

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number: _____

Meeting Type: Regular

Meeting Date: Mar 13, 2014

Action Requested By: Legal

Agenda Type: Resolution

Subject Matter:
Real Estate Purchase Agreement between the City and Heritage Ventures, Inc.

Exact Wording for the Agenda:
Resolution authorizing the Mayor to execute a Real Estate Agreement between the City of Huntsville and Heritage Ventures, Inc.

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

Item to be considered for: Action

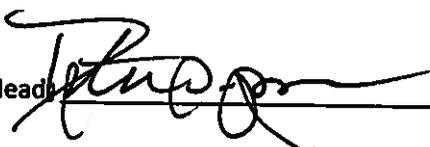
Unanimous Consent Required: No

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: \$1,600,000

Budgeted Item: Yes

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head:  _____

Date: 3-10-14

RESOLUTION NO. 14-_____

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 Agreement between the City of Huntsville and Heritage Ventures, 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 Agreement Between the City of Huntsville, Alabama and Heritage Ventures, Inc.," consisting of seven (7) pages including Exhibits A-1 and A-2, and the date of March 13, 2014, appearing on the margin of the first page, together with the signature of the President or President Pro Tem 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 13th day of March, 2014.

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

APPROVED this the 13th day of March, 2014.

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 "Purchaser" or the "City") who agrees to purchase the real property described in Paragraph One (1) from **HERITAGE VENTURES, INC.**, an Alabama corporation (hereinafter referred to as "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 that certain real property lying and being situated in Madison County, Alabama, and being specifically described in Exhibit "A-1" and "A-2" (hereinafter referred to as "the Property").

2. Purchase Price

The Purchase Price for the Property shall be One Million Six Hundred Thousand and No/100 Dollars (\$1,600,000.00), which shall be payable at Closing.

3. Conditions of Sale

This Agreement is subject to approval by the Huntsville City Council. Furthermore, this Agreement is subject to Purchaser's written approval of an owner's title commitment from Wilmer & Lee, P.A. Finally, this Agreement is contingent upon Seller being able to acquire the subject property prior to Closing, pursuant to the Seller's existing contract with the current owner.

4. Title

The Property shall be conveyed to Purchaser by General Warranty Deed, in a form and content satisfactory to Purchaser and in accordance with the laws of the State of Alabama, conveying 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.

5. **Demolition**. The parties hereby acknowledge and consent that the City shall be demolishing the Pearce Construction Company corporate office building located at 407 St. Clair Avenue and the Quest Diagnostics building located at 404 Governors Drive. Seller shall have fourteen (14) calendar days after the Closing to remove, at its expense, any fixtures, furnishings and/or equipment from these buildings prior to the demolition.

6. **Closing**

The Closing shall take place immediately after the acquisition of the subject property by Seller. The Parties further agree as follows:

- a. Real Property Taxes for the current year, if any, shall be paid by Seller when due.
- b. Seller shall deliver an affidavit attesting that there are no liens and that Seller is in sole possession of the Property.
- c. Purchaser shall pay all costs of Closing. Each party shall pay its own attorney's fees in connection with Closing.
- d. Seller shall provide the above-referenced deed at Closing to be prepared by Purchaser's counsel, at Purchaser's expense.

7. **Broker**

Seller and Purchaser acknowledge that no broker and/or finder arranged the sale of Seller's property on the terms and conditions contained herein. Seller and Purchaser 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 Purchaser, respectively.

8. **Time of the Essence**

Time is of the essence of this Agreement.

9. **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.

10. **Successors**

All rights and obligations of Seller and Purchaser under this Agreement shall inure to the benefit of and be binding upon their successors and assigns.

11. 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 and/or documents are inconsistent with the terms and conditions of this Agreement, this Agreement shall control and shall further survive recordation of the deed.

12. Entire Agreement

This Agreement contains the entire agreement between the parties. No promise, representation, warranty or covenant not included in this Agreement has been relied upon by either party. Each party has had a full opportunity to examine this Agreement and/or has had an opportunity to have its counsel review said Agreement on its behalf.

13. Interpretation

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

14. Email or Facsimile Signatures

The parties agree that this document may be executed and the signatures transmitted to the other parties by facsimile, email or similar electronic transmission. Upon transmission and receipt by another party, such signature shall be effective as an original. Notwithstanding the preceding sentence, the parties agree that they will transmit original signature pages to the other parties and Counsel promptly after execution.

15. 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 one and the same instrument.

16. Counsel Acknowledgment

The parties all acknowledge that Purchaser's counsel, SAMUEL H. GIVHAN, and the law firm of Wilmer & Lee, P.A. (collectively "Counsel") prepared this Agreement on behalf of and in the course of his representation of Purchaser. Counsel also represents Seller, directly and indirectly,

along with its affiliates, in other matters. For the purposes of this transaction, Counsel represents Purchaser's interest and no other interests. All conflicts of interest due to Counsel's representation of Purchaser and unrelated representation of Seller are hereby waived.

