

RESOLUTION NO. 22-45

A Resolution to Authorize the Mayor to Execute an Amendment to Funding Agreement for 2022 Warrants and Memorandum of Understanding to Build a New High School

WHEREAS, the City of Alexander City desires to improve the education of our children; and

WHEREAS, the City Council approved Resolution 20-48 on March 16, 2020, which authorized the Mayor to execute a funding agreement with the Alexander City Board of Education (BOE) and transfer warrants for the purpose of renovating current schools and the construction of a new high school; and

WHEREAS, the City Council approved Ordinance 2020-07 on March 16, 2020, which placed a cap of \$750,000 of the education portion (1/4 of 1%) of the City's sales tax; and

WHEREAS, the received bids for the construction of the new high school were over the borrowed amount; and

WHEREAS, after much discussion and negotiating the BOE would like to build the new high school within the Charles E. Bailey Sportplex; and

WHEREAS, the City and BOE have agreed to the terms of the Amendment to the Funding Agreement, Exhibit A; and


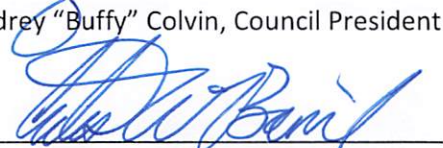
WHEREAS, with further negotiations the City and the BOE agree to the terms stated in the Memorandum of Understanding, Exhibit B; and

THEREFORE, BE IT RESOLVED by the City Council of the City of Alexander City, Alabama, be and hereby authorizes the Mayor to execute an Amendment to the Funding Agreement and Memorandum of Understanding.

ADOPTED AND APPROVED this 25th of February 2022.

ATTEST:


Amanda F. Thomas, City Clerk


Audrey "Buffy" Colvin, Council President

Curtis "Woody" Baird, Mayor

Resolution: 22-45

CERTIFICATION OF CITY CLERK

The undersigned, as City Clerk of the City of Alexander City, Alabama, hereby certifies that the foregoing is a true, correct and complete copy of **Resolution No. 22-45** which was adopted by the City Council on this 25th of February 2022.

WITNESS MY SIGNATURE, as City Clerk of the City Alexander City, Alabama, under the seal thereof, this 25th of February 2022.



S E A L

Amanda F. Thomas

City Clerk of the
City of Alexander City, Alabama

Yeas: Colvin, Hardy, E. Brown, C. Brown

Nays: Tapley, Keel

AMENDMENT TO FUNDING AGREEMENT

THIS AMENDMENT TO FUNDING AGREEMENT (this “Amendment”) dated as of February 1, 2022 (the “Effective Date”), is entered into by the **CITY OF ALEXANDER CITY**, a municipal corporation organized under the laws of the State of Alabama (the “City”), and the **CITY BOARD OF EDUCATION OF THE CITY OF ALEXANDER CITY**, an agency and instrumentality of the State of Alabama (the “Board”).

RECITALS:

WHEREAS, the Board has undertaken the responsibility to provide for the proper management of public schools within the City and to educate the City’s school children.

WHEREAS, pursuant to Article 14 of Chapter 13 of Title 16 of the Code of Alabama (1975), as amended (the “Enabling Law”), on June 24, 2020, the Board issued its School Tax Warrants (Special Local Taxes), Series 2020-A, outstanding in the aggregate principal amount of \$47,950,000, and Taxable School Tax Warrants (Special Local Taxes), Series 2020-B, outstanding in the aggregate principal amount of \$6,300,000 (collectively, the “2020 School Board Warrants”), for the purpose of (a) financing a portion of the costs of the construction and equipping of a new high school in the City and renovations of the existing middle school and high school in the City for consolidation of middle school and upper elementary school grades (collectively, the “School Construction Projects”), (b) redeeming and retiring certain indebtedness of the City incurred for school purposes, as more particularly described in the Funding Agreement referred to below (the “City School Warrants”), and (c) paying the costs of issuing the 2020 School Board Warrants.

WHEREAS, in order to facilitate the Board’s issuance of the 2020 School Board Warrants, the City and the Board entered into that certain Funding Agreement dated as of March 1, 2020 (the “Funding Agreement”), pursuant to which (a) the Board agreed to refund and cause to be defeased and paid, contemporaneously with the issuance of the 2020 School Board Warrants, the outstanding City School Warrants, and (b) the City agreed to continue to levy, and to commit to pay to the Board, certain of the proceeds received by the City from the Special Ad Valorem Tax and the Applicable Portion of the City Sales Tax, all as defined and more particularly described in the Funding Agreement (any capitalized term used but not defined herein shall have the meaning specified in the Funding Agreement).

