

PUBLIC WORKS AGREEMENT

This Agreement is between Shelby County, Alabama (hereinafter the "County") and the City of Hoover, Alabama (hereinafter the "City").

R E C I T A L S

WHEREAS, the County has previously built and constructed an existing 10" diameter force main sanitary sewer line in and along the public right-of-way of Caldwell Mill Road in Shelby County, Alabama consisting of approximately 11,000 linear feet in length which runs from the north right-of-way line of Valleydale Road, northerly along Caldwell Mill Road to a point in the general vicinity of Butte Woods Circle; and

WHEREAS, the County is currently undertaking to design, develop, and construct new and additional public works and projects to meet the health and welfare needs of the citizens of Shelby County; and

WHEREAS, the City has a substantial portion of its corporate limits situated in Shelby County, Alabama and has a substantial public interest in the design, development and provision of sanitary sewer services to its residents, schools, and commercial citizens; and

WHEREAS, the City has further committed itself to improve the sanitary sewer access and service provided to its individual and corporate citizens who also reside in Shelby County, Alabama in order to enhance their health and welfare and provide for future growth and development of the land situated within its corporate limits.

Inst # 2001-09627

03/16/2001-09627
03:51 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
014 MEL 50.00

In consideration of the mutual covenants and obligations contained herein and other good and valuable consideration, and intending to be legally bound, the County and the City agree as follows:

ARTICLE I

IN KIND EXCHANGE

1.1 Agreement to Convey Sewer Line. County agrees to convey and transfer all of its right, title and interest to the City in that certain segment of its 10" force main sanitary sewer line which runs along Caldwell Mill Road in Shelby County, Alabama, which shall include a pumping station and all appurtenances thereto located in the vicinity of the entrance to Heatherwood subdivision described on Exhibit "A" attached hereto and incorporated herein collectively by reference (the "sewer line") consisting of approximately 11,000 linear feet.

1.2 Agreement to Construct Public Works. City agrees to donate the sum of Fifty Thousand and 00/100 Dollars (\$50,000.00) to County to be used for sanitary upgrade and development of Heardmont Farms.

1.3 Wastewater Treatment. County will permit the sanitary wastewater discharged through the sewer line to continue to flow into its main sanitary trunk line and continue to the disposal and treatment site of the Shelby County Wastewater Treatment Facility located near Highway 280 and Hugh Daniel Drive until such time as the City completes its new Inverness Wastewater Treatment Facility and connects the

north end of the sewer line to be directed to and processed and properly treated at the City's Inverness Wastewater Treatment Facility. In no event, however, shall County be required to treat sewage generated into the aforesaid sewer line for a period greater than that specified in Section 1.5 hereafter. All new customers connected to said sewer line after the date hereof shall be required by City to sign a Shelby County Sewer User's Agreement in advance of service connection in form and substance as supplied by Shelby County and each such sewer customer shall be billed on a monthly basis for the total Shelby County assessed user fees for such customer connected to and served by said sewer line at the rate then customarily charged by the County. All Impact Fees, if any, charged by the City of Hoover to such customer shall remain the property of the City of Hoover. The City of Hoover shall be responsible for immediately notifying Shelby County of any of the names, addresses, and billing information for each new customer connected to said sewer line during the time that Shelby County is treating any part of the sewage therein or thereon.

1.4 Existing Customer Service. City shall identify a point on the southern part of the sewer line where the same intersects with the center line of Lynnwood Drive and Caldwell Mill Road. This point shall be the southernmost termination point of the sewer line to be transferred to the City. The County shall retain ownership, service and control of all portions of the sewer line south of the southernmost termination point and the County shall continue to provide sanitary sewer services at their discretion to all

customers located immediately south of the southernmost termination point.

1.5 Cutting and Capping Sewer Line. Within a reasonable time after the sewer line is connected to the City's Inverness Wastewater Treatment Facility and the flow can be safely and properly reversed and directed to said facility, the City shall cut and cap the sewer line at the southernmost termination point in order to prevent and preclude any further discharge into the County's main trunk line sanitary sewer. City shall use its best efforts to complete the Inverness Wastewater Treatment Facility and to direct the flow of sewage from the sewer line to City's facility as soon as practical. All other provisions contained herein to the contrary notwithstanding, however, City shall be absolutely responsible for cutting and capping the sewer line at the southernmost termination point and to begin accepting treatment of all sewage from said sewer line no later than five (5) years from the date hereof. It is also understood and agreed that in no event, however, will County have any duty to receive and/or treat any part or portion of such sewage, including infiltration and inflow from all sources from such sewer line after the expiration of five (5) years from the date hereof, nor receive or treat more than 100,000 gallons thereof per day on the peak or maximum flow day on any day within said five (5) year period.

