

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number _____

Meeting Type: Regular

Meeting Date: 12/5/2013

Action Requested By:
Administration

Agenda Item Type
Resolution

Subject Matter:

License Agreement between the City of Huntsville and the Forty-Seven, Inc. d/b/a The Downtown Forty-Seven

Exact Wording for the Agenda:

Resolution authorizing the Mayor to enter into a License Agreement between the City of Huntsville and the Forty-Seven, Inc. d/b/a The Downtown Forty-Seven.

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.

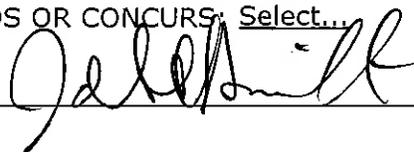
[Empty box for providing details on why the action is required, recommended, and what Council action will provide, allow, and accomplish.]

Associated Cost:

Budgeted Item: Not applicable

MAYOR RECOMMENDS OR CONCURS: Select...

Department Head: _____



Date: 12/3/2013

ROUTING SLIP CONTRACTS AND AGREEMENTS

Originating Department: Administration Council Meeting Date: 12/5/2013

Department Contact: John Hamilton Phone # 5009

Contract or Agreement: License Agreement between the City of Huntsville and the Forty-Seven, Inc. d/b...

Document Name: License Agreement between the City of Huntsville and the Forty-Seven, Inc. d/b/a The ...

City Obligation Amount:

Total Project Budget:

Uncommitted Account Balance:

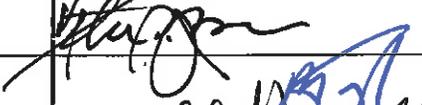
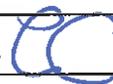
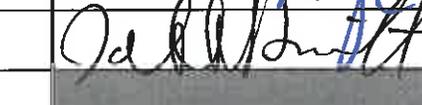
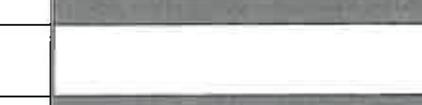
Account Number:

Procurement Agreements

<u>Not Applicable</u>	<u>Not Applicable</u>
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Grant-Funded Agreements

<u>Select...</u>	Grant Name: <input style="width: 90%;" type="text"/>
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Department	Signature	Date
1) Originating		12/3/2013
2) Legal		12-4-13
3) Finance 		12/3
4) Originating		12/3/2013
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		

RESOLUTION NO. 13-_____

WHEREAS the City Council of the City of Huntsville, Alabama, does hereby declare in accordance with Code of Alabama (1975) that the Mayor be, and he is hereby authorized to enter into a License Agreement between the City of Huntsville and the Forty-Seven, Inc. d/b/a The Downtown Forty-Seven 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 "License Agreement between the City of Huntsville and the Forty-Seven, Inc. d/b/a The Downtown Forty-Seven," consisting of five (5) pages and the date of December 5, 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 5th day of December, 2013.

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

APPROVED this the 5th day of December, 2013.

Mayor of the City of
Huntsville, Alabama

LICENSE AGREEMENT BETWEEN
THE CITY OF HUNTSVILLE AND
THE FORTY-SEVEN, INC.
d/b/a THE DOWNTOWN FORTY-SEVEN

LICENSE AGREEMENT BETWEEN THE CITY OF HUNTSVILLE
AND THE FORTY-SEVEN, INC. d/b/a THE DOWNTOWN FORTY-SEVEN

This License Agreement (the "Agreement") is entered into this 5th day of December, 2013 by and between the City of Huntsville, a municipal corporation in the State of Alabama (hereinafter the "City"), and The Forty-Seven, Inc. d/b/a The Downtown Forty-Seven (hereinafter "Downtown Forty-Seven").

WHEREAS, the Downtown Forty-Seven is a group of Huntsville citizens who are committed to encouraging, supporting and promoting the ongoing cultural, aesthetic, social and economic vitality of the downtown area of Huntsville; and

WHEREAS, the City of Huntsville has a public interest in promoting a vital and thriving downtown area; and

WHEREAS, the Downtown Forty-Seven desires to stage an event known as the "Downtown 47 Tinsel Trail" in Big Spring Park East; and

WHEREAS, the City has determined that entering into this License Agreement will serve the public purpose of enhancing the economic vitality and growth of the Downtown Huntsville area;

NOW THEREFORE, for and in consideration of the mutual covenants herein, the parties agree as follows:

1. **Use of Premises.** Subject to the terms and conditions of this License Agreement, the City hereby grants the Downtown Forty-Seven permission to utilize that portion of Big Spring Park East designated as the "Event Area" which shall be determined by the City's Parks and Recreation Department, and which is hereinafter referred to as the "Premises" to be used for an event called the "Downtown 47 Tinsel Trail" (the "Event") which shall be a community event wherein individuals and organizations sponsor live holiday trees to be placed on the Premises.

