



Memphis City Council Summary Sheet

Please provide a brief summary of the item, in bullet form, not to exceed one page:

1. Item is a Resolution authorizing the Mayor to enter into a purchasing agreement for the statue of Ramesses the Great (currently located at the front of the former Pyramid Arena), to the University of Memphis for public display and educational purposes.
2. The Initiating party is the Division of Housing and Community Development – CD90030-Planning and Grants.
3. This is not a change to an existing ordinance or resolution.
4. Resolution will require a new contract.
5. An expenditure of funds or a budget amendment is not required.

RESOLUTION

WHEREAS, the Memphis City Council is responsible for the disposition of all City owned personal property valued at more than five Hundred Dollars (“\$500.00”); and

WHEREAS, since 1991, the Pyramid Arena, located in the City of Memphis, has been an iconic structure in the downtown Memphis Skyline; and until 2007, served the City of Memphis as a prominent entertainment venue; and

WHEREAS, the Pyramid Arena was associated with an Egyptian theme, relative to the City’s namesake in Egypt, and included a twenty –five foot replica of the Ramesses Colossus statue which stands in front of the structure; and

WHEREAS, in July 2010, the City of Memphis, as the sole owner of the Pyramid Arena, entered into a long term lease with Bass Pro Shops, Inc. for the creation of a destination retail center in the Pyramid Arena; and

WHEREAS, both the City of Memphis, and Bass Pro Shops have agreed, as lessor and lessee, that the historical and cultural significance of the statue’s existence was inconsistent with the theme of Bass Pro Shops, Inc. in their redevelopment of the Pyramid; and

WHEREAS, it was determined by the City of Memphis that the Ramesses statue should be relocated to a site where its educational value and significance to the City of Memphis can be maximized; and

WHEREAS, the University of Memphis, public university has expressed an interest in relocating the statue to their main campus as a part of their collection of Egyptian artifacts and educational items; and

WHEREAS, after careful consideration and deliberation by the City Administration and the Memphis City Council, it has been determined that the Ramesses statue should be relocated to the University of Memphis, where it shall be displayed in such a location where its cultural and educational significance and value shall be maximized by the citizens of Memphis, as well as all other persons who desire access to this work; and

WHEREAS, in the furtherance of this position, it is also agreed that the City of Memphis and the University of Memphis shall enter into a purchase agreement for the statue to memorialize the terms and conditions of their arrangement. Said agreement is included with this Resolution as Exhibit “A.”

NOW, THEREFORE, BE IT RESOLVED, that the Memphis City Council hereby authorizes the Mayor of the City of Memphis to execute the Purchase Agreement affixed to this resolution with the University of Memphis to display the Ramesses statue on its campus in accordance with the terms and conditions as set forth herein.

**CONDITIONAL PURCHASE AGREEMENT BETWEEN THE CITY OF MEMPHIS AND THE
UNIVERSITY OF MEMPHIS FOR THE RELOCATION AND USE OF THE OFFICIALLY
AUTHORIZED REPLICA OF THE COLOSSUS OF RAMESSES II**

THIS PURCHASE AND SALE AGREEMENT of personal property is made and entered into this ____ day of _____, 2011, by and between the City of Memphis, by and through its Division of Housing and Community Development, with its principal offices located at 701 North Main Street, Memphis, TN 38107, (hereinafter called the "Seller") and The University of Memphis, a public university within the Tennessee Board of Regents system (hereinafter called the "Purchaser"), with its principal offices located at 3720 Alumni Avenue, Memphis, TN 38152.

WITNESSETH:

WHEREAS, since 1991, the Pyramid Arena, located in the City of Memphis, has been an iconic structure in the downtown Memphis Skyline; and until 2007, served the City of Memphis as a prominent entertainment venue; and

WHEREAS, the Pyramid Arena was associated with an Egyptian theme, relative to the City's namesake in Egypt, and included a twenty-five foot replica of the Ramesses Colossus statue which stands in front of the structure; and

WHEREAS, in July 2010, the City of Memphis, as the sole owner of the Pyramid Arena, entered into a long term lease with Bass Pro Shops, Inc. for the creation of a destination retail center in the Pyramid Arena and surrounding area; and

