

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number _____

Meeting Type: Regular

Meeting Date: 12/19/2013

Action Requested By:
Legal

Agenda Item Type
Resolution

Subject Matter:

Real Estate Sales Contract between the City and Dynetics, Inc.

Exact Wording for the Agenda:

Resolution authorizing the Mayor to execute a Real Estate Sales Contract and Option Agreement between the City of Huntsville and Dynetics, Inc.

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

Item to be considered for: Action

Unanimous Consent Required: No

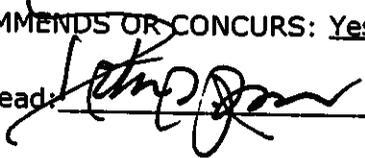
Briefly state why the action is required; why it is recommended; what Council action will provide, allow and accomplish and; any other information that might be helpful.

Associated Cost: 1,262,500

Budgeted Item: Not applicable

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head: _____



Date: 12-13-13

RESOLUTION NO. 13-_____

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and he is hereby authorized to enter into a Real Estate Sales Contract by and between the City of Huntsville and Dynetics, 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 Sales Contract between the City of Huntsville and Dynetics, Inc.," consisting of twenty-one (21) pages including Exhibits, and the date of December 19, 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 19th day of December, 2013.

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

APPROVED this the 19th day of December, 2013.

Mayor of the City of
Huntsville, Alabama

REAL ESTATE SALES CONTRACT AND
OPTION AGREEMENT BETWEEN
THE CITY OF HUNTSVILLE, ALABAMA
AND DYNETICS, INC.

STATE OF ALABAMA)
)
COUNTY OF MADISON)

**REAL ESTATE SALES CONTRACT
AND OPTION AGREEMENT**

THIS AGREEMENT is made and entered into on this 19th day of December, 2013, by and between the CITY OF HUNTSVILLE, ALABAMA, a municipal corporation within the State of Alabama (the "City"), and Dynetics, Inc., ("Dynetics"), an Alabama corporation.

WHEREAS, the City owns a tract of land containing 14.27 acres more or less, which is more particularly described and shown as "Lot 2" in Exhibit "A" attached hereto and incorporated herein by reference (hereinafter referred to as "Lot 2"); and

WHEREAS, the City also owns a tract of land containing 21.44 acres more or less, contiguous to Lot 2, which is more particularly described and shown as "Lot 1" in Exhibit "A" attached hereto and incorporated herein by reference (hereinafter referred to as "Lot 1"); and

WHEREAS, Dynetics desires to purchase, and the City desires to sell Lot 2 on the terms and conditions and for the consideration set forth herein; and

WHEREAS, the City desires to grant Dynetics an exclusive option to purchase Lot 1 and all rights, privileges, easements and appurtenances thereto owned by Seller; and

WHEREAS, the City desires to construct certain improvements on Lot 1 during the option period, and Dynetics agrees to contribute toward the cost of the said improvements;

NOW, THEREFORE, FOR AND IN CONSIDERATION of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the City and Dynetics agree as follows:

{H0143869.4}

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

1. PURCHASE OF LOT 2.

A. Dynetics agrees to buy and the City agrees to sell Lot 2 in accordance with the covenants and conditions of this Agreement.

B. Between the execution date of this Agreement and the date of Closing, Dynetics and Dynetics' agents, employees, contractors, representatives and other designees (collectively the "Dynetics' Designees") shall have the right to enter the Lot 2 for the purposes of inspecting Lot 2, conducting soil tests, conducting surveys, mechanical and structural engineering tests, and conducting any other investigations, examinations, tests and inspections as Dynetics may reasonably require to assess the condition of the Lot 2; provided, however, that (i) any activities by or on behalf of Dynetics, including, without limitation, the entry by Dynetics or Dynetics' Designees with respect to the Lot 2 ("Dynetics' Activities") shall not damage the Lot 2 in any manner whatsoever, and (ii) in the event the Lot 2 is altered or disturbed in any manner in connection with any of Dynetics' Activities, Dynetics shall immediately return the Lot 2 to the condition existing prior to Dynetics' Activities. Provided further that Dynetics will indemnify the City for any and all costs, expenses, or liabilities related to the conduct of Dynetics' Activities.

C. Dynetics shall have until the date sixty (60) days after the date the Agreement was fully executed (the "Due Diligence Date") to perform such investigations, examinations, tests and inspections as Dynetics shall deem necessary or desirable to determine whether the Lot 2 is suitable and satisfactory to Dynetics in its sole discretion. In the event that Dynetics shall determine, in its sole and absolute discretion, that the Lot 2 is not suitable and satisfactory to Dynetics, Dynetics shall have the right to terminate the Agreement by delivering written notice to the City not later than the Due Diligence Date. In the event Dynetics gives City notice of termination all rights and obligations of the parties under this Agreement shall expire, and this Agreement shall become null and void.

D. The total purchase price (the "Purchase Price") for Lot 2 shall be One Million Two Hundred Sixty-two Thousand Five Hundred Dollars (\$1,262,500.00) which shall be due and payable at closing.

