



Huntsville, Alabama

305 Fountain Circle
Huntsville, AL 35801

Cover Memo

Meeting Type: City Council Regular Meeting **Meeting Date:** 5/8/2025

File ID: TMP-5505

Department: Urban Development

Subject:

Type of Action: Approval/Action

Resolution authorizing the Mayor to enter into an Option to Purchase Real Estate Agreement among the City of Huntsville and Joni D. Swaim, Jeri S. Kirkpatrick and Johnnie M. Swaim, for property located along Bob Wade Lane.

Resolution No.

Finance Information:

Account Number: TBD

City Cost Amount: \$20,000 Option Money

Total Cost: \$20,000 Option Money

Special Circumstances:

Grant Funded: NA

Grant Title - CFDA or granting Agency: NA

Resolution #: NA

Location: (list below)

Address: Speedway at Bob Wade Lane

District: District 1 ☐ District 2 ☐ District 3 ☐ District 4 ☐ District 5 ☐

Additional Comments:

\$20,000.00 option money

\$3,268,200.00 purchase price

RESOLUTION NO. 25-_____

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 an Option to Purchase Real Estate, by and between the City of Huntsville, an Alabama municipal corporation, and Joni D. Swaim, Jeri S. Kirkpatrick, and Johnnie M. Swaim, which said agreement is substantially in words and figures as that certain document attached hereto and identified as “Option to Purchase Real Estate between the City of Huntsville and Joni D. Swaim, Jeri S. Kirkpatrick, and Johnnie M. Swaim,” consisting of ten (10) pages including exhibits, and the effective date of May 8, 2025, appearing on the first page, together with the signature of the President or President Pro Tem of the City Council, 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 of the City of Huntsville, Alabama.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the Mayor be and he is hereby authorized to exercise the Option to Purchase Real Estate, on behalf of the City of Huntsville, with such changes as the Mayor deems desirable and necessary, including the authority to assign said document and/or the authority to execute all such documents or instruments relevant and/or relating to effect and complete the real estate transaction contemplated therein.

ADOPTED this the 8th day of May, 2025.

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

APPROVED this the 8th day of May, 2025.

Mayor of the City of Huntsville, Alabama

OPTION TO PURCHASE REAL ESTATE

This OPTION TO PURCHASE REAL ESTATE (this "Agreement") is made and entered into as of the ____ day of _____ 2025 ("Effective Date"), by and between the **City of Huntsville**, an Alabama municipal corporation (the "City" or "Purchaser"), and **Joni D. Swaim**, an unmarried woman, **Jeri S. Kirkpatrick**, a married woman, and **Johnnie M. Swaim**, an unmarried woman, **by and through Joni D. Swaim and Jeri S. Kirkpatrick, the joint agents named in her durable power of attorney** (collectively, referred to as "Owner" or "Seller").

WHEREAS, Seller is the owner of certain real estate located off of Bob Wade Lane in Huntsville, Alabama, identified by Madison County Tax Assessor records as PPINs 1973, 556925, 552095, and 27329, consisting of approximately 16.79 acres, more or less, and being more particularly described on Exhibit "A" attached hereto, together with any and all adjacent lands owned by Seller, whether by color of title, descent cast or adverse possession, together with all improvements thereon and all appurtenances, easements, rights of way, water and water rights (including but not limited to wells, canals, and reservoirs), pumps, pipes, flumes and ditches and ditch rights, water stock, ditch and/or reservoir stock or interests, royalties, development rights and credits, air rights, minerals of every kind, mineral rights, oil rights, and gas rights, and any fixtures or evidence related thereto, whether now or later used or useful in connection with, appurtenant to or related thereto, whether appropriated or unappropriated, tributary or non-tributary, and decreed or undecreed (hereinafter collectively referred to as the "Property").

WHEREAS, the City desires to obtain from Owner an exclusive option to purchase the Property.

