CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number: 15.x.

Meeting Type: Regular

Meeting Date: Feb 12, 2015

Action Requested By: City Council

Agenda Type: Resolution

Subject Matter:

Agreement with Brimstone Music Group, Inc.

Exact Wording for the Agenda:

Resolution authorizing the Mayor to execute an agreement between the City of Huntsville and Brimstone Music Group, Inc.

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.

Agreement required for the Down Home Blues Festival.

Associated Cost:

Budgeted Item: Not Applicable

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head:

Date:

RESOLUTION NO. 15-____

WHEREAS the City Council of the City of Huntsville, Alabama, does hereby declare that the Mayor be, and is hereby authorized to execute a Lease Agreement between the City of Huntsville, and Brimstone Music Group, Inc., 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 a "Lease Agreement between the City of Huntsville, and Brimstone Music Group, Inc., consisting of nine (9) pages including Exhibit "A" and the date of February 12, 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 12th day of February, 2015.

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

APPROVED this the 12th day of February, 2015.

_____
Mayor of the City of
Huntsville, Alabama

LEASE AGREEMENT

This Lease Agreement ("Agreement") is made and entered into on the 12h day of February, 2015, by and between the City of Huntsville, a municipal corporation in the State of Alabama, hereinafter referred to as "Lessor," and Brimstone Music Group, Inc., an Alabama corporation, hereinafter referred to as "Lessee".

This Agreement shall become effective on the day it is executed by both parties (the Effective Date) and shall continue in effect through May 27, 2015.

Lessor hereby agrees to lease unto Lessee for that period beginning at 8:00 o'clock a.m. on Friday, May 22, 2015 through and including 5:00 o'clock p.m. on Monday, May, 25, 2015, those premises owned by Lessor, which are indicated in the outlined area of the map attached hereto as Exhibit "A", hereinafter referred to as the "Premises" (and being a portion of John Hunt Park) which is made a part of this lease agreement as if fully set out herein. Such lease is according to the following terms and conditions:

1. *Use of premises; timing.*

(a) Lessee agrees that the Premises shall be used for an event called the "Down Home Blues Festival" (the "Event") which shall be a social and cultural event with musical bands and refreshments during the period specified in this Agreement, and for no other purpose.

2. *Security; access.*

(a) Lessee 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.

(b) At its sole costs and expense, Lessee shall provide adequate security for the Event, including a sufficient security detail, as approved by the Huntsville Police Department. Lessee agrees that, at any time, the Huntsville Police Department's Incident Commander assigned to the Event 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 sponsors 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*

Lessee shall be permitted to erect a fence around the perimeter of the Premises (for any area where no fence is currently erected) provided no holes are drilled in any existing concrete, asphalt, brick or other impervious surface and further provided that the fence is not anchored in concrete or any other permanent material.

4. *Alcoholic beverages.*

(a) Lessee intends that the event will include the retail sale of beer, brewed beverage or wine as those terms are defined in Section 28-3-1 of the Code of Alabama (1975) and no other alcoholic beverages, for on-premise consumption. In such event, Lessee shall have secured all licensing necessary for such sale by at least one (1) week 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 of alcohol shall not be permitted on the Premises.

(b) Lessee shall prevent any person from bringing alcoholic beverages into the Premises and from leaving the Premises in possession of any alcoholic beverage. Lessee shall post signs at each access way into the Premises informing patrons or visitors that (1) access will be denied to any person who attempts to bring alcoholic beverages into the Premises; and (2) that no alcoholic beverages shall be taken from the Premises. Lessee shall provide tamper-proof measures that identify persons of legal drinking age.

(c) Lessee shall abide by all alcoholic beverage control laws of the state and city including the regulations of the Alabama Alcoholic Beverage Control Board.

5. *Conditions of Lessee's use of the Premises.*

(a) Lessee agrees to comply with all ordinances, laws, rules and regulations pertaining to the use of the Premises 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) Lessee shall obtain and maintain all licenses and permits and pay all fees necessary or required to hold the event. Lessor may require Lessee to provide proof of proper permitting or licensure prior to or during the event.

(c) Lessee shall be responsible for providing adequate security lighting for the Premises during the Event.