E. This transaction shall close on a business day mutually agreeable to the City and Dynetics, which shall not occur more than ninety (90) days of the date of this Agreement. *Time is of the essence.*

F. The City agrees to convey Lot 2 and will furnish to Dynetics a good and merchantable title by a properly executed warranty deed substantially in the form attached hereto as Exhibit "B", free from any and all encumbrances, subject only to easements, restrictions set out in the attached deed, rights-of-way of record, ad valorem taxes due and payable for the year 2013, and the protective covenants of Cummings Research Park West, as recorded in Deed Book 826 at Page 602 in the Office of the Judge of Probate of Madison County. If, subsequent to the execution of the Agreement, Dynetics determines to finance this venture, through Industrial Development Bonds, then, upon Dynetics' request, said deed shall be delivered in the name of the Industrial Development Board of the City of Huntsville, a public corporation and instrumentally organized under the laws of the State of Alabama, as Grantee. Dynetics understands said restrictions are binding on the property and may be amended from time to time and Dynetics agrees that it shall comply with said restrictions as amended. If, prior to closing, Dynetics discovers a defect in title to the property, City, at City's option, shall have a reasonable time (but not in excess of thirty (30) days following the receipt of Dynetics' written notice of objections) within which to cause the same to be cured. If the defects are not timely cured to Dynetics' satisfaction, (i) Dynetics may waive such defects and proceed to close or (ii) Dynetics may cancel its agreement by notice of writing to City, and any money paid to City pursuant to this Agreement (as Earnest Money or otherwise), shall be refunded (including interest payments for extensions); and each of the parties shall be released from further liability to the other. Dynetics shall notify City of any defect in writing within ten (ten) days following receipt or such title defect.

G. Closing costs, if any, will be borne by Dynetics.

H. Prorations: All rents, taxes and other monetary obligations attributable to Lot 2 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.

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

J. Neither the City nor Dynetics have employed any real estate agent or broker regarding Lot 2 and/or the transaction evidenced hereby. Consequently, neither the City nor Dynetics 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 Property and/or the transaction evidenced hereby. The City or Dynetics 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 City and Dynetics from and against any and all such duty, liability, obligation, and responsibility.

K. Dynetics and City acknowledge that Lot 2 shall be sold subject to a farming lease agreement (attached hereto and incorporated herein by reference as Exhibit "C"), the pro-rated proceeds of which shall be assigned from City to Dynetics at Closing, afterwhich, Dynetics shall be entitled to the pro-rated annual rental income from the said lease.

L. Commencement of Construction. Dynetics agrees to obtain a building permit, complete all site preparation, and to commence the actual physical construction of its intended structure on Lot 2, as approved by the Architectural Control Committee, within twelve (12) months from the date of the conveyance, and to continue without interruption, Force Majeure Events (hereinafter defined) excepted, the construction of the said facility until completed according to approved plans and specifications. As used herein, the term "Force Majeure Events" shall mean any events or occurrences whatsoever which prevent or delay Purchaser's performance hereunder and which are beyond the reasonable control of Purchaser, including without limitation, an act of God, war, riot, civil commotion, or other disturbance, sovereign conduct, national emergencies, acts of civil or military authority, strike or other labor difficulties, fire, flood, catastrophe, insurrection, power or other utility failure, transportation failure, or governmental action. In the event Dynetics fails to begin substantial construction within the time described above, then the City may, at its option, within three hundred sixty (360) days of Dynetics' failure, repurchase the above described Tract of land for a sum equal to the total purchase price paid by Dynetics therefore plus the reasonable value of any improvements. Dynetics also understands that there are certain building restrictions in existence with respect to property located within Cummings Research Park West, and that certain approvals are necessary for the design and construction of any structure(s) on the Tract. Dynetics agrees to comply with any and all rules and regulations with respect to structures on the Tract, as they may be amended from time to time. Dynetics will indemnify and hold harmless City from and against any and all liability arising out of the destruction of or damage to the property, or injuries or loss to, or death of any person in connection with the development, improvement or construction upon the real property described herein, or any activity or project conducted thereon, other liability for any loss, damages or injuries that may result from Seller's own intentional, wrongful or negligent acts. The provisions of this section shall survive the closing.

2. OPTION TO PURCHASE LOT 1

A. Subject to the covenants and conditions of this Agreement, the City hereby grants Dynetics the exclusive, irrevocable right and option (hereinafter the "Option") to purchase Lot 1 for the sum of Eighty-two Thousand Five Hundred Dollars (\$82,500.00) per acre. As consideration for this Option, Dynetics shall: purchase Lot 2 on the terms and conditions of Section One above; shall deliver to the City a check for Ten Thousand Dollars (\$10,000.00) at

the time of closing for Lot 2, and covenant to pay to the City an additional One Hundred Twenty-Thousand Dollars (\$120,000) upon commencement of the park improvements as described below in this Section Two.

B. In conjunction with the purchase of this Option, the City shall construct the following improvements on Lot 1:

- 1) A 20' X 50' open pavilion with public restrooms.
- 2) Two (2) sand volleyball courts.
- 3) Two (2) horseshoe pits.
- 4) A disc golf course.
- 5) A 10' wide grass walking path that meanders around the disc golf course.
- 6) A 75' diameter grass area surrounded by an 8' concrete sidewalk that resembles an amphitheater.

C. The City shall commence construction of the said improvements on or before June 1, 2016. Upon commencement of the construction of these improvements, Dynetics shall deliver to the City a check for One Hundred Twenty Thousand Dollars (\$120,000.00) as additional consideration for the Option.

