CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number_____

Meeting Type: Regular

Meeting Date: 3/22/2012

Action Requested By:
Engineering

Agenda Item Type
Resolution

Subject Matter:

Agreement with the Health Care Authority of the City of Huntsville

Exact Wording for the Agenda:

Resolution authorizing the Mayor to enter into a Real Estate Agreement between the City of Huntsville and the Health Care Authority of the City of Huntsville for Governors Drive, Phase II Project, Project No. 65-06-RD04

Note: If amendment, please state title and number of the original

Item to be considered for: Action

Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what Council action will provide, allow
and accomplish and; any other information that might be helpful.

This agreement between the City and the Health Care Authority of the City of Huntsville is for the purchase of necessary easements and temporary construction easements for a total contract amount of $121,830.00. Acct. No. 23-6500-0813-8127

Associated Cost:

Budgeted Item: Select...

MAYOR RECOMMENDS OR CONCURS: Select...

Department Head: Date:

revised 4/13/2011

ROUTING SLIP
CONTRACTS AND AGREEMENTS

Originating Department: **Engineering** Council Meeting Date: **3/22/2012**

Department Contact: **Lynn Majors** Phone # **256-427-5201**

Contract or Agreement: **Real Estate Purchase Agreement**

Document Name: **Huntsville Hospital Agreement Project No. 65-06-RD04**

City Obligation Amount: **$121,830.00**

Total Project Budget: **$121,830.00**

Uncommitted Account Balance: **0**

Account Number: **23-6500-0813-8127**

Procurement Agreements

Not Applicable	**Not Applicable**

Grant-Funded Agreements

Not Applicable	**Grant Name:**

Department	Signature	Date
1) Originating		3/5/12
2) Legal	Mary C. Cotts	3/9/12
3) Finance		3/9/12
4) Originating		
5) Copy Distribution		
a. Mayor's office (2 copies)		
b. Clerk-Treasurer (Original & 2 copies)		
c. Legal (1 copy)		

RESOLUTION NO. 12-____

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and is hereby authorized to enter into an Agreement to Purchase with The Health Care Authority of the City of Huntsville (the "Hospital"), on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to that certain document attached hereto and identified as "Real Estate Purchase Agreement between the City of Huntsville and the Health Care Authority of the City of Huntsville," consisting of five (5) pages, including Exhibit A, and the date of March 22, 2012, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this the 22nd day of March, 2012.

_____
President of the City Council of
the City of Huntsville, Alabama

APPROVED this the 22nd day of March, 2012.

_____
Mayor of the City of
Huntsville, Alabama

REAL ESTATE AGREEMENT

This Real Estate Agreement (this "Agreement") is entered into by and between **THE CITY OF HUNTSVILLE,** an Alabama municipal corporation (hereinafter referred to as either "Buyer," "Purchaser," or the "City") who agrees to purchase the real property described in Paragraph One (1) from **THE HEALTH CARE AUTHORITY OF THE CITY OF HUNTSVILLE**, a health care authority organized under the laws of the State of Alabama (hereinafter referred to the "Seller"), who agrees to sell the Property. In consideration of ten and no/100 Dollars ($10.00) and other good and valuable consideration, the receipt of such by Seller is hereby acknowledged, the parties hereby agree as follows:

1. Sale and Purchase

Seller hereby agrees to grant, bargain, sell and convey to Purchaser Temporary Construction Easements and Purchaser hereby agrees to purchase from Seller, subject to the terms and conditions hereinafter set forth, said Temporary Construction Easements over, under and upon those certain parcels of land lying and being situated in Madison County, Alabama, and being specifically described in Exhibit "A" (hereinafter referred to as "the Property").

THE ABOVE DESCRIBED TEMPORARY CONSTRUCTION EASEMENTS SHALL TERMINATE AND ALL RIGHTS SHALL REVERT TO SELLER UPON COMPLETION OF THE CITY OF HUNTSVILLE GOVERNORS DRIVE IMPROVEMENTS, PHASE II PROJECT, OR TWO (2) YEARS FROM THE DATE OF CLOSING, WHICHEVER SHALL FIRST OCCUR.

2. Purchase Price

The Purchase Price for the Temporary Construction Easements shall be One Hundred Twenty-One Thousand Eight Hundred and Thirty and no/100 Dollars ($121,830.00), which shall be payable at Closing.

3. Conditions of Sale

This agreement to Purchase is subject to approval by both the Huntsville City Council and the Board of Directors for the Seller within 21 days from the date it is executed. Furthermore, the agreement is subject to Buyer's written approval of a title opinion from Wilmer & Lee, P.A., to Buyer.

President of the City Council of the City of Huntsville, AL
Date: March 22, 2012

4. Title

The Temporary Construction Easements shall be conveyed to Buyer by Warranty Deed, in a form and content satisfactory to Buyer and in accordance with the laws of the State of Alabama, conveying the Temporary Construction Easements over, under and upon the Property, free and clear of all liens, encumbrances and other matters affecting title except a lien for taxes not yet due and payable, matters of survey and existing easements and restrictions of record. Any existing mortgages on the Property shall be paid and/or satisfied at or prior to closing. Seller shall provide customary affidavits in order to establish clear title to the Property if necessary.

