CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number_____

Meeting Type: Regular

Meeting Date: 8/8/2013

Action Requested By:
Planning

Agenda Item Type
Resolution

Subject Matter:

Real Estate Contract

Exact Wording for the Agenda:

Resolution authorizing the Mayor on the behalf of the City of Huntsville, to enter into a Real Estate Contract with Solid Rock Church, Inc.

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

Item to be considered for: Select...

Unanimous Consent Required: Select...

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 property will be sold to the purchaser as is. All closing costs will be paid by the purchaser.

Associated Cost:

Budgeted Item: Select...

MAYOR RECOMMENDS OR CONCURS: Select...

Department Head: Angie M Boutte

Date: 8-2-13

revised 3/12/2012

ROUTING SLIP
CONTRACTS AND AGREEMENTS

Originating Department: **Planning** Council Meeting Date: **8/8/2013**

Department Contact: **Kimberly Gosa** Phone # **427-5115**

Contract or Agreement: **Contract**

Document Name: **Real Estate Contract**

City Obligation Amount: **$0**

Total Project Budget:

Uncommitted Account Balance:

Account Number:

Procurement Agreements

Select...	Select...

Grant-Funded Agreements

Select...	Grant Name:

Department	Signature	Date
1) Originating	[signature]	8-2-13
2) Legal	Mary C Cates	8-5-13
3) Finance	[signature]	8/7
4) Originating		
5) Copy Distribution		
a. Mayor's office (1 copies)	[signature]	8/7/13
b. Clerk-Treasurer (Original & 2 copies)		

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 a Real Estate Contract between Solid Rock Church, Inc., 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 Contract between the City of Huntsville and Solid Rock Church, Inc.," consisting of four (4) pages, including Exhibits A & B , and the date of August 8, 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 8th day of August, 2013.

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

APPROVED this the 8th day of August, 2013.

_____
Mayor of the City of
Huntsville, Alabama

STATE OF ALABAMA)
)
COUNTY OF MADISON)

REAL ESTATE CONTRACT

THIS REAL ESTATE CONTRACT ("Contract") is made and entered into as of the 8th of August 2013, by and between THE CITY OF HUNTSVILLE, as Owner, and SOLID ROCK CHURCH, INC., as Purchaser.

WITNESSETH:

FOR AND IN CONSIDERATION of the Purchase Price set forth below, Owner agrees to sell and convey to Purchaser, and Purchaser agrees to purchase from the Owner, upon the agreements, covenants, conditions, provisions and terms set forth herein, the properties specifically described in the attached "Exhibit A" and "Exhibit B", (the "Properties") on the following terms and conditions:

1. Consideration: In consideration of Purchaser having maintained the Properties for more than 40 years and Purchaser's covenant to continue maintaining the Properties in a good state of repair in perpetuity and other good and valuable consideration, the receipt of such by Seller is hereby acknowledged, and the parties agree to such.

2. Closing Date: This transaction shall close on a business day mutually agreeable to Owner and Purchaser within thirty (30) days of the approval of this agreement by the City Council of the City of Huntsville.

3. Closing Costs: All costs associated with all taxes incurred as a result of the transaction evidenced hereby shall be paid by Purchaser.

4. Prorations: All rents, taxes and other monetary obligations attributable to the Properties shall be prorated at Closing based on the actual number of days which have elapsed between the inception of each such obligation and the Closing Date.

5. Title/Warranty Deed: At Closing, Owner shall execute and deliver, and furnish to Purchaser, an Alabama general warranty deed (prepared by Owner's counsel) ("Warranty Deed") to and for the Properties, free from any and all liens and encumbrances except for (i) the liens for the current and future ad valorem taxes, (ii) applicable zoning ordinances, subdivision regulations and other applicable land use laws, rules and regulations, (iii) existing and recorded restrictions, (iv) easements and minimum building lines of record, and (v) matters of survey (said items (i), (ii), (iii), (iv) and (v) collectively are the "Permitted Title Exceptions"). Purchaser shall be responsible for examining title to the Properties and obtaining evidence of said title, whether in the form of a title opinion, title insurance or otherwise.

