

THIS INSTRUMENT PREPARED BY:
Alabama Department of Transportation
Bureau of Right-of-Way
1409 Coliseum Blvd.
Montgomery, AL 36110

LEASE

STATE OF ALABAMA)
MADISON COUNTY)

Project No. I-565-5(8)
Tracts No. 266 and 267

THIS LEASE, made and entered into this 13th day of September, 2017, by and between the State of Alabama, acting by and through the Alabama Department of Transportation, Party of the First Part (hereinafter referred to as the State), and City of Huntsville, Party of the Second Part (hereinafter referred to as the City).

WITNESSETH:

WHEREAS, the City desires to lease an area of right-of-way owned by the state for a Dog Park; and

WHEREAS, the State desires to cooperate with the City in this endeavor;

NOW THEREFORE, the State hereby grants the City permission to occupy the area herein described for the purpose of maintaining, supervising, controlling, operating, and directing the management of the public park developed under the previous lease designated as a "Dog Park", the area being more particularly described as follows:

the area within the right of way line/denied access fencing along Pratt Avenue and Southern Railway including beneath the I-565 bridges along Pratt Avenue, Huntsville, Alabama, Project No. I-565-5(8), Tract Nos. 266 and 267 containing 1.975 acres, more or less, as shown on Exhibit "A" attached hereto and made a part hereof by reference. Said area hereinafter referred to as "premises".

In consideration of the premises, the mutual covenants herein contained, and the sum of \$1.00 by each of the parties to the other in hand paid, receipt whereof is hereby acknowledged, the parties agree as follows:

1. This "premises" shall be leased for the purpose of providing a public park at no charge for the purpose of allowing dog owners a recreational area for their dogs.
2. No vehicles shall be allowed on the "premises."
3. Any changes in plans, improvements and installations on the "premises" must be pre-approved by the State with concurrence of the Federal Highway Administration (FHWA) and will be coordinated through the Area Operations Engineer. FHWA Regulations 23 CRF 710.405 shall apply herein and are incorporated by reference.
4. Vehicular access to the "premises" directly from the established grade line of I-565 is specifically prohibited. No use will be permitted by the City of airspace over ramps and the connecting roadways which will require piers, columns, or any other facilities to be placed so as to interfere with necessary visibility or reduce sight distances of drivers or in any other way interfere with the safety and freedom of traffic on such ramps and roadways. The occupancy and use of the "premises" below the highway shall not be such as will permit hazardous or objectionable smoke, fumes, vapor, or odors to rise above the grade line of the highway. The City will permit no hazardous waste on or contamination of the "premises." Should such occur for any reason, the City will be solely responsible for remediation of said hazardous waste and/or contamination with no liability to the State, its members, officials, officers, agents,

employees or the FHWA. No storage of materials or supplies of any nature will be permitted without the express written approval of the State and FHWA.

5. The "premises" and its use shall not be transferred or assigned to another party without prior written approval of the State, subject to concurrence by the FHWA.
6. The City, as part of the consideration herefor, does hereby agree that no person, on the grounds of race, color, national origin, religion, sex or handicap shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the "premises," and the City shall in all respects comply with Title VI of the Civil Rights Act of 1964 and 49 C.F.R. Section 21.5 as amended, and with applicable sections of the Americans with Disabilities Act, 42 U.S.C. 12101, et seq. (1990).
7. The City shall maintain fencing, lighting, gates displays, walkways, trash receptacles, commercial poop stations, and other items installed related to the operation of the dog park on the "premises." No permanent structures shall be placed on the "premises." Any signs, displays, or devices will be restricted to lawful signs, being those indicating ownership and type of on-premise activity and will be subject to regulation by the State and FHWA with respect to number, size, location and design. The City may not make any improvements, installations, or modifications without the prior written approval of the State. All improvements, installations, and modifications shall be at no cost to the State. The City shall forward a drawing of the improved "premises" to the State.
8. The design of the park was developed around existing bridge columns within the limits of the "premises". The City shall maintain appropriate protective devices such as bollards, barriers, guardrails, etc. around bridge columns as deemed necessary by the State to protect bridge columns. Such installations or maintenance will be at no cost to the State. Such protective devices shall be submitted to the State for review and approval and must be installed to State specifications.
9. The City shall protect any fences, guardrails, and/or other parts of highway structures from damage incident to the use of the "premises." The City shall replace any damaged fencing or protective devices at no cost to the State. If, during the life of the highway structure, any type of protection to the columns is required because of accidents, the State, in conjunction with the City and the FHWA, will consider the problem and determine the type of action to be taken for the protection of piers.
10. The City shall be responsible for the security and safety of the "premises."
11. The City agrees to maintain the "premises" in a neat and safe condition at no cost to the State. The City is responsible for litter control, the removal of animal feces deposited by the animals and removal of feces deposited in commercial poop stations. The City responsible for the maintenance of all improvements and installations made by the City on the "premises," for the existing State right of way fence bordering the "premises" and for all other items associated with the operation and maintenance of the "Dog Park on-premises." Failure to properly maintain the area herein described shall be a violation of this LEASE.
12. The City agrees to abide by all laws and ordinances affecting the use or occupancy of the "premises" and hereby fully relieves the State from any compliance therewith or liability for violation thereof.
13. Abandonment of the "premises", failure of the City to use the "premises" for the purposes herein stated, or failure to comply with term condition or stipulation contained herein that is not corrected within 30 days following written notice, shall be considered a breach of this Lease and the State shall have the right immediately and without formal notice to reenter the "premises" and remove all property, equipment etc. from the "premises" whether belonging to the City or others.
14. The State does not carry insurance to cover personal property of the City. It is the City's responsibility to obtain this insurance if it is desired.

