

**CITY COUNCIL AGENDA ITEM COVER MEMO**

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

Meeting Type: Regular

Meeting Date: Oct 22, 2015

Action Requested By: Administration

Agenda Type: Resolution

**Subject Matter:**

Midsouth Paving, Inc.

**Exact Wording for the Agenda:**

Resolution authorizing the Mayor to enter in to a Real Estate Purchase Agreement between the City of Huntsville and Midsouth Paving, Inc.

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

Item to be considered for: Action

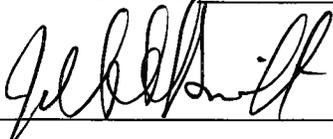
Unanimous Consent Required: \_\_\_\_\_

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: \_\_\_\_\_

Department Head: 

Date: 10/19/15

## ROUTING SLIP CONTRACTS AND AGREEMENTS

Originating Department: Administration Council Meeting Date: 10/22/2015

Department Contact: John Hamilton Phone # 5009

Contract or Agreement: Real Estate Purchase Agreement Midsouth Paving, Inc.

Document Name: Real Estate Purchase Agreement Midsouth Paving, Inc.

City Obligation Amount:

Total Project Budget:

Uncommitted Account Balance:

Account Number: 4001-10-00000-520600-PR8462X

### Procurement Agreements

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

<u>Not Applicable</u>	Grant Name: <input style="width: 90%;" type="text"/>
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Department	Signature	Date
1) Originating	<i>[Signature]</i>	10/19/15
2) Legal	<i>[Signature]</i>	10/14/2015
3) Finance <span style="color: blue;">C</span>	<i>[Signature]</i>	10/19/15
4) Originating	<i>[Signature]</i>	10/19/15
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, is hereby authorized to enter into a Real Estate Purchase Agreement by and between the City of Huntsville and Midsouth Paving, Inc., 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 a "Real Estate Purchase Agreement by and between the City of Huntsville and Midsouth Paving, Inc." consisting of nine (9) pages, including Exhibits "A-B" and the date of October 22, 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 22nd day of October, 2015.

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

**APPROVED** this the 22nd day of October, 2015.

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



one or more wire transfers of immediately available federal funds to an account designated in writing by Seller no later than one (1) day prior to the Closing Date.

3. Closing/Subject of Conveyance/As-Is/Where-Is. The Closing of the proposed transaction (the "Closing") will occur within ninety (90) days of the date of this Agreement. At Closing, Seller shall deliver to Purchaser a statutory warranty deed to the Property. The said deed shall transfer fee simple title to the Property to Purchaser free from any and all liens and encumbrances except for (i) the liens for the current and future ad valorem taxes, (ii) applicable zoning ordinances, subdivision regulations and other applicable land use laws, rules and regulations, (iii) existing and recorded restrictions, (iv) easements and minimum building lines of record, and (v) matters of survey (said items (i), (ii), (iii), (iv) and (v) collectively are the "Permitted Title Exceptions").

Property taxes will be prorated between the parties on an annual basis at Closing. All other closing costs, including the transfer tax, title examination, title insurance, updated survey of the Property, as well as any escrow fees or other closing costs associated with closing will be paid by Purchaser. Each party will bear its own legal expenses in connection with the proposed transaction. Possession will be given to the City on the Closing Date.

The delivery of the deed by Seller, and the acceptance by Purchaser shall be deemed the full performance and discharge of every obligation on the part of the Seller to be performed under this Agreement.

Subject to the terms and conditions of this Agreement, Seller agrees to sell to Purchaser and Purchaser agrees to purchase from Seller the Property, including without limitation, all of Seller's right, title and interest in:

- (a) all rights appurtenant to the Land, if any, including without limitation, any strips and gores abutting the Land, and any land lying in the bed of any street, road or avenue in front of, or adjoining the Land, to the center line thereof;
- (b) all other rights, privileges, easements, licenses, appurtenances and hereditaments relating to the Property; and
- (c) the fixtures, building equipment and personal property owned by Seller and used in connection with the Improvements or the Land.
- (d) Subject to this Agreement, Purchaser acknowledges that Purchaser has made thorough inspections and investigations of the Property and Purchaser agrees to take title to the Property "AS-IS" and in the condition existing as of the date of this Agreement, subject to reasonable use, ordinary wear and tear and without any reduction in or abatement of the Purchase Price.