NOW THEREFORE, in consideration of the premises, which are incorporated herein by reference, and the mutual covenants contained herein, the parties agree as follows:

1. Option. For and in consideration of Twenty Thousand Dollars (\$20,000.00) and other good and valuable consideration in hand paid to the Owner ("Option Money"), the receipt and sufficiency of which are hereby acknowledged by the Owner, the Owner hereby grants to Purchaser an exclusive right and option (the "Option") to purchase the Property at the purchase price and on the terms and conditions hereinafter set forth. The Option Money shall be non-refundable.
2. Purchase Price. The aggregate purchase price for the Property shall be THREE MILLION TWO HUNDRED SIXTY-EIGHT THOUSAND TWO HUNDRED AND 00/100 DOLLARS (\$3,268,200.00). The Purchase Price shall be paid to Owner in cash upon the delivery of the deed to the Property to Purchaser and satisfaction of all other closing conditions set forth in this Agreement.
3. Option Term; Extension. The term of the Option herein granted is for an initial period of one hundred fifty (150) days commencing on the date this Agreement is duly executed by all parties, and expiring at midnight on the 150th day thereafter (the "Initial Term"); provided

that the Purchaser may unilaterally extend the term of the Option for a period of sixty (60) days (if any, the "Extension Term") by the payment of an additional Ten Thousand and no/100 dollars (\$10,000.00) (the "Extension Payment") from the Purchaser to the Seller, but if not extended then the Option shall terminate at the end of the Initial Term. The Extension Payment shall not be applicable to the Purchase Price and shall be non-refundable. If the Option is not exercised or extended in writing prior to expiration, this Option shall automatically and without notice expire and any consideration paid therefore shall be retained by Owner, and neither party shall have any further liability or obligation hereunder.

4. Exercise of Option. Notice of election by Purchaser to exercise the Option shall be delivered to Owner in person or by a prepaid nationally recognized courier service, or mailed to Owner by certified United States mail, postage prepaid, addressed to Owner at the address given in this Option, and the same shall be deemed to have been received on the day it is delivered.

5. No Obligation to Purchase. Nothing in this Agreement is intended or shall operate to require Purchaser to purchase the Property.

6. Termination. At any time prior to the execution of this Agreement, should Purchaser determine that the Property is not feasible for the intended development project, then Purchaser shall promptly provide notice to owner to terminate this Agreement.

7. Deed. It is understood and agreed that the title herein required to be furnished at closing is fee simple good and marketable title of record, free and clear of all liens, encumbrances, and parties in possession as lessees, licensees, tenants at sufferance, or trespassers, except (i) ad valorem taxes for the current year not yet due and payable, and (ii) matters shown on the Title Commitment (defined herein) or Survey (defined herein), which are approved in writing by Purchaser (the "Permitted Exceptions"). The Property shall be conveyed by statutory warranty deed, free and clear of any and all liens and encumbrances, except for the Permitted Exceptions (the "Deed"). The Deed shall include both the attached legal description as well as the legal description determined by the Survey (described below).

8. Preliminary Title Commitment; Survey. Purchaser, at its expense, shall obtain (i) a commitment to issue an ALTA owner's policy of title insurance (the "Title Commitment") from Closing Agent (defined below) covering the Property showing any existing encumbrances affecting the Property and in whom fee simple title is currently vested, and (ii) a boundary survey of the Property prepared by a registered public land surveyor licensed by the State of Alabama, containing a metes and bounds description of the Property (the "Survey"). The legal description contained in the Survey may be used in the Deed.

9. Closing. The Deed to the Property shall be delivered, and the sale shall be closed ("Closing") at the law offices of Lanier Ford ("Closing Agent") on or within sixty (60) days after the exercise of the Option (the "Closing Date"), provided that if any encumbrances or liens which have not been approved by Purchaser remain in effect or unsatisfied, or title is otherwise not acceptable to Purchaser at that time, the sale shall be closed within thirty (30) days after title is made acceptable to Purchaser. The parties may deliver all closing documents and may deposit all

closing funds with Closing Agent on or prior to the Closing Date, such that neither party shall be required to be physically present at Closing.

