

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number: \_\_\_\_\_

Meeting Type: Regular

Meeting Date: Jul 24, 2014

Action Requested By: Fire and Rescue

Agenda Type: Resolution

Subject Matter:

Approval of Lease Agreement

Exact Wording for the Agenda:

Lease Agreement between the City of Huntsville and Green Mountain Volunteer Fire Department, Inc., for the leasing of facilities.

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.

This lease agreement will allow Huntsville Fire and Rescue to lease the station and the bay to the volunteers to continue to operate from to assist us in responding to events on Green Mountain in a timely manner. Huntsville Fire and Rescue will staff the station during inclement weather.

Associated Cost: NA

Budgeted Item: Not Applicable

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head: *BW McFarland Jr*

Date: 7-17-14

## ROUTING SLIP CONTRACTS AND AGREEMENTS

Originating Department: Fire and Rescue

Council Meeting Date: 7/24/2014

Department Contact: Lesley Easter

Phone # 427-5053

Contract or Agreement: Lease Agreement

Document Name: Green Mt VFD Lease Agreement

City Obligation Amount: NA

Total Project Budget: NA

Uncommitted Account Balance: NA

Account Number:

### Procurement Agreements

<u>Not Applicable</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	<i>BWM-Jal J</i>	7-17-14
2) Legal	<i>Mary Clates</i>	7-17-14
3) Finance <i>CE</i>	<i>[Signature]</i>	7/21/14
4) Originating	<i>BWM-Jal J</i>	7-17-14
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		

RESOLUTION NO. 14- \_\_\_\_\_

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor is hereby authorized to enter into a Lease Agreement, by and between the City of Huntsville, a municipal corporation in the State of Alabama, and Green Mountain Volunteer Fire Department, Inc., which said Agreement is attached hereto and identified as "Lease Agreement between the City of Huntsville and Green Mountain Volunteer Fire Department, Inc., for the leasing of facilities" consisting of nine (9) pages and the date of July 24<sup>th</sup>, 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 24<sup>th</sup> day of July, 2014.

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

APPROVED this the 24<sup>th</sup> day of July, 2014.

\_\_\_\_\_  
Mayor of the City of Huntsville,  
Alabama

Lease Agreement Between the  
City of Huntsville, Alabama and  
the Green Mountain Volunteer  
Fire Department, Inc.

LEASE AGREEMENT

This Lease Agreement (this "Lease") is made and entered into on the 24<sup>th</sup> day of July, 2014, by and between the **City of Huntsville**, a municipal corporation in the State of Alabama, hereinafter referred to as the "City," and the **Green Mountain Volunteer Fire Department, Inc.**, an Alabama non-profit corporation, hereinafter referred to as "Green Mountain".

**WITNESSETH:**

**WHEREAS**, the majority of the property on Green Mountain is within the city limits of Huntsville and is therefore within Huntsville Fire and Rescue's (hereinafter HFR) primary response area; and

**WHEREAS**, the community of Green Mountain established a volunteer fire department in 1967 to aid the City of Huntsville with response time because of the mountainous terrain of the community which would affect response time, especially during inclement weather; and

**WHEREAS**, the City desires to purchase the building currently housing the Green Mountain Volunteer Fire Department, along with an adjoining structure (hereinafter referred to as the "Leased Premises"); and

**WHEREAS**, leasing the Leased Premises to Green Mountain will serve the public purpose of providing fire protection to the Green Mountain area; and

**WHEREAS**, the City desires to lease to Green Mountain the Leased Premises on the terms and conditions set forth in this Lease; and

**WHEREAS**, HFR desires to utilize the Leased Premises for its personnel during certain periods or situations; and

**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 Green Mountain, hereby leases unto Green Mountain the Leased Premises. The City shall retain the right to house HFR crews in the Leased Premises as set forth in Section 4.0 herein.

2.0 TERM. The term of this Lease shall be twenty-five (25) years, commencing on the date the City closes on the purchase of the Leased Premises from Green Mountain. The Lease shall terminate upon the City commencing operation of a regular Huntsville Fire & Rescue station upon the Leased Premises.

