

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number: 1

Meeting Type: Regular

Meeting Date: Dec 4, 2014

Action Requested By: Legal

Agenda Type: Resolution

Subject Matter:

License Agreement with Dwight Wright.

Exact Wording for the Agenda:

Resolution authorizing the Mayor to execute a License Agreement between the City of Huntsville, Alabama, and Dwight Wright.

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.

Associated Cost: _____

Budgeted Item: Not Applicable

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head 

Date: 12-3-14

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 enter into a License Agreement 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, Alabama and Dwight Wright," consisting of three (3) pages and the date of December 4, 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 4th day of December, 2014.

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

APPROVED this the 4th day of December, 2014.

Mayor of the City of
Huntsville, Alabama

**LICENSE AGREEMENT BETWEEN
THE CITY OF HUNTSVILLE AND
DWIGHT WRIGHT**

LICENSE AGREEMENT

This License Agreement (the "Agreement") is made and entered into effective the 4th day of December, 2014, by and between the City of Huntsville, a municipality within the State of Alabama, ("City" or "Licensor") and Dwight Wright ("Wright" or "Licensee").

WITNESSETH:

WHEREAS, Wright owns all that part of Lots 13 and 14, Block X, of the Resubdivision of Blocks N, S, X of Kildare Estates Subdivision, as recorded in Plat Book 1, Page 169, Probate Records of Madison County, Alabama consisting of approximately 1.14 acres, said property is more particularly described in that certain deed recorded at Instrument No. 20071130000832660, Probate Records of Madison County, Alabama (hereinafter referred to as "Property"); and

WHEREAS, the Property is subject to a certain right-of-way in favor of the City which runs down the east boundary of the Property along Kildare Street; and

WHEREAS, the City granted Wright a revocable license to construct a fence (the "Fence") upon and within the said right-of-way pursuant to that certain License Agreement dated July 25, 2013 and adopted and approved by the Huntsville City Council (the "City Council"), pursuant to Resolution No. 13-568 (hereinafter referred to as the "License Agreement") which was revoked by the City Council on July 10, 2013, via Resolution No. 14-346; and

WHEREAS, the City and Wright desire to enter into a new License Agreement pursuant to the terms and conditions contained herein;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each of the parties, and for the mutual promises and covenants contained herein, the parties hereby agree that a revocable license is hereby granted to Licensee to read as follows, including the additional terms and conditions:

1. Licensor does hereby grant and demise unto Licensee a license to construct a fence (the Fence) upon and within the right-of-way of the Property. The Fence shall be located as shown on the survey attached hereto and incorporated herein by reference as Exhibit "A". The Fence shall be constructed according to the specifications attached hereto and incorporated herein by reference as Exhibit "B". Licensee shall be required to maintain the fence in good

condition and repair and shall further maintain the grass, any shrubbery, and other landscaping in that portion of the right-of-way both within and outside of the fenced area.

2. Construction of the structural components of the Fence shall be completed on or before March 1, 2015. All required painting of the Fence, as specified in Exhibit "B," shall be completed on or before April 1, 2015.

3. Licensee agrees to remove the Fence, at his sole cost and expense, for any work the City might need to perform within the designated right-of-way for such time period as is required by the City. Licensee will bear the cost and burden of reconstructing the fence in its original location upon completion of the City's work. As of the date of approval of this Agreement, the City has no plans to perform any work within the designated right-of-way.

4. Licensor hereby retains the right to revoke this Agreement and the license granted herein at any time in its sole discretion without further liability to Licensee. Upon revocation, Licensee shall have 45 days from the date of revocation to remove the Fence and restore the right of way to its condition prior to erection of the fence. If Licensee fails to remove the Fence within 45 days, Licensor will proceed to remove the Fence.

5. Wright, 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 construction, ownership, maintenance or use of the Fence. 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.

6. Wright shall maintain a Commercial General Liability insurance policy, written on an occurrence basis, with a \$500,000 General Aggregate Limit. 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 the construction, ownership, maintenance or use of the Fence. Additional insured status shall be through ISO Additional Endorsement CG 20 11 04 13 or equivalent that is sufficient to provide the coverage required by this Agreement. The "Fence," for purposes of Wright's obligations under this paragraph, shall extend to and include the Fence (whether of similar or different materials) located within, or adjacent to, the right-of-way on both Kildare Street and Oakwood Avenue. A copy of the insurance certificate as specified in this paragraph shall be submitted by Wright to the City Attorney on or before December 31, 2014. Wright shall submit updated proof of insurance annually, on or before December 31st of each year this License is in effect.

7. Failure of Licensee to complete the obligations specified herein by the dates specified shall render this License Agreement void, and of no effect. In such event, Licensee shall remove the Fence, or portions constructed thereof, as provided in paragraph 6 above.

8. All parties agree to take any necessary actions and to execute any documents necessary to consummate the transactions contemplated hereunder.

9. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, executors, administrators, representatives, and assigns.

10. Each and every reference to a party, and any and all pronouns describing a party, shall include male or female, singular and plural, corporation or corporations, individual or individuals, as may fit the particular party or parties. All captions are descriptive only.

11. The failure of any party to insist upon strict compliance with any of the provisions of this Agreement by another party shall not constitute a waiver of such party's right to demand exact compliance with said provisions.

12. This Agreement constitutes the entire agreement between the parties with regard to the subject matter hereof. No other understanding, inducement, representation, or agreement shall be of any force or effect except as otherwise specifically provided for or referred to herein. This Agreement may not be altered or amended except in writing signed by all parties.