10. Contingencies. This Agreement shall be contingent upon review and approval by the City Council of the City of Huntsville ("City Council").

11. Taxes. Ad valorem taxes on the Property shall be prorated as of the date of the delivery of the deed such that Owner will be responsible for any taxes due on the Property up to the Closing Date and Purchaser will be responsible for the taxes on the Property after the Closing Date.

12. Condition of Property. Purchaser is responsible for its own inspection and examination of the Property and any improvements thereon. Notwithstanding the foregoing, Owner agrees that nothing will be done to the Property which would reduce the value of the Property, or cause Purchaser to incur additional costs of developing the Property. Should Purchaser exercise its option, Owner agrees to convey the Property to Purchaser in substantially the same condition as on the date hereof. Purchaser acknowledges and agrees that Owner is conveying Property in its "AS IS" condition.

13. Closing Costs. The cost of deed preparation by Purchaser's counsel, deed tax, recording fees, and all closing costs, except for Owner's attorney's fees, shall be paid by Purchaser at Closing.

14. Title Insurance. All title insurance premiums shall be paid by Purchaser.

15. Owner's Default: In the event Owner fails to perform any provision of this Agreement, Purchaser may reaffirm this Agreement and proceed against Owner for specific performance thereof.

16. Purchaser's Default: In the event Purchaser fails to purchase the Property after exercising the Option, Owner's remedy shall be payment by Purchaser of Ten Thousand and 00/100 Dollars (\$10,000.00) in liquidated damages in addition to the Option Money and the Extension Payment, if any. The parties acknowledge that Owner's damages in the event Purchaser does not close are difficult to ascertain, but that \$10,000.00 is deemed to be a reasonable estimate of such damages and does not constitute a penalty.

17. Assignment. Purchaser shall have the right to assign this Option or any of its rights and responsibilities hereunder at any time without the consent of Owner; and from and after the date of such assignment, the term Purchaser, as used herein shall, mean and include such assignee. Purchaser shall notify Owner in writing of any assignment and the name of the assignee.

18. Right of Entry. Upon execution of this Agreement and throughout the Initial Term and, if applicable, Extended Term, Purchaser and its agents are hereby granted the right to enter onto, over, through, across and from the Property from time to time for the purpose of making any general inspections, explorations, tests and surveys as the Purchaser may desire, or for the purpose of engaging in any other general property evaluation and assessment activities which Purchaser

deems appropriate, including, without limitation, surveys, soil borings, soil tests, subsurface drillings, subsurface condition evaluations, and environmental inspections or testing (collectively, referred to as the "Reports"). Provided, however, that Purchaser and its agents or representatives shall: a) not unreasonably disturb the Property; b) damage any portion of the Property or any personal property located on the same; or c) injure or otherwise cause bodily harm to Seller or their licensees. All such investigations, testing and evaluations shall be undertaken only after Purchaser has provided reasonable notice of such to Owner and shall be performed by Purchaser or its agents at Purchaser's sole cost and expense. In the event Purchaser does not elect to exercise the Option, Purchaser, at its cost, shall restore the Property to substantially the same condition as existed prior to such testing. Additionally, Purchaser shall be responsible for obtaining any necessary licenses, permits, or governmental approvals required by its inspections, if any, and all costs associated therewith. In the event that this Agreement is terminated, copies of all Reports, as referred to herein, shall be transferred to Owner.

19. Authority. Owner represents and warrants, to and for the benefit of Purchaser, that Owner has the authority to convey the Property in accordance with the terms of this Agreement and the individual(s) signing this Agreement and all documents executed or to be executed by Owner are and shall be duly authorized to sign on behalf of Owner.

20. Property Condition; No Additional Encumbrances. During the term of this Option, Owner shall not (a) sell, lease, transfer or encumber in any manner any portion of the Property, (b) construct, remove or substantially modify any improvements existing on the Property; or (c) cut or remove or sell the right to cut, remove or divert any timber, mineral deposits, soil, dirt, water or any other natural resources from or on the Property. During the term of this Option, Owner shall maintain the Property and all improvements on the Property in substantially the same condition that existed on the date of this Agreement.

