

CONTRACT OF SALE
COF Contract No.: 2013-0033

This Agreement (“Agreement”) is made between The City of Franklin, TN, a municipal corporation organized and existing under the laws of the State of Tennessee, (“City”) and The Heritage Foundation of Franklin and Williamson County, Tennessee, a non-profit organized and existing under the laws of the State of Tennessee (“Heritage Foundation”).

WHEREAS, on July 28, 2009 the Board of Mayor and Aldermen for the City of Franklin, TN (“Board”) discussed declaring the Old, Old Jail and the Old Jail, both located on Bridge Street, as surplus property; and

WHEREAS, in July 2010 the City published notice to sell both the Old Jail and the Old, Old Jail; and

WHEREAS, on August 11, 2009, the Board passed Resolution 2009-31 declaring the Old, Old Jail and the Old Jail surplus property; and

WHEREAS, the City received one bid, submitted by Battle Ground Brewery, LLC; and

WHEREAS, on September 28, 2010 the Board voted to reject the bid from Battle Ground Brewery, LLC; and

WHEREAS, on February 8, 2013, the City received a request from the Heritage Foundation requesting to purchase the Old, Old Jail and set forth reasons why there would be no need to re-bid the property (a copy of the letter is attached as Exhibit A); and

WHEREAS, the Board believes it to be in the best interest of the City to sell the property known as the Old, Old Jail to the Heritage Foundation; and

WHEREAS, the Board believes that it is not required to re-bid the sale of the Old, Old Jail for the reasons set forth in the letter from the Heritage Foundation (Exhibit A).

NOW, THEREFORE, in consideration of these premises and the mutual promises contained herein, it is agreed by and between the parties as follows:

1. The above recitals are incorporated herein as if set forth at length.
2. Description of Property. The City agrees to sell and convey to the Heritage Foundation and the Heritage Foundation agrees to purchase, for the price and upon the terms and conditions set forth below, the property and improvements, described in Exhibit B hereto (the “Property”), located in Williamson County, Tennessee. The property is generally described as the Old Old Jail, located on Bridge Street in Franklin (Williamson county Property Assessor Map 063N, Parcel 64).
3. Purchase Price. The purchase price of the Property is TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00).
4. Title Exceptions. The Property shall be conveyed subject to the following title exceptions and no others:
 - a. Applicable building and zoning laws.

b. Encroachments, easements and other matters shown on the survey to be paid for by the Heritage Foundation which will not interfere with the Heritage Foundations's intended use of the Property.

c. Real estate taxes not yet due and payable.

5. Closing. The closing shall take place at the offices of the City of Franklin on or before June 1, 2013 or at such other time and place as may be agreed upon by the City and the Heritage Foundation. At closing, the City shall execute and deliver to the Heritage Foundation a good and valid quitclaim deed conveying title to the Property, and the Heritage Foundation shall pay the balance of the cash portion of the purchase price called for above. The City shall deliver final possession of the Property to the Heritage Foundation on the closing date.

6. Right of First Refusal. The Heritage Foundation agrees that should it decide to relocate from the Property and place the Property for sale it will grant the City a first right of refusal to purchase back the Property at or below the current appraised value.

7. Further Agreements. The parties understand that the Heritage Foundation's obligations hereunder are further contingent upon a satisfactory agreement's being reached, prior to closing, between the City and the Heritage Foundation.

8. Adjustments. The Heritage Foundation shall be responsible for the Real Estate taxes beginning the date of closing. Real estate taxes and assessments (collectively "taxes") shall be apportioned and prorated as of the end of the day preceding the closing date.

9. Costs and Expenses; Preparation of Documents. The City shall pay for deed preparation. The Heritage Foundation shall pay for transfer taxes, if any, and recording costs, if any related to this transaction. Each party shall pay for its own attorney's fees.

10. Condemnation and Casualty. If any authority having the power of eminent domain, shall commence negotiations with City or shall commence legal action against City for the damaging, taking, or acquiring of all or any part of the Property, either temporarily or permanently, in any condemnation proceeding or by exercise of the power of eminent domain, the City shall immediately give notice of the same to the Heritage Foundation. Upon the occurrence of any of the foregoing events, if it reasonably appear that such taking, damage, or destruction would materially interfere with the Heritage Foundation's intended use of the Property, the Heritage Foundation shall have the right, at its option, to terminate this Agreement by giving notice thereof to the City on or before the closing date, in which event the Heritage Foundation shall be released of all further obligations hereunder and the Deposit shall be returned. If the Heritage Foundation does not so terminate this Agreement, the purchase price shall be reduced by the total of any awards, settlement proceeds, or other proceeds received by the City at or prior to closing with respect to any taking, destruction, or damage. At the time of closing, the City shall assign to the Heritage Foundation all rights of the City in and to any unpaid awards, settlement proceeds, or other proceeds payable by reason of any such taking, destruction, or damage. In the event of any negotiations regarding the payment of any such awards or proceeds, the City will inform the Heritage Foundation of all such negotiations of which the City have notice and will permit the Heritage Foundation to take part therein.

