

STATE OF ALABAMA)
)
COUNTY OF BALDWIN)

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT ("Agreement") is entered into on this the _____ day of _____, 2021 (the "Effective Date"), between BALDWIN COUNTY, ALABAMA, by and through the BALDWIN COUNTY COMMISSION, a political subdivision of the State of Alabama ("Seller" and/or the "County"), and THE CITY OF ROBERTSDALE, ALABAMA, a municipal corporation ("Buyer" and/or the "City").

WHEREAS, Seller is the owner of all right, title and interest in and to that certain real property located in Baldwin County, Alabama, and more particularly described on Exhibit "A", which is attached hereto and incorporated herein by reference (the "Property"); and

WHEREAS, Seller desires to sell the Property to Buyer and Buyer desires to purchase the Property from Seller; subject to the terms and conditions contained herein.

NOW THEREFORE, FOR AND IN CONSIDERATION of the sum of Ten and No/100 Dollars (\$10.00) and the mutual promises and covenants herein contained, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer do hereby mutually covenant and agree as follows:

1. Agreement of Purchase and Sale. Subject to the terms and conditions set forth herein, Seller agrees to sell, and Buyer agrees to purchase and pay for, according to the terms set forth below, the Property which is owned by Seller and located in Baldwin County, Alabama, and more particularly described on Exhibit "A".

2. Purchase Price. Seller and Buyer agree that the purchase price for the Property shall be TWO MILLION TWO HUNDRED THOUSAND AND NO/100 (\$2,200,000.00) (the "Purchase Price"). At Closing, Buyer will pay the Purchase Price, as adjusted by credits and prorations, by wire transfer of immediately available funds.

a. **Earnest Money.** Within three (3) business days after the Effective Date of this Agreement, Buyer will deposit with _____ (the "Title Company") the sum of TWO HUNDRED THOUSAND AND NO/100 (\$200,000.00) as earnest money (the "Earnest Money") to be held during the Due Diligence Period, as defined in Paragraph 9 herein, and applied to the Purchase Price at Closing.

3. Conveyance. Seller shall convey the Property to Buyer by statutory warranty deed free of all liens and encumbrances except for the Permitted Exceptions, as defined herein; provided, however, Seller makes no representation or warranty with respect to mineral rights on the Property. Except as expressly set forth herein to the contrary, the Property shall be conveyed by Seller to Buyer "AS IS, WHERE IS, WITH ALL FAULTS" and Seller makes no representation or warranty as to the condition of the same.

4. Title Insurance.

a. Seller shall furnish to Buyer, at Buyer's expense, an owner's title insurance commitment issued by or through the Title Company insuring the Property to Buyer in an amount equal to the Purchase Price (the "Title Commitment"). Said Title Commitment shall be delivered to Buyer not later than thirty (30) days from the Effective Date of this Agreement, unless Buyer and Seller mutually agree in writing to extend said deadline.

b. In the event of any defects in Seller's title which renders it unmarketable, Buyer shall notify Seller in writing on or before the fifteenth (15th) day before expiration of the Due Diligence Period of any such defects and, thereafter, Seller shall have thirty (30) days within which Seller may, at Seller's option, perfect title or cure such defects in the title. In the event Seller is unable or unwilling to cure any defect in the title to the Property, then notwithstanding anything in this Agreement to the contrary, Buyer may either (i) elect to rescind this Agreement, in which case Seller shall refund the Earnest Money to Buyer and the parties shall have no further liability hereunder; (ii) elect to accept the defect in title and close on the acquisition of the Property with said defect(s); or (iii) elect to undertake to cure the defect themselves at Buyer's expense in which case Seller will reasonably cooperate with Buyer's effort and extend this Agreement for a reasonable time under the circumstances. All alleged defects approved by Buyer or subsequently waived shall hereinafter be deemed to be Permitted Exceptions.

5. Permitted Exceptions. The Property shall be conveyed to Buyer subject to all ad valorem taxes and assessments for the then current year and all subsequent years thereafter, all easements, restrictions, reservations, rights-of-way and other matters of record in the Probate Office of Baldwin County, Alabama, all zoning ordinances pertaining to the Property, all mineral and mining rights not owned by Seller, any matters revealed by the Title Commitment in accordance with Paragraph 4b, restrictions on sale of the property by Buyer, reservations of use as an emergency management support facility in accordance with Paragraph 12, and any restrictions on use or sale due to compliance with federal, state or local law in accordance with Paragraph 11 (collectively, the "Permitted Exceptions").