- (e) Neither party to this Agreement is relying on any statement or representation not expressly stated in this Agreement. Purchaser specifically confirms and acknowledges that in entering into this Agreement, Purchaser has not been induced by, and has not relied upon, whether express or implied, warranties, guaranties, promises, statements, inducements, representations or information pertaining to the Property or its uses, the physical condition, environmental condition, state of title, income, expenses or operation of the Property, or any other matter or thing with respect thereto, written or unwritten, whether made by Seller or any agent, employee or other representative of Seller, or any broker or any other person representing (or purporting to represent) Seller, which are not expressly set forth in this Agreement. Seller shall not be liable for or bound by any written or unwritten statements, representations, warranties, brokers' statements or other information pertaining to the Property furnished by Seller, any broker, any agent, employee or other actual (or purported) representative of Seller, or any person, unless and only to the extent the same are expressly set forth in this Agreement.
- (f) At least thirty (30) days prior to -Closing, Seller shall, at Seller's sole cost and expense, undertake to complete those items outlined on Exhibit "B" attached hereto and incorporated herein by reference ("Seller's Work"). Upon Seller's completion of Seller's Work, Seller shall give Purchaser written notice of same, and Purchaser and Seller shall select a mutually agreeable date and time for Purchaser to inspect the Property for the satisfactory completion of the Seller's Work. Purchaser shall have five business days after the said inspection to provide Seller with Purchaser's approval or disapproval of Seller's Work, which approval shall not be unreasonably withheld. If Seller does not receive such written notice of approval or disapproval prior to the expiration of the five business day period, then Purchaser shall be deemed to approve the work. If Buyer timely provides written notice of disapproval to Seller, then the deposit shall be returned to Purchaser, and this Agreement shall be deemed terminated and the parties shall have no further obligations to each other except for surviving provisions hereof.

4. Notices.

- (a) Any notice or other communication provided for hereunder will be in writing and may be (i) served by personal delivery, (ii) made by electronic mail or facsimile transmission, or (iii) sent by overnight courier service (with all fees prepaid) to the receiving parties as follows, or to any other address which either party may hereafter designate for itself in writing:

If to Seller: Midsouth Paving, Inc.  
500 Riverhills Business Park  
Suite 590  
Birmingham, AL 35242  
Attention: Lamar Forsyth  
[Lamar.forsyth@midsouthpaving.com](mailto:Lamar.forsyth@midsouthpaving.com)

With a Copy to: Oldcastle Law Group  
900 Ashwood Parkway  
Suite 600  
Atlanta, GA 30338  
Attention: General Counsel  
Fax: 770-392-5305

If to Purchaser: City of Huntsville  
P.O. Box 308  
Huntsville, AL 35804  
Attention: Bruce Pitts, Assistant City Attorney  
[Bruce.pitts@huntsvilleal.gov](mailto:Bruce.pitts@huntsvilleal.gov)  
Fax: 256-427-5403

(b) Any party may, by notice given in accordance with this Article, designate a different address or person for receipt of all communications or notices.

5. Brokerage Commissions. Purchaser and Seller acknowledge that no brokers/advisors have been or will be involved in the sale of the Property. In the event of any claim for any additional 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.

6. Applicable Law/Jurisdiction/Venue. This Contract shall be interpreted, construed and enforced in accordance with the laws of the State of Alabama. For any action concerning this Contract and/or the Property (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.

7. Entire Agreement. This Agreement embodies the entire agreement and understanding of the Owner and Purchaser as to the transaction contemplated and evidenced

hereby and merges herein all agreements, covenants, representation, statements and understandings heretofore made by and between Owner and Purchaser as to such transaction, whether written, oral or both. Any agreements, covenants, representations, statements or understandings by and between Owner and Purchaser as to such transaction not contained herein are and shall be null and void and of no force and effect.

8. Amendment. Owner and Purchaser hereto expressly, intend and understand that neither this Agreement nor any provision or term hereof, shall be amended, changed or modified in any respect, nor may any estoppels, novation or waiver regarding the same be effectuated, without the parties 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.

9. Construction. This Agreement shall be construed in its entirety to its plain meaning and shall be considered as a negotiated agreement and shall not be construed against the party who provided or drafted it.

10. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

11. Waiver. The failure of either party to insist, in any one or more instances, upon a strict performance of any of the terms and conditions of this Agreement, or to exercise or fail to exercise any option or right contained herein, shall not be construed as a waiver or a relinquishment for the future of such right or option, but the same shall continue and remain in full force and effect. The continued performance by either party of this Agreement with knowledge of the breach of any term or condition hereof shall not be deemed a waiver of such breach, and no waiver by either party of any provision hereof, shall be deemed to have been made, or operate as estoppel, unless expressed in writing and signed by such party.

