

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number: _____

Meeting Type: Regular

Meeting Date: Aug 14, 2014

Action Requested By: Legal

Agenda Type: Resolution

Subject Matter:

Resolution authorizing the Mayor to execute a Temporary Lease Agreement between the City of Huntsville and Homegrown, LLC, for the Big Spring Crush event.

Exact Wording for the Agenda:

Resolution authorizing the Mayor to execute a Temporary Lease Agreement between the City of Huntsville and Homegrown, LLC, for the Big Spring Crush event.

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, along with any other helpful information.]

Associated Cost: _____

Budgeted Item: Not Applicable

MAYOR RECOMMENDS OR CONCURS: _____

Department Head:  _____

Date: 8-12-14

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 execute a Temporary Lease Agreement by and between the City of Huntsville and Homegrown, LLC, 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 "Temporary Lease Agreement between the City of Huntsville and Homegrown, LLC," consisting of eight (8) pages including Exhibit "A", and the date of August 14, 2014, 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 14th day of August, 2014.

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

APPROVED this the 14th day of August, 2014.

Mayor of the City of
Huntsville, Alabama

TEMPORARY LEASE AGREEMENT
BETWEEN THE CITY OF HUNTSVILLE
AND HOMEGROWN LLC.

LEASE AGREEMENT

This Temporary Lease Agreement ("Agreement") is made and entered into on the _____ day of _____, 2014, by and between the City of Huntsville, a municipal corporation in the State of Alabama, hereinafter referred to as "City," and Homegrown LLC, an Alabama limited liability company, hereinafter referred to as "Homegrown".

Subject to the terms and conditions hereinafter set forth, the City agrees to lease to Homegrown for the period of time beginning at 2:00 p.m. Friday, the 26th day of September, 2014, through and including 11:00 a.m. Sunday, the 28th day of September, 2014, for the area generally described or depicted on the map attached hereto as Exhibit "A," hereinafter referred to as the "Premises" which is made a part of this Agreement as if fully set out herein.

1. *Use of premises; timing; road closure.*

(a) Homegrown agrees that the Premises, including Spragins Street south of Spring Street, shall be used for an event called "Big Spring Crush" which shall be a wine and food festival with musical band(s) during the period specified in this Agreement, and for no other purpose.

(b) Subject to subsection 1(c) concerning the road closure of Spragins Street, Homegrown may access the Premises for event set-up starting at 2:00 p.m. on September 26, 2014. The actual event shall not commence until 4:00 p.m. on the afternoon of Saturday, September 27th and shall conclude at 9:00 p.m. on the evening of Saturday, September 27th. Subject to section 4 concerning the sale of alcoholic beverages, alcoholic beverage sales or service shall not commence until the 4:00 p.m. start time for the event and must conclude by the 9:00 p.m. end time for the event. Take-down of the event may occur at any time starting at the conclusion of the event until 11:00 a.m. on Sunday, September 28, 2014. The take-down of the event and restoration of the Premises shall be concluded no later than 11:00 a.m. on Sunday, September 28, 2014.

(c) Spragins Street shall be closed between the hours of 3:00 p.m. and 10:00 p.m. on September 27, 2014, only. Otherwise the road shall remain open to traffic, unless the Huntsville Police Department allows or requires a different time for the opening/closing of the street.

2. *Security; access.*

(a) Homegrown shall be responsible for the provision of security within the Premises during the period of the Agreement; provided, however, nothing herein shall be construed to limit or prevent any law enforcement officer or other official from entering upon the Premises to perform any law enforcement function or otherwise administer or enforce any federal, state or local law.

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

(b) At its sole costs and expense, Homegrown shall provide adequate security for the event, including a sufficient security detail, as approved by the Huntsville Police Department. Homegrown agrees that, at any time, a law enforcement officer of the Huntsville Police Department may require that the event be canceled, the conduct of the event modified, or prescribe such other measures that might be necessary in the event of inclement weather conditions, security issues, threats to the health or safety of the sponsor(s) or attendees of the event or to the general public, or otherwise for public convenience or safety.

(c) To the extent the event is conducted outside the Premises on property owned by or leased to others, nothing herein shall be construed to limit or prevent any law enforcement officer or other official from entering upon said property to perform any law enforcement function or otherwise administer or enforce any federal, state or local law.