ARTICLE II

INSPECTIONS AND OTHER CONTINGENCIES

2.1 Record Drawings. County shall deliver to City any and all record

drawings and specifications denoting the location and configuration of the sewer line and any and all easements for the same, including all appurtenances (isolation valves, air valves, etc.) The foregoing shall include as built drawings, O&M manuals, shop drawings, operational logs, maintenance records and other records requested by the City.

2.2 **Customer List.** County shall deliver to City a list which identifies the name and address of all customers presently connected to the sewer line. Also, the County shall submit a report to the City identifying the existing private pump station pumping capabilities of these customers.

2.3 **Pumping Station and Pumps.** County shall deliver to the Riverchase Wastewater Treatment Plant any and all pumps and accessories, including warranties and manuals related thereto, which have been removed from the sewer line pumping station located in the vicinity of the entrance to Heatherwood subdivision.

2.4 **Easement.** In the event the sewer line and related appurtenances are located in a public right-of-way, County shall convey to City a license/permit in the public right-of-way of Caldwell Mill Road sufficient to provide City reasonable access to the sewer line and related appurtenances to permit the necessary and proper perpetual maintenance and excavation of the sewer line or the land immediately adjacent thereto..

2.5 **Release of Liens.** To the extent the sewer line and related appurtenances and any real property which is the subject of Section 2.4 above are encumbered or pledged as security for any debt of the County, the County shall secure a release of any

and all liens prior to its transfer and conveyance to the City.

2.6 Sewer User Agreements. County shall deliver to the City the name and address of any and all users who have any sewer user agreement in force or effect or who have been promised or otherwise advised that they or it shall have any right to connect or request connection to the sewer line. To the extent any such agreements have been reduced to writings, memorandums, or other documentation of any description, the County shall provide the City with true and accurate copies of such agreements.

2.7 Inspections. City and its agents, representatives, employees, engineers, contractors and assigns will have the right at its sole cost and expense to enter upon the land and excavate as necessary to inspect, examine, survey and make test, borings, or other engineering tests which it may deem necessary or advisable. It shall be the City's sole responsibility to determine if the sewer line, pump station, pump, and other appurtenances meet or exceed its required engineering criteria and the County makes no representation or warranty regarding such criteria or the condition of any of the portions of the system being conveyed hereby.

ARTICLE III

COUNTY'S REPRESENTATIONS AND WARRANTIES

County represents, warrants and covenants with City that the following matters are or shall be true upon transfer of title of the sewer line:

3.1 Title. County is the legal title holder of the sewer line and related appurtenances and said sewer line and related appurtenances are free and clear of all mortgages and security interests, leases and tenancies, licenses, reservations, claims, options, options to purchase, liens, encumbrances, covenants, agreements, judgments and other matters affecting title to the sewer line.

3.2 No Contracts Affecting Sewer Line. County has not entered into any contract with respect to the sewer line, other than this Agreement, which will survive the transfer or otherwise affect the use, operation or maintenance of the sewer line after transfer to the City.

3.3 No Transfer or Conveyance of Sewer Line. After the date hereof and prior to transfer of the sewer line to the City, no part of the sewer line or any interest therein will be alienated, liened, or otherwise encumbered by the County.

3.4 No Suits Pending. County has no notice of any pending or threatened action, claim or proceeding under any state or federal laws arising out of the ownership of or in connection with the sewer line and the County has not been served with any citation or received any notice or other communication of non-compliance with any laws, rules, regulations or ordinances related to or affecting the sewer line, and, to the best of County's knowledge, is in compliance with all statutes, ordinances, rules, regulations, orders and requirements of all federal, state and local authorities and any other governmental entity having jurisdiction over the sewer line.

3.5 Location of Sewer Line. The segment of the sewer line and related appurtenances to be transferred to the City are located in public right-of-way or otherwise in dedicated easement(s).

3.6 Service Territory. Any and all property contiguous to the sewer line and along Caldwell Mill Road, beginning at the southernmost termination point and going northerly to the northernmost end of the existing force main sewer line, being that segment to be transferred to the City, that can be practically served using sound and generally accepted engineering practices, shall be the exclusive service territory of the City to the extent legally permissible and within the County powers to so specify.

