

ROUTING SLIP CONTRACTS AND AGREEMENTS

Originating Department: Police

Council Meeting Date: 1/23/2014

Department Contact: Jessica Winn

Phone # (256) 427-7002

Contract or Agreement: Lease Agreement between City of Huntsville & Drake and Harlan Properties

Document Name: _____

City Obligation Amount: _____ \$28,605/year

Total Project Budget: _____

Uncommitted Account Balance: _____

Account Number: _____ 01-5100-0608-1101

Procurement Agreements

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

<u>Select...</u>	Grant Name: _____
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Department	Signature	Date
1) Originating	<i>Kevin Morris</i>	12/9/2013
2) Legal	<i>Mary Cates</i>	1/1/2013
3) Finance <i>CC</i>	<i>Boyl</i>	12/23/13
4) Originating		
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number _____

Meeting Type: Regular

Meeting Date: 1/23/2014

Action Requested By:
Police

Agenda Item Type
Resolution

Subject Matter:

Lease Agreement between the City of Huntsville (Police) and Drake and Harlan Properties for warehouse lease contract renewal

Exact Wording for the Agenda:

Resolution authorizing the Mayor to enter into a lease agreement with Drake and Harlan Properties for warehouse space located at 3000 and 3002 12th Avenue.

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.

Leased warehouse space is occupied by the Huntsville Police Department. The space is a total of 15,660 square feet @ \$2,383.75/month.

Associated Cost:

Budgeted Item: Select...

MAYOR RECOMMENDS OR CONCURS: Select...

Department Head: _____

René Morris

Date: 12/9/2013

RESOLUTION NO. 14-_____

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 an agreement by and between the City of Huntsville and Drake and Harlan Properties, 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 "Lease Agreement between the City of Huntsville, Alabama and Drake and Harlan Properties, Inc.," consisting of ten (10) pages, and the date of January 23, 2014 appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, and 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 23rd day of January, 2014.

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

APPROVED this the 23rd day of January, 2014.

Mayor of the City of
Huntsville, Alabama

STATE OF ALABAMA
COUNTY OF MADISON

LEASE AGREEMENT BETWEEN
THE CITY OF HUNTSVILLE AND
DRAKE AND HARLAN PROPERTIES, INC.

THIS LEASE made and entered into on this the _____ day of January, 2014, by and between Drake and Harlan Properties, Inc., hereinafter referred to as "Landlord", which expression shall include the successors, assigns, heirs, executors, and administrators of the Landlord, and the City of Huntsville, a municipal corporation, hereinafter referred to as "Tenant" which expression shall include the successors and assigns of Tenant.

WITNESSETH, that:

LANDLORD is the owner of, or otherwise has a good and lawful right to lease, let, and demise the following described premises, situated in Huntsville, Madison County, Alabama (hereinafter referred to as the "Leased Premises"), to wit:

**That certain building located at
3000 and 3002 12th Avenue, Huntsville, Alabama 35805
and consisting of approximately
15,660 square feet.**

LANDLORD has agreed, and subject to the covenants, terms and conditions hereinafter set forth, does hereby lease, let and demise the Leased Premises above described unto Tenant, and Tenant does hereby rent said premises from Landlord upon said covenants, terms, and conditions.

NOW THEREFORE, in consideration of the premises and of the covenants and agreements hereinafter made, Landlord hereby leases to Tenant, and Tenant leases from Landlord, the Leased Premises above described to be used for any lawful purpose, including but not limited to, use as a storage facility.