3.0 RENTAL. Green Mountain shall pay the City the sum of Ten Dollars (\$10.00) per year as rental for the Leased Premises.

4.0 USE OF LEASED PREMISES. Green Mountain shall utilize the Leased Premises as the base for the operation of a volunteer fire department to serve the Green Mountain area and for related community functions. The City may utilize the Leased Premises whenever Huntsville Fire and Rescue determines there is a need for deployment whether for inclement weather, natural disaster, or any other situation or event that warrants a more expedient response to the community. In the event the City does require the use of the Leased Premises according to the deployment plan, the City use shall take precedence over all other uses of the Leased Premises, whether or not said uses were previously scheduled. The City shall have the right to store at all times any and all equipment required for the City's use of the Leased Premises as set forth in this section.

5.0 SIGNAGE. The City shall maintain a sign on the Leased Premises designating it as "Huntsville Fire & Rescue Station 13." Green Mountain may also erect and maintain a sign designating the Leased Premises as the Green Mountain Volunteer Fire Department.

6.0 QUIET ENJOYMENT. The City covenants that Green Mountain, upon paying rent, herein specified and observing the covenants hereof, shall peaceably and quietly have, hold and enjoy the Leased Premises during the term hereof and any extensions thereto.

7.0 MAINTENANCE OF LEASED PREMISES. Green Mountain shall not in any manner deface or injure the Leased Premises and will pay the cost of repairing any damage or injury done to the Leased Premises or any part thereof by Green Mountain or Green Mountain's employees, agents, contractors or invitees. Green Mountain shall be responsible for the janitorial services for the Leased Premises as well as all routine interior maintenance. Green Mountain agrees that it will keep the Leased Premises and the fixtures therein in clean, safe, sanitary and good order and condition and will, at the expiration or other termination of the Lease term hereof, remove all goods and effects not the property of the City and at Green Mountain's expense shall (a) promptly surrender to the City possession of the Leased Premises (including keys, locks and any fixtures or other improvements which Green Mountain hereby acknowledges are owned by the City) in good order and repair (ordinary wear and tear and damage due to casualty or condemnation excepted) and broom clean, (b) remove therefrom all signs, goods, effects, machinery, furniture, fixtures computer/telephone cabling and equipment used in conducting Green Mountain's trade or business which is not owned by the City, and (c) repair any damage caused by such removal. The City shall be responsible for all HVAC attached to the building (e.g., window air conditioner units and attached space heaters) and all existing electrical equipment attached to and made part of the building. The City shall be responsible for the maintenance of the envelope of the building. The City shall also be responsible for maintaining the grounds of the Leased Premises in the same style and manner as other HFR stations.

8.0 UTILITIES. The City shall provide utilities (including garbage pickup) to the Leased Premises.

9.0 ALTERATIONS AND IMPROVEMENTS BY GREEN MOUNTAIN. No alterations, additions or Improvements to the Leased Premises, except such as may be otherwise provided for in this Lease, shall be made without first obtaining City's written consent, and any improvements, additions or alterations requested by Green Mountain after such consent shall have been given, shall be installed by and under the sole control and supervision of City. All requests for alterations, additions, or improvements shall be accompanied by architectural drawings depicting both the existing and proposed layout or depicting the existing and proposed condition of the alteration, addition, or improvement in question. City agrees to give Green Mountain a contract price for all approved alterations, additions, or improvements and will endeavor to complete all work in a timely and workmanlike manner. Any and all fixtures installed, excepting trade fixtures, shall, at City's option, remain on the Leased Premises as the property of the City, without compensation to Green Mountain, or, shall be removed therefrom and the Leased Premises restored to its original condition at cost of Green Mountain at the expiration or sooner termination of this lease. Green Mountain shall, at its own cost, repair any damage caused by the removal of trade fixtures restoring the Leased Premises to its original condition.

10.0 INSURANCE REQUIREMENTS. During the term of this Lease, Green Mountain shall satisfy the following insurance requirements:

**A. MINIMUM SCOPE OF INSURANCE:**

**1. General Liability:**

Insurance will be written on an occurrence basis. Claims-made coverage will be accepted only on an exception basis after the City's approval.