WHEREAS, both the City of Memphis, and Bass Pro Shops have agreed, as lessor and lessee, that the historical and cultural significance of the statue's existence was inconsistent with the theme of Bass Pro Shops, Inc. in their redevelopment of the Pyramid; and

WHEREAS, it was determined by the City of Memphis that the Ramesses statue should be relocated to a site where its educational value and significance to the City of Memphis can be maximized; and

WHEREAS, a Request for Proposals (RFP) was initiated on July 5, 2011 and responses were due on or before August 5, 2011 and the City received one response to the RFP from the University of Memphis; and

WHEREAS, in their response, the University of Memphis, presented a plan for relocation of the statue to their main campus as a part of their collection of Egyptian artifacts and educational items; and

WHEREAS, after careful consideration and deliberation by a review committee, the City Administration and the Memphis City Council, it has been determined that the Ramesses statue should be relocated to the University of Memphis, where it shall be displayed in such a location where its cultural and educational significance and value shall be maximized by the citizens of Memphis, as well as all other persons who desire access to this work; and

WHEREAS, the City of Memphis and the University of Memphis shall enter execute a purchase agreement of the statue to memorialize the terms and conditions of their arrangement.

NOW, THEREFORE, the parties to this agreement for considerations set forth below, do here and now agree and bind themselves to the following terms and conditions:

Seller hereby transfers to Purchaser the personal property described in Exhibit "A" attached hereto and made a part hereof, all of which is hereinafter referred to as "the property", on the following terms and conditions:

I. Term

This Agreement shall commence on the 1st day of _____, 2011, and shall be continuous in nature, so long as the Purchase shall utilize the property in conjunction with the premises set forth in Section IV. of this Agreement. In

the event that the Purchaser shall discontinue use of the property in the manner set forth in Section IV. of this Agreement, the Seller shall, at its election, enter into the premises of the Purchaser, and reclaim the property, or otherwise enjoin Purchaser from utilizing the property in a manner inconsistent with that set forth in Section IV. of this Agreement.

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II. Purchase Price

(a) The University shall pay Seller as purchase price for the property the sum of One **Dollar (\$1.00)** Except as may be otherwise provided herein, the University shall be liable for any taxes or other costs assessed against the property or upon the possession or use thereof, and the University hereby indemnifies and holds Seller harmless from all liability therefor. The University shall be also liable for any sales and use taxes applicable to the purchase of said property hereunder.

(b) The University shall be responsible for ensuring that a purchase and relocation plan for the statue is completed at the time of the purchase as the University will be placed in full possession of the property upon the approval of the sale by the Memphis City Council. Should a purchase and relocation plan not be completed by Purchaser upon the City Council's approval of the sale, the Seller may, at its option, terminate this agreement in accordance with the paragraph hereof entitled, "Termination." If, however, the University is deprived of full possession of the property due to the acts of Seller or its employees and agents, or due to a defect in Seller's title, or due to fire, flood, earthquake, acts of God, acts of the public enemy, or any other cause beyond the control of the University, and, if the University is deprived of possession of the property for a period of One Hundred Eighty (180) consecutive days, the University may, at its option, terminate this agreement in accordance with the paragraph hereof entitled, "Termination."

III. Delivery, and Transportation Expenses

The University shall be responsible for removing the property from its current location of One A.W. Willis Avenue, Memphis, TN, 38103, and transporting it to the University of Memphis, where it shall be relocated to the _____, which is located at _____ on the University campus. The property shall be placed on public display at this location, and shall be made accessible and available for public viewing at no cost to the general public during all hours of operation of the University of Memphis.

All transportation, packaging, and assembly charges relating to the property shall be at the sole expense of the University. The property shall be installed by Purchaser at its sole expense.

IV. Use of Property

(a) In accordance with the terms and conditions of this Purchase Agreement, the University shall use and display the property either alone or in conjunction with other accessories, equipment or property, as an item of cultural and educational significance to the City of Memphis, Tennessee, and in that connection, shall place the property in an area on the campus, either indoors or outdoors, where it shall be available for public viewing and education on its significance. The University shall not be prohibited from placing or using the property with other objects of similar theme, provided that it is done in a manner that maintains an historical depiction of the property.