6. Closing. The Closing will be held at the office of the Title Company on _____, 2021, unless the parties agree otherwise. Closing may be held at such other place or such earlier time and date as Seller and Buyer may mutually approve.

7. Closing Costs. Seller will pay (a) one-half (1/2) of any escrow fee which may be charged by the Title Company, (b) one-half (1/2) of the premium for an owner's title policy, and (c) the costs of curing all title objections for which Seller is responsible under this Agreement. Buyer will pay (a) one-half (1/2) of any escrow fees charged by the Title Company, (b) one-half (1/2) of the premium for an owner's title policy, (c) all applicable transfer taxes, if any, documentary stamp taxes and similar charges relating to the transfer of the Property, (d) the fees for recording the statutory warranty deed, if any, (e) the premium for any owner's title policy and endorsements obtained by Buyer at Closing, (f) the cost of Buyer's inspections of the Property, and

(g) the cost of the any survey of the Property that Buyer may obtain. Buyer and Seller will each be responsible for its own attorneys' fees.

8. Prorations. All valorem taxes, rents and other items of income and expense applicable to the Property shall be prorated between Buyer and Seller as of 11:59 p.m. on the date prior to Closing. If, on such date, the rate of taxes or amount of assessment is undetermined, such taxes shall be prorated on the basis of the rate or amount applicable for the next preceding year and promptly re-prorated upon issuance of final bills therefor.

9. Due Diligence. Buyer shall have shall have a period of ninety (90) days following the Effective Date of this Agreement ("Due Diligence Period") within which it shall conduct or perform such examinations of the Property and make such appraisals, surveys, and other non-invasive tests or inspections, including, but not limited to, soil tests, borings, engineering studies, environmental studies, feasibility studies, topographical surveys, drainage plans, marketing studies, financial studies, utility availability investigations, Buyer's ability to obtain building permits, and all other required permits or licenses and any approvals deemed necessary or important to Buyer to determine the suitability of the Property for the purposes of the Buyer, provided said tests shall not be so exercised as to damage the Property materially or to interfere substantially with the use or occupancy by Seller. Seller hereby grants to Buyer and its agents, representatives or assigns a license to enter onto the Property during the Due Diligence Period and to Buyer agrees to indemnify and hold Seller harmless against loss or damage from claims made by third parties resulting from Buyer's conduct of its tests and investigations on the Property. In the event the Buyer determines that any of the aforementioned examinations, inspections, investigations, surveys or tests conducted hereunder are not acceptable or that the Property is not suitable for the purposes of the Buyer for any reason, Buyer shall have the right to terminate this Agreement. In the event Buyer so elects to terminate this Agreement, Buyer shall deliver written notice of such termination to Seller prior to expiration of the Due Diligence Period upon which all Earnest Money deposited hereunder shall be immediately returned to the Buyer and the parties shall have no further rights, duties or obligations hereunder. The Earnest Money shall become non-refundable to Buyer upon expiration of the Due Diligence Period.

10. Provision of Existing Information. Seller shall provide to Buyer within ten (10) days from the effective date of this Agreement, unless Buyer and Seller mutually agree in writing to extend the deadline for compliance, any and all existing feasibility studies, existing surveys, title policies, environmental studies, reports and data, soil and other engineering studies, and the like and all governmental permits, licenses, certificates, and other approvals in Seller's possession or control regarding the Property.

11. Compliance. This Agreement shall be subject to all federal, state and local laws, rules and regulations. The parties acknowledge that the some or all of the improvements on the Property were constructed using federal financial assistance, including funds available through Federal Emergency Management Agency ("FEMA") and/or other funding assistance. The parties therefore agree that this Agreement shall be subject to and conditioned upon compliance with all applicable laws, rules and regulations, including, but not limited to Title 44, Code of Federal Regulations, Chapter 1, in order to maintain compliance with such federal, state and local laws, rules and regulations.