1. TERM AND RENT.

This lease is for a term of three (3) years, beginning on the 1st day of January, 2014 and ending on the 31st day of December, 2016. The total rent is to be \$28,605.00 annually or \$2,383.75 per month, due on the first day of each month in advance and considered delinquent after the fifth day of each month. Landlord covenants to keep the Tenant in possession of the premises for the term of this lease, subject to the terms and conditions herein, in consideration whereof Tenant agrees to pay the rent hereinabove specified at the place designated by Landlord. (If Tenant shall take possession on a day other than the first day of the month, the first month's rent shall be prorated by dividing the sum of \$2,383.75 by the number of days of the month during which Tenant takes

possession to obtain a daily rate and then multiplying said daily rate by the number of days Tenant shall be in possession during said first month). In the event that the Tenant holds over for ten days after expiration of the term of this lease without the consent of the Landlord, the Landlord may, at its option, deem such holdover a renewal of this lease for an additional term of one year under the same terms, covenants and conditions thereof, except rent, or the Landlord may take such steps as may be required to remove Tenant from the leased property. In the event Landlord shall deem holdover by Tenant a renewal to payment of a monthly rental rate of \$2,383.75 increased by the same percentage as the consumer price index has increased since the date this lease was originally executed.

2. CONDITION AND MAINTENANCE OF PREMISES.

Landlord represents that insofar as it can reasonably ascertain, the demised premises at the time of the commencement of the Tenant's obligation to pay rent hereunder will be in first class tenantable condition with no broken glass and heating plant, plumbing, wiring, alarm system, and all other apparatus or fixtures in good working condition. The Landlord will, at Landlord's expense, properly maintain the exterior of the said building, parking areas, and adjacent sidewalks and make at Landlord's expense, all structural and all exterior repairs, including all repairs to roof, walls and window frames, in the building necessary or required to maintain the Leased Premise in such condition during the term of this lease or any extension thereof, and will maintain and repair heating, alarm system, plumbing, sprinkler and hot water systems, (provided, however, that where any such repairs, save those caused by fire or other insurable casualty, are made necessary by or as a result of the voluntary waste, negligence, or abusive conduct of the Tenant or any person for whose conduct the Tenant is legally responsible, the Tenant shall forthwith reimburse the Landlord for the expense of any and all such repairs). Landlord shall also make any repairs necessitated by water seepage or by other causes not under the Tenant's control. Landlord shall make all interior repairs necessary or required by any act, omission, negligence or misconduct of the Landlord or of any person for whose conduct the Landlord is responsible. The Landlord further covenants to save the Tenant harmless and indemnified from all injury, loss or damage to any person or property, all liability incurred, suffered or claimed by reason of the Landlord's neglect or failure to observe and perform the terms covenants and conditions or any of them, in this paragraph contained and on the part of the Landlord to be performed and observed.

3. COMPLIANCE WITH LAW.

The Tenant in its use and occupancy of the premises will comply with all local, state, and federal laws and ordinances applicable thereto, as well as the lawful requirements of all competent authorities; the Tenant will not knowingly permit said premises to be used for any unlawful, improper, or offensive purpose. The Tenant agrees to comply with all reasonable rules and regulations for said building as may hereinafter be adopted by Landlord which do not interfere with the Tenant's use and enjoyment and invitees when on the premise to comply with said rules and regulations.

4. TENANT'S DUTY TO KEEP PREMISES IN REPAIR.

Subject to the duties of the Landlord as provided herein, the Tenant will keep all and singular the said Leased Premises in such repair as the same are at the commencement of the said term or may be put in by the Landlord during the continuance thereof, damage due to reasonable wear and tear being excepted as well as damage due to negligent or intentional acts or omissions of the Landlord (or anyone acting on behalf of the Landlord) being excepted.

5. INSURANCE (Liability).

Tenant, a self-insured municipal corporation, shall not be required to maintain any policy of comprehensive liability insurance to insure against liability for injury to persons and property and for death of any person occurring in or about the Leased Premises.

6. INSURANCE (Hazard).

Landlord shall keep the building (including all improvements, alterations, additions, and changes made thereto by Landlord) insured against damage or destruction by fire and the perils commonly covered under the extended coverage endorsement to the extent of ninety percent (90%) of the full insurable value thereof, the proceeds of such policy or policies shall be used for the repair of the Leased Premises. The Landlord shall continuously insure the premises against fire loss by policies with extended coverage and the Tenant shall not be liable for injury to the premises by fire or other casualty so covered by this type of insurance, no matter how caused, it being understood that in case of such injury the Landlord shall look solely to the insurer for reimbursement and not to the Tenant.

