# CITY OF OPELIKA
# CITY COUNCIL
# WORKSESSION MEETING AGENDA

300 Martin Luther King Blvd.

**October 4, 2022**

**TIME: 5:45 PM**

1. CALL TO ORDER
    1. George Allen, Erica Norris, Tim Aja, Todd Rauch, Eddie Smith

2. PRESENTATIONS
    1. Request to Advertise for PH - Rezoning, 1531 First Avenue, 8.6 Acres, from M-1 to PUD.

3. RESOLUTIONS

4. ORDINANCES
    1. Amend the City Code of Ordinances: Repealing Sections 12-40 through 12-65 which Authorized a Residential Rental Registration and Inspection Program and Authorizing Amounts Collected to be Refunded - 1st Reading.
    2. Bond Issue and GO Warrants, Series 2022 - 1st Reading.

5. GENERAL UPDATES

6. REVIEW/DISCUSS CURRENT COUNCIL MEETING AGENDA

7. GENERAL / DISCUSSION

8. END OF WORK SESSION

*"In compliance with the Americans with Disabilities Act, the City of Opelika will make reasonable arrangements to ensure accessibility to this meeting. If you need special assistance to participate in this meeting, please contact the ADA Coordinator 72 hours prior to the meeting at (334)705-5130."*

# City of Opelika
## Planning Commission Report

| | |
|---|---|
| **Action Requested:** | Rezoning - 8.6 acres from M-1 (manufacturing) to PUD (Planned Unit Development) |
| **Location of Property:** | 1531 & 1617 First Avenue |
| **Property Owner:** | Hinson+Dagg Architects LLC, Authorized Representatives<br>Regeneration LLC |
| **Current Zoning:** | M-1 |
| **Proposed Zoning:** | PUD (Planned Unit Development) |
| **Existing Land Use:** | Former Leshner Mill Site |

**Surrounding Zoning Districts And Land Uses:**

| | | |
|---|---|---|
| North | M-1, C-2 | Former Mill Property and residential |
| South | R4M | Mobile Home Park (across RR) |
| East | M-1 | Contractor Office |
| West | M-1 | Single-Family |

**Rezoning:**

The applicant is requesting rezoning 8.6 acres from a M-1 (Industrial District) zoning district to a planned unit development (PUD) zoning district. The proposed property includes a majority of the site for the former Leshner Mill site located on the south side of 1st Avenue.

The properties surrounding the subject property are a variety of land uses. The property to the north has former institutional (school) uses. The property to the east has a contractor's office. The property to the south across the railroad is residential use primarily mobile home parks. The property to the west is vacant lots and single-family residential uses. The proposed master plan project contains single-family residential and shared amenities.

Overall, the proposed uses within the masterplan of the PUD would be considered medium density residential. Medium density residential is classified as residential up to nine (9) units per acre. Most of the existing residential in this area are medium and low-density residential classification. The proposed density for this development is 5.2 units per acre. This falls in middle of the density for medium density residential and is similar to an R-4 zoning district. The R-4M zoning district would adjoin this property if the railroad R.O.W. did not separate the two properties.

The development proposes 45 residential units with rear access and parking for two vehicles. This includes 45 single family "cottages" homes some with garages. Overall, the development will have a density of 5.2 units per acre. The applicant is showing six open space parcels including the existing pond with a walking trail. The applicant is also introducing private streets and alleys that will create rear access for the all the residential units. The applicant states this is a needed housing type in Opelika.

This development mixes two different housing types described as cottage housing on smaller lot footprints. Both cottage types will be located on individual lots for sale with a minimum of 800 and 900 square foot minimums on the ground floor area. The smaller lots in the rear have open space separating the rows. The homes located along 1st Avenue (Lot Type A) are requesting lot widths of 55 feet and minimum lot sizes of 5,775 square feet. Type A lots would include the following front 20 feet, rear 10 feet, and 10 feet on one side, both sides totaling 25 feet. The single-family homes in the rear portion of this property (Lot Type B) will be separate lots with a minimum lot width of 45 feet and a minimum lot size of 3,600 square feet. The (Lot Type B) lots would include the following setbacks front 15 feet, rear 10 feet, and side 7 feet on one side, both sides totaling 15 feet. The near by single family home lots have existing lots with 60 feet minimum lot widths because lot standards for residential in a C-2 would apply R-5 standards for single family homes. Staff feels the transition between the existing neighborhood and the single-family homes proposed across 1st Avenue is a gradual step from 60-foot minimum lot widths to 55-foot minimum lot widths. Staff recommend the proposed lots along 1st Avenue have a landscape plan provided showing one large/canopy tree installed for each house frontage either in the right-of-way between the sidewalk and the street curb with permission from the City of Opelika or in the front yard adjacent to the public right-of-way. The rear loading lots and alleys for all the cottages will reduce the back yard areas. Each row of the smaller cottages (Type B) orients the house, so the front faces a common green. The cottages are described as one- and two-story structures.

A landscape plan has not been submitted at this time. Landscape buffers and individual residential lot landscaping will need to be submitted and approved. These are key components of PUD developments with medium densities. Staff believes that landscaping on each lot and around the development are of high importance. Traditionally, a buffer would be required on the perimeter of the PUD. However, this PUD is bound by a street and the railroad on two sides. In this case, buffers are more likely to be appreciated by the proposed residential units than help buffer the adjacent property from this development to the north. Street trees would help define the edges of the road but may conflict with utilities. A residential buffer consistent with the landscape ordinance will be required along the west property line. Sidewalks are shown on this plan fronting 1st Avenue, around the pond area, and connecting the open space areas. The residential areas should meet the general parking and landscape requirements of the zoning ordinance. Any signage for this development will need to be submitted separately and approved by Planning and Building Inspection prior to the permit being issued.

The applicant has provided sample floor plans and elevations to show how this development will look. The master plan narrative states the architectural guidelines, building regulations, and use restrictions will be governed by covenants, conditions, and restrictions. The property owner's association will govern maintenance agreements for jointly owned right of ways, private roads, and green spaces. Staff feel the elevation provided have some similarities to homes in the area. All utilities shall be installed underground. The master plan narrative states the internal access (private streets) and alley ways, amenities, open space, will be owned and maintained by the homeowner's association. The future subdivision plat will need to state ownership and maintenance of all open spaces, green spaces, amenities, detention ponds, public gardens, and walking trails.

Overall, the development is below the density of 9 units per acre in a medium density zoning district. Staff feels this development generally provides a good re-use of the Leshner Mill property and finds the development to transitions in a positive manner.

