

**CITY COUNCIL AGENDA ITEM COVER MEMO**

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

Meeting Type: Regular

Meeting Date: Apr 14, 2016

Action Requested By: Legal

Agenda Type: Resolution

**Subject Matter:**

Real Estate Purchase Agreement.

**Exact Wording for the Agenda:**

Resolution authorizing the Mayor to enter into a Real Estate Agreement among the City of Huntsville, Greenbrier Enterprises, LLC, Russ McDonald, Caroline Adherholt and Leah Engler for permanent utility and drainage easements and temporary construction easements.

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

Item to be considered for: Action

Unanimous Consent Required: No

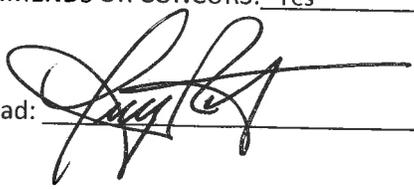
Briefly state why the action is required; why it is recommended; what council action will provide, allow and accomplish and; any other information that might be helpful.

[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: \$136,322.25

Budgeted Item: Yes

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head:  \_\_\_\_\_

Date: Apr 12, 2016



RESOLUTION NO. 16- \_\_\_\_\_

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 contract by and between the City of Huntsville and Greenbrier Enterprises, L.L.C., Russ McDonald, Caroline Aderholt, and Leah Engler, which said agreement is substantially in words and figures the same as that certain document attached hereto and identified as "Real Estate Agreement between the City of Huntsville and Greenbrier Enterprises, L.L.C., Russ McDonald, Caroline Aderholt, and Leah Engler", consisting of Thirteen (13) pages including Exhibits A-1 through A-4, an executed copy of said document after being signed by the Mayor, shall be permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this the 14th day of April, 2016.

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

APPROVED this the 14th day of April, 2016.

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

## REAL ESTATE AGREEMENT

This Real Estate Agreement (this "Agreement") is entered into by and between **THE CITY OF HUNTSVILLE**, an Alabama municipal corporation (hereinafter referred to as either "Purchaser" or the "City") who agrees to purchase the real property described in Paragraph One (1) from **GREENBRIER ENTERPRISES, L.L.C.** an Alabama limited liability company ("Greenbrier"), **RUSS MCDONALD**, a single man, **CAROLINE ADHERHOLT**, a married woman, and **LEAH ENGLER**, a single woman (hereinafter collectively referred to as "Sellers"), 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 fee simple title to that certain real property lying and being situated in Madison County, Alabama, and being specifically described in Exhibit "A-1" and "A-2," totaling 5.585 acres+/-, an exclusive permanent utility and drainage easement over the 2.425 acres+/- described in attached Exhibit "A-3," and a temporary construction easement over the .019 acre +/- tract described in the attached Exhibit "A-4" (hereinafter referred to as "the Property").

2. Purchase Price

Purchaser agrees to pay One Hundred Thirty-Six Thousand Three Hundred Twenty-Two Dollars and 25/100 (\$136,322.25) for the Property, which shall be payable at Closing.

3. Conditions of Sale

This Agreement is subject to approval by the Huntsville City Council. Furthermore, this Agreement is subject to Purchaser's written approval of an owner's title commitment from Wilmer & Lee, P.A.

4. Title

The Property shall be conveyed to Purchaser by General Warranty Deed, in a form and content satisfactory 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. Irrigation System.

Purchaser agrees to pay Sellers \$22,500.00 (the "Relocation Funds") to move the irrigation system existing on the Property. Purchaser agrees that the Irrigation System will not be moved until existing crops are removed from the Property or until December 31, 2016, whichever occurs first. The Relocation Funds shall be remitted to Sellers on or before November 30, 2016.

6. Lease.

Purchaser agrees to lease the Property to Sellers for this current crop year. Sellers may maintain crops on the Property until December 31, 2016, or until removal of the crop, whichever occurs first. In return, Sellers agree to pay One Hundred Dollars (\$100.00) per acre rent to Purchaser on December 31, 2016, which shall be deducted from the Purchase Price at Closing.

7. Closing.

The Closing shall take place within thirty (30) days following the receipt of approval from the City Council. The Parties further agree as follows:

- a. Real Property Taxes for the current year, if any, shall be paid by Seller when due.
- 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, except that each party shall pay its own attorney's fees in connection with Closing.
- d. The above-referenced deed is to be prepared by Purchaser's counsel, at Purchaser's expense.

8. Broker.

Seller and Purchaser acknowledge that no broker and/or finder arranged the sale of Seller's property on the terms and conditions contained herein. Seller and Purchaser do hereby agree to indemnify each other from all loss, damage, cost or expense, including attorney's fees, that they may suffer as a result of any claim or action brought by any other broker, acting on behalf of Seller or Purchaser, respectively.