21. Termination of Farming Operations. Parties acknowledged that there is an existing farm lease between Owner and Darwin Farms (Bart Darwin). If Purchaser exercises its Option to purchase under this Agreement, then Owner agrees to terminate the farm lease on or before the Closing Date. If Purchaser exercises the option to purchase, Owner shall ensure that any such farmer removes all equipment and personal property from the Property and surrenders possession of the Property to the Purchaser on or before the Closing Date.

22. Broker's Fees. Each party represents that there are no brokers' fees or real estate commissions due on account of this Agreement or the transactions contemplated hereby. Each party agrees to indemnify, defend and hold the other harmless from any claims of real estate agents or brokers claiming through the party.

23. Attorney's Fees. In the event either party initiates any lawsuit, litigation, or legal action regarding the terms of this Agreement or the Property, the prevailing party shall be entitled to collect reasonable attorney's fees and court costs.

24. Governing Law. 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 provision.

25. Entire Agreement. This Agreement contains the entire agreement between the parties with respect to the transactions provided for herein, and the parties hereto agree that no other representations have been relied on by either party.

26. Successors and Assigns. This Agreement shall be binding upon the heirs, personal representatives, successors and assigns of Owner, and inure to benefit of the successors and assigns of Purchaser.

27. Notice. All notices shall be property given only if made in writing and sent to the addresses set forth below and provided by any of the following methods: (i) hand delivery, (ii) U.S. Mail or other nationally recognized delivery service (such as FedEx or UPS), or (iii) electronic transmission, such as through email, PDF, or other similar electronic means. Such notices shall be deemed received if (i) delivered by hand, on the date of delivery, (ii) sent by U.S. Mail or national delivery service, on the date deposited with the applicable carrier, or (iii) delivered by electronic transmission, on the date the transmission is sent. Notice shall be provided to the following:

To Owner: Attn: _____

Phone: _____
Email: _____

With a copy to: Attn: _____

Phone: _____
Email: _____

To City: City of Huntsville
Attn: Shane Davis
Director of Urban & Economic Development
305 Fountain Circle
Huntsville, Alabama 35801
Phone: 256-427-5100
Email: shane.davis@huntsvilleal.gov

With a copy to: Lanier Ford Shaver & Payne, PC
Attn: Samuel H. Givhan or Katie Beasley
2101 West Clinton Avenue, Ste. 102
Huntsville, Alabama 35805
Phone: 256-535-100
Email: shg@lanierford.com
kab@lanierford.com

Any party may change its address and related contact information by providing the other parties with five (5) days' prior written notice of such new address and contact information.

28. Survival. Any terms and covenants contained in this Agreement which require the performance of either party after the Closing shall survive the closing and delivery of the deed.

29. 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 Closing Agent promptly after execution.

30. 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.

31. Effective Date. The Effective Date shall be date this Agreement has been signed by the City.

32. Recording. Purchaser may, at Purchaser's option, record this Agreement or a memorandum thereof in the Probate Office of Madison County, Alabama in order to protect Purchaser's rights herein. Upon Purchaser's request, Owner agrees to execute a recordable memorandum of this Agreement within five (5) days of such request.

33. Personal Property. Any personal property left on the Property after Closing shall be considered abandoned by Owner and Purchaser may, at Purchaser's option, remove or dispose of such personal property without being liable to Owner therefor.

34. Cooperation and Further Assurances. The parties agree to cooperate with one another and will work in good faith and will use their reasonable best efforts to complete their respective obligations hereunder. At Purchaser's request, Owner shall execute and deliver any additional documents reasonably required to carry out the transaction contemplated by this Agreement or to correct any scrivener's error contained in this Agreement or any other document executed pursuant hereto or in connection with the transaction contemplated herein. Additionally, Owner agrees to cooperate and assist Purchaser in curing any title defects affecting and/or encumbering the Property.