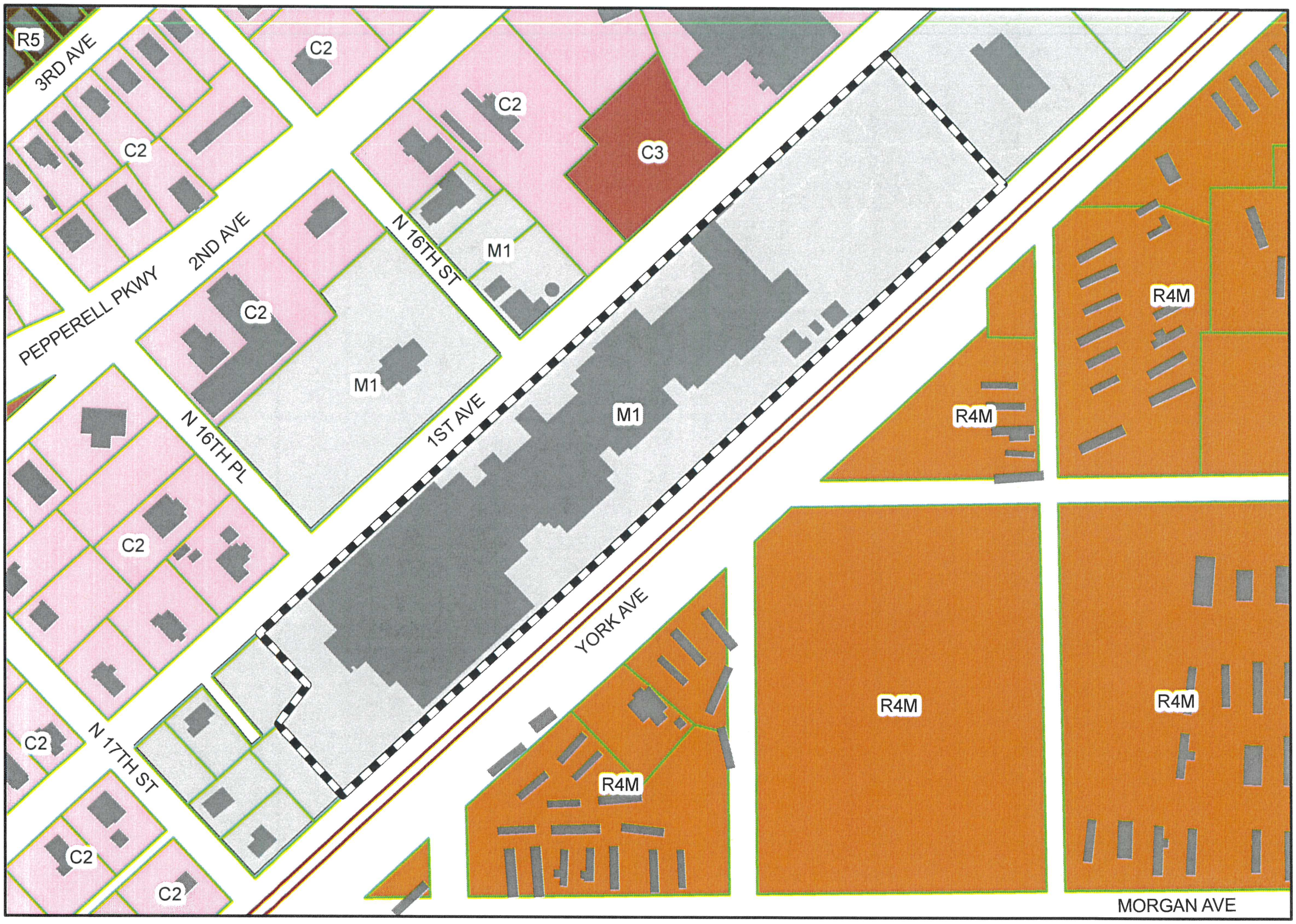
**Staff Recommendation:**

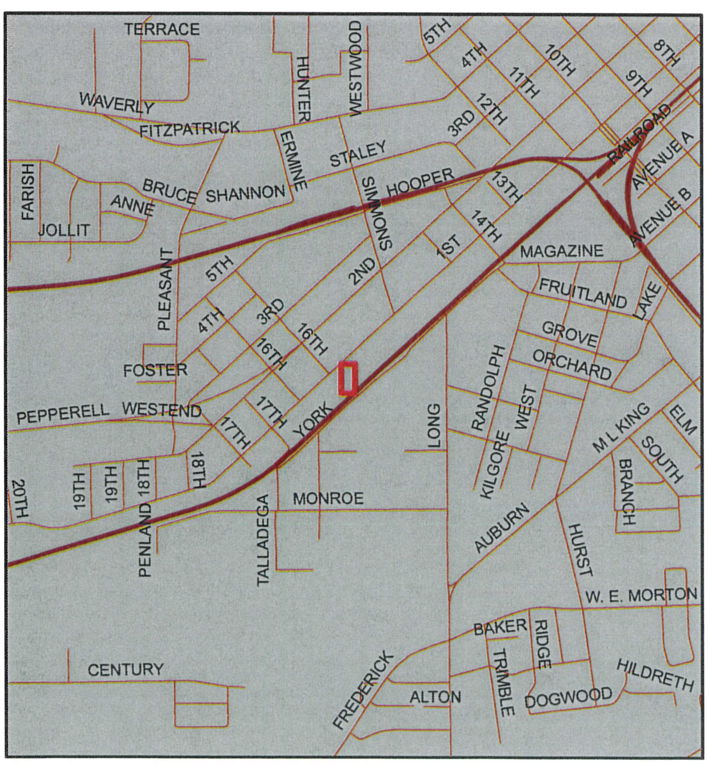
**Staff recommends a positive recommendation to the City Council to rezone the property from M-1 to PUD subject to the following:**

1. **Provide sidewalks on both sides of each street adjoining an amenity or residence.**
2. **All utilities shall be underground.**
3. **A conceptual landscape plan for the individual residential lots and green spaces be submitted and approved by staff. The individual residential lots along 1st Avenue include one large/canopy tree shall be installed for each house frontage either in the right-of-way between the sidewalk and the street curb with permission from the City of Opelika or in the front yard adjacent to the public right-of-way. The plan should include a residential buffer to the west.**

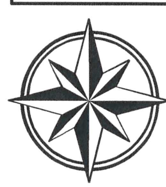
*At the September 27th meeting, the Planning Commission voted to send a positive recommendation to the City Council to approve the rezoning from M-1 to PUD.*

# REGENERATION LLC REZONING
# 1531 FIRST AVENUE
# M-1 TO PUD




The applicant is requesting to rezone 8.6 acres for 42 cottage style homes (900 sf) with front porches and front & rear yard space. Homes fronting along 1st Avenue are accessed from a private street in rear yard with parking in rear yard.



Subject Property

The City of Opelika does not guarantee this map to be free from errors or inaccuracies. The City of Opelika, Alabama disclaims any responsibility or liability for interpretations from this map or decisions based thereon. The information contained on this map is a general representation only and is not to be used without verification by an independent professional qualified to verify such information.

The First Avenue Development

## Proposed PUD Rezoning

The applicant respectfully requests that the Opelika Planning Commission rezone the "First Avenue Development" to a PUD (Planned Unit Development). The subject property is currently zoned M1. The applicant is proposing to create a new neighborhood of single-family homes and green spaces governed by a single PUD zoning designation. The applicant is requesting a PUD rezoning in order to create an increase in density of quality housing near downtown that is currently lacking in Opelika.

## Location

The proposed development is located on an 8-acre parcel between 1st Avenue and the railroad tracks, one block away from Pepperell Parkway. This development is south of the Piggly Wiggly Shopping Center and was the former site of the Leshner Mill. The current site is adjacent to properties that are currently zoned C-1, C-2, C-3 as well as housing R4M and R4 across the railroad tracks.

## Concept

The applicant is proposing 45 units of "cottage" style housing at no more than 6 units per acre. These houses will be approximately 900 sf on the ground floor with an option for a second story. The typical lot along with its neighbors will create a rhythm where house and open space are equal in dimension. The development will prioritize the articulation of a residential street along 1st Avenue. The front porches along this street will create an edge set back from the street 20' in order to create a continuous green lawn. Access to the homes will occur along the rear right of way, with parking for 2 vehicles in the back of the lot. For houses facing 1st Avenue, a Garage will be permissible.

South of the right of way access, a series of 27 cottage units (utilizing the same plans as 1st avenue) will share both green spaces and an access alley to rear lot parking. The minimum ground floor square footage of these cottages is 800sf.

Such rezoning will help reflect an overall consistency of housing stock in the development and will allow the applicant to implement the concept.

## Site Details

This proposed development consists of 8 acres. Internal access right of way will be privately owned and maintained by a property owners association. Access to the proposed development will be from 1st Avenue at 3 points. It is not anticipated that the traffic generated by the development will unduly burden the existing road infrastructure.

Stormwater detention will be provided on site. The existing pond will continue to service the overall site in this way. Open space is planned for the development. Amenities include public gardens and walking trails. Architectural guidelines, building regulations and use restrictions will be governed by Covenants, Conditions and Restrictions. The property owner association will govern maintenance agreements for jointly owned right of ways, private roads and green spaces.

Setbacks and Buffers

See the attached exhibit, "Typical Lots with Setbacks".

Lot type A: Along 1st Avenue

55' x 105' = 5775 sf.

20' front

10' rear

25' side total- 10' minimum one side

Garage Permissible

Corner Lots are 60' x 105' with a 20' setback on both R.O.W.

Lot type B: Cottage Lots

45' x 80' minimum = 3600 sf.

15' front

10' rear

15' side total- 7' minimum one side

Utilities

Opelika Sewer and water services to be provided. Power and communication will be provided by Opelika Power Services. Natural Gas to be provided by Spire.

Benefit

This development for 45 units on 8 acres near downtown will integrate single family homes with green space. The proposed rezoning is required to achieve the proposed density and shared parks. This development would be a short distance to downtown and provide a housing type that is lacking. People are looking for small to medium cottage style homes with 2-3 bedrooms on small lots. It is expected that this type of housing would be perfect for young families and recently retired homeowners.

Revised 9.23.22


**HINSON + DAGG**
ARCHITECTS, LLC
www.hinsondagg.com

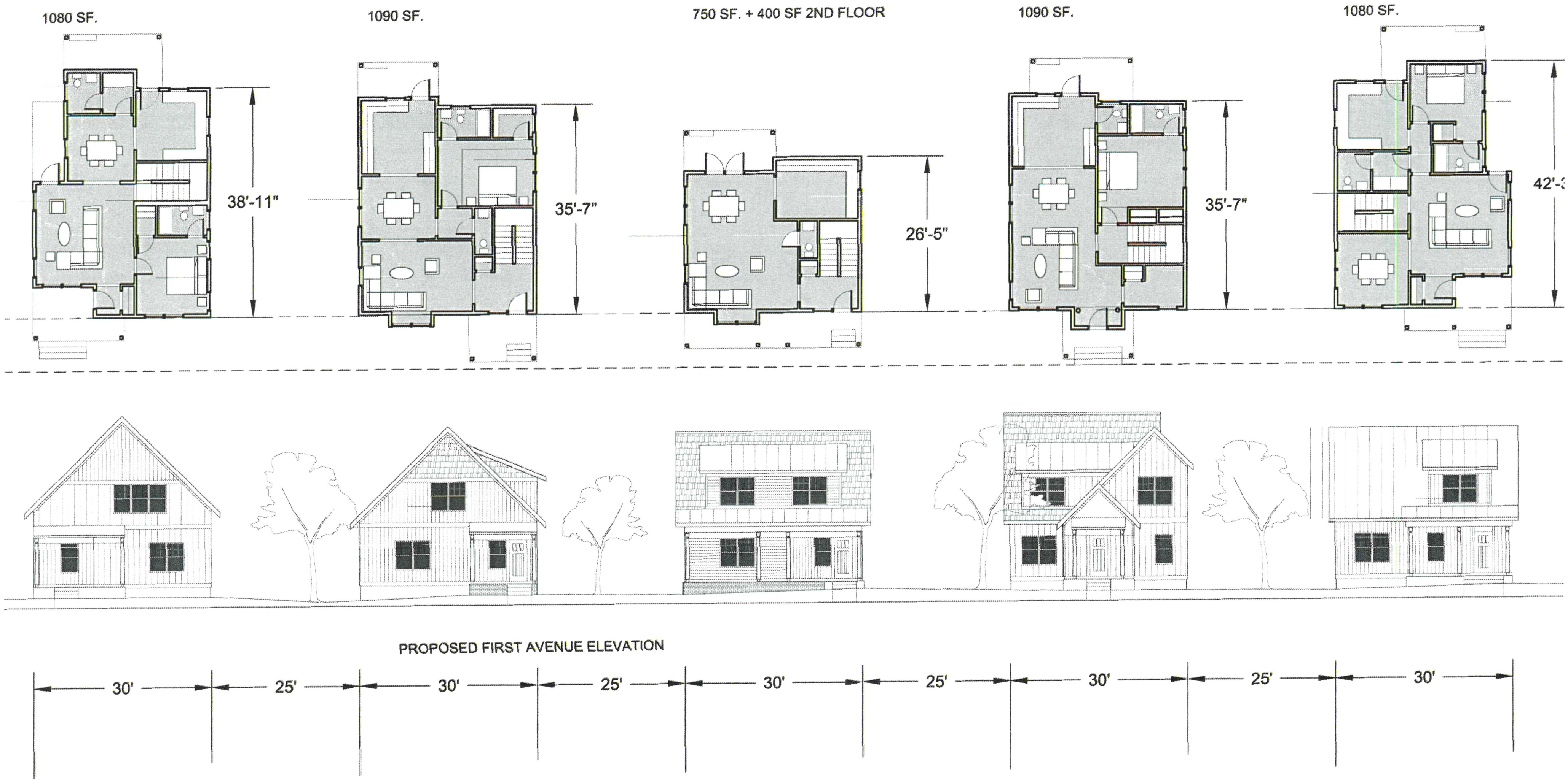
STUDY FOR OPELIKA, ALABAMA
SEPTEMBER 1, 2022

