

ROUTING SLIP CONTRACTS AND AGREEMENTS

Originating Department: Administration

Council Meeting Date: 5/14/2015

Department Contact: John Hamilton

Phone # 5009

Contract or Agreement: Agreement between the City of Huntsville and the Huntsville City Board of Edu...

Document Name: Agreement between the City of Huntsville and the Huntsville City Board of Education ...

City Obligation Amount:

Total Project Budget:

Uncommitted Account Balance:

Account Number:

Procurement Agreements

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

<u>Select...</u>	Grant Name:
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Department	Signature	Date
1) Originating		5/11/15
2) Legal		5-11-15
3) Finance		5/11
4) Originating		
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number _____

Meeting Type: Regular

Meeting Date: 5/14/2015

Action Requested By:
Administration

Agenda Item Type
Resolution

Subject Matter:

Agreement between the City of Huntsville and the Huntsville City Board of Education for the sale and purchase of Cavalry Hill School, The Huntsville Center for Technology and The Seldon Center.

Exact Wording for the Agenda:

Resolution authorizing the Mayor to enter into an Agreement for the sale and purchase of Cavalry Hill School, The Huntsville Center for Technology and The Seldon Center.

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, recommended, and what council action will provide, allow, and accomplish.]

Associated Cost:

Budgeted Item: Not applicable

MAYOR RECOMMENDS OR CONCURS: Select

Department Head: [Signature]

Date: 5/11/15

RESOLUTION NO.14-_____

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, is hereby authorized to enter into an Agreement by and between the City of Huntsville and The Huntsville City Board of Education, 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 an "Agreement between the City of Huntsville and The Huntsville City Board of Education for the Sale and Purchase of Cavalry Hill School, The Huntsville Center For Technology and The Seldon Center" consisting of eight (8) pages, including Exhibit "A" and the date of May 14, 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 14th day of May, 2015.

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

APPROVED this the 14th day of May, 2015.

Mayor of the City of
Huntsville, Alabama

of Huntsville by deed recorded at Deed Book 261 Page 97 Probate Records of Madison County, Alabama.

2 The Huntsville Center for Technology ("HCT") located at 2800 Drake Avenue, Huntsville, AL 35805, more particularly described as follows:

All that part of the Southwest Quarter of Section 11, Township 4 South, Range 1 West in the City of Huntsville, Madison County, Alabama, particularly described as beginning at a point on the South margin of Ivy Avenue, said place of beginning being located North 89 degrees 00 minutes East 2259.3 feet and South 0 degrees 50 minutes East 30.2 feet from the center of the West boundary of said Section 11; thence from the place of beginning and along the South margin of said Ivy Avenue North 89 degrees 00 minutes East 254.0 feet to a point on the West boundary of the Braham Spring Park property line; thence Due South along the West boundary of said Braham Spring Park property 1255.6 feet to a point on the North margin of Drake Avenue; thence South 46 degrees 42 minutes West along the West margin of said Drake Avenue 444.9 feet; thence North 65 degrees 37 minutes West 181.3 feet; thence North 43 degrees 36 minutes West 1580.6 feet to a point on the East margin of a railroad spur tract (20.0 feet from the centerline as measured at right angles); thence North 0 degrees 48 minutes West along the East margin of said railroad spur tract 295.0 feet to a point on the South margin of Ivy Avenue; thence North 88 degrees 12 minutes East along the South margin of said Ivy Avenue 1329.7 feet to the place of beginning and containing 38.33 acres, more or less.

Subject to a 25.0 foot drainage easement along the West boundary of the above described property, conveyed to the City of Huntsville, Alabama, and recorded in Deed Book 329, on Page 158, in the office of Judge of Probate, Madison County, Alabama.