9. Time of the Essence.

Time is of the essence of this Agreement.

10. Attorney's Fees.

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.

11. 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.

12. 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 each party 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.

13. 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.

14. Interpretation.

This Agreement shall be interpreted in accordance with Alabama law. Unless otherwise provided, all terms shall have the meaning given them in ordinary and customary English usage. Words in the masculine gender include feminine and neuter. The paragraph headings and titles of this Agreement do not form a part of this Agreement, are inserted for convenience of reference only, and shall have no effect upon the construction or interpretation of any part of this Agreement.

15. 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 Counsel promptly after execution.

16. 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.

17. Counsel Acknowledgment.

The parties all acknowledge that Purchaser's counsel, SAMUEL H. GIVHAN, 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. Counsel has also represented Greenbrier in other matters. For the purposes of this transaction, Counsel represents Purchaser's interest and no other interests. All conflicts of interest due to Counsel's representation of Purchaser and unrelated representation of Greenbrier are hereby waived.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have caused this Real Estate Agreement to be executed on the respective dates set forth below.

**PURCHASER:**

**The City of Huntsville, Alabama**

By: \_\_\_\_\_  
Tommy Battle, Mayor

Attest: \_\_\_\_\_  
Charles Hagood, Clerk Treasurer

Date: \_\_\_\_\_

**SELLERS:**

**Greenbrier Enterprises, L.L.C.**

*Shirley McDonald*  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

*Julie Brewer*  
Witness  
3-8-2016

Date: 3-8-2016

**Russ McDonald**

*Russ McDonald*  
\_\_\_\_\_  
Russ McDonald

*Julie Brewer*  
Witness  
3-8-2016

Date: 3-8-2016

**SELLERS CONTINUED:**

**Caroline Adherholt**

Caroline Adherholt  
Caroline Adherholt Aderholt CA

Date: March 8, 2016

**Leah Engler**

\_\_\_\_\_  
Leah Engler

Date: \_\_\_\_\_

Hannah M Wegman  
Witness

\_\_\_\_\_  
Witness

**SELLERS CONTINUED:**

**Caroline Adherholt**

\_\_\_\_\_  
Caroline Adherholt

\_\_\_\_\_  
Witness

Date: \_\_\_\_\_

**Leah Engler**

*Leah Engler*  
\_\_\_\_\_  
Leah Engler

*Julie Brewer*  
\_\_\_\_\_  
Witness

*3-8-2016*

Date: *3-8-2016*

Exhibit "A-1"

TRACT 11

**RIGHT-OF-WAY**

Commencing from the common section corner for Sec. 27, Sec. 22, Sec. 26, and Sec. 23, T-4-S, R-3-W;

thence N 87°23'26" W, a distance of 1136.09 feet to a point at the present Old Highway 20 right-of-way line, also the Point of Beginning;

thence from the Point of Beginning N 00°56'56" W, a distance of 81.49 feet to a point at the intersection of the Old Highway 20 acquired right-of-way line and the present right-of-way line 87.23 feet left of station 98+23.12;

thence S 88°16'24" E along the Old Highway 20 acquired right-of-way line, a distance of 581.90 feet to a point on the Old Highway 20 acquired right-of-way line 98.35 feet left of station 103+99.70 of the Old Highway 20 centerline;

thence N 89°41'45" E along the Old Highway 20 acquired right-of-way line, a distance of 430.25 feet to a point at the intersection of the Old Highway 20 acquired right-of-way line and the property line 115.84 feet left of station 108+35.94 of the Old Highway 20 centerline;

thence S 03°19'05" W along property line, a distance of 76.75 feet to a point at the intersection of the property line and the present Old Highway 20 right-of-way line;

thence N 89°24'30" W along the present Old Highway 20 right-of-way line, a distance of 1006.14 feet to the Point of Beginning.

The above described parcel contains 1.73 acres, more or less.