(d) In the event Lessee installs a stage or other performance area upon the Premises, Lessee shall abide by all applicable laws for said installation including any 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.

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

(f) Lessee agrees to provide for and pay all costs and expenses associated with clean-up of, and damage to, Lessor's property, both within and outside of the Premises which relate to the Lessee's use of the Premises. The Premises shall be cleaned and restored entirely by Lessee within forty-eight (48) hours of the end of the Event, to the sole satisfaction of Lessor, except as provided otherwise herein.

(g) Electricity: Lessee shall provide all necessary electrical connectors, cable and breakers from the Lessor controlled electrical panel to the stage and vendors, as required. Cost for electrical use is covered in the property rental fees.

(h) Restrooms: Lessee shall provide all necessary Port-O-Lets as recommended by industry standards for the projected attendance to the Event and shall assist with placement of the port-o-lets in an area designated by the Lessor. Lessee shall cause port-o-lets to be removed no later than Monday following the Event, at 5:00 o'clock p.m.

(i) Vendors: Lessee shall require all food, drink, and arts and crafts vendors to obtain all necessary city license and Health Department food permits. Lessee shall provide proof of all license and food permits to Lessor.

(j) Trash: Lessee shall provide such additional trash containers above the number provided by the Lessor as may be necessary to accommodate the volume of trash generated by the Event. Lessee must pick up all ground trash and empty all trash containers by Monday following the Event, at 5:00 o'clock p.m. All additional large dumpsters must be emptied and removed by Wednesday following the Event. Lessee shall dispose of, or cause to be disposed of, all trash in trash containers (barrels and dumpster) owned by Lessor on Wednesday following the Event, at 5:00 o'clock p.m.

(k) Clean Up: Lessee is responsible for all clean up of the leased premises and any cost associated with clean up.

(l) Admission: Lessee shall provide adequate personnel to collect all admission fees and staff all entrance and exit gates. Lessee shall be solely responsible for collection of all fees.

(m) To the extent the event is conducted on property outside the Premises on property owned by or leased to others, Lessee shall be solely responsible for obtaining the right to conduct the event on said property and nothing herein shall be construed to provide Lessee any interest in such property.

(n) Lessee may not assign its interest in this Lease without the express written consent of the Lessor.

6. Lessor's obligations.

(a) Parking: Lessor shall provide areas necessary to park all participant of the Event. Lessor authorizes parking only for the site known as John Hunt Park North Runway (inside north fence) with overflow parking restricted to the area of John Hunt Park south of Airport Road and north of the entrance to the Municipal Golf Course as depicted in the shaded area of Exhibit "A". Workers of the Event may use the Jaycee Building parking lot. There shall be no parking on grassy areas of John Hunt Park, and parking must not impede access to the Municipal Golf Course, John Hunt Park athletic fields or the Huntsville Tennis Center.

(b) Facility: Lessee shall have exclusive use of Lessor operated areas, excluding the Jaycee offices, of the Jaycee Building to support the Down Home Blues Festival activities beginning one day before the Event and continuing through one day after the Event. It shall be the responsibility of Lessee to insure the Jaycee Building is cleaned to the satisfaction of Lessor at the conclusion of the Event, but no later than Wednesday of the following week, at 12 o'clock noon.

(c) Electricity: Lessor shall make available to the Lessee all electrical panels currently located on the leased premises.

(d) Water: Lessor shall make available the water source located on the northwest side of the leased premises for food vendors.

(e) Trash: Lessor will provide and deliver 23 trash barrels for the Event.

7. *Indemnification; non-liability.* The City of Huntsville, its officials, officers, employees, agents, contractors, and volunteers performing an authorized city function, shall not be liable for any loss, injury, death, or damage to persons or property which at any time may be suffered or sustained by the City, its officials, officers, employees, agents, contractors or volunteers performing an authorized city function; Lessee, its agents, employees or contractors; or by any person who may at any time be using or occupying or visiting the Premises or be in, on or upon the same if such loss, injury, death, or damage shall be caused or result from or arise out of the negligence of Lessee, its agents, employees or contractors, or of any occupant, visitor or user of any portion of the Premises under the terms of this Agreement. Lessee shall indemnify and hold harmless and does hereby agree to indemnify and hold harmless the City of Huntsville, its officials, officers, employees, agents, contractors and volunteers performing an authorized city function, (hereinafter referred to as "indemnitees") from and against any and all claims, liability, loss, judgments, suits, penalties, costs, expenses and damages aforesaid (including but not limited to reasonable attorneys' fees and expenses and court costs and fees). Lessee's duty to indemnify shall not apply to loss, injury, death or damage arising by reason of the negligence or misconduct of the indemnitees. Lessee's duties hereunder shall survive the termination or expiration of this Agreement.

