

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number: _____

Meeting Type: Regular

Meeting Date: Apr 24, 2014

Action Requested By: Legal

Agenda Type: Resolution

Subject Matter:

Real Estate Sales Contract for Cummings Research ParkWest.

Exact Wording for the Agenda:

Resolution authorizing the Mayor to execute a Real Estate Sales Contract between the City of Huntsville and SMC Enterprises, LLC.

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.

[Empty box for providing details on why the action is required, why it is recommended, what council action will provide, allow and accomplish, and any other helpful information.]

Associated Cost: _____

Budgeted Item: Yes

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head: _____

Date: _____

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 sales contract by and between the City of Huntsville, a municipal corporation in the State of Alabama, and SMC Enterprises, LLC, which said agreement is substantially in words and figures as that certain document attached hereto and identified as "Real Estate Sales Contract between the City of Huntsville and SMC Enterprises, LLC," consisting of seventeen (17) pages including Exhibits and the date of April 24, 2014, 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 24th day of April, 2014.

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

APPROVED this the 24th day of April, 2014.

Mayor of the City of Huntsville,
Alabama

REAL ESTATE SALES CONTRACT

STATE OF ALABAMA)
COUNTY OF MADISON)

This Real Estate Sales Contract (“Contract”) entered into on this the 24th day of April, 2014, by and between **City of Huntsville** a municipal corporation in the State of Alabama (“Seller”) and **SMC Enterprises, LLC**, an Alabama limited liability company, its successors and assigns (“Purchaser”).

WITNESSETH:

For in consideration of the sum of the promises and mutual covenants hereinafter set forth, and for other and valuable consideration hereinafter provided, the parties do hereby agree as follows, to wit:

I. AGREEMENT TO BUY AND SELL

The Purchaser agrees to buy and the Seller agrees to sell an approximately 5 acre Tract of real property described in Exhibit “A”, attached hereto and incorporated herein by reference (the “Property”) in accordance with the covenants and conditions of this contract. Prior to Closing and as a condition to Purchaser’s obligation to close the transaction hereunder, Seller, at Seller’s expense and to the satisfaction of Purchaser in its sole discretion, shall (i) plat the Property as a single subdivision lot in accordance with Seller’s subdivision regulations, (ii) obtain a topographical map/survey of the Property, and (iii) obtain a geotechnical study of the Property. Upon such platting and subdivision, the legal description of the Property for purposes of this Agreement and the deed of conveyance to Purchaser shall be deemed to be the Property as described in, and with reference to, the recorded subdivision plat.

II. DUE DILIGENCE PERIOD

Between the execution date of this Contract and the date of Closing, Purchaser and Purchaser’s agents, employees, contractors, representatives and other designees (collectively the “Purchaser’s Designees”) shall have the right to enter the Property for the purposes of inspecting the Property, conducting soil tests, conducting surveys, mechanical and structural engineering tests, and conducting any other investigations, examinations, tests and inspections as Purchaser may reasonably require to assess the condition of the Property; provided however, that (i) any activities by or on behalf of Purchaser, including, without limitation, the entry by Purchaser or Purchaser’s Designees with respect to the Property (“Purchaser’s Activities”) shall not damage the Property in any manner whatsoever, and (ii) in the event the Property is altered or disturbed in any manner in connection with any of Purchaser’s Activities, Purchaser shall immediately return the Property to the condition existing prior to Purchaser’s Activities.

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

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

III. PURCHASE PRICE

In consideration of the Seller's agreement to sell the Tract to the Purchaser, Purchaser agrees to pay to Seller the sum of \$65,000.00 per acre, for a total price of \$325,000.00 payable in full on the date of closing as hereinafter defined. If a final survey to be provided by Seller prior to closing reveals the total acreage is more or less than five (5) acres, the Purchase Price shall be adjusted accordingly.

IV. CLOSING

Except as otherwise agreed, Closing shall occur upon five (5) days' notice by Purchaser to Seller at the Office of the City Attorney of the City of Huntsville or such other place as agreed upon by the parties. Closing shall occur not more than ninety (90) days from the date hereof; provided, however, at the election of the Purchaser, Seller shall grant an additional thirty (30) days upon the payment to Seller, as interest, of three percent (3%) of the unpaid balance of the Purchase Price at least two (2) days prior to the ninetieth (90th) day following the date hereof.

