

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number \_\_\_\_\_

Meeting Type: Regular

Meeting Date: 4/11/2013

Action Requested By:  
Legal

Agenda Item Type  
Resolution

Subject Matter:

Option Agreement

Exact Wording for the Agenda:

Resolution authorizing the Mayor to enter into an Option Agreement between Kate McDonnell Downing and Corra McDonnell McKnight and the City of Huntsville.

**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.

Associated Cost:

Budgeted Item: Yes

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head: \_\_\_\_\_



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

4-9-13

RESOLUTION NO. 13-\_\_\_\_\_

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 Option Agreement by and between the City of Huntsville and Kate McDonnell Downing and Corra McDonnell McKnight, 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 "Option Agreement between Kate McDonnell Downing and Corra McDonnell McKnight and the City of Huntsville," consisting of six (6) pages including Exhibits A and B, and the date of April 11, 2013, 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 11th day of April, 2013.

\_\_\_\_\_  
President of the City Council of  
the City of Huntsville, Alabama

APPROVED this the 11th day of April, 2013.

\_\_\_\_\_  
Mayor of the City of  
Huntsville, Alabama

OPTION AGREEMENT BETWEEN  
KATE McDONNELL DOWNING,  
CORRA McDONNELL McKNIGHT AND  
THE CITY OF HUNTSVILLE, ALABAMA

**OPTION AGREEMENT**

THIS OPTION AGREEMENT is made this the \_\_\_\_ day of \_\_\_\_\_, 2013 between KATE McDONNELL DOWNING, a single woman, and CORRA McDONNELL McKNIGHT, a married woman, hereinafter referred to collectively as "Seller," and the City of Huntsville, Alabama, a municipal corporation in the State of Alabama, hereinafter referred to as "Purchaser."

**RECITALS:**

WHEREAS, Seller owns a certain parcel of land, which is more particularly described in Exhibit "A" attached hereto and incorporated herein by reference, and which is hereinafter referred to as the "Property"; and

WHEREAS, Seller is agreeable to granting Purchaser an exclusive option to purchase the Property and all rights, privileges, easements and appurtenances thereto owned by Seller.

NOW, THEREFORE, in consideration of the parties' mutual promises, conditions and provisions, the parties hereto agree as follows:

**WITNESSETH:**

1. **Option.** Seller hereby grants Purchaser the exclusive, irrevocable right and option (hereinafter the "Option") to purchase the Property for a sum of Two Million Eight Hundred Thousand Dollars (\$2,800,000.00). Within thirty days of the execution of this instrument by both parties, Purchaser shall deliver to Seller a check for Fifty Thousand Dollars (\$50,000.00) as consideration for this Option. Purchaser shall thereafter deliver to Seller a check for Fifty Thousand Dollars (\$50,000.00) for each year the Option remains in effect. Said checks shall be due within one year of the delivery of the previous Option payment.

2. **Option Term.** The Option shall expire if the Purchaser does not exercise it on or before \_\_\_\_\_.

3. **Exercise of the Option.** The Option may be exercised at any time prior to the expiration of the Option period by the Purchaser providing written notice to the Seller, hand delivered or

\_\_\_\_\_  
President of the City Council of the  
City of Huntsville, Alabama  
Date; \_\_\_\_\_

mailed by certified mail, return receipt requested, to the Seller at the address set forth in section seven herein. If the Purchaser exercises the Option, the sum of all annual payments for the Option shall be credited against the purchase price. If the Purchaser does not exercise the Option prior to the expiration of the Option term, the consideration paid for the Option shall be retained by the Seller, and neither party shall have any further rights or claims against each other.

If the Purchaser closes on the sale of the approximately 25 acres it owns in John Hunt Park (the "John Hunt Property", which is more fully described in Exhibit "B" attached hereto) during the Option Term, then it shall exercise the Option within 120 days of the closing on the John Hunt Property.

4. **Closing Date.** The transaction forming the subject of this Agreement shall be closed by Seller within thirty (30) calendar days after the exercise of the Option. Seller agrees to give Purchaser fifteen (15) days prior written notice of the proposed Closing Date. Notice shall be deemed to be given upon receipt by Purchaser of Seller's notice. To the extent possible, Purchaser will divide the payment of the purchase price between two calendar years, so long as the total payment of the purchase price is made within one fiscal year for Purchaser. (October 1 – September 30). Purchaser shall deliver to Seller the first check for the purchase price at the closing.

Purchaser will accept from Seller as a charitable gift the difference between the purchase price of the Property and the appraised value of the Property and will cooperate with Seller and execute any required documents in regard to Seller's reporting of this gift for tax purposes.

