

CITY COUNCIL AGENDA ITEM COVER MEMO

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

Meeting Type: Regular

Meeting Date: Oct 23, 2014

Action Requested By: Legal

Agenda Type: Resolution

Subject Matter:

Real Estate Auction Contract with Fowler Auction & Real Estate Service.

Exact Wording for the Agenda:

Resolution authorizing the Mayor to execute a Real Estate Auction Contract between the City of Huntsville and Fowler Auction & Real Estate Service, Inc., to auction real property located at 2603 Brookline Drive.

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

Item to be considered for: Action

Unanimous Consent Required: No

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

Associated Cost: \_\_\_\_\_

Budgeted Item: Not Applicable

MAYOR RECOMMENDS OR CONCURS: Yes

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

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

RESOLUTION NO. 14-\_\_\_\_\_

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, for and as act of the City of Huntsville, that the Mayor of the City of Huntsville is hereby authorized, requested and directed to enter into an agreement with Fowler Auction & Real Estate Service, Inc. to sell at public auction the property known as 2603 Brookline Drive, Huntsville, Alabama, and more particularly described as Lot 6, Block 8, Parkwood Estates, Second Addition, Huntsville, Alabama, to the highest bidder in an attempt to obtain the highest possible price for said property.

That said Agreement between Fowler Auction & Real Estate Service, Inc., and the City of Huntsville, a municipal corporation in the State of Alabama, is substantially in words and figures similar to that certain document attached hereto and identified as "Real Estate Auction Contract between the City of Huntsville and Fowler Auction and Real Estate Service, Inc." consisting of 4 pages including any exhibits, and the date of October 23, 2014, appearing on the first page together with the signature of the President or 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.

BE IT FURTHER RESOLVED upon the completion of the public auction, that the Mayor and the City Clerk be, and they are hereby authorized and directed to execute and attest, respectively, for and on behalf of the City of Huntsville, Alabama, a deed, which does convey the property described above to the successful buyer of said above described property.

ADOPTED this the \_\_\_\_\_ day of \_\_\_\_\_, 2014.

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

APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, 2014.

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

"The Preferred Auction Company"



SERVICE, INC.

8719 Highway 53 · Toney, Alabama 35773

Toney: (256) 420-4454 Huntsville: (256) 859-5682 Athens: (256) 232-7788 Fax: (256)420-4707

Toll: (866) 293-0157

e-mail: [info@fowlerauction.com](mailto:info@fowlerauction.com) www.fowlerauction.com

Mickey Fowler ALSL466, TNSL1442, TN Firm 1148, MSSL718F

REAL ESTATE AUCTION CONTRACT

This agreement is entered into this 23rd day of October 2014 between City of Huntsville, Alabama hereinafter referred to as "SELLER", whose address is 308 Fountain Circle Huntsville, Alabama 35801

and

FOWLER AUCTION & REAL ESTATE SERVICE, INC., hereinafter referred to as "AGENT", whose address is 8710 Highway 53, Toney, Alabama 35773.

RIGHT TO SELL: SELLER hereby warrants that he/she/they is(are) the owner of property described below and said property is free and clear of all liens unless listed below, and the SELLER has complete power of sale. List all lien holders and mortgagors with address, telephone number, account number(s) and amount owed. (Attach additional sheet if necessary):

All authority and information provided to and by the Seller is pursuant to Judgment dated May 16, 2014 by the Circuit Court of Madison County, Alabama and attached hereto as Exhibit A. NO ADDITIONAL WARRANTS ARE MADE BY SELLER.