**Commercial General Liability**

Contractual

Personal Injury

Broad Form Property Damage

**2. Property Insurance:**

Green Mountain shall keep the Leased Premises insured against damage or destruction by fire and the perils commonly covered under the extended coverage endorsement in the amount of \$175,000.00; the proceeds of such policy or policies shall be used for the repair of the Leased Premises. The policy shall be written on a "Special Form" basis with the City named as beneficiary and a deductible not greater than Ten Thousand Dollars (\$10,000.00).

**3. Workers' Compensation Insurance:**

Statutory protection against bodily injury, sickness or disease or death sustained by employee in the scope of employment. Protection shall be provided by a commercial insurance company or a recognized self-insurance fund authorized before the State of Alabama Industrial Board of Relations.

**B. MINIMUM LIMITS OF INSURANCE:**

**1. General Liability:**

Commercial General Liability on an "occurrence form" for bodily injury and property damage:

\$ 2,000,000 General Aggregate Limit  
\$ 1,000,000 Each Occurrence

**2. Workers' Compensation:**

As Required by the State of Alabama Statute

**C. OTHER INSURANCE PROVISIONS:**

The City is hereby authorized to adjust the requirements set forth in this document in the event it is determined that such adjustment is in the City's best interest. If the insurance requirements are not adjusted by the City prior to the City's release of specifications with regard to the project in question, then the minimum limits shall apply.

The policies are to contain, or be endorsed to contain, the following provisions:

**1. General Liability and Automobile Liability Coverage's Only:**

a. The City, its elected and appointed officials, employees, agents and specified volunteers are to be covered as Additional Insureds, as their interests may appear, as respects: liability arising out of activities performed by or on behalf of Green Mountain for products used by and completed operations of Green Mountain; or automobiles owned, leased, hired or borrowed by Green Mountain. 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.

b. Green Mountain's insurance coverage shall be primary insurance as respects the City, its elected and appointed officials, 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 Green Mountain's insurance and shall not contribute to it.

c. Green Mountain's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

**2. All Coverages:**

a. Green Mountain is responsible to pay all deductibles. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City. Cancellation of coverage for non-payment of premium will require ten (10) days written notice to the City.

b. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officers, employees, agents or specified volunteers.

**D. ACCEPTABILITY OF INSURERS:**

Insurance is to be placed with insurers with an A. M. Best's rating of no less than B+ V.

**E. VERIFICATION OF COVERAGE:**

The City shall be indicated as a Certificate Holder and Green Mountain shall furnish the City with Certificates of Insurance reflecting the coverage required by this document. The A. M. Best Rating and deductibles, if applicable, shall be indicated on the Certificate of Insurance for each insurance policy. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

**F. HOLD HARMLESS AGREEMENT:**

**1. Other Than Professional Liability Exposures:**

Green Mountain, 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, attorney's fees, arising out of or resulting from the performance of the work, provided that any such claim, damage, loss or expense (1) is attributable to personal injury, including bodily injury sickness, disease or death, or to injury to or destruction of tangible property, including loss of use resulting therefrom, and (2) is caused by any negligent act or omission of Green Mountain or any of their consultants, or anyone directly or indirectly employed by them or anyone for whose acts they are legally liable. Such obligation should not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this paragraph.

11.0 INSPECTIONS OF THE LEASED PREMISES. City shall have the right to enter the Leased Premises at all reasonable times (but no less than once per year) for purposes of examining the Leased Premises for the purpose of discovering any defect or injury to the Leased Premises.

12.0 ASSIGNMENT AND SUBLETTING. Green Mountain covenants and agrees not to assign this Lease or sublet said Leased Premises or any part of same, or in any other manner transfer the Lease or Green Mountain's leasehold interest in the Leased Premises, without the written consent of City. In the event of such subletting or assignment, Green Mountain nevertheless shall remain liable for all payments to City under, and compliance with, all of the terms and conditions of this Lease. Any consent to a subletting or assignment shall not be deemed a consent to any subsequent subletting or assignment.

