

Introduced by _____

First Reading _____

Second Reading _____

Ordinance No. _____

Council Bill No. B 337-11

AN ORDINANCE

authorizing a purchase and sale contract with St. Charles Road Development LLC for the acquisition of land adjacent to Muriel Battle High School for park purposes; directing the City Clerk to have the contract recorded; and fixing the time when this ordinance shall become effective.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF COLUMBIA, MISSOURI, AS FOLLOWS:

SECTION 1. The City Manager is hereby authorized to execute a purchase and sale contract with St. Charles Road Development LLC for the acquisition of land adjacent to Muriel Battle High School for park purposes. The form and content of the contract shall be substantially as set forth in "Attachment A" attached hereto and made a part hereof as fully as if set forth herein verbatim.

SECTION 2. The City Clerk is authorized and directed to have a copy of the contract recorded in the office of the Boone County Recorder of Deeds.

SECTION 3. This ordinance shall be in full force and effect from and after its passage.

PASSED this _____ day of _____, 2011.

ATTEST:

City Clerk

Mayor and Presiding Officer

APPROVED AS TO FORM:

City Counselor

PURCHASE AND SALE CONTRACT

THIS PURCHASE AND SALE CONTRACT ("Contract") dated as of the 28th day of November, 2011 (the "Effective Date"), is made by and between St. Charles Road Development LLC, a Missouri limited liability company, P.O. Box 756, 1123 Wilkes Blvd., Columbia, MO 65205 ("Seller") and the City of Columbia, Missouri, a Missouri municipal corporation, 701 E. Broadway, Columbia, MO 65201 ("Buyer").

1. CONVEYANCE. Subject to the terms and conditions set forth herein, Seller agrees to sell and convey to Buyer and Buyer agrees to purchase from Seller, fee simple interest in the 30.18 acre tract of land described and depicted on Exhibit A attached hereto and incorporated herein by this reference (the "Property").

2. PURCHASE PRICE. The purchase price to be paid by Buyer to Seller for the Property shall be \$681,280.00 (the "Purchase Price"). Should the Plat called for below show that the Property contains less than 30.18 acres the Purchase Price shall be reduced by the difference between 30.18 acres and the number of acres actually contained in the Property as shown on the Plat multiplied by \$21,000.00. Should the Plat called for below show that the Property contains more than 30.18 acres the Purchase Price shall be increased by the difference between 30.18 acres and the number of acres actually contained in the Property as shown on the Plat multiplied by \$21,000.00. The Purchase Price shall be payable (plus or minus pro-rations as hereinafter provided) in full by cashier's check or wire transfer at closing.

3. INSPECTION. During the period of 45 days following the Effective Date (the "Inspection Period") Buyer and Buyer's duly authorized agents or representatives shall have the right, at reasonable times and upon reasonable notice to Seller, to enter upon the Property to inspect the Property and conduct such inspections, studies, appraisals, investigations and tests with respect to the Property that Buyer chooses to conduct (the "Inspections"); provided the Inspections shall be so conducted as not to damage the Property and such Inspections shall be conducted at Buyer's cost and expense. Buyer shall indemnify and hold Seller harmless from and against any liabilities or claims for damage to persons or property caused by such Inspections and any failure to pay the costs thereof, and Buyer's obligations under this paragraph 3 shall survive cancellation or closing of this Contract. Should Buyer find the results of the Inspections to be unsatisfactory to Buyer, Buyer may cancel this Contract by written notice to Seller given, or deemed given, to Seller on or before the end of the Inspection Period. In the event of such cancellation the parties shall have no obligations hereunder except those that survive cancellation pursuant to the provisions of this Contract. Should Buyer fail to give such notice to Seller on or before the end of the Inspection Period Buyer's right to cancel this Contract under this paragraph shall expire and the parties shall proceed hereunder subject to the other terms hereof, and Buyer shall purchase the Property in "as is" condition, with all defects, if any, open and obvious, hidden or latent, known or unknown, and without any warranties by Seller as to the physical condition thereof.

