

ROUTING SLIP CONTRACTS AND AGREEMENTS

Originating Department: Engineering

Council Meeting Date: 12/17/2015

Department Contact: Shane Davis

Phone #

Contract or Agreement: Real Estate Purchase Agreement

Document Name: Real Estate Purchase Agreement Greenbrier Pkwy Tract 22

City Obligation Amount: \$247,350.00 ✓

Total Project Budget:

Uncommitted Account Balance:

Account Number: 3206-71-00000-524011-00000000-

Procurement Agreements

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

<u>Not Applicable</u>	Grant Name:
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Department	Signature	Date
1) Originating		<u>12-11-15</u>
2) Legal		<u>12-8-15</u>
3) Finance 	<u>Margie Largo</u>	<u>12-11-15</u>
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: Dec 17, 2015

Action Requested By: Engineering
Urban Development

Agenda Type: Resolution

Subject Matter:

Real Estate Purchase Agreement for easements and rights-of-ways for Greenbrier Parkway.

Exact Wording for the Agenda:

Resolution authorizing the Mayor to enter into a real estate purchase agreement with Holmes Farms, LLC, for Greenbrier Parkway, Tract 22.

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: _____

Budgeted Item: Yes

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head: *[Signature]*

Date: *12-11-15*

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 Agreement by and between the City of Huntsville, Alabama, and Holmes Farms, 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 Agreement between Holmes Farms, LLC, and the City of Huntsville, Alabama," consisting of eight (8) pages, and the date of December 17, 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 17th day of December, 2015.

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

APPROVED this the 17th day of December, 2015.

Mayor of the City of
Huntsville, Alabama

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 **HOLMES FARMS, LLC**, an Alabama limited liability company (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.

Sellers hereby agree to grant, bargain, sell and convey to Purchaser that certain real property and interest in real property located in Section 21, Township 4 South, Range 3 West, Limestone County, Alabama and more particularly described in Exhibit “A” attached hereto (“the Property”).

2. Purchase Price.

The Purchase Price for the Property shall be TWO HUNDRED FORTY-SEVEN THOUSAND THREE HUNDRED FIFTY AND 00/100 DOLLARS (\$247,350.00), which shall be payable at Closing. The Purchase Price is calculated as follows:

Greenbriar Parkway II – Tract 22 :

Right-of-Way: 7.46 acres x \$30,000/acre -	\$223,800.00
Utility and Drainage Easement: 1.57 acres x \$30,000/acre x 25% -	<u>23,550.00</u>
GBII – Tract 22 -	\$247,350.00

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

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

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 signed by Seller's managing member with the written consent of all members of Holmes Farms, LLC, 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 within sixty (60) days following approval of this acquisition by the City Council of the City of Huntsville, and the signing of this agreement by Purchaser. 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.

6. Commissions.

The parties represent that neither has incurred nor is obligated for any brokers' or finders' fees, and that no real estate commissions are due on account of this transaction. Each party agrees to indemnify, defend and hold the other harmless from any claims, including attorneys' fees, that it 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.

Seller affirms that, by Closing, the Real Property will be not be subject to any farm lease or crop agreement. Seller affirms that, by Closing, all crops will have been harvested and all farming equipment removed from the Real Property.

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 heirs, personal representatives, successors and assigns. Purchaser reserves the right to assign its interest in this Agreement.

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 further 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 a full opportunity to examine this Agreement and/or has had an opportunity to have its counsel review said Agreement on its behalf.

13. Interpretation.

This Agreement shall be interpreted 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 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. Notwithstanding the preceding sentence, the parties agree that they will transmit original signature pages to the other parties and their counsel 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. Any conflicts of interest due to Counsel's previous representation of Seller 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 December 15, 2015.

[SIGNATURES ON THE 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: _____

Date: _____

WITNESS:

SELLER:
HOLMES FARMS, LLC

By: Margaret Cynthia Holmes
Margaret Cynthia Holmes
Its: Managing Member

Date: 1 Dec 2015

WITNESS:

Rebecca M. Knight
Sam A. Hagan

Exhibit "A"

HOLMES FARMS LLC

RIGHT-OF-WAY DESCRIPTION
TRACT 22

All that part of Section 21, Township 4 South, Range 3 West, Limestone County, Alabama and more particularly described as:

Commencing at a railroad spike purported to be the northeast corner of Section 21; thence S62°28'03"W, a distance of 5,386.20 feet to the point of beginning; thence S00°10'51"E, a distance of 2,276.85 feet; thence N87°42'39"W, a distance of 152.14 feet; thence N00°10'51"W, a distance of 505.90 feet; thence N13°18'54"E, a distance of 51.42 feet; thence N00°10'51"W, a distance of 1718.88 feet; thence S88°20'43"E, a distance of 140.07 feet to the point of beginning and containing 7.46 acres, more or less.

UTILITY AND DRAINAGE EASEMENT DESCRIPTION 1 OF 2
TRACT 22

All that part of Section 21, Township 4 South, Range 3 West, Limestone County, Alabama and more particularly described as:

Commencing at a railroad spike purported to be the northeast corner of Section 21; thence S62°28'03"W, a distance of 5,386.20 feet to the point of beginning; thence S88°20'43"E, a distance of 30.02 feet; thence S00°10'51"E, a distance of 2,277.19 feet; thence N87°42'39"W, a distance of 30.03 feet; thence N00°10'51"W, a distance of 2,276.85 feet to the point of beginning and containing 1.57 acres, more or less.

UTILITY AND DRAINAGE EASEMENT DESCRIPTION 2 OF 2
TRACT 22

All that part of Section 21, Township 4 South, Range 3 West, Limestone County, Alabama and more particularly described as:

Commencing at a railroad spike purported to be the northeast corner of Section 21; thence S62°28'03"W, a distance of 5,386.20 feet; thence N88°20'43"W, a distance of 140.07 feet to the point of beginning; thence S00°10'51"E, a distance of 1,718.88 feet; thence S13°18'54"W, a distance of 51.42 feet; thence S00°10'51"E, a distance of 505.90 feet; thence N87°42'39"W, a distance of 30.03 feet; thence N00°10'51"W, a distance of 508.15 feet; thence N13°18'54"E, a distance of 51.42 feet; thence N00°10'51"W, a distance of 1,716.30 feet; thence S88°20'43"E, a distance of 30.02 feet to the point of beginning and containing 1.57 acres, more or less.

