

## **ORDINANCE NUMBER 3220**

### **AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER A FUNDING AGREEMENT WITH INNOVATE ALABAMA TO BECOME AN INNOVATE ALABAMA NETWORK PARTNER AND RECEIVE FUNDING FOR AMENITIES AT ALTADENA VALLEY PARK**

**WHEREAS**, the Alabama Innovation Commission, known as Innovate Alabama, was established July 16, 2020 through Executive Order 720 of Governor Kay Ivey to serve as a platform for entrepreneurs, innovators, and other stakeholders to engage policymakers, exchange ideas, and identify policies that promote innovation in the state; and

**WHEREAS**, the Alabama Innovation Corporation was created through Act. 2021-455 to partner with the private sector, state agencies, and state policy makers to make and develop and implement programs and policies to lead to a more robust, diverse, and resilient economy for this state; and

**WHEREAS**, the Alabama Innovation Commission partnered with the Hoover Institution to identify strategies to promote economic development through creating partnerships that will leverage their assets to contribute to a regional innovation ecosystem; and

**WHEREAS**, Innovate Alabama has designed the Innovate Alabama Network program to catalyze innovation by encouraging partnerships and funding activities which enhance the regional innovation ecosystem through its core pillars of Talent Development, Access to Resources, and Lifestyle and Recreation; and

**WHEREAS**, Innovate Alabama has extended to the City of Vestavia Hills the opportunity to join the Innovate Alabama Network with funding of \$15,000 towards the proposed project of adding outdoor fitness equipment at Altadena Valley Park; and

**WHEREAS**, admission to the Innovate Alabama Network will add the City of Vestavia Hills to a growing list of communities which have already joined the Network and will have access to additional resources for economic development; and

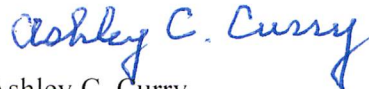
**WHEREAS**, an Innovate Alabama Network Grant Agreement has been presented to the City of Vestavia Hills for said funding, a copy of which is marked as Exhibit A, attached to and incorporated into this Ordinance Number 3220 as if written fully therein; and

**WHEREAS**, the Mayor and the City Council feel it is in the best public interest to accept said grant and authorize the City Manager to execute the agreement detailed in Exhibit A.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA, AS FOLLOWS:**

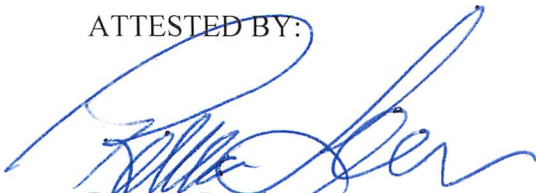
1. The City Manager is hereby authorized to execute and enter into an agreement with the Alabama Innovation Corporation as detailed in the attached Exhibit A; and
2. The City Manager is further authorized to deposit the grant proceeds into the City's Capital Fund (Fund 20) and expend said funds for purposes of installing recreational/fitness equipment and trail enhancements consistent with the Altadena Valley Park Master Plan; and
3. This Ordinance Number 3220 shall become effective immediately upon adoption and approval following publishing/publication pursuant to Alabama law.

**DONE, ORDERED, ADOPTED and APPROVED** this the 13<sup>th</sup> day of May, 2023.



Ashley C. Curry  
Mayor

ATTESTED BY:

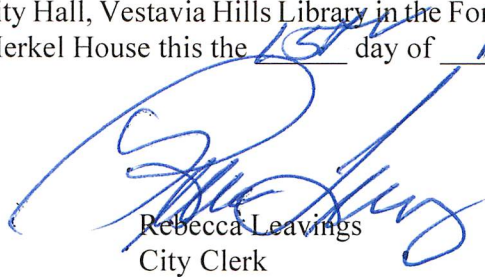


Rebecca Leavings  
City Clerk

**CERTIFICATION:**

I, Rebecca Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance # 3219 is a true and correct copy of such Ordinance that was duly adopted by the City Council of the City of Vestavia Hills on the 13<sup>th</sup> day of May, 2024 as same appears in the official records of said City.

Posted at Vestavia Hills City Hall, Vestavia Hills Library in the Forest, Vestavia Hills Civic Center and Vestavia Hills New Merkel House this the 15<sup>th</sup> day of May, 2024.