6. Possession: Possession shall be given on the Closing Date.

7. Condition of Properties/Inspection: The Properties is sold "AS IS" and "WITH ALL FAULTS." Owner makes no representations or warranties, express or implied, regarding the condition (environmental, geotechnical or otherwise) of the Properties. Purchaser acknowledges and agrees that Owner has not made, does not make and specifically negates and disclaims any representations,

City Council President

August 8, 2013
Date

warranties (other than the special warranty of title as set out in the Deed, as defined in Section 5 herein), promises, covenants, agreements or guaranties of any kind or character whatsoever, whether express or implied, oral or written, past, present or future, of, as to, concerning or with respect to: (a) the value, nature, quality or condition of the Properties, including, but not limited to, the water, soil and geology; (b) the income to be derived from the Properties; (c) the suitability of the Properties for any and all activities and uses which Purchaser or any tenant may conduct on the Properties; (d) the compliance of or by the Properties or its operation with any laws, rules, ordinances or regulations of any applicable governmental authority or body; (e) the habitability, merchantability, marketability, profitability or fitness for a particular purpose of the Properties; (f) the manner or quality of the construction or materials, if any, incorporated into the Properties; (g) the manner, quality, state of repair or lack of repair of the Properties; or (h) compliance with any environmental protection, pollution or land use laws, rules, regulations, orders or requirements, including the existence in or on the Properties of Hazardous Materials (as defined below) or (i) any other matter with respect to the Properties. Additionally, no person acting on behalf of Owner is authorized to make, and by execution of this Agreement Purchaser acknowledges that no person has made, any representation, agreement, statement, warranty, guaranty or promise regarding the Properties or the transaction contemplated in this Agreement; and no such representation, warranty, agreement, guaranty, statement or promise, if any, made by any person acting on behalf of Owner shall be valid or binding upon Owner unless expressly set forth in this Agreement. Purchaser further acknowledges and agrees that having been given the opportunity to inspect the Properties, Purchaser is relying solely on its own investigation of the Properties and not on any information provided or to be provided by Owner and agrees to accept the Properties at Closing and waive all objections or claims against Owner (including, but not limited to, any right or claim of contribution) arising from or related to the Properties or to any Hazardous Materials on the Properties. Purchaser further acknowledges and agrees that any information provided or to be provided with respect to the Properties was obtained from a variety of sources and that Owner has not made any independent investigation or verification of such information and makes no representations as to the accuracy, truthfulness or completeness of such information. Owner is not liable or bound in any manner by any verbal or written statement, representation or information pertaining to the Properties, or the operation of the Properties, furnished by any real estate broker, contractor, agent, employee, servant or other person. Purchaser further acknowledges and agrees that to the maximum extent permitted by law, the sale of the Properties as provided for in this Agreement is made on an "AS-IS" condition and basis with all faults. It is understood and agreed that the purchase price has been adjusted by prior negotiation to reflect that all of the Properties is sold by Seller and purchased by Purchaser. The provisions of this paragraph Seven shall survive the Closing and delivery of the Deed.

8. Real Estate Commission: Neither Owner nor Purchaser have employed any real estate agent or broker regarding the Properties and/or the transaction evidenced hereby. Consequently, neither Owner nor Purchaser shall have any duty, liability, obligation, or responsibility to any person, firm or entity for payment of any broker's fee, commission, finder's fee, sales commission or other compensation, regarding the Properties and/or the transaction evidenced hereby. The Owner or Purchaser causing, creating, permitting and/or suffering any such duty, liability, obligation or responsibility for such commissions, fees, or other compensation shall forever protect, defend, indemnify and hold harmless the remaining Owner and Purchaser from and against any and all such duty, liability, obligation, and responsibility.

9. Survival: Any agreements, covenants, conditions, provisions and terms contained in and made pursuant to this Contract not performed at the time of the delivery of the Warranty Deed for the Properties from Owner to Purchaser, shall survive (a) the execution and delivery of this Contract, (b) the

execution and delivery of the Warranty Deed for the Properties from Owner to Purchaser, and (c) the consummation of the transaction evidenced hereby, and shall be fully enforceable by Owner, by Purchaser, and by their respective heirs, personal representatives, successors and assigns, by the remedies set forth in this Contract.

10. Applicable Law/Jurisdiction/Venue: This Contract shall be interpreted, construed and enforced in accordance with the laws of the State of Alabama. For any action concerning this Contract and/or the Properties (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.