Also, subject to an easement 20.0 feet in width reserved for the purpose of providing access to a 44" brick conduit which supplies water to mill from Braham Spring for fire protection, the centerline of which is described as follows:

All that part of the Southwest Quarter of Section 11, Township 4 South, Range 1 West, in the City of Huntsville, Madison County, Alabama, particularly described as beginning at a point which is located North 89 degrees 00 minutes East 2513.3 feet, South 0 degrees 50 minutes East 30.2 feet, Due South 313.8 feet from the center of the West boundary of said Section 11; thence South 59 degrees 18 minutes West 610.6 feet; thence South 58 degrees 55 minutes West 370.0 feet; thence South 59 degrees 11 minutes West 211.0 feet to the most Westward point on the easement.

This description is intended to convey the same property as that conveyed by deed recorded at Deed Book 367, page 827 in the office of the Judge of Probate of Madison County, Alabama.

3) The Seldon Center located at 2820 Holmes Avenue, Huntsville, AL 35816, more particularly described as follows:

Lot 1 TBG-Holmes Avenue Subdivision A Resubdivision of Deed Book 818, Page 751 and Deed Book 942, Page 874 as recorded in the Office of the Judge of Probate, Madison County, Alabama, as recorded as Document No. 20120911000580790 Probate Records of Madison County, Alabama.

Lots 1, 2 and 3, Block 11, as shown on the Map or Plat of TERRY HEIGHTS, THIRD ADDITION ANNEX, Huntsville, Alabama, which map or plat is of record in the Probate Office of Madison County, Alabama, in Plat Book 1, page 178, LESS AND EXCEPT 10 feet off the southwest side of each lot to the City of Huntsville for a creek.

(hereinafter collectively referred to as the "Properties")

THIS Agreement is made upon the following agreements, conditions, covenants, provisions, representations and terms:

1. Purchase Price and Other Consideration. The purchase price for the Properties (the "Purchase Price") is Four Million Five Hundred Thousand and No/100 Dollars (\$4,500,000.00). The Purchaser shall pay the Purchase Price in five (5) equal payments of Nine Hundred Thousand Dollars (\$900,000.00) each

with the first payment being due and payable on July 1, 2017 and each subsequent payment due on July 1 of the years 2018 through and including 2021.

The Purchaser acknowledges intent to issue or to cause to be issued General Obligation Warrants ("Warrants") for the benefit of the Seller in order to support the construction of a new Morris P8 school (in connection with conditions set forth in the Consent Order approved by Federal Adjudication on or about April 21, 2015.) The Seller understands that the Purchaser's acknowledgement does not obligate the Purchaser to issue or to cause to be issued the Warrants. All parties acknowledge that the general feasibility, nature, timing and extent ("Factors") of future debt instruments and arrangements are dependent on variables that are currently unknown and undeterminable. The Factors of a future Warrant issue for the benefit of the Seller will be assessed at a time that the Seller considers it appropriate to request consideration of the same from the Purchaser. The parties acknowledge that the Seller will, within two (2) weeks of receipt of the same, remit to the Purchaser the full amount of each payment described in this Section 2 for the principal and interest on general obligation warrants to be issued by the City for Huntsville City School projects. The Seller's debt service obligation for the Warrant issue as set forth in this paragraph shall be limited to Nine Hundred Thousand and No/100 Dollars (\$900,000.00) per year in years 2017 through 2021.

In addition to the Purchase Price, the Seller acknowledges receipt of the following consideration for the Properties:

The Purchaser will convey to the Seller the title to the Columbia High School campus by statutory warranty deed, on the Closing Date, subject only to the title exceptions set out at Section 9 (a)(i)(A) and 9(a)(i)(B) of this Agreement. The property to be conveyed by this provision is the same property conveyed to the Purchaser by deed dated August 20, 2002 and recorded September 28, 2002 in Deed Book 1029 Page 834 Probate Records of Madison County, Alabama.

The City acknowledges its intent to use the Properties for public purposes including but not limited to housing of public safety facilities, educational and recreational youth programs and public recreational use.