35. Counsel Acknowledgment. The parties all acknowledge that Purchaser's counsel, SAMUEL H. GIVHAN, and the law firm of Lanier, Ford, Shaver & Payne, P.C. (collectively "Counsel") prepared this Agreement on behalf of and in the course of his representation of Purchaser and, 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 are hereby waived. Neither the City nor Counsel have provided any tax advice to Seller regarding this transaction.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date(s) written below.

[Signatures and acknowledgments appearing on the following page(s).]

[Owner Signature Page to Option to Purchase Real Estate.]

OWNER:

By: _____
Joni D. Swaim

Witnessed:

By: _____ Date: _____

By: _____
Jeri S. Kirkpatrick

Witnessed:

By: _____ Date: _____

By: _____
Johnnie M. Swaim, by and through Joni D. Swaim, as joint agent named in her durable power of attorney

Witnessed:

By: _____ Date: _____

By: _____
Johnnie M. Swaim, by and through Jeri S. Kirkpatrick, as joint agent named in her durable power of attorney

Witnessed:

By: _____ Date: _____

[Purchaser Signature Page to Option to Purchase Real Estate.]

PURCHASER:

CITY OF HUNTSVILLE, an Alabama municipal corporation

By: _____
Tommy Battle, Mayor

Attested to:

By: _____
Shaundrika Edwards, City Clerk

Date: _____

Exhibit "A"
(Legal Description of Property)

Lot 2, according to that Final Plat of Speedway at Bob Wade Lane, as recorded in Instrument Number 2018-00080087 in the Probate Records of Madison County, Alabama.

AND ALSO:

Lot 3, according to that Final Plat of Speedway at Bob Wade Lane, as recorded in Instrument Number 2018-00080087 in the Probate Records of Madison County, Alabama.

AND ALSO:

All that part of the Northeast one-quarter of Section 36, Township 2 South, Range 1 West, Madison County, Alabama, particularly described as beginning due West 2089.24 feet and due South 20 feet from the Northwest corner of said Section 36, and further described as being on the South margin of a 40 foot right-of-way for Wade Lane; thence from the place of true beginning along the said South margin of Wade Lane due West 187.76 feet to an iron stake in the Northwest corner of 85 acre tract, which point is also the Northwest corner of 5.0 acre tract; thence along the West boundary of said 85 acre tract South 3 degrees 30 minutes East 1160.0 feet to an iron stake; thence South 87 degrees 0 minutes East along a drainage ditch 187.76 feet to an iron stake; thence North 3 degrees 30 minutes West 1166.0 feet to the place of beginning, and containing 5.0 acres, more or less.

LESS AND EXCEPT:

A part of Section 36, Township 2 South, Range 1 West of the Huntsville Meridian, identified as Tract No. 52 on Project No. ST-045-000-015 in Madison County, Alabama, and being more fully described as follows:

Beginning at a point on the western property line of the subject property having an Alabama State Plane (East Zone) coordinate value of N 1575606.29 and E 432352.06, 200.00 feet left of HNB Mainline at Station 348+97.53;

Thence along the acquired right-of-way line, along an arc 197.00 feet to the left, having a radius of 2300.00 feet, the chord of which is S 74°06'57" E for a distance of 196.94 feet, to a point on the eastern property line 200.00 feet left of HNB Mainline at Station 351+11.67;

Thence along the eastern property line S 2°44'01"E a distance of 413.90 feet to a point on the acquired right-of-way line 200.00 feet right of HNB Mainline at Station 352+18.39;

Thence along the acquired right-of-way line, along an arc 193.99 feet to the right, having a radius of 2700.00 feet, the chord of which is N 76°57'26"W for a distance of 193.94 feet, to a point on the western property line 200.00 feet right of HNB Mainline at Station 350+38.77;

Thence along the western property line N2°44'01"W a distance of 424.05 feet to a point 200.00 feet left of HNB Mainline at Station 348+97.53 and the POINT OF BEGINNING.

The above described parcel contains \pm 1.79 acres (78145.07 sq. ft.)

(The above-described legal description may be updated and/or revised to reflect the Survey.**)**