2. **Term.** The term of this Agreement shall be from November 27, 2013 through January 8, 2014, inclusive.

President of the City Council of the
of the City of Huntsville, Alabama
Date: December 5, 2013

3. Set up and Construction of Event Exhibits. The Downtown Forty-Seven shall not affix any trees or other materials to the Premises without the prior approval of the City's Director of Landscape Management. The Downtown Forty-Seven shall obtain the approval of the City's Director of General Services prior to the use of electrical power for any part of the Event. Electricity may be obtained only from sources authorized by the General Services Director.

4. Alteration of Premises. The Downtown Forty-Seven may not remove or alter any trees or make any other changes to the Premises without the prior approval of the Director of Landscape Management.

5. Vandalism or Weather Damage. The Downtown Forty-Seven shall promptly repair any damage to its property or the Premises caused by vandalism or weather events. The City shall not be responsible for any damage to property of the Downtown Forty-Seven, its sponsors, or third parties.

6. Compliance with Laws. The Downtown Forty-Seven agrees to comply with all ordinances, laws, rules and regulations pertaining to the use of the Premises and shall not use the Premises in an unlawful manner nor create or allow to exist any nuisances or trespass nor deface or damage the Premises. The Downtown Forty-Seven shall not sell, serve or allow alcoholic beverages on the premises.

7. Licensing and Permits. The Downtown Forty-Seven shall obtain and maintain all licenses and permits and pay all fees necessary or required to hold the event and to sell and serve food on the Premises. City may require the Downtown Forty-Seven to provide proof of proper permitting or licensure prior to or during the event.

8. Access. The Downtown Forty-Seven shall, at all times, maintain handicap access throughout the Premises and maintain the Premises in such a way so as to meet the Americans with Disabilities Act (ADA) standards for accessibility.

9. Indemnification; non-liability. The City, its officials, officers, employees, agents, contractors, and volunteers performing an authorized city function, shall not be liable for any loss, injury, death, or damage to persons or property which at any time may be suffered or sustained by the City, its officials, officers, employees, agents, contractors or volunteers performing an authorized city function; the Downtown Forty-Seven, its agents, employees or contractors; or by any person who may at any time be using or occupying or visiting the Premises or be in, on or upon the same if such loss, injury, death, or damage shall be caused or result from or arise out of the negligence of the Downtown Forty-Seven, its agents, employees or contractors, or of any occupant, visitor or user of any portion of the Premises under the terms of this Agreement. The Downtown Forty-Seven shall indemnify and hold harmless and does hereby agree to indemnify and hold harmless the City, its officials, officers, employees, agents, contractors and volunteers performing an authorized city function, (hereinafter referred to as "indemnitees") from and against any and all claims, liability, loss, judgments, suits, penalties, costs, expenses and damages aforesaid (including but not limited to reasonable attorneys' fees and expenses and court costs and fees). The Downtown Forty-Seven's duty to indemnify shall not apply to loss, injury, death or damage arising by reason of the negligence or misconduct of the indemnitees. The Downtown Forty-Seven's duties hereunder shall survive the termination or expiration of this Agreement.

Nothing contained in this section 9 shall be construed as a waiver of any immunity of statutory protection of the City of Huntsville, Alabama, and no third party may expand any recovery against the City due to the Downtown Forty-Seven's duty of indemnification.

10. Restoration. The Downtown Forty-Seven agrees to provide for and pay all costs and expenses associated with clean-up of, and damage to, the City's property resulting from the Downtown Forty-Seven's use of the Premises. The Premises shall be cleaned and restored entirely by the Downtown Forty-Seven no later than the end of the Agreement term, to the sole satisfaction of the City.