The Purchaser will convey to the Seller the title, to the real property located at 2309 Jordan Ln NW, Huntsville, AL 35816 (which is the current site of the City of Huntsville Fire Station number 3) on the Closing Date, subject only to the title exceptions set out at Section 9(a)(i)(A) and 9(a)(i)(B) of this Agreement. The Purchaser will continue to occupy the said property for use as a fire station until such time as the Seller provides to Purchaser notice to vacate said property; however, the City of Huntsville shall have a minimum of sixty (60) days notice prior to being required to vacate the said property. The City will owe no compensation to the Board for its continuing use of the said property. It is intended that the Seller recover all interest in the Westlawn Middle School campus which was originally acquired from the Madison County Board of Education by deed dated October 25, 1956 and recorded August 9, 1957 in Deed Book 249 Page 474 Probate Records of Madison County, Alabama, and by this provision Purchaser agrees to convey to Seller any interest in such property.

2. Inspection Period/Property Evaluations. During the period beginning at the Effective Date hereof and continuing until the Closing Date (the "Inspection Period"), Purchaser shall have the privilege of going upon each of the Properties with its agents or engineers as needed to inspect, examine, survey and otherwise do whatever Purchaser deems necessary in the engineering, planning, and land use planning, for use and/or development of the Properties. Said privilege shall include the right, at Purchaser's sole expense, to conduct borings, environmental site assessments, geotechnical investigations, percolation tests, soil tests and other reasonable tests to obtain other information to determine surface, subsurface and topographic conditions (collectively the "Property Evaluations"), provided said Property Evaluations do not affect the marketability and/or safety of the Property. Within five (5) days after the Effective Date, the Seller will deliver to the Purchaser all due diligence materials currently in its possession or control, including without limitation all environmental reports, surveys, title commitments or policies, all plans and specifications, and all leases for the Properties. Forty-eight (48) hours advance notice to Seller shall be given by Purchaser before Purchaser or its agents or engineers enter the Properties for Property Evaluations, and those entering the Properties shall be accompanied by a Seller representative. For Property Evaluation purposes only, pre-entry notice will be given to Seller's designee, Jeff Gattis, Director of Construction and Renovation, (256) 527-5159, Jeffrey.gattis@hsv.k12.org.

Upon completion of such Property Evaluations, Purchaser, at its cost and expense, shall restore the Properties to their preexisting condition and state. To the extent permitted by Alabama law, Purchaser shall indemnify and hold Seller harmless from and against any claims, liens, damages or losses incurred by Seller as a result of the Property Evaluations and persons or firms entering the Properties on Purchaser's behalf in regard to the Property Evaluations. If any of the Property Evaluations indicate conditions to be unsatisfactory to Purchaser for Purchaser's contemplated use, then within the Inspection Period, Purchaser may cancel this Agreement, whereupon Seller and Purchaser shall have no further claim or right against, or liability to, each other for and on account of this Agreement and/or the Property (aside from the above indemnity obligations) and this Agreement shall be terminated.

3. Closing Conditioned upon the Granting of Zoning Variance. The completing of the Purchase and Sale of the Properties as contemplated by this Agreement is conditioned upon the granting of a variance(s) by the City of Huntsville Board of Zoning Adjustment for the Cavalry Hill School property allowing for the operation of a private school at that location, which variance(s) may include landscape, parking, signage,

and any other zoning relief as may be necessary to use the property and operate the school as contemplated. If the Board of Zoning Adjustment fails to grant the said variance prior to the Closing Date (as set forth in Paragraph "6" herein), then Purchaser may cancel this Agreement, whereupon Seller and Purchaser shall have no further claim or right against, or liability to, each other for and on account of this Agreement and/or the Properties (aside from the above indemnity obligations) and this Agreement shall be terminated

4. **Condition of Property.** Except for the condition of title to the Properties as set forth in Paragraph "6" below, the Properties are sold "AS IS" and "WHERE IS" without any representation or warranty, express, implied or otherwise, by Seller. Seller makes no representations or warranties, express or implied, regarding the condition (environmental, geotechnical, wetlands, or otherwise) of the Properties. Seller shall have no duty, liability, obligation and/or responsibility to Purchaser or any other person or entity regarding the condition (environmental, geotechnical, wetlands, or otherwise) of the Properties.

