

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number _____

Meeting Type: Regular

Meeting Date: 8/22/2013

Action Requested By:
Recreation Services

Agenda Item Type
Resolution

Subject Matter:

Sub-Lease Agreement Between Our Place, Inc. and the City of Huntsville

Exact Wording for the Agenda:

Resolution authorizing the Mayor to enter into a Sub-Lease Agreement Between Our Place, Inc. and the City of Huntsville.

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.

[Empty box for providing details on why the action is required, recommended, and what Council action will provide, allow, and accomplish.]

Associated Cost:

Budgeted Item: Not applicable

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head: Greg Patterson

Date: 8/7/2013

RESOLUTION NO. 13-_____

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and he is hereby authorized to enter into a Sub-Lease Agreement by and between the City of Huntsville and Our Place, Inc., 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 "Sub-Lease Agreement between the City of Huntsville and Our Place, Inc.," consisting of eight (8) pages and the date of August 22, 2013, appearing on the margin of the first page, together with the signature of the President or President Pro Tem 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 22nd day of August, 2013.

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

APPROVED this the 22nd day of August, 2013.

Mayor of the City of
Huntsville, Alabama

STATE OF ALABAMA
MADISON COUNTY

**Sub-Lease Agreement Between
Our Place, Inc and the
City of Huntsville**

SUB-LEASE AGREEMENT

This Sub-Lease Agreement (this "Lease") is made and entered into on the ____ day of _____, 2013, by and between the **City of Huntsville**, a municipal corporation in the State of Alabama, hereinafter referred to as the "City," and **Our Place, Inc**, an Alabama non-profit corporation, hereinafter referred to as "Our Place" and is subject to the approval of the Madison County Board of Health.

WITNESSETH:

WHEREAS, City leases from the Madison County Board of Health a certain premises consisting of a gymnasium, office and classroom space, athletic fields, field houses and associated outbuildings, including an outbuilding known as the "Book Store" building, all of which are shown in the drawing attached hereto and made a part hereof as Attachment "A"; and

WHEREAS, Our Place has previously sub-leased from the City the building known as the Book Store and the parking area immediately surrounding said building (hereinafter referred to as the Leased Premises); and

WHEREAS, the parties desire to enter into a new sub-lease setting forth their respective rights and obligations; and

WHEREAS, City desires to lease to Our Place the Leased Premises on the terms and conditions set forth in this Lease;

NOW, THEREFORE, FOR AND IN CONSIDERATION of the mutual covenants and agreements contained hereinbelow, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1.0 **LEASED PREMISES**, City, in consideration of the rents, covenants, and agreements contained herein, to be paid and performed by Our Place, hereby leases unto Our Place the Leased Premises.

2.0 **PERMITTED USES**. The Leased Premises may be used only for office space and meeting place for the clients of Our Place and for other community groups approved by City and must comply in all requests with the provisions of the Zoning Ordinance governing the Leased Premises.

3.0 **TERM**.

3.1 The term of this Lease shall be two (2) years, commencing on July 1, 2013 and expiring on June 30, 2015.

3.2 The parties shall have the right to extend the term of this Lease for two additional one (1) year periods. If Our Place exercises such extension(s), such extension(s) shall be on the same terms and conditions as set forth in this Lease, including, without limitation, the rent set forth in Section 4.

4.0 RENTAL.

4.1 Our Place shall pay City an annual rental of One Thousand Two Hundred (\$1,200.00) Dollars, which shall be paid in twelve (12) consecutive monthly payments of One Hundred (\$100.00) Dollars each on the first (1st) day of each month throughout the term of this Lease.

5.0 USE OF LEASED PREMISES. The parties agree as follows regarding the use of Leased Premises:

5.1 Our Place will operate a not for profit drop-in facility for mental health consumers. The programs operated by Our Place shall be approved by the State of Alabama Department of Mental Health and Mental Retardation.