4. TITLE INSURANCE. Within 10 days after the Effective Date Buyer shall obtain a title insurance commitment for the Property (the "Commitment") issued by Boone-Central Title Company (the "Title Company") in which the Title Company shall commit that, upon delivery and recording of the deed provided for herein, it will issue its policy of owner's title insurance policy insuring in Buyer, in

the amount of the Purchase Price, fee simple title to the Property, subject only to the exceptions set forth therein, which may include real estate taxes on the Property for the year in which the closing of this Contract occurs (which shall be pro rated between the parties as of the date of closing), easements for existing utility lines of record, standard ALTA printed policy exceptions, all applicable laws and ordinances and any deeds of trust to be released at closing (the "Permitted Exceptions"). If the Commitment reveals any other exceptions to Seller's title to the Property, Buyer may object to any such exceptions by written notice given to Seller within 10 days after Buyer has received the Commitment. If Seller is unable or unwilling to correct and remove any such exception so objected to by Buyer by the time of Closing, Buyer may, as Buyer's sole remedies, either cancel this Contract, in which event the parties shall have no further obligations to each other hereunder except those that are to survive cancellation under the terms hereof, or waive such objections and proceed with closing, in which event all such matters objected to by Buyer shall become Permitted Exceptions. Should Buyer fail to make such objections all matters shown in the Commitment shall be Permitted Exceptions. Should Buyer make such objections and a closing occurs, Buyer shall be deemed to have waived the objections to matters objected to which remain uncured by Seller. Upon Closing, Seller shall pay the premium due for issuance of the owner's policy of title insurance insuring Buyer fee simple title to the Property in the amount of the Purchase Price, subject only to the Permitted Exceptions. Notwithstanding the foregoing, deeds of trust encumbering the Property shall not be Permitted Exceptions, Buyer shall not be obligated to object thereto, and Seller shall cause all such deeds of trust to be released at or prior to closing.

5. CONTINGENCIES.

This Contract is contingent upon Seller, at Seller's cost:

- a. extending sanitary sewer to the main portion of the Property located at the east end of the stem of the Property;
- b. extending Battle Drive to the north from its present terminus to the northwest corner of the "stem" portion of the Property as shown on Exhibit A, said portion to be constructed according to the same street construction standards as the portion of Battle Drive already constructed and dedication of such extension as a public street as part of the Plat called for below;
- c. cause the property to be platted into a single subdivision lot in accordance with applicable subdivision regulations (the "Plat"), which shall state the number of acres contained within the lot rounded to the nearest 1/100ths of an acres, include a dedication of the extension of Battle Drive as referred to in a. above and a dedication of a 20 foot wide utility easement along the north boundary of the stem of the Property as shown on Exhibit A attached.

If these contingencies have not been satisfied by the time of closing, Buyer, as Buyer's sole remedy, may cancel this Contract by notice to Seller, in which event, the parties shall have no further obligations hereunder excepting those declared by this Contract to survive the cancellation of this Contract. These contingencies may be waived by Buyer and, should a closing occur absent satisfaction of such contingencies, Buyer shall be deemed to have waived these contingencies.

6. EMINENT DOMAIN; DAMAGE. If prior to Closing all or any part of the Property is condemned or appropriated by public authority or any party exercising the right of eminent domain, or is threatened thereby, Seller will give Buyer written notice thereof, and if Buyer so chooses in Buyer's sole discretion, the parties shall proceed under this Contract notwithstanding such condemnation without a

reduction in the Purchase Price, in which event, conditioned only on closing, the right to receive any award Seller is otherwise entitled to receive in any such proceeding, shall be assigned to Buyer, or, if said award has already been paid to Seller prior to closing, said award shall reduce the Purchase Price to be paid by Buyer at closing by the amount of such award paid to Seller, and should said condemnation have occurred prior to closing, that portion of the Property condemned shall be excluded from the sale. Notwithstanding anything contained herein, in the event of such condemnation, if Buyer chooses, in Buyer's sole discretion, to cancel this Contract due to such condemnation, the Buyer shall deliver notice of cancellation to the Seller within 10 days of receipt by Buyer of written notice of such condemnation from Seller and thereupon the parties shall have no further obligations hereunder excepting those declared by this Contract to survive the cancellation of this Contract.

7. DEED. At closing Seller shall convey the Property to Buyer by general warranty deed, conveying good and marketable title and containing all the usual and customary warranties of title contained in general warranty deeds in the state of Missouri, conveying the Property to Seller free and clear of all liens, encumbrances and other exceptions to title except the Permitted Exceptions.

8. TAXES AND ASSESSMENTS. Seller shall pay all real estate taxes on the Property for all years prior to the year in which the closing occurs. All real estate taxes not yet due for the year of closing shall be prorated through the date of closing. The proration of such taxes shall be based on the most recent tax bill if the then current years taxes are unknown at the time of closing.

9. CLOSING.

(a) Date. The Closing of this Contract shall take place on July 2, 2012 or the first weekday which is not a state of Missouri or national holiday following the expiration of 14 days after the contingencies described in Paragraph 5 above are satisfied, which ever is earlier, or on such other date as the parties may mutually agree. The closing shall be conducted at 10 a.m. on the date of closing at the offices of the Title Company in Columbia, Missouri.