3. *Fencing, access control.*

(a) At Homegrown's sole cost and expense, the City may erect or require Homegrown to erect a temporary fence, approved by the Huntsville Police Department, at those locations specified by the police department, in order to control access to the Premises or otherwise for security purposes. Homegrown understands and agrees that the actual fence location may be modified as directed by police department to provide for the public safety or convenience, to control access to the Premises, or otherwise for security purposes.

(b) During the actual conduct of the event the Premises will be closed to persons or vehicles that are not participating in the event; provided, however, the City may allow access to any person or vehicle for purposes of public health, safety or convenience, or otherwise in the case of an emergency.

(c) Should the City, or those acting on its behalf, erect the fence, Homegrown shall promptly reimburse or pre-pay the City for all associated costs and expenses including the cost of labor and materials.

(d) If the City allows or requires Homegrown to erect the required fencing, Homegrown shall not drill holes in any existing concrete, asphalt, sidewalk, brick or other impervious surface and the fence shall not be anchored in concrete or any other permanent material.

4. *Alcoholic beverages.*

(a) Homegrown intends that the event will include the retail sale of alcoholic beverages for on-premise consumption. In such event, Homegrown shall have secured all licensing necessary for such sale by at least five (5) business days prior to the commencement date for the event unless the time specified by the state's or City's alcoholic beverage control laws requires an earlier time. Failing therein, the sale or service of alcoholic beverages shall not be permitted for the Premises.

(b) The event will be conducted in the Quigley Arts and Entertainment District during the regular hours that the district is open. Therefore, the event shall be subject to Section 3-27 of

the Code of Ordinances of the City (“City Code”) concerning Arts and Entertainment Districts. Homegrown intends to apply for a permit to qualify as an Arts and Entertainment District Permittee pursuant to Section 3-27 of the Code of Ordinances of the City. To the extent that Homegrown qualifies as an Arts and Entertainment District Permittee (“A&E Permittee”) in relation to the event, it and the event shall be governed as such.

(c) In addition to the Premises, should Homegrown include private property within the event area that is to be included within the area to be licensed to sell alcoholic beverages for on-premise consumption, then the Premises and the additional area shall be hereinafter referred to as the “licensed area”.

(d) Homegrown agrees to prevent any person from leaving the licensed area while in possession of any alcoholic beverage, unless it is an A&E Permittee, and to prevent any person from bringing alcoholic beverages into the licensed area; and, to this end, the Huntsville Police Department may require security control at access points and appropriate signage.

(e) The sale of alcoholic beverages shall not start until 4:00 p.m. on September 27th, 2014, and shall cease at 9:00 p.m. on September 27, 2014. The price of alcoholic beverages shall remain constant throughout the event.

(f) Homegrown shall abide by all alcoholic beverage control laws of the state and City including the regulations of the Alabama Alcoholic Beverage Control Board. Homegrown shall provide tamper-proof measures that identify persons of legal drinking age.

5. *Conditions of use.*

(a) Homegrown agrees to comply with all ordinances, laws, rules and regulations pertaining to the use of the Premises, including Chapter 23, Article VI of the City Code governing organized events, 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.

(b) Homegrown shall obtain and maintain all licenses and permits and pay all fees necessary or required to hold the event. City may require Homegrown to provide proof of proper permitting or licensure prior to or during the event.

(c) Homegrown shall install on the Premises at its own cost and expense portable toilets sufficient in number for the use of the event attendees during the Agreement period. In addition, Homegrown shall be responsible for providing adequate security lighting for the Premises during the event, should it be required by the Huntsville Police Department. In the event Homegrown installs a stage or other performance area upon the Premises, Homegrown shall abide by all applicable laws for said installation including applicable building, fire and electrical codes, and in no event shall any holes be drilled in any existing concrete, asphalt, brick or other impervious surface. Any such stage, tent or other temporary structure erected for the event shall not be anchored in concrete or any other permanent material, or otherwise deface or damage any portion of the Premises.

(d) This Agreement hereby incorporates as if fully set out herein each condition and requirement established in the special event permit issued for the event and a violation thereof shall constitute a breach of this Agreement.

(e) Homegrown shall reimburse the City for its costs and expenses relative to the event including personnel, labor and material costs. The City may require Homegrown to pre-pay some or all of its estimated costs and expenses prior to the event or to reimburse the City within thirty (30) days after the event.

(f) Homegrown shall, at all times, maintain handicap access throughout the Premises. Homegrown shall maintain the Premises in such a way so as to meet the Americans with Disabilities Act (ADA) standards for accessibility.