TYPICAL LOT A:
55' X 105' (5775 SF)
FRONT SETBACK 20'
SIDE SETBACK TOTAL 25'
GARAGE

TYPICAL LOT B:
45' X 80' (3600 SF)
FRONT SETBACK 15'
SIDE SETBACK 15' TOTAL
REAR YARD PARKING SPOT

Revised 9.23.22

PROPOSED TYPICAL PLANS




PROPOSED FIRST AVENUE ELEVATION

**HINSON + DAGG**
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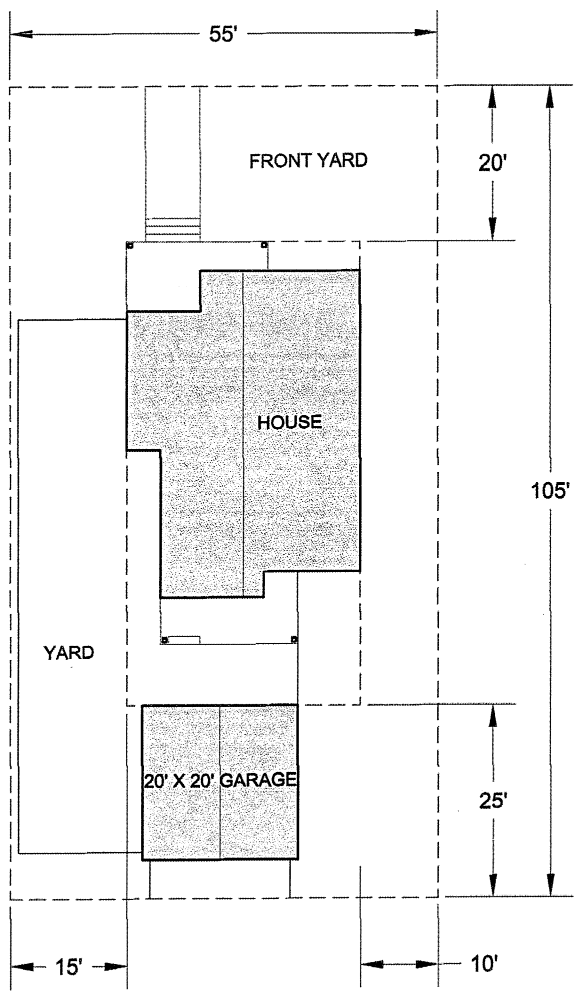
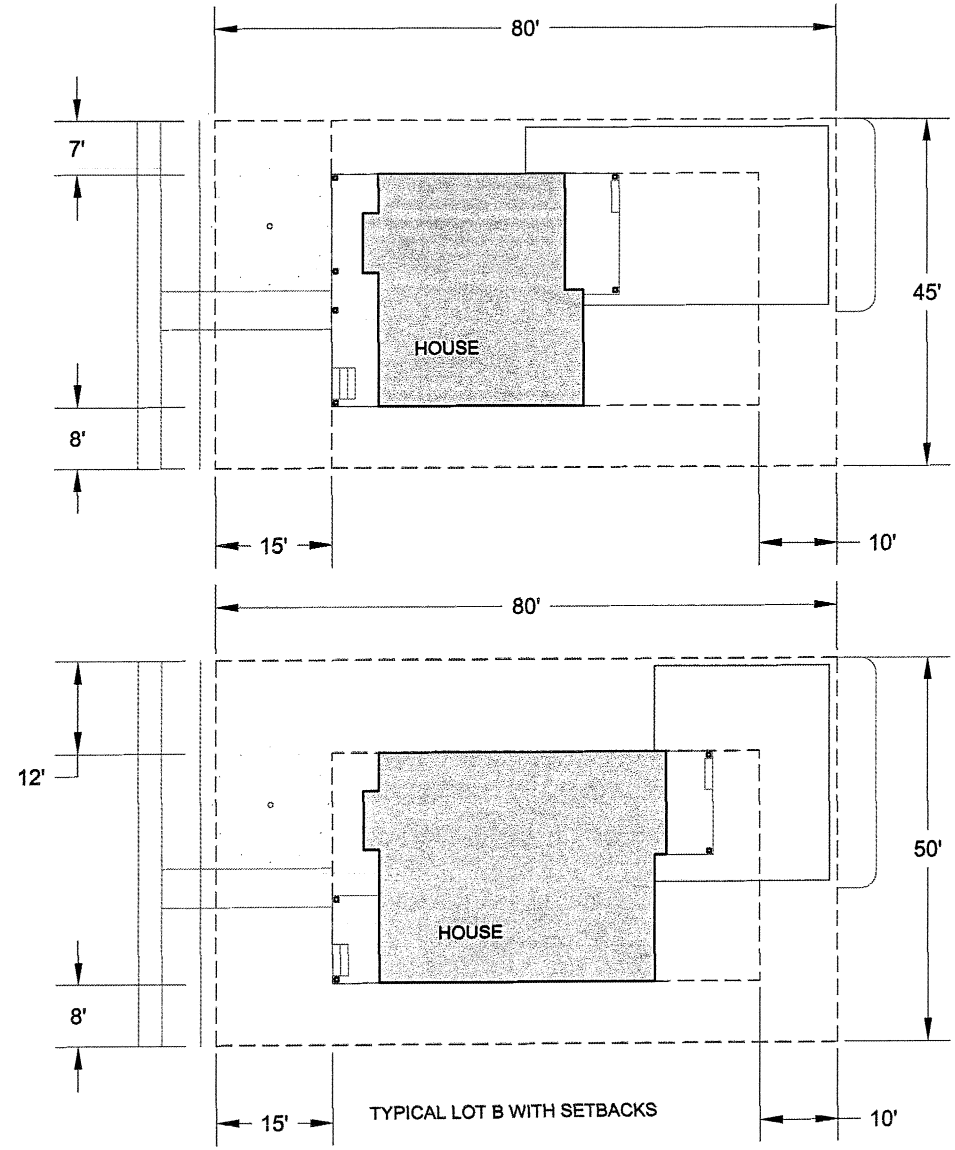
STUDY FOR OPELIKA, ALABAMA
SEPTEMBER 1, 2022

Revised 9.23.22




TYPICAL LOT A WITH SETBACKS

TYPICAL LOT B WITH SETBACKS

HINSON + DAGG
ARCHITECTS, LLC
www.hinsondagg.com

STUDY FOR OPELIKA, ALABAMA
SEPTEMBER 1, 2022

**ORDINANCE NO.________**

**AN ORDINANCE REPEALING SECTIONS 12-40 THROUGH 12-65 OF THE CODE OF ORDINANCES OF THE CITY OF OPELIKA, ALABAMA, WHICH AUTHORIZED A RESIDENTIAL RENTAL REGISTRATION AND INSPECTION PROGRAM WITHIN THE CITY OF OPELIKA, ALABAMA AND AUTHORIZING AMOUNTS COLLECTED UNDER RENTAL ORDINANCE TO BE REFUNDED**

**WHEREAS,** on September 21, 2021, the City of Opelika, Alabama, (the "City") enacted Ordinance No. 020-21 entitled "An Ordinance Adopting a Registration and Inspection Program for Residential Properties Being Rented Within the City of Opelika, Alabama" (the "Rental Ordinance"); and

**WHEREAS,** on February 21, 2022, the City Council enacted Ordinance No. 005-22 which amended certain sections of the Rental Ordinance; and

**WHEREAS,** the Rental Ordinance, as amended, is codified at Sections 12-40 through 12-65 of the *Code of Ordinances* of the City of Opelika; and

**WHEREAS,** on August 26, 2022, the Alabama Supreme Court issued a decision in the case of Center Point v. Atlas Rental Property, LLC and Spartan Invest, LLC, wherein the Court held that the Center Point residential rental inspection ordinance is preempted by §35-9A-124, *Code of Alabama*; and

**WHEREAS,** the City of Opelika has elected to repeal the Rental Ordinance, as amended.

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Opelika as follows:

1. That Sections 12-40 through 12-65 of the *Code of Ordinances* of the City of Opelika, Alabama, are hereby repealed.

2. That the City Council hereby authorizes and directs the Mayor and the Treasurer to refund to property owners all registration fees (including late fees) and inspection fees received under the Rental Ordinance, as amended.

3. That all refunds shall come from the Unassigned Fund Balance. The Controller is hereby authorized and directed to make all necessary and appropriate budget adjustments to implement this Ordinance.

4. That this Ordinance shall become effective immediately upon its passage and publication as required by law.

5. That the City Clerk of the City of Opelika, Alabama, is hereby authorized and directed to cause this Ordinance to be published one (1) time in a newspaper published in and of general circulation published in the City of Opelika, Alabama.

**ADOPTED AND APPROVED** this the ____ day of ________________, 2022.

______________________________________
PRESIDENT OF THE CITY COUNCIL OF THE CITY OF OPELIKA, ALABAMA

ATTEST:

______________________________________
CITY CLERK

TRANSMITTED TO MAYOR on this the _____day of ____________________, 2022.

______________________________________
CITY CLERK

ACTION BY MAYOR

APPROVED this the _____day of _______________________, 2022.

______________________________________
MAYOR

ATTEST:

______________________________________
CITY CLERK

**EXCERPTS FROM THE MINUTES OF A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF OPELIKA**

The City Council of the City of Opelika met in regular public session at City Hall in the City of Opelika, Alabama, at 6:00 o'clock p.m. on the 4th day of October, 2022. The meeting was called to order by the Council President, and the roll was called with the following results:

Present: Charles E. Smith, Council President
Erica Baker-Norris, President Pro Tempore
George Allen
Tim Aja
Todd Rauch

Absent: None

The President of the Council announced that a quorum was present and that the meeting was open for the transaction of business.

Councilmember ______________ introduced the following ordinance, and Councilmember ___________ moved for unanimous consent of the Council to suspend the rules of procedure to allow for the immediate consideration of the following Ordinance:

**ORDINANCE NO. __________-22**

**AN ORDINANCE AUTHORIZING THE ISSUANCE AND PAYMENT OF $9,975,000 PRINCIPAL AMOUNT OF GENERAL OBLIGATION WARRANTS, SERIES 2022, TO BE DATED OCTOBER 13, 2022**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF OPELIKA, ALABAMA, AS FOLLOWS:

**Section 1. Definitions and Use of Phrases.**

The following words and phrases and others evidently intended as the equivalent thereof shall, in the absence of clear implication herein otherwise, be given the following respective interpretations herein:

"Authorized Denominations" means with respect to all Warrants the amount of $5,000 and any integral multiple thereof for each maturity.