(b) Documents from Seller. Seller shall, at Seller's sole cost and expense, deliver at closing the following executed documents in form and content reasonably acceptable to Buyer:

(i) Deed. Seller shall deliver a warranty deed as described above. The description of the Property contained in the Plat called for above shall be used in said Deed.

(ii) Affidavits. Affidavit(s) stating that (1) vacant possession of the Property is being delivered; (2) there are no unrecorded or oral leases or contracts affecting the Property; (3) there are no unrecorded liens against the Property; (4) Seller is not a foreign person; and (5) there have been no recent improvements to the Property for which mechanics liens may be asserted which have not been paid for excepting only for work or materials performed or provided at Buyer's request.

(iii) Closing Statement. Seller's closing statement.

(iv) Other Documents. Such other documents required by this Contract and/or which Buyer or the Title Company may reasonably require, including but not limited to, a certificate of good standing from the state of Missouri and a certified copy of a resolution of the members of Seller evidencing the authority to sell the Property pursuant to this Contract.

(c) Documents from Buyer. Buyer shall deliver at closing the following executed documents:

(i) Closing Statement. Buyer's closing statement.

(ii) Other Documents. Such other documents required by this Contract and/or which Seller or the Title Company may reasonably require.

(iii) Form 8283. Should Seller obtain an appraisal of the Property and the other rights, benefits and easements granted to, or inuring to the benefit of Buyer at closing or hereunder, and should such appraisal reflect a value in excess of the Purchase Price, Buyer shall, at closing, or at any time thereafter upon Seller's request, execute an appropriate IRS Form 8283 for use by Seller.

(d) Payment. At Closing, Buyer shall pay the Purchase Price, subject to any applicable reimbursements, adjustments, or credits (such as, without limitation, proration of real estate taxes or closing costs) by wire transferred funds or by cashier's check.

(e) Real Estate Taxes. General and special real estate taxes and other state or city taxes affecting the Property shall be prorated between Seller and Buyer as of the Closing date.

(f) Recording Fees. The recording fees for Seller's deed shall be Buyer's expense.

(g) Brokers. Each party represents to the other that it has had no dealing with any broker or agent with respect to the transaction contemplated herein, and each party will indemnify the other from and against any claim for commission asserted by any such broker or such person retained by the indemnifying party. Seller discloses that one of Seller's Members, Rob Wolverton is a Missouri licensed real estate broker.

(h) Escrow Fees. Any escrow and/or closing fees charged by the Title Company shall be paid by Buyer and Seller in equal shares at closing.

10. NOTICE. All notices, demands, or other communications of any type given, or required to be given, pursuant to this Contract shall be in writing and shall be delivered to the address of the party to whom the notice is directed, by hand delivery, or by United States certified mail, return receipt requested, postage prepaid to the addresses of the parties set forth above or by facsimile transmission to the parties at the following facsimile numbers:

To Buyer at Facsimile Number: (573) 874-7640

To Seller at Facsimile Number: (573) 256-5000

Any notice given by personal delivery will be deemed effective when delivered to the address listed above. Any notice given by United States Mail will be deemed effective on the business day deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed as set forth above. Any notice sent by facsimile shall be deemed given by the date reflected by the facsimile confirmation receipt. Any notice that may be given by either party in connection with this Contract may be given by such party's attorney.

11. MISCELLANEOUS. No term or condition of this Contract will be deemed to have been waived or amended unless expressed in writing, and the waiver of any condition or the breach of any term will not be a waiver of any subsequent breach of the same or any other term or condition. This Contract constitutes the entire Contract of the parties which incorporates and supersedes all prior written and oral understandings. This Contract shall be binding upon, and inure to the benefit of, the parties, their heirs, executors, personal representatives, nominees, successors or assigns. The obligations of this Contract shall survive the closing of this Contract.

12. TIME. Time is of the essence of this Contract and each provision hereof. The time in which any act required or permitted by this Contract is to be performed shall be determined by

excluding the day upon which the event occurs, from whence the time commences.

13. ATTORNEYS' FEES/ENFORCEMENT. Each party shall be responsible for its own attorneys' fees in connection with this Contract and the transaction contemplated hereby. However, in the event that either party commences suit to recover damages arising from a breach of this Contract or otherwise to seek enforcement hereof, the prevailing party shall be entitled to an award of reasonable attorneys' fees, together with court costs and litigation expenses reasonably incurred and actually paid. In the event of a breach of this Contract by a party, the non-breaching party shall have all remedies available at law or in equity to enforce this Contract.

