

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number _____

Meeting Type: Regular

Meeting Date: 4/25/2013

Action Requested By:
Recreation Services

Agenda Item Type
Select...

Subject Matter:

Agreement with the Arts Council for Concerts in the Park

Exact Wording for the Agenda:

Agreement with the Arts Council for Concerts in the Park

Note: If amendment, please state title and number of the original

Item to be considered for: Action

Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what Council action will provide, allow and accomplish and; any other information that might be helpful.

Allow for the continuation of the Concerts in the Park series

Associated Cost: <\$18,000/yr.

Budgeted Item: Not applicable

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head: Breg Patterson

Date: 4.18.13

ROUTING SLIP CONTRACTS AND AGREEMENTS

Originating Department: Recreation Services Council Meeting Date: 4/25/2013

Department Contact: Steve Ivey Phone # 256-564-8026

Contract or Agreement: Agreement with the Arts Council, Inc.

Document Name: AGREEMENT BETWEEN THE CITY OF HUNTSVILLE AND THE ARTS COUNC...

City Obligation Amount: < \$18,000/yr.

Total Project Budget:

Uncommitted Account Balance:

Account Number: 01-7261-0608-5130

Procurement Agreements

<u>Select...</u>	<u>Select...</u>
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Grant-Funded Agreements

<u>Select...</u>	Grant Name:

Department	Signature	Date
1) Originating	<i>Greg Patterson</i>	4-22-13
2) Legal	<i>[Signature]</i>	4-22-13
3) Finance	<i>[Signature]</i>	4/23
4) Originating	<i>Greg Patterson</i>	4-23-13
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		

RESOLUTION NO. 13 - _____

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and is hereby authorized to execute an agreement on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to that certain document attached hereto and identified as "Agreement between The City of Huntsville and the Arts Council, Inc.," consisting of seven (7) pages and the date of April 25, 2013, appearing on the margin of the first page, together with the signature of the President of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this the 25th day of April, 2013.

President of the City
Council of the City of
Huntsville, Alabama

APPROVED this the 25th day of April, 2013.

Mayor of the City of
Huntsville, Alabama

AGREEMENT BETWEEN THE
CITY OF HUNTSVILLE AND
THE ARTS COUNCIL, INC.

STATE OF ALABAMA)
)
COUNTY OF MADISON)

AGREEMENT

THIS AGREEMENT made this 25th day of April, 2013, between The Arts Council, Inc., a private, non-profit corporation in the State of Alabama (hereinafter "Arts Council"), and the City of Huntsville, a municipal corporation in the State of Alabama (hereinafter "City"), for the purpose of providing musical events for the inhabitants of the City.

Both parties acknowledge the receipt of good and valuable consideration supporting the terms and conditions of this Agreement as follow:

1. This Agreement shall become effective upon the date signed by both parties hereto, and shall continue in effect through September 30, 2015.
2. Arts Council will:
 - A. Co-produce outdoor musical events (the "Events") in Big Spring International Park, Huntsville, Alabama, on every Monday from 6:30 to 8:00 o'clock in the evening, commencing the first Monday in June of each year of this agreement, and continuing through the Monday in August immediately prior to the start of the Huntsville City School year, except for the following:

Arts Council reserves the right to move the event scheduled around or in proximity to the July 4th holiday, or to cancel the event altogether if, in the opinion of The Arts Council and the City, the event would interfere with any other cultural events scheduled on or about July 4 of each year of this agreement.
 - B. For each year of this agreement, provide a "not to exceed" budget to the City of Huntsville, to cover the total cost of staging the Events. Said costs include but are not limited to sound/lighting equipment vendors, rental of staging, musical instruments, and other necessary rental equipment. The "not to exceed" budget shall be provided no later than August 31 of the year preceding the Events. The "not to exceed" amount shall be subject to the approval of the City.