WHEREAS, the Board pledged for security and payment of the 2020 School Board Warrants various funds of the Board, including without limitation proceeds from certain taxes levied by Tallapoosa County pursuant to Section 40-12-4 of the Code of Alabama 1975, as amended, for the benefit of the Board (the “County Sales Taxes”), and proceeds from the Special Ad Valorem Tax and the Applicable Portion of the City Sales Tax.

WHEREAS, the Board has determined that additional funds are necessary in order to finance the costs of completion of the School Construction Projects, and for such purpose, the Board has proposed to issue, pursuant to the Enabling Law, its School Tax Warrants (Special Local Taxes), Series 2022, in an aggregate principal amount not to exceed \$26,500,000 (the “2022 School Board Warrants”).

WHEREAS, the Board proposes to pledge for security and payment of the 2022 School Board Warrants proceeds from the County Sales Taxes and proceeds from the Special Ad Valorem Tax and the Applicable Portion of the City Sales Tax.

WHEREAS, the Board has requested that the City agree to amend the Funding Agreement in order to facilitate the Board’s issuance of the 2022 School Board Warrants and to remove in the future the Applicable Portion Cap, and the City has agreed to such request provided that the Board and the City enter into this Agreement.

WHEREAS, pursuant to the Enabling Law, the Board has the power to enter into this Amendment with the City and to issue the 2022 School Board Warrants for the purposes stated herein, and the City has the power to enter into this Agreement with the Board.

AGREEMENT:

NOW, THEREFORE, in consideration of the premises and of the respective agreements and undertakings of the City and the Board contained in this Agreement, said parties agree as follows:

SECTION 1. Incorporation of Recitals; Definitions.

The Recitals to this Agreement are incorporated herein for all purposes and shall be considered a part of this Agreement. Unless otherwise defined herein, all capitalized terms used herein shall have the meaning given to such term in the Funding Agreement.

SECTION 2. Amendments to Funding Agreement.

(a) Effective as of the Effective Date, Section 2(a)(4) of the Funding Agreement is hereby amended and restated as follows:

“(4) to segregate, allocate and pay, in accordance with the provisions of paragraph (b) below, 100% of the proceeds (after deducting costs of collection) of the Applicable Portion of the City Sales Tax to the Board, provided, however, for any fiscal year of the City through and including the fiscal year ending September 30, 2023, the amount of proceeds of the Applicable Portion of the City Sales Tax payable to the Board for any such fiscal year will be limited to \$750,000 (the “Applicable Portion Cap”). For any fiscal year of the City beginning October 1, 2023 and continuing for each fiscal year thereafter through the Term of this Agreement, the amount of proceeds of the Applicable Portion of the City Sales Tax payable to the Board for any such fiscal year will not be limited by the Applicable Portion Cap.”

(b) Effective as of the Effective Date, Section 2(a)(7) of the Funding Agreement is hereby amended and restated as follows:

“(7) that, except as expressly permitted in this Agreement, it will not pledge, encumber, hypothecate or convey the Special Ad Valorem Tax or the Applicable Portion of the City Sales Tax, or any portion thereof, on any basis for so long as any 2022 School Board Warrants, any 2020 School Board Warrants, and any Refunding Warrants, are outstanding.”

(c) Effective as of the Effective Date, Section 2(b) of the Funding Agreement is hereby amended and restated as follows:

“(b) The City will cause to be remitted to the Board the amounts owing hereunder from the Special Ad Valorem Tax and the Applicable Portion of the City Sales Tax by the entity or entities (public or private) collecting the Special Ad Valorem Tax and the Applicable Portion of the City Sales Tax. Amounts owing hereunder from the Special Ad Valorem Tax received or collected during any calendar month will be remitted to the Board bi-annually on or before February 15th and September 15th, and amounts owing hereunder from the Applicable Portion of the City Sales Tax received or collected during any calendar month will be remitted to the Board by the 15th calendar day of the second full calendar month immediately following such month. All remittances of amounts owing

hereunder will include an accompanying account statement and detail in form reasonably acceptable to the Board.”