15. The City is self-insured for general liability purposes. The City shall, at all times during the term of this Lease, maintain sufficient cash reserves dedicated to the payment of claims, and maintain the present financial ability to pay claims, in the amount of \$100,000 for injury to or death of one person; \$300,000 for injury or death to more than one person growing out of one accident; and \$100,000 for property damage loss.
16. Subject to the limitations on damages applicable to municipal corporations under Ala. Code § 11-47-190 (1975), the City shall indemnify, and hold harmless the State and FHWA, its officers, officials, agents, servants, and employees from and against (1) claims, damages, losses, and expenses, including but not limited to attorneys' fees arising out of, connected with, resulting from or related to the work performed by the City, or its officers, employees, contracts, agents or assigns (2) the provision of any services or expenditure of funds required, authorized, or undertaken by the City pursuant to the terms of this Lease, or (3) any damage, loss, expense, bodily injury, or death, or injury or destruction of tangible property (other than the work itself), including loss of use therefrom, and including but not limited to attorneys' fees, caused by the negligent, careless or unskillful acts of the City its agents, servants, representatives or employees, or the misuse, misappropriation, misapplication, or misexpenditure of any source of funding, compensation or reimbursement by the City, its agents, servants, representatives or employees, or anyone for whose acts the City may be liable.
17. The State and FHWA shall at all times have the right to enter the "premises" or any part thereof, for the purpose of inspecting same, and for the inspection, maintenance, or re-construction of highways, highway structures, and/or devices. The City agrees to have the "premises" vacated in the event of scheduled maintenance activities or unscheduled emergency activities. The City may be required to use its police powers to clear the area for the State's accessibility.
18. The State shall give the City not less than five (5) days notice prior to beginning any scheduled maintenance work in the area. In the event of emergency maintenance work, the State shall give notice as conditions permit.
19. Any other agreement between the City and the State for maintenance of vegetative cover in the City along the right of way of the Federal route identified above or any other agreement between the State and the City is not superseded or affected as a result of this LEASE.
20. This LEASE shall continue for a period of five (5) years with an option of renew for an additional five (5) year period by providing written notice to the State ninety (90) days before expiration of the initial term, commencing on the date of execution first written above, unless otherwise terminated as herein provided.
21. Either the State or the City may terminate this LEASE at any time by giving ninety (90) days written notice to the other party. Notice shall be sent by either Registered or Certified Mail and shall be deemed as given the first date the Postal Service attempts to make delivery. Notice to the City shall be addressed to the City Clerk, City of Huntsville, P. O. Box 308, Huntsville, AL 35804, and to the State shall be addressed to the Director of the Department of Transportation, 1409 Coliseum Blvd., Montgomery, AL 36110, with a copy to the Right-of-Way Bureau.
22. Upon expiration or termination of this Lease for any reason whatsoever, the City will surrender possession of the "premises" without further notice leaving in as good condition as same at the commencement of the first term. Except as stated in Number 13 above, the City shall be permitted to remove all property, equipment, etc. that was furnished or installed by the City. Such removal will be completed by the end of ninety (90) days from the date of notification of termination. Any removal of improvements will be at no cost to the State or FHWA.
23. This LEASE and any subsequent modifications are subject to the approval of the Federal Highway Administration.
24. The failure of the State to insist on strict performance of any of the covenants or conditions of this Lease or to exercise any option here conferred in any one or more

instances shall not be construed as a waiver or relinquishment of any such covenants, conditions, or options, but the same remain in full force and effect.

25. This Agreement contains the entire agreement of the parties and there are no other agreements, verbal or written, affecting the Agreement that have not been incorporated herein or attached hereto.

IN WITNESS WHEREOF, the respective parties have hereunto set their hands and seals on the day and year first above written.

ATTEST:

CITY OF HUNTSVILLE

KENNETH BENION,
CITY CLERK TREASURER

TOMMY BATTLE, MAYOR

RECOMMENDED FOR APPROVAL:

ALABAMA DEPARTMENT OF
TRANSPORTATION

CURTIS W. VINCENT, P.E.
REGION ENGINEER

JOHN R. COOPER
TRANSPORTATION DIRECTOR

PHILIP A. SHAMBURGER
RIGHT OF WAY BUREAU CHIEF

THIS LEASE HAS BEEN LEGALLY
REVIEWED AND APPROVED AS TO
FORM AND CONTENT:

WILLIAM F. PATTY
CHIEF COUNSEL
ALABAMA DEPARTMENT OF
TRANSPORTATION

THE STATE OF ALABAMA

ATTEST:

JOHN H. MERRILL
SECRETARY OF STATE
OF THE STATE OF ALABAMA

KAY IVEY
GOVERNOR OF ALABAMA

EXHIBIT "A"

**EXCESS PROPERTY PROJECT NO. I-565-5(8), MADISON COUNTY
TRACTS 266 & 267:**

All of lots 3, 4 & 5, Block 1 according to the survey of the Winston Street Urban Renewal Project, the map of which is recorded in Plat Book 3, Page 74, in the office of the Judge of Probate of Madison County, Alabama and is further described as Tracts 266 & 267 of Alabama Department of Transportation Project No. I-565-5(8) in Madison County recorded in Deed Book 663, Page 585 (Tract 266) and Deed Book 665, Page 180 (Tract 267) in the Probate Records of Madison County, Alabama and same can also be found shown on the right of way map of said project of record with the Alabama Department of Transportation;

Containing 1.975 acres, more or less.