President of the City Council
of the City of Huntsville, Alabama
Date: April 25, 2013

- C. Audition, select, and schedule performers for all of said Events.
- D. Provide to the City a schedule of all the performers, to the extent possible, for all of the Events no later than the second Monday in May of each year of this agreement.
- E. Notify the City in writing no later than five (5) business days before the date of an event of all staging and equipment needed. In the event the City is unable, for whatever reason, to provide the staging and other rental equipment by the Thursday before the date of the event, The Arts Council can rent such equipment as it deems necessary to produce the event, provided such costs are within the amount budgeted for the event as indicated in the notice required in paragraph 2(B) of this agreement.
- F. Provide a master of ceremonies (MC) for all of the said Events.
- G. Be responsible for all publicity of the said events and notification of the media if an event is cancelled due to inclement weather. All advertising and press releases shall indicate that the events are a co-production of The Arts Council and the City of Huntsville's Parks and Recreation Department.
- H. Be expressly authorized to receive donations at the Events. If The Arts Council receives donations at any of the events in paragraph 2(A), the net proceeds, after The Arts Council's expenses for one Arts Council employee working the Events have been deducted, will be split evenly between the City and The Arts Council. The Arts Council shall maintain documentation of all donations received and make such documentation available for inspection by the City.
- I. Be expressly authorized to seek and accept financial sponsorships from vendors, local businesses, and corporations to support the annual Concert in the Park summer series. All financial sponsorships secured by The Arts Council will be split evenly between the City and The Arts Council to defray operational and staff expenses associated with the Concert in the Park summer series. Documentation of the terms of the sponsorships is to be maintained on file in the Arts Council, Inc. administrative office and open to review by the City of Huntsville upon request. The City has the right of approval for all sponsors.
- J. Contract with sound, lighting and staging vendors for the Events and will pay the charges for said vendors as they are incurred. The City will reimburse the Arts Council for these expenses up to the amount budgeted pursuant to paragraph 2(B) of this Agreement. The amount reimbursed shall not exceed \$12,000.00 per year.
- K. Invoice the City monthly for the professional services incurred in paragraph 2(J) of this Agreement.
- L. Provide an annual written summary of receipts and disbursements, as well as any proceeds due to the City, by September 30 of each year of this agreement.

- M. Provide professional staff and service to set up and operate sound, lighting, or any rental staging equipment not provided by the City for the Events.
- N. Provide to the City a monthly invoice for professional services provided in paragraphs 2(C), 2(E), and 2(M).
- O. Contract with and manage all food vendors for the Events. The Arts Council will oversee the food vendors' compliance with all applicable laws, ordinances and regulations. The Arts Council, to the fullest extent permitted by law, shall indemnify and hold harmless the CITY, its elected and appointed officials, employees, agents and specified volunteers against all claims, damages, losses and expenses, including, but not limited to, court awarded attorney's fees, arising out of or resulting from the contracting and management of food vendors for said Events. All food vendor payments secured by The Arts Council will be split evenly between the City and The Arts Council to defray operational and staff expenses associated with the Concert in the Park summer series.

3. The City will:

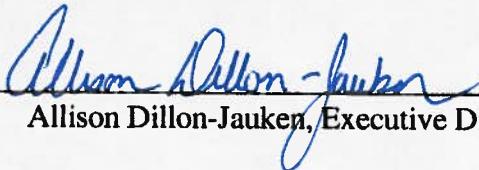
- A. Co-produce outdoor musical events (the "Events") in Big Spring International Park, Huntsville, Alabama, on every Monday from 6:00 to 8:30 o'clock in the evening, commencing the first Monday in June of each year of this agreement, and continuing through the Monday in August immediately prior to the start of the Huntsville City School year.
- B. Secure all required City permits for all said Events.
- C. Provide to the Arts Council by May 15 of each year of this agreement, a written list of City owned and contracted equipment available for use by the Arts Council for the Events.
- D. Assist with selection and scheduling of performers for all said Events.
- E. Provide a suitable location in Big Spring International Park, Huntsville, Alabama, for all of the Events.
- F. Provide staging, or other equipment, owned by the City, as needed and as available for all of the Events upon notification pursuant to paragraph 2(E) and provided the total costs for the requested equipment does not exceed the amount budgeted and appropriated by the City as indicated by the budget submitted by the Arts Council in accordance with paragraph 2(B).

