

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number: _____

Meeting Type: Regular

Meeting Date: May 28, 2015

Action Requested By: Administration

Agenda Type: Resolution

Subject Matter:

Real Estate Purchase Agreement.

Exact Wording for the Agenda:

Resolution authorizing the Mayor to execute a real estate purchase agreement between the City of Huntsville and Sherman Industries, LLC, formerly known as Sherman International, Inc.

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

Item to be considered for: Action

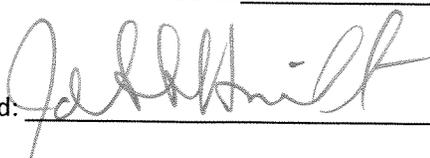
Unanimous Consent Required: No

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

Associated Cost: 2,048,600.00

Budgeted Item: Yes

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head: 

Date: May 20, 2015

ROUTING SLIP CONTRACTS AND AGREEMENTS

Originating Department: Administration

Council Meeting Date: 5/28/2015

Department Contact: John Hamilton

Phone # 427-5000

Contract or Agreement: Real Estate Purchase Agreement

Document Name: Real Estate Purchase Agreement with Sherman Industries

City Obligation Amount: \$2,048,600.00

Total Project Budget: \$2,048,600.00

Uncommitted Account Balance:

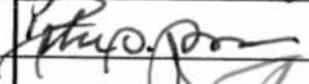
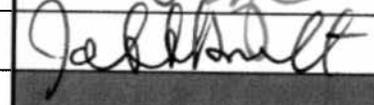
Account Number:

Procurement Agreements

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

<u>Not Applicable</u>	Grant Name: <u></u>
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Department	Signature	Date
1) Originating		<u>5/26/2015</u>
2) Legal		<u>5-20-15</u>
3) Finance		<u>5/26/15</u>
4) Originating		<u>5/26/2015</u>
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 he is hereby authorized to enter into a Real Estate Purchase Agreement by and between the City of Huntsville, Alabama, and Sherman Industries, LLC, 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 Sherman Industries, LLC, F/K/A Sherman International, Inc.," consisting of six (6) pages including exhibits, and the date of May 28, 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 28th day of May, 2015.

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

APPROVED this the 28th day of May, 2015.

Mayor of the City of
Huntsville, Alabama

AGREEMENT
(Fee Simple)

STATE OF ALABAMA
COUNTY OF MADISON

THIS AGREEMENT made between the City of Huntsville in the State of Alabama, party of the first part, and Sherman Industries LLC F/K/A Sherman International, Inc. party of the second part.

For and in consideration of the sum of one dollar (\$1.00) in hand paid by the party of the first part to the party of the second part, receipt of which is hereby acknowledged, the parties herein agree as follows:

1. The party of the first part agrees to purchase in fee simple from the party of the second part certain property known as Right-of-Way Tract No. 25 & 25A* of the subject project, as identified from the records of the City of Huntsville for the purpose of constructing and maintaining a public highway identified as Project No. STPHV-4500(200) as shown by the right-of-way map of said project.

2. The party of the second part agrees to sell and convey the property to the party of the first part in fee simple, free of all encumbrances, and will execute and deliver a special warranty deed to the party of the first part, conveying the property in fee simple free of all encumbrances to the party of the first part upon payment of the sum of \$ 2,048,600.00 dollars to the party of the second part by the party of the first part at the time of delivery of such deed. The party of the second part agrees to satisfy all liens for ad valorem taxes outstanding against the above tract, to the date of closing that becomes due and payable October 1 next, following date of execution of the agreement.

The party of the second part understands the above mentioned sum includes payment for the following, as is where is with no warranty implied: 3.911 acres, all improvements (main building, fuel storage shelter, process & water basin, pavement, fencing, landscaping,, retaining walls, underground plumbing and electrical (does not including personal items that can be moved)

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

3. The party of the second part agrees to give the party of the first part and its contractors immediate right-of-entry to the property being acquired: Yes X or No _____.

4. Exceptions and additional conditions: See Exhibit "A"

IN WITNESS WHEREOF the parties herein have set their hands and seals this the 28th day of May, 2015.