5. Closing

The closing shall be within thirty (30) days after the conditions set forth in Paragraph Three have been satisfied, or earlier at the option of Buyer. The Parties further agree as follows:

a. Real Property Taxes for the current year, if any, shall be paid by the Seller when due.
b. Seller shall deliver an Affidavit of no Liens and attesting to Seller's sole possession to Buyer.
c. Buyer shall pay for the deed, taxes and recording fees. Buyer shall pay for other costs of closing. Each party shall pay its own attorney's fees in connection with closing.
d. Seller shall provide the above-referenced deeds at closing to be prepared by Buyer's counsel, at Buyer's expense.

6. Broker

The Seller and Buyer acknowledge that no broker and/or finder arranged the sale of Seller's property on the terms and conditions contained herein. Seller and Buyer do hereby agree to indemnify each other from all loss, damage, cost or expense, including attorney's fees, that they may suffer as a result of any claim or action brought by any other broker, acting on behalf of Seller or Buyer, respectively.

7. Time of the Essence

Time is of the essence of this Agreement.

8. Attorney's Fees

In the event of a dispute between the parties pursuant to the terms of this Agreement, the prevailing party shall be entitled to collect reasonable attorney's fees.

9. Successors

All rights and obligations of Buyer and Seller under this Agreement shall inure of the benefit of and be binding upon all successors and assigns of each of them.

10. Amendment

No modification or amendment of this Agreement shall be of any force or effect unless the same shall be made in writing and executed by each party hereto. To the extent that escrow, closing or settlement instructions or other similar documents are inconsistent with the terms and conditions of the purchase and sales contained herein, this Agreement shall control and shall survive the recordation of any and all deeds.

11. Entire Agreement

This Agreement contains the entire Agreement between the parties. No promise, representation, warranty or covenant not included in this Agreement has been or is relied upon by either party. Each party has relied upon his own examination of the full Agreement and the provisions thereof and the warranties, representations and covenants expressly contained in the Agreement itself.

12. Interpretation

This Agreement shall be interpreted in accordance with Alabama law. Unless otherwise provided, all terms shall have the meaning given them in ordinary English usage and as customarily used. Words in the masculine gender include feminine and neuter. The paragraph headings and titles of this Agreement are not part of this Agreement, having been inserted for convenience of reference only, and shall have no effect upon the construction or interpretation of any part of this Agreement.

13. Facsimile Signatures

The parties hereto agree that this Agreement maybe executed by circulating the Agreement by facsimile machine for signatures and that facsimile signatures shall be binding on all parties. It is further agreed that if facsimile signatures are used, then upon execution of this Agreement, originals will be circulated for the purpose of obtaining original signatures and each party to this Agreement agrees to execute this Agreement and return a fully executed original to the other party. Until such

time as the originals are fully executed by the parties, or in the event such does not occur, the fully executed facsimile agreement shall remain the binding agreement.

14. Execution by Counterpart Originals.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute the same instrument.

IN WITNESS WHEREOF, the parties have caused this Agreement to Purchase to be executed on the respective dates set forth below.

BUYER:

The City of Huntsville, Alabama

By: _____
Tommy Battle, Mayor

Attest: _____
Charles Hagood, Clerk Treasurer

Date: _____

SELLER: Health Care Authority of the City of Huntsville d/b/a Huntsville Hospital

The Health Care Authority of the City of Huntsville

By: [signature]
3-9-12

It: COO
Jeff Samz

KOL

Attest: Nella Stone
Nella Stone Printed Name

Its: _____ Title

Date: 3-9-12

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EXHIBIT "A"

TEMPORARY CONSTRUCTION EASEMENT
FROM HUNTSVILLE HOSPITAL TO THE CITY OF HUNTSVILLE

TCE "A"

Beginning at a point, having coordinates of N:1,536,218.37, E:433,153.53; thence S82°41'46"E a distance of 496.18 feet; thence S01°56'53"W a distance of 14.11 feet; thence N89°17'59"W a distance of 263.64 feet; thence N13°29'25"E a distance of 19.97 feet; thence N77°28'38"W a distance of 136.99 feet; thence S12°24'07"W a distance of 25.27 feet; thence N80°35'49"W a distance of 23.85 feet; thence N80°55'31"W a distance of 78.31 feet; thence N12°24'07"E a distance of 34.05 feet to the point of beginning and containing 13,688.62 square feet, more or less.

TCE "B"

Beginning at a point, having coordinates of N:1,536,223.05, E:433,062.41; thence S12°24'07"W a distance of 16.00 feet; thence N81°40'35"W a distance of 235.41 feet; thence N30°10'35"W a distance of 15.98 feet; thence N06°34'24"W a distance of 3.57 feet; thence S81°40'35"E a distance of 247.42 feet to the point of beginning and containing 3,864.30 square feet, more or less.

TCE "C"

Beginning at a point, having coordinates of N:1,536,244.87, E:432,671.71; thence S41°48'05"W a distance of 9.16 feet; thence N87°47'53"W a distance of 244.00 feet; thence S02°12'07"W a distance of 6.50 feet; thence N87°47'53"W a distance of 97.22 feet; thence N87°53'34"W a distance of 3.94 feet; thence N02°00'46"E a distance of 11.50 feet; thence S88°08'06"E a distance of 351.04 feet to the point of beginning and containing 2,751.91 square feet, more or less.

ALABAMA
REGISTERED
NO. 14107
LAND
SURVEYOR
JAMES N. HILL, JR.