- G. Provide an adequate number of privies based on the anticipated crowd at each of the said Events.
 - H. Print ten thousand (10,000) copies of a program of the schedule of the said events in paragraph 2(A), provided that the City receives the notification required in paragraph 2(D).
 - I. Provide professional staff service for setting up the said equipment in paragraph 3(C), overseeing the delivery of the said privies in paragraph 3(G), overseeing the printing of the said program in paragraph 3(H), setting up the staging in paragraph 3(F), and other reasonable and necessary tasks pursuant to the City's obligations herein.
 - J. Oversee and direct the setting up of sound equipment, staging, and/or rental equipment at 2:00 o'clock in the afternoon prior to each of the Events.
 - L. Pay all invoices in a timely manner for services referenced in 2(J), and 3(F).
 - M. Coordinate all event security needs with officials from Huntsville Police Department and HEMSI.
4. In the event it is raining by 5:30 o'clock p.m. on the date of the scheduled concert, the parties to this agreement shall mutually decide whether the concert shall be canceled.
5. All necessary communication with regard to this agreement between The Arts Council, Inc., and the City shall be conducted through the City's Recreation Superintendent of Community Events. If unavailable, contact shall be through the Manager of Parks and Recreation. All notices or correspondence required in paragraphs 2(B) and 2(D) shall be submitted in writing directly to the Recreation Superintendent, Community Events, 2920 Newby Road, Huntsville, Alabama 35805.
7. The annual summary of receipts and disbursements required by paragraph 2(H) and 2(I) shall be submitted in writing directly to the Director of Parks and Recreation , 2920 Newby Road, Huntsville, Alabama 35805.
8. Arts Council shall be deemed in all respects to be a contractor and not an agent, joint venturer or partner of the City. All of the services to be performed for the City under this Agreement are to be performed by Arts Council, Inc., who may utilize the customary services of others under its direct supervision, without further expense or cost to the City. Arts Council shall be responsible for all salaries, wages, taxes, unemployment compensation, workmen's compensation or other "benefits" of its employees, and does hereby indemnify and hold harmless the City from any obligation therefor.

9. All promotional advertising and press releases shall indicate that the events are a co-production of the City of Huntsville, through its Department of Parks and Recreation, and the Arts Council, Inc.
10. Should this Agreement be found by any court of competent jurisdiction to be illegal or unenforceable, it shall be deemed terminated as of the date of any such decree, without recourse of either party against the other.
11. This document represents the full agreement among the parties. This Agreement shall be construed in accordance with the laws of the State of Alabama.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

**ARTS COUNCIL, INC., a private, non-profit
corp. in the State of Alabama**

By: 
Allison Dillon-Jauken, Executive Director

**CITY OF HUNTSVILLE, a municipal
corporation in the State of Alabama**

By: _____
Tommy Battle, Mayor

ATTEST:

Charles E. Hagood, Clerk-Treasurer

STATE OF ALABAMA)
COUNTY OF MADISON)

I, the undersigned, a notary public in and for said County, in said State, hereby certify that Allison Dillion-Jauken whose name as Executive Director of ARTS COUNCIL, INC., a private, non-profit corporation in the State of Alabama, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the document, she, as such officer and with full authority, executed the same for and as the act of said corporation on the day the same bears day.

GIVEN under my hand and official seal this the 22 day of APRIL 2013.

Kyra B Pope
Notary Public

STATE OF ALABAMA)
COUNTY OF MADISON)

I, the undersigned, a notary public in and for said County, in said State, hereby certify that Tommy Battle and Charles E. Hagood, whose names as Mayor and City Clerk-Treasurer, respectively, of The City of Huntsville, Alabama, a municipal corporation are signed to the foregoing document, and who are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they, as such officers and with full authority, executed the same for and as the act of said corporation on the day the same bears day.

GIVEN under my hand and official seal this the _____ day of _____ 2013.

Notary Public