

CITY COUNCIL AGENDA ITEM COVER MEMO

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

Meeting Type: Regular

Meeting Date: Jul 23, 2015

Action Requested By: Legal

Agenda Type: Resolution

Subject Matter:

Real Estate Purchase Agreement with John William Procter for parcel of land regarding the Polaris facility.

Exact Wording for the Agenda:

Resolution authorizing the Mayor to execute a Real Estate Purchase and Sales Agreement between the City of Huntsville and John William Procter.

**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: \$147,500

Budgeted Item: Yes

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head: Mary C. Calton

Date: 7/17/2015

RESOLUTION NO. 15-\_\_\_\_\_

**WHEREAS** the City Council of the City of Huntsville, Alabama, does hereby declare that the Mayor be, and he is hereby authorized to enter into a Real Estate Purchase Agreement by and between the City of Huntsville and John William Procter, 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 by and between the City of Huntsville and John William Procter," consisting of nine (9) pages, including Exhibits, and the date of July 23, 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 23rd day of July, 2015.

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

**APPROVED** this the 23rd day of July, 2015.

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

07-10-2015

**REAL ESTATE PURCHASE AND SALES AGREEMENT**

This Real Estate Agreement (this "Agreement") is entered into as of the 13<sup>th</sup> day of July, 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 **JOHN WILLIAM PROCTER**, a married man (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 consisting of approximately 12.56 acres, located in Limestone County, Alabama, 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 THIRTY THOUSAND SIX HUNDRED AND 00/100 DOLLARS (\$30,600.00) per acre for approximately four (4) acres of the Property which is not considered to be "flood property" and TWO THOUSAND AND 00/100 DOLLARS (\$2,000.00) per acre for approximately eight (8) acres which is considered to be "flood property." The exact amount of "flood property" will be determined by survey. The purchase price, which shall not be less than ONE HUNDRED FORTY SEVEN THOUSAND FIVE HUNDRED AND 00/100 DOLLARS (\$147,500.00), 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 reasonable matters of title are unacceptable to Purchaser. Purchaser may only exercise this right of termination as a result of unacceptable



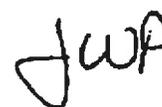
title concerns by giving Seller written notice of the termination within thirty (30) days of the date of this Agreement.

(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 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 reasonably 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 reasonably 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. 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 at the offices of Wilmer & Lee, P.A., on or before the 31st day of August, 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 and approved by Seller's attorney.

6. Commissions.

The parties represent that neither has 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 the other party may suffer as a result of any claim or action brought by any broker or real estate agent, acting on behalf of that party.

7. Farming Operations.

If any portion of the Property is currently being farmed by a third party and if the farmer has already planted crops, Purchaser shall either permit the farmer to harvest the crop or shall pay the farmer for the lost crop. (The amount of any such buy-out shall be equal to the average yield realized by the farmer for the same crop when planted over the past five year period for the acreage in question as certified by the Farm Service Agency, multiplied by the greater of (a) the price currently booked or (b) the current spot price for the crop set in Decatur, Alabama, less the average crop expenditure not yet expended.) Owner agrees to terminate any existing farm lease or crop agreement as of the end of the current growing season. At the end of the growing season or the Closing date, whichever is last to occur, the farmer shall have thirty (30) days to remove all



equipment, deer stands and other personal property from the Property and surrender possession of the Property to Purchaser.

If the Property continues to be farmed by a third party after closing, Owner agrees to obtain a full release from the farmer releasing Purchaser from any liability with regard to the farming operations (other than expressly assumed by Purchaser hereunder) and indemnifying the Purchaser from any loss, cost, damage or expense arising from or connected with such farming operations, unless such liability arises from the sole negligence of the Purchaser.

8. 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.

The terms and conditions of this Agreement shall be construed, interpreted and enforced in accordance with the laws of the State of Alabama without regard to Alabama's conflict of laws provisions.

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, SAMUEL H. GIVHAN and 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. KENNETH M. SCHUPPERT, JR, and the law firm of Blackburn, Maloney & Schuppert, LLC. exclusively represents Owner. Any conflicts of interest due to a lawyer's previous representation of other parties 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 July 17, 2015.

