CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number_____

Meeting Type: Regular

Meeting Date: 6/12/2014

Action Requested By:
Finance

Agenda Item Type
Resolution

Subject Matter:

Approval of Agreement

Exact Wording for the Agenda:

Resolution authorizing the Mayor to enter an advertising contract with The Alabama Media Group.

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.

Routine Procurement Function

Associated Cost:

Budgeted Item: Select...

MAYOR RECOMMENDS OR CONCURS: Select...

Department Head:_____ Date: 6/4

revised 3/12/2012

ROUTING SLIP
CONTRACTS AND AGREEMENTS

Originating Department: **Finance** Council Meeting Date: **6/12/2014**

Department Contact: **Cecilia Summers** Phone # **427-5060**

Contract or Agreement: **Advertising Agreement**

Document Name: **20140612Almedia**

City Obligation Amount:

Total Project Budget:

Uncommitted Account Balance:

Account Number:

Procurement Agreements

Title 41	Competitive

Grant-Funded Agreements

Not Applicable	Grant Name:

Department	Signature	Date
1) Originating		6/4
2) Legal	Mary C Cates	6/4/2014
3) Finance		6/4
4) Originating		
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		

Revised 04/15/2011

RESOLUTION NO.14-_____

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, the Mayor be, and he is hereby authorized, to enter into an agreement with The Alabama Media Group, 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 "Contract Between the City of Huntsville and The Alabama Media Group" consisting of two (2) pages with the date of June 12, 2014 appearing on the margins of the first pages, together with the signature of the President or President Pro Tem of the City Council, and an executed copy of said documents being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this the 12th day of June, 2014

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

APPROVED this the 12th day of June, 2014.

_____
Mayor of the City of Huntsville, Alabama

ALABAMA MEDIA GROUP

Audience Solutions Agreement

Advertiser Name City of Huntsville Clerk-Treasurer Account # 0068722

Address 308 Fountain Circle Huntsville, AL 35801

Billing Address Jeffery Fussell PO Box 308 Huntsville, AL 35801

Contact Name LaRissa Mack Phone (256) 427-5060 Email larissa.mack@huntsvilleal.gov

Contract Initiation Date 06/01/2014

❑ **Replacement Contract**

CONTRACT LEVEL

❑ Level 1	❑ Level 2	❑ Level 3	❑ Level 4	❑ Level 5	❑ Level 6	❑ Level 7	❑ Level 8

Agreement is hereby made between ALABAMA MEDIA GROUP, hereinafter "Publisher," and the undersigned, hereinafter "Advertiser" and "Agency" (if applicable). This agreement shall be effective on 06/12/2014 ("effective date").

[Advertiser and Agency agree to use and pay for advertising space in Publisher's print publication(s) The Huntsville Times (collectively, "Newspaper") and/or on its website currently located at www.AL.com ("Website") and/or on its mobile applications and/or digital newspapers (collectively, "Apps") at a frequency of _____, and/or a minimum revenue commitment of _____, or as follows: 378 Inches during the period of one year from the effective date of this agreement.

ADDITIONAL INFORMATION:

Sunday B/W - $43.70/inch
Daily B/W - $29.90

Sunday Color - $50.26
Daily Color - $34.39

TERMS AND CONDITIONS:

1. Orders for all advertising units in Publisher's Newspaper, Website and/or Apps are non-cancellable. In the event that Advertiser uses or pays for less advertising than that specified herein or the Advertiser or Agency otherwise breaches the terms of this agreement, Advertiser and Agency will be charged ten percent (10%) of the remaining advertising commitment ("short-rate"). In such event, Advertiser and Agency must reimburse Publisher for the short-rate within ten days of Publisher's invoice therefor and Advertiser will thereafter pay for advertising at the open rate or at the newly-determined rate(s) (as applicable).

2. Advertiser and Agency shall pay for such advertising at the rates set forth in this contract (if specified herein) or Publisher's rate card applicable at the time of the publication of the advertising. Volume discounts are net rates. No other discounts apply.