11. Costs: In the event of any default by any party as to any duty, warranty, or undertaking owed to another party, which default results in legal proceedings, the party adjudged to be in default shall pay, in addition to such other sums as may be due hereunder, the legal costs and expenses of such legal proceedings, including without limitation a reasonable attorney fee.

12. Entire Agreement: This Agreement embodies the entire agreement and understanding of the Owner and Purchaser as to the transaction contemplated and evidenced hereby and merges herein all agreements, covenants, representation, statements and understandings heretofore made by and between Owner and Purchaser as to such transaction, whether written, oral or both. Any agreements, covenants, representations, statements or understandings by and between Owner and Purchaser as to such transaction not contained herein are and shall be null and void and of no force and effect.

13. Construction: This Agreement is to be construed, controlled, enforced, governed and interpreted by the laws of the State of Alabama. This Agreement shall further be construed in its entirety to its plain meaning and shall be considered as a negotiated agreement and shall not be construed against the party who provided or drafted it.

14. Amendment: Owner and Purchaser hereto expressly, intend and understand that neither this Agreement not any provision or term hereof, shall be amended, changed or modified in any respect, nor may any estoppels, novation or waiver regarding the same be effectuated, without the parties first executing a writing, in equal dignity to this Agreement, embodying their complete and full agreement and understanding as to such amendment, change, modification, novation or waiver.

15. Miscellaneous: This Contract states the entire agreement between Owner and Purchaser as to the Properties and the transaction evidenced hereby, and merges herein all prior and contemporaneous agreements, conditions, covenants, representations, statements and warranties heretofore made by Owner or Purchaser regarding the same, whether oral or written. Any other such agreements, conditions, covenants, representations, statements and/or warranties not incorporated herein are null and void and of no force and effect.

16. Remedies: Upon default by either party, the non-defaulting party shall have the right to pursue any and all remedies available at law or in equity.

OWNER:

THE CITY OF HUNTSVILLE, ALABAMA

By:_____
Its:_____

ATTEST:

_____
Charles E. Hagood
City Clerk-Treasurer

PURCHASER:

SOLID ROCK CHURCH, INC.

By:_____

ATTEST

_____

Garver Engineers, LLC

218 Holmes Avenue, N.E.
Huntsville, Alabama 35801

(256) 534-5512
FAX (256) 534-5544

www.garverengineers.com

EXHIBIT A

GARVER|ENGINEERS

STATE OF ALABAMA
MADISON COUNTY

SURVEYOR'S DESCRIPTION FOR A TRACT OR PARCEL OF LAND LYING AND BEING SITUATED IN THE SOUTHEAST QUARTER OF SECTION 24, TOWNSHIP 3S, RANGE 1W OF THE HUNTSVILLE MERIDIAN; REFERENCE: PLAT 64-B.