(g) To the extent the event is conducted on property outside the Premises on property owned by or leased to others, Homegrown shall be solely responsible for obtaining the right to conduct the event on said property and nothing herein shall be construed to allow the Homegrown to such property.

6. *Indemnification; non-liability.*

(a) Homegrown shall and does hereby agree to indemnify and hold harmless the City, its present and future officials, officers, employees, agents, contractors, and volunteers performing authorized city functions, from and against any and all claims, costs, losses, expenses through appeal (including reasonable attorneys' fees, and costs or expenses incidental to the investigation of claims and lawsuits), demands, payments, suits, actions, recoveries, penalties, fines, liabilities, and judgments, of any nature and description, resulting from or arising out of, or alleged to have resulted from or arisen out of, the acts or omissions of Homegrown, its servants, agents, contractors, or employees, or event participants in connection with the conduct of the event or the lease of the Premises. Homegrown's duties hereunder shall survive the termination or expiration of this Agreement.

Nothing contained in this section 6 shall be construed as a waiver of any immunity or statutory protection of the City of Huntsville, Alabama, and no third party may expand any recovery against the City due to the Homegrown's duty of indemnification.

7. *Restoration.* Homegrown agrees to provide for and pay all costs and expenses associated with clean-up of, and damage to, the City's property, both within and outside of the Premises which relate to the Homegrown's use of the Premises. The Premises shall be cleaned and restored entirely by the Homegrown no later than the end of the Agreement term, to the sole satisfaction of the City.

8. *Insurance.* Homegrown 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 Homegrown against all liability assumed by Homegrown hereunder as well as liability imposed by law, and shall insure both the City, its present and future officials, officers, employees, agents, contractors and volunteers performing an authorized city function, who shall be named as an Additional Insureds, and Homegrown, but shall be so endorsed as to create the same liability on the part of the insurer as though a separate policy had been written for the City and Homegrown. Such policy of insurance shall be issued by a company authorized to engage in the insurance business in the state of Alabama with an A. M. Best's rating of no less than "A" and shall be approved by the City Attorney of the City of Huntsville prior to Homegrown entering upon the Premises upon the terms of this Agreement. City may, at any time, require Homegrown to provide a Certificate of Insurance or other proof of insurance.

9. *Rent.* Homegrown shall pay to the City the sum of \$500.00 (five hundred and no/100 dollars) as for the use of the Premises; which shall be paid in full by Homegrown within 24 hours of the execution of this Agreement.

10. *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.

11. *Beason-Hammon Alabama Taxpayer and Citizen Protection Act Affirmation (Ala. Code § 31-13-9(k)(1975)).* "By signing this contract, the contracting parties affirm, for the duration of the agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom."

12. *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 Homegrown, its personal representative, heirs, successors and permitted assigns, and the City, its successors and assigns.

(b) Homegrown 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 Homegrown 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.

(e) *Conjunctions.* In a provision involving two or more items, conditions, provisions or events, which items, conditions, provisions or events are connected by the conjunction "and," "or" or "either . . . or," the conjunction shall be interpreted as follows:

- (1) "And" indicates that all the connected terms, conditions, provisions or events apply.
- (2) "Or" indicates that the connected terms, conditions, provisions or events apply singly or in any combination.
- (3) "Either . . . or" indicates that the connected terms, conditions, provisions or events apply singly but not in combination.

(f) *"Includes".* The term "includes" or "including" does not limit a term to a specified example.

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.

THE CITY OF HUNTSVILLE, ALABAMA

By: _____ (seal)
Tommy Battle, Mayor

ATTEST:

Charles E. Hagood
City Clerk-Treasurer

HOMEGROWN LLC

Ashley Ryals
By: _____ (seal)
Ashley Ryals
As Its: Member

[Notaries on following page]

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 agreement, and who are known to me, acknowledged before me on this day that, being informed of the contents of the agreement, they, as such officers and with full authority, executed the same voluntarily for and as the act of said corporation as of 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 Ashley Ryals, whose name is signed to the foregoing agreement as member of Homegrown LLC, an Alabama limited liability company, and who is known to me, acknowledged before me on this day that, being informed of the contents of the agreement, she as such member and with full authority executed the same voluntarily for and as the act of said limited liability company of the day the same bears day.

GIVEN under my hand and official seal this the 7th day of August, 2014.

Molanda Napson
Notary Public
My Commission Expires: 11/23/14

EXHIBIT "A"