Rebecca Leavings  
City Clerk

## CITY OF VESTAVIA HILLS, AL Funding

**Alabama Innovation Corporation**  
**Innovate Alabama Network Grant Agreement**

This Grant Agreement (this "Agreement"), pursuant to the Innovate Alabama Network Grant Program (the "Network Grant Program"), is entered into by and between the Applicant (listed below) and the Alabama Innovation Corporation, an Alabama public corporation, hereinafter referred to as "Innovate Alabama," together with the Applicant, the "Parties" and, each, a "Party". Award of this grant (the "Grant") is subject to the Applicant's acceptance of the terms set forth in the Grant Agreement Terms, a copy of which is attached hereto as Exhibit A and incorporated herein by reference.

The following terms shall have their respective meanings in this Agreement and in the Grant Agreement Terms:

<b>Applicant</b>	CITY OF VESTAVIA HILLS, AL
<b>Applicant Address</b>	1032 MONTGOMERY HIGHWAY, VESTAVIA HILLS, AL 35216
<b>Applicant Primary Contact Name</b>	JEFFREY DOWNES, CITY MANAGER
<b>Applicant Primary Contact Phone Number</b>	205.978.0195
<b>Applicant Primary Contact Email</b>	<a href="mailto:jdownes@vhal.org">jdownes@vhal.org</a> . Please CC: mhipp@vhal.org
<b>Amount of Grant Funding Awarded</b>	\$15,000
<b>Project Description</b>	Outdoor Fitness Center and Trail at Altadena Valley Park
<b>Grant Period Expiration</b>	One year from disbursement of funds.

*To accept this Agreement and have rights to the funds as provided herein (the "Grant Fund") the Applicant must return a signed copy of this Agreement to Innovate Alabama. Execution of this Agreement signifies the Applicant's agreement to comply with the Grant Agreement Terms set forth in Exhibit A. Should any part of this Agreement not be satisfactory, please return any Grant Funds paid herewith until the issues are resolved.*

**Alabama Innovation Corporation**

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Applicant:** \_\_\_\_\_

Name: Jeffrey Downes \_\_\_\_\_

Title: City Manager \_\_\_\_\_

Date: \_\_\_\_\_

**Exhibit A**  
**Grant Agreement Terms**

**1. Certification of the Applicant's Eligibility under the Network Grant Program.**

- a. The Applicant certifies it is either a non-profit organization, municipality, or educational institute as defined below.
  - i. Non-profit organization is defined as a nonprofit validly existing and registered to do business in Alabama, with a determination letter from the Internal Revenue Service evidencing its 501(c)(3) status.
  - ii. A municipality is defined as a municipality in Alabama; a county in Alabama; or a federally recognized Native American tribe in Alabama.
  - iii. An educational institution is a public or private university or college, accredited by any of the following institutions:
    - Southern Association of Colleges and Schools Commission on Colleges (SACSCOC)
    - National Accrediting Commission of Career Arts and Sciences (NACCAS)
    - Higher Learning Commission (HLC)
    - Association for Biblical Higher Education (ABHE)
    - Council on Occupational Education (COE)
    - Accrediting Commission of Career Schools and Colleges (ACCSC)
    - Accrediting Bureau of Health Education Schools (ABHES)
    - Distance Education Accrediting Commission (DEAC)
    - American Osteopathic Association (AOA)

**2. Disbursement of Grant Funds.** This Agreement may condition the disbursement of Grant Funds on certain milestones which the Parties will agree to in writing and attach to this Agreement. In such event, Innovate Alabama will have sole and absolute discretion to determine whether such milestones are met and additional disbursements should be made.

**3. Expenditure of Grant Funds.**

- a. The Grant Funds may only be used for those reasonable expenses incurred by the Applicant, pursuant to the Applicant's proposed use of funds submitted with its application for the Network Designation Grant Program. The Applicant shall maintain records sufficient to prove to Innovate Alabama, subject to its sole and absolute discretion, that none of the Grant Funds have been used for any purpose other than as provided in the Applicant's proposed use of funds.
- b. The Applicant is responsible for the expenditure of Grant Funds in accordance with the submitted project budget, and for maintaining adequate supporting records consistent with generally accepted accounting practices or the Applicant's historical accounting principles, each consistently applied. All such records shall be maintained for at least five years after the Grant Period Expiration and, upon request by Innovate Alabama, shall be made electronically available to Innovate Alabama, its auditors, or other agents.
- c. Except as provided in this Agreement, Innovate Alabama has no obligation to provide additional support to the Applicant. Innovate Alabama's obligation to provide support under this Agreement shall terminate if it determines that the Applicant has failed to perform in accordance with the terms of this Agreement.

