

Resolution No. 12-246

The City Council finds and determines that the public benefit and welfare will be fostered by the acquisition of approximately 9.57 acres of land to expand the Gale Montgomery Park;

The Council further finds and determines that the purchase price of \$45,900 for approximately 5.87 acres; with the understanding that approximately 3.70 additional acres are to be donated by the Sellers Tyler R. Batchelor and Keith O. Holdbrooks, is a fair and reasonable price.;

NOW THEREFORE BE IT RESOLVED by the Decatur City Council that the Mayor is hereby authorized to execute, and the City Clerk is hereby authorized to attest, a purchase agreement with Tyler R. Batchelor and Keith O. Holdbrooks for the City to purchase approximately 5.87 acres at the purchase price of \$45,900 and accept a donation from the sellers of an additional 3.70 acres for the expansion of Gale Montgomery Park; said property being described on the attached sheets.

ADOPTED this 6th day of August 2012

STATE OF ALABAMA)
COUNTY OF MORGAN)

AGREEMENT FOR THE PURCHASE OF REAL PROPERTY

This Agreement is made this the _____ day of _____, 2012,
by and between the **City of Decatur, Alabama, a Municipal Corporation in Alabama,**
hereinafter referred to as **“The City” or “Purchaser”** and **Tyler R. Batchelor and Keith O.**
Holdbrooks, hereinafter referred to as **“Sellers”**.

WITNESSETH,

WHEREAS, Sellers wish to convey certain property further described below to The City partially as a donation and partially as a sale; and

WHEREAS, The City desires to purchase the property Sellers wish to sell and accept the donation of such property as the Sellers are willing to donate, said property to be put to legal use for the benefit of The City; and

WHEREAS, the parties have mutually agreed to the terms and conditions necessary for this transaction to be completed,

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements contained in this Agreement and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

A. PROPERTY TO BE PURCHASED. Sellers agree to sell and Purchaser agrees to purchase the following property situated in Decatur, Morgan County, Alabama:

East Tract Legal Description, Exhibit A. 5.87 acres

- B. PROPERTY TO BE DONATED.** Sellers agree to donate and The City agrees to accept the following property situated in Decatur, Morgan County, Alabama:

North Tract Legal Description, Exhibit B. 3.70 acres

- C. PURCHASE PRICE:** The Purchase Price for the property described in Paragraph A above is Forty-Five Thousand Nine Hundred and No/100 Dollars (\$45,900.00) said payment to be made at Closing.
- D. REAL ESTATE COMMISSIONS:** Seller and Purchaser represent that neither has retained real estate agents to assist and negotiate in the sale and purchase of this real property and; accordingly no commissions are owed or will be owed to any real agent or similar entity regarding the sale and purchase of this property.
- E. POSSESSION:** Purchaser shall take possession of the Property described in Paragraph A and Paragraph B above at Closing.
- F. TITLE:** If title to all or part of the Property is unmarketable, as determined by relevant law, or is subject to liens, encumbrances, easements, conditions, restrictions, or encroachments other than those excepted in this Agreement, Sellers shall, within thirty (30) days after written notice thereof, remedy or remove any such defect, lien, encumbrance, easement, condition, restriction, or encroachment. At Closing, Sellers and Purchaser shall sign an Affidavit with respect to off-record title matters in accordance with community custom.
- G. DEEDS:** Sellers shall convey to Purchaser marketable title for each tract in fee simple by transferable and recordable general warranty deed, with release of dower, if any, or fiduciary deed, as appropriate, free and clear of all liens, leases, and encumbrances not excepted by this Agreement.
- H. TAXES AND ASSESSMENTS:** At Closing, Sellers shall pay, or credit from the Purchase Price, all delinquent taxes, including penalties and interest, all assessments that are a lien as of the date of this Agreement prior to Closing and also a portion thereof for the year of Closing prorated through the date of Closing and based on a 365 day year and, if undetermined, based on the most recent available tax rate and valuation, giving effect to applicable exemptions, recently voted millage, change in valuation etc., whether or not certified.

Sellers warrant that no improvements, or services (site or area) have been installed or furnished, nor have Sellers received notification from any public authority or owners' association of future improvements of which any part of the costs may be assessed against the Property, other than those disclosed herein.

- I. DAMAGE OR DESTRUCTION OF PROPERTY:** Risk of loss to the Property and appurtenances shall be borne by Sellers until Closing.
- J. HAZARDOUS SUBSTANCES:** No later than thirty (30) days after execution of this Agreement, and at least ten (10) days prior to Closing, Sellers shall provide to Purchaser all tests, results of tests, correspondence, and information that Sellers have concerning the presence or possible presence of hazardous substances (including petroleum hydrocarbons) or the investigation for hazardous substances on the Property, if any. The information shall include all correspondence, reports, and test results obtained from the previous owner or any previous prospective purchaser, that were provided to Sellers, and shall also include any and all correspondence between Sellers and any governmental entity concerning the presence of hazardous substances on the Property and any remedy of it.