5. **Equipment and Fixtures.** All building systems and appurtenances currently in use in the Properties, including without limitation HVAC systems, plumbing, and security systems shall remain with the Properties after Closing and shall become property of the Purchaser. Seller may remove from HCT those items which are used for vocational and technical instruction. With respect to the Cavalry Hill facility, the items listed in Exhibit "A", which is attached hereto and incorporated herein by reference, will remain with the Property and will also be conveyed to the City.

6. **Title to Property.** Purchaser, at its cost and expense, may have the title to the Properties examined and if there are defects in title (the "Title Defects") to any of the Properties (other than the Permitted Title Exceptions set forth in Paragraph "9" hereof) which can be cured as herein provided, Purchaser shall notify Seller of the same in writing on or before thirty (30) days after the Effective Date hereof. At said time Purchaser, at no cost to the Seller, shall also furnish Seller copies of all evidence of title to the Property, including, but not limited to, recorded documents, preliminary title opinions and/or title insurance binders or commitments which reflect all such Title Defects. If such Title Defects are of such a nature they (a) cannot be cured, (b) will cost Seller in excess of One Thousand and No/100 Dollars (\$1,000.00) to cure in the aggregate, then:

a. Seller may cancel this Agreement, whereupon Seller and Purchaser shall have no further claim or right against, or liability to, each other for and on account of this Agreement and/or the Properties; and/or

b. Purchaser may either (a) cancel this Agreement, whereupon Seller and Purchaser shall have no further claim or right against, or liability to, each other for and on account of this Agreement and/or the Properties and this Agreement shall be terminated, or (b) elect to purchase the Properties and pay the full Purchase Price as set forth in Paragraph "1" hereof in which event Purchaser shall be deemed to have waived such of said Title Defects which have not then been cured and Seller shall have no duty, liability, obligation and/or responsibility for the same, and such waived Title Defects shall become Permitted Title Exceptions in the Warranty Deed.

7. **Title Insurance.** Purchaser, at its cost and expense, shall order and procure any and all commitments and/or policies of title insurance pertaining to the Properties which are required for the transaction evidenced hereby. Seller shall not be responsible for the cost, expense and/or policies of title insurance or any other evidence of title pertaining to the Property. Purchaser, at its cost and expense, shall furnish Seller copies of said commitments and all Exceptions listed therein as provided in Paragraph "6" above.

8. **Closing Date.** The transaction evidenced hereby shall be closed and fully consummated no later than July 1, 2015. Said Closing shall be held in Huntsville, Alabama, at a time mutually agreed upon by Seller and Purchaser (the "Closing Date").

9. **Closing Documents.** At the closing of the transaction evidenced hereby on the Closing Date, Seller and Purchaser shall execute and deliver to each other the following documents (the "Closing Documents"):

a. Seller shall execute and deliver to Purchaser the following documents:

i. Statutory warranty deed prepared by Seller's counsel (the "Warranty Deeds") for each of the Properties warranting that Seller has fee simple title in and to each of the said Properties and that each of the Properties is free and clear of all liens and encumbrances permitted or suffered by Seller except for, and subject to, the following Permitted Title Exceptions:

A. Easements, minimum building set back lines, restrictions and rights-of-way of record in the Office of the Judge of Probate of Madison County, Alabama and such state of facts as would be disclosed by an accurate survey of the Property;

B. Applicable provisions of (i) The Zoning Ordinance, (ii) The Subdivision Regulations, (iii) The Stormwater Management Manual and (iv) other land use laws, statutes regulations and rules, of the City of Huntsville, Alabama, Madison County, Alabama, the State of Alabama and the United States of America, all as last amended;

C. Such Title Defects as Purchaser may have waived pursuant to Paragraph "6" hereof;

(The foregoing and immediately preceding subparagraphs A. through C., inclusive, are herein referred to, separately and severally, and collectively, as the "Permitted Title Exceptions");

ii. An affidavit establishing that Seller is not a "foreign person", as that term is defined in Section 1445 of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, and otherwise in form and content sufficient to eliminate Purchaser's withholding obligations under said Section 1445 with respect to the sale and purchase of the Property; and

b. Seller and Purchaser shall also execute and deliver to each other any and all other documents deemed reasonably necessary by Seller or by Purchaser to consummate the transaction evidenced hereby in accordance with this Agreement including, but not limited to, closing statements, modified seller/owner affidavits, and Internal Revenue Service Reporting forms, if applicable.