IN WITNESS WHEREOF, the Seller and Buyer have caused this Contract to be executed as of the date first written above.

Seller: St. Charles Road Development LLC

By: Patricia Coriden
Patricia Coriden, Trust Officer of Central Trust and Investment Company as Trustee of the Robert M. LeMone Revocable Trust dated January 27, 2004, Member

By: [Signature]
Robert A. Wolverton, Trustee of the Robert A. Wolverton Revocable Living Trust U/T/A 7/29/02, Member

By: [Signature]
Robert K. Pugh, Co-Trustee of the Robert K. Pugh and Connie G. Pugh Living Trust Agreement U/T/D/ May 10, 1995, Member

By: Connie G. Pugh
Connie G. Pugh, Co-Trustee of the Robert K. Pugh and Connie G. Pugh Living Trust Agreement U/T/D/ May 10, 1995, Member

By: TSA Investments, L.L.C., Member

By: [Signature]
Thomas E. Atkins, III, Member

By: [Signature]
Thomas Scott Atkins, Member

Buyer: City of Columbia, Missouri

By: _____
Mike Matthes, City Manager

Attest:

Sheela Amin, City Clerk

Approved as to Form

Fred Boeckmann, City Counselor

CERTIFICATIONS

I hereby certify that the expenditures on the part of the City required above is within the purpose of the appropriations to which it is charged, being Account No. _____, and that there is an unencumbered balance to the credit of such appropriations sufficient to pay therefor.

John Blattel
Director of Finance

Execution of this Contract authorized by Ordinance Number _____
finally passed on _____, 20__.

Sheela Amin, City Clerk

Exhibit A, page 1

Legal Description of the Property

A TRACT OF LAND LOCATED IN THE WEST HALF OF SECTION 1, TOWNSHIP 48 NORTH, RANGE 12 WEST IN BOONE COUNTY, MISSOURI, AND BEING PART OF THE SURVEY RECORDED IN BOOK 2415, PAGE 86 AND THE WARRANTY DEED RECORDED IN BOOK 2884, PAGE 44, ALL OF THE BOONE COUNTY RECORDS AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF THE SURVEY RECORDED IN BOOK 3263, PAGE 7; THENCE ALONG THE NORTH LINE OF SAID SURVEY, N89°32'05"W, 1884.98 FEET TO THE NORTHWEST CORNER OF SAID SURVEY; THENCE N89°32'05"W, 281.11 FEET TO A POINT ON THE FUTURE RIGHT-OF-WAY OF BATTLE AVENUE; THENCE ALONG SAID FUTURE RIGHT-OF-WAY LINE, N00°29'40"E, 70.00 FEET; THENCE LEAVING SAID FUTURE RIGHT-OF-WAY LINE, S89°32'05"E, 1177.74 FEET; THENCE N00°27'55"E, 1184.48 FEET TO A POINT ON THE NORTH LINE OF SECTION 1; THENCE ALONG SAID SECTION LINE, S89°32'20"E, 976.28 FEET; THENCE LEAVING SAID SECTION LINE, S00°05'00"E, 1254.62 FEET TO THE POINT OF BEGINNING AND CONTAINING 30.18 ACRES

Exhibit A, page 2

Depiction of the Property

(see attached)

EXHIBIT A, PAGEZ

BATTLE AVE PARK

S 89°32'20"E
976.28'

FUTURE BATTLE AVENUE

ELEMENTARY TRACT

N 0°27'55"E
1184.48'

PARK TRACT

30.18 ACRES

S 0°05'00"E
1254.62'

N 0°29'40"E
70.00'

S 89°32'05"E
1177.74'

P.O.B. 

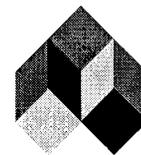
N 89°32'05"W
281.11'

N 89°32'05"W
1884.98'

BATTLE HIGH
SCHOOL



NTS



A CIVIL GROUP

CIVIL ENGINEERING, PLANNING, SURVEYING

3401 BROADWAY BUSINESS PARK COURT

SUITE 105

COLUMBIA, MD 65203

PHONE: (513) 817-5150, FAX: (513) 817-1671

TO: City Council
FROM: City Manager and Staff
DATE: November 14, 2011
RE: Acquisition of Park Land Adjacent to Battle High School