12. Binding Effect; Assignment. This Agreement shall be binding upon the parties hereto and their respective successors and permitted assigns. No other person or entity shall acquire or have any right under, or by virtue of, this Agreement. Purchaser shall not assign or transfer any right or delegate any obligation hereunder without the prior written consent of Seller, in its sole discretion. Seller may assign or transfer its rights hereunder to any affiliate. Any purported assignment or transfer in violation of this section shall be null and void.

13. Remedies. Upon default by either party, the non-defaulting party shall have the right to pursue any and all remedies available at law or in equity.

14. Limitation of Liability.

- (a) **Disclaimer of Consequential Damages.** IN NO EVENT SHALL SELLER BE LIABLE UNDER THIS AGREEMENT TO THE PURCHASER OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES, INCLUDING ANY DAMAGES FOR BUSINESS INTERRUPTION, LOSS OF USE, REVENUE OR PROFIT, WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT THE PURCHASER WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- (b) **Cap on all other Damages.** IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL PURCHASE PRICE TO BE PAID TO THE SELLER PURSUANT TO THIS AGREEMENT.

15. Time of Essence; Calculation of Dates. Time is of the essence of this Agreement. Anywhere a day certain is stated for payment or for performance of any obligation, the day certain so stated enters into and becomes a part of the consideration for this Agreement. If any date set forth in this Agreement shall fall on, or any time period set forth in this Agreement shall expire on, a day which is a Saturday, Sunday, federal or state holiday, or other non-business day, such date shall automatically be extended to, and the expiration of such time period shall automatically be extended to, the next day which is not a Saturday, Sunday, federal or state holiday or other non-business day. The final day of any time period under this Agreement or any deadline under this Agreement shall be the specified day or date, and shall include the period of time through and including such specified day or date.

**[Signatures follow on the next page]**

IN WITNESS WHEREOF, the parties have executed this Agreement on the date indicated above.

SELLER:

**MIDSOUTH PAVING, INC,**  
**a Delaware corporation**

By: 

Name: D. Lamar Forsyth

Title: CFO/Secretary

PURCHASER:

ATTEST:

**CITY OF HUNTSVILLE, ALABAMA,**  
**A municipal corporation**

By: \_\_\_\_\_

Charles E. Hagood  
Clerk-Treasurer, City of Huntsville

By: \_\_\_\_\_

Tommy Battle  
Mayor, City of Huntsville

EXHIBIT "A"  
Legal Description

**TRACT I:** All that part of the northeast quarter of Section 14, Township 4 South, Range 1 West, beginning at an iron pin, northeast corner of said Section 14 near the center of Leeman Ferry Road; thence south 89 degrees 20 minutes west with the north property line of said section 25 feet, an iron pipe in the west margin of Leeman Ferry Road; thence with said road south 00 degrees 21 minutes east parallel to the east section line 1773.37 feet, an iron pipe, the southeast corner of Tract 12, the true beginning point, thence continuing with the west margin of Leeman Ferry Road south 00 degrees 21 minutes east 400 feet, an iron pipe, the southeast corner of Tract 10; thence south 89 degrees 20 minutes west parallel to the north line of said section 1138.66 feet, more or less, an iron pipe, the southwest corner of Tract 11 in the east line of the City of Huntsville sanitary sewer easement along the east side of Huntsville Spring Branch; thence with said property line north 1 degree 05 minutes west 600.05 feet to an iron pipe, the northwest corner of Tract 11; thence north 89 degrees 20 minutes east 573 feet, an iron pipe, the northwest corner of Tract 12; thence south 00 degrees 21 minutes east 200 feet, an iron pipe, the southwest corner of Tract 12; thence north 89 degrees 20 minutes east 570 feet to the true point of beginning, containing 13.10 acres, more or less.

EXHIBIT "B"  
Seller's Work

1. Clean and dispose of debris in oil/grit separator in the truck wash.
- ~~2.~~
- ~~3.2.~~ All radioactive materials, if any, to be removed from the asphalt testing lab.
- ~~4.3.~~ Asphalt tanks located on the property to be removed.
- ~~5.4.~~ Miscellaneous items and debris to be removed from the Property.