## Exhibit "A-2"

TRACT 10

### RIGHT-OF-WAY # 1

Commencing from the common section corner for Sec. 21, Sec. 22, Sec. 27, and Sec. 28, T-4-S, R-3-W;

thence N 82°52'42" E, a distance of 298.06 feet to a point at the intersection of the present Old Highway 20 right-of-way line and the property line, also the Point of Beginning;

thence from the Point of Beginning N 00°48'42" E along the property line, a distance of 47.13 feet to a point at the intersection of the Old Highway 20 acquired right-of-way line and the property line 74.29 feet left of Station 57+99.96 of the Old Highway 20 centerline;

thence S 89°20'06" E along the Old Highway 20 acquired right-of-way line, a distance of 40.73 feet to a point on the Old Highway 20 acquired right-of-way line 49.50 feet left of station 58+56.17 of the Old Highway 20 centerline;

thence along the Old Highway 20 acquired right-of-way line curvature thereof an arc length of 83.09 feet (said arc having a chord bearing of S 88°58'58" E, in a clockwise direction, a chord distance of 83.09 feet and a radius of 6759.50 feet) to a point on the Old Highway 20 acquired right-of-way line 49.50 feet left of station 59+38.65 of the Old Highway 20 centerline;

thence S 88°37'51" E along the Old Highway 20 acquired right-of-way line, a distance of 603.99 feet to a point on the Old Highway 20 acquired right-of-way line 49.50 feet left of station 65+42.64 of the Old Highway 20 centerline;

thence along the Old Highway 20 acquired right-of-way line curvature thereof an arc length of 103.11 feet (said arc having a chord bearing of S 89°04'27" E, in a clockwise direction, a chord distance of 103.11 feet and a radius of 6660.50 feet) to a point on the Old Highway 20 acquired right-of-way line 49.50 feet left of station 66+46.51 of the Old Highway 20 centerline;

thence S 89°31'04" E along the Old Highway 20 acquired right-of-way line, a distance of 3077.53 feet to a point at the intersection of the Old Highway 20 acquired right-of-way line and the present right-of-way line 49.50 feet left of station 97+24.05 of the Old Highway 20 centerline;

thence S 00°56'56" E along the present right-of-way line, a distance of 43.56 feet to a point at the intersection of the present Old Highway 20 right-of-way line and the present right-of-way line;

thence N 89°24'30" W along the present Old Highway 20 right-of-way line, a distance of 3909.73 feet to the Point of Beginning.

The above described parcel contains 3.680 acres, more or less.

### RIGHT-OF-WAY # 2

Commencing from the common section corner for Sec. 22, Sec. 23, Sec. 27, and Sec. 26, T-4-S, R-3-W;

thence N 72°12'44" W, a distance of 135.30 feet to a point at the intersection of the present Old Highway 20 right-of-way line and the property line, also the Point of Beginning;

thence from the Point of Beginning N 03°19'05" E along the property line, a distance of 76.75 feet to a point at the intersection of the property line and the Old Highway 20

acquired right-of-way line 115.84 feet left of Station 108+35.94 of the Old Highway 20 centerline;

thence N 89°41'45" E along the Old Highway 20 acquired right-of-way line, a distance of 96.15 feet to a point at the intersection of the Old Highway 20 acquired right-of-way line and the present right-of-way line 117.18 feet left of Station 109+32.08 of the Old Highway 20 centerline;

thence S 00°13'42" E along the present right-of-way line, a distance of 78.18 feet to a point at the intersection of the present right-of-way line and the present Old Highway 20 right-of-way line;

thence N 89°24'30" W along the present Old Highway 20 right-of-way line, a distance of 100.91 feet to the Point of Beginning.

The above described parcel contains 0.175 acres, more or less.

## Exhibit "A-3"

### PERMANENT UTILITY & DRAINAGE EASEMENT #1

Commencing from the common section corner for Sec. 21, Sec. 22, Sec. 27, and Sec. 28, T-4-S, R-3-W;

thence N 74°09'50" E, a distance of 308.13 feet to a point at the intersection of the Old Highway 20 acquired right-of-way line and the property line 74.29 feet left of Station 57+99.96, also the Point of Beginning;

thence from the Point of Beginning N 00°48'42" E, a distance of 27.97 feet to a point on the Permanent Utility & Drainage Easement line 77.47 feet left of station 58+15.51 of the Old Highway 20 centerline;

thence S 89°35'34" E along the Permanent Utility & Drainage Easement line, a distance of 186.01 feet to a point on the Permanent Utility & Drainage Easement line 79.58 feet left of station 60+00.54 of the Old Highway 20 centerline;

thence S 55°36'59" E along the Permanent Utility & Drainage Easement line, a distance of 55.21 feet to a point at the intersection of the Permanent Utility & Drainage Easement line and the Old Highway 20 acquired right-of-way line 49.50 feet left of station 60+46.84 of the Old Highway 20 centerline;

thence N 88°37'51" W along the Old Highway 20 acquired right-of-way line, a distance of 108.19 feet to a point on the Old Highway 20 acquired right-of-way line 49.50 feet left of station 59+38.65 of the Old Highway 20 centerline;

thence along the Old Highway 20 acquired right-of-way line curvature thereof an arc length of 83.09 feet (said arc having a chord bearing of N 88°58'58" W, in a counter-clockwise direction, a chord distance of 83.09 feet and a radius of 6759.50 feet) to a point on the Old Highway 20 acquired right-of-way line 49.50 feet left of station 58+56.17 of the Old Highway 20 centerline;

thence N 89°20'06" W along the Old Highway 20 acquired right-of-way line, a distance of 40.73 feet to the Point of Beginning;

The above described Permanent Utility & Drainage Easement contains 0.139 acres, more or less.