11. The Heritage Foundation's Right to Inspect Property Before Closing. The Heritage Foundation shall have the right, before closing, at its own expense, to enter onto the Property to inspect it, to make soil test borings, environmental surveys, archaeological studies, drainage tests, and tests of the Property at the Heritage Foundation's expense concerning the presence of any

environmental hazard or any other condition of the property. In proceeding with this transaction, the Heritage Foundation is relying upon the tests and inspections conducted by its own environmental engineers and other consultants and not upon any representation of the City. If these tests and inspections disclose any condition of the Property unsatisfactory to the Heritage Foundation or that would prevent the Heritage Foundation from using the Property for the use intended, then the Heritage Foundation shall notify the City within thirty (30) days prior to the date set for closing with its intent to terminate this Agreement. The City makes no representations as to the condition of the Property and sells the Property "as is".

12. Notices. Any notice or other communication (collectively "notices") required to be given hereunder shall be in writing and delivered personally or sent by United States certified mail, return receipt requested, addressed to the parties at the following addresses:

The City of Franklin:
Eric Stuckey, City Administrator
City of Franklin
P.O. Box 305
Franklin, TN 37064

With a copy to:
Shauna R. Billingsley, City Attorney
City of Franklin
109 3rd Avenue South, Franklin, TN 37065

The Heritage Foundation:
Mary Pearce, Executive Director
The Heritage Foundation

or to such other address as either party may hereafter give the other. Notices sent by mail shall be deemed given three (3) days after mailing.

13. Offer and Acceptance. This Agreement, as executed by the party first executing it shall constitute an offer to the other party. The offeree shall accept the same, if at all, by delivering a fully executed original of this Agreement to the offer on or before 1:00 p.m. on May 1, 2013. The notice provisions hereof hereinabove notwithstanding, acceptance of this offer shall be effective only upon the actual receipt by the offer of the fully executed original. The offer, if not timely accepted as aforesaid, shall expire and be of no further force and effect at the time and date set forth in this Section. Any offer by the Heritage Foundation is subject to final approval by the Franklin Board of Mayor and Aldermen.

14. Headings. The Section headings are inserted for convenience only and are not intended to describe, interpret, define, or limit the scope or content of this Agreement or any provisions hereof.

15. Miscellaneous. All prior understanding and agreements between the parties are deemed merged herein. This Agreement may be modified only by an agreement in writing signed by the parties. This Agreement shall apply to, bind, and inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties. The effective date of this Agreement shall be

the day it is last executed by the City or the Heritage Foundation. This Agreement shall be governed by Tennessee law.

IN WITNESS WHEREOF, City and Heritage Foundation have set their hands on the day and year written beside their signatures.

CITY OF FRANKLIN

HERITAGE FOUNDATION

By: _____
Dr. Ken Moore
Mayor

By: _____
Print Name: _____
Title: _____

Date: _____

Date: _____

Attest

By: _____
Eric Stuckey
City Administrator

Approved as to Form

Approved as to Form

By: _____
Shauna R. Billingsley
City Attorney

By: _____
Bryan Echols
Counsel for the Heritage Foundation



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<http://www.dickinsonwright.com>

J. BRYAN ECHOLS
BEchols@dickinsonwright.com
(615) 620-1751

February 8, 2013

VIA EMAIL: eric.stuckey@franklintn.gov & U.S. MAIL

Mr. Eric Stuckey
Franklin City Administrator
109 Third Avenue South
Franklin, Tennessee 37064

Re: Acquisition of Old, Old Jail Property

Dear Mr. Stuckey:

The purpose of this letter is to propose a negotiated process for conveyance of the Old, Old Jail, 112 Bridge Street, Franklin, Williamson County Tax Map 63N Parcel 64 (the "Property") by the City of Franklin to The Heritage Foundation of Franklin and Williamson County, Tennessee (the "Heritage Foundation"), pursuant to the City's authority, exercised through the Board of Mayor and Aldermen, under Section 5-802(3) of the Municipal Code.

Section 5-802(3) provides that "Upon a reasonable determination that the property does not exceed \$25,000.00 in value, or that there are other unique circumstances making a public advertisement and bid procedure impossible or impracticable, then the board, by resolution, may waive the requirements of public notice, and sealed bidding, and may sell or dispose of the property in question by negotiated contract, or by other means that will adequately protect the public interest."

It is unclear whether the Property has a value of more than \$25,000, given the fact that much of the site is in the Flood Fringe Overlay and flood plain, development of the Property would potentially be more expensive due to the requirements of the Historic Overlay District, and that any reuse of the current improvements on the Property would require extensive biological remediation and restoration before any use.