SAID TRACT OR PARCEL BEING A PORTION OF THAT PROPERTY CONVEYED TO THE CITY OF HUNTSVILLE IN DEED BOOK 1032, PAGE 1037, (LOTS 41, 42, 43, 44, 45, 46, 47 & 48, BLOCK B OF MRS. MOLLIE E. COUNTESS SUBDIVISION, PLAT BOOK, 1 PAGE 89), AS RECORDED IN THE OFFICE OF THE JUDGE OF PROBATE OF MADISON COUNTY, ALABAMA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A #5 REBAR FOUND AT THE NORTHEAST CORNER OF LOT 54, BLOCK B OF SAID COUNTESS SUBDIVISION, THENCE ALONG THE RIGHT-OF-WAY OF TREYMOUR AVENUE NORTH 67 DEGREES 54 MINUTES 37 SECONDS EAST 149.92 FEET TO A #5 REBAR FOUND AT THE NORTHEAST CORNER OF SAID LOT 48; SAID POINT BEING THE POINT OF BEGINNING OF THE TRACT TO BE DESCRIBED HEREIN; THENCE LEAVING SAID TREYMOUR RIGHT-OF-WAY SOUTH 21 DEGREES 51 MINUTES 48 SECONDS WEST 125.06 FEET TO A #5 REBAR WITH A CAP STAMPED "GARVER ENG. CA #445" SET (TYPICAL); THENCE NORTH 67 DEGREES 52 MINUTES 28 SECONDS WEST 2.00 FEET TO A #5 REBAR SET; THENCE SOUTH 22 DEGREES 46 MINUTES 47 SECONDS WEST 25.02 FEET TO A #5 REBAR SET AT THE NORTHEAST CORNER OF LOT 40 BLOCK B OF SAID COUNTESS SUBDIVISION; THENCE ALONG THE NORTH BOUNDARY OF SAID LOT 40 NORTH 67 DEGREES 51 MINUTES 49 SECONDS WEST 99.65 FEET TO A #5 REBAR SET ON THE EAST RIGHT-OF-WAY OF MASTIN LAKE ROAD; THENCE ALONG SAID MASTIN LAKE ROAD RIGHT-OF-WAY NORTH 2 DEGREES 05 MINUTES 03 SECONDS EAST 34.02 FEET TO A #5 REBAR SET AT THE POINT OF CURVATURE OF A CURVE TO THE LEFT HAVING A RADIUS OF 405.00 FEET, A DELTA ANGLE OF 16 DEGREES 23 MINUTES 30 SECONDS, A CHORD OF NORTH 6 DEGREES 06 MINUTES 42 SECONDS WEST 115.47 FEET; THENCE ALONG THE ARC OF SAID CURVE 115.87 FEET TO THE POINT OF CURVATURE OF A CURVE TO THE RIGHT HAVING A RADIUS OF 10.00 FEET, A DELTA ANGLE OF 126 DEGREES 16 MINUTES 45 SECONDS, A CHORD OF NORTH 48 DEGREES 49 MINUTES 56 SECONDS EAST 17.84 FEET; THENCE ALONG THE ARC OF SAID CURVE 22.04 FEET TO A #5 REBAR SET AT THE INTERSECTION OF SAID MASTIN LAKE ROAD RIGHT-OF-WAY AND SAID TREYMOUR RIGHT-OF-WAY; THENCE ALONG SAID TREYMOUR RIGHT-OF-WAY SOUTH 68 DEGREES 01 MINUTE 43 SECONDS EAST 159.64 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 0.46 ACRES MORE OR LESS.

ALL ACCORDING TO MY SURVEY THIS THE 3rd DAY OF AUGUST, 2006

Loyd W. Carpenter, P.L.S.
AL. License # 26012

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Huntsville, Alabama 35801

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EXHIBIT B

GARVER|ENGINEERS

STATE OF ALABAMA
MADISON COUNTY

SURVEYOR'S DESCRIPTION FOR A TRACT OR PARCEL OF LAND LYING AND BEING SITUATED IN THE SOUTHEAST QUARTER OF SECTION 24, TOWNSHIP 3S, RANGE 1W OF THE HUNTSVILLE MERIDIAN; REFERENCE PLAT #30-B.

SAID TRACT OR PARCEL OF LAND BEING A PORTION OF THAT PROPERTY CONVEYED TO THE CITY OF HUNTSVILLE IN DOCUMENT NO. 20040713000222540,(LOTS 37, 38, 39, AND 40, BLOCK B OF MRS. MOLLIE E. COUNTESS SUBDIVISION, PLAT BOOK, 1 PAGE 89), AS RECORDED IN THE OFFICE OF THE JUDGE OF PROBATE OF MADISON COUNTY, ALABAMA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A # 5 REBAR WITH A CAP STAMPED "GARVER ENG CA #445" (TYPICAL) SET AT THE NORTHEAST CORNER OF SAID LOT 40; THENCE SOUTH 22 DEGREES 46 MINUTES 47 SECONDS WEST 93.31 FEET TO A #5 REBAR SET ON THE EXISTING RIGHT-OF-WAY OF MASTIN LAKE ROAD; THENCE ALONG SAID RIGHT-OF-WAY NORTH 67 DEGREES 17 MINUTES 24 SECONDS WEST 65.85 FEET TO A #5 REBAR SET; THENCE NORTH 02 DEGREES 05 MINUTES 03 SECONDS EAST 98.63 FEET TO A #5 REBAR SET; THENCE LEAVING SAID RIGHT-OF-WAY SOUTH 67 DEGREES 51 MINUTES 49 SECONDS EAST 100.71 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 0.18 ACRE MORE OR LESS.

ALL ACCORDING TO MY SURVEY THIS THE 3rd DAY OF AUGUST, 2006

Loyd W. Carpenter, P.L.S.
AL. License # 26012