13.0 DEFAULT. In the event: (a) rent in this Lease or any other payment required hereunder to be paid by Green Mountain is not paid at the time and place when and where due; (b) the Leased Premises shall be deserted or vacated for a period lasting more than thirty (30) consecutive days; (c) Green Mountain shall fail to comply with any term, provision, condition, or covenant of this Lease, other than the payment of rent, and shall not cure such failure within ten (10) days after written notice to Green Mountain of such failure to comply; (d) any petition is filed by or against Green Mountain under any section or chapter of the National Bankruptcy Act as amended, (e) Green Mountain shall become insolvent or make a transfer in fraud of creditors; (f) Green Mountain shall make an assignment for benefit of creditors; (g) a receiver is appointed for a substantial part of the assets of Green Mountain in any of such events, City shall have the option to do any one of the following in addition to and not in limitation of any other remedy permitted by law or by this Lease:

(i) Terminate this Lease, in which event Green Mountain shall immediately surrender the Leased Premises to City.

(ii) Enter the Leased Premises without being liable to prosecution or any claim for damages therefor, and relet the Leased Premises, and receive the rent therefor, and Green Mountain shall pay City any deficiency that may arise by reason of such reletting (plus all expenses incurred by such reletting), on demand at the office of the City.

(iii) City may do whatever Green Mountain is obligated to do by the provisions of this Lease and may enter the Leased Premises without being liable to prosecution or any claim for damages therefor, in order to accomplish this purpose. Green Mountain agrees to reimburse City immediately upon demand for any expenses which City may incur in thus effecting compliance with this Lease on behalf of Green Mountain.

(iv) Pursue any and all other remedies available to City at law or in equity.

In the event City employs an attorney on account of the nonpayment of rent or other violation of any of the terms or conditions of this Lease by Green Mountain, Green Mountain shall pay all expenses incurred including a reasonable attorney's fee.

14.0 SURRENDER. Upon the termination of this Lease, Green Mountain 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 Green Mountain, 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.

15.0 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 Green Mountain may mutually agree to terminate this Lease within sixty (60) days after the date of such damage, casualty or taking. The City recognizes the importance of the Green Mountain Volunteer Fire Department and, in the event the Leased Premises becomes unfit for use or occupancy, will make a good faith effort to move expeditiously to repair or rebuild the Leased Premises.

16.0 MISCELLANEOUS. The parties hereto further agree as follows:

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

16.2 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.

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

16.4 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 Green Mountain, 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  
615 Washington Street  
Huntsville, Alabama 35801  
Attention: Director of General Services

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

Green Mountain: Green Mountain Volunteer Fire Department, Inc.  
5026 Riverview Drive, SE  
Huntsville, Alabama 35803

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.

16.5 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.

16.6 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.

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

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

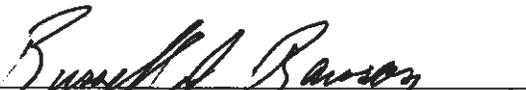
16.9 Each party to this Lease shall be responsible for the payment of all costs, expenses, legal fees and disbursements incurred or to be incurred by it or any of them in negotiating and preparing this Lease, and all documents required to be delivered pursuant to this Lease and in otherwise performing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

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

WITNESS:

**GREEN MOUNTAIN VOLUNTEER  
FIRE DEPARTMENT, INC.**  
a non-profit corporation

By:   
Peter D. Dobbs  
Its: President

By:   
Russell J. Rawson  
Its: Chief

CITY OF HUNTSVILLE, ALABAMA

By: \_\_\_\_\_  
Charles E. Hagood  
Its: City Clerk-Treasurer

By: \_\_\_\_\_  
Tommy Battle  
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.

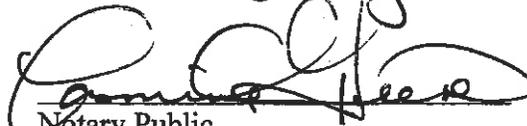
GIVEN under my hand and official seal this the \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
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 Peter D. Dobbs and Russell J. Rawson, whose name as President and Chief of Green Mountain Volunteer Fire Department, Inc., a non-profit corporation, 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, 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 15<sup>th</sup> day of July, 2014.

  
Notary Public