D. Contemporaneous to the construction of the above improvements, Dynetics will install the irrigation system and the turf inside the amphitheater circle on Lot 1. The irrigation system will connect to the City's utility facilities, not Dynetics'.

E. In addition, contemporaneous with the above improvements to Lot 1, the City shall construct:

- 1) a sidewalk on the North side of Explorer Boulevard, beginning at the East entrance of the current Dynetics' campus, extending to the entrance on Lot 1; and
- 2) if requested by Dynetics, a traffic light on Explorer Boulevard at an existing point of egress/ingress to the Dynetics' campus as the parties shall mutually determine.

F. The City shall own, operate and maintain the park features located on Lot 1 until such time as Dynetics' option to purchase is exercised or is terminated.

G. Dynetics may exercise the Option on or before December 15, 2028 and shall receive all improvements constructed by the City on Lot 1. If Dynetics does not exercise the Option prior to the expiration of the Option term, the consideration paid for the Option (or remainder thereof) shall be retained by the City, and neither party shall have any further rights or claims against each other. The Option may be exercised by Dynetics providing written notice to

the City, hand delivered or mailed by certified mail, return receipt requested, to the Seller at the address set forth in Section Eight herein.

3. **Applicable Law/Jurisdiction/Venue:** This Agreement shall 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.

4. **Entire Agreement:** This Agreement, including all exhibits and attachments, embodies the entire agreement and understanding of the City and Dynetics 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 Dynetics as to such transaction, whether written, oral or both. Any agreements, covenants, representations, statements or understandings by and between the City and Dynetics as to such transaction not contained herein are and shall be null and void and of no force and effect.

5. **Survivability:** The covenants, terms and conditions of this Agreement, other than those of Paragraph One, shall survive the Closing on Lot 2, until expiring by their applicable terms.

6. **Construction:** This Agreement shall 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.

7. **Amendment:** The City and Dynetics hereto expressly, intend and understand that neither this Agreement nor 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.

8. **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.

9. **Notice.** Any notice, request, demand, tender or other communication under this Agreement shall be in writing, and shall be deemed to have been duly given at the time and on the date when personally delivered, or delivered via electronic mail or facsimile deemed given at the time and date when the transmission was sent, or upon being deposited with a nationally recognized commercial courier for next day delivery, to the address for each party set forth

below, or upon delivery if deposited in the United States Mail, Certified Mail, Return Receipt Requested, with all postage prepaid, to the address for each party set forth below. The time period in which a response must be made, or action taken, by a party receiving such communication shall commence on the date of actual receipt by such party. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice was given shall be deemed to be in receipt of such communication. By giving prior notice to all other parties, any party may designate a different address for receiving notices.

Notices to Dynetics shall be sent to: Dynetics, Inc.

Notices to the City shall be sent to: The City of Huntsville
P.O. Box 308
Huntsville, Alabama 345804
Attention: Economic Development Director

IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first above written.

DYNETICS, INC.

Attest:

By: _____

CITY OF HUNTSVILLE
a municipal corporation
in the State of Alabama

Attest:

Charles E. Hagood

By: _____

Tommy Battle

Its: Clerk-Treasurer

Its: Mayor

STATE OF ALABAMA)
)
COUNTY OF MADISON)

DEED

THIS INDENTURE, made and entered into on this the ____ day of _____, 201__, by and between the **City of Huntsville, Alabama**, a municipal corporation, as party of the first part, hereinafter called "Grantor," and **Dynetics, Inc.**, as party of the second part, hereinafter called "Grantee."

WITNESSETH: That for and in consideration of good and valuable consideration, to it paid this day by Grantee, receipt of which is hereby acknowledged, has this day given, granted, bargained, sold and conveyed and does by these presents give, grant, bargain, sell and convey unto Grantee, the following described real estate, lying and being situated in the City of Huntsville, County of Madison, State of Alabama, to-wit:

SEE ATTACHED EXHIBIT "A"

TO HAVE AND TO HOLD the real estate above described, together with all and singular the rights, privileges, tenements, hereditaments, appurtenances and improvements thereunto belonging or in anywise appertaining unto Grantee, its successors and assigns forever, in fee simple.

Grantor does hereby covenant with and represent unto Grantee, its successors and assigns, that Grantor is lawfully seized in fee of the tracts or parcels of land above described; that the same are free of encumbrances, that it has a good and lawful right to sell and convey the same; and that it will warrant and defend the title to the same unto Grantee, its successors and assigns forever, except as to ad valorem taxes, and any easements, rights of way and restrictions of record.

I. Use of the real estate shall be subject to the Protective Covenants to Cummings Research Park West, as recorded in Deed Book 626 at Page 602, as amended, in the Office of the Judge of Probate of Madison County, Alabama.

II. Use of the real estate shall be subject for a period of twenty (20) years to the following restrictions, which shall be deemed for all purposes covenants running with the land, violation of which may be enjoined at eth suit of the within Grantor, its successors or assigns, including the immediate and remote Grantees of the within Grantor of other parcels of land within the area acquired and developed by the Grantor known as the "Cummings Research Park West." Such restrictions are as follows, to-wit:

(a) Said property shall be used only for the purposes of laboratories, offices and other facilities for basic and applied research and development, testing and consulting, whether public or private; production or assembly of prototype products, scientifically-oriented production, or the assembly of high-technology products which are related to the on-site research and development activities of the Grantee or its assigns; or any use permitted pursuant to Article 51 – "Research Park West District Regulations," of the Zoning Ordinance of the City of Huntsville, Alabama, (Ordinance Number 63-93, as amended).