7. TENANT'S EMPLOYEES AND INVITEES.

Tenant is responsible for the acts and conduct of Tenant's employees and invitees while in or about the leased premises insofar as such acts and conduct result in physical damage to said premises and Tenant is liable for such damage done by them to the same extent as if done by the Tenant unless such damage is a peril insured pursuant to paragraph six (6) above.

8. UTILITIES.

The Tenant, at Tenant's expense, shall pay all utility meter deposit fees and such sewer service and such utilities (including but not limiting same to water, electric current, and natural gas) throughout the term hereof as Tenant requires for operation and occupancy of the Leased Premises.

9. JANITORIAL SERVICE.

The Tenant, at Tenant's expense, shall furnish to the Leased Premises, janitorial services sufficient to maintain the building in a clean and sanitary condition.

10. LANDLORD RIGHT OF ENTRY.

Landlord shall have the right at all reasonable times during normal business hours to enter said leased premise to inspect same and may at any time remove placards, signs, fixtures, alteration or additions not in conformity with Paragraph 14 this lease and may make such repairs and alterations as may be deemed necessary by the Landlord necessary to the preservation of the Leased Premises or the building; the Landlord is not required to repair the premises leased herein except as specifically provided in this lease.

11. PREMISES UNFIT FOR USE, EMINENT DOMAIN, FIRE.

It is agreed that if the leased premises, or any part thereof, or the whole or any part of the buildings of which they are a part, shall be taken for any street or other public use under any statute by right of eminent domain or shall be destroyed or damaged by fire or other casualty (under circumstances where such fire or other casualty was not caused by a negligent act or omission of the Tenant or its agents, servants, or employees) so as to be thereby unfit for use, then and in such case the rent hereinabove reserved, or a just a proportion thereof, according the nature and extent of damage sustained by the leased premises shall be abated until the leased premises shall have been fully repaired or restored by the Landlord. In the event of such damage or destruction or taking Tenant may, however elect to terminate this lease in its entirety if Landlord is unable or unwilling to repair or restore the demised premises to tenantable condition for the use of the Tenant within thirty (30) days of the date of such taking, damage or destruction. In the event of any such taking for public use as hereinabove referred to, or damage or destruction notwithstanding this lease be terminated, and whether all or any part of the demised premises be taken, damaged, or destroyed, nothing herein shall preclude the Tenant from intervening in any condemnation proceedings involving the demised premises and from taking appropriate legal steps to prove its damage which might result from the taking, damage, or destruction.

12. TAXES AND LICENSES.

Landlord to Pay Real Property Taxes and Assessments.

Landlord shall pay all taxes and assessments levied against the land, buildings and improvements other than for the personal property of Tenant.

13. ASSIGNMENT.

Tenant will not assign this lease, or sublease the Leased Premises, or any portion thereof, or permit any transfer thereof by operation of law, without the written consent of the Landlord first obtained, which consent shall not be unreasonably withheld.

14. ALTERATIONS OF LEASE PREMISES; FIXTURES; SIGNS.

a. Alterations.

Tenant shall not make any structural changes or alterations in or to any part of the building, or to the Leased Premises, except upon the prior written consent of the Landlord, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, the parties agree that Tenant may, from time to time without the approval of the Landlord, make at Tenant's expense, alterations to the interior of the Leased Premises provided the same do not materially diminish the value of the Leased Premises.

b. Fixtures.

Tenant may install and affix to the Leased Premises such fixtures and equipment as Tenant deems desirable and all such fixtures and equipment shall remain the property of Tenant and may be removed at any time provided that Tenant, at its expense, shall repair any damage caused by reason of such removal.

c. Signs and Advertisements.

Tenant shall not attach any sign to the exterior of the Leased Premises unless the design, nature, and content thereof have been approved by the Landlord. The Tenant shall at its expense maintain and repair any such sign and may upon the expiration of the term of this Lease or any renewal thereof, remove said signs.