[SIGNATURES ON FOLLOWING PAGE]

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

PURCHASER:

The City of Huntsville, Alabama

By: _____
Tommy Battle, Mayor

Attest: _____
Charles E. Hagood, Clerk Treasurer

Date: _____

SELLER:

Heritage Ventures, Inc.

By: _____
James Keith Sharp
Its: President

Witness

Date: _____

STATE OF ALABAMA
MADISON COUNTY

TRACT NO. 2 (RIGHT-OF-WAY)

A TRACT OF LAND LOCATED IN THE NORTHWEST QUARTER OF SECTION 1, TOWNSHIP 4 SOUTH, RANGE 1 WEST MADISON COUNTY, ALABAMA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID LAND LOCATED ON THE NORTHERLY RIGHT-OF-WAY MARGIN OF GOVERNORS DRIVE (RIGHT-OF-WAY VARIES) HAVING ALABAMA STATE PLANE COORDINATES (EAST ZONE, NAD83) OF NORTHING: 1536202.88 AND EASTING: 430167.85; THENCE LEAVING SAID MARGIN NORTH 1 DEGREES 21 MINUTES 36 SECONDS EAST A DISTANCE OF 197.83 FEET TO A HEX HEAD; THENCE NORTH 1 DEGREE 19 MINUTES 40 SECONDS EAST A DISTANCE OF 279.07 FEET TO A POINT; THENCE SOUTH 89 DEGREES 22 MINUTES 45 SECONDS EAST A DISTANCE OF 59.22 FEET TO A POINT; THENCE SOUTH 1 DEGREE 11 MINUTES 43 SECONDS WEST A DISTANCE OF 477.07 FEET TO A POINT OF THE NORTHERLY RIGHT-OF-WAY MARGIN OF GOVERNORS DRIVE; THENCE ALONG SAID MARGIN NORTH 89 DEGREES 12 MINUTES 33 SECONDS WEST A DISTANCE OF 60.44 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.65 ACRES MORE OR LESS.

SUBJECT TO: ANY EASEMENTS, RESTRICTIONS OR RIGHTS-OF-WAY WHICH MAY OR MAY NOT BE OF RECORD.

STATE OF ALABAMA
MADISON COUNTY

TRACT NO. 3 (RIGHT-OF-WAY)

A TRACT OF LAND LOCATED IN THE NORTHWEST QUARTER OF SECTION 1, TOWNSHIP 4 SOUTH, RANGE 1 WEST, MADISON COUNTY, ALABAMA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID LAND LOCATED ON THE SOUTHERLY RIGHT-OF-WAY MARGIN OF SAINT CLAIR AVENUE (50 FOOT RIGHT-OF-WAY) HAVING ALABAMA STATE PLANE COORDINATES (EAST ZONE, NAD83) OF NORTHING: 1536783.42 AND EASTING: 430181.41; THENCE ALONG SAID MARGIN SOUTH 89 DEGREES 22 MINUTES 45 SECONDS EAST A DISTANCE OF 61.15 FEET TO A POINT; THENCE LEAVING SAID MARGIN AROUND A CURVE TO THE LEFT HAVING A RADIUS OF 1740.00 FEET AND A CHORD BEARING AND DISTANCE OF SOUTH 2 DEGREES 37 MINUTES 25 SECONDS WEST FOR 86.75 FEET TO A POINT; THENCE SOUTH 1 DEGREE 11 MINUTES 43 SECONDS WEST A DISTANCE OF 17.09 FEET TO A POINT; THENCE NORTH 89 DEGREES 22 MINUTES 45 SECONDS WEST A DISTANCE OF 59.22 FEET TO A POINT; THENCE NORTH 1 DEGREE 19 MINUTES 40 SECONDS EAST A DISTANCE OF 103.80 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.14 ACRES MORE OR LESS.

SUBJECT TO: ANY EASEMENTS, RESTRICTIONS OR RIGHTS-OF-WAY WHICH MAY OR MAY NOT BE OF RECORD.

ROUTING SLIP CONTRACTS AND AGREEMENTS

Originating Department: Legal

Council Meeting Date: 3/13/2014

Department Contact: Peter Joffrion

Phone # 427-5026

Contract or Agreement: Real Estate Agreement with Heritage Ventures, Inc.

Document Name: Real Estate Purchase Agreement with Heritage Ventures

City Obligation Amount: \$1,600,000

Total Project Budget:

Uncommitted Account Balance:

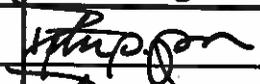
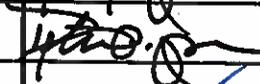
Account Number: 23-6500-0813-8112812²

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		3-10-14
2) Legal		3-10-14
3) Finance 		3/11
4) Originating		3-10-14
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		