For and in consideration, SELLER does hereby grant to AGENT, sole, exclusive and irrevocable right to sell his/her/their/its property(ies). AGENT is to promote and conduct a sale at public auction of SELLER'S real property. AGENT may cooperate with subagents and shall use AGENT'S best efforts to procure a buyer for the property. AGENT is authorized to advertise the property and to place "FOR SALE" and "AUCTION SIGNS" on the property. SELLER will assist AGENT in any reasonable way in selling the property and will refer all inquiries regarding the property to agent during the term hereof. AGENT shall, however, submit to SELLER any and all written offers to purchase, for SELLER'S consideration. The property described as follows:

DESCRIPTION OF PROPERTY: House and Lot - 2603 Brookline Dr NW, Huntsville, AL

DATE OF SALE:

(Day)

(Month)

(Date)

Time:

TERMS

The following is required by RECAD (Real Estate Consumer Agency and Disclosure Act) Agency Disclosure:

The Listing Company Fowler Auction & Real Estate Service, Inc., is: (Two lines may be checked)

[X] An Agent of the Seller. [ ] An agent of the buyer. [ ] An agent of both the seller and buyer and is acting as a limited consensual dual agent. [ ] Assisting the [ ] buyer [ ] seller as a transaction broker.

The Selling Company Fowler Auction & Real Estate Service, Inc., is: (Two lines may be checked)

[X] An Agent of the Seller. [ ] An agent of the buyer. [ ] An agent of both the seller and buyer and is acting as a limited consensual dual agent. [ ] Assisting the [ ] buyer [ ] seller as a transaction broker.

Buyer's Premium: A buyer's premium of 10% will be added to all winning bids.

Deposit: SELLER hereby authorizes AGENT to accept a deposit on SELLER'S behalf and to hold these funds in its Escrow account. These funds are to be applied toward AGENT'S commission and expenses and on the purchase price of the buyer at closing. SELLER further authorizes AGENT to execute a binding contract of sale and prepare all closing documents on SELLER'S behalf. In the event of default by purchaser, one-half of the forfeited earnest monies collected will be paid to AGENT and one half shall be paid to SELLER, after payment of the Agent's auction expenses and the promotional budget.

Compensation to Agent: SELLER hereby agrees to compensate AGENT as follows: n/a% of the total sales price plus the Buyer's Premium, plus \$ 1,000.00 of the promotional budget, advertisements, and brochures. SELLER further agrees to compensate AGENT, if during the term hereof or any extension thereof, the property is sold by AGENT or any other person, or if a sales agreement is obtained for the property by AGENT or any other person with a buyer who is willing and able to purchase the property upon the price and terms, SELLER accepts, or if the property is withdrawn from sale, transferred, conveyed, leased without the consent of AGENT or made unmarketable by SELLER'S voluntary act. The term "sale" shall be deemed to include any exchange or trade to which SELLER consents, a fee equal to the percentage above plus all advertising costs.

CONDITIONS OF PROPERTY:

Prior to the Auction, SELLER agrees to disclose in writing to AGENT any and all information affecting the sale of the property(ies). SELLER'S disclosure shall provide written notice of any know defects latent or otherwise known to SELLER concerning the property for all known issues/defects involving: environmental problems, underground storage tanks, buried materials, hazardous, toxic substances, mold, termites, structural, boundary line disputes, encroachments.

SELLER is required to pay all costs and expenses to obtain the written approval of any governing bodies with jurisdiction over the sale of property(ies), re-subdivision, and platting, if required.

SELLER is required to provide release(s) of lien(s)/mortgage(s) on property(ies).

AGENT or its representatives make no representation regarding the value of the property(ies) and are not bound by any opinions issued or discussions relating to the value of the property(ies). AGENT has no knowledge of any environmental problems, or

hazardous, toxic substances, mold, termites, or structural issues. AGENT has made no representations or warranties as to the physical condition of the property(ies) and/or any improvements therein.

SELLER warrants and represents that all statements made to AGENT regarding the features and conditions of property, mortgages and liens against property, and SELLER'S right to sell property, are true and correct. If any statements made by SELLER or information provided by SELLER is untrue or incorrect, or if any information is not provided to AGENT, AGENT is released from his responsibilities under this contract and SELLER is liable for all expenses incurred to that point.