(b) The property shall, in all events, even if attached to realty, be deemed the personal property of the University. The University will keep the property free from all liens and encumbrances, and shall not otherwise, offer or seek to offer the premises as security or collateral for any debt. In the event that the University shall pledge the property as security or collateral for any indebtedness of the Seller, Seller shall have the right to terminate this agreement immediately, and to enter the premises and reclaim the property, or demand that it be returned to a specific location as determined by the Seller. Any such pledge or collateralization of the premises shall be deemed void upon its inception.

(c) Failure of the University to comply with the terms as conditions of this section may constitute an event of default, as set forth in paragraph VIII of this agreement, and shall entitle and allow Seller, at its discretion, to re-enter and repossess its personal property to cure any default herein.

V. Warranty and Maintenance

Seller makes no warranties; either expressed or implied, concerning the property, but does provide that it has full power, right, and authority to enter into this agreement.

The University will keep the property in good working order and condition, and will make all necessary adjustments and repairs promptly upon oral or written notice from Seller that such are required or, in any event, on inspections by Seller of the property, all at the University's sole expense. Seller may inspect the property at all other reasonable times, but shall provide adequate notice, in writing of its intent to inspect the property, which shall contain the date, time, and personnel that will be conducting the inspection. Seller shall share all inspection reports with the University, so as to allow the University to make any necessary repairs and/or adjustments in accordance with the inspection report(s).

VIII. Default, Remedies, Suspension, and Termination

(a) In the event the University shall fail to substantially perform any of the duties and obligations under this agreement or any other agreement related hereto, and shall have failed to cure the same within thirty (30) days (unless the event is caused by either an act or omission by the Seller, then an event of default ("Event of Default") shall have occurred under this agreement. When an action constituting an Event of Default shall occur, the Seller shall notify the University in writing and advise the University of the Default, as well as the time period within which the University shall have to cure same. An Event of Default shall not have occurred if the failure to substantially perform cannot be cured within said cure period and such party has commenced to cure within said cure period and thereafter diligently pursues such cure. In addition to the matter set forth above, each of the following events, upon failure to cure within the aforesaid curative periods, shall constitute an Event of Default hereunder:

Any failure or omission on the part of the University to comply with the material terms and conditions of this Agreement;

Misrepresentation or omission by University of any material fact or facts related to this Agreement which materially and adversely affects the rights or obligations of the parties hereto;

The filing of any petition under any bankruptcy, moratorium, reorganization or insolvency act, Federal or State, by the University against the University which, if against same, is not dismissed within ninety (90) days of such filing; and

The filing of an application for the appointment of a receiver for, or the making of a general assignment for the benefit of creditors of, the University, however expressed or indicated.

(b) All remedies of the parties provided for herein are cumulative and shall be in addition to all other rights and remedies provided by law. The exercise of any right or remedy by either party hereunder shall not in any way constitute a cure or waiver of default hereunder or invalidate any act done pursuant to any Event of Default hereunder or prejudice a party hereto in the exercise of any of its rights hereunder, unless in the exercise of said rights the party realizes all amounts owed to it under this Agreement.

(c) Notwithstanding anything to the contrary herein contained, the University shall have the right to contest, in good faith, any claim, demand, levy or assessment, the assertion of which would constitute any Event of Default hereunder.

(d) This Agreement may be terminated by Seller, whenever the University shall default in the performance of activities specified in this Agreement and/or its attachments and fails to cure such default within a period of thirty (30) days, or such longer period as the Seller shall determine, provided that the Seller shall serve notice of default, in writing, upon the University. As a result of the termination of the Agreement, Seller shall be entitled to enter the premises of the University, or cause its contractors, agents, and / or assigns to enter the premises of the University for the sole purpose of repossessing the property due to an event of default. Seller shall not be unreasonably delayed in its reclamation of its property from the University if an event of default should occur.

IX. Exclusivity

Seller recognizes that it has been provided, by the Arab Republic of Egypt, the exclusive right to display the only permitted replica of the Colossus of Ramesses, ("the Property") and that the agreement is in the furtherance of the City's continued display of the Property in conjunction with the exclusive right that Seller has been provided. Any lease, transportation, relocation, display, or other use of the Property shall be performed in a manner consistent with this Purchase and Sale Agreement, and with the express written consent of the appropriate authority of the City of Memphis.