IN WITNESS WHEREOF, the parties have executed this Modification of License Agreement as of the date first written above.

ATTEST

THE CITY OF HUNTSVILLE, ALABAMA

CHARLES E. HAGOOD
Its: Clerk-Treasurer

By: _____
TOMMY BATTLE
Its: Mayor

Witness

DWIGHT WRIGHT

EXHIBIT "A"

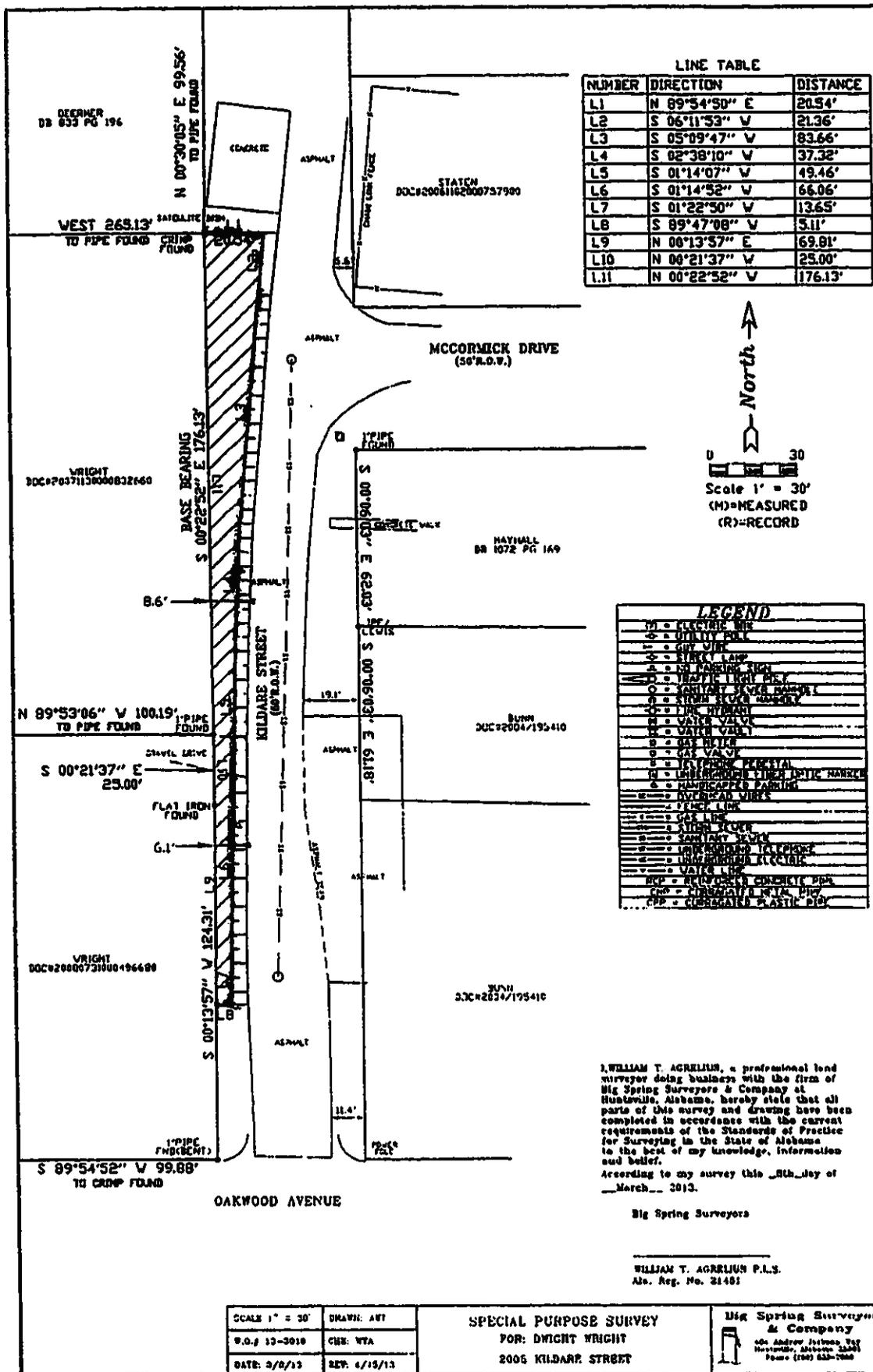


EXHIBIT "B"

The fence will be constructed as a series of 8 foot by 8 foot inset panels. Each panel will be reverse board and batten framed in wood. Each panel will be defined by a vertical 5.5 inch by 5.5 inch pressure treated post which is set concrete. The fence will be back braced with 5.5 inch by 5.5 inch pressure treated support posts. The bottom of the panels will be determined by the highest point on Kildare Street. The top and bottom rails of the fence are the horizontal boards that are currently in place. Total height of the fence ranges from just over eight feet to approximately ten feet. At the appropriate time, the fence will be stained the new trim/accent color from the house. The new colors are approximate to the original color scheme and will replace the bright green and red colors added around 1980.

There will be a north and south entrance with double gates at each entrance. The south entrance will be installed during the first phase of construction, and the north gate will be added later. To meet all City visibility requirements, the gate in-line with the fence will be constructed of iron pickets. A privacy gate will be at an angled setback from the iron gate.

The area remaining in front of the fence will be landscaped with a row of cornuta rotundra holly (currently in place) punctuated with either dwarf arborvitae or Catawba crepe myrtle. Crushed limestone gravel will cover the berm between the pavement and the landscaping. This provides drainage and prevents erosion.

A sketch depicting an approximate view of the fence is attached hereto as Attachment "1."