5. **Conveyance.** At the closing, the Seller shall execute, acknowledge and deliver to the Purchaser a good and sufficient warranty deed conveying a fee simple title to the Property, free and clear of all liens, encumbrances and other defects in title. The title to the Property shall be subject exclusively to approval by the Purchaser, and all the costs and expenses of curing any defect or defects in the title shall be borne by the Seller; and such costs and expenses, together with all moneys required for the satisfaction of taxes, liens, or encumbrances may be reserved from the purchase price and applied directly to the curing of such defects, if any, and to the satisfaction and release of such taxes, liens and encumbrances. Ad valorem taxes against the Property for the year in which the sale is consummated, whether or not a lien, and whether or not assessed, shall be prorated between the parties as of the date of delivery of title and possession. If the actual amounts to be prorated are not known as of the date of Closing, the prorations shall be made on the basis of the best evidence then available, and thereafter when actual figures are received, a cash settlement will be made between Seller and Purchaser. Seller agrees to execute any and all documents necessary to complete the conveyance.

6. **Governing Law.** This Option Agreement shall in all respects be interpreted, construed and enforced in accordance with the laws of the State of Alabama. For any action concerning this Agreement and/or the Property, (a) jurisdiction shall be in the appropriate state or federal courts sitting in Alabama and (b) venue (i) in Alabama state courts shall be in Madison County, Alabama and (ii) in Alabama federal courts shall be in the United States District Court for the Northern District of Alabama, Northeastern Division.

7. **Agricultural Use.** From time to time, Seller leases a portion of the Property for agricultural purposes. If on the date Purchaser notifies Seller of the exercise of this Option a crop has been planted on the Property, Purchaser will permit the person leasing that portion of the Property to harvest any crop planted prior to Purchaser notifying Seller of the exercise of this Option.

8. **Notices.** All notices and statements which either party shall be required or shall desire to give to the other party shall be given in one of the following ways:

(a) By personal delivery;

(b) By deposit, addressed as specified below, registered or certified mail, postage prepaid:

To the Sellers:

Kate McDonnell Downing and  
Corra McDonnell McKnight  
c/o Julian Butler, Esq.  
Sirote & Permutt  
305 Church Street  
Huntsville, AL 35801

To the Purchaser:

City Attorney  
City of Huntsville, Alabama  
308 Fountain Circle  
P.O. Box 308  
Huntsville, AL 35804

If so delivered or mailed, each such notice, statement or other document shall be conclusively deemed to have been given when personally delivered or on the first business day following the date of mailing, as the case may be.

9. **Entire Agreement.** This Option Agreement constitutes the entire agreement between the parties and cannot be modified except by written instrument duly executed by both parties. Neither Seller nor Purchaser has made any representations, promises or warranties not set forth herein.

10. **Approval.** Seller and Purchaser hereby covenant that the execution of this Agreement and the transaction herein contemplated have been duly approved and that the parties executing this Agreement are authorized to execute the same and enter into a binding legal contract for the purchase and sale of the premises.

**IN WITNESS WHEREOF**, the parties have caused this Option Agreement to be duly executed and delivered the day and year first above written.

**ATTEST:**

**PURCHASER:**  
**THE CITY OF HUNTSVILLE, ALABAMA**

\_\_\_\_\_  
Charles E. Hagood  
City Clerk-Treasurer

By: \_\_\_\_\_  
Tommy Battle, Mayor

ATTEST:

Sally Hamilton

SELLER:

Kate McDonnell Downing  
Kate McDonnell Downing

Stewart D. McKnight (4-3-13)

Corra McDonnell McKnight  
Corra McDonnell McKnight

A tract of land lying and being in the Southeast Quarter of Section 15, Township 4 South, Range 1 West, Madison County, Alabama and being more particularly described as follows:

Commence at the center of said Section 15, thence run S 89° 03' 04" E for a distance of 1170.56 feet to a 1/2" Capped Iron Pin on the South line of Triono Village and also on the East Right-of-Way of Binderton Place and also being the POINT OF BEGINNING; Thence continue along said South line S 89° 03' 36" E for a distance of 1460.69 feet to a point on the West side of Triono Boulevard; Thence run S 2° 02' 25" W along said West side for a distance of 122.20 feet; thence continue along said West side S 2° 58' 25" W for a distance of 398.75 feet; thence continue along said West side S 2° 58' 25" W for a distance of 401.17 feet; thence continue along said West side S 1° 48' 33" W for a distance of 350.55 feet; thence continue along said West side S 1° 39' 30" W for a distance of 1379.05 feet to a Iron Pin on the North line of that property owned by Redstone Arsenal; thence leaving said West side run S 89° 18' 46" W along said North line for a distance of 1273.92 feet to a concrete monument; thence continue along said North line N 88° 31' 41" W for a distance of 1331.17 feet to a 1/2" pipe at the Southeast corner of Oak Leaf Fourth Addition; thence leaving said North line run N 1° 57' 19" E along the East line of said Oak Leaf Fourth Addition for a distance of 1057.77 feet; to the Northeast corner of said Oak Leaf Fourth Addition; thence run N 88° 47' 27" W along said North line for a distance of 25.00 feet to the Southeast corner of said Oak Leaf Second Addition; thence run N 2° 03' 46" E along said East line for a distance of 574.04 feet to a 1/2" Capped Iron Pin; thence continue along said East line N 1° 25' 51" E for a distance of 258.64 feet to the Southwest corner of that property owned by City Board of Education, City of Huntsville; thence run S 89° 01' 07" E along the South line of said City Board of Education for a distance of 984.15 feet to the Southeast corner of said City Board of Education property; thence run N 27° 27' 53" E along the East line for a distance of 458.56 feet; thence continue along said East line N 1° 05' 53" E for a distance of 375.00 feet back to the POINT OF BEGINNING.

