

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number: _____

Meeting Type: Regular

Meeting Date: Mar 26, 2015

Action Requested By: Water Pollution Control

Agenda Type: Resolution

Subject Matter:

Agreement between the City of Huntsville and Heritage Ventures, Inc.

Exact Wording for the Agenda:

Real Estate Purchase 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.

This agreement is for the purchase of a four acre tract adjacent to the Spring Branch Wastewater Treatment Facility. The tract has an existing 10,000 SF warehouse facility with an 10,000 gallon fueling station and truck scales. The facility will house WPC's inventory control, fueling station and the weigh station for high strength waste receiving.

Associated Cost: \$400,000.00

Budgeted Item: _____

MAYOR RECOMMENDS OR CONCURS: _____

IR
AK

Department Head: Shane Coch

Date: Mar 26, 2015

**ROUTING SLIP
CONTRACTS AND AGREEMENTS**

Originating Department: Water Pollution Control

Council Meeting Date: 3/26/2015

Department Contact: Shane Cook

Phone # 256-883-3719

Contract or Agreement: Real Estate Purchase Agreement

Document Name: Heritage Ventures, Inc. - Project No. 65-15-SP29

City Obligation Amount: \$400,000

Total Project Budget: \$400,000

Uncommitted Account Balance: 0

Account Number: 02-8000-0801-1339

Procurement Agreements

Not Applicable	Not Applicable
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Grant-Funded Agreements

Not Applicable	Grant Name:
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Department	Signature	Date
1) Originating	<i>Shane Cook</i>	3-19-2015
2) Legal	<i>Mary Clats</i>	3-19-2015
3) Finance	<i>Shane Cook</i>	3/23
4) Originating		
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		

RESOLUTION NO. 15-_____

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and is hereby authorized to enter into an Agreement to Purchase between the City of Huntsville and Heritage Ventures, Inc., an Alabama Corporation, 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 Purchase Agreement between the City of Huntsville and Heritage Ventures, Inc." consisting of seven (7) pages including Exhibit "A" and the date of March 26, 2015, 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 26th day of March, 2015.

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

APPROVED this the 26th day of March, 2015.

Mayor of the City of
Huntsville, Alabama

03-12-2015

REAL ESTATE AGREEMENT

This Real Estate Agreement (this "Agreement") is entered into as of the ____ day of _____, 2015, by and between **THE CITY OF HUNTSVILLE**, an Alabama municipal corporation (hereinafter referred to as "Purchaser") who agrees to purchase the real property described in Section 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 located at 4120 Jake Drive, Huntsville, Alabama 35802, and more particularly described in Exhibit "A" attached hereto (hereinafter referred to as the "Property").

2. Purchase Price.

The Purchase Price for the Property shall be FOUR HUNDRED THOUSAND AND 00/100 DOLLARS (\$400,000.00), which shall be payable at Closing.

3. Conditions of Sale.

(A) Purchaser's obligation to close on the purchase of the Property is contingent upon the following:

(1) Purchaser's written approval of an owner's title commitment from Wilmer & Lee, P.A. Purchaser shall have thirty (30) days from the date of this Agreement in which to obtain and review the title commitment. Purchaser shall have the right, in its sole discretion, to terminate this Agreement in the event any matters of title are unacceptable to Purchaser. Purchaser may only exercise this right of termination as a result of unacceptable title concerns by giving Seller written notice of the termination within thirty (30) days of the date of this Agreement.

(2) The results of an environmental assessment being acceptable to Purchaser. Purchaser shall have thirty (30) days from the date of this Agreement in which to perform Phase I and Phase II Environmental Site Assessments. Seller hereby grants access to the Property to Purchaser and Purchaser's environmental consultants to perform the

President of the City Council
of the City of Huntsville, AL
Date: March 26, 2015

environmental assessments. Purchaser shall have the right, in its sole discretion, to terminate this Agreement in the event the results of the environmental assessment are unacceptable to Purchaser. Purchaser may only exercise this right of termination as a result of unacceptable environmental concerns by giving Seller written notice of the termination within thirty (30) days of the date of this Agreement.

(3) The results of a survey being acceptable to Purchaser. Purchaser shall have thirty (30) days from the date of this Agreement in which to obtain a survey of the Property. Seller hereby grants access to the Property to Purchaser and Purchaser's surveying consultants to survey the Property. Purchaser shall have the right, in its sole discretion, to terminate this Agreement in the event the survey is unacceptable to Purchaser. Purchaser may only exercise this right of termination as a result of unacceptable survey concerns by giving Seller written notice of the termination within thirty (30) days of the date of this Agreement.