V. CONVEYANCE

Seller agrees to convey said property and will furnish to Purchaser 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 2014, 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 contract, the Purchaser determines to finance this venture, through Industrial Development Bonds, then, upon Purchaser's 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. Purchaser understands said restrictions are binding on the property and may be amended from time to time and Purchaser agrees that Purchaser shall comply with said restrictions as amended. If, prior to closing, Purchaser discovers a defect in title to the property, Seller, at Seller's option,

shall have a reasonable time (but not in excess of thirty (30) days following the receipt of Purchaser's written notice of objections) within which to cause the same to be cured. If the defects are not timely cured to Purchaser's satisfaction, (i) Purchaser may waive such defects and proceed to close or (ii) Purchaser may cancel its agreement by notice of writing to Seller, and any money paid to Seller pursuant to this contract (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. Purchaser shall notify Seller of any defect in writing within ten (ten) days following receipt or such title defect.

VI. CONSTRUCTION

Purchaser agrees 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 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 Purchaser fails to begin substantial construction within the time described above, then the Seller may, at its option, within three hundred sixty (360) days of Purchaser's failure, repurchase the above described Tract of land for a sum equal to the total purchase price paid by the Purchaser therefore plus the reasonable value of any improvements. Purchaser 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. Purchaser 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. Purchaser will indemnify and hold harmless Seller 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 paragraph shall survive the closing.

VII. DEFAULT

Should Purchaser fail to carry out the terms and conditions of this Contract in accordance, with all of its provisions, this contract shall terminate with no further obligations between the parties and Seller shall retain any money paid to Seller as liquidated damages. Should Seller fail to carry out this Contract in accordance with all of its provisions, (1) Purchaser shall have the option to demand a refund of any monies or an

extension interest Purchaser may have paid or caused to be paid to Seller, together with payment to Purchaser by Seller of any sums expended by Purchaser in connection with Purchaser's due diligence investigations and inspections of the Property, and upon payment of such sums to Purchaser by Seller, this Contract shall terminate, or (2) Purchaser may, without demanding a return of any money, proceed with a suit for specific performance of this contract.

VIII. ADDITIONAL PROVISIONS

A. Policies and Procedures- Hazardous Materials. Purchaser shall develop and implement policies and procedures for the storage, use, receipt and disposition of any hazardous materials that come onto its premises. Purchaser will not offer or accept, under these policies, hazardous materials for transportation in commerce unless said materials are properly classed, described, packaged, marked, labeled, and in such condition for proper shipment as required under Title 49 Code of Federal Regulations, Parts 171-179. The packaging of hazardous materials coming into or going out of its facilities shall be maintained in compliance with the regulations specified for each specific mode of transportation. This includes the proper handling and transport of all materials via air, highway, rail or water.

Materials handling, as part of all manufacturing operations, will be conducted within the confines of the building. This will include the inspection of product, material packing/unpacking, and all functions requiring product or by-product preparation for transportation.

In the event by-product material removal becomes necessary, procedures will be placed into effect to ensure proper removal. Prior to the transport of materials, complete material evaluation will be conducted to ensure proper compliance with all applicable transportation requirements. All options will be evaluated for the beneficial reclamation or recycling for by-product material.

Purchaser insures that it's intrastate, interstate, and internal operations will be in compliance with all applicable requirements, and that it will fully comply with all federal, state, and local laws, regulations or ordinances regarding environmental, safety, industrial hygiene, and/or hazardous material requirements.

IX. OPTION TO PURCHASE.

Purchaser and its successors and assigns shall have an option to purchase the adjoining five (5) acre parcel of property described on Exhibit "C" attached hereto, for a period of three (3) years from the date of approval of this agreement by the City Council of the City of Huntsville, for the sum of \$65,000 per acre. Purchaser shall notify Seller, in writing, of Purchaser's intent to exercise this purchase option, and said notice shall be

delivered to Seller by Purchaser prior to the expiration of the option period. In the event Purchaser exercises this option, closing shall occur within thirty (30) days of the notice provided to Seller, and the sale shall be subject to the provisions of this agreement.

X. ENTIRE AGREEMENT

This contract, with all Exhibits attached hereto, and the restrictions and covenants of as herein referenced, constitute the entire agreement between the parties. All statements, representations covenants heretofore made and any other agreements not incorporated herein are void and of no force and effect.

IN WITNESS WHEREOF, the parties have entered their hands and seals and attest to the same with the signature of the Mayor being the official act of said municipality in accordance with his dully constituted authority.