11. Insurance. The Downtown Forty-Seven shall obtain and maintain in effect throughout the term of this agreement, bodily injury and property damage liability insurance, written on an occurrence basis, covering the Premises in a minimum amount of FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) for the injury to or death of any one person and ONE MILLION DOLLARS (\$1,000,000.00) for the injury to or death of any number of persons in one occurrence, and property damage liability insurance in the amount of ONE MILLION DOLLARS (\$1,000,000.00). Such insurance shall specifically insure the Downtown Forty-Seven against all liability assumed by it hereunder as well as liability imposed by law. The City of Huntsville, its officers, employees, agents, contractors and specified volunteers are to be covered as Additional Insureds. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, employees, agents, contractors or specified volunteers. Additional Insured status shall be through ISO Additional Endorsement CG 20 10 11 85 or equivalent that is sufficient to provide coverage as per this Agreement. Such policy of insurance shall be issued by a company authorized to engage in the insurance business in the state of Alabama and shall be approved by the City Attorney of the City of Huntsville prior to Lessee entering upon the leased premises upon the terms of this agreement.

12. Rent. The Downtown Forty-Seven shall pay to the City the sum of \$10.00 (Ten and no/100 dollars) as for the use of the Premises.

13. Non-compliance. In the event of any breach of any condition or term of this Agreement, the City may cancel the Event and terminate this Agreement at any time. Huntsville Police Department, Huntsville Fire and Rescue or any other official of the city of Huntsville acting within the line and scope of his/her authority may take any action they deem necessary in order to protect the public health or safety, to prevent damage or destruction to public or private property, or to enforce applicable laws.

14. Miscellaneous.

(a) This Agreement shall not be amended except by written instrument signed by the parties hereto. This Agreement, together with all exhibits, constitutes the entire agreement between the parties and shall be interpreted under and according to the Laws of the State of Alabama. This Agreement shall be binding upon and inure to the benefit of the Downtown Forty-Seven, its successors and permitted assigns, and the City, its successors and assigns.

(b) The Downtown Forty-Seven shall not be excused from complying with any of the terms and conditions of this Agreement by any failure of the City upon one or more occasions to

insist upon or to seek compliance with any such terms or conditions, nor shall such failure on the part of the City be construed or held to be a waiver of the City's rights thereafter to strictly enforce any provision of this Agreement.

(c) The captions of this Agreement are for convenience and reference only and in no way define, describe, extend or limit the intent or scope of this Agreement.

(d) If, for any reason or no reason, any agreement(s), provision(s), or term(s) of this Agreement (whether material to the bargain of City and the Downtown Forty-Seven or not) should be declared illegal, null and void, unconstitutional or unenforceable, in whole or in part, by any court of competent jurisdiction, the offending portion of this Agreement shall be deemed severed herefrom as though the same was never a part hereof; provided, however, the remainder of this Agreement shall not be impaired and shall remain in full force and effect according to its remaining agreements, covenants, provisions and terms.

15. The parties represent and warrant that they have full authority to enter into this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed under their respective seals and delivered as of the date first above written.

ATTEST

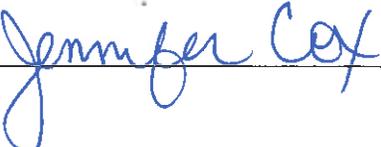
**LICENSOR:
THE CITY OF HUNTSVILLE, ALABAMA**

Charles E. Hagood
City Clerk-Treasurer

By: _____
Tommy Battle, Mayor

ATTEST

**LICENSEE:
THE FORTY-SEVEN, INC d/b/a
THE DOWNTOWN FORTY-SEVEN**



By: Robert C. Mayer, Jr.
Its: Treasurer

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 municipal corporation on the day the same bears day.

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

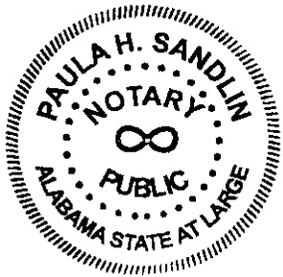
Notary Public

STATE OF ALABAMA)
COUNTY OF MADISON)

I, the undersigned, a notary public in and for said County, in said State, hereby certify that Rob Mayes, whose name as Treasurer of the Forty-Seven, Inc. d/b/a The Downtown Forty-Seven, 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 instrument, he, in his capacity as such officer, 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 3rd day of December, 2013.

Paula H. Sandlin
Notary Public



MY COMMISSION EXPIRES MAY 15, 2016