However, we believe that BOMA could "reasonably determine" that there exist "other unique circumstances" that cause the bid procedure to be impracticable. These circumstances include:

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February 8, 2013
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1. The building is in an advanced state of disrepair and is not currently usable for any uses. The roof, mechanical and electrical systems are fully deteriorated beyond the ability to repair. Windows, doors and other elements of the building require major repair, and, in most cases, replacement. Lead paint, mold and asbestos are present throughout the building and present real and significant health hazards. Photos of the existing state of the building are attached as Exhibit A. The cost of bringing the building up to minimal standards, even for minimally conditioned storage, are estimated at not less than \$300,000.00 and as high as \$500,000.00.

2. If the City does nothing to stabilize the building and prevent further deterioration, this will almost certainly result in “demolition by neglect” of this historically significant property. The cost of such stabilization to the City could be significant, as had been the case with other historic properties owned by the City.

3. The Property is currently an eyesore and degrades the environment for nearby commercial properties. The Property’s location on what is now a major traffic artery for Franklin exposes this condition to numerous people every day.

4. The City has previously declared the Property to be surplus and has solicited proposals. Our understanding is that no viable proposal was received. We believe this reflects the difficulties associated with developments that have been previously mentioned. Experience has shown that there are high hurdles to any adaptive use and restoration by the private sector. Unless the site holds specific positive attributes, similar to those found in the Five Points Building, the costs associated with remediation and restoration are far in excess of other sites that can be selected for private market investment.

As you know, the Heritage Foundation, a current tenant of City property, will be displaced if the current negotiations to change the use of the Historic Five Points Post Office building are completed. The Heritage Foundation has proven its capacity to successfully raise funds with the purchase and restoration of the Franklin Theatre, another historic property for which no viable market solution existed. The Theatre has become not only a jewel on Main Street, but a key driver for economic and social vitality for downtown Franklin.

The Heritage Foundation is willing, and eager, to undertake fundraising, renovation and occupancy of the Old, Old Jail. Given the significant deterioration, hazardous material remediation required and renovation costs, the task will not be easy. However, the end product would be a project greatly benefiting the community. Built to historic preservation requirements, open to the public, available for use by other non-profits and community groups, providing an appropriate place for staging the festivals that the Heritage Foundation manages, and including the pursuit of LEED certification, the project would be another winning project for the City, the community, and the Heritage Foundation.

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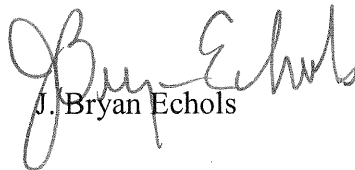
The Heritage Foundation therefore proposes that the Property be disposed of by negotiation, the terms of which should include a requirement that the Property be restored by the Heritage Foundation in accordance with Secretary of the Interior standards for restoration of an historic structure, and in accordance with applicable City requirements.

We believe that the benefits to the City of this approach are clear, objective and non-speculative, and that use of a public bid process under the existing circumstances would be impracticable. The use of a negotiated process for disposal, however, would ensure that the City and BOMA have full control over the specifics of the transfer, restoration and preservation of this iconic property. At the same time, the certainty gained through the negotiated process would better enable the Heritage Foundation to leverage its nonprofit status to raise the considerable funds necessary for fulfillment of its obligations.

We appreciate your consideration of our request and are ready to move to the next step of the process.

Sincerely,

Dickinson Wright PLLC



J. Bryan Echols

JBE:mag

cc: Shauna R. Billingsley, Esq. (Via Email: shauna.billingsley@franklin-gov.com)
Mary Pearce (Via Email: mpearce@historicfranklin.com)
Cyril Stewart (Via Email: cyril.stewart@vanderbilt.edu)