5.2 Our Place will also prepare and serve meals to the users of its services.

5.3 Our Place may make structural changes to the Leased Premises for the purpose of installing a bathroom. The said bathroom must be within the confines of the current structure. All construction and usage must comply with the Americans with Disabilities Act and all applicable zoning laws and building and safety codes. Prior to the commencement of any construction or remodeling work all plans and specifications must be approved by the City's Director of General Services. All contractors must be licensed by the City of Huntsville. All plans and specifications are also subject to the approval of the Madison County Board of Health.

5.4 Our Place shall have the exclusive use of the kitchen and the two offices in the Bookstore Building at all times. The City's General Services Department shall have access to these areas for use in emergencies and to insure compliance with this Lease. Our Place shall have the exclusive use of all other areas of the Leased Premises during the hours of 8:00 a.m. until 5:00 p.m. on the Mondays, Tuesdays, Wednesdays, and Fridays during the term of this Agreement and during the hours of 8:00 a.m. through 8:00 p.m. on Thursdays during the term of this Agreement.

5.5 City may allow other groups in the community to use the Leased Premises, except for the kitchen and offices specified in Section 5.4, for meetings during periods when it is not subject to the exclusive use of Our Place. Such use shall be subject to the City's Recreation Services Department scheduling policies and procedures.

6.0 DUTIES AND OBLIGATIONS OF CITY. City assumes the following duties and obligations:

6.1 City's General Services Department shall maintain the roof and the HVAC system of the Leased Premises.

6.2 Allow Our Place the use of the Leased Premises at times other than the times specified in paragraph 5.4 of this Lease subject to the scheduling policies and procedures of the City's Recreation Services Department.

7.0 DUTIES AND OBLIGATIONS OF OUR PLACE. Our Place hereby assumes the following duties and obligations:

7.1 Our Place shall perform, at its sole cost and expense, the ordinary maintenance of the Leased Premises and shall make all necessary repairs to the Leased Premises with the exception of repairs to the roof and HVAC system. The ordinary maintenance of the Leased Premises shall include janitorial services.

7.2 Our Place shall maintain phone service and utilities for the Leased Premises.

7.3 The activities of Our Place shall not unreasonably interfere with the City's use of the Max Luther Recreation Center.

7.4 Our Place shall maintain casualty insurance on the Leased Premises with a policy limit of \$200,000 and shall provide proof of such insurance prior to the commencement of the term of this sub-lease. Our Place shall also maintain a policy of commercial general liability on the Leased Premises written on an "occurrence basis" for bodily injury and property damage with a \$1,000,000 general aggregate limit. The City, its elected and appointed officials, employees, agents and specified volunteers are to be covered as Additional Insureds on the said policy. Additional insured status shall be through ISO Additional Endorsement CG 20 10 11 85 or equivalent that is sufficient to provide the coverage required by this Agreement. Our Place's insurance coverage shall be primary insurance as respects the City, its officers, employees, agents and specified volunteers, as their interests may appear. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents or specified volunteers shall be excess of Our Place's insurance and shall not contribute to it.

8.0 DEFAULT. If (i) Our Place fails to pay when due any rent payable under this Sub-Lease, and such failure continues for a period of thirty (30) days after City gives Our Place written notice of such failure, or (ii) if Our Place fails to comply with any lawful term, condition, covenant, obligation, or agreement expressed herein (other than the payment of rent), and such failure continues for a period of sixty (60) days after City gives Our Place written notice of such failure (provided, however, that if such failure cannot reasonably be cured within said sixty (60) day period, then Our Place shall have such additional period of time within which to cure such

failure provided Our Place commences such cure as soon as is practicable within said initial sixty (60) day period and diligently prosecutes the cure to completion.), or (iii) a petition in bankruptcy has been filed against Our Place and such petition is not dismissed within one hundred twenty (120) days after it is filed or commenced, or (iv) Our Place shall be adjudicated a bankrupt or insolvent according to law, or (v) Our Place makes an assignment of Our Place's property for the benefit of its creditors, then, in any of the said cases and notwithstanding any license or waiver of any prior breach of any of the said terms, conditions, covenants, obligations or agreements, City without necessity or requirement of making any entry may (subject to Our Place's rights under applicable law) terminate this Lease while such default remains uncured by written notice to Our Place. Said notice shall specify the date on which this Lease shall terminate, which date shall be not less than ten (10) business days after the giving of such notice. In such event, upon the date specified in City's notice, this Lease and the estate hereby granted shall expire and terminate with the same force and effect as if the date specified in such notice were the date hereinbefore fixed for the expiration of this Lease, and all right of Our Place hereunder shall expire and terminate. Any termination under this section shall be without prejudice to any remedies, which might otherwise be used for arrears of rent or preceding breach of any of the said terms, conditions, covenants, obligations or agreements.