**TYPE OF AUCTION:**

- 1.   X   This auction is to be conducted "ABSOLUTE" without reserve to be sold to the highest bidder on the aforementioned date.
- 2. \_\_\_\_\_ This auction is being conducted WITH RESERVE. SELLER'S right to reject sale: Seller has the right to accept or reject sale if a minimum bid of \$ \_\_\_\_\_ is not presented and understands if said sale or part of said sale is rejected, SELLER agrees to pay all promotional costs (as stated above), and all costs incurred on behalf of SELLER, within seven (7) days from sale date. Some of the costs are for newspaper advertisement, radio spots when used, 4'x8' or 4'x4' yard signs, streamers, directional signs, postage, letters and envelopes, ring-men, auctioneers, clerks, preparation of sales contract, and other related promotional expenses. SELLER agrees that Agent may file a lien with the Judge of Probate against the property if advertising fees and costs incurred on behalf of SELLER are not paid within seven (7) days of the Auction Date to Agent.
- 2a. \_\_\_\_\_ REJECTED BID: In the event, the SELLER exercises his right to reject the sale (if minimum bid is presented) or any part of the sale, the Seller agrees to pay, in addition to the promotional costs (as stated above), a commission of \_\_\_\_\_% of the top bid to the AGENT.

**ADDITIONAL AGREEMENT**

**Auction Rules:** SELLER agrees that any announcements made at the Auction are binding and enforceable. Seller agrees that under Code of Alabama Section 7-2-328 (1975), the sale by auction is complete when the Auctioneer so announces by the fall of the hammer or in other customary manner.

**Title:** SELLER warrants that he/she/they is(are) the owner of the property and has the authority to execute this agreement and sell the property and will provide a marketable title and a Warranty Deed at closing. Upon execution of this Agreement, Seller shall provide copies of Seller's deed, tax assessments, tax maps, title insurance policies, easements, rights of way, restrictions, plats, environmental reports, and surveys (if available). If there are any title defects, SELLER to immediately inform the AGENT, and SELLER agrees to cure said defects in a timely manner at SELLER'S expenses and costs prior to the Auction.

**Equal Housing Opportunities:** It is illegal to discriminate in the sale of property, and this property is offered without regard to race, religion, age, color, sex, handicap, family status or national origin.

**Expenses:** SELLER agrees to pay all expenses incurred by AGENT on their behalf. Some of the expenses shall be as follows, but not limited to:

- Survey
- Bush Hog Work
- Perc. Tests
- Bulldozer Work
- Structural Repairs
- Title Opinion
- Deeds

**Expiration of Listing:** If the property is sold or otherwise transferred within 180 days after the expiration of this agreement to any person or entity with whom AGENT has negotiated, shown the property, or to whom AGENT has introduced to SELLER, during the term hereof, then the aforesaid compensation shall be payable to AGENT provided, however, that AGENT notified SELLER, in writing, of such negotiation, showing or introduction within ninety (90) days after the termination hereof. This contract shall continue and be considered as a listing agreement and all terms shall remain thereafter until terminated by either SELLER or AGENT giving 10 days notice in writing.

**Closing:** SELLER agrees to execute any and all documents necessary to effect the sale of the property. The current year's real estate taxes, any rents and/or other monies produced by the property shall be prorated at the time of closing, unless otherwise stated herein:                   n/a                  . Any deposits and/or other interest held by SELLER will be released at closing.

**LIMITED POWER OF ATTORNEY for the Sale of Real Estate:** The SELLER agrees to be present at the Auction. However, if the SELLER is not available for the Auction, the SELLER shall fax written acceptance or email written acceptance of the purchase price to AGENT. The SELLER has made, constituted and appointed, and by these presents do make, constitute and appoint, the AGENT, as SELLER'S true and lawful attorney to sign SELLER'S name to any and all documents, including the Auction Sales Contract, and any and all closing documents necessary to sell the above described property.