Each of the Closing Documents shall be prepared at Purchaser's cost and expense by Purchaser's counsel except for the Warranty Deed. All Closing Documents shall be in form and substance acceptable to Seller and Seller's counsel.

10. **Closing Costs.** Closing Costs shall be paid by Purchaser. Except as provided below, the term "Closing Costs" shall include, but is not limited to, Purchaser's attorney's fees, percolation tests fees, Property Evaluation costs and expenses, and costs of compliance with any other land use laws, ordinances, or regulations, appraisal fees, document recording fees and deed recordation taxes payable to the Probate Judge of Madison County, Alabama, and other governmental authorities for recording of documents, the cost of preparation of all documents to be used in the transaction evidenced hereby, all charges associated with the financing of Purchaser's acquisition of the Property, and generally all costs and expenses associated with or resulting from Purchaser's acquisition of the Property. Provided, however, the term "Closing Costs" shall not include (a) Seller's attorney's fees or (b) the cost of preparation of the Warranty Deed required by Paragraph "9" hereof, both of which shall be paid by Seller at Seller's sole cost and expense.

11. **Ad Valorem Taxes.** Purchaser and Seller are tax exempt entities and thus there will be no proration on the Closing Date.

12. **Representations and Warranties.**

a. Seller states unto Purchaser that, to the best of Seller's actual knowledge:

i. Except for the Permitted Title Exceptions, there are no encumbrances on any of the Properties; and

ii. Seller has not received any notice nor does it have any knowledge of any violations of any law, zoning ordinance, building code or regulation affecting any of the Properties, nor does Seller have any knowledge of any condemnation proceedings involving any of the Properties.

iii. That each and every one of the persons, officers, and/or representatives of Seller signing this Agreement and executing, acknowledging and delivering all documents at the closing of the transaction evidenced hereby, are and will be duly authorized and empowered to do so, and are and will be the only persons, officers, and/or representatives of Seller who are or will be required to sign this Agreement and said documents at the closing of the transaction evidenced hereby.

b. Purchaser represents and warrants unto Seller:

i. That as of the date of its execution of this Agreement it is, and that as of the Closing Date it will be:

A. A municipal corporation in the State of Alabama.

B. Legally authorized to hold title to, and to accept a conveyance of, the Properties;

C. Legally and duly authorized to enter into this Agreement; and

D. Legally and duly authorized to execute and deliver all documents necessary for the consummation of the transaction evidenced hereby.

ii. That each and every one of the persons, officers, and/or representatives of Purchaser signing this Agreement and executing, acknowledging and delivering all documents at the closing of the transaction evidenced hereby, are and will be duly authorized and empowered to do so, and are and will be the only persons, officers, and/or representatives of Purchaser who are or will be required to sign this Agreement and said documents at the closing of the transaction evidenced hereby.

13. **Possession of the Properties.** Except for HCT, possession of which shall be retained by Seller until not later than December 31, 2016 (If alternative facilities for the Seller's culinary arts program has not been completed prior to this date, then, upon written notice to the Purchaser, the Seller may continue to occupy HCT until such time as alternative facilities become available, but no later than December 31, 2017.), and the small gymnasium at Cavalry Hill which shall be retained by Seller for storage purposes until not later than October 1, 2015, Seller shall deliver to Purchaser full and exclusive possession of the each of the Properties on the Closing Date subject, however, to the Permitted Title Exceptions

14. **Brokerage Commissions.** Purchaser and Seller acknowledge that no brokers/advisors have been or will be involved in the sale of the Properties. In the event of any claim for any broker's, agent's or finder's fees or commissions or other similar amounts in connection with the negotiation, execution or consummation of the Purchase Agreement, each party whose actions or alleged actions or commitments form the basis of any such claim, will indemnify and hold the other parties harmless from any claims for other brokerage/advisory fees or commissions arising from the proposed transaction.