- d. Awards should be utilized to advance the applicant's efforts to enhance the existing innovation ecosystem. Funds cannot be used to recoup a personal investment or to pay off debt. Legal fees related to any eligible cost should not exceed 10% of the awarded funds. If there are elements of funding not allowed in the underlying award, but which the applicant deems critical to the proposed project, the applicant may request funding, but must clearly indicate in the request that these are not otherwise allowable and justify the request.
  - e. No portion of the Grant Funds provided under the terms of this Agreement may be used to support the following:
    - i. Any contributions or expenditures in support of, or in opposition to, any candidate for political office (federal, state, or local), political party, political committee that supports political candidates or parties, or nonprofit organization that will use the funds for political activities;
    - ii. Any "electioneering communications" as that term is defined under federal or state law;
    - iii. Any action to carry on propaganda or otherwise attempt to influence legislation; and
    - iv. Any action to influence the outcome of any specific public election or to carry on, directly or indirectly, any voter registration drive.
4. **Semi-Annual Reporting.** An applicant awarded funds under the Innovate Alabama Network Designation Program must complete and submit to Innovate Alabama reports at 6 months and 12 months after the grant has been made. A copy of the form that the Applicant must use for such reports is attached hereto as Exhibit B. Innovate Alabama reserves the right to make amendments to Exhibit B from time to time, in which case the Applicant agrees to make its reports on such amended form.
5. **Compliance with Laws.**
- a. The Applicant represents, to the best of its knowledge, that it is in compliance with all applicable laws, ordinances, codes, rules, requirements, and regulations of foreign, federal, state, and local governments and all agencies thereof relating to the operation of its business and the maintenance and operation of its properties, assets, employees, and independent contractors.
  - b. The Applicant represents, to the best of its knowledge, that no Applicant investor, director, officer, or employee is a member of the Innovate Alabama Board ("the Board") or an employee of Innovate Alabama, or a family member of any such individual. Further, the Applicant represents, to the best of its knowledge, that no family member of a Applicant investor, director, officer, or employee is either a member of the Board or an employee of Innovate Alabama, or a family member of any such individual. To the extent that the Applicant cannot make this representation, Applicant represents that these relationships have been disclosed in its application.
  - c. The Applicant certifies that any public official or public employee (or the family members of such public official or public employee) under the Alabama Ethics Act (Section 36-25-1, et seq. Code of Alabama (1975)), who is an investor, director, officer, or employee of the Applicant, has not and will not use his or her public position to obtain any personal gain or financial benefit, except as specifically authorized by law or as provided pursuant to a lawful university or agency policy or employment agreement.
6. **Publicity.** Announcement of the Grant to the public may be made by the Applicant or Innovate

Alabama, except as provided herein. The Applicant shall provide notice to Innovate Alabama prior to the use of Innovate Alabama 's name or logo and shall send to Innovate Alabama a copy of any published accounts mentioning the Grant. The Applicant grants a royalty-free, non-transferable limited license to Innovate Alabama for the use of the Applicant's name and logo in any publications made by or for Innovate Alabama. The Applicant agrees to use or display the Innovate Alabama Network Designation Logo, a sample of which is attached hereto on Exhibit C, on the Applicant's buildings, websites, and other marketing materials related to or associated with the Network Grant Program.