3. Payment for advertising shall be made on or before the 30th day of the month following that in which advertising is published. All advertising production fees (if any) shall be billed and are immediately due in full within the first month of the ad campaign. Failure of Advertiser and its Agency, if there is one, to comply with this requirement shall, at the option of Publisher, be considered a breach of this agreement. If payment is made by Agency, allowable commissions may be deducted. If any bill is not paid by its due date, commissions shall be deemed not earned and the gross amount of the bill shall be paid in full. Publisher may, at its option, require cash with order or otherwise change the payment terms at any time.

4. This Agreement is not subject to rebates, however it may be resigned for greater or less commitment at any time. If an agreement is for less space, a rate adjustment charge will be made according to the rate earned.

5. Advertiser and Agency, if there be one, each agrees to be jointly and severally liable for the payment of all bills and charges incurred. Advertiser authorizes Publisher, at its election, to tender any bill to Agency, and such tender shall constitute notice to Advertiser of the bill and shall in no way impair the joint and several liability of Advertiser and Agency. Payment by Advertiser to Agency shall not discharge Advertiser's liability to Publisher. The rights of Publisher shall in no way be affected by any dispute or claim as between Advertiser and Agency. Advertiser confirms that it has appointed Agency, if one is specified, to be its authorized representative with respect to all matters relating to advertising placed on Advertiser's behalf with the understanding that Agency may be paid a commission.

6. Advertiser and its Agency, if there be one, represent and warrant that: (i) Advertiser's websites, mobile sites, applications, and/or similar services that are associated with advertising purchased hereunder shall contain all necessary consumer disclosures required by applicable federal, state and local laws, rules and regulations, including, but not limited to, an accurate privacy policy (and Advertiser shall not violate the terms of such disclosures); (ii) there is nothing in any advertisement or other material (including but not limited to software and/or product samples) provided by Advertiser or Agency, or in any material to which the advertisement or other material links or refers, that violates any personal or proprietary right of any third party (including, but not limited to, copyright, trademark, patent, service mark,

(See other side for continuation of terms and conditions)

Alabama Media Group Advertising Representative

Alabama Media Group Advertising Director

Advertiser's Signature

Tommy Battle
Advertiser's Printed Signature

Government Municipality
Type of Business

City of Huntsville
Name of Person Individually Liable

❑ Corporate ❑ Partnership ❑ Assumed Name

misappropriation, unfair competition, trade secret, privacy publicity rights, etc.), constitutes false advertising, is harmful, or violates any law or governmental regulation; (iii) none of the advertisements or other materials provided to Publisher for display on its Websites or Apps cause the download or delivery of any software application, executable code, any virus or malicious or social engineering (e.g., phishing) code or features; and (iv) it will not conduct or undertake, or authorize any third party to conduct or undertake, any unlawful or improper actions in connection with the Websites or Apps, including, but not limited to, generating automated, fraudulent or otherwise invalid clicks or impressions on Publisher's Websites or Apps. As part of the consideration to induce Publisher to publish, distribute, display, perform or transmit (collectively referred to herein as "Publish" or "Published" or "Publishing") such advertisement, Advertiser and its Agency, if there be one, each agrees to jointly and severally defend, indemnify and hold harmless Publisher, its employees, and representatives against all liability, loss, damage and expense of any nature, including but not limited to attorneys' fees, arising out of (a) the Publishing of any advertisement submitted by or on behalf of the Advertiser regardless of whether Publisher participated in the creation of such advertisement, or the linkage of any advertisement to any other material, or the loss, theft, use, or misuse of any credit or debit card or other payment, financial, or personal information; (b) any violation of the CAN-SPAM Act or other laws relating to Advertiser's advertisements, including, but not limited to, commercial messages e-mailed on Advertiser's behalf by Publisher; (c) the products and/or services promoted, sold, presented and/or contained in Advertiser's advertisements; and (d) a breach or alleged breach of its covenants, warranties and obligations under these advertising contract terms and conditions.

7. Advertiser shall have the right to revoke its agency at any time during the period of this agreement effective upon receipt by Publisher of notice in writing; in such event, Publisher may, at its option, terminate this agreement. If Advertiser shall designate another agent Publisher may, at its option, recognize such agent upon receipt of an agreement by said agent to be bound by the terms of this agreement and to become liable for the payment of all bills due and to become due under this agreement.