X. Non-Waiver

This Agreement and any provision hereof may not be changed, waived, discharged or terminated except by an instrument in writing signed by both parties.

XI. Not an Agent

Nothing in this Agreement shall be deemed to represent that the University is the agent, representative or employee of the Seller. Anything in this Agreement which may appear to give the Seller the right to direct the University as to the details of the performance of its business or to exercise a measure of control over the University and shall only mean that the University shall follow the desires of the City of Memphis only as to the intended results of the scope this Agreement.

XII. Non-Transferability

This Agreement shall not be transferred or assigned without prior written consent of the City.

XIII. Verbal Agreements

It is specifically stipulated that there are no verbal agreements or understandings between the parties hereto affecting this Agreement, which have not been set forth expressly herein. This Agreement constitutes a final and complete integration of those understandings.

XIV. Parties to be bound

Seller and the University each bind themselves, their partners, successors, executors, administrators and assigns to this Agreement.

XV. Elected Officials / Conflict of Interest

The University certifies that none of its employees are directly or personally involved with the creation, negotiation, or execution of this Agreement. Seller certifies that none of its employees are directly or personally involved in any transaction or hold any financial interest in the transaction referenced in this Agreement nor shall, elected official, or any member of Congress of the United States shall be admitted to any financial share or interest in any part of this

Agreement. The University further certifies that no elected official or employee of Seller has a financial interest in any part of the University's business that relates to this transaction.

XVI. Designated Administrator

The Designated Administrator of this Agreement shall be the Director of the City of Memphis, Division of Housing and Community Development or his duly designated appointee.

XVII. Number and Gender

Wherever used the singular number shall include the plural, the plural the singular, and the use of the any gender be applicable to all genders, as the context may require.

XVIII. Notices

All notices or demands hereunder shall be given in writing and shall be deemed to have been sufficiently given for all purposes when presented personally or sent by registered or certified mail to any party hereto at the address set forth below or at such other address as either party shall subsequently designate in writing:

If to Seller:

**Robert Lipscomb, Director
City of Memphis / HCD
701 North Main Street
Memphis, TN 38107**

With a copy to:

**Herman M. Morris, Jr.
City Attorney
125 N. Main Street, Rm 336
Memphis, TN 38103**

And a copy to:

**Marcus D. Ward
Senior Assistant City Attorney
701 North Main Street
Memphis, TN 38107**

If to the University

**Dr. Shirley C. Raines, President
The University of Memphis
3720 Alumni Avenue
Memphis, TN 38152**

XIX. Jurisdiction

The terms, conditions, and covenants of this Agreement shall be governed, enforced, and adjudicated pursuant to the laws of the State of Tennessee, and no other.

XX. Recordation of Agreement

Upon the execution of this Agreement, the parties shall cause same to be recorded with the appropriate agency as notice of the execution of the transaction herein.

IN WITNESS WHEREOF, the parties hereto has caused this Transfer of Personal Property, particularly the statue of Ramesses the Great, owned by the City of Memphis and to be transferred to the University of Memphis, to be executed by authorized signatories, effective as of the day and year first above written.

CITY OF MEMPHIS, TENNESSEE

THE UNIVERSITY OF MEMPHIS

A C Wharton, Jr., Mayor
City of Memphis

Dr. Shirley C. Raines, President
University of Memphis

Robert Lipscomb, Director
Division of Housing and Community
Development

APPROVED AS TO LEGAL FORM

Herman M. Morris, Jr.
City Attorney

Marcus D. Ward
Senior Assistant City Attorney

ATTEST:

COMPTROLLER

EXHIBIT "A"

DESCRIPTION OF PERSONAL PROPERTY TO BE PURCHASED

The statue of Ramesses the Great is the only permitted replica of the Colossus of Ramesses. The property is a granite structure approximately 25 feet tall and 100,000 pounds (50) tons in weight, including the supportive base. Both the statue and the base will be removed during the relocation process

The property is currently located in front of the former Pyramid Arena, which is addressed as One A.W. Willis Avenue, Memphis, TN 38103. The statue, however, is located on the west side of Front Street between Overton and Shadyac streets on conspicuous display.