15. CARE OF LEASED PREMISES.

Tenant shall not permit, allow or cause any act or deed to be performed or any practice to be adopted or followed in or about said Leased Premises which shall cause, or be likely to cause, injury or damage to any person, or to said Leased Premises, or to the building, or to the sidewalks and pavements adjoining the Leased Premises. Tenant, at all times, shall keep said Leased Premises in a neat and orderly condition. Tenant agrees to permit no waste on the property but to take good care of same. Nothing contained herein shall prohibit Tenant from permitting, allowing, or causing any act or deed to be performed or any practice to be adopted or followed in or about said Leased Premises in the course of Tenant's normal and customary use of the Leased Premises, sidewalks and pavements adjoining the Leased Premises nor impose liability upon Tenant as a result of wear and tear.

16. DAMAGE OR LOSS OF PROPERTY.

Landlord shall not be liable for any loss of any property of the Tenant from said Leased Premises, or for any damage to any property of the Tenant, however, occurring, except only such damage in the latter instance as may result directly from the failure of Landlord to perform any act required of him under the terms and conditions of this Lease, specifically to include the requirements set forth in Section Two herein

17. QUIET ENJOYMENT.

The Landlord covenants that the Tenant upon paying rent, herein specified and observing the covenants hereof, shall peaceably and quietly have, hold and enjoy the demised premises during the term hereof and any extensions thereto, and at all times when the Tenant may hereafter be a tenant at will of said premises.

18. DEFAULT BY TENANT

A. Tenant shall be in default upon the occurrence of any of the following:

- 1) Failure of the Tenant to pay rent or to comply with any other provision of this lease agreement for a period of thirty (30) days or more.
- 2) Filing by the Tenant in any court pursuant to any statute, either of the United States or any state, of a petition in bankruptcy or insolvency, or for reorganization, or for the appointment of a receiver or trustee of all or a portion of the Tenant's property or an assignment by the Tenant for the benefit of creditors.
- 3) Filing against the Tenant in any court pursuant to any statute, either of the United States or of any state, of a petition in bankruptcy or insolvency, or for reorganization, or for appointment of a receiver or trustee of all or a portion of the Tenant's property, if within ninety (90) days after the commencement of any such proceeding against the Tenant such petition shall not have been dismissed.
- 4) Upon the occurrence of an event of default, the Landlord at any time thereafter may give written notice to the Tenant specifying such event of default and stating that this lease shall expire on the date specified in such notice, and upon the date specified in such notice this lease and all rights of the Tenant hereunder shall terminate.

B. Upon the occurrence of any of the conditions specified in Section 18.A. herein, the Landlord shall have as liquidated and agreed final damages for the Tenant's default, an amount equal to the difference between the rent and additional rent reserved hereunder for the unexpired portion of the lease terms and then fair and reasonable rental value of the leased property for the same period less any proceeds from Landlord's reletting of the Leased Premises for any portion of the lease term. In the computation of such damages the difference between any installment of rent becoming due hereunder after the date of termination and the fair and reasonable rental value of the leased property for the period for which such installment was payable shall be discounted to the date of termination at the rate of four percent annum. If the leased property or any part thereof is relet by the Landlord for the unexpired term of this lease, or any part thereof, before presentation of proof of such liquidated damages to any court, commission, or tribunal, the amount of rent reserved upon such reletting shall be deemed prima facie to be the fair and reasonable rental value for the part of the whole of the leased property so relet during the term of the reletting. Nothing herein contained shall limit or prejudice

the right of the Landlord to prove for and obtain as liquidated damages by reason of such termination an amount equal to the maximum allowed by any statute or rule of law in effect at the time when, and governing the proceedings in which, such damages are to be proved, whether or not such amount be greater, equal to, or less than the amount of the difference referred to above. Landlord shall have a duty to reasonably mitigate its damages.

The Tenant hereby expressly waives, so far as permitted by law, the service of any notice of intention to reenter provided for in any statute, or of the institution of legal proceedings to that end. The Tenant, for an on behalf of itself and all person claiming through or under the Tenant, also waive any right of redemption or reentry or repossession or to restore the operation of this lease in case the Tenant shall be dispossessed by a judgment or by warrant of any court or judge or in the case of reentry or repossession by the Landlord.