8. Publisher reserves the right, at its absolute discretion and at any time, to cancel any advertising or reject any advertising copy, whether or not the same has already been acknowledged and/or previously Published, including but not limited to for reasons relating to the contents of the advertisement or any technology associated with the advertisement. In the event of such cancellation or rejection by Publisher, advertising already run shall be paid for at the rate that would apply if the entire order were Published and no short rate will apply. The rejection of copy by the Publisher shall require Advertiser and/or Agency to supply new copy acceptable to the Publisher. Advertisements that simulate editorial content must be clearly labeled "ADVERTISEMENT" or "PROMOTION" or "SPECIAL ADVERTISING SECTION" at the top of the advertisement, and Publisher may, in its sole discretion, so label such copy.

9. Publisher, at its option, may terminate this agreement for the breach of any of the terms hereof, it being specifically understood without limitation that failure on the part of either Advertiser or Agency to pay each bill on or before its due date shall constitute a breach. Should Publisher terminate this agreement, all charges incurred together with short-rate charges shall be immediately due and payable.

10. Any bill tendered by Publisher shall be conclusive as to the correctness of the item or items therein set forth and shall constitute an account stated unless written objection is made thereto within ten days from the rendering thereof. In addition, unless otherwise agreed on the cover page of this agreement, all impressions and/or other measurements of ads hereunder shall be solely based on Publisher's calculations.

11. This agreement may not be assigned by Advertiser or Agency without the prior written consent of Publisher, and any assignment without such consent shall be null and void. Advertiser or Agency may not use any space for the advertisement either directly or indirectly of any business organization, enterprise, product, or service other than that for which the advertising space is provided by Publisher, nor may Advertiser or Agency authorize any others to use any advertising space.

12. Orders containing terms, rates or conditions or specifying positions, facings, editorial adjacencies or other requirements may be accepted but such terms, rates, conditions or specifications are not binding unless Publisher has specifically agreed to them in writing.

13. In the event of a suspension of publication of Publisher's Newspaper, Website and/or Apps due to strike, accident, fire, flood, computer or software/network malfunction, congestion, repair, Internet outages or any other cause or contingencies beyond the control of Publisher, it is understood and agreed that such suspension shall not invalidate this contract, but a) will give Publisher the option to cancel this agreement, or if Publisher does not do so, b) upon resumption of publication this contract shall be continued and no liability for damages shall be incurred by the Publisher by reason of such suspension.

14. Interest will accrue at a rate of one and one-half percent (1.5%) per month (or such other maximum amount as is permissible by law) on all past due balances. If it becomes necessary to place with an attorney for collection any claim for funds due under the terms of this agreement, then Advertiser and Agency agree to pay to Publisher the reasonable attorneys' fees arising from such collection.

15. If during the period of this agreement Publisher revises its advertising rates, Advertiser and Agency agree to be bound by such rates provided Publisher gives at least thirty (30) days notice of such increase. However, in such event Advertiser may elect not to place any further advertisements after the effective date of the increase, and if no space is used after the effective date of the increase, no short rate will be charged on space used prior to such increase

16. Publisher does not guarantee any given level of circulation or readership. In addition, Publisher makes no guarantee or representation as to the quantity and quality of visits, impressions, circulation, or other usage of its Website or Apps or of the advertisement, or as to the use of any particular tracking or information-gathering devices, unless Publisher expressly agrees otherwise in writingTo the extent Publisher fails to provide Advertiser/Agency with any guaranteed impressions on its Website or Apps (if expressly agreed to by Publisher in writing). Publisher will provide as a sole remedy a makegood, by extending the order beyond the contracted advertising flight period until the remainder of the guaranteed impressions are delivered. For the purpose of clarification, Advertisers/Agencies that request a special billing schedule or an upfront bill will not receive refunds/adjustments in the case of under delivery of guaranteed impressions (if applicable).

17. Publisher's sole liability (and Advertiser's and Agent's sole remedy) for errors and/or omissions by Publisher in published advertisements shall be to provide Advertiser a credit for the actual space of the error or omission (in no event shall such credit exceed the total amount paid to Publisher for the applicable advertisement), and Publisher shall have no liability unless the error or omission is brought to Publisher's attention no later than 5 working days after the advertisement is first Published. However, if a copy of the advertisement was provided to or reviewed by Advertiser, Publisher shall have no liability. IN NO EVENT SHALL PUBLISHER BE LIABLE TO ADVERTISER, AGENCY OR ANY OTHER PARTIES FOR ANY FURTHER DAMAGES OF ANY KIND ARISING FROM THIS AGREEMENT OR ANY BREACH THEREOF, INCLUDING BUT NOT LIMITED TO INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR LOST PROFITS.