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

BY: _____
Its Mayor

ATTEST:

City Clerk-Treasurer

SMC ENTERPRISES, LLC

By: _____
Name: Sheila M. Cummings
Title: Manager

WITNESS:

STATE OF ALABAMA)
COUNTY OF MADISON)

I, the undersigned, Notary Public in and for said County in said State, hereby certify that **Tommy Battle**, whose name as Mayor of THE CITY OF HUNTSVILLE, and **Charles E. Hagood**, as Clerk-Treasurer, are signed to the foregoing Contract and who are known to me, acknowledged before me on this day that, being informed of the contents of such instrument, they, as such Mayor and Clerk-Treasurer, and with full authority, executed the same voluntarily for and as the act of said City of Huntsville, on the day the same bears date.

Given under my hand this the 24th day of April, 2014

NOTARY PUBLIC
My Commission Expires: _____

[NOTARIAL SEAL]

STATE OF ALABAMA)
COUNTY OF MADISON)

I, the undersigned, Notary Public in and for said County in said State, hereby certify that **Sheila M. Cummings**, whose name as Manager of SMC Enterprises, LLC, an Alabama corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, she, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand this the _____ day of _____, 2014.

NOTARY PUBLIC
My Commission Expires: _____

[NOTARIAL SEAL]

EXHIBIT "A"

Subject Property described as: SEE ATTACHED.



5125A Research Drive
Huntsville, AL 35805

TEL 256.534.5512
FAX 256.534.5544

www.GarverUSA.com

**STATE OF ALABAMA
MADISON COUNTY**

**Tract 1 of Lot 2 of Mark C. Smith Drive Subdivision as recorded in Document Number
20131202000757220**

I, Loyd W. Carpenter a Professional Land Surveyor in the State of Alabama hereby certify that the foregoing is a true, and accurate description of a tract of land lying and being situated in Section 36, Township 3 South, Range 2 West of the Huntsville Meridian.

Said tract being a portion of Lot 2 of Mark C. Smith Drive Subdivision as recorded in Document Number 20131202000757220 in the Office of the Probate Judge of Madison County, Alabama, and being more particularly described as follows:

Commencing at the southeast corner of Section 36, Township 3 South, Range 2 West of the Huntsville Meridian; thence North 87 Degrees 55 Minutes 37 Seconds West a distance of 1130.00 feet to a 4"x4" concrete monument with a cap stamped "Garver LLC CA#445" found on the westerly right-of-way of Mark C. Smith Drive said point being on a curve to the right, having a radius of 3550.00 feet, a chord of North 34 Degrees 50 Minutes 04 Seconds West a distance of 739.01 feet; thence along said right-of-way and the arc of said curve 740.35 feet to the southeast corner of Lot 2 of Mark C. Smith Drive Subdivision as recorded in Document Number 20131202000757220 in the Office of the Probate Judge of Madison County, Alabama; thence continue along said right-of-way and arc of said curve 74.09 feet to the Point of Beginning of the herein described tract;

Thence leaving said right-of-way South 76 Degrees 09 Minutes 21 Seconds West a distance of 588.68 feet to a #5 rebar with a cap Stamped "Garver LLC CA 445" (typical) set; thence North 19 Degrees 19 Minutes 38 Seconds West a distance of 349.46 feet to a #5 rebar set on the north boundary of said Lot 2; thence along said north boundary North 68 Degrees 39 Minutes 14 Seconds East a distance of 550.00 feet to the northeast corner of said Lot 2, said point being on the westerly right-of-way of Mark C. Smith Drive and a curve to the left, having a radius of 3500.00 feet, a chord of South 24 Degrees 12 Minutes 40 Seconds East for a distance of 426.63 feet; thence leaving said north boundary and along said right-of-way and the arc of said curve 426.90 feet to the POINT OF BEGINNING.

The above described tract contains 5.00 acres more or less.

All according to my survey this the 24th day of April, 2014.

Loyd W. Carpenter, PLS
Alabama License No.26012

EXHIBIT "B"

Form of Deed – see attached

STATE OF ALABAMA)
)
COUNTY OF MADISON)

DEED

THIS INDENTURE, made and entered into on this the ____ day of _____, 2014, by and between the **City of Huntsville, Alabama**, a municipal corporation, as party of the first part, hereinafter called “Grantor,” and **SMC ENTERPRISES, LLC**, 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 LEGAL DESCRIPTION ATTACHED HERETO AS 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 _____, 2014.