Sellers warrant and represents to Purchaser that neither Sellers, to the best of Sellers' knowledge, have introduced any hazardous or toxic materials or waste or petroleum hydrocarbons in, on, or under the Property, and Seller has no knowledge of any third party discharging any such hazardous or toxic material or waste in, on, or under the Property.

- K. PURCHASER CONTINGENCIES:** Purchaser shall have the right to waive any or all of the conditions precedent to its obligations hereunder and to close this transaction as though such conditions precedent had been met. Purchaser's obligations under this Agreement are subject to the satisfaction of the following contingencies to be completed before Closing.

Purchaser Contingencies are:

1. Purchaser, in the exercise of due diligence, may inspect and/or test the property to determine its suitability for its intended use and to assess the condition of the soil. Purchaser's conclusions with respect to said inspection and/or testing shall be subjective and made a Purchaser's sole discretion.
2. This Agreement is contingent upon a positive vote of the Decatur City Council authorizing the Mayor of Decatur to enter into this Agreement.

L. COOPERATION:

1. Seller shall furnish Purchaser, upon request, with copies of all available plans, specifications, drawings, surveys, title work, zoning reports, and other information regarding taxes and other related expenses at the Property over the past two (2) years, if available.

2. At Closing, Sellers shall join in the execution of any and all documents necessary to fulfill the conditions precedent set forth above.
3. Purchaser may, through its agents, servants, employees, and engineers, at its sole expense, enter into and upon the Property to inspect it, for the making of such surveys, maps, drawings, and the collection of engineering data including an environmental site assessment as it may in its sole discretion require during the period of this Agreement; provided, however, that Purchaser shall cause no substantial or material damage to the Property, and the Property shall be restored by Purchaser to its substantial similar condition after the examination surveys, etc., are completed, except for the usual and ordinary changes caused by such inspections and test.

M. MISCELLANEOUS:

1. This Agreement constitutes the entire Agreement of the parties, and there are no representations, oral or written that have not been incorporated herein.
2. Time is of the essence in all provisions of this Agreement.
3. All of the provisions of this Agreement shall survive the Closing.

N. CLOSING/COSTS: This Agreement shall be performed and the transaction closed on or before September 28, 2012. Sellers will pay for and provide a general warranty deed and pay for or furnish Purchaser with an updated abstract of title. Purchaser may select the closing attorney and agrees to pay the attorney's fee and for title insurance or a title opinion as well as document recording fees.

O. SELLERS' REPRESENTATIONS AND WARRANTIES: In addition to any other representations, warranties and certification of Sellers as set forth in this Agreement, Seller hereby warrants and certifies as follows:

1. All statements made herein are true and correct and the information to be provided by Seller to Purchaser pursuant to this Agreement and relating to the Property does not and will not contain any statement, which at the time and in light of the circumstances under which it was made, is false or misleading with respect to any material fact or fails to state any material fact (that is known) necessary in order to make any statement contained therein not false or misleading in any material respect.
2. Sellers shall immediately notify Purchaser of any material change in respect to the Property, or any information heretofore or hereafter furnished to Sellers in respect to the Property including, but not limited to the title insurance commitment hereunder.

3. Sellers have full right, power, and authority to execute, deliver, and to perform this Agreement without obtaining any consensus or approvals from, or the taking of any other actions with respect to, any third parties, as described herein (or if any such consensus, approvals, or other actions are required, the same will be accomplished prior to the closing date). This Agreement, when executed and delivered by Sellers and Purchaser, will constitute the valid and binding Agreement of Sellers and Purchaser enforceable against Sellers and Purchaser in accordance with its terms.
4. There is no pending condemnation or similar proceeding affecting the Property or any portion thereof or access thereto, not does Seller have any knowledge that any such action is presently contemplated.
5. Said Property includes all oil, gas, mineral rights, buildings, improvements, easements, privileges, and appurtenances, if any, thereunto belonging to Sellers.

P. PURCHASER'S REPRESENTATIONS, WARRANTIES AND CERTIFICATIONS: In addition to any other representation, warranty and certification of Purchaser, as set forth in this Agreement, Purchaser hereby represents, warrants, and certifies that:

1. Purchaser is a validly existing entity in good standing and with full authority to execute this Agreement.
2. Purchaser has the full right, power and authority to execute, deliver, and perform this Agreement without obtaining any consensus, approvals from, or the taking of any other actions with respect to any third parties (or if any such consensus, approvals, or other actions are required, the same will be accomplished prior to the closing date). This Agreement, when executed and delivered by Seller and Purchaser, will constitute the valid and binding Agreement of Seller and Purchaser enforceable against Seller and Purchaser in accordance with its terms.

Q. NOTICES: Any notices provided for herein shall be in writing and shall be delivered by overnight delivery service, postage prepaid, addressed to the parties as follows:

If to Seller:

Tyler Batchelor
2215 Red Bank Road SE
Decatur, AL 35603

If to Purchaser:

Herman Marks
City of Decatur Legal Department
402 Lee St NE
Decatur, AL 35601

- R. **EFFECTIVE DATE:** This Agreement has an Effective Date as of the later date of signature or execution, as shown herein, and must be signed by all parties.
- S. **SUCCESSORS IN INTEREST:** To the extent applicable, this Agreement inures to the benefit of any heirs, successors or assigns.