(b) Said property, or any portion thereof, or any building, structure or improvement thereon shall not be used, kept, maintained or offered for general rental or lease purposes, except that the Grantee or its assigns may use, keep, maintain or offer up to 25% of the heated floor space of a building, structure or improvement on the property for general rental or lease purposes, for a qualified use, if the portion thus used, kept, maintained or offered for general rental or lease purposes is reasonably necessary for the future

expansion of the Grantee, its primary tenant or its assigns. In no event shall an entire building, structure or improvement on the subject property be occupied by more than a primary or base tenant, plus one (1) additional tenant for each 7,500 square feet of permitted excess rental/lease area.

(c) Any failure or delay on the part of the within Grantor to object or to bring suit to enjoin any violation of these restrictions shall in no event be deemed a waiver of same, except with respect to Architectural Control Committee approval, as specifically provided in the Protective Covenants referenced in paragraph I, above.

III. It is expressly agreed and acknowledged by and between the parties hereto that the hereinabove described tract of land is being sold and conveyed to the Grantee for the construction thereon of a facility to be used in accordance with the permitted uses hereinabove specified in paragraphs II(a), II(b) and II(c), and that a part of the consideration for the conveyance of said property to the Grantee is the Grantee's agreement to obtain a building permit, complete all site preparation, and to commence the actual physical construction of the facility thereon, as approved by the Architectural Control Committee, within twelve (12) months from the date of this conveyance, and to continue without interruption the construction of the said facility until completed according to approved plans and specifications. The Grantee does for itself, its successors and assigns, agree that upon its failure to meet the requirements hereunder then the Grantor may, at its option, within 360 days of Grantee's failure, repurchase the above described tract of land for a sum equal to the total purchase price paid by the Grantee therefor plus the value of any improvements thereon.

IV. The Grantee hereby agrees that in the event Grantee, or Grantee's assigns, shall elect to sell or otherwise dispose of any unimproved portion of the above described property within twenty (20) years from the date of this conveyance, Grantee shall first offer such unimproved portion to Grantor at the purchase price per acre of such portion paid by Grantee to Grantor. Grantor and Grantee hereby further agree as follows:

(a) Before offering any unimproved portion of the above described property for sale or development, the Grantee shall submit its plan therefor to the Planning Commission of the City of Huntsville, Alabama, for approval as is required by law in the subdivision of land. The costs of such submission shall become a part of the purchase price of the property in the event the Grantor herein shall elect to exercise its right of first refusal as permitted in this Paragraph IV.

(b) Before consummating any sale of any unimproved portion of the real property involved, Grantee, or Grantee's assigns, shall notify Grantor in writing of its intention to sell the same as a separate parcel of property and shall offer such property to Grantor in writing at the price hereinabove specified. In the event Grantor shall elect so to repurchase said property, it shall so notify the Grantee, or Grantee's assigns, in writing, and shall pay the amount of the sale price in cash to Grantee or Grantee's assigns, upon delivery of a deed from the Grantee, or Grantee's assigns, reconveying such unimproved parcel of property to Grantor, subject only to ad valorem real property taxes for the then current year, and covenants, restrictions, reservations and rights-of-way then of record. In the event Grantor shall not so notify Grantee, or Grantee's assigns, in writing of its election to repurchase said property within forty-five (45) days from receipt of notification from Grantee, or having given such notice of its election to repurchase, shall not tender the purchase price thereof, as aforesaid, within forty-five (45) days after delivery of such notice from Grantor of its election to repurchase, Grantee, or Grantee's assigns, shall no longer be obligated to Grantor with respect to any repurchase of such unimproved real property. Such unimproved real property shall be selected by Grantee or Grantee's assigns, in such manner that no one (1) major dimension shall exceed any other major dimension by a factor in excess of two (2) and shall be in the configuration of a rectangle or square as nearly as practicable; provided, however, that if at least one boundary of said property, when so placed as to comply with building set-back provisions of applicable building codes and restrictions does not abut a public street, or

streets, said area shall be enlarged by extension of the boundaries thereof in straight lines to the extent necessary to cause said area to abut the nearest public street providing access to said area.

(c) In the event Grantee, or Grantee's assigns, shall have made substantial improvements, including construction of a building, and desires to sell the entire tract of real property here involved to a single purchaser in one transaction, the Grantee or its assigns shall be under no obligation to Grantor with respect to offering the property for repurchase.

(d) Grantee, or Grantee's assigns, shall be under no obligation to Grantor with respect to offering the unimproved real property to Grantor as herein provided in paragraph (IV) above, and shall be entitled to retain any consideration received, if the contemplated sale or transfer by Grantee, or Grantee's assigns, is:

(1) A sale or transfer to the United States or the State of Alabama or to any department, subdivision or agency thereof, including any legally established Industrial Development Board or other public corporation expressly authorized under Alabama Law, or to any municipality or municipal corporation, whether voluntary or involuntary, or any other sale or transfer under threat of condemnation, or

(2) To a wholly owned subsidiary of the Grantee, or Grantee's assigns, or to a legal entity of which the Grantee, or Grantee's assigns, own more than 50% interest.