Nothing contained in this section 7 shall be construed as a waiver of any immunity of statutory protection of the City of Huntsville, Alabama, and no third party may expand any recovery against the City due to Lessee's duty of indemnification.

8. *Sale of Premises by Lessor.*

If the Lessor sells or otherwise transfers ownership of all or any part of the Premises during the term of this Lease, then this Lease shall be terminated.

9. *Insurance.* Lessee 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 ONE MILLION DOLLARS ($1,000,000.00) for the injury to or death of any one person and TWO MILLION DOLLARS ($2,000,000.00) 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 Lessee against all liability assumed by it hereunder as well as liability imposed by law. The City of Huntsville, its officers, employees, agents, contractors and specified volunteers are to be covered as Additional Insureds. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, employees, agents, contractors or specified volunteers except it shall be limited except in the case of the indemnitee or indemnitees sole negligence. Additional Insured status shall be through ISO Additional Endorsement CG 2011 01 96 or equivalent that is sufficient to provide coverage as per this Agreement. Such policy of insurance shall be issued by a company authorized to engage in the insurance business in the state of Alabama and shall be approved by the City Attorney of the City of Huntsville prior to Lessee entering upon the Leased Premises upon the terms of this agreement.

10. *Rent.* Lessee agrees to pay Lessor the non-profit rate of $700.00 per day of the Event (May 23 and 24, 2015) for the rental of the Jaycee Building and $700.00 per day for rental of the North Runway to produce the Event at the Premises in John Hunt Park. Lessee further agrees to pay for each set-up and clean-up day (May 22 and 25, 2015) at the rate of 50% of the daily usage fee for each facility rented. One-half of such sums shall be due and payable to Lessor no later than May 1, 2015, at 5:00 o'clock p.m. The remaining one-half of such sun shall be due and payable to Lessor no later than May 30, 2015, at 5:00 o'clock p.m.

11. *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.

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. Venue to enforce any term of this Agreement shall be in the Circuit Court of Madison County, Alabama or the United States District Court for the Northern District of Alabama, Northeastern Division. This Agreement shall be binding upon and inure to the benefit of Lessee, its successors and permitted assigns, and Lessor, its successors and assigns.

(b) Lessee shall not be excused from complying with any of the terms and conditions of this Agreement by any failure of Lessor 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 Lessor be construed or held to be a waiver of Lessor'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, any agreement(s), provision(s), or term(s) of this Agreement (whether material to the bargain of City and DSF 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.

13. Cancellation: Each party shall have the right to cancel this Agreement at any time, without cause, upon giving thirty (30) days written notice to the other.

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

LESSOR:
CITY OF HUTNSVILLE, ALABAMA

By: _____
Tommy Battle
Its: Mayor

ATTEST:

By: _____
Charles E. Hagood
Its: City Clerk-Treasurer

LESSEE:
BRIMSTONE MUSIC GROUP, INC.

By: _____
Its: President

WITNESS:

By: _____
Its:

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 with full authority 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 12th day of February, 2015.

_____
Notary Public
My Commission Expires: _____

STATE OF ALABAMA)
)
COUNTY OF MADISON)