12. Use of Property as Shelter. The City acknowledges and agrees that, prior to the Effective Date, the Property has been made available to the public as a shelter and emergency management support facility (“EMSf”) at the request of the County. The City agrees and covenants that the Property will continue to be made available as an EMSf upon request by the County and without restriction. Any and all furnishings and personal property kept within the Coliseum shall be mobile and/or easily removable in nature pursuant to the respective guidelines established by FEMA. The City shall be responsible for paying all costs associated with its use of any emergency generators located on the Property; provided, however, that any costs incurred during times when the County or the public occupies the Property as an EMSf shall be reimbursed by the County following a proper accounting of the same. The City hereby grants a non-exclusive easement to the County for the testing, maintenance, and replacement of emergency generators serving the Property and any costs associated therewith. The County agrees that it shall return the Property to its prior condition, reasonable wear and tear excepted, upon the conclusion of its use as an EMSf. Buyer’s covenant to continue use of the Property as an EMSf, pursuant to the terms and conditions set forth above, shall be evidenced by a reverter clause and easement in favor of the Seller and shall be a permitted exception in the conveyance from Seller to Buyer.

13. Government Approvals.

a. Approval by County Commission. Seller’s obligations under this Agreement are expressly conditioned on and subject to approval and appropriation of the sale of the Property by the Baldwin County Commission. In the event the sale of the Property is not approved by the Baldwin County Commission, then Seller shall have the right, in its sole discretion, to terminate this Agreement. In the event Seller so elects to terminate this Agreement, Seller shall deliver written notice of such termination to Buyer prior to the expiration of the Due Diligence Period upon which all Earnest Money deposited hereunder shall be immediately returned to the Buyer and the parties shall have no further rights, duties or obligations hereunder.

b. Approval by City Council. Buyer’s obligations under this Agreement are expressly conditioned on and subject to approval and appropriation of the purchase of the Property by the City Council of the City of Robertsdale. In the event the purchase of the Property is not approved by the State of Alabama or the City Council, or should the State of Alabama and the City Council not appropriate sufficient funds to the purchase of the Property, then Buyer shall have the right, in its sole discretion, to terminate this Agreement. In the event Buyer so elects to terminate this Agreement, Buyer shall deliver written notice of such termination to Seller prior to the expiration of the Due Diligence Period upon which all Earnest Money deposited hereunder shall be immediately returned to the Buyer and the parties shall have no further rights, duties or obligations hereunder.

14. Cattle and Fair Lease. On September 29, 2008, Seller, as lessor, entered into that certain Real Estate Lease with Baldwin County Cattle & Fair Association, Inc., as lessee, pursuant to which Baldwin County Cattle & Fair Association, Inc., leased the improvements on the Property including the finished areas of the coliseum and arena from Seller for a five (5) year term which is set to expire on September 30, 2022 (the “Cattle and Fair Lease”). A true and correct copy of

the Cattle and Fair Lease is attached hereto as Exhibit "B". At Closing, Seller shall execute an Assignment of the Cattle and Fair Lease in substantially the form attached hereto as Exhibit "C" wherein Seller assigns all of its rights, duties and obligations under the Cattle and Fair Lease to Buyer, and Buyer accepts the same and assumes all of Seller's rights, duties and obligations thereunder. Seller agrees to deliver possession of the Property to Buyer on the Closing date subject to the rights of Baldwin County Cattle & Fair Association, Inc. pursuant to the terms of the Lease.

15. County Fair. The City acknowledges that the Property has been used to host annual county fairs for many years prior to this agreement. For a period of twenty (20) years from the Effective Date of this Agreement, the City agrees that it will allow the Property to be used to host one (1) county fair per calendar year, for said twenty (20) years, in a manner that is substantially similar to its use during previous county fairs. As consideration for this agreement, the County will pay the City the sum of ONE HUNDRED TEN THOUSAND AND NO/100 (\$110,000.00) within sixty (60) days of the conclusion of each annual county fair. Such payments will continue for twenty (20) years unless (i) the Property is not used to host an annual county fair, or (ii) the County determines in its sole and absolute discretion that the Property is not being used to host an annual county fair in a manner that is substantially similar to its use during previous county fairs.