City of Huntsville in the State of Alabama

By: Tommy Battle

Its: Mayor

Witness:

By: Charles E. Hagood

Its: Clerk Treasurer

Sherman Industries LLC

By: *Ben Moore*

Vice President
Its:

Witness:

By: *Dy Bih*

Sales Admin
Its:

Exhibit "A"

(a) **Inspection Period.** The obligations of the Buyer hereunder are conditioned upon the Buyer having procured such inspections, studies, tests and reports related to toxic or hazardous materials and substances on the Property and the Improvements, including but not limited to a Phase I Environmental Assessment report; the condition of the Improvements; the condition of the soils of the Land, excluding core drilling tests or any invasive procedures except as provided herein below; the feasibility of the Property and Improvements for the Buyer's intended use; and such other matters as the Buyer, in its sole and unimpaired discretion, may determine (collectively, the "**Buyer's Inspection**"). Prior to the Buyer conducting a Phase II Environmental Assessment report, any core drilling tests, or any invasive procedures, the Buyer will provide the Seller written notice thereof and obtain the Seller's written approval of the testing plan and procedure, which approval shall not be unreasonably withheld. In the event that the Seller refuses to provide permission for such additional testing, such as a Phase II, the Buyer's sole remedy shall be to terminate this Agreement with refund of any Earnest Money Deposit made to date or to purchase the Property with no reduction in Purchase Price. If the Buyer conducts a Phase II, the Buyer shall deliver a copy of the final Phase II to the Seller. The Buyer and its designated agents, employees, and independent contractors shall have the right to enter upon the Property and the Improvements to facilitate the Buyer's Inspection and to perform such inspections, studies, and tests as the Buyer may deem fit. The Buyer will provide twenty-four hours' notice to the Seller prior to its entry upon the Seller's Property to perform such inspection(s) and further agrees to conduct the inspection(s) so as to not cause interruption to the Seller's ongoing business upon the Property. On or before **Ninety (90) Days** after the Contract Date (the "**Inspection Period**"), the Buyer may notify the Seller, in writing, that the Buyer's Inspection is not satisfactory to the Buyer, in its sole and unimpaired discretion, and may terminate this Agreement without penalty or expense. If the Buyer shall terminate this Agreement, any Earnest Money shall at once be returned to the Buyer. The Buyer agrees that, unless required to do so by law or regulation, the results of the Buyer's Inspection will be held confidential and not revealed by the Buyer other than to its agents, representatives, employees, or assigns. Notwithstanding the foregoing, a copy of any and all inspection reports will be provided to the Seller within five (5) days of Buyer's receipt of such reports. Furthermore, the Buyer, as a condition to its exercise of the Buyer's Inspection, agrees to indemnify, defend, and hold harmless the Seller from and against any and all losses, claims, damages, liabilities, and expenses, including attorney fees and expert witness fees for or in respect of injuries (including death) or damage of any kind to the person or property of the Seller incurred, sustained, or asserted against the Seller or the Property arising out of the exercise by the Buyer, or any of its representatives, agents or designees, of the aforesaid right of inspection; provided, however, notwithstanding anything to the contrary stated herein, the Buyer shall not be liable for (i) the discovery of any preexisting condition; (ii) any claims of diminution in the value of the Property as a consequence of the results revealed by any such investigations or testing; or (iii) the negligence or willful misconduct of the Seller or the Seller's agents, employees, or contractors. This indemnification shall survive the Closing or the termination of the Agreement for a period of twelve (12) months.

(b) The Seller agrees that, at the election of the Buyer, any and all Hazardous Materials including but not limited to underground hazardous material storage tanks and any related filling and dispensing lines and appurtenances, as may be further set forth in a Phase I report and/or a Phase II report obtained by the Buyer, shall be appropriately remediated on the Property by the Seller, which the Seller hereby represents that it will accomplish at its sole cost and expense, to the satisfaction of the Buyer, including, if applicable, the obtainment of a letter of no further action from the governing environmental agency having jurisdiction over the remediation of the Property. Such remediation shall include any removal of USTs and appurtenances in addition to the remediation, cleanup and corrective action of such hazardous substances associated therewith which are present on the Property in excess of regulated standards.

The term “**Hazardous Materials**” shall mean any substances, waste, toxins, pollutants or contaminants, including but not limited to, any material, substance, or activity defined, listed, or classified as a hazardous activity, hazardous substance, hazardous waste, toxic substance, toxic waste, pollutant or contaminant by the Environmental Protection Agency, the Occupational Safety and Health Administration, the National Institute of Safety and Health, or any federal, state, or local agency having jurisdiction over environmental protection matters, or any of their successor agencies or authorities.

(c) To avoid all doubt, nothing in Exhibit A creates an obligation on the part of the Seller to do, remove, add, or change the Property or anything that is currently existing or sitting on the Property, except as provided in Subparagraph (b).

(d) **Insurance:** The Buyer is a municipality and is self-insured.

(e) **Corporate Approval:** The Seller shall have obtained all necessary corporate approvals to complete the transaction within sixty (60) days of the Agreement. Should the Seller be unable to obtain all necessary corporate approvals, the Seller and the Buyer shall be released from all liability or obligation and this Agreement shall be NULL and VOID. This shall be the Buyer’s sole and exclusive remedy hereunder.