Said tract contains 140.06 acres more or less.

**LEGAL DESCRIPTION  
JOHN HUNT COMMERCIAL PARK  
25.32 ACRES**

All that part of Section 13 Township 4 South, Range 1 West, Madison County, Alabama and more particularly described as:

Commencing at a 1/2 inch rebar found on the northerly right-of-way line of Airport Road and being the southeast corner of Lot 1 of Art Subdivision as recorded in Plat Book 38, Page 64 in the Office of the Judge of the Probate Court of Madison County, Alabama; thence S67°24'43"W along the a distance of 278.26 feet to a capped 5/8 inch rebar set and stamped "G.W. Jones & Sons C.E. Inc. CA-00020E" and the point of beginning; thence S67°20'07"W along the northerly right-of-way line of Airport Road a distance of 457.03 feet to a capped 5/8 inch rebar set and stamped "G.W. Jones & Sons C.E. Inc. CA-00020E"; thence westerly 780.20 feet along the northerly right-of-way line of Airport Road and along a curve to the right having a radius of 2,785.00 feet a chord bearing of S75°21'39"W and a chord distance of 777.65 feet to a capped 5/8 inch rebar set and stamped "G.W. Jones & Sons C.E. Inc. CA-00020E" ; thence N01°10'01"E a distance of 933.35 feet to a capped 5/8 inch rebar set and stamped "G.W. Jones & Sons C.E. Inc. CA-00020E"; thence S89°34'26"E a distance of 286.37 feet to a capped 5/8 inch rebar set and stamped "G.W. Jones & Sons C.E. Inc. CA-00020E"; thence N00°32'32"E a distance of 252.98 feet to a railroad spike set; thence N86°14'17"E a distance of 845.16 feet to a capped 5/8 inch rebar set and stamped "G.W. Jones & Sons C.E. Inc. CA-00020E" on the westerly boundary of the 1.76 acre tract of land conveyed to Shaun Mundy and Edward Don Allison as recorded in Deed Book 857, Page 238 in the Office of the Judge of the Probate Court of Madison County, Alabama; thence S24°51'09"E a distance of 214.98 feet to a 1/2 inch rebar found at the southwest corner of said 1.76 acre tract of land and the northwest corner of Lot 2 of Art Subdivision Second Addition a Resubdivision of Lot 2 Art Subdivision as recorded in Plat Book 42, Page 19 in the Office of the Judge of the Probate Court of Madison County, Alabama; thence S24°40'50"E along the westerly boundary of said Lot 2 a distance of 95.00 feet to a mag nail set being a corner of said Lot 2; thence S27°07'13"W along a westerly boundary of Lot 2 and a westerly boundary of Lot 1 of said plat a distance of 82.50 feet to a 5/8 inch capped rebar stamped "CA-00122LS" found and being a corner of said Lot 1; thence S83°23'43"W a distance of 256.45 feet to a capped 5/8 inch rebar set and stamped "G.W. Jones & Sons C.E. Inc. CA-00020E"; thence S04°49'00"E a distance of 250.50 feet to a capped 5/8 inch rebar set and stamped "G.W. Jones & Sons C.E. Inc. CA-00020E"; thence S35°12'45"E a distance of 285.03 feet to the point of beginning and containing 25.32 acres, more or less.

EXHIBIT B

**ROUTING SLIP  
CONTRACTS AND AGREEMENTS**

Originating Department: Legal

Council Meeting Date:

Department Contact: Peter Joffrion

Phone # 427-5026

Contract or Agreement: Option Agreement

Document Name: Option Agreement with the McDonnells

City Obligation Amount:

50,000

Total Project Budget:

Uncommitted Account Balance:

Account Number:

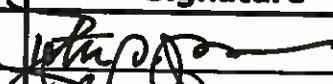
MCDONNELL ACCT - 23

**Procurement Agreements**

<b>Not Applicable</b>	<b>Not Applicable</b>
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**Grant-Funded Agreements**

<b>Not Applicable</b>	Grant Name:
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Department	Signature	Date
1) Originating		<u>4-9-13</u>
2) Legal		<u>4-9-13</u>
3) Finance		<u>4/9/13</u>
4) Originating		<u>4-9-13</u>
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		