16. Seller's Representations and Warranties. Seller hereby represents, warrants and covenants unto Buyer as follows:

a. Seller has good and marketable fee simple absolute title to the Property free and clear of all easements, restrictions, conditions, reservations, liens, claims or other encumbrances, other than those deemed Permitted Exceptions as provided herein.

b. Seller has the full right, power, and authority to enter into this Agreement and to cause the same to create a legal and binding obligation of Seller.

c. With the exception of the Cattle and Fair Lease, there are no oral or written lease, agreement, or Agreement to which Seller is a party in *any way* affecting or related to the Property and there are no persons possessing or having rights of possession to the Property or any portion thereof other than Seller.

d. The Property is not the subject of any representation or outstanding agreement with any party pursuant to which any such party may acquire an interest therein;

e. Seller has received no notice of taking or condemnation, actual or proposed, with respect to the Property or any portion thereof;

f. There is no pending or contemplated claim, litigation, condemnation, administrative action, or other legal proceeding involving or affecting any portion of the Property or Seller's use, possession or ownership of the same.

g. With the exception of persons in possession of the Property pursuant to the Cattle and Fair Lease, there are no parties in possession of any portion of the Property as lessees, tenants at sufferance, trespassers or otherwise;

h. There has been no material or labor furnished for the Property for which payment has not been made, and there are no mechanic's or materialmen's claims of nonpayment or claims of liens by any contractors, subcontractors, suppliers, mechanics, materialmen or artisans with respect to any work performed on or materials furnished to the Property;

i. Between the date hereof and the closing date, Seller shall not sell, transfer, convey or mortgage the Property, or any part thereof, or take any other action, or permit any action to be taken by any other person, that might affect title to the Property or otherwise impair the value of the Property to Buyer;

j. All general real estate and ad valorem taxes assessed or imposed against the Property have been paid prior to closing (excepting only ad valorem taxes for the year in which the closing hereunder occurs that have not been billed prior to the closing date), and Seller shall furnish evidence of such payment to Buyer and the title company selected by Buyer. There are no proposed unusual changes in the real estate taxes applicable to the Property, and no special assessments exist, have been levied or are contemplated or pending against the Property;

All of the foregoing representations and warranties shall be deemed to be true as of the date hereof and shall be true on the Closing date and shall survive Closing. In the event that any of the foregoing representations or warranties should not be true during the period commencing on the date hereof and ending on the Closing date, Seller agrees to perform such actions as may be necessary to cure such defects prior to the Closing date.

17. Buyer's Post-Closing Covenants After closing, Buyer agrees and covenants that Seller shall be entitled to utilize the Property, at no cost to Seller, for ten (10) days in a calendar year, which are not required to be consecutive days. Buyer further agrees and covenants that, after Closing, it will not sell, lease, or otherwise alienate the Property without the express written approval of Seller, which Seller may grant or deny in its sole and absolute discretion. This covenant shall be evidenced by a reverter clause in favor of the Seller and shall be a permitted exception in the conveyance from Seller to Buyer.

18. Seller's Default. Upon a default by Seller, Buyer will be entitled, as its sole remedy, to receive the return of the Earnest Money, which will operate to terminate this Agreement and release Seller from any and all liability thereunder, such sum being agreed upon by the parties as liquidated damages and not a penalty, and Buyer waives any claims for damages against Seller. In the event Buyer should fail to consummate the transaction contemplated herein for any reason after expiration of the Due Diligence Period except default by Seller, or should Buyer fail to timely deposit with Seller any amounts required herein, Seller may, at Seller's option, terminate this Agreement and retain the Earnest Money which will operate to terminate this Agreement and release Seller from any and all liability thereunder, such sum being agreed upon by the parties as liquidated damages and not a penalty, and Seller waives any claims for damages against Buyer.

19. Agency Disclosure. Seller and Buyer warrant and represent unto each other that no realtors or brokers have been involved with either the Seller's decision to sell this Property or the Buyer's decision to purchase this Property.

20. Notice and Approval. All notices required or permitted to be given hereunder shall be in writing and shall be delivered to the parties at the following addresses:

If to Seller:

Baldwin County Commission
Attn: Chairman
312 Courthouse Square, Suite 12
Bay Minette, AL 36507

If to Buyer:

City of Robertsedale
Attn: Mayor
P.O. Box 429
Robertsedale, AL 36567

Notice shall be deemed to be served upon deposit in an office of the United States Postal Service, or successor governmental agency, registered or certified mail, return receipt requested, or upon receipt by a reputable overnight courier service (such as Federal Express), receipt requested, or by facsimile during regular business hours at the fax numbers set forth above.