"Authorizing Ordinance" means this ordinance authorizing the issuance of the Warrants.

"Book-Entry System" means a book-entry only system of evidence of purchase and transfer of beneficial ownership interests in the Warrants.

"Business Day" shall mean a day, other than a Saturday or a Sunday, on which commercial banking institutions are open for business in the state where the principal corporate trust office of the Paying Agent is located and a day on which the payment system of the Federal Reserve System is operational.

"Code" means the Internal Revenue Code of 1986, as amended.

"Direct Participant" or "Direct Participants" means securities brokers and dealers, banks, trust companies, clearing corporations and other financial institutions which have access to the Book-Entry System.

"Eligible Certificates" means interest bearing certificates of deposit issued by any bank organized under the laws of the United States of America or any state thereof having a combined capital, surplus and undivided profits of not less than $50,000,000, provided that such certificates of deposit are secured by the issuing bank by depositing and pledging with a Federal Reserve Bank Government Obligations having a market value (exclusive of accrued interest) not less than the face amount of such certificates.

"Government Obligations" means direct general obligations of the United States of America or any securities on which the payment of the principal of and interest on which are unconditionally guaranteed by the United States of America.

"Indirect Participant" or "Indirect Participants" means securities brokers and dealers, banks, trust companies, clearing corporations and other financial institutions for which the Securities Depository holds Warrants as securities depository through a Direct Participant.

"Interest Payment Dates" means April 1 and October 1 in each calendar year, beginning April 1, 2023.

"Letter of Representation" means and includes (i) the Letter of Representation with respect to the Warrants from the City to the Securities Depository and (ii) any other or subsequent agreement by whatsoever name or identification with respect to the Warrants between said parties from time to time in effect.

"City" means the City of Opelika, Alabama, a municipal corporation under the laws of the State of Alabama, and any successor to its functions.

"Paying Agent" means The Bank of New York Mellon Trust Company, N.A., the bank designated as (i) the place of payment of the Warrants, (ii) the registrar and authenticating agent of the Warrants and (iii) the paying agent and depository for the Warrant Fund, and any successor bank to The Bank of New York Mellon Trust Company, N.A designated by the City pursuant to the provisions of Section 12 hereof.

"Qualified Investments" shall mean:

(1) Government Obligations; or

(2) Eligible Certificates; or

(3) Money market funds customarily utilized by the Paying Agent for the investment of public funds and rated "AA-m" or "AAm-G" or better by Standard & Poor's Rating Group.

"Record Date" means, with respect to the Warrants, that date which is 15 calendar days before any date on which interest is due and payable on the Warrants.

"Securities Depository" means The Depository Trust Company, a limited purpose trust company organized under the laws of the State of New York, and the successors and assigns thereof, and any substitute securities depository therefor that maintains a Book-Entry System for the Warrants.

"Securities Depository Nominee" means the Securities Depository or the nominee of such Securities Depository in whose name there shall be registered on the Warrant Register the Warrants to be delivered to such Securities Depository during a period in which the Warrants are held pursuant to the Book-Entry System.

"Warrants" means the City's $9,975,000 principal amount of General Obligation Warrants, Series 2022, dated October 13, 2022, authorized hereunder.

"Warrant Fund" means the Series 2022 General Obligation Warrants Fund, established pursuant to Section 8 hereof.

"Warrant Register" means the register or registers for the registration and transfer of Warrants maintained by the City pursuant to Section 3(e).

"Warrant Registrar" means the agent of the City appointed as such pursuant to Section 3(e) for the purpose of registering Warrants and transfers of Warrants.

The definitions set forth in this section shall be deemed applicable whether the words defined are used herein in the singular or the plural. Wherever used herein, any pronoun or pronouns shall be deemed to include both singular and plural and to cover all genders.

**Section 2. Findings and Representations.**

The City, by and through its City Council, does hereby find, determine, represent, and warrant as follows:

(a) It is necessary, desirable and in the public interest for the City to (1) acquire, construct, and equip certain capital public school improvements within the City (the "Improvements") and (2) pay issuance expenses.

(b) The assessed valuation of the taxable property in the City for fiscal year 2021 (including motor vehicles) is not less than $532,927,320 (including motor vehicles), and the total indebtedness of the City (including the Warrants) chargeable against the debt limitation for the City prescribed by the Constitution of the State of Alabama will not be more than twenty percent of said assessed valuation.

(c) The City is not in default under any ordinances or contracts evidencing its general obligation indebtedness and no such defaults thereunder or under any other debt proceedings are imminent.

**Section 3. Authorization and Description of Warrants.**

(a) Pursuant to the applicable provisions of the laws of the State of Alabama, including particularly Section 11-47-2 of the CODE OF ALABAMA 1975, as amended, there is hereby authorized to be issued a series of warrants designated "General Obligation School Warrants, Series 2022" in the maximum aggregate principal amount of $9,975,000. The Warrants shall be dated October 13, 2022, shall be in registered form, without coupons, shall be in the denomination of $5,000 or any integral multiple thereof, and shall be numbered in such manner as the Paying Agent shall determine will be most useful for the identification thereof. The Warrants shall mature as hereinafter provided, on October 1 in years and principal amounts as follows and shall bear interest at the following per annum rates for all Warrants maturing in the year set opposite such rates:

| Year of Maturity | Principal Maturing | Applicable Interest Rate | Yield | Year of Maturity | Principal Maturing | Applicable Interest Rate | Yield |
|---|---|---|---|---|---|---|---|
| 2026 | $320,000 | 5.000% | 3.180% | 2033 | $965,000 | 5.000% | 3.900% |
| 2027 | 340,000 | 5.000 | 3.260 | 2034 | 1,010,000 | 5.000 | 4.000 |
| 2029 | 1,180,000 | 3.000 | 3.500 | 2035 | 1,060,000 | 4.000 | 4.210 |
| 2031 | 1,725,000 | 3.500 | 3.750 | 2036 | 1,205,000 | 4.125 | 4.290 |
| 2032 | 915,000 | 5.000 | 3.800 | 2037 | 1,255,000 | 4.125 | 4.340 |

(b) Subject to the requirements of the Book-Entry System hereinafter described, the principal of and premium (if any) on the Warrants shall be payable only upon presentation and surrender of the Warrants at the designated office of the Paying Agent. Interest on the Warrants shall be remitted by the Paying Agent to the respective registered owners of the Warrants at the addresses thereof shown on the registration books of the Paying Agent pertaining to the Warrants. Interest shall be payable on April 1 and October 1 in each year, first interest payable on April 1, 2023. The principal of, premium, if any, and interest on the Warrants shall be payable in lawful money of the United States at par and without discount, exchange, deduction or charge therefor.

(c) Book-Entry System.

(i) The Warrants shall initially be issued pursuant to a Book-Entry System administered by the Securities Depository with no physical distribution of any Warrant to any person. One Warrant for each maturity of such series will be issued, registered in the name of the Securities Depository Nominee, and immobilized in the custody of the Securities Depository. Beneficial ownership interests in Warrants held by the Securities Depository may be purchased by or through Direct Participants. The holders of these beneficial ownership interests in such Warrants are referred to as the "Beneficial Owners." The Beneficial Owners will not receive certificated warrants representing their beneficial ownership interests. Ownership of the interests in Warrants in Authorized Denominations will be evidenced on the records of the Securities Depository and the Direct Participants and Indirect Participants pursuant to rules and procedures established by the Securities Depository. During a period in which the Book-Entry System is in effect for the Warrants, the City and the Paying Agent shall treat the Securities Depository or the Securities Depository Nominee as the only registered owner of such Warrants for all purposes under the Ordinance, including, without limitation, receipt of all principal of, premium (if any) and interest on the Warrants, receipt of notices, voting, and requesting or directing the Paying Agent or City to take or not to take, or consenting to, certain actions under the Ordinance. In the event the Securities Depository or the Securities Depository Nominee assigns its rights to consent or vote under the Ordinance to any Direct Participant or Indirect Participant, the City and the Paying Agent shall treat such assignee or assignees as the only registered owner or owners of the Warrants of such series for the purpose of exercising such rights so assigned.

(ii) During a period in which the Book-Entry System is in effect for the Warrants, payments of principal and interest, with respect to such Warrants will be paid by the Paying Agent directly to the Securities Depository, or the Securities Depository Nominee, as Holder, and as provided in the Letter of Representations; provided, that payment of the principal of such Warrants due at final maturity of such Warrants shall be made only upon surrender thereof at the designated office of the Paying Agent. The

Securities Depository and the Direct Participants and the Indirect Participants shall be responsible for the disbursement of such payments to the Beneficial Owners. All such payments to the Securities Depository or the Securities Depository Nominee, as Holder, of principal of, and interest on such Warrants on behalf of the City or the Paying Agent shall be valid and effectual to satisfy and discharge the liability of the City and the Paying Agent to the extent of the amounts so paid, and the City and the Paying Agent shall not be responsible or liable for payment to any Beneficial Owner by the Securities Depository or by any Direct Participant or by any Indirect Participant, or for sending transaction statements or for maintaining, supervising or reviewing records maintained by the Securities Depository or Direct Participants or Indirect Direct Participants.

(iii) Transfers of ownership interests in the Warrants by the Beneficial Owners thereof, and conveyance of notices and other communications by the Securities Depository to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners of the Warrants, will be governed by arrangements among the Securities Depository, Direct Participants, Indirect Participants and the Beneficial Owners, subject to any statutory and regulatory requirements as may be in effect from time to time. For every transfer and exchange of beneficial ownership in such Warrants, the Beneficial Owners may be charged a sum sufficient to cover any tax, fee or other governmental charge that may be imposed in relation thereto.

(iv) Redemption notices respecting Warrants held by the Securities Depository shall be sent to the Securities Depository Nominee by the Paying Agent.