7. **Evaluation.** Innovate Alabama may, at its own expense, monitor and conduct an evaluation of the Applicant's activities utilizing the Grant Funds. Innovate Alabama has the right, upon reasonable notice, to inspect the accounts, books, and records of the Applicant to ensure, in its sole discretion, compliance with this Agreement. This evaluation may include site visits. Such visits will be made at Innovate Alabama's discretion and upon reasonable notice to the Applicant.
8. **Return of Grant Funds.**
  - a. The Applicant shall return to Innovate Alabama any unexpended Grant Funds within 60 days of the Grant Period Expiration unless the Applicant has requested and received from Innovate Alabama a written extension of the Grant Period Expiration.
  - b. The Applicant shall promptly return any unexpended Grant Funds to Innovate Alabama if the Applicant violates any of the terms in this Agreement; provided, however, that the Applicant shall return to Innovate Alabama an amount equal to the full amount of the Grant Funds, regardless of whether or not the Applicant has already used any portion of such funds, if any of the following occurs:
    - i. The Applicant makes any misrepresentations or false statements to Innovate Alabama in the Application or this Agreement;
    - ii. The Applicant violates Section 1 of this Agreement; or
    - iii. The Applicant violates Section 3 of this Agreement.
9. **Indemnification.** Except to the extent prohibited by law, the Applicant shall indemnify, defend, and hold harmless Innovate Alabama, and the officers, directors, employees, agents, and contractors of Innovate Alabama, from and against any and all losses, damages, expenses, liabilities, demands, claims, suits, and judgments, including without limitation all court costs and reasonable attorneys' fees, arising out of or relating to either (a) the Applicant's performance under this Agreement or breach thereof, or (b) the intentional misconduct or negligent acts or omissions of the Applicant, its employees, agents, contractors, or consultants in connection with the performance of its obligations under this Agreement. The Applicant covenants not to sue Innovate Alabama, its officers, directors, employees, agents, or contractors, under any circumstances or upon any grounds with respect to the services bargained for under the terms of this Agreement, or any part thereof, or any injury, damage, or loss, whether physical or economic, to the persons or property resulting therefrom. This provision shall survive the termination of this Agreement.
10. **Rights to Reports, Materials, Books, and Articles.** All reports, materials, books, and articles resulting from the Grant are considered to be the copyrighted works of the Applicant or the author, in accordance with the policies of the Applicant toward the goal of obtaining the widest dissemination of such reports, materials, books, and articles. Applicant and author hereby grant to Innovate Alabama and its affiliates a non-exclusive, non-transferrable, royalty-free license solely to use, copy and distribute on all types of media any and all published reports, materials, books, and articles resulting from the Grant.
11. **Notices.** All notices, requests, consents, claims, demands, waivers and other communications



hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective Party at the following addresses (or at such other address for a Party as shall be specified in a notice given in accordance with this paragraph):

If to Innovate Alabama:

Innovate Alabama

Attn: Cynthia Crutchfield

1320 1st Avenue South

Birmingham, AL 35233

Email: [Partners@innovatealabama.org](mailto:Partners@innovatealabama.org)

If to the Applicant, such communication may be addressed to the Applicant, in care of the Applicant Primary Contact, at the Applicant Address. Email communications may be sent to the Applicant Primary Contact Email.

12. **Independent Contractor.** Nothing in this Agreement shall constitute the naming of the Applicant as an agent or legal representative of Innovate Alabama for any purpose whatsoever. This Agreement shall not be deemed to create any relationship of agency, partnership or joint venture between the Parties hereto, and the Applicant shall make no such representation to anyone.
13. **Dispute Resolution.** Subject to either Party's right to seek remedies available to it at law and in equity, in the event of a dispute of any kind arising out of or in any way related to this Agreement, the Parties shall endeavor in good faith to settle the dispute through negotiation. If the dispute cannot be resolved through negotiation, or another mutually agreeable dispute resolution mechanism, either of the Parties has the right to request non-binding mediation where a mutually agreed upon neutral third party assists the Parties in reaching a negotiated settlement.
14. **Remedies Cumulative.** The remedies afforded to a Party in this Agreement are not intended to be exclusive, and each remedy shall be cumulative and shall be in addition to all other remedies available to a Party at law or in equity.
15. **Third-Party Beneficiaries.** This Agreement shall not be construed to confer any rights or remedies upon any person or entity, except the Applicant and Innovate Alabama.
16. **Waivers.** No delay or omission by either Party in exercising any rights or remedies under this Agreement or applicable law shall impair such right or remedy or be construed as a waiver of any such right or remedy. Any single or partial exercise of a right or remedy shall not preclude further exercise of that right or remedy or the exercise of any other right or remedy. No waiver shall be valid unless in writing signed by the Party to be bound.
17. **Applicable Law.** All matters arising out of or relating to this Agreement shall be governed by and construed in accordance with the laws of the State of Alabama, without regard to its conflict of laws principles, and, where applicable, the laws of the United States.
18. **Venue and Consent to Jurisdiction.** Any action at law, suit in equity, or other judicial

proceeding for the enforcement of this Agreement or any provision hereof may take place in the State of Alabama, in Montgomery County. The Parties hereby irrevocably consent to the personal jurisdiction of the state and federal courts in or for Montgomery County, in any dispute arising from or relating to this Agreement.