**SAID COMMISSION SHALL BE PAID AS FOLLOWS:**

- 1. In full at the time of closing by the Lender, Closing Agent or Escrow Agent. This agreement is instruction to said Lender, Closing Agent, or Escrow Agent to pay AGENT'S commission and Agent's expenses from the Buyer(s)' deposit(s) directly to AGENT and/or AGENT'S assigns without further instruction from SELLER.
- 2. If the sale is not closed due to refusal or failure on the part of SELLER to go forward, the commission & Agent's expenses are immediately due and payable in full.
- 3. SELLER agrees to pay AGENT the reasonable costs and expenses that may arise from enforcing this Agreement, including a reasonable attorney's fee, plus interest at ten (10%) percent interest per annum for any amount owed by SELLER to AGENT. SELLER agrees that Agent may file a lien with the Judge of Probate against the property if advertising fees, commissions, and costs incurred on behalf of SELLER are not paid within seven (7) days of the due date.

**INDEPENDENT CONTRACTOR:** The AGENT is acting as an independent contractor and nothing contained in this Agreement shall be deemed to constitute a partnership, joint venture, or other relationship between the SELLER and AGENT, except as limited by the terms of this Agreement.

**ARBITRATION:** Any controversy or claim arising out of, or relating to, the execution, interpretation, performance, or breach of any provision of this Agreement and any future claims between the parties, regardless of their contractual relationship, shall be settled by arbitration. The arbitration must be arbitrated by the parties in accordance with the Rules of the American Arbitration Association, with the exception of the rules with respect to payment of fees and appointment of an arbitrator. Moreover, any controversy or claim between the parties to this agreement, regardless of whether such controversy or claim arises out of, or relates to, this agreement, shall likewise be settled by arbitration in accordance with the Rules of the American Arbitration Association. If any party to a dispute desires to arbitrate the dispute, either before or after a lawsuit is filed, such party shall demand arbitration by giving the other party or parties written notice. If the parties cannot agree on an arbitrator within fourteen (14) days after the date of the notice, each party shall name an arbitrator within ten (10) days. The two (2) arbitrators shall select one (1) arbitrator within ten (10) days, and the selected one (1) arbitrator shall determine the dispute(s). Payment of all arbitration fees and expenses shall be divided equally between the parties. In the event that any court determines that the preceding sentences are not to be enforced in whole, or in part, for any reason, then the parties intend that the preceding sentences shall only apply to any controversy or claim arising out of, or relating to, the course of dealings between the parties on account of the relationship created by this agreement. Course of dealings includes agreements other than, and subsequent to, this agreement entered into between the parties. Arbitration shall be held in Madison County, Alabama.

**WAIVER OF JURY TRIAL:** The Parties hereby waive any and all rights and demands for a jury trial.

**INDEMNITY:** SELLER hereby agrees to indemnify and hold AGENT harmless from and against any and all liability or loss that may be claimed against the AGENT as a result of this auction contract or the auction conducted under this contract. Said indemnity is to include any and all expenses and costs, including but not limited to attorney's fees, sustained as a result of any claims, suits, demands, costs, or judgments arising from this auction contract, or the auction subject to it, from any Buyer, person, firm, corporation, partnership, LLC, or other entity for any reason whatsoever.

**NO CONSTRUCTION AGAINST DRAFTING PARTY:** The Parties acknowledge that each of them and their counsel have had an opportunity to review this Agreement and that this Agreement will not be construed against either party, merely because the other party may have prepared it.

**ENTIRE AGREEMENT:** This Agreement contains the entire agreement between the parties hereto and any promises, covenants, conditions and representations made by either party hereto, other than expressly set forth herein, which are not incorporated herein, are void and of no force and effect. No additions, deletions or modifications to, or from this Agreement shall be binding upon any party hereto, unless such addition, deletion or modification shall be set down in writing, properly executed by all the parties hereto, and attached as a part hereof.

This is a legal document, which each party to this contract must read carefully and fully understand as to the conditions and terms constituting this real estate auction contract. The AGENTS are serving only as real estate brokers in connection with this transaction and cannot give legal advice to any party. This agreement will serve as notice of disclosure that the SELLER is paying AGENT'S commission and no additional fees are being paid to AGENT by the buyer.