(v) In the event that the Securities Depository ceases to act as the securities depository for the Warrants, the City shall discontinue the Book-Entry System for such Warrants. If the City fails to appoint another qualified securities depository to replace the then acting Securities Depository, the City will cause the Paying Agent to authenticate and deliver fully registered certificated Warrants to each Beneficial Owner in evidence of the ownership interests thereof. The Securities Depository shall provide a list of Warrantholders with addresses to the Paying Agent. If the Book-Entry System is discontinued for the Warrants, payments to, and transfers of such Warrants by the Beneficial Owners shall be governed by the provisions set forth in this Ordinance with respect thereto.

(vi) The City may enter into a custody agreement with any bank or trust company serving as Paying Agent (which may be the Paying Agent serving in the capacity of Paying Agent) to provide for a Book-Entry System or similar method for the registration and transfer of the Warrants.

(vii) During a period in which the Book-Entry System is in effect for the Warrants in accordance herewith, the provisions of this Ordinance and such Warrants shall be construed in accordance with the Letter of Representations and to give full effect to such Book-Entry System.

(viii) The Beneficial Owners of the Warrants, by their acquisition of any beneficial interest in a Warrant or Warrants, and the Securities Depository, the Securities Depository Nominee, and all Direct Participants and all Indirect Participants, severally agree that the City and the Paying Agent shall not have any responsibility or obligation to any Direct Participant or any Indirect Participant or any Beneficial Owner with respect to (1) the accuracy of any records maintained by the Securities Depository or any Direct Participant or any Indirect Participant; (2) the payment by the Securities Depository or any Direct Participant or any Indirect Participant of any amount due to any Beneficial Owner in respect of the principal of, premium (if any) and interest on the Warrants; (3) the delivery or timeliness of delivery by the Securities Depository or any Direct Participant or any Indirect Participant of any notice due to any Beneficial Owner which is required or permitted under the terms of the Ordinance to be given to Beneficial Owners; or (4) any consent given or other action taken by the Securities Depository, or the Securities Depository Nominee, as owner.

(d) Discontinuation of Book-Entry System; Registration; Transfer and Exchange of Warrants; Replacement of Lost, Destroyed or Stolen Warrants.

(i) The Warrants may be issued in certificated form, and not pursuant to a Book Entry System, in accordance with the provisions hereof.

(ii) The Securities Depository may determine to discontinue the Book-Entry System with respect to the Warrants at any time upon notice to the City and the Paying Agent and upon discharge of its responsibilities with respect thereto under applicable law. Upon such notice and compliance with law the Book-Entry System for such Warrants will be discontinued unless a successor securities depository is appointed by the City.

(iii) In the event the Book-Entry System for the Warrants is discontinued, Warrants in certificated form in Authorized Denominations will be physically distributed to the Beneficial Owners thereof and such Warrants will be registered in the names of the owners thereof on the registration books of the Paying Agent pertaining thereto, and the Paying Agent will make payments of principal of, premium (if any) and interest on such Warrants to the registered owners thereof as provided in the Warrants and this ordinance and the following provisions with respect to registration, transfer and exchange of such Warrants by the registered owners thereof shall apply:

(1) Each of the Warrants may be transferred by the Holder thereof or his duly authorized attorney, only on the Warrant Register upon surrender of such Warrant to the Warrant Registrar for cancellation. Upon surrender for transfer of any Warrant, the City shall execute, and the Paying Agent shall authenticate, register and deliver, in the name of the designated transferee or transferees, one or more new Warrants of any Authorized Denominations and in a principal amount equal to the unpaid or unredeemed portion of the principal of the Warrant so presented.

(2) At the option of the Holder, Warrants may be exchanged for other Warrants of the same series, of any Authorized Denomination and of a like aggregate principal amount, upon surrender of the Warrants to be exchanged at a designated corporate office of the Warrant Registrar. Whenever any Warrants are so surrendered for exchange, the City shall execute, and the Paying Agent shall authenticate, register and deliver, the Warrants which the Holder making the exchange is entitled to receive.

(3) All Warrants surrendered upon any exchange or transfer provided for in this Ordinance shall be canceled.

(4) All Warrants issued upon any transfer or exchange of Warrants shall be the valid obligations of the City and be entitled to the same security and benefits under this Ordinance as the Warrants surrendered upon such transfer or exchange.

(5) Every Warrant presented or surrendered for transfer or exchange shall be duly endorsed or be accompanied by a written instrument of transfer in form satisfactory to the City and the Warrant Registrar duly executed by the Holder thereof or his attorney duly authorized in writing.

(6) The Warrant Registrar shall not be required to transfer or exchange any Warrant during the period between the Record Date and the then next succeeding interest payment date; and, in the event that any Warrant (or any part thereof) is duly called for redemption, the Warrant Registrar shall not be required to transfer or exchange any such Warrant during the period of forty-

five (45) days next preceding the date fixed for such redemption.

(7) If (i) any mutilated Warrant is surrendered to the Paying Agent, or the City and the Paying Agent receive evidence to their satisfaction of the destruction, loss or theft of any Warrant, and (ii) there is delivered to the City and the Paying Agent such security or indemnity as may be required by them to save each of them harmless, then, in the absence of notice to the City or the Paying Agent that such Warrant has been acquired by a bona fide purchaser, the City shall execute and the Paying Agent shall authenticate, register and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Warrant, a new Warrant of like tenor and principal amount, bearing a number not contemporaneously outstanding.

(8) Upon the transfer or exchange of any Warrant or the issuance of any new Warrant under this Section, the City may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses connected therewith; provided no charge shall be made to the Holder for any transfer or exchange of Warrants.

(9) Every new Warrant issued pursuant to this Section in lieu of any destroyed, lost or stolen Warrant shall constitute an original additional contractual obligation of the City, whether or not the destroyed, lost or stolen Warrant shall be at any time enforceable by any person.

(10) The provisions of this Section are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Warrants.

(e) Registration of Warrants.

The City shall cause to be kept at the designated corporate office of the Paying Agent a register (the "Warrant Register") in which, subject to such reasonable regulations as it may prescribe, the City shall provide for the registration of Warrants and registration of transfers of Warrants entitled to be registered or transferred as herein provided. The Paying Agent is hereby appointed "Warrant Registrar" for the purpose of registering Warrants and transfers of Warrants as herein provided.

## Section 4. Redemption of Warrants.

(a) Optional Redemption

The Warrants having stated maturities on October 1, 2033 and thereafter shall be subject to prior redemption in whole or in part, at the option of the City, and in such order and amount of maturities as the City shall determine, on October 1, 2032 or on any date thereafter, at a redemption price for each Warrant (or principal portion thereof) redeemed equal to the principal amount thereof to be redeemed, plus accrued interest to the date fixed for redemption, without premium or penalty.

(b) Mandatory Redemption

(i) The Warrants with a stated maturity on October 1, 2029 (the "2029 Term Warrants") are required to be redeemed on October 1, 2028 in the principal amount of $360,000 (with those to be redeemed to be selected by the Paying Agent) at a redemption price equal to the principal amount thereof to be redeemed plus accrued interest thereon, without premium or penalty.

The remainder of the 2029 Term Warrants in principal amount of $820,000 will mature on October 1, 2029.

(ii) The Warrants with a stated maturity on October 1, 2031(the "2031 Term Warrants") are required to be redeemed on October 1, 2030 in the principal amount of $845,000 (with those to be redeemed to be selected by the Paying Agent) at a redemption price equal to the principal amount thereof to be redeemed plus accrued interest thereon, without premium or penalty. The remainder of the 2031 Term Warrants in principal amount of $880,000 will mature on October 1, 2031.

**Section 5. Form of Warrants.**

The form of the Warrants and the requisite certificates thereof shall be substantially as follows:

**UNITED STATES OF AMERICA**
**STATE OF ALABAMA**
**CITY OF OPELIKA**
**GENERAL OBLIGATION SCHOOL WARRANT**
**SERIES 2022**

| Maturity Date | Interest Rate | CUSIP |
|---|---|---|

The CITY OF OPELIKA, a municipal corporation organized and existing under and by virtue of the laws of the State of Alabama (the "City"), for value received, hereby acknowledges itself indebted to CEDE & CO. or registered assigns in the principal sum of

_________________________ DOLLARS ($_________)

and hereby orders and directs the Treasurer of the City to pay to said payee or registered assigns solely from the Fund hereinafter designated said sum on the Maturity Date specified above, and to pay from said Fund interest on said sum from the date hereof at the per annum Interest Rate specified above, payable on April 1 and October 1 in each year, first interest payable on April 1, 2023. Interest shall be computed on a 360-day year with twelve months of thirty days each. The principal of and interest on this Warrant are payable in lawful money of the United States of America, at par and without deduction for exchange or costs of collection. The principal of and premium (if any) on this Warrant shall be payable only upon presentation and surrender of this Warrant at the designated office of The Bank of New York Mellon Trust Company, N.A, Birmingham, Alabama (the "Paying Agent"). Subject to the requirements of the Book-Entry System hereinafter described, interest on this Warrant shall be remitted by the Paying Agent to the then registered owner of this Warrant at the address thereof shown on the registration books of the Paying Agent. Such payments shall be deemed timely made if so mailed on the interest payment date (or if such interest payment date is not a business day, on the business day next following such interest payment date). All such payments shall be valid and effectual to satisfy and discharge the liability of the City or the Paying Agent upon this Warrant to the extent of the sum or sums so paid.

This Warrant is one of a duly authorized issue of General Obligation School Warrants, Series 2022, of the City (the "Warrants") limited to an aggregate principal amount of $9,975,000, issued pursuant to the Constitution and laws of the State of Alabama, including the provisions of Section 11-47-2 of the CODE OF ALABAMA 1975, as amended, and ordinances and proceedings of the City duly held, passed and conducted (the "Authorizing Ordinance"). The indebtedness evidenced by the Warrants is a general obligation of the City, and the full faith and credit of the City are hereby pledged to the punctual payment of the principal thereof and interest thereon. The proceeds of the Warrants will be applied exclusively for public school purposes and do not count against the City's state constitutional debt limit.