18. Failure by Publisher to enforce any provision of this agreement shall not be considered a waiver of such provision. Unless inconsistent with the express terms of this agreement, all orders are subject to the terms of Publisher's applicable rate card. Advertiser and Agency acknowledge receipt of a copy of said rate card.

19. Advertiser and Agency recognize that the copyright in any advertisements created by Publisher is owned by Publisher. As to all other advertisements, Advertiser and Agency agree that Publisher has the non-exclusive right, for the full term of copyright, by itself or through third parties, to republish, retransmit, re-perform, redistribute or otherwise re-use any advertisements submitted hereunder in any form in which the advertisements may be Published or used (in any media now in existence or hereafter developed) in whole or in any part, whether or not combined with material of others.

20. This agreement will be construed in accordance with the laws of the State of Alabama. Any action based on or alleging a breach of this agreement must be commenced in a state or federal court in or near Birmingham, Alabama; and the parties hereby consent to the exclusive jurisdiction of such courts in connection with this Agreement.

21. Advertiser and Agency understand that advertisements and/or other commercial messages sent on its behalf by Publisher via electronic mail may be governed by federal, state and local laws, rules and regulations, including without limitation the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 and any acts related thereto, and including the interpretation thereof by the FTC or other governmental authorities (collectively, the "CAN-SPAM Act") and state "Do Not E-mail" registries. Advertiser and Agency agree to comply with all such applicable laws, rules and regulations. Without limiting the generality of the foregoing, Advertiser and Agency shall fulfill all obligations of a "Sender" as defined in the CAN-SPAM Act, and comply with Publisher's policies intended to comply therewith.

22. All data collected by Publisher, Advertiser and/or any third party in connection with this agreement shall be exclusively owned by Publisher, and not used or disclosed by Advertiser/Agency without Publisher's prior written approval in each instance.

23. The titles and logos of the Publisher's Newspapers, Website and Apps are registered trademarks and/or trademarks protected under common laws. Neither the titles nor the logos may be used without the express written permission of Publisher.

24. This agreement may be executed by Advertiser/Agency by manual, facsimile or scanned PDF signatures (or by clicking "accept" or similar terminology online), and in any number of counterparts, each of which will be deemed an original and all which together will constitute one and the same instrument.

25. PUBLISHER DISCLAIMS ALL WARRANTIES AND/OR GUARANTEES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES FOR NONINFRINGEMENT, ACCURACY, AVAILABILITY, UPTIME, MERCHANTABILITY AND/OR FITNESS FOR ANY PARTICULAR PURPOSE IN CONNECTION WITH THE DISPLAY, PERFORMANCE AND TRANSMISSION OF ADVERTISEMENTS IN PUBLISHER'S NEWSPAPERS, WEBSITES AND APPS. Advertiser and Agency acknowledge that third parties other than Publisher may generate automated, fraudulent or otherwise invalid/improper impressions, conversions, inquiries, clicks or other actions on Advertiser's advertisements displayed on Publisher's Websites and/or Apps. As between Advertiser and Publisher, Advertiser accepts the risk of any such improper actions. Advertiser's exclusive remedy for such suspected improper actions is for Advertiser to request a refund relating to its impacted advertisements in the form of advertising credits on the applicable Website or App within thirty (30) days from the end of the calendar month in which such advertisement is initially displayed on the applicable Website or App. Any advertising credit refunds in connection with the Advertiser's aforementioned requests are within the sole discretion of Publisher.

26. The foregoing terms shall govern the relationship between Publisher and Advertiser and Agency. Publisher has not made any representations to Advertiser or Agency that are not contained herein. Unless expressly agreed to in writing signed by an officer or senior executive of Publisher, no other terms and conditions in insertion orders, contracts, click-through terms and conditions, copy instruction, letters, or otherwise will be binding on Publisher.

_____Client Initials 06/12/2014 _____Date