(d) Effective as of the Effective Date, Section 2(d) of the Funding Agreement is hereby amended and restated as follows:

“(d) The Board hereby agrees that the Special Ad Valorem Tax and the Applicable Portion of the City Sales Tax shall be used to pay debt service on the 2022 School Board Warrants, the 2020 School Board Warrants, and on any Refunding Warrants, with any remaining amounts to be used for general purposes of the Board at the Board's discretion. The Board further understands, acknowledges and agrees that any amounts collected during any fiscal year (during which the Applicable Portion Cap is in effect) from the Applicable Portion of the City Sales Tax over the Applicable Portion Cap shall not be subject to payment to the Board under this Agreement, and may be used by the City at its sole discretion and consistent with the terms of the ordinance of the City then in effect under which the City Sales Tax is levied.”

(e) Effective as of the Effective Date, Section 4(b) of the Funding Agreement is hereby amended by deleting the phrase “up to the Applicable Portion Cap” from such section.

(f) Effective as of the Effective Date, Section 5 of the Funding Agreement is hereby amended and restated as follows:

“**SECTION 5. Term.** This Agreement shall have a term (the “Term”) commencing on the Effective Date and terminating on the first to occur of: (i) if the 2020 School Board Warrants have not been issued and delivered by the Issuance Deadline, the Issuance Deadline, (ii) such date as all of the 2022 School Board Warrants, all of the 2020 School Board Warrants, and all of the Refunding Warrants (if any have been issued), have been paid in full, (iii) such date as all of the 2022 School Board Warrants, all of the 2020 School Board Warrants, and all of the Refunding Warrants (if any have been issued), are deemed no longer outstanding under the instruments pursuant to which they were issued, or (iv) February 1, 2052. Notwithstanding anything in this Agreement to the contrary, neither the City nor the Board shall have the right to terminate this Agreement prior to the expiration of the Term.”

(g) Effective as of the Effective Date, Sections 6(a) and (b) of the Funding Agreement are hereby amended and restated as follows:

“**SECTION 6. Refunding Warrants.** (a) Prior to the issuance of any Refunding Warrants, the Board shall have first notified the City in writing and shall have provided to the City, upon the sale of such Refunding Warrants, such information as shall be reasonably requested by the City to demonstrate satisfaction of the following conditions (the “Refunding Warrants Conditions”): (i) that such obligations were issued solely for the purpose of refunding 2022 School Board Warrants and/or 2020 School Board Warrants, (ii) that such obligations have a term not longer than the final maturity of the 2022 School Board Warrants or 2020 School Board Warrants, as applicable, and (iii) that proceeds or other amounts resulting from the sale of such obligations are being used solely for the redemption and payment of 2022 School Board Warrants and/or 2020 School Board Warrants and payment of the costs of issuing such obligations.

(b) As used in this Agreement, “Refunding Warrants” means any obligations issued by the Board (i) solely for the purpose of refunding 2022 School Board Warrants

and/or 2020 School Board Warrants, (ii) having a term not longer than the final maturity of the 2022 School Board Warrants or 2020 School Board Warrants, as applicable, and (iii) the proceeds of which, or other amounts resulting from the sale and issuance thereof, are solely for the purpose of redeeming and retiring 2022 School Board Warrants and/or 2020 School Board Warrants and to pay the costs of issuing such obligations. In no event shall “Refunding Warrants” include obligations the proceeds of which, or other amounts generated from, the issuance and sale thereof are used for payment of capital improvements, operating or other expenses of the Board.”

SECTION 3. Provisions of General Application.

(a) Amendment Scope of Amendment. The Funding Agreement is hereby amended in accordance with the terms and conditions of this Amendment. Except as expressly modified or amended herein, all terms and conditions of the Funding Agreement are hereby ratified and confirmed in all respects and shall remain in full force and effect.

(b) Governing Law. This Amendment shall be governed by and construed in accordance with the laws of the State of Alabama, without regard to principles governing conflicts of law, and all applicable laws of the United States of America.

(c) Counterparts. This Amendment may be executed in one or more counterparts each of which when executed and delivered shall constitute an original. All such counterparts together shall be deemed to be one and the same instrument.

(d) Severability. The provisions of this Amendment shall be severable. In the event any provision hereof shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any of the remaining provisions hereof.

(e) Captions. The captions to the sections and paragraphs of this Amendment are for the convenience of the parties only and are not part of this Amendment.

[Signatures appear on the following page.]

IN WITNESS WHEREOF, the Board and the City have caused this Agreement to be duly executed and attested by their duly authorized officers, as of the Effective Date.