21. Miscellaneous.

a. No Coercive Action. Seller expressly acknowledges that it is entering into this Agreement on its own accord and free will and is not entering into this Agreement as the result of any coercive action, whether by exercise of eminent domain powers or otherwise, by Buyer or any other entity.

b. Assignment. No assignment of this Agreement or any right or duty accruing under this agreement shall be made, in whole or in part, by either party, without the prior written consent of the other party, which consent shall not be unreasonably withheld.

c. Binding Effect. This Agreement shall inure to the benefit of, and shall be binding upon, each of the parties hereto, and their respective heirs, personal representatives, successors and assigns.

d. Survival. Each and every provision of this Agreement shall survive the closing and shall not be nullified or affected by the Closing.

e. Severability. If any part or parts of this Agreement shall be held unenforceable for any reason, the remainder of this Agreement shall continue in full force and effect. If any provision of this Agreement is deemed invalid or unenforceable by any court of competent jurisdiction, and if limiting such provision would make the provision valid, then such provision shall be deemed to be construed as so limited.

f. Time of the Essence -- Time is of the essence as to all matters covered in this Contract.

g. Attorney's Fees. Notwithstanding anything contained herein to the contrary, should either the Buyer or the Seller employ an attorney or attorneys to enforce any of the terms and conditions hereof, or to protect any right, title, or interest created or evidenced hereby, or to recover damages for the breach of the terms and conditions hereof, or to respond to any matter raised by the other party, the non-prevailing party in any such action shall pay to the prevailing party all reasonable costs, damages, and expenses, including reasonable attorneys' fees, expended or incurred by the prevailing party.

h. Entire Agreement. This Agreement and the documents referred to in this Agreement constitute the entire agreement between the parties and supersedes any prior contracts or agreements, and there are no other conditions, covenants or agreements which shall be binding between the parties.

i. Rule of Construction. The parties hereto acknowledge that each party and its counsel have had the opportunity to review and revise this Contract, and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

j. Governing Law; Venue. This Agreement shall be deemed to have been made in the State of Alabama, and the validity of the same, its construction, interpretation, enforcement and the rights of the parties hereunder, shall be determined under, governed by and construed in accordance with the substantive laws of the State of Alabama, without giving effect to any choice of law provisions arising thereunder. The proper venue for any action arising hereunder or relating to the subject matter of this Agreement shall lie solely in Baldwin County, Alabama.

(Signature Pages Follow)

IN WITNESS WHEREOF, Seller and Buyer have hereunto set their hands and seals, by and through their duly authorized representatives, on the date and year set forth below.

SELLER:

BALDWIN COUNTY COMMISSION

By: Joe Davis, III
Its: Chairman

ATTEST:

WAYNE DYESS
County Administrator

STATE OF ALABAMA
COUNTY OF BALDWIN

I, _____, a Notary Public, in and for said County in said State, hereby certify that JOE DAVIS, III, whose name as Chairman of the Baldwin County Commission, and WAYNE DYESS, whose name as County Administrator, are signed to the foregoing instrument and who are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they, as such officers and with full authority, executed the same voluntarily for and as the act of said county commission.

Given under my hand and seal this _____ day of _____, 2021.

Notary Public, Baldwin County, Alabama
My Commission Expires: _____

BUYER:

CITY OF ROBERTSDALE, ALABAMA

By: Charles Murphy
Its: Mayor

ATTEST:

Shannon Burkett
Clerk

STATE OF ALABAMA
COUNTY OF BALDWIN

I, _____, a Notary Public, in and for said County in said State, hereby certify that CHARLES MURPHY, whose name as Mayor of the City of Robertsdale, Alabama, and SHANNON BURKETT, whose name as City Clerk, are signed to the foregoing instrument and who are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they, as such officers and with full authority, executed the same voluntarily for and as the act of said county commission.

Given under my hand and seal this _____ day of _____, 2021.

Notary Public, Baldwin County, Alabama
My Commission Expires:_____