9. TERMINATION OF CITY'S LEASE INTEREST. If the City's lease interest on the Leased Premises is terminated for any reason, then this Sub-Lease shall be terminated effective upon the termination of the Lease Agreement between the City and the Madison County Board of Health.

10. COVENANTS IN EVENT OF TERMINATION. Our Place covenants that in case of any termination of this Lease, by reason of default of Our Place, then:

10.1 Our Place will forthwith pay to City, as liquidated damages hereunder, (i) all rent then due and unpaid and (ii) a sum equal to the amount by which the rent for the remainder of the term of this Lease exceeds the fair market rental value of said Leased Premises for the remainder of the Term, which sum shall be discounted to its then present value in accordance with accepted financial practices using a rate equal to the then prime rate published in the Wall Street Journal (or its successor) as of the date of the termination. Notwithstanding the foregoing, City shall be obligated to use all commercially reasonable measures to mitigate its damages.

10.2 Our Place covenants that it will furthermore indemnify City from and against all reasonable, out-of-pocket attorneys' fees and disbursements incurred by City in connection with the default by Our Place and City's termination of this Lease.

10.3 At the option of City, however, City's cause of action under this Section shall accrue when a new tenancy first commences subsequent to a termination under this Lease, in which event City's damages shall be limited to the rental otherwise payable under this Lease from the date of said termination to the date the new tenancy first commences, subject, however, to City's obligation to use all commercially reasonable measures to mitigate its damages.

10.4 City shall also be entitled to any and all other remedies provided by law. All rights and remedies are to be cumulative and not exclusive.

11. **SURRENDER.** Upon the termination of this Sub-Lease, Our Place shall deliver up the Leased Premises in the same condition as the same were in at the commencement of the term of this Lease (with the exception of any remodeling or structural changes previously approved by City), reasonable and ordinary wear and tear and damage by fire and other casualty or condemnation excepted. Neither vacating the Leased Premises by Our Place, nor the delivery of possession to City, shall be deemed a surrender or an acceptance of surrender of the Leased Premises unless so stipulated in writing by City.

12. **LOSS OR DAMAGE.**

Our Place shall indemnify City against all liabilities, damages and other expenses, including reasonable attorneys' fees, which may be imposed upon, incurred by, or asserted against City by reason of (a) any failure on the part of Our Place to perform or comply with any covenant required to be performed or complied with by Our Place under this Lease or (b) any injury to person or loss or damage to property sustained or occurring on the Leased Premises on account of or based upon the act, omission, fault, negligence or misconduct of any person whomsoever other than the act, omission, fault, negligence or misconduct by City or its employees, agents, contractors or subcontractors.

13 **FIRE, OTHER CASUALTY.** If a fire, casualty, or taking renders the Leased Premises or any part thereof unfit for use and occupancy as intended in this Agreement, a just and proportionate abatement of rent shall be made as of the date of such fire, casualty, or taking. If a substantial portion of the Leased Premises is damaged by fire, casualty or taking, City and Our Place shall each have the right to terminate this Lease by notice given to the other party at any time within sixty (60) days after the date of such damage, casualty or taking. If City fails to restore the Leased Premises to a condition substantially suitable for use and occupancy within one hundred eighty (180) days after said fire, casualty or taking, then Our Place shall have a further right to terminate this Lease by notice given to City at any time after the expiration of said one hundred eighty (180) day period, but before the completion of said repair and restoration.

14.0 **MISCELLANEOUS.** The parties hereto further agree as follows:

14.1 The non-enforceability or illegality of any provision of this Lease shall not render the other provisions unenforceable, invalid or illegal.