(4) The results of an appraisal showing the fair market value of the Property equal to or above the Purchase Price. Purchaser shall have thirty (30) days from the date of this Agreement in which to obtain an appraisal of the Property. Seller hereby grants access to the Property to Purchaser and Purchaser's appraiser to inspect the Property. Purchaser shall have the right, in its sole discretion, to terminate this Agreement in the event the estimated market value determined by the appraisal is not equal to or above the Purchase Price, by giving Seller written notice of termination within thirty (30) days of the date of this Agreement.

4. Title.

The Property shall be conveyed to Purchaser by General Warranty Deed, satisfactory in manner and form 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. Closing.

The Closing shall take place on or before the 31st day of March, 2015. The parties further agree as follows:

a. Real property taxes for the current year shall be prorated between Seller and Purchaser as of the Closing Date.

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, other than as specifically stated herein. Each party shall pay its own attorneys' fees in connection with this transaction.

d. Seller shall provide a General Warranty Deed at Closing, to be prepared by Purchaser's counsel, at Purchaser's expense.

7. Commissions.

Seller agrees to pay six percent (6%) real estate commission to the listing broker, Chapman Commercial Real Estate, LLC. The parties represent that neither have incurred nor are obligated for any brokers' or finders' fees, and that no real estate commissions are due, other than as stated above.

Each party agrees to indemnify, defend and hold the other harmless from any claims, including attorneys' fees, that they may suffer as a result of any claim or action brought by any broker or real estate agent, acting on behalf of that party.

8. Improvements.

Seller warrants that it will not remove any permanent improvements currently located on the Property; including, but not limited to, the underground diesel fuel tank and the truck scales.

9. Time of the Essence.

Time is of the essence of this Agreement.

9. Attorneys' Fees.

In the event of a dispute between the parties pursuant to the terms of this Agreement, the prevailing party in any court of competent jurisdiction shall be entitled to collect reasonable

attorneys' fees. In the event of dispute, the provisions of this Agreement shall not be construed against the party drafting this Agreement.

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 both parties 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 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 full opportunity to examine this Agreement and/or has had an opportunity to have its counsel review this 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 section headings and title 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 Agreement 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 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, JOSEPH A. JIMMERSON, 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. For the purposes of this transaction, Counsel represents Purchaser's interest and no other interests. Any conflicts of interest due to Counsel's representation of Purchaser are hereby waived.

17. Waiver.

The waiver of default by either party of any provision of this Agreement shall not operate as a waiver of subsequent defaults.

18. Corporate Authority.

The parties acknowledge that all necessary action has been taken to authorize the entering into of this Agreement of behalf of each party. The parties acknowledge that once this Agreement is signed by the persons shown below, the Agreement is binding on the parties.

19. Acceptance. In order to be binding, a copy of this Agreement must be executed by both parties on or before 5:00 p.m. C.D.T., on March 31, 2015.

[SIGNATURES ON FOLLOWING PAGE]

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

PURCHASER:

THE CITY OF HUNTSVILLE

By: _____

Its: _____

Witness:

Date: _____

SELLER:

HERITAGE VENTURES, INC.

By: _____

Its: _____


J. Keith Sharp
President

Witness:



Samuel H. Gibson

Date: 3-13-15

EXHIBIT "A"

(4120 Jake Drive, Huntsville, Alabama 35802)

ALL THAT PART OF THE NORTHEAST QUARTER OF SECTION 26, TOWNSHIP 4 SOUTH, RANGE 1 WEST OF THE HUNTSVILLE MERIDIAN, MADISON COUNTY, ALABAMA, PARTICULARLY DESCRIBED AS BEGINNING AT A POINT ON THE WEST MARGIN OF A 60.00 FOOT ROAD RIGHT OF WAY AS RECORDED IN DEED BOOK 275, PAGE 508, OF THE PROBATE RECORDS, MADISON COUNTY, ALABAMA; SAID POINT OF TRUE BEGINNING IS FURTHER DESCRIBED AS BEING SOUTH 00 DEGREES 20 MINUTES 30 SECONDS WEST 490.38 FEET AND NORTH 88 DEGREES 51 MINUTES EAST 1267.33 FEET FROM THE CENTER OF THE NORTH BOUNDARY OF SECTION 26, TOWNSHIP 4 SOUTH, RANGE 1 WEST;

THENCE FROM THE POINT OF TRUE BEGINNING ALONG THE WEST MARGIN OF SAID ROAD RIGHT OF WAY SOUTH 00 DEGREES 22 MINUTES 30 SECONDS EAST, 544.00 FEET TO A POINT; THENCE SOUTH 88 DEGREES 51 MINUTES WEST 320.20 FEET TO A POINT; THENCE NORTH 00 DEGREES 22 MINUTES 30 SECONDS WEST, 544.00 FEET TO A POINT; THENCE NORTH 88 DEGREES 51 MINUTES EAST, 320.20 FEET TO THE POINT OF TRUE BEGINNING AND CONTAINING 4.00 ACRES MORE OR LESS.