(3) In connection with a merger, consolidation, reincorporation, any reorganization of the types described in Section 368 of the Internal Revenue Code of 1986, as amended from time to time, or any similar provision of the Internal Revenue laws of the United States, or other corporate reorganization, except under the laws relating to bankruptcies, affecting or involving the Grantee, or

(4) To an investor pursuant to a sale and leaseback agreement whereby such investor shall have agreed to construct upon such property a facility in conformance with Paragraph II leased to or to be occupied by the Grantee or the Grantee's successor in title as a result of a sale or transfer by Grantee, or Grantee's assigns, of a type described in subparagraph (2) or (3) above; or

(5) Any sale or conveyance approved in writing by Grantor; provided, however, that this option to repurchase and the restrictions elsewhere set out in this option shall continue in effect as to said land or part thereof, in the hands of any successor in title of Grantee as a result of a sale or transfer of a type described in subparagraphs (2), (3), (4), above, or in this paragraph. It is further provided that this option and said restrictions shall apply in the event of any involuntary transfer or conveyance of the above described property suffered by the Grantee or Grantee's assigns, (except an involuntary transfer or conveyance of the type described in subparagraph (1) above) with like effect as to a voluntary sale, conveyance or transfer and shall be, in any case, deemed a covenant running with the land.

(e) In the event Grantee, or Grantee's assigns, shall wish to encumber all or any portion of the real property herein involved in conjunction with a building program for the improvement of such property, Grantor will, upon request, subordinate the rights contained in the foregoing paragraphs to any such encumbrances, provided, however, said mortgage or encumbrances will provide that in the event of default the within Grantor will be given thirty (30) days notice before foreclosure proceedings or any other action is instituted.

(f) Nothing in this paragraph IV shall be deemed to inhibit the right of Grantee, or Grantee's assigns, acting without the concurrence of Grantor, to grant easements or rights-of-way for the installation of utilities or roadways deemed necessary by Grantee, or Grantee's assigns, for appropriate utilization of the premises.

V. The foregoing agreements shall be valid for a period of twenty (20) years from the date of this conveyance.

VI. The City Council of the City of Huntsville, Alabama, may grant a written exception to the restrictions herein contained, by resolution which shall clearly and specifically set forth the exception and the reasons therefore. The City Council shall hold a public hearing on any request for a written exception hereunder. No resolution granting any such exception shall be adopted until after such public hearing. Any such resolution shall be executed in the name of the City by the President of the City Council and the Mayor. No assigns or immediate or remote Grantees of the Grantor shall have the right to restrain the granting of any such exception or any use of the property pursuant to such exception.

IN WITNESS WHEREOF, Grantor has caused this instrument to be executed by its duly authorized officers on the date first above written.

CITY OF HUNTSVILLE, ALABAMA,
a municipal corporation in the State of Alabama

By: _____
Tommy Battle, Mayor

ATTEST:

By: _____
Charles E. Hagood
Clerk-Treasurer

STATE OF ALABAMA)
COUNTY OF MADISON)

I, the undersigned, a notary public in and for said County, in said State, hereby certify that Tommy Battle and Charles E. Hagood, whose names as Mayor and City Clerk-Treasurer, respectively, of The City of Huntsville, Alabama, a municipal corporation are signed to the foregoing document, and who are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they, as such officers and with full authority, executed the same for and as the act of said corporation on the day the same bears day.

GIVEN under my hand and official seal this the _____ day of _____, 201__.

Notary Public

THIS INSTRUMENT PREPARED BY:
Peter S. Joffrion, City Attorney
308 Fountain Circle, Post Office Box 308
Huntsville, Alabama 35804
Telephone: (256) 427-5026

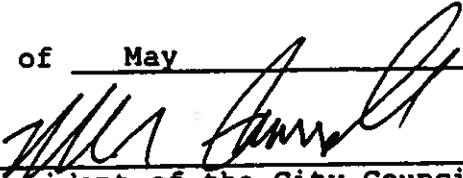
EXHIBIT "A"

Legal Description

RESOLUTION NO. 13-412

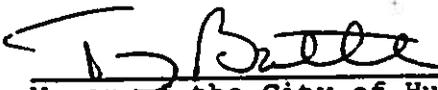
BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and is hereby authorized to enter into a lease with Atkinson Farms, Lessee, whereby the City will rent and lease approximately 64 acres of unimproved land in Cummings Research Park to be used for agricultural purposes, said lease being substantially similar in words and figures to that certain document attached hereto and identified as "Land Lease Agreement Between the City of Huntsville and Atkinson Farms" and consisting of six (6) pages plus one (1) additional page consisting of Exhibit "A" and the date of May 23, 2013, appearing on the margin of the first page, together with the signature of the President of the City Council, and 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 23rd day of May, 2013.



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

APPROVED this the 23rd day of May, 2013.



Mayor of the City of Huntsville,
Alabama

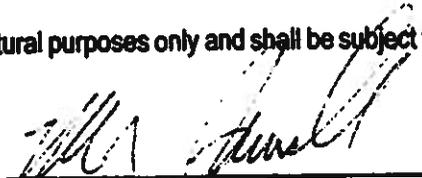
LAND LEASE AGREEMENT BETWEEN THE CITY OF HUNTSVILLE AND ATKINSON FARMS

THIS AGREEMENT made, entered into and executed, in duplicate, by and between the City of Huntsville, a municipal corporation within the State of Alabama, hereinafter referred to as "City", and Atkinson Farms, hereinafter referred to as "Lessee".