14.2 The paragraph headings contained herein are only for convenience and reference, and are not intended to be part of this Lease or in any manner to define, limit or describe the scope and intent of this Lease for the particular paragraph to which they refer.

14.3 The words "City" and "Our Place", when used in this Lease, shall be construed as plural whenever the number of the parties to this Lease shall require.

14.4 Any and all notices or other communications required or permitted by this Lease or by law to be served on or given to any party hereto, by another party to this Lease, shall be in writing, and shall be deemed duly served when personally delivered to the party, City or Our Place, to whom they are directed, or in lieu of such personal service, when received if sent by United States Mail, Postage Prepaid, Certified Mail, Return Receipt Requested, and addressed as follows:

City: City of Huntsville, Alabama
A Municipal Corporation
Post Office Box 308
Huntsville, Alabama 35804-0308
Attention: Director of General Services

with copy to: City Attorney's Office
Post Office Box 308
Huntsville, Alabama 35804-0308
Attention: City Attorney

Our Place: Our Place, Inc.
P.O. Box 2751
Huntsville, Alabama 35804
Attention: Janet Neighbors

If either party hereto changes its address for purposes of this Agreement, the party so changing shall give the other party appropriate written notice of change of address in the manner specified above.

14.5 The parties further agree that this Lease is to be deemed to have been prepared jointly by the parties hereto, after arm's length negotiations, and that any ambiguity or uncertainty existing herein, if any, shall not be interpreted against the other party.

14.6 It is expressly understood that this Lease sets forth the entire agreement of the parties and supersedes any prior written or oral agreements between them concerning the subject matter contained herein, oral or otherwise, and that there is no other agreement between the parties other than that contained herein.

14.7 The parties further agree to sign any and all instruments or documents necessary to carry out the full purpose and intent of this Lease.

14.8 This Lease shall be binding upon the parties, and their successors in interest.

14.9 Each party to this Lease shall be responsible for the payment of all costs, expenses, legal fees and disbursements incurred or to be incurred by it or any of them in negotiating and preparing this Lease, and all documents required to be delivered pursuant to this Lease and in otherwise performing the transactions contemplated by this Lease.

IN WITNESS WHEREOF, the parties hereunto entered into this Lease on the day first written above.

WITNESS:

OUR PLACE, INC.
a non-profit corporation

By: _____

By: _____

Its: _____

Its: _____

CITY OF HUNTSVILLE, ALABAMA

Attest: _____

By: _____

Charles E. Hagood

Tommy Battle

Its: City Clerk-Treasurer

Its: Mayor

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 of The City of Huntsville, a municipal corporation are signed to the foregoing instrument, and who are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they, in their capacity as such officers, executed the same voluntarily 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

STATE OF ALABAMA)
)
COUNTY OF MADISON)

I, the undersigned, a notary public in and for said County, in said State, hereby certify that _____ and _____, whose names as _____ and _____ of Our Place, Inc. an Alabama non-profit corporation, are signed to the foregoing instrument, and who are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they, in their

capacity as such officers, executed the same with full authority for an 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
My Commission Expires: _____

APPROVED:

By: _____
Dr. Lawrence Robey
Health Officer, representing the Madison County
Board of Health, Madison County, Alabama

ROUTING SLIP CONTRACTS AND AGREEMENTS

Originating Department: Recreation Services

Council Meeting Date: 8/22/2013

Department Contact: Greg Patterson

Phone # 427-8021

Contract or Agreement: Sub-Lease Agreement between Our Place, Inc. and the City of Huntsville

Document Name: Sub-Lease Agreement between Our Place, Inc. and the City of Huntsville

City Obligation Amount:

Total Project Budget:

Uncommitted Account Balance:

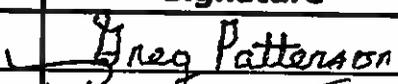
Account Number:

Procurement Agreements

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

<u>Not Applicable</u>	Grant Name:
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Department	Signature	Date
1) Originating		8-12-13
2) Legal		8-13-13
3) Finance 		8/14
4) Originating		
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		