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



5125A Research Drive
Huntsville, AL 35805

TEL 256.534.5512
FAX 256.534.5544

www.GarverUSA.com

STATE OF ALABAMA
MADISON COUNTY

**Tract 1 of Lot 2 of Mark C. Smith Drive Subdivision as recorded in Document Number
20131202000757220**

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The above described tract contains 5.00 acres more or less.

All according to my survey this the 24th day of April, 2014.

Loyd W. Carpenter, PLS
Alabama License No.26012

EXHIBIT "C"

Description of Adjoining Parcels– see attached



5125A Research Drive
Huntsville, AL 35805

TEL 256.534.5512
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STATE OF ALABAMA
MADISON COUNTY

Tract 2 of Lot 2 of Mark C. Smith Drive Subdivision as recorded in Document Number 20131202000757220

I, Loyd W. Carpenter a Professional Land Surveyor in the State of Alabama hereby certify that the foregoing is a true, and accurate description of a tract of land lying and being situated in Section 36, Township 3 South, Range 2 West of the Huntsville Meridian.

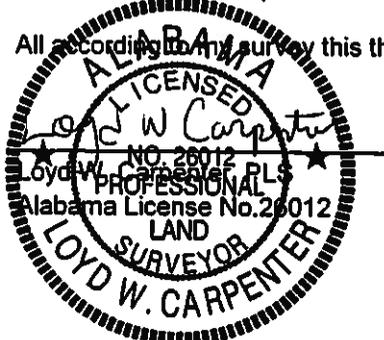
Said tract being a portion of Lot 2 of Mark C. Smith Drive Subdivision as recorded in Document Number 20131202000757220 in the Office of the Probate Judge of Madison County, Alabama, and being more particularly described as follows:

Commencing at the southeast corner of Section 36, Township 3 South, Range 2 West of the Huntsville Meridian; thence North 87 Degrees 55 Minutes 37 Seconds West a distance of 1130.00 feet to a 4"x4" concrete monument with a cap stamped "Garver LLC CA#445" found on the westerly right-of-way of Mark C. Smith Drive said point being on a curve to the right, having a radius of 3550.00 feet, a chord of North 34 Degrees 50 Minutes 04 Seconds West a distance of 739.01 feet; thence along said right-of-way and the arc of said curve 740.35 feet to the southeast corner of Lot 2 of Mark C. Smith Drive Subdivision as recorded in Document Number 20131202000757220 in the Office of the Probate Judge of Madison County, Alabama, said point being the Point of Beginning of the herein described tract;

Thence leaving said right-of-way and along the south boundary of said Lot 2 South 61 Degrees 08 Minutes 23 Seconds West a distance of 907.30 feet to the southwest corner of said Lot 2; thence leaving said south boundary and along the west boundary of said Lot 2 North 4 Degrees 49 Minutes 59 Seconds West a distance of 644.89 feet to the northwest corner of said Lot 2; thence leaving said west boundary and along the north boundary of said Lot 2 North 68 Degrees 39 Minutes 14 Seconds East a distance of 135.89 feet to a #5 rebar with a cap Stamped "Garver LLC CA 445" (typical) set; thence leaving said north boundary South 19 Degrees 19 Minutes 38 Seconds East a distance of 349.46 feet to a #5 rebar set; thence North 76 Degrees 09 Minutes 21 Seconds East a distance of 588.68 feet to a #5 rebar set on the westerly right-of-way of Mark C. Smith Drive, said point being on a curve the left, having a radius of 3500.00 feet, a chord of South 28 Degrees 18 Minutes 42 Seconds East for a distance of 74.09 feet; thence along said right-of-way and the arc of said curve 74.09 feet to the POINT OF BEGINNING.

The above described parcel contains 5.00 acres more or less.

All according to my survey this the 24th day of April, 2014.



**ROUTING SLIP
CONTRACTS AND AGREEMENTS**

Originating Department: Legal

Council Meeting Date: 4/24/2014

Department Contact: Peter Joffrion

Phone # 427-5026

Contract or Agreement: Real Estate Agreement with SMC Enterprises, LLC

Document Name: Real Estate Sales Contract between the COH and SMC Enterprises, LLC

City Obligation Amount: _____

Total Project Budget: _____ **\$325,000**

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