City hereby rents and lets to Lessee and Lessee hereby takes and leases from City the lands hereinafter described upon the terms and conditions hereinafter set forth:

1. **The Property:** Approximately 64 acres of unimproved land described in Exhibit A attached hereto and incorporated herein as fully as if appearing herein, generally described and located as follows:

64 Acres being generally located in Cummings Research Park and more accurately identified in "Exhibit A".
2. **Terms:** The terms of this agreement shall commence on the 24th day of May, 2013, and expire on the 31st day of December, 2013, unless sooner terminated or extended in accordance with the terms and conditions herein set forth.
3. **Extended Term:** Subject to the provisions of paragraphs 4 and 5, of this Lease agreement, Lessee may extend this Lease for successive additional twelve (12) month terms upon giving written notice to City no less than thirty (30) days prior to the end of the then current terms.
4. **Right to Terminate:** City reserves the right to terminate this agreement at the end of any crop year.
5. **Rights Reserved:** it is understood and agreed that this property is owned by the City for development and that the lease of it for farming is secondary to the development purpose. The City reserves the right to show the property at any time to prospective purchasers or tenants, to permit prospective purchasers or tenants to come upon the land to conduct such tests as it deems fit to determine the suitability of the land for its purposes, and to terminate this lease as to any or all of the land so leased at any time upon written notice to the Lessee. The City shall compensate the Lessee for any direct losses which may be sustained by the Lessee as a result of any such showing, testing, or termination. Said direct losses shall include the actual cost of such items as fuel, seed, fertilizer, herbicides and pesticides incurred by Lessee in the normal course of farming operation on the leased land. However, compensation shall not extend to such expenses as labor costs, insurance costs or loss of anticipated profits. If all or any portion of the property is sold or leased by the City during the term of this lease the rent due under the lease will be reduced on a pro rata basis according to the number of acres withdrawn.
6. **Rent:** Lessee agrees to pay City the sum of \$75.00 per acre for a total of \$4,800.00. The number of acres planted shall be as recorded in the records of the Madison County Office of the Agricultural Stabilization and Conservation of the U.S. Department of Agriculture. The number of acres planted shall be computed as of July 15th. The foregoing notwithstanding, in no event shall rent be paid on less than 64 acres. All rent shall be payable in arrears on or before the 30th day of September, and is due without demand, set-off or deduction of any kind. Any rental payment received by City more than ten (10) days after the due date shall be assessed a late charge equal to one and one-half percent (1.5%) per month of the amount due.
7. **Use of Property:** The Property shall be used for agricultural purposes only and shall be subject to the following additional terms and conditions:



President of the City Council of the City
of Huntsville, AL
Date: May 23, 2013

1. Lessee agrees to conduct farming activities on The Property in an efficient, economic, safe and careful manner, and in accordance with the best farming methods commonly practiced in the area. Lessee shall periodically have the soil tested by the Alabama Department of Agriculture and shall make such applications of fertilizers or lime as may be necessary and appropriate, as recommended by the Alabama Department of Agriculture. All such soil tests shall be conducted at Lessee's sole expense and copies of the soil test reports shall be furnished to the City upon request.
 2. Lessee shall cut no timber, nor conduct any mining operations nor remove any soil or other natural substances from The Property.
 3. Lessee shall allow no unlawful, improper or otherwise offensive use of The Property, nor commit or permit waste or damage to The Property nor commit or permit any nuisance to exist on The Property. Lessee shall strictly comply with all applicable rules, regulations, laws, administrative orders and ordinances of the City of Huntsville, County of Madison, State of Alabama, the United States and any other governmental agency having jurisdiction regarding use of The Property.
 4. Lessee shall not make, construct or install any additions, improvements or alterations to or on The Property without the advance written consent of the City. Lessee shall not construct or install any fuel tanks on The Property, whether permanent or temporary, whether above or below ground, under any circumstances. Any approved additions, improvements or alterations shall become the property of the City upon termination of this Agreement, unless the City gives written approval for Lessee to retain such improvements, in which case Lessee shall promptly remove such improvements at the end of the lease term and shall repair any damages caused by such removal.
8. **Maintenance:** It shall be the responsibility of Lessee to:
1. Maintain The Property and conduct all operations in strict compliance with all governmental regulations and federal, state, county and municipal statutes, laws, ordinances and rules in effect during the term of this agreement.
 2. Keep The Property in an orderly condition and free from debris, weeds and brush which would be detrimental to efficient farming operations.
 3. Insure that no mechanic's, materialmen's or other liens are placed against The Property for labor or materials furnished or supplied at Lessee's request.
 4. Use every reasonable means to prevent soil erosion on The Property.

In the event the City determines that The Property is not being properly maintained, in accordance with the provisions of this Agreement, it shall notify Lessee of the deficiency. Lessee shall perform the required maintenance, at Lessee's sole expense. In the event the maintenance is not satisfactorily performed within thirty (30) days of receiving the notice or, in the event such maintenance is not capable of being performed within said period and Lessee has not begun such maintenance and is not pursuing completion with due diligence, then the City may, in addition to all other rights or remedies provided herein, enter The Property and perform the maintenance. Lessee agrees to reimburse the City for the reasonable cost of all such maintenance immediately upon demand.