City Fiscal Impact Enter all that apply:	
\$0	City's current net FY cost.
\$670,000	Amount of Funds Already appropriated
\$0	Amount of budget amendment needed
\$670,000	Estimated 2 yr net costs:
\$6,000	One-time
	Operating / On-going
Program Impact:	
N	New program/ agency (Y/N)
N	Duplicates/expands an existing program (Y/N)
N	Fiscal impact on any local political subdivision (Y/N)
Resources Required:	
N	Requires add'l FTE personnel? (Y/N)
N	Requires additional facilities? (Y/N)
N	Requires additional capital equipment? (Y/N)
Mandates:	
N	Federal or state mandated? (Y/N)
Vision Implementation Impact Enter Below All That Applies: Refer to Website:	
Y	Vision Impact? (Y/N or if N, go no further)
#12.1	Primary Vision, Strategy and/or Goal Item#
#	Secondary Vision, Strategy and/or Goal Item#
	FY10/FY11 Implementation Task#

EXECUTIVE SUMMARY: The Park and Recreation Department is requesting approval to proceed with the acquisition of approximately 30.18 acres of land located immediately north of the new Muriel Battle High School for future development as a community park. Staff has prepared an ordinance authorizing the City Manager to execute the attached Purchase and Sale Contract with the current property owner, St Charles Road Development, LLC. The proposed purchase price is \$681,280. Funding for this acquisition was set aside from the 2005 Park Sales Tax land acquisition funds.

DISCUSSION: In January of 2008, the City Council passed a motion directing staff to proceed with discussions with appropriate individuals regarding a joint park project in conjunction with the new high school being proposed by the Columbia School District. Upon confirmation by the School District of the St Charles Road location for the new Muriel Battle High School, staff initiated negotiations with the property owners of land immediately adjacent to the new high school property. Acquisition of land in the vicinity of the new high school is in keeping with the City's long standing policy/goal of providing public park land adjacent to the community's public schools. At this same time, funds which had been included in the 2005 park sales tax ballot issue for future park acquisition were set aside to fund this specific project.

After extended negotiations, a 30.18 acre tract located adjacent to the north boundary of the high school property was identified as the most desirable for a future park. This 30.18 acre tract also adjoins a 32 acre tract recently acquired by the School District for the site of a new elementary school. It should also be noted that the City/County Northeast Area Plan that was completed in response to the development of the new high school and the expected growth in this region of the community identifies the land located north of the new high school for future use as institutional and open space. The 30.18 acre tract is currently owned by St Charles Road Development, LLC.

As a result of the ongoing negotiations, both the City and the property owner had appraisals prepared to assist in the determination of value. The City's appraisal, completed by Allan Moore, MAI, of Moore and Shyrock, LLC, valued the property at approximately \$14,600 per acre. The property owner's appraisal, completed by John Kirby, MAI, valued the property at approximately \$29,670 per acre. Because of the difference in land value between the two appraisals, an independent third party appraiser was asked to review the two appraisals. The review appraiser's report analyzed the primary differences in the two appraisals and suggested a reasonable valuation might be in the \$20,000 to \$21,000 per acre range.

Based on the information received from the review appraiser, the property owners offered to sell the property to the City for a price of \$681,280. This amount was derived from the sale of 30.18 acres at

\$21,000 per acre plus fifty percent of the estimated cost to extend sewer to the property (estimated sewer cost of \$95,000, city share \$47,250). The offer was contingent upon the contractor agreeing to complete construction of Battle Avenue northward from its current terminus to a point where the City would have access to the new park site and the extension of the sewer line to the park site. The offer was also contingent upon the City agreeing to acknowledge that the property owner has an appraisal which indicates a higher value for the property than the agreed upon sales price. These conditions have been included in the sales contract. Final closure of the proposed sale will not occur until the road and sewer line extensions have been completed by the property owner. Staff is recommending that this proposed offer be accepted by the City and that the Council approve the Contract for Sale.

FISCAL IMPACT: The proposed purchase price for this property is \$681,280. Funding set aside for land acquisition from the 2005 Park Sales ballot issue is available to cover the cost of this acquisition. It is anticipated that development of the park will be several years in the future with possible funding being derived from future park sales tax ballot issues. Prior to development, the site will be maintained as public open space. Maintenance costs will be limited to the occasional mowing and clean-up necessary to maintain the site appropriately in relationship to the new high school and is expected to be between \$3,000 and \$5,000 per year.

VISION IMPACT: The acquisition of this property addresses vision goal 12.1 which identifies the need for the City to acquire and develop a variety of attractive, well-maintained parks throughout Columbia, including neighborhood parks, regional parks, nature parks, and urban parks to ensure all residents have access to a full range of outdoor and indoor recreational opportunities.

SUGGESTED COUNCIL ACTIONS: Approve the ordinance authorizing the City Manager to execute all documents necessary to complete the acquisition.