(f) **Conditions of Closing:** This Agreement is subject to approval by the Huntsville City Council. Furthermore, this Agreement is subject to the Buyer’s written approval of an owner’s title commitment from Wilmer & Lee, P.A. (the “Title Agent”) satisfactory to the Buyer. Should either approval not be provided, the Buyer may terminate this Agreement, which Agreement will become NULL and VOID, and neither party shall have further liability or obligation to the other party.

(g) **Closing.** The Closing shall occur within thirty (30) days of the later of (i) all conditions of Closing being satisfied and (ii) completion of the Buyer’s Inspection and acceptance of the Property, Ad valorem taxes shall be prorated to the date of Closing. The Seller shall deliver the special warranty deed and any affidavits of title and no liens as are required by the Title Agent at Closing. Possession of the Property shall be delivered to the Buyer at Closing.

(h) **Personal Property:** The Seller may remove personal property located on the Property, up to sixty (60) days after the date of Closing, provided that the Seller shall remove all personal property in the right-of-way and easement areas, for the Project No. STPHV-4500(200), before the Closing in order that the Buyer may commence construction. Any personal property remaining on the Property sixty (60) days after the closing shall become part of the Property being sold to the Buyer. The Seller makes no warranties as to title or merchantability of title, or other representations as to the condition of the personal property, and, subject to Subparagraph (b), the Buyer accepts the property in AS-IS, WHERE-IS condition known or unknown, existing at the time of the Agreement. Beginning as of the Closing, the Buyer assumes all risk of damage or injury to persons or property arising out of its use and/or operation of the Premises, excluding, however, liability for those items of personal property that the Seller is removing during the sixty (60) day period post-Closing.

(i) **Broker.** The Seller and the Buyer acknowledge that no broker and/or finder arranged the sale of the Seller’s Property on the terms and conditions contained herein and that no brokerage commission is due to any person or entity. The Seller and the Buyer agree to indemnify each other from all loss, damage, cost or expense, including attorney’s fee, that they may suffer as a result of any claim or action brought by any broker, acting on behalf of the Seller or the Buyer, respectively.

(j) **Other Provisions:** Time is of the essence of this Agreement. In the event of a dispute between the parties pursuant to the terms of this Agreement, the prevailing party shall be entitled to

collect reasonable attorney's fees. All rights and obligations of the Seller and the Buyer under this Agreement shall inure to the benefit of and be binding upon their successors and assigns. No modification or amendment of this Agreement shall be of any force or effect unless the same shall be made in writing and executed by each party hereto. 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. This Agreement shall be interpreted in accordance with Alabama law. 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. The parties agree that this document may be executed and the signatures transmitted to the other parties by facsimile, email or similar electronic transmission. Upon transmission and receipt by another party, such signature shall be effective as an original.

All that part of Section 35, Township 3 South, Range 1 West in the City of Huntsville, Madison County, Alabama, particularly described as beginning at a point where the west margin of Yarbrough Avenue intersects the Southerly margin of Pratt Avenue, and being further described as beginning at a point that is located North 64 degrees 53 minutes West 32.90 feet from the northwest corner of Lot 2, Block 4 according to the plat of Winston Street Urban Renewal project as of record in Plat Book 3, Page 74, Probate Records, Madison County, Alabama;

Thence from the true point of beginning run South 0 degrees 52 minutes West along the west margin of said Yarbrough Avenue a distance of 601.52 feet;

Thence leaving said Yarbrough Avenue run South 70 degrees 32 minutes West 250.90 feet;

Thence North 28 degrees 23 minutes West 498.0 feet to a point on the southeasterly margin Pegram Street;

Thence North 46 degrees 12 minutes East along the southeasterly margin of said Pegram Street a distance of 373.70 feet to the beginning of a curve to the right having a radius of 124.52 feet;

Thence along the arc of said curve, a chord bearing and distance of North 80 degrees 39 minutes 30 seconds East 140.91 feet to a point on the southerly margin of Pratt Avenue and the end of said curve;

Thence South 64 degrees 53 minutes East along the southerly margin of said Pratt Avenue a distance of 81.31 feet to the true point of beginning and containing 5.00 acres more or less. Subject to rail spur to serve subject property.

Less and except all that portion of the above described real estate acquired by the State of Alabama in that certain condemnation proceeding in Madison County, Alabama, case styled State of Alabama v. The Industrial Development Board of the City of Huntsville, Alabama, et al., Case No. 28681 in Deed Book 690, Page 122, Probate Court of Madison County, Alabama.