CITY OF ALEXANDER CITY

By: _____
Its Mayor

[SEAL]

Attest:

Its: City Clerk

**CITY BOARD OF EDUCATION OF THE CITY OF
ALEXANDER CITY**

By: _____
Its President

[SEAL]

Attest:

Its: Secretary

STATE OF ALABAMA)

COUNTY OF TALLAPOOSA)

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF ALEXANDER CITY, ALABAMA
AND THE ALEXANDER CITY BOARD OF EDUCATION**

THIS MEMORANDUM OF UNDERSTANDING (the "MOU") entered into on the ____ day of February, 2022 by and between the **CITY OF ALEXANDER CITY, ALABAMA**, an Alabama municipal corporation (the "City"), and the **ALEXANDER CITY BOARD OF EDUCATION** which is duly authorized pursuant to the laws of the State of Alabama ("the BOE").

AGREEMENT

WHEREAS, the City and the BOE have similar interest in providing educational opportunities for the citizens of Alexander City; and

WHEREAS, the City and the BOE have agreed to certain division of sales tax and expenditures of funds for the purpose of constructing a new high school to be located at the Charles E. Bailey Sportplex and to support education in Alexander City; and

WHEREAS, both parties desire to make the construction of a new high school possible; and

WHEREAS, the City and the BOE desire to enter into this MOU for future actions and cooperation between the parties.

NOW, THEREFORE, upon and as consideration of the mutual promises and covenants contained herein and for other good and valuable consideration, hereby acknowledged, the parties hereby agree as follows:

1. The BOE agrees to pay the City \$600,000.00 for no more than eighty-eight (88) acres identified by the parties within the Charles E. Bailey Sportplex. Said property shall not be within the ADECA easements. The purchase price of \$600,000.00 shall be deposited and held in escrow pending approval of ADECA to allow the BOE to acquire right-of-way for entrance into the property. The City as Grantee of the easement and the BOE shall cooperate in the acquisition of the easement from ADECA. Upon grant of easement the funds shall be released to the City.
2. The City and BOE will work together to transfer the HWY 280 property and easement off of HWY 63 South to the City for and in consideration of the Amendment to the Funding Agreement between the parties and other covenants between the parties.
3. If ADECA does not grant the easement required in Paragraph 1 above, the agreement to purchase by the BOE of the 88 acres and the purchase by the City of the US Hwy. 280 property and assignment of easement on Alabama Hwy. 63 shall be null and void and the BOE shall receive the funds held in escrow. This contingency shall not affect the Amended Funding Agreement and Ordinance #_____ dated February 25, 2022.

4. The City and BOE will work together to determine the potential needs and cost of the sewer lift station and force main.
5. The City engineer will assist in consultation of all infrastructure, to include roadways, sewer, and electrical with BOE design teams and civil engineering.
6. The BOE agrees to continue funding current unit allocations provided by the annual allocations for its fine art's program. In the event of proration of other State budgetary shortfalls, the BOE may diminish units accordingly to meet the requirements by State Department of Education.
7. The BOE agrees to reimburse the City for all police services at home football games.
8. The BOE agrees to share seventy percent (70%) of the cost of repairing/repaving parking lots adjacent to the Charles E. Bailey Football Stadium.
9. The BOE agrees to implement traffic design and control to minimize any potential school-traffic use of Sportplex Blvd. in an effort to minimize the potential for conflicts between park pedestrians/youth and school-traffic.
10. The BOE agrees to convey a portion – twelve (12) acres (+/-) of the Radney School property, which shall include the kitchen, dining hall, and basketball facilities. The property to be conveyed shall be adjacent to the City's Sportplex property.
11. The City shall not accept any real property or facilities from the BOE that are not adjacent to the Sportplex, other than the former HWY 280 school site.
12. The City and BOE will work together concerning the use and maintenance of the Charles E. Bailey Football Stadium.
 - a. The BOE agrees that the current enclosed Girls' Softball Batting Cages, located by the gym, will become the Sportplex maintenance shop upon the completion of the maintenance and/or lease agreement.
 - b. The BOE agrees to allow the City's Youth Football to use a football stadium beginning at 5:30 p.m., except during scheduled football games or other school related activities.
 - c.

IN WITNESS WHEREOF, each party hereto has caused this Agreement to be duly executed as of the date first above written.

CITY OF ALEXANDER CITY, ALABAMA

By: _____

Print Name: **CURTIS W. BAIRD**

Its: **Mayor**

Date: _____

ATTEST:

By: Amanda Thomas, City Clerk

[SEAL]

ALEXANDER CITY BOARD OF EDUCATION

By: _____

Print Name: **DR. KEITH LANKFORD**

Its: **Superintendent**

Date: _____

ATTEST:

By: