

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number: _____

Meeting Type: Regular

Meeting Date: Feb 12, 2015

Action Requested By: Public Transit

Agenda Type: Resolution

Subject Matter:

Agreement with Wal-Mart to install a bus shelter on their property.

Exact Wording for the Agenda:

Agreement with Wal-Mart to install a bus shelter at the L & N Wal-Mart.

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: -0-

Budgeted Item: Not Applicable

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head: 

Date: Feb 27, 2015

RESOLUTION NO. 15 - _____

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 and effectuate all terms of an agreement, on behalf of the City of Huntsville, a municipal corporation in the State of Alabama (herein, the "City"), by and between The City of Huntsville and Wal-Mart Stores East, LP", a public entity and constitutional instrumentality of the State of Alabama, incorporated by statute, for and on behalf of Wal-Mart Stores East, LP in Huntsville (herein, "Wal-Mart") which said agreement is substantially in words and figures similar to that certain document attached hereto and identified as, Agreement between the City of Huntsville and Wal-Mart Stores East, LP", consisting of 4 pages and the date of March 12, 2015, 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 _____ day of _____, 2015.

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

APPROVED this the _____ day of _____, 2015.

Mayor of the City of Huntsville,
Alabama

TRANSIT STATION LICENSE AGREEMENT

THIS TRANSIT STATION LICENSE AGREEMENT (this "Agreement") is entered into as of this ____ day of _____, 20____, by and between **WAL-MART STORES EAST, LP** ("WAL-MART"), and _____, whose address is _____.

WITNESSTH

WHEREAS, _____ operates a public transit system that transports the public throughout the _____ County, _____ area; and

WHEREAS, it is critical to the success of the public transit system that passengers have safe and convenient locations to wait for and to board vehicles; and

WHEREAS, it is beneficial to **WAL-MART** and their officials, employees, agents and guests that vehicles operated by _____ pick-up and drop-off passengers at the transit site located at Store/Club # _____ in _____; and

WHEREAS, the parties agree that it is in their mutual best interests that the transit site is an integral part of the community and functions as a community activity station; and

WHEREAS, the parties agree that it is in their mutual best interests to place a transportation facility at the specified site for use as an established transit station, which will provide facilities for the embarking and disembarking of passengers that are safe, convenient, accessible and more comfortable for passengers to wait for transit vehicles.

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties, **WAL-MART** and **Licensee** hereby agree as follows:

Section 1 - Transit Site Agreement. **WAL-MART** hereby grants **Licensee** a license (the "License") to enter upon that certain parcel of real property located at Store/Club #375 in Huntsville, Alabama, more particularly described and delineated by the site plan attached hereto as composite Exhibit A and made a part hereof (the "Transit Site") for the sole and limited purpose of installing a transit stop, subject to all of the terms and conditions provided for herein. **WAL-MART** agrees **Licensee** may install and use a facility for passengers which consists of a trash receptacle (s), a bench (es), a sign (s), a passenger waiting shelter (s), and such other items as may be mutually agreed upon by the parties and referred to as (the "Transit Station") on the Transit Site.

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

Date

Section 2 - Installation of Transit Station. Licensee shall provide all the materials and labor for the construction of the Transit Station to be located on the Transit Site. Licensee shall retain ownership of such Transit Station.

The Transit Station shall be comparable to other transit stations currently used by Licensee. If as a result of Licensee's construction of a Transit Station, Licensor is required by federal, state, or local law, ordinance, order etc, to make any improvements, changes or alterations ("Improvements") to the property on which Store/Club #375 is located, in order to comply with such laws, such collateral Improvements shall be the responsibility of Licensee. All costs associated with such collateral Improvements shall be borne by Licensee.

Section 3 - Term. This Agreement shall commence on the date included in the introductory paragraph of this Agreement (the "Date of Commencement") and, unless extended by the undersigned, shall terminate on the earlier of: (i) three (3) years from the Date of commencement; or (ii) thirty (30) days after notice is given by either party of the desire to terminate the Agreement. At the time this Agreement is terminated, Licensee shall remove the Transit Station and all of the Licensee equipment at the Transit Site and upon removal of the Transit Station, Licensee shall return the Transit Site to substantially the condition existing prior to the installation of the Transit Station.

Section 4 - Effective Date. This Agreement shall become effective upon being executed by the parties hereto and shall remain in full force and effect until such time as either party terminates this Agreement as provided in Section 3 hereof.

Section 5 - Damage to the Transit Station. Licensee shall be responsible for day-to-day normal and customary maintenance of the Transit Site and the Transit Station, and every part thereof, including, but not limited to, washing the Transit Station from time to time and picking up trash on the Transit Station on a regular basis. Licensee shall be responsible for heavy maintenance, including, but not limited to, painting, removal of graffiti, and concrete repair, as well as the repair of any damage to the Transit Station caused by Licensee and its agents. Such repair will be commenced within three (3) days after Licensee is notified by WAL-MART, in writing, of such damage. If Licensee shall fail to maintain the Transit Station in a clean manner, Wal-Mart shall have the right to clean the Transit Station after three (3) days written notice to Licensee. Licensor shall then be permitted to invoice Licensee for all costs incurred and to add a 15% administrative fee to such costs.

Section 6 - Advertising. Licensee may place or permit placement of any advertising materials or public notices similar to those customarily placed on or in transit stations within the Licensee system on the exterior or interior of the Transit Station or on the Transit Site. Licensee shall have the right to retain all amounts generated by such advertising. Licensee shall not place or allow advertising of any nature, including signage, in or around the Station which would either (i) promote or encourage the use of products legally prohibited to minors, such as tobacco products,

alcohol or adult entertainment of any type, or (ii) promote or encourage major competitors to Wal-Mart. Wal-Mart retains the right to demand that **Licensee** remove any advertisement for any reason without liability for contractual obligations of the Licensee that are related to the advertisement. Such demand may be written or verbal and may be made with 24 hours notice.

Section 7 - Security. WAL-MART shall not be responsible for providing security for the Transit Site or for any persons using the Transit Station.

Section 8 - No Partnership. Nothing contained herein shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto, it being understood that nothing contained herein, or any acts of the parties hereto other than the relationship of licensor and licensee.

Section 9 - Notices. Any notice, request, demand, approval, consent or other communication which WAL-MART or Licensee may be required or permitted to give to the other party shall be in writing and shall be mailed or hand delivered to the other party at the addresses set forth below:

If to WAL-MART:

Wal-Mart Stores East, LP
2001 S.E. 10th Street
Bentonville, AR 72716-0550
Attn: Realty Manager

If to Licensee:

or to such other address as either party shall have designated by notice to the other pursuant to this paragraph. The time of the rendition of such notice shall be one of the following: (1) two (2) days after same is deposited in an official United States Post Office with postage prepaid, and with certified or registered mail, return receipt requested; (2) the date of when same is hand delivered; or (3) the date delivered by overnight courier with confirmation of delivery required.

Section 10 - Authorization. WAL-MART and Licensee hereby represent and warrant to the other that as of the date of this Agreement, the undersigned are duly authorized to execute this Agreement on behalf of WAL-MART and Licensee, respectively.

Section 11 - Choice of Law; Venue. This Agreement and the provisions contained herein shall be construed, controlled, and interpreted in accordance with the laws of the State of Alabama. Venue for any dispute arising as a result of this Agreement shall be Madison County, Alabama.

Section 12- Compliance. Licensee agrees to comply with all applicable laws, rules, codes, and/or other regulation governing such operation; obtain any and all necessary consents or approvals,

and to display same as required by any law, rule, code, or regulation.

Section 13 - Attorneys Fees. In connection with any legal proceedings arising out of this Agreement, the prevailing party shall be entitled to recover its costs, expenses, attorney and paralegal fees, including without limitation, those incurred whether or not litigation is commenced, and also those incurred at trial and in any administrative, arbitration, mediation, bankruptcy or appellate proceedings.

Section 14 - Time of the Essence. Time is of the essence of the Agreement.

Section 15 - Severability. If any sentence, phrase, paragraph, provision or portion of this Agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such holding shall not affect the validity of the remaining portion hereto.

Section 16 - License to Use Copyrighted Materials and Trademark Rights. WAL-MART acknowledges that Licensee owns and holds all right, including patents, trademarks, copyrights and trade secrets in and to all elements of the Transit Station and related structures, designs and drawings, including without limitation, the passenger waiting shelter. Licensee hereby grants WAL-MART a revocable license to use such rights in the Transit Station and related structure, designs and drawings during the term of this Agreement for the purposes addressed in this Agreement. WAL-MART shall acquire no right or interest in any of these elements by virtue of the Agreement and all uses of these elements and related rights shall inure to the benefit of Licensee. WAL-MART agrees not to challenge or otherwise interfere with the validity of Licensee’s rights in these elements or Licensee’s ownership of these elements and related rights.

Section 17 - Indemnification. To the extent permitted by _____ law and subject to the limitations provided by _____ law, Licensee shall indemnify WAL-MART against, and hold WAL-MART harmless from all losses, damages, costs, claims, suits, liabilities, and expenses (including reasonable attorneys’ fees including those for services rendered at the appellate court level) resulting from any of Licensee’s use, construction, removal, maintenance or compliance requirements under this Agreement.

AGREED TO by the parties hereto as of the date first above written.

 (“Licensee”)

WAL-MART STORES EAST, LP

By: _____

By: _____

Date: _____

Date: _____