IN WITNESS WHEREOF, intending to be legally bound, the parties hereto have executed this Agreement on the date set forth above.

PURCHASER:

**CITY OF DECATUR, ALABAMA,
A MUNICIPAL CORPORATION,**

Attest:

**Mayor
City of Decatur, Alabama**

**City Clerk
City of Decatur, Alabama**

STATE OF ALABAMA)
COUNTY OF MORGAN)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that the Mayor of the City of Decatur whose name is signed to the foregoing instrument, and the City Clerk of the City of Decatur whose name is signed to the foregoing instrument, both of whom being known to me, acknowledged before me on this day that , being informed of the contents of the instrument, they, in their respective capacities as mayor of the City of Decatur and City Clerk of the City of Decatur, executed the same voluntarily for and as the act of the City of Decatur, Alabama, a municipal corporation, the day the same bears date.

Given under my hand and seal this the _____ day of _____,
 20_____.

Notary Public

My Commission Expires: _____

SELLERS

Tyler R. Batchelor

Keith O. Holdbrooks

STATE OF ALABAMA)
COUNTY OF MORGAN)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that **Tyler R. Batchelor**, whose name is signed to the foregoing instrument, being known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and seal this the _____ day of _____,
20____.

Notary Public

My Commission Expires: _____

STATE OF ALABAMA)
COUNTY OF MORGAN)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that **Keith O. Holdbrooks**, whose name is signed to the foregoing instrument, being

known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and seal this the _____ day of _____,
20_____.

Notary Public

My Commission Expires: _____

BEGIN AT THE SOUTHEAST CORNER OF THE NORTHWEST ¼ OF SECTION 17, TOWNSHIP 6 SOUTH, RANGE 4 WEST, DECATUR, MORGAN COUNTY, ALABAMA AND RUN THENCE N 89°24'00" W A DISTANCE OF 230.50 FEET TO A POINT; THENCE N 03°01'49" W A DISTANCE OF 39.10 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY MARGIN OF MILL ROAD (80' RIGHT-OF-WAY); THENCE N 03°01'49" W A DISTANCE OF 565.00 FEET TO A POINT ; THENCE N 08°05'49" W A DISTANCE OF 371.40 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY MARGIN OF WHITTEN LANE (50' RIGHT-OF-WAY); THENCE N 08°05'49" W A DISTANCE OF 50.64 FEET TO THE TRUE POINT OF BEGINNING OF THE TRACT HEREIN DESCRIBED; THENCE FROM THE TRUE POINT OF BEGINNING N 88°58'49" W A DISTANCE OF 464.66 FEET TO AN IRON PIN; THENCE N 00°21'11" E A DISTANCE OF 609.37 FEET TO A POINT; THENCE S 88°58'49" E A DISTANCE OF 373.97 FEET TO A POINT; THENCE S 08°05'49" E A DISTANCE OF 617.13 FEET TO THE TRUE POINT OF BEGINNING, LYING AND BEING WITHIN SECTION 17, TOWNSHIP 6 SOUTH RANGE 4 WEST, MORGAN COUNTY, ALABAMA, AND CONTAINNG 5.87 ACRES, MORE OR LESS.

BEGIN AT THE SOUTHEAST CORNER OF THE NORTHWEST ¼ OF SECTION 17, TOWNSHIP 6 SOUTH, RANGE 4 WEST, DECATUR, MORGAN COUNTY, ALABAMA AND RUN THENCE N 89°24'00" W A DISTANCE OF 230.50 FEET TO A POINT; THENCE N 03°01'49" W A DISTANCE OF 39.10 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY MARGIN OF MILL ROAD (80' RIGHT-OF-WAY); THENCE N 03°01'49" W A DISTANCE OF 565.00 FEET TO A POINT ; THENCE N 08°05'49" W A DISTANCE OF 371.40 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY MARGIN OF WHITTEN LANE (50' RIGHT-OF-WAY); THENCE N 08°05'49" W A DISTANCE OF 50.64 FEET TO A POINT; THENCE N 88°58'49" W A DISTANCE OF 464.66 FEET TO AN IRON PIN; THENCE N 00°21'11" E A DISTANCE OF 609.37 FEET TO A POINT; THENCE N 88°58'49" W A DISTANCE OF 73.00 FEET TO THE TRUE POINT OF BEGINNING OF THE TRACT HEREIN DESCRIBED; THENCE FROM THE TRUE POINT OF BEGINNING CONTINUE N 88°58'49" W A DISTANCE OF 442.00 FEET TO A POINT; THENCE N 00°21'11" E A DISTANCE OF 365.02 FEET TO A POINT; THENCE S 88°58'49" E A DISTANCE OF 442.00 FEET TO A POINT; THENCE S 00°21'11" W A DISTANCE OF 365.02 FEET TO THE TRUE POINT OF BEGINNING, LYING AND BEING WITHIN SECTION 17, TOWNSHIP 6 SOUTH RANGE 4 WEST, MORGAN COUNTY, ALABAMA, AND CONTAINNG 3.70 ACRES, MORE OR LESS.