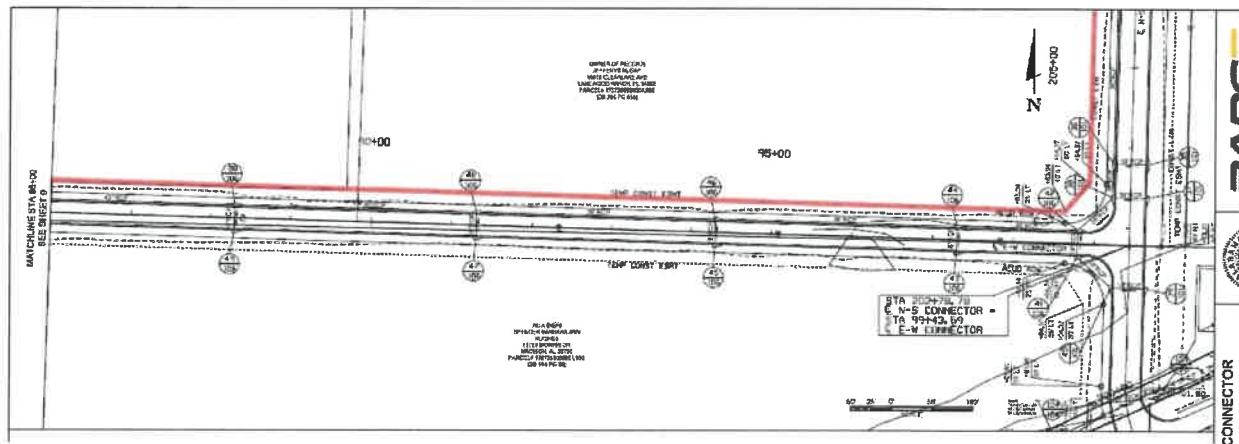


Exhibit D