

**MINUTES OF THE SPECIAL MEETING OF THE  
CITY COUNCIL OF THE CITY OF MOUNTAIN BROOK  
NOVEMBER 9, 2023**

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[As a convenience, members of the public were invited to listen and observe in the public meeting by Internet video conference. There were no virtual attendees at the meeting.]

The City Council of the City of Mountain Brook, Alabama met in person at 11:47 a.m. on the 9th day of November, 2023 (others were invited to listen to the meeting by way of Internet video conference—no one attended). Council President Virginia Smith called the meeting to order and the roll was called with the following results:

Present: Virginia Smith, Council President  
William S. Pritchard III, Council President Pro Tempore  
Stewart Welch III, Mayor  
Gerald A. Garner  
Lloyd C. Shelton  
Graham L. Smith

Absent:

Also present were City Attorney Whit Colvin, City Manager Sam Gaston, and City Clerk Heather Richards.

Council President Virginia Smith stated that a quorum was present and that the meeting was open.

**1. EXECUTIVE SESSION**

Council President Pro Tempore made a motion that the City Council convenes in executive session to discuss matters of good name and character and that the City Council shall reconvene upon conclusion of the executive session to the special council meeting. The City Attorney certified that the subject matters were allowed to be discussed in executive pursuant to Alabama Law. The motion was seconded by Council Member Graham Smith. Then, upon the question being put and the roll called, the vote was recorded as follows:

Ayes: Virginia C. Smith  
William S. Pritchard III  
Graham L. Smith  
Lloyd C. Shelton  
Gerald A. Garner

Nays: None

**2. CONSIDERATION: RESOLUTION NO. 2023-185 EXECUTING A PURCHASE AND SALE AGREEMENT WITH ALABAMA VETERANS MEMORIAL FOUNDATION INC. (EXHIBIT 1, APPENDIX 1)**

Stewart Welch-Mayor

- The Alabama Veterans Memorial Foundation donated the 22 acre memorial park to the City

- Honored the Foundation entrusted the City with the responsibility of preserving the memorial of our fallen Alabama Veterans
- Wants to make the Alabama Veterans Park a signature park within the city
- This park will become the 8<sup>th</sup> park in Mountain Brook

Council Member Gerald Garner made a motion to approve the resolution executing a Purchase and Sale Agreement with Alabama Veterans Memorial Foundation Inc. The motion was seconded by Council President Pro Tempore Pritchard. Thereupon, Council President Virginia Smith called for vote with the following results:

Ayes: Virginia C. Smith  
William S. ("Billy") Pritchard III  
Gerald A. Garner  
Lloyd C. Shelton  
Graham L. Smith

Nays: None

Council President Virginia Smith declared Resolution (No. 2023-185) is hereby adopted by a vote of 5—0 (Exhibit 1, Appendix 1)

**3. COMMENTS FROM RESIDENTS AND ATTENDEES**

(There were no public comments)

**4. ANNOUNCEMENT**


The next regular meeting of the City Council is November 13, 2023 at 7:00 p.m.

**5. ADJOURNMENT**

There being no further business to come before the City Council, Council President Virginia Smith adjourned the special meeting at approximately 12:03 p.m.

**6. CERTIFICATION**

I, Heather Richards, City Clerk of the City of Mountain Brook, Alabama, certify the above is a true and correct transcript of the special meeting of the City Council of the City of Mountain Brook, Alabama held at City Hall, Council Chamber (Room A-108) on November 9, 2023, and that the meeting was duly called and held in all respects in accordance with the laws of the State of Alabama and bylaws of the City and that a quorum was present.

  
City Clerk Approved by  
City Council November 27, 2023

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**EXHIBIT 1**

**RESOLUTION NO. 2023-185**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby authorizes either the Mayor or City Manager to execute the Purchase and Sale Agreement, in the form as attached hereto as Exhibit A, between the City and Alabama Veterans Memorial Foundation Inc.

**APPENDIX 1**

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STATE OF ALABAMA

JEFFERSON COUNTY

PURCHASE AND SALE AGREEMENT

THIS AGREEMENT ("the Agreement"), is hereby made and entered into as of the 9th day of November 2023 by and between the ALABAMA VETERANS MEMORIAL FOUNDATION, INC, a non-profit corporation organized under the laws of the State of Alabama (hereinafter referred to as "Foundation"), and the CITY OF MOUNTAIN BROOK, ALABAMA, a municipal corporation organized under the laws of the State of Alabama (hereinafter referred to as "City").

RECITALS:

WHEREAS, the Foundation owns a tract of land consisting of approximately twenty-two (22) acres, more or less, situated at the Alabama Veterans Memorial Park in the City of Birmingham, Jefferson County, Alabama, more particularly described in Section 2 below (hereinafter referred to as "Property"); and

WHEREAS, Foundation wishes to convey the Property to City on terms, provisions and conditions set forth in this Agreement so that it may be properly maintained, improved and used as a memorial park for Veterans for generations to come; and

WHEREAS, the City wishes to receive the Property and to maintain, improve, and use it for the purposes intended on the terms, provisions, and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the premises, the mutual covenants hereinafter contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, Foundation and City hereby mutually covenant and agree as follows:

1. **CONVEYANCE.** For and in consideration of One and No/100 Dollars (\$1.00) in hand paid by City to Foundation, the agreement to assume the cost of maintenance of the Property and the other commitments set forth in this agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Foundation, the Foundation agrees to convey and City agrees to accept the Property on the terms, provisions and conditions hereinafter set forth.

2. **PROPERTY.** The Property is situated at 100 Overton Access Rd (I-459 Exit 23) in the City of Birmingham, Jefferson County, Alabama and consists of approximately twenty-two (22) acres more or less, as is generally shown on the site plan attached as Exhibit A. The Property is presently used by the Foundation as the Alabama Veterans Memorial Park.

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a summons, citation, directive, letter or other communication, written or oral, from any governmental authority as to any of the above environmental concerns.

10. **CONDITION OF PROPERTY:** City acknowledges and agrees that:

A. Foundation has not made and does not make any covenant, representation of warranty, either expressed or implied, regarding the physical condition of the Property or any portion thereof, the suitability of the Property for any particular purpose or use whatsoever, utility availability for the Property, whether the Property is subject to surface or subsurface contamination by toxic or hazardous waste or with respect to any other matters affecting the Property or City's contemplated use thereof;

B. City has been given the absolute and unfettered right during the Inspection Period to conduct such Inspections of the Property as City, in its sole discretion, may determine necessary in order to satisfy itself of all conditions and other aspects of the Property; and

C. City has available to it such resources, expertise, consultants and advisors so that it can make a sound and reasonable judgment as to the condition of the Property as well as to all economic conditions, suitability requirements and all other matters affecting the use, development and ownership of the Property. City acknowledges and agrees that the Property is to be sold and conveyed to, and accepted by, City in its present condition, "AS IS, WHERE IS AND WITH ALL FAULTS," and City hereby assumes the risk that adverse physical characteristics and existing conditions may have not been revealed by the Inspections.

11. **EXISTING DOCUMENTS, SURVEY AND TITLE INSURANCE:** Within ten (10) days following the Effective Date of this Agreement, the Foundation agrees to provide City copies of all existing surveys, existing title insurance policies, existing environmental reports, and other documentation in any way relating to the Property that are in the possession of the Foundation or the Foundation's agents.

12. **CLOSING COSTS:** The Closing shall be held at a place and time to be agreed upon by the parties. The City shall pay all closing costs.

13. **TAXES:** The Property is exempt from ad valorem taxes and there shall be no proration of ad valorem taxes for the Property at the Closing.

14. **ASSIGNMENT:** The City may not assign this Agreement or any of its rights hereunder without the express written consent of Foundation. Any assignment in violation of the restriction on assignment shall be void and of no force and effect.

15. **BROKER:** None.

A. **CITY:** The City is not represented in this contemplated transaction by any real estate broker/agent.

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3. **CLOSING AND CLOSING DATE.** Subject to the terms, provisions and conditions of this Agreement, the closing of the sale and purchase of the Property (the "Closing") shall occur on a date agreed upon by the parties, not more than ninety (90) days from the Effective Date. (the "Closing Date").

4. **CONVEYANCE.** Foundation agrees to convey the Property to City by general warranty deed (the "Deed") at the Closing subject to the Permitted Exceptions set forth (as herein defined). A copy of this Agreement shall be recorded at the same time as the Deed.

5. **SURVEY.** Within thirty (30) days after the Effective Date, City, at City's expense, shall cause to be prepared by a surveyor selected by City (the "Surveyor") a boundary survey of the Property (the "Survey") and shall provide a copy of the Survey to Foundation.

6. **TITLE INSURANCE.** City shall secure a title commitment (the "Title Commitment") naming City as the proposed insured on a standard form title insurance policy for the Property (the "Title Policy") subject to the following permitted exceptions (a) easements, covenants and other encumbrances of record, (b) mineral and mining rights not owned by Foundation, (c) matters that would be disclosed by a current survey of the Property.

7. **INSPECTIONS:** City, or City's representatives, shall have the right to enter the Property for the purpose of inspection of the same, and/or making boundary line and topographical surveys of the same, and/or making soil tests thereon, and/or in general observing and investigating the condition of the Property. City agrees to indemnify Foundation from and against any liability that results from City performing any of its inspections as provided herein, and such indemnity shall survive any termination of this Agreement.

8. **INSPECTION PERIOD:** City has already conducted a general inspection of the Property. City shall have a period of thirty (30) days following the Effective Date of this Agreement ("Inspection Period") to conduct such inspections as it deems appropriate to determine, either personally or through or with a representative of City's choosing, any and all conditions of the Property material to City's decision to accept the Property.

9. **ENVIRONMENTAL CONCERNS:** Foundation has no actual knowledge that the Property has in the past been used or is presently used for the handling, storage, manufacturing, refining, transportation or disposal of "toxic material", "hazardous substances" or "hazardous waste". The terms "hazardous waste", "hazardous substances" and "toxic material" include, without limitation, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances or related materials defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 USC §960, et seq.), the Hazardous Materials Transportation Act, as amended (42 USC §1801, et seq.), the Resource Conservation and Recovery Act, as amended (42 USC §9601, et seq.), the regulations adopted and publications promulgated pursuant to the foregoing and any other federal, state or local environmental law, ordinance, rule or regulation. Furthermore, Foundation has not received

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B. **FOUNDATION:** The Foundation is not represented in this contemplated transaction by any real estate broker/agent.

16. **NOTICES:** All notices and demands to be given or made hereunder shall be in writing and shall be given by (i) personal or hand delivery, (ii) nationally recognized express overnight delivery service (with charges therefor prepaid), or (iii) certified or registered mail, return receipt requested (with postage therefor prepaid). Notices shall be deemed received upon (a) receipt, if hand or personally delivered, (b) the next business day after the notice has been deposited with a nationally recognized express overnight delivery service, or (the third business day after the notice has been deposited with the United States Postal Service. Notices shall be provided to the parties at the following addresses:

**IF TO FOUNDATION:** Alabama Veterans Memorial Foundation, Inc.  
Attn: Its President  
P.O. Box 59343  
Birmingham, AL 35259

**IF TO CITY:** City of Mountain Brook  
Attn: Its City Manager  
56 Church Street  
Mountain Brook, Alabama 35213

Either party hereto may change the address to which it is to receive notice or the representative to whom notice is to be given by written notice to the other part in the manner set forth above.

17. DEFAULT AND REMEDIES:

A. In the event that Foundation shall fail to consummate the transaction as contemplated herein for any reason, this Agreement shall be deemed cancelled and terminated and, except for the indemnification obligations of City set forth herein neither party shall have any further obligation or liability to the other hereunder. City hereby expressly waives any right to seek or obtain any monetary judgment or damages against Foundation in the event of any default hereunder by Foundation and acknowledges and agrees that no other damages, rights or remedies shall be collectible, enforceable or available to City.

B. In the event that City shall fail to consummate the transaction as contemplated herein for any reason, this Agreement shall be deemed cancelled and terminated and, except for the indemnification obligations of City set forth herein neither party shall have any further obligation or liability to the other hereunder. Foundation hereby expressly waives any right to seek or obtain any monetary judgment or damages against City in the event of any default

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hereunder by City and acknowledges and agrees that no other damages, rights or remedies shall be collectible, enforceable or available to Foundation.

18. **EFFECTIVE DATE:** The "Effective Date" to be inserted on the first page of this Agreement is the date upon which this Agreement has been fully executed by Foundation and City and each of Foundation and City has received a fully executed original counterpart. The last party executing this Agreement will deliver a fully executed original counterpart to the other party by hand delivery or overnight delivery for receipt on the next succeeding business day and, in the case of hand delivery shall insert the date of delivery on the first page of all original counterparts of this Agreement, or, in the case of overnight delivery, will insert the next succeeding business day on the first page of all original counterparts of this Agreement.

19. **ADDITIONAL AGREEMENTS:** The Parties agree to the following additional terms and conditions:

- A. The name of the Park shall remain the "Alabama Veterans Memorial Park."
- B. The Property shall be used for public municipal purposes.
- C. The Veterans Memorial Area shall remain in place and shall be maintained by the City in such condition that it may be accessed, enjoyed and visited by Foundation members and guests, City residents, and by the general public. The Veterans Memorial Area is depicted on Exhibit A to this Agreement.
- D. The Veterans Memorial Area may be improved in such manner as to enhance or maintain the character of the Memorial as a monument of remembrance, respect, and appreciation of Alabama's Veterans. The Memorial Plaza, the Hall of Honor, the American Flag Plaza Structures shall remain in place and available for use by the public for their useful life and may only be replaced in the event necessary as a result of degradation, age, or obsolescence. Within the Veterans Memorial Area, the City may make improvements as and where needed for enhanced use, paths and roads may be paved or improved for access, and grounds may be improved. Trees and vegetation may be removed only to the extent necessary for safety, to remove dead, invasive, nuisance or diseased plants or trees (as recommended by the City's arborist), or to otherwise enhance the aesthetic quality of the Memorial itself.
- E. The Property may be improved for passive recreational use, including but not limited to hiking or walking trails, biking trails, outdoor viewing areas, amphitheaters, dog parks, fitness trails or other like uses, and parking related thereto. It shall not be improved for sale to any commercial interest nor shall it be used for commercial purposes, other than as may be ancillary to its primary public use. No athletic fields will be constructed on the Property.
- F. The area identified as the Allowable Improvement Area on Exhibit A may be improved with structures for municipal or school system use without limitation.

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G. Any structures constructed or improved on the Property shall be subject to advisory design review by the Mountain Brook Village Design Review Committee, which has been established by City Ordinance. The process set forth in Section 219-415 of the Mountain Brook City Code will be utilized for such review; provided, however, that the portions of the Code section requiring sign review shall not apply.

H. The Foundation shall be entitled to priority use of the Veterans Memorial Area for Veterans Day, Memorial Day, StepStones Installation events and any other events related to the use of the Memorial. The Parties will coordinate as to the dates of such use. All use by the Foundation shall be at no cost. The Foundation shall be permitted to fundraise or solicit support during all such events and shall be permitted to retain all revenue raised for Foundation purposes. The Foundation shall also be entitled to maintain signage at the entrance to the Veterans Memorial Park area describing the Foundation's purpose, which may include a solicitation of financial support or donations for the Foundation. The Foundation shall remain responsible for activities related to the Memorial itself, including brick inscription, the inscription of names on the wall, StepStone installation, and similar activities. The City will be responsible for raising and lowering the flags in the Veterans Memorial Area.

I. The Foundation shall be entitled to utilize the current building on the site or any building that may be constructed to replace the current building for business meetings, special events or otherwise in conjunction with Foundation business. The Foundation shall be afforded a locked room or secure area in which to store Foundation supplies, property, or other items. The City agrees to designate an area in said buildings for the public display of historical artifacts related to the Park, including but not limited to original photos, articles, and commemoration of events displaying the history of the Park. The Foundation shall have access to the building at all times.

J. The City shall include the Alabama Veterans Memorial Park as a City park facility in publications, on social media, in materials and online and shall promote its use in a similar manner as it does other City park facilities.

K. The Foundation will appoint a liaison who will act in an advisory capacity to the City's Park and Recreation Board as to all matters involving the Property.

## 20. MISCELLANEOUS

A. **Governing Law.** This Agreement and the rights and obligations of the parties hereto shall be governed by and construed in accordance with the laws of the State of Alabama. The jurisdiction and venue for the resolution of any dispute shall be in Jefferson County, Alabama.

B. **Binding Agreement.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

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C. **Survival.** All representations and warranties of this Agreement shall survive the Closing, as shall the agreements in paragraph 19.

D. **Time is of the Essence.** Time is of the essence of this Agreement.

E. **Waiver.** The failure of either party to exercise any rights under this Agreement shall not constitute a waiver of any right, nor excuse the other party's full performance. No express waiver of any matter shall affect any other matter under this Agreement. Express waivers are only effective if in writing.

F. **Construction of Terms.** Descriptive headings are for convenience only and shall not control or affect the meaning or construction of any provision. Any ambiguities of this Agreement shall be construed fairly and equitably regardless of the participation of either party in drafting this Agreement. The reference in terms to gender and number shall be modified as may be appropriate.

G. **Severability.** In case of any of the provisions of this Agreement shall for any reason be held invalid, illegal or unenforceable by any court of competent jurisdiction in any respect, the remaining provisions shall remain in effect and the Agreement be performed in a fair and equitable manner as to any uncertainties arising from the unenforceable provisions.

H. **Dates.** If any date provided in this Agreement falls on a Saturday, Sunday or holiday, the date shall be the next business day.

I. **Execution in Counterparts.** This Agreement may be executed simultaneously in any number of counterparts, each of which shall be an original, but all of which shall constitute but one and the same instrument.

J. **Entire Agreement.** This written Agreement contains the entire agreement between the parties, incorporating all prior agreements, and may only be amended in writing executed by both parties.

IN WITNESS WHEREOF, Foundation and City have executed this Agreement to be executed as of the date first above written.

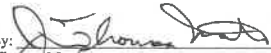
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ALABAMA VETERANS MEMORIAL FOUNDATION, INC.

ATTEST:

By:   
Thomas Martin,  
President

CITY OF MOUNTAIN BROOK, ALABAMA

ATTEST:

By:   
Virginia C. Smith  
President, City Council

  
Stewart Welch  
Mayor

STATE OF ALABAMA )

JEFFERSON COUNTY )

I, the undersigned authority, a Notary Public in and for said county in said State, hereby certify that Thomas Martin, whose name as President of the Alabama Veterans Memorial Park, Inc. is signed to the foregoing Agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, she, as such officer, and with full authority, executed the same voluntarily for and as the act of the Alabama Veterans Memorial Park, Inc.

Given under my hand and official seal, this the 9 day of November, 2023.

  
Notary Public

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STATE OF ALABAMA )

JEFFERSON COUNTY )

I, the undersigned authority, a Notary Public in and for said county in said State, hereby certify that Virginia C. Smith, whose name as President of the City Council of the City of Mountain Brook, Alabama is signed to the foregoing Agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, she, as such officer, and with full authority, executed the same voluntarily for and as the act of the City of Mountain Brook, Alabama.

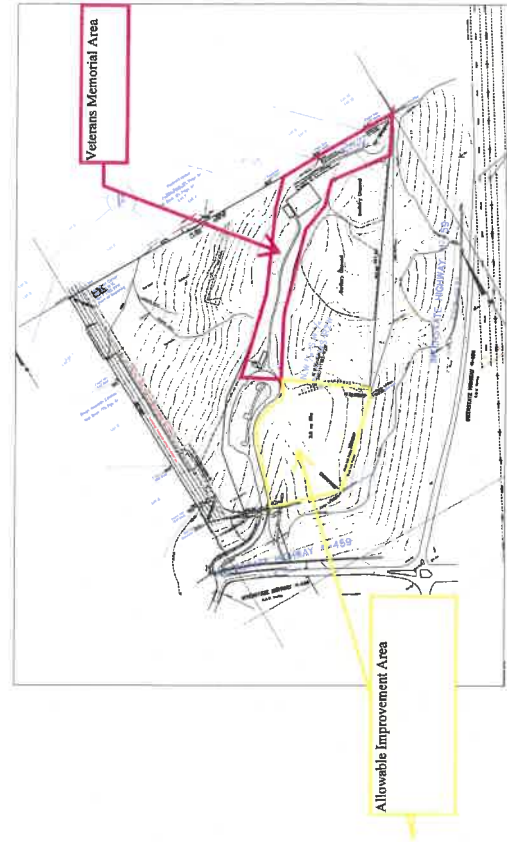
Given under my hand and official seal, this the 9th day of November, 2023.

Virginia C. Smith  
Notary Public

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EXHIBIT A



APPENDIX 1