The Warrants are initially issued in Authorized Denominations pursuant to a Book-Entry System to be administered by the Securities Depository and registered in the name of and held by the Securities Depository Nominee, all as more particularly provided in the Authorizing Ordinance. Reference is hereby made to the Authorizing Ordinance for the terms and conditions upon which the purchase, transfer and exchange of beneficial ownership interest in the Warrants are to be made by means of the Book-Entry System administered by the Securities Depository, to and by all of which terms, conditions and provisions of the Authorizing Ordinance the owner of any beneficial interest in the Warrant, by the acquisition hereof, hereby assents and agrees to be bound. In the event the Book-Entry System for the Warrants is discontinued, Warrants in certificated form in Authorized Denominations will be physically distributed to the Beneficial Owners thereof, the hereinafter described Warrants will be registered in the names of the owners thereof on the registration books of the Paying Agent pertaining thereto, the Paying Agent shall make payments of principal of and interest on the Warrants to the registered owners thereof as provided in the Warrants and the Authorizing Ordinance, and the provisions of this warrant and of the Authorizing Ordinance with respect to registration, transfer and exchange of warrants by the registered owners thereof shall apply.

The City has established in the Authorizing Ordinance a special fund designated "Series 2022 General Obligation Warrants Fund" for the payment of the principal of, premium, if any, and interest on the Warrants and has obligated itself to pay or cause to be paid into said Fund from the revenues or other funds of the City sums sufficient to provide for the payment of the principal of, premium, if any, and interest on the Warrants as the same mature and come due.

The Warrants having stated maturities on October 1, 2033 and thereafter shall be subject to prior redemption in whole or in part, at the option of the City, and in such order and amount of maturities as the City shall determine, on October 1, 2032 or on any date thereafter, at a redemption price for each Warrant (or principal portion thereof) redeemed equal to the principal amount thereof to be redeemed, plus accrued interest to the date fixed for redemption, without premium or penalty.

The Warrants with a stated maturity on October 1, 2029 (the "2029 Term Warrants") are required to be redeemed on October 1, 2028 in the principal amount of $360,000 (with those to be redeemed to be selected by the Paying Agent) at a redemption price equal to the principal amount thereof to be redeemed plus accrued interest thereon, without premium or penalty. The remainder of the 2029 Term Warrants in principal amount of $820,000 will mature on October 1, 2029.

The Warrants with a stated maturity on October 1, 2031(the "2031 Term Warrants") are required to be redeemed on October 1, 2030 in the principal amount of $845,000 (with those to be redeemed to be selected by the Paying Agent) at a redemption price equal to the principal amount thereof to be redeemed plus accrued interest thereon, without premium or penalty. The remainder of the 2031 Term Warrants in principal amount of $880,000 will mature on October 1, 2031.

The Warrants are issuable only as fully registered Warrants in the denomination of $5,000 or any integral multiple thereof. Provision is made in the Authorizing Ordinance for the exchange of Warrants for a like aggregate principal amount of Warrants of the same maturity and in authorized denomination, all upon the terms and subject to the conditions set forth in the Authorizing Ordinance with respect thereto.

If the Book-Entry System is not in effect, then the Warrants may be transferred by the registered owner in person or by authorized attorney, only on the books of the Paying Agent and only upon surrender of the Warrant to the Paying Agent for cancellation with a written instrument of transfer acceptable to the Paying Agent executed by the registered owner or his duly authorized attorney, and upon any such transfer, a new Warrant of like tenor shall be issued to the transferee in exchange thereof. Each registered owner, by receiving or accepting this Warrant, shall consent and agree and shall be estopped to deny that insofar as the City and the Paying Agent are concerned, this Warrant may be transferred only in accordance with the provisions of the Authorizing Ordinance.

Provision is made in the Authorizing Ordinance for the replacement of any Warrant which shall be or become mutilated, lost, stolen or destroyed by the issuance, authentication and registration of a new Warrant of like tenor, subject, however, to the terms, conditions and limitations contained in the Authorizing Ordinance with respect thereto.

The Paying Agent shall not be required to transfer or exchange any Warrant during the period of fifteen (15) days next preceding any April 1 or October 1; and in the event that any Warrant (or any principal part thereof) is duly called for redemption and prepayment, the Paying Agent shall not be required to register or transfer any such Warrant during the period of forty-five (45) days next preceding the date fixed for such redemption or prepayment. No charge shall be made for the privilege of transfer, but the registered owner of any Warrant requesting any such transfer shall pay any tax or other governmental charge required to be paid with respect thereto.

It is hereby recited, certified and declared that the indebtedness evidenced and ordered paid by this Warrant is lawfully due without condition, abatement or offset of any description, that this Warrant has been registered in the manner provided by law, that all acts, conditions and things required by the Constitution and laws of the State of Alabama to happen, exist and be performed precedent to and in the execution, registration and issuance of this Warrant, and the adoption of the Authorizing Ordinance have happened, do exist and have been performed as so required and that the principal amount of this Warrant, together with all other indebtedness of the City, are within every debt and other limit prescribed by the Constitution and laws of the State of Alabama.

IN WITNESS WHEREOF, the City has caused this Warrant to be manually executed in its name and on its behalf by its Mayor and manually attested by its City Clerk, who has signed this Warrant and caused its corporate seal to be affixed hereto, and has caused this Warrant to be dated October 13, 2022.

**CITY OF OPELIKA, ALABAMA**

CITY SEAL

By ________________________________
Its Mayor

Attest: ________________________________
City Clerk

AUTHENTICATION AND REGISTRATION DATE:

AUTHENTICATION AND REGISTRATION CERTIFICATE

This Warrant is hereby authenticated and has been registered by the City of Opelika on the registration books maintained with the Paying Agent in the name of the above registered owner on the Authentication and Registration Date noted above.

**THE BANK OF NEW YORK**

**MELLON TRUST COMPANY, N.A.**

By ______________________________
Its Authorized Officer

REGISTRATION CERTIFICATE

I hereby certify that this Warrant has been duly registered by me as a claim against the City of Opelika, in the State of Alabama and the Warrant Fund referred to herein.

_______________________________________________
City Clerk

ASSIGNMENT

For value received __________________________________ hereby sell(s), assign(s) and transfer(s) unto __________________ the within Warrant and hereby irrevocably constitute(s) and appoint(s) _______________________________ attorney, with full power of substitution in the premises, to transfer this Warrant on the books of the within mentioned Paying Agent.

Dated this ____ day of _______, 20__

_______________________________________________
NOTE: The signature on this assignment must correspond with the name of the registered owner as it appears on the face of the within Warrant in every particular, without alteration, enlargement or change whatsoever.

Signature Guaranteed:

__________________________________
(Bank, Broker or Firm*)

By________________________________

Its ______________________________

Medallion Number: ________________

* Signature(s) must be guaranteed by an eligible guarantor institution which is a member of a recognized signature guarantee program, i.e., Securities Transfer Agents Medallion Program (STAMP), Stock Exchanges Medallion Program (SEMP), or New York Stock Exchange Medallion Signature Program (MSP).

**Section 6. <u>Execution of the Warrants, Registration Certificate and Authentication and Registration Certificate</u>.**

(a) Each of the Warrants shall be manually executed in the name and on behalf of the City by the Mayor and shall be attested by the City Clerk, and the official seal of the City shall be imprinted thereon. The Warrants shall be registered by the City Clerk of the City in the records maintained by the

City Clerk, as a claim against the City and the Warrant Fund, which registration shall be made simultaneously as to all the Warrants. The certificate of registration on each of the Warrants shall be executed by the City Clerk of the City. Said officers are hereby directed to so execute, attest and register the Warrants. In case any officer whose signature shall appear on the Warrants shall cease to be such officer before the authentication and delivery of such Warrants, such signature shall nevertheless be valid and sufficient for all purposes, the same as if he had remained in office until authentication and delivery.

(b) The Authentication and Registration Certificate on each Warrant shall be manually executed by an authorized officer of the Paying Agent, and each Warrant shall be registered in the name of the owner on the registration books maintained with the Paying Agent. No Warrant shall be valid unless such Warrant has been validly authenticated and registered on said registration books by the Paying Agent.

**Section 7. Warrants Are General Obligations.**

The indebtedness evidenced and ordered paid by the Warrants shall be a general obligation of the City for the punctual payment of the principal of, premium, if any, and interest on which the full faith and credit of the City are hereby pledged. The City represents that ad valorem taxes have been levied and hereby covenants and agrees that such taxes will be levied and collected, insofar as such taxes may be permitted by the present or any future provisions of the Constitution of Alabama, on all taxable property in the City, and applied to the maximum extent permitted by law to the payment of the principal of and interest on the Warrants as such principal matures and such interest comes due, in amounts sufficient for such purposes.

**Section 8. The Warrant Fund.**

(a) The Warrant Fund, hereby authorized, shall be held by the Paying Agent as paying agent for the Warrants, until the principal of, premium, if any, and interest on the Warrants shall have been paid in full or provision for such payment shall have been made as provided in Section 13 hereof. Moneys in the Warrant Fund shall be used solely for the payment of the principal of, premium (if any) and interest on the Warrants. The City shall pay or cause to be paid into the Warrant Fund the following amounts on or before the following dates:

(1) On or before October 25, 2022 and on or before the 25$^{th}$ day of each calendar month thereafter, to and including September 25, 2037, the City shall deposit into the Series 2022 Warrant Fund an amount equal to one-sixth (1/6$^{th}$) of the interest coming due on the Series 2022 Warrants on the next ensuing interest payment date, the first such interest payment date being April 1, 2023;

(2) On or before October 25, 2025, and on or before the 25$^{th}$ day of each calendar month thereafter, to and including September 25, 2037 the City shall deposit into the Series 2022 Warrant Fund an amount equal to one-twelfth (1/12$^{th}$) of the principal coming due or subject to mandatory redemption on the Series 2022 Warrants on the next ensuing principal payment or mandatory redemption date.

(b) If on any principal or interest payment date the balance in the Warrant Fund is insufficient to pay the principal of, premium, if any, and interest on the Warrants due and payable on such date, the City shall forthwith pay any such deficiency into the Warrant Fund.

(c) The City and the Paying Agent shall cause all money deposited in the Warrant Fund to be applied to the payment of principal or interest on the Warrants within thirteen months from the date of such deposit and shall cause all income and profits received from the investment of money in the Warrant Fund to be applied to the payment of principal or interest on the Warrants within twelve months from the date of receipt of such income or profits.

(d) Income and profits received from any investment of money in the Warrant Fund shall be credited against the deposit next required to be made into the Warrant Fund.