3.7 Operation and Maintenance Excavation. The City shall have the right and approval is hereby granted to the City to perform operation and maintenance to any portion of the sewer line, including excavation that may be required within paved travel ways located within the public right-of-way of Caldwell Mill Road. The County will grant approval and authorize City to do any and all other acts necessary and proper to service and maintain the sewer line. In the event such operation and maintenance by City will involve damage to or removal of any part of the paving surface or interfere with the use of the traveled portion of the road by the public, City will first notify the Shelby County Engineer and obtain his approval relative to plans, specifications, time, and scheduling for City access and the plans by the City to repair any damage. City shall be responsible for repairing at its expense any damage to the highway caused or occasioned

by the City's operation and maintenance of such sewer line. The County shall waive all permitting and inspection fees for all future construction carried out by or on behalf of the City with respect to the above portion of the aforesaid sewer line or the aforesaid appurtenances. In the event County determines in its sole discretion to widen the traveled portions of Caldwell Mill Road, City will relocate at its own expense said sewer line to a point within the highway easement specified by the County, all within County specifications and time schedule reasonably set by County.

3.8 **Authority to Transfer.** The County has properly considered and approved the transfer of the sewer line to the City in accordance with the applicable provisions of Alabama law.

ARTICLE IV

CITY'S REPRESENTATIONS AND WARRANTIES

City represents and warrants to and covenants with the County that the following matters are and shall be true upon the transfer of the sewer line and the payment as set forth in Section 1.2 of this Agreement:

4.1 **Completion of Inverness Wastewater Treatment Facility.** City shall use its most reasonable and best efforts to complete the Inverness Wastewater Treatment Plant in a timely and diligent manner consistent with sound and generally accepted engineering and construction standards. In any event, however, City absolutely agrees that it will complete said Inverness Waste Water Treatment Plant within less

than five (5) years from the date hereof and will before the expiration of five (5) years from the date hereof divert all sewage, infiltration, and inflow from said sewer line to its said plant.

4.2 Public Works Project. City will cooperate and timely fulfill its obligation as set forth in Section 1.2 of this Agreement. City will allow the Project to be designed, installed, and constructed pursuant to the laws, rules and regulations imposed by the County. City will not unreasonably withhold payment upon request of the County and in no event shall the City fail to make the payment required of it under Section 1.2 within thirty (30) calendar days after receipt of the request for payment from the County or its authorized assign or designee.

4.3 Authority. The City has properly considered and approved the sewer line acquisition and the payment required by section 1.2 hereof in accordance with the applicable provisions of Alabama law.

ARTICLE V

MISCELLANEOUS

5.1 Entire Agreement. This Agreement constitutes the entire understanding between the parties with respect to the transaction contemplated herein, and all prior or contemporaneous oral agreements, understandings, representations and statements, and all prior written agreements, understandings, representations and statements are merged into this Agreement.

5.2 **Headings and Captions.** The headings and captions of various sections in this Agreement are for convenience only, and are not to be utilized in construing the content or meaning of the substantive provisions hereof.

5.3 **Survival of Contract Provisions.** The execution and delivery of the transfer documents related to the transaction contemplated herein shall not extinguish or affect the continuing validity and effectiveness of this Agreement and the representations and warranties contained herein.

5.4 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Alabama.

5.5 **Counterparts.** This Agreement may be executed in as many counterparts as may be required and it shall not be necessary that the signature of, or on behalf of, each party, or that the signatures of the persons required to bind any party, appear on more than one counterpart. All counterparts shall collectively constitute a single agreement.

5.6 **Benefits and Obligations to Successors and Assigns.** The terms, conditions and covenants of this Agreement shall be binding upon and shall inure to the benefit of the parties and their respective nominees, personal representatives, heirs, successors, beneficiaries and assigns. City may assign all or any of its rights, title and interest under this Agreement without the prior consent of County provided, however, that no such assignment shall relieve the City of its liabilities or obligations hereunder

unless specifically agreed to in writing by County.

5.7 No Third-party Beneficiaries. This Agreement is for the benefit only of the parties hereto or their nominees, personal representatives, heirs, successors, beneficiaries and assigns and no other person or entity shall be entitled to rely on this Agreement, receive any benefit hereunder or enforce against any party to this Agreement any provision hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement of Sale as of the date indicated below.

Done this 10 day of July ~~March~~ 2000.