The signature of the parties constitute that they have read and understand the terms and conditions of this agreement. In signing this document, SELLER, does hereby acknowledge that he has read and does understand the terms and conditions contained herein.

_____ SELLER	_____ DATE	_____ SELLER	_____ DATE
_____ SELLER	_____ DATE	_____ SELLER	_____ DATE

**SELLER'S TELEPHONE NUMBER(S) & ADDRESSE(S):**

_____ Telephone Number	_____ Address
_____ Telephone Number	_____ Address
_____ Telephone Number	_____ Address

**AGENT:** **Fowler Auction & Real Estate Service, Inc.,  
An Alabama Corporation**

\_\_\_\_\_  
By: DATE  
Its:

\_\_\_\_\_  
The City of Huntsville, Alabama  
By: Tommy Battle  
Its: Mayor

**IN THE CIRCUIT COURT OF MADISON COUNTY, ALABAMA**

STATE OF ALABAMA EX REL ROBERT )  
BROUSSARD, DA, )  
Plaintiff, )  
V. ) Case No.: CV-2014-901067.00  
FIKES LARRY JOHN, )  
LACY ALLEN TERRELL, )  
Defendants. )

**Consent Judgment**

This is a condemnation proceeding brought by the Madison County District Attorney's Office pursuant to Alabama Code 20-2-93 seeking the forfeiture of a house and real property located at 2603 Brookline Drive, Huntsville, Alabama, seized from the possession of Larry John Fikes and titled to Allen Terrell Lacy. There are no apparent mortgages or liens recorded. The parties have filed their Consent to Forfeiture which this Court hereby approves.

It is therefore ORDERED, ADJUDGED and DECREED that the house and real property located at 2603 Brookline Drive, Huntsville, Alabama, more particularly described as Lot 6, Block 8, Parkwood Estates, Second Addition is declared contraband and shall be forfeited to the City of Huntsville for use in law enforcement. Defendant shall immediately vacate said premises and turn possession over to City of Huntsville. Title shall vest with the City of Huntsville. In the event that the property is sold by the City of Huntsville, court costs and costs of the sale are to be paid from the proceeds with the remaining proceeds to be divided as follows:

- 35% to the City of Huntsville;
- 25% to the Madison County District Attorney's Office;
- 14% to the Huntsville Madison County Strategic Counterdrug Team;
- 6.5% to the Madison County Sheriff's Department;
- 6.5% to the City of Madison;
- 6.5% to the City of Decatur and
- 6.5% to the Morgan County Sheriff's Department.

DONE this 16<sup>th</sup> day of May, 2014.

/s/ WILLIAM K. BELL

STATE OF ALABAMA IN THE CIRCUIT COURT  
MADISON COUNTY CASE No. CV 14-901067  
I, Jane Smith, Clerk of the Circuit Court of Madison County, Alabama hereby certify that this is a full true and correct copy of the original record as the same appears of record and now on file in this office.  
Witness my hand this the 12<sup>th</sup> day of Aug., 2014  
  
CLERK CIRCUIT COURT

## ROUTING SLIP CONTRACTS AND AGREEMENTS

Originating Department: Legal

Council Meeting Date: **10/23/2014**

Department Contact: **Peter Joffrion**

Phone # **427-5026**

Contract or Agreement: **Real Estate Auction Contract with Fowler Auction**

Document Name: **Real Estate Auction Contract with Fowler Auction**

City Obligation Amount:

Total Project Budget:

Uncommitted Account Balance:

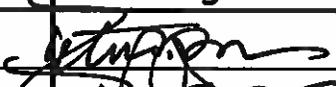
Account Number:

### Procurement Agreements

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

<b>Not Applicable</b>	<b>Grant Name:</b>
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Department	Signature	Date
1) Originating		10.20.14
2) Legal		10.20.14
3) Finance <span style="color: blue;">PC</span>		10/21/14
4) Originating		10.20.14
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		