**Section 9. Transfer of Funds.**

(a) The Treasurer of the City shall collect the proceeds of the City's revenues and deposit the same in the Warrant Fund in the amounts and at the times that deposits are required by this ordinance to be made into said Fund.

(b) In the event that the proceeds of the City's revenues shall not be sufficient to pay the principal of, premium, if any, and interest on the Warrants and to make the deposits into the Warrant Fund in the amounts and at the times required by this ordinance, the City further covenants and agrees promptly to make up such deficiency from other revenues, income, taxes, assets and resources of the City, and the Treasurer of the City shall promptly deposit into the Warrant Fund from the aforesaid sources all amounts required to make up such deficiency.

**Section 10. Security for Warrant Fund.**

The money at any time on deposit in the Warrant Fund shall be and at all times remain public funds impressed with a trust for the purpose for which the Warrant Fund is created. The Paying Agent shall at all times keep the money on deposit with it in such Fund continuously secured for the benefit of the City and the registered owners of the Warrants either

(a) by holding on deposit as collateral security Government Obligations having a market value (exclusive of accrued interest) not less than the amount of money on deposit in the Warrant Fund, or

(b) if the furnishing of security in the manner provided in the foregoing clause (a) is not permitted by the then applicable laws and regulations, then in such manner as may be required or permitted by the applicable State of Alabama and Federal laws and regulations respecting the security for or granting a preference in the case of the deposit of public trust funds; provided, however, that it shall not be necessary for the Paying Agent so to secure (i) any portion of the money on deposit in the Warrant Fund that may be insured by the Federal Deposit Insurance Corporation or by any agency of the United States of America that may succeed to its functions, or (ii) any portion of the money on deposit in such Fund that may be invested as provided in Section 11.

**Section 11. Investment of Money in Warrant Fund.**

The City may cause any money on deposit in the Warrant Fund not then needed for the payment of principal of or interest on the Warrants to be invested or reinvested by the Paying Agent (described in the following section) at the written direction of the City in Qualified Investments. The Paying Agent shall not be held liable or responsible for any loss resulting from any such investments. All such investments must mature or be subject to redemption at the option of the holder on or prior to the respective date or dates when cash funds will be required for the purposes of such Fund. Any such investments shall be held by or under control of the Paying Agent. All interest accruing on such investments and any profit realized therefrom shall be deposited in the Warrant Fund. Any losses resulting from liquidation of investments shall be charged to the Warrant Fund and shall be added to the next ensuing deposit specified herein. The

Paying Agent shall sell and reduce to cash a sufficient portion of such investments whenever the cash balance in the Warrant Fund is insufficient to pay the principal and interest requirements on the Warrants. Although the City recognizes that it may obtain a broker confirmation or written statement containing comparable information at no additional cost, the City hereby agrees that broker confirmations of investments are not required to be issued by the Paying Agent for each month in which a monthly statement is rendered by the Paying Agent.

**Section 12. Paying Agent for the Warrant Fund.**

(a) The City does hereby designate and appoint The Bank of New York Mellon Trust Company, N.A. as the Paying Agent for the Warrants.

(b) The Paying Agent, by acceptance of its duties hereunder, shall have undertaken to perform only such duties as are specifically set forth in this Authorizing Ordinance and no implied covenants or obligations shall be read in this Authorizing Ordinance against the Paying Agent. The Paying Agent is not required to risk or expend its own funds in the performance of its duties hereunder.

(c) The Paying Agent, by acceptance of its duties hereunder, shall be construed to have agreed thereby with the registered owners from time to time of the Warrants that it will make all remittances of principal of and interest on the Warrants from money supplied by the City for such purpose in bankable funds at par and without discount or deduction for exchange, fees or expenses. The City hereby covenants and agrees with the registered owners of the Series 2022 Warrants and with the Paying Agent that it will pay all charges for exchange, fees or expenses which may be incurred by the Paying Agent in the making of remittances in bankable funds at par.

(d) The Paying Agent may resign and be discharged of all duties imposed upon it as Paying Agent, Warrant Registrar and transfer agent by giving written notice of such intended resignation by certified or registered mail to the City at lease thirty (30) days prior to the date when such resignation shall take effect. The Paying Agent may also be removed and discharged of all duties imposed upon it as Paying Agent, Warrant Registrar and transfer agent by the City after receiving written notice of such intended removal by the City at lease thirty (30) days prior to the date when such removal shall take effect.

(e) If at any time the Paying Agent shall resign or be or become incapable of acting or shall be adjudged a bankrupt or insolvent or a receiver of the Paying Agent or of its property shall be appointed or any public officer shall take charge or control of the Paying Agent or of its property or affairs for the purpose of rehabilitation, conservation or liquidation, then the City may remove the Paying Agent and the City shall promptly appoint a successor Paying Agent.

(f) Any successor Paying Agent shall be a bank or trust company authorized to act as Paying Agent and Warrant Registrar and having, at the time of its acceptance of such appointment, combined capital and surplus of at least $50,000,000.

(g) Every successor Paying Agent appointed hereunder shall execute, acknowledge and deliver to the City and to the retiring Paying Agent an instrument accepting such appointment and thereupon the resignation or removal of the retiring Paying Agent shall become effective and such successor Paying Agent, without any further act, deed or conveyance, shall become vested with all the rights, powers, and duties of the retiring Paying Agent.

(h) Any corporation into which the Paying Agent may be merged or with which it may be consolidated, or any corporation resulting from any merger or consolidation to which the Paying Agent shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Paying Agent, shall be the successor of the Paying Agent hereunder, without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case any Warrants shall have been authenticated, but not delivered, by the Paying Agent then in office, any successor by merger or consolidation to such authenticating Paying Agent may adopt such authentication and deliver the Warrants so authenticated with the same effect as if such successor Paying Agent had itself authenticated such Warrants.

(i) The Paying Agent shall have the right to accept and act upon directions or instructions in connection with the Warrants and delivered using Electronic Means (defined below); provided, however, that the City shall provide to the Paying Agent an incumbency certificate listing authorized officers with the authority to provide such directions or instructions (each an "Authorized Officer") and containing specimen signatures of such Authorized Officers, which incumbency certificate shall be amended whenever a person is to be added or deleted from the listing. If the City elects to give the Paying Agent directions or instructions using Electronic Means and the Paying Agent in its discretion elects to act upon such directions or instructions, the Paying Agent's understanding of such directions or instructions shall be deemed controlling. The City understands and agrees that the Paying Agent cannot determine the identity of the actual sender of such directions or instructions and that the Paying Agent shall conclusively presume that directions or instructions that purport to have been sent by an Authorized Officer listed on the incumbency certificate provided to the Paying Agent have been sent by such Authorized Officer. The City shall be responsible for ensuring that only Authorized Officers transmit such directions or instructions to the Paying Agent and that all Authorized Officers treat applicable user and authorization codes, passwords and/or authentication keys as confidential and with extreme care. The Paying Agent shall not be liable for any losses, costs or expenses arising directly or indirectly from the Paying Agent's reliance upon and compliance with such directions or instructions notwithstanding such directions or instructions conflict or are inconsistent with a subsequent written direction or written instruction. The City agrees: (i) to assume all risks arising out of the use of Electronic Means to submit directions or instructions to the Paying Agent, including without limitation the risk of the Paying Agent acting on unauthorized directions or instructions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting directions or instructions to the Paying Agent and that there may be more secure methods of transmitting directions or instructions and (iii) that the security procedures (if any) to be followed in connection with its transmission of directions or instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances. "Electronic Means" shall mean the following communications methods: e-mail, facsimile transmission, secure electronic transmission containing applicable authorization codes, passwords and/or authentication keys, or another method or system specified by the Paying Agent as available for use in connection with its services hereunder.

**Section 13. <u>Provision for Payment of Warrants</u>**

(a) The Warrants shall be deemed fully paid for purposes of this ordinance if:

(i) The City shall have filed with the Paying Agent a fully executed copy of an irrevocable trust agreement between the City and a banking institution with a designated office in the State of Alabama making provision for the retirement of the Warrants by creating for that purpose a trust fund sufficient to provide for payment and retirement of the Warrants then outstanding (including payment of the interest that will mature thereon until and on the dates they are retired, as such interest becomes due and payable, and the premium, if any, required to be paid upon the redemption of the Warrants, if any, being redeemed), either by redemption prior to their respective maturities, by payment at their respective maturities, or by payment of part thereof at their respective maturities and redemption of the remainder prior to their respective maturities, which trust fund shall consist of (A) Government Obligations which are not subject to redemption prior to their respective maturities at the option of the City and which, if the principal thereof and the interest thereon are paid at their respective maturities, will produce funds sufficient so to provide for payment and retirement of such Warrants, or (B) both cash and such Government Obligations which together will produce funds sufficient for such purpose, or (C) cash sufficient for such purpose; and

(ii) Such notice as is required hereunder for the redemption of those Warrants (if any) that, according to such trust agreement, are to be redeemed prior to their respective maturities has been given or provisions satisfactory to the Paying Agent have been made for the giving of such notice.

(b) Any money on deposit in the Warrant Fund (to the extent that such money is not required for the payment of the principal of, premium, if any, and interest on the Warrants previously becoming due and payable, or is not otherwise unavailable for the following use) may at the direction of the City be transferred to and constitute a part of the trust fund created pursuant to the aforesaid trust agreement providing for the retirement of the Warrants.

**Section 14. Approval of Warrant Purchase Agreement**

The Warrant Purchase Agreement and its prior execution on behalf of the City is hereby ratified, adopted, and approved.

**Section 15. Expenses of Collection; Interest After Maturity.**

The City covenants and agrees that, if the principal of and interest on the Warrants are not paid promptly as such principal and interest matures and comes due, it will pay to the registered owners of the Warrants all expenses incident to the collection of any unpaid portion thereof, including a reasonable attorneys' fee. The Warrants shall bear interest at the rate of 5% per annum or the maximum rate of interest allowed by law, whichever is less, from and after the respective maturity or due dates thereof, if not then paid.