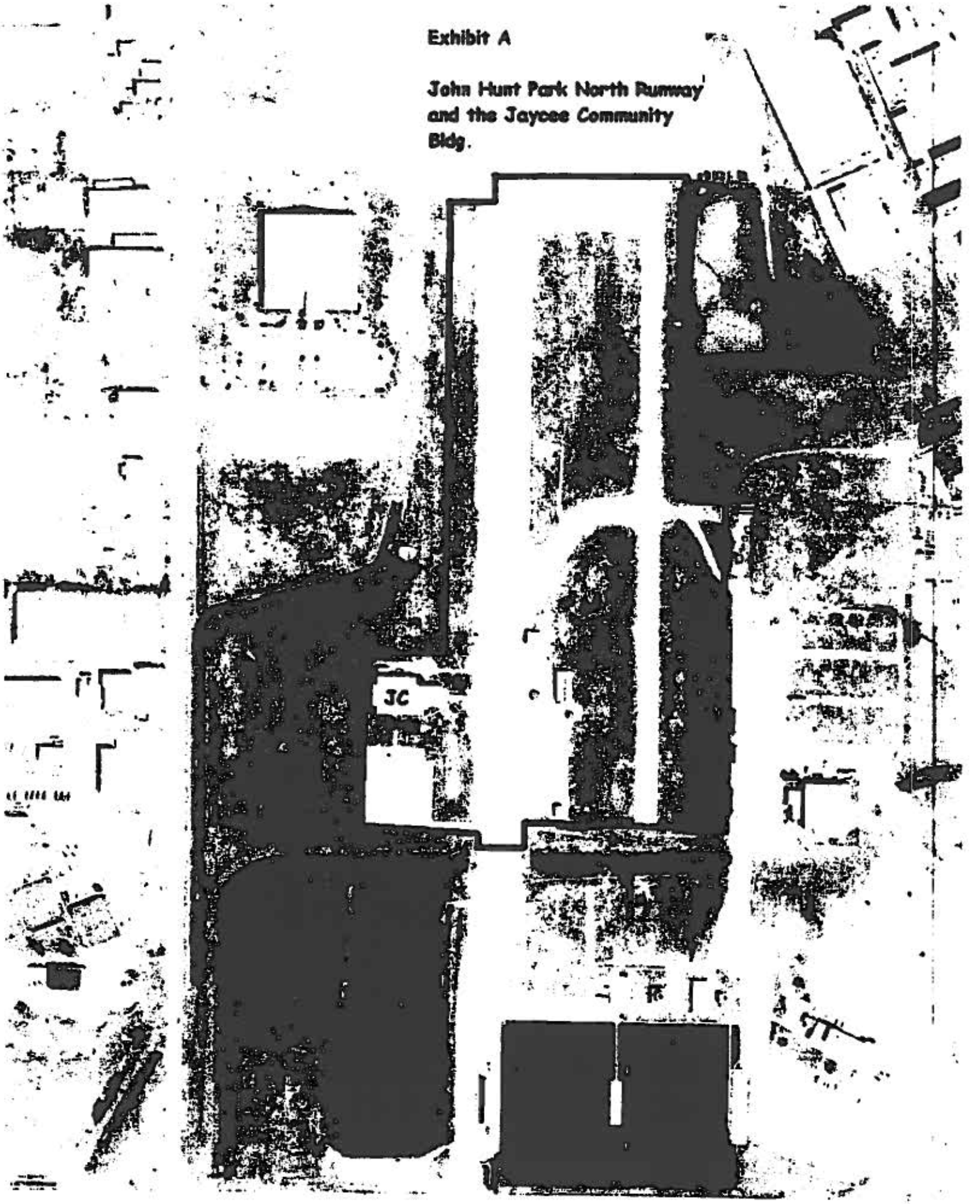
I, the undersigned, a notary public in and for said County, in said State, hereby certify that _____, whose name as _____ of Brimstone Music Group, Inc., is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, in his capacity as such _____, executed the same with full authority for and as the act of said limited liability company as of the day the same bears day.

GIVEN under my hand and official seal this the _____ day of _____, 2015.

_____
Notary Public
My Commission Expires: _____

Exhibit A

John Hunt Park North Runway and the Jaycee Community Bldg.



ROUTING SLIP
CONTRACTS AND AGREEMENTS

Originating Department: **Legal** Council Meeting Date: **2/12/2015**

Department Contact: **Peter Joffrion** Phone # **427-5026**

Contract or Agreement: **Lease Agreement with Brimstone Music Group, Inc.**

Document Name: **Lease Agreement with Brimstone Music Group, Inc.**

City Obligation Amount:

Total Project Budget:

Uncommitted Account Balance:

Account Number:

Procurement Agreements

Not Applicable	**Not Applicable**

Grant-Funded Agreements

Not Applicable	**Grant Name:**

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

Revised 04/15/2011