9. **Condition of the Property:** Lessee acknowledges that Lessee has thoroughly inspected the condition of The Property, and found the Property to be in satisfactory condition for the intended purpose. This Agreement is made without any representations or warranties by the City as to the condition of The Property and without obligation of the City to make any changes or alterations to The Property. Lessee expressly assumes sole liability for any and all accidents, loss, cost or damage alleged to have been caused by the condition of The Property.

10. **Environmental Matters:** Lessee agrees to strictly comply with all applicable governmental regulations and federal, state, county and municipal statutes, laws, rules, orders and ordinances, as now exist or may hereafter be adopted concerning protection of the environment. It is an express condition of this Agreement that Lessee shall comply with all rules and regulations of the Environmental Protection Agency, the Alabama Department of Environmental Management, the Department of Agriculture, and any other authority of competent jurisdiction regarding operations on The Property and reporting and clean-up of any spills, emissions, discharges, leaks or releases causing contamination of the environment. Lessee hereby indemnify and holds the City harmless from and against any and all liability, including fines, suits, claims, loss, costs, damage, liens, expenses, judgments and causes of action of every kind resulting from pollution, emissions, leaks, discharges, release, escapes or spills resulting from the activities, operations or omissions of Lessee, the employees, independent contractors or agents of Lessee in connection with the operations on The Property; including, but not limited to, costs of any required clean up, abatement or environmental remediation. This obligation on the part of Lessee shall survive the expiration or earlier termination of this agreement.

Lessee shall not, nor will Lessee permit any third parties, to discharge, dispose, dump or release, any hazardous substance or waste on or under The Property. The use of pesticides and herbicides, which have been approved by the appropriate regulatory agency, shall not be considered as hazardous substances, when used in accordance with approved application procedures.

11. **Security Deposit:** No security deposit shall be required upon commencement of the lease term. In the event of default by Lessee of any provision of this Agreement, the City reserves the right to institute a reasonable security deposit requirement as a condition of continuing the lease.

12. **Taxes, Assessments and Utilities:** The City shall be responsible for payment of any property taxes or general assessments which may be levied on or assessed against The Property. Lessee shall be responsible for the payment of all taxes levied against Lessee's personal property and taxes attributable to Lessee's use of or income from The Property. Lessee shall be responsible for payment of utility charges, if any.

13. **Sublease:** Lessee shall not sublease or encumber the Property nor any portion thereof under any circumstance. Use of The Property, by anyone other than Lessee constitutes a sublease. Any attempted sublease or assignment of Lessee's interest in this Agreement constitutes an event of default on the part of Lessee and gives the City the right to terminate this Agreement immediately upon notice to Lessee.

14. **Default:**

1. In the event of Lessee's breach of any provision of this Agreement, the City shall give Lessee written notice of default. In the event the default is not corrected within ten (10) days from the date of such notice, then the City shall have the right to terminate this Agreement or terminate Lessee's right to conduct operations on The Property. Upon termination of this Agreement or upon termination of Lessee's right to conduct operations at The Property, Lessee agrees to promptly remove any and all equipment and vacate The Property without further demand.
2. Lessee agrees to pay the City's reasonable attorneys' fees and all costs of legal proceedings if it

becomes necessary for the City to employ an attorney or legal process to collect any amounts due hereunder, to remove any equipment from The Property, to restore The Property to the condition it was in upon commencement of the Agreement or to enforce any provisions of this agreement upon default by Lessee.

3. An assignment for the benefit of creditors, the appointment of a receiver, any proceedings in bankruptcy, whether voluntary or involuntary, or any act of Lessee's insolvency shall be deemed a breach of this Agreement.
4. Upon default by Lessee, the City may elect to exercise any of the remedies provided by this Agreement, individually or cumulatively, or may elect to assert such other remedies as are available in equity or at law.

15. **Insurance:**

1. Lessee shall, within thirty (30) days from the date of this Agreement and at Lessee's sole expense, procure and maintain during the term of this Agreement comprehensive public liability insurance in a minimum amount of ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) per injured person, to a maximum of ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) for a single incident.
2. The City and its councilmen, officers, employees and agents shall be named as additional insureds on the policy. The insurance carrier shall be required to send a certificate of insurance to the City, and give the City thirty (30) days' advance written notification of any cancellation or modification to the policy.
3. It is understood and agreed by Lessee that the City is not responsible for the loss of or damage to any of Lessee's equipment or personal property, nor does the City's insurance cover such loss or damage. Lessee is encouraged to procure and maintain sufficient insurance to protect Lessee's equipment against any loss or damage.

16. **Indemnification:** Lessee, the heirs, personal representatives and assigns of Lessee, shall indemnify and hold the City and its councilmen, officers, employees and agents harmless from and against any and all liability, including fines, suits, judgments, claims, loss, costs, damage, lines, expenses and causes of action of every kind resulting from Lessee's use of or presence on The Property, or arising out of or in connection with Lessee's or any third party's operations, activities or omissions pursuant to this Agreement. Lessee and the heirs, personal representatives and assigns of lessee, shall indemnify and hold the City and its councilmen, officers employees and agents, harmless from and against any and all liability for injury, disability or death to persons, for damage to or loss of property, resulting from Lessee's, or any third party's operations, activities, or omissions pursuant to this Agreement. This indemnification shall include the cost of defense of any suit or claim including all court costs and reasonable attorneys' fees.