19. **Captions and Headings.** The captions and headings contained in this Agreement are for convenience of reference only and shall not be used to limit the applicability or meaning of any provisions of this Agreement.
20. **Pronouns and Plurals.** All personal pronouns used in this Agreement, whether used in the masculine, feminine or neuter gender, shall include all other genders where the context so requires. The use of the singular form shall include the plural and the use of the plural shall include the singular where the context so requires.
21. **Severability.** If any term or provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each provision shall be valid and enforceable to the fullest extent permitted by law.
22. **Construction.** This Agreement shall be interpreted and construed in a fair and impartial manner without regard to such factors as the Party which prepared the instrument or drafted any provision thereof, the relative bargaining powers of the Parties or the domicile of any Party.
23. **Modification and Amendment.** This Agreement shall not be modified or amended in any respect except by a written instrument executed by the Parties.
24. **Assignments.** This Agreement may not be assigned by the Applicant without the prior written consent of Innovate Alabama. This Agreement shall be binding upon the Parties and their respective successors and permitted assigns and shall inure to the benefit of the Parties and their respective successors and permitted assigns.
25. **Entire Agreement.** This Agreement, together with the Network Designation Guidelines and Application, contains the entire agreement of the Parties in respect of the subject matter hereof, and supersede all prior and contemporaneous understandings, instruments, and agreements, both written and oral, with respect to such subject matter. Neither party is relying upon any statement or representation not provided in writing herein.
26. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same document. Any executed counterpart transmitted by facsimile, electronic communication in portable document format (.pdf), or similar transmission by any Party shall be deemed to be, and shall have the same force and effect as, an original.

**Exhibit B**

**Innovate Alabama Network Designation Grant Program Reporting Form**

Date of Report: \_\_\_\_\_

<i>Section 1 - General Information</i>	
Applicant Name	CITY OF VESTAVIA HILLS
Applicant Address	1032 MONTGOMERY HIGHWAY VESTAVIA HILLS, AL 35216
Primary Contact Name	JEFFREY DOWNES
Primary Contact Title	CITY MANAGER
Primary Contact Email	<a href="mailto:Jdownes@vhal.org">Jdownes@vhal.org</a>
Primary Contact Phone	205.978.0195

<i>Section 2 – Reporting</i> <i>(Please report on achieved during this 6-month reporting period)</i>	
Project Description	Outdoor Fitness Center and Trail at Altadena Valley Park
Total Grant Funds Used	TBD, up to \$15,000 (grant award)
Amount of Additional Capital Raised From:	
Grants	
Venture Capital	n/a
Other (please specify)	
Participants Impacted <i>(Please indicate if there are any KPIs or evaluation metrics being used)</i>	Talent – attracting and retaining talent and employers (no KPIs evaluated)
Major Outcomes of Granted Funds	

Describe the Applicant's milestones, how they have been achieved, and, if not achieved, when the milestones will be achieved. Using the budget submitted with your Application, describe money spent and money remaining on hand.

***I certify that the information in this Report Form is true and correct.***

**APPLICANT: CITY OF VESTAVIA HILLS, AL**

BY: \_\_\_\_\_

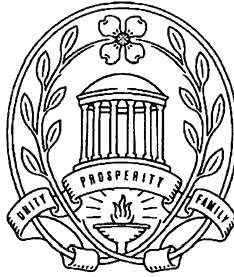
Name: JEFFREY DOWNES, CITY MANAGER

**Exhibit C**

**Innovate Alabama Network Designation Logo**

The following logo shall be prominently displayed on the Applicant's buildings, websites, and other marketing materials related to or associated with the Network Grant Program. Please contact [partners@InnovateAlabama.org](mailto:partners@InnovateAlabama.org) for high-resolution images and graphics.





**CITY OF VESTAVIA HILLS  
OFFICE OF THE CITY MANAGER  
INTER-DEPARTMENT MEMO**

**May 13, 2024**

**To:** Mayor and City Council

**From:** Jeff Downes, City Manager

**Cc:** Jamie Lee, Parks and Leisure Services Director

**RE:** Public Hearing - Ordinance Number - 3220 - An Ordinance  
Authorizing the City Manager to Accept a Grant and Enter Into an  
Agreement with Innovate Alabama for Improvements to Altadena  
Valley Park

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**Background:**

The City of Vestavia Hills applied and has been notified of a grant receipt from Innovate Alabama totaling \$15,000. The funding can be applied to recreational/fitness equipment installation at Altadena Valley Park along with trail enhancements.

**Recommendation:**

It is recommended that the City Council authorize the City Manager to execute any and all documents to allow receipt of these funds and approve the expenditure consistent with the grant agreement.

**Fiscal Impact:**

The \$15,000 grant has no match requirement; however, the further implementation of the Altadena Valley Park Master Plan was a crucial factor in the grant award.

**Attachments:**

1. ORDINANCE Authorizing agreement with Innovation Network
2. Innovate Alabama Network\_Funding Agreement
3. PH Boone Legal Opinion to City Manager May 7 2024