ATTEST:

Kim W. Reynolds
COMMISSION CLERK

SHELBY COUNTY, ALABAMA

BY: Billy Thompson
BILLY THOMPSON, CHAIRMAN
SHELBY COUNTY COMMISSION

ATTEST:

Linda Camp
CITY CLERK

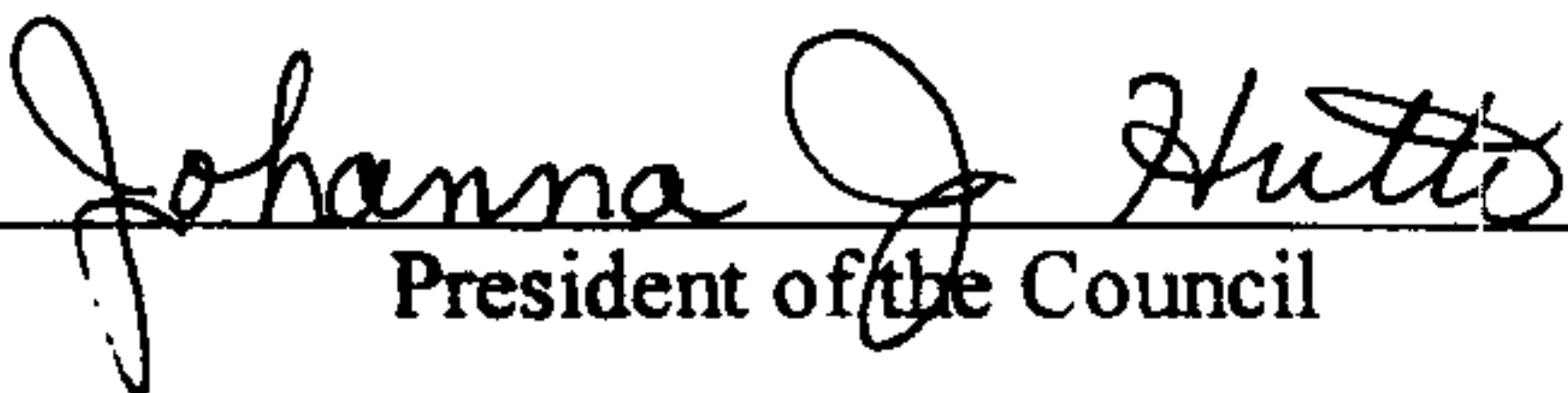
CITY OF HOOVER, ALABAMA

BY: Brian K. Skelton
BRIAN K. SKELTON, MAYOR

RESOLUTION NO. 2320-00


BE IT HEREBY RESOLVED by the City Council of the City of Hoover, Alabama, in regular meeting duly assembled, a quorum being present, that Mayor Brian L. Skelton is hereby authorized to execute a **Public Works In Kind Exchange Agreement** with Shelby County.

ADOPTED this the 5th day of June, 2000.



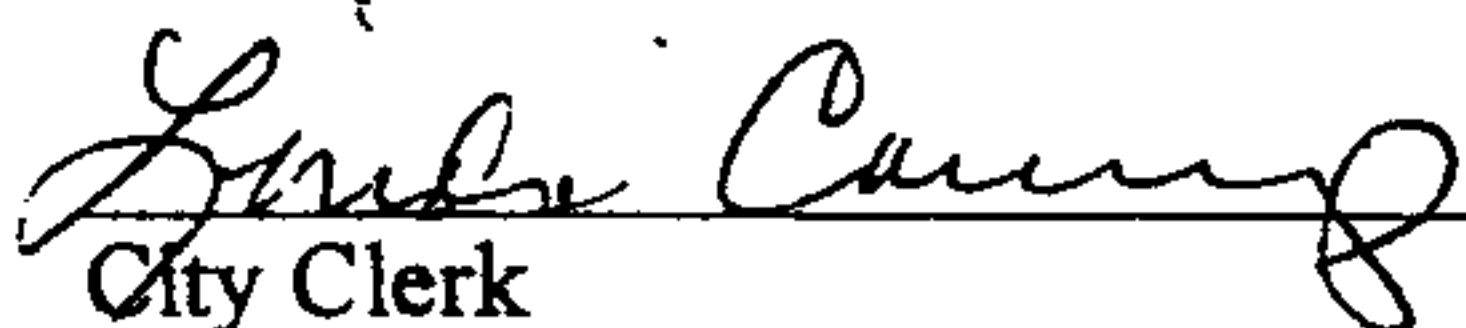
President of the Council

APPROVED:



Mayor

ATTESTED BY:



City Clerk

Inst # 2001-09627

CERTIFICATION

I, Linda Crump, City Clerk for the City of Hoover, Alabama, hereby certify that the attached is Resolution No. 2320-00, which was adopted by the City Council of the City of Hoover, Alabama, at their meeting held on the 5th day of June, 2000.

Linda Crump
City Clerk # 2001-09627

03/16/2001-09627
03:51 PM CERTIFIED

SHELBY COUNTY JUDGE OF PROBATE
014 MEL 50.00