### PERMANENT UTILITY & DRAINAGE EASEMENT #2

Commencing from the common section corner for Sec. 21, Sec. 22, Sec. 27, and Sec. 28, T-4-S, R-3-W;

thence N 86°01'27" E, a distance of 989.24 feet to a point at the intersection of the Old Highway 20 acquired right-of-way line and the Permanent Utility & Drainage Easement line 49.50 feet left of station 65+05.44, also the Point of Beginning;

thence from the Point of Beginning N 62°31'02" E along the Permanent Utility & Drainage Easement line, a distance of 49.70 feet to a point on the Permanent Utility & Drainage Easement line 73.48 feet left of station 65+49.04 of the Old Highway 20 centerline;

thence S 89°31'20" E along the Permanent Utility & Drainage Easement line, a distance of 1349.85 feet to a point on the Permanent Utility & Drainage Easement line 74.29 feet left of station 79+99.96 of the Old Highway 20 centerline;

thence N 87°54'40" E along the Permanent Utility & Drainage Easement line, a distance of 600.50 feet to a point on the Permanent Utility & Drainage Easement line 101.23 feet left of station 84+99.85 of the Old Highway 20 centerline;

thence S 87°25'02" E along the Permanent Utility & Drainage Easement line, a distance of 651.71 feet to a point on the Permanent Utility & Drainage Easement line 77.34 feet left of station 91+51.12 of the Old Highway 20 centerline;

thence S 89°05'51" E along the Permanent Utility & Drainage Easement line, a distance of 247.92 feet to a point on the Permanent Utility & Drainage Easement line 75.52 feet left of station 93+99.04 of the Old Highway 20 centerline;

thence N 88°36'49" E along the Permanent Utility & Drainage Easement line, a distance of 324.27 feet to a point at the intersection of the Permanent Utility & Drainage Easement line and the present right-of-way line 86.09 feet left of station 97+23.13 of the Old Highway 20 centerline;

thence S 00°56'56" E along the present right-of-way line, a distance of 36.61 feet to a point at the intersection of the present right-of-way line and Old Highway 20 acquired right-of-way line 49.50 feet left of station 97+24.05 of the Old Highway 20 centerline;

thence N 89°31'04" W along the Old Highway 20 acquired right-of-way line, a distance of 3077.53 feet to a point on the Old Highway 20 acquired right-of-way line 49.50 feet left of station 66+46.51 of the Old Highway 20 centerline;

thence along the Old Highway 20 acquired right-of-way line curvature thereof an arc length of 103.11 feet (said arc having a chord bearing of N 89°04'27" W, in a counter-clockwise direction, a chord distance of 103.11 feet and a radius of 6660.50 feet) to a point on the Old Highway 20 acquired right-of-way line 49.50 feet left of station 65+42.64 of the Old Highway 20 centerline;

thence N 88°37'51" W along the Old Highway 20 acquired right-of-way line, a distance of 37.20 feet to the Point of Beginning;

The above described Permanent Utility & Drainage Easement contains 2.286 acres, more or less.

**Exhibit "A-4"**

**TEMPORARY CONSTRUCTION EASEMENT**

Commencing from the common section corner for Sec. 21, Sec. 22, Sec. 28, and Sec. 27, T-4-S, R-3-W;

thence N 82°54'30" E, a distance of 626.32 feet to a point on the Old Highway 20 acquired right-of-way line, also the Point of Beginning;

thence from the Point of Beginning N 01°22'09" E along the Temporary Construction Easement, a distance of 20.50 feet to a point on the Temporary Construction Easement 70.00 feet left of station 61+40.00 of the Old Highway 20 centerline;

thence S 88°37'50" E along the Temporary Construction Easement, a distance of 40.00 feet to a point on the Temporary Construction Easement 70.00 feet left of station 61+80.00 of the Old Highway 20 centerline;

thence S 01°22'09" W along the Temporary Construction Easement, a distance of 20.50 feet to a point at the intersection of the Temporary Construction Easement and the Old Highway 20 acquired right-of-way line

thence N 88°37'51" W along the Old Highway 20 acquired right-of-way line, a distance of 40.00 feet to the Point of Beginning.

The above described temporary construction easement contains 0.019 acres, more or less.