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:

JOHN WILLIAM PROCTER

By: John W. Procter  
7-13-2015

Witness:

Kara DiGiulio  
Kara DiGiulio

Date: 7-13-2015



# Acknowledgment by Individual

State of Washington County of Ciallam

On this 13<sup>th</sup> day of July, 2015, before me, Kara Digulio  
Name of Notary Public

the undersigned Notary Public, personally appeared

John William Procter

Name of Signer(s)

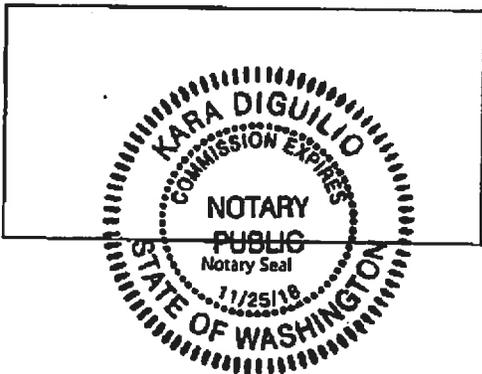
Proved to me on the oath of \_\_\_\_\_

Personally known to me

Proved to me on the basis of satisfactory evidence DRIVERS License PROCTJW538PG  
(Description of ID)

to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged that he/she/they executed it.

WITNESS my hand and official seal.



Kara Digulio  
(Signature of Notary Public)

My commission expires 11-25-2018

Optional: A thumbprint is only needed if state statutes require a thumbprint.

Right Thumbprint of Signer  
Top of thumb here

### Description of Attached Document

Type or Title of Document

Real Estate Purchase and Sales Agreement

Document Date

7-10-2015

Number of Pages

6

Signer(s) Other Than Named Above

Scanner Enabled Scans should use this form Manual Scans Use the Back to Report Operations

DS6554 (Rev 02-01-15)



FO01-00000DSG5350-01

Exhibit "A"



5125A Research Drive  
Huntsville, AL 35805

TEL 258.534.5512  
FAX 258.534.5544

www.GarverUSA.com

STATE OF ALABAMA  
LIMESTONE COUNTY

**CITY OF HUNTSVILLE, ALABAMA PROPOSED PROPERTY ACQUISITION SURVEY.**

**Reference Drawing Number 1, Tract 1A.**

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 in Section 28, Township 4 South, Range 3 West, of the Huntsville Meridian.

Said tract being a portion of the John William Procter tract as recorded in the Office of the Probate Judge of Limestone County, Alabama in FICHE 98327, Page 22 and being more particularly described as follows:

Beginning at the northwest corner of Lot 1 of McCrary Commercial Subdivision Phase 2 as recorded in the Office of the Probate Judge for Limestone County, Alabama in Plat Book H, Page 437 having established grid coordinates of (N)1514762.37, (E)346994.78 of Zone East of the Alabama State Plane Coordinate System;

Thence North 1 Degrees 56 Minutes 54 Seconds East a distance of 200.45 feet to a 3 inch diameter pipe found at the northwest corner of the John William Procter tract as recorded in the Office of the Probate Judge of Limestone County, Alabama in FICHE 98327, Page 22, said point being located on the existing south right-of-way of Norfolk Southern Railroad; thence along the north boundary of said Procter tract and said south right-of-way North 70 Degrees 28 Minutes 17 Seconds East a distance of feet 1309.52 feet to a #5 rebar with a cap Stamped "GARVER LLC CA 445" (typical) set on the proposed west right-of-way of Greenbrier Parkway; thence leaving said north boundary of Procter tract and existing Railroad right-of-way and along said proposed right-of-way South 13 Degrees 24 Minutes 47 Seconds East a distance of 585.88 feet to a #5 rebar set; thence South 19 Degrees 53 Minutes 37 Seconds East a distance of 57.25 feet to a #5 rebar set; thence leaving said proposed right-of-way and along the south boundary of said Procter tract North 88 Degrees 32 Minutes 07 Seconds West a distance of 384.38 feet to a 3 inch diameter pipe in concrete found; thence South 88 Degrees 37 Minutes 57 Seconds West a distance of 1012.43 feet to the POINT OF BEGINNING.

The above described tract contains 12.56 acres (547284.03 sq. ft.)

All according to my survey this the 24<sup>th</sup> day of June, 2016

*Loyd W. Carpenter*

2015.06.24  
08:55:03-05'00"

Loyd W. Carpenter, PLS  
Alabama License No. 26012





## ROUTING SLIP CONTRACTS AND AGREEMENTS

Originating Department: Legal

Council Meeting Date: 7/23/2015

Department Contact: Cissy Cates

Phone # 427-5026

Contract or Agreement: Real Estate Purchase and Sale Agreement

Document Name: Real Estate Purchase and Sale Agreement John W. Procter

City Obligation Amount:  \$147,500

Total Project Budget:  \$147,500

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>	Grant Name: _____
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Department	Signature	Date
1) Originating	<i>Mary Cates</i>	<i>7/17/2015</i>
2) Legal	<i>Mary Cates</i>	<i>7/17/2015</i>
3) Finance		
4) Originating		
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		