17. **Security and Damage:** The City Assumes no responsibility or liability for damage to The Property or crops from any cause whatsoever. The City assumes no responsibility for the security of The Property or any improvements or equipment thereon, nor for the safety of Lessee's employees, independent contractors or agents. Lessee assumes full responsibility and risk of loss for all improvements and equipment on The Property and for the safety of all persons and equipment utilized in the operations of Lessee.

18. **Relationship of the Parties:** Nothing contained herein shall be deemed or construed as creating a partnership, joint venture or agency relationship between the parties. Neither party shall have the right or authority to bind the other.
19. **Right to Enter:** The City reserves the right to enter the Property at all reasonable times, to inspect the Property, to perform tasks, surveys, etc., or at any time in the event of emergency. The City will endeavor to limit entry to reasonable hours. Lessee shall have no claim against the City for interference with Lessee's interest during such periods of inspection.
20. **Joint and Several Liability:** Each individual lessee executing this Agreement hereby assumes individual as well as joint liability for the full and faithful performance of all provisions of this Agreement.
21. **Waiver:** The City's waiver of default by Lessee of any provision of this Agreement shall not operate as a waiver of subsequent defaults by Lessee.
22. **Integration:** This Agreement is the entire agreement between the parties, and cannot be altered or amended except in writing and signed by both parties.
23. **Binding Effect:** The rights and obligations of this Agreement shall extend to and be binding upon the parties and their heirs, personal representatives, successors and assigns. However, this section shall not be construed as giving Lessee the right to assign this Agreement.
24. **Assignment:** Lessee shall not assign or transfer this Agreement, sublet any portion of The Property or permit any part of The Property to be used by anyone other than Lessee.
25. **Construction:** This Agreement shall be construed under, and in accordance with, the laws of the State of Alabama. In the event any provisions of this Agreement are held to be invalid, illegal or unenforceable in any respect, by a court of competent jurisdiction, the remaining portion of this Agreement shall continue in full force and effect.
26. **Notice:** All payments and written notices required by this Agreement, unless otherwise provided, shall be mailed to the City at the following address:

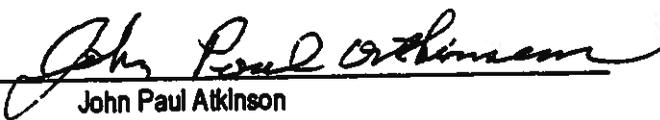
City of Huntsville
Real Estate Department
P.O. Box 308
Huntsville, Alabama 35804
Attention: Kelly W. Davis

All notices required by this Agreement unless otherwise provided , shall be mailed to Lessee at the following Address:

John Paul Atkinson
Atkinson Farms
29423 Old Highway 20
Madison, Alabama 35758

IN WITNESS WHEREOF, John Paul Atkinson, as Lessee, and the City of Huntsville, a municipal corporation, acting by and through Tommy Battle, as Mayor, and Charles Hagood, as Clerk-Treasurer of the City of Huntsville, Alabama, have hereunto set their hands and affixed the seal of the City of Huntsville and attested the same as and for the official act of said municipal corporation in accordance with their duly constituted authority as such Mayor and Clerk Treasurer as heretofore authorized by the City Council of the City of Huntsville, Alabama, on this the 23rd day of May, 2013.

LESSEE:

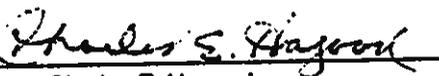


John Paul Atkinson
Atkinson Farms

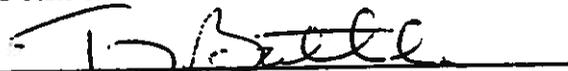
LESSOR:

CITY OF HUNTSVILLE, a municipal corporation
In the State of Alabama

ATTEST:

BY: 

Charles E. Hagood
City Clerk-Treasurer

BY: 

Tommy Battle
Mayor

Exhibit "A"



Time: 3/22/2012 2:16:17 PM

Session: C:\Documents and Settings\kelly.davis\My Documents\GTVIEWER Sessions\Atkinson Farms.gts

COH Geographic Information Systems (GIS)

ROUTING SLIP CONTRACTS AND AGREEMENTS

Originating Department: Legal

Council Meeting Date: 12/19/2013

Department Contact: Peter Joffrion

Phone # 427-5026

Contract or Agreement: Real Estate Sales Contract

Document Name: Real Estate Sales Contract between the COH and Dynetics, Inc.

City Obligation Amount:

Total Project Budget: \$1,262,500

Uncommitted Account Balance:

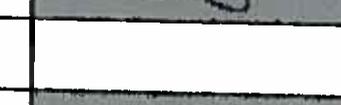
Account Number:

Procurement Agreements

<u>Not Applicable</u>	<u>Not Applicable</u>
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Grant-Funded Agreements

<u>Not Applicable</u>	Grant Name:
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Department	Signature	Date
1) Originating		12-13-13
2) Legal		12-13-13
3) Finance		12/14/13
4) Originating		12-13-13
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		