**Section 16. Sale and Delivery of Warrants; Closing Papers.**

The Warrants are hereby sold to The Frazer Lanier Company Incorporated, upon the payment to the City of the purchase price of $10,067,144.35 (representing the par amount of the Warrants of $9,975,000.00 plus a net original issue premium of $166,956.85 and less an underwriting discount of $74,812.50). The City Council has determined that the sale of the Warrants to such purchaser on such terms is most advantageous to the City. The Warrants shall be delivered to such purchaser upon the payment to the City of the aforesaid purchase price. The Mayor, the City Clerk and the CityTreasurer, or any of them, are hereby authorized and directed to effect such delivery and in connection therewith to deliver such closing papers, documents and contracts (including a Non-Arbitrage Certificate and United States Treasury Form 8038-G) containing such representations as are required to demonstrate: the legality and validity of the Warrants; the exemption of interest on the Warrants from Federal and State of Alabama income taxation; and the absence of pending or threatened litigation with respect to any of such matters. The City Treasurer shall give a receipt to the said purchaser for the purchase price paid, and such receipt shall be full acquittal to the said purchaser and the said purchaser shall not be required to see to, or be responsible for, the application of the proceeds of the Warrants. Nevertheless, the proceeds of the Warrants shall be held in trust and applied solely for the purposes specified in this ordinance.

**Section 17. Application of Proceeds.**

The proceeds from the sale of the Warrants shall be applied as follows:

1. The sum of $10,004,644.35 shall be applied to the Series 2022 Improvements pursuant to the Non-Arbitrage Certificate.

2. The sum of $62,500 shall be applied by the Paying Agent to the payment of issuance expenses.

**Section 18. Covenant With Respect to Tax Exemption for Interest.**

The City hereby covenants and agrees with the registered owners from time to time of the Warrants that the proceeds of the Warrants shall not be used or applied by it, and the taxes or other revenues of the City shall not be accumulated in the Warrant Fund in such a manner and no investment thereof shall be made, as to cause the Warrants to be or become "arbitrage bonds", as that term is defined in Section 148 of the Code.

With respect to the Code, the City does hereby make the following representations and covenants:

(a) None of the proceeds of the Warrants will be applied for any "private business use" nor will any part of the proceeds of the Warrants be used (directly or indirectly) to make or finance loans to persons other than a governmental unit.

(b) The payment of the principal of and interest on the Warrants is not (i) secured in any way by any property used or to be used for a "private business use" or by payments in respect of such property or (ii) to be derived from payments (whether or not to the City) in respect of property, or borrowed money, used or to be used for a "private business use." The recreational/community complex will be open and available to the public at all times.

(c) The City hereby covenants and agrees with the registered owners of the Warrants that, to the extent permitted by law, it will not take any action, or omit to take any action with respect to the Warrants that would cause the interest on the Warrants not to be and remain excludable from gross income pursuant to the provisions of Section 103 of the Code.

(d) The City will make no use of the proceeds of the Warrants that would cause the Warrants to be or become "arbitrage bonds" under Section 148 of the Code.

(e) The City will comply with the requirements of Section 148(f) of the Code with respect to any required rebate to the United States.

(f) The City will make no use of the proceeds of the Warrants that would cause the Warrants to be "federally guaranteed" under Section 149(b) of the Code and the payment of the principal of and interest on the Warrants shall not be (directly or indirectly) "federally guaranteed" in whole or in part as described in said Section.

(g) The City has designated the Warrants as "qualified tax-exempt obligations" for the purposes of paragraph (3) of subsection (b) of Section 265 of the Code. The Warrants are “bank-qualified.”

The City hereby represents and certifies that it has no subordinate entities which have authority to issue "tax-exempt obligations" other than The Waterworks, Gas and Sewer Board of the City of Opelika and those public corporations which have the authority only to issue "tax-exempt obligations" which would be classified as "private activity bonds" under the Code, and the City does not anticipate that it will create any new such subordinate entities during this calendar year. The City does not appoint any members to the City Board of Education of the City of Opelika.

The terms used in this Section in quotation marks shall have the definitions and meanings provided by the Code.

**Section 19. Provisions of Ordinance a Contract.**

The terms, provisions and conditions set forth in this ordinance constitute a contract between the City and the registered owners of the Warrants and shall remain in effect until the principal of and interest on the Warrants shall have been paid in full, or until payment shall have been provided as set forth in Paragraph 14 hereof.

**Section 20. Severability.**

The provisions of this ordinance are severable. In the event that any one or more of such provisions or the provisions of the Warrants shall, for any reason, be held illegal or invalid, such illegality or invalidity shall not affect the other provisions of this ordinance or of the Warrants, and this ordinance and the Warrants shall be construed and enforced as if such illegal or invalid provision had not been contained herein or therein.

**Section 21. Continuing Disclosure Undertaking.**

In accordance with the requirements of Rule 15c2-12 (the "Rule") promulgated by the Securities and Exchange Commission, the City agrees to provide, or cause to be provided, the following to the Municipal Securities Rulemaking Board ("MSRB"):

(i) its annual audited financial statement on the EMMA website by March 31 of each calendar year for the prior fiscal year ending September 30, provided, however, that if the audited financial statement is not available by such date, the City will post reasonably available unaudited draft financial information by said date,

(ii) if not already included in the City's audited financial statement, an annual update to the information contained in "SOURCES OF GENERAL FUND REVENUES," and

(iii) notices ("Material Event Notices") of the occurrence of the following events with respect to the Warrants in a timely manner:

Not in excess of 10 Business Days after the occurrence of a reportable event, to MSRB: (a) principal and interest payments delinquencies, (b) non-payment related defaults, if material, (c) unscheduled draws on debt service reserves reflecting financial difficulties, (d) unscheduled draws on credit enhancements reflecting financial difficulties, (e) substitution of credit or liquidity providers or their failure to perform, (f) adverse tax opinions with respect to the Series 2022 Warrants, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the security, or other material events affecting the tax status of the security; (g) modifications to rights of security holder, if material, (h) bond calls, if material, and tender offers, (i) defeasances, (j) release, substitution or sale of property securing repayment of the securities, if material, (k) rating changes, if any are then in effect, (l) bankruptcy, insolvency, receivership or similar event of the obligated person, (m) merger, consolidation, acquisition or sale of assets involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material, (n) appointment of a successor or additional paying agent or the change of name of a paying agent, (o) the incurrence of a financial obligation of the obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the obligated person, any of which affect security holders, if material, and (p) default, an event of acceleration, a termination event, modification of terms, or other similar events under the terms of a financial obligation of the obligated person, any of which reflect financial difficulties; and

(iv) in a timely manner, notice of any failure by the City to provide the required annual financial information on or before the date specified.

The City reserves the right to modify from time to time the specific types of information provided or the format of the presentation of such information, to the extent necessary or appropriate in the judgment of the City; provided that, the City agrees that any such modification will be done in a manner consistent with the Rule. The City reserves the right to terminate its obligation to provide the annual operating information and financial information and notices of material events, as set forth above, if and when the City no longer remains an obligated person with respect to the Warrants within the meaning of the Rule. The City acknowledges that its undertaking, pursuant to the Rule described under this heading is intended to be for the benefit of the registered owners of the Warrants and shall be enforceable by the holders; provided that, the holders' rights to enforce the provisions of this undertaking shall be limited to a right to obtain specific enforcement of the City's obligations hereunder and any failure by the City to comply with the provisions of this undertaking shall not be an event of default with respect to the Warrants and shall not subject the City to money damages in any amount, whether compensatory, penal or otherwise.

**Section 22. Approval of Preliminary Official Statement and Final Official Statement.**

The Preliminary Official Statement and the final Official Statement (collectively, the "Official Statements"), with respect to the Warrants, in substantially the form and of substantially the content as the forms of Official Statements presented to and considered at this meeting, are hereby approved and adopted.

The City Council does hereby find and determine that the Official Statements are correct and do not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

The Mayor of the City is hereby authorized to execute and deliver the final Official Statement for and on behalf of and in the name of the City, with such changes or additions thereto or deletions therefrom as he may deem necessary or desirable in order to state fully and correctly the pertinent facts concerning the City and the Warrants offered thereby.

The distribution of the Preliminary Official Statement to prospective purchasers of the Warrants is hereby ratified and confirmed.

**Section 23. Repeal of Conflicting Provisions.**

All ordinances, resolutions and orders or parts thereof in conflict with this ordinance are to the extent of such conflict, hereby repealed.

The motion for unanimous consent was seconded by Councilmember ________________ and upon the question, the vote thereon was as follows:

Ayes: Charles E. Smith, Council President
Erica Baker-Norris, President Pro Tempore
George Allen
Tim Aja
Todd Rauch

Nays: None

The Council President declared the motion carried and the rules suspended.

After said ordinance had been discussed and considered in full by the Council, Councilmember ____________________ then moved for the adoption of the Ordinance and to waive the reading of said ordinance at length. The motion was seconded by Councilmember _________________. The motion was regularly put, and upon roll call, the vote thereon was as follows:

Ayes: Charles E. Smith, Council President
Erica Baker-Norris, President Pro Tempore
George Allen
Tim Aja
Todd Rauch

Nays: None

The Council President thereupon declared said ordinance passed and adopted as introduced.

ADOPTED AND APPROVED this the 4th day of October, 2022.

PRESIDENT OF THE CITY COUNCIL OF
THE CITY OF OPELIKA, ALABAMA

ATTEST:

CITY CLERK

**TRANSMITTED TO MAYOR** on this the 5th day of October, 2022.

CITY CLERK

ACTION BY MAYOR

APPROVED this the 5th day of October, 2022.

MAYOR

ATTEST:

CITY CLERK

* * *

It was moved and seconded that the meeting be adjourned. Motion carried.

## CERTIFICATE OF CITY CLERK

I do hereby certify that I am the duly elected, qualified and acting City Clerk of the City of Opelika, Alabama (the "City"). I do further certify that as City Clerk of the City I have access to all original records of the City and I am duly authorized to make certified copies of its records on its behalf; the above and foregoing pages constitute a complete, verbatim and compared copy of excerpts from the minutes of a meeting of the City Council of the City duly held on the 4th day of October, 2022, the original of which is on file and of record in the minute book of the City Council in my custody; the ordinance set forth in such excerpts is a complete, verbatim and compared copy of said ordinance as introduced and adopted by the City Council on such date; and said ordinance is in full force and effect and has not been repealed, amended or changed.

IN WITNESS WHEREOF, I have hereunto set my hand as City Clerk of the City and have affixed the official seal of the City, this 5th day of October, 2022.

____________________________________
City Clerk

CITY SEAL