15. **Risk of Loss.** Seller shall keep in force at current levels at insurance on the improvements on the Properties. If the improvements on the Seldon Center or Cavalry Hills are destroyed or materially damaged between the Effective Date of this Agreement and the Closing Date, and Seller is unable or unwilling to restore the improvements to their previous condition prior to the Closing Date, Purchaser shall have the option of (a) terminating this Agreement or (b) accepting the improvements and the Properties in their then condition. If Purchaser elects to accept the improvements and the Property in their damaged condition, any insurance proceeds otherwise payable to Seller by reason of such damage will be applied to the balance of the Purchase Price.

16. **Notices.** All notices (a) shall be in writing, (b) shall be deemed served on the date on which they are actually received, and (c) shall be served by (i) personal delivery, or (ii) United States First Class Certified or Registered Mail, Return Receipt Requested, properly addressed with postage prepaid or (iii) a nationally recognized overnight courier/delivery service (i.e. Federal Express, United Parcel Service, etc.) or (iv) telephonic transmission ("E-mail") or telephonic facsimile transmission ("Fax") in conjunction with one of the other methods of delivery set forth in subparagraphs (i), (ii) or (iii), each addressed as follows:

To Seller: Jason W. Taylor
Huntsville City Board of Education
200 White Street SE
Huntsville, AL 35801
Phone: (256) 428-6852
Email: jason.taylor@hsv-k12.org

Y. Albert Moore, III
Lanier Ford Shaver & Payne P.C.
2101 West Clinton Avenue
Suite 2101
(Post Office Box 2087)
Huntsville, Alabama 35805(35804)
Phone: (256) 535-1100
Fax: (256) 535-9322
E-mail: yam@lanierford.com

To Purchaser: John Hamilton
City Administrator
P.O. Box 308
Huntsville, Alabama 35804
Phone: (256) 427-5009

Peter S. Joffrion
City Attorney
P.O. Box 308
Huntsville, Alabama 35804
Phone: (256) 427-5026
Fax: (256) 427-5043
Peter.Joffrion@huntsvilleal.gov

17. **Defaults/Sole Remedy/Attorneys Fees.** Should one party be ready, willing and able to close the sale and purchase of the Properties in accordance with this Agreement, and should the other party fail to carry out this Agreement in accordance with all of its agreements, conditions, covenants, representations, statements, terms and understandings, the nondefaulting party shall either (a) be entitled to pursue any legal or equitable remedy including, without limitation, a suit for specific performance, or (b) terminate this Agreement and in such event, neither Seller nor Purchaser shall have any further claim or liability against the other for and on account of this Agreement and/or the Property. ..

18. **Time.** Time is of the essence of this Agreement.

19. **Entire Agreement/Merger.** This Agreement, along with all exhibits and attachments or other documents affixed hereto or referred to herein, embodies the entire agreement, intent and understanding of Seller and Purchaser as to the transaction evidenced hereby and merges herein all prior and contemporaneous agreements, conditions, covenants, discussions, provisions, representations, statements, terms, warranties and understandings heretofore made between Seller and Purchaser as to such transaction, whether written, oral or both. Any agreements, conditions, covenants, discussions, provisions, representations, statements, terms, warranties or understandings by and between Seller and Purchaser as to such transaction not contained herein are and shall be null and void, unenforceable and of no force and effect.

20. **Applicable Law/Jurisdiction/Venue.** This Agreement is made in, and thus shall be construed, controlled, enforced, governed and interpreted in accordance with its plain meaning in accordance with the internal laws of, the State of Alabama, without regard to principles of conflicts of laws. For any action

concerning this Agreement (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.

21. **Construction.** As this Agreement has been drafted jointly by Seller and Purchaser, after extensive consultation with their respective counsel, no presumption against the draftsmen of this Agreement shall be indulged in the construction and/or interpretation hereof.

22. **Severability.** If, for any reason or no reason, any agreement(s), condition(s), covenant(s), provision(s), representation(s), statement(s), term(s), warranty(ies) or understanding(s) of this Agreement (whether material to the bargain of the Seller and the Purchaser or not) should be declared illegal, null and void, unconstitutional and/or unenforceable, in whole or in part, by any court of competent jurisdiction, the remainder of this Agreement shall not be impaired and shall remain in full force and effect according to its remaining agreements, conditions, covenants, provisions, representations, statements, terms, warranties and understandings.

23. **Survival.** Any agreements, conditions, covenants, provisions, representations, statements, terms, warranties or understandings contained in and made pursuant to this Agreement not performed at the time of the execution and delivery of this Agreement from Seller to Purchaser shall survive (a) the execution and delivery of this Agreement, (b) execution and delivery of Warranty Deed, and (c) the consummation of the transaction evidenced hereby.

24. **Binding Effect.** Seller, and Seller's successors and assigns, and Purchaser, and Purchaser's successors and assigns shall be fully bound by this Agreement and each and every agreement, covenant, condition, provision and term hereof. Each and every agreement, covenant, condition, provision and term of this Agreement inures, and shall inure, to the benefit of Seller, and Seller's successors and assigns, and Purchaser, and Purchaser's successors and assigns.

The successors and assigns of Purchaser shall be fully bound by this Agreement and each and every agreement, covenant, condition, provision and term hereof just as Purchaser is bound.

25. **Amendment, etc.** Neither this Agreement nor any agreement, condition, covenant, provision, representation, statement, term, warranty or understanding hereof, shall be amended, changed or modified in any respect, nor may any estoppel, novation or waiver regarding the same be effectuated, without Seller and Purchaser 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.

26. **Captions.** The captions of this Agreement are for convenience and reference only and in no way define, describe, extend or limit the intent or scope of this Agreement.

27. **Effective Date.** For purposes of the calculation of any time periods set forth in this Agreement, the Effective Date of this Agreement is the date set forth below and shall be counted as the first day of any such time periods.

28. **Counterparts:** This Agreement is executed in multiple original counterparts, but all of which together constitute but one agreement.

IN WITNESS WHEREOF, Seller and Purchaser have caused these presents to be executed as of the 14th day of May, 2015, being the Effective Date hereof.

SELLER:
HUNTSVILLE CITY BOARD OF EDUCATION

Witness

Witness

By: E. Casey Wardynski
As its: Superintendent

PURCHASER:

THE CITY OF HUNTSVILLE, ALABAMA
a municipal corporation

ATTEST:

Charles E. Hagood

By: Tommy Battle
As its: Mayor

Exhibit "A"

Items to Remain with Cavalry Hill Property After Closing

1. Existing Dimmer Panel
2. Existing Sound Amp/EQ
3. Existing Speaker System
4. Existing Monitor System
5. Snakes (Cabling) for Lighting/Speaker systems from Rear of House to Equipment Room
6. Existing Electric Strips (to hang lights on)
7. Existing Blacks (Curtains, Sides, Etc.)
8. Existing Rigging for Set Lifts
9. Existing Projection Screen
10. Existing Seating
11. Existing Stage Extensions
12. Existing Acoustic Panels
13. Existing Lighting Panel
14. Existing Sound Panel
15. Existing theatrical spot lights
16. Existing theatrical can lights
17. Mural attached to the front of the stage opening if area behind needs work to look correct
18. Food preparation and service equipment (Excluding pots, pans and other food preparation and service utensils.)
19. Camera systems
20. Alarm systems
21. Networking equipment including routers, switches, wiring, and racks
22. Telecommunication systems, equipment, and wiring
23. Control and automation systems
24. Air compressors
25. Irrigation controllers and system
26. Maintenance and construction supplies specific to that facility