

**ROUTING SLIP  
CONTRACTS AND AGREEMENTS**

Originating Department: Legal

Council Meeting Date: 4/23/2015

Department Contact: Peter Joffrion

Phone # 427-5026

Contract or Agreement: Revocable License Agreement

Document Name: Revocable License Agreement between the COH & Legends Holdings

City Obligation Amount:

Total Project Budget:

Uncommitted Account Balance:

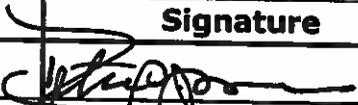
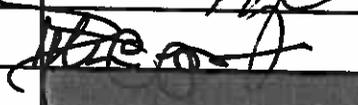