The terms "enter", "reenter", "entry", or "reentry", as used in this lease are not restricted to their technical legal meaning.

In the event a civil action shall be brought for the recovery of possession of the demised premises or for the recovery of any rent due under the provisions of this lease, or because of the breach of any other covenant herein contained, on the part of Tenant to be kept or performed, Tenant shall pay to Landlord a reasonable attorney's fee which shall be fixed by the Court.

19. DEFAULT BY LANDLORD.

In the event a civil action shall be brought by Tenant against Landlord because of the breach of any covenant contained in this lease agreement on the part of Landlord to be kept or performed, Landlord shall pay to Tenant a reasonable attorney's fee which shall be fixed by the Court.

20. NOTICES.

All notices hereunder shall be served by certified mail, and if intended for the Landlord shall be addressed to the Landlord at the following address:

**Drake and Harlan Properties, 2511 Triana Blvd.,
Huntsville, Alabama 35805**

and if intended for the Tenant shall be addressed to the following address:

**City of Huntsville Police Department
815 Wheeler Avenue
Huntsville, Alabama 35801**

or to such other addresses as may be requested by the Landlord or Tenant in writing.

21. WAIVER.

No assent, express or implied, by the Landlord to any breach of any of the Tenant's covenants, or by the Tenant to any breach of the Landlord's covenants shall be deemed to be a waiver of any succeeding breach of the same covenant.

22. COMPLETE AGREEMENT.

The Landlord and Tenant further covenant with each other that all covenants, agreements, and representations relating to the premises or any part thereof, whether oral or written, made by and between the parties, either personally or by their authorized agents, prior to the execution and acceptance hereof, be deemed to have been fully performed and discharged; that each of the parties hereto has read and understood this lease; and that all prior covenants and agreements, so far as they have any force and validity, have been included herein.

23. GOVERNING LAW

Any interpretation of this Lease or any other determination of the rights or liabilities of the parties hereto, shall be governed by the Laws of the State of Alabama. Venue to enforce any provision of this Lease shall be in the courts of Madison County, Alabama.

24. INTERPRETATION

Feminine and neuter pronouns may be substituted for those of the masculine form, and the plural form may be substituted for the singular number, in any place herein where the context may require substitution.

IN WITNESS WHEREOF, the Landlord and Tenant have executed this lease on the date first above written.

*Signatures on following page.

LANDLORD

TENANT

Drake & Harlan Properties, Inc.

The City of Huntsville

By: Steve Harlan
Steve Harlan, Owner

By: _____
Tommy Battle, Mayor

WITNESS FOR LANDLORD

Attested

Nancy D. Harlan

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 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 Lease Agreement, and who are known to me, acknowledged before me on this day that, being informed of the contents of the same, they, in their capacity as such officers, executed the same with full authority for and as the act of said corporation on the day the same bears day.

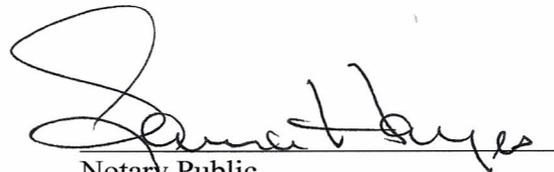
GIVEN under my hand and official seal this the ____ day of _____, 2014.

Notary Public
My Commission Expires: _____

STATE OF ALABAMA)
)
COUNTY OF MADISON)

I, the undersigned, a notary public in and for said County, in said State, hereby certify that Steve Harlan and Nancy Harlan, whose names as owner and owner of Drake & Harlan Properties, Inc., are signed to the foregoing Lease Agreement, and who are known to me, acknowledged before me on this day that, being informed of the contents of the same, they, in their capacity as such officers, executed the same with full authority for and as the act of said corporation on the day the same bears day.

GIVEN under my hand and official seal this the 10th day of December, 2013.



Notary Public
My Commission Expires: 4-14-2017