EXHIBIT A

EXISTING CONDITIONS

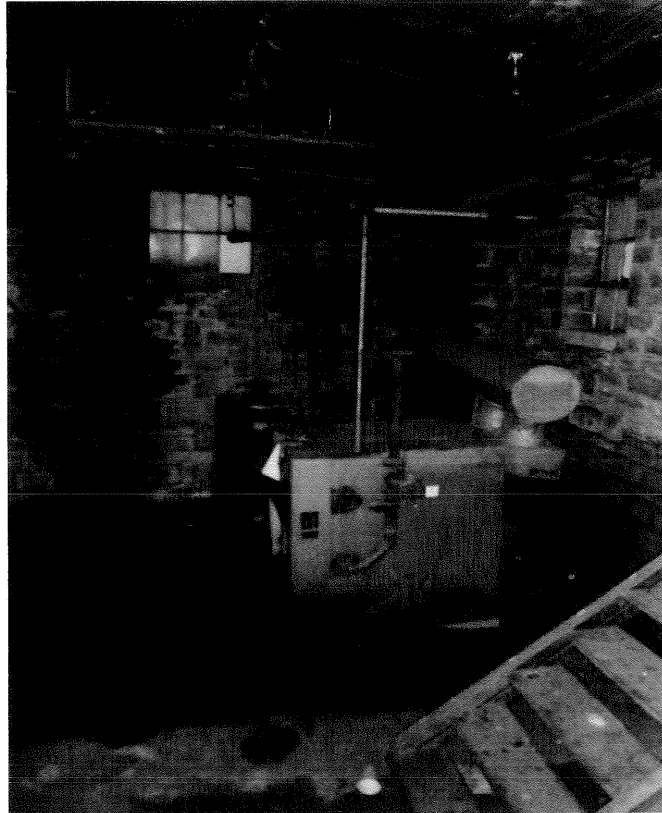




EXHIBIT B

PARCEL A

Bounded on the east by the "New Jail" property of Williamson County and on the west and north by Tohrner and on the south by Bridge Street. Beginning at a mark in the inside margin of the sidewalk along the northerly side of Bridge Street, same being the southwesterly corner of the "New Jail" property of Williamson County and the southeasterly corner of this tract; then North 35 degrees West 292.0 feet to an iron pin; then South 55 degrees West 63 feet to an iron pin; then South 35 degrees East 59.9 feet to an iron pin; thence South 55 degrees West 28 feet to an iron pin; thence South 35 degrees East 229.6 feet to an iron pin in the inside margin of the sidewalk along the northerly side of Bridge Street; thence North 55 degrees East 90 feet, more or less, to the point of beginning; according to survey of C.K. McLemore dated April 23, 1970.

Grantors herein reserve to themselves, their heirs and assigns, a perpetual easement or right of way 7.75 feet in width fronting along the inside margin of the sidewalk along the northerly side of Bridge Street and running back between parallel lines 229.6 feet more or less, to a northerly boundary of the tract above described, the westerly boundary of said easement being the westerly boundary of the above described tract.

Further, in consideration for the foregoing exchange, grantors herein do hereby grant unto grantee, its successors and assigns, a perpetual easement or right of way 7.75 feet in width fronting along the inside margin of the sidewalk along the northerly side of Bridge Street and running back between parallel lines 229.6 feet to a dead line, the easterly boundary of said easement being the westerly boundary line of the above described tract.

Said easements herein reserved and granted being for the purpose of ingress and egress jointly of the parties hereto and their respective heirs, successors and assigns, to the respective properties of each.

And being the same property conveyed to Williamson County, Tennessee by deed of Martin Tohrner and wife, Peggy S. Thorner, of record in Deed Book 170, page 141, Register's Office of Williamson County, Tennessee.

PARCEL B

Being a tract or parcel of land lying wholly within the Corporate Limits of the City of Franklin, Ninth Civil District of Williamson County, Tennessee, and bound in General by Williamson County Jail on the South and East, and by Tohrner on the North and West.

Commencing at a mark in the sidewalk at the north margin of Bridge Street in the southeast corner of Tohrner; thence with the east boundary line of Tohrner N 35° W 98.6 feet to a fence post, the point of beginning; thence with a new line continuing N 35° W 193.4 feet to an iron pin; thence another new line N 55° E 50 feet to an iron pin in the northwest corner of the Williamson County Jail Lot; thence with the

west boundary line of said Jail Lot southeasterly 197 feet to an iron post in an existing fence line; thence with the existing fence line southwesterly 49 feet to the point of beginning.

And being the same property conveyed to Williamson County, Tennessee by deed of Martin Tohrner and wife, Peggy S. Tohrner, of record in Deed Book 169, page 524, Register's Office of Williamson County, Tennessee.

PARCEL C

Lying, located and being in the Town of Franklin, in Williamson County, in the State of Tennessee, and fronting fifty (50) feet, on Bridge Street, in said Town, adjacent to the lot on which the Williamson County jail is now located, and running back between parallel lines, from the margin of Bridge Street, (inner edge of the pavement), one hundred (100) feet. The two front corner of said lot, so sold and conveyed, are marked by notches cut in the cement pavement and pieces of iron pipe driven in the ground. The two rear corners are marked by pieces of iron pipe driven in the ground. And being a part of the lot which was conveyed to the grantor, Dorsey T. Crockett, by deed of Mrs. Mary W. Gault, Executrix etc., registered in Deed Book No. 27, page 60, Register's Office of Williamson County, Tennessee, to which reference is made for source of title and more accurate description.

And being the same property conveyed to Williamson County, Tennessee by deed of Dorsey T. Crockett and wife, Pauline T. Crockett, of record in Deed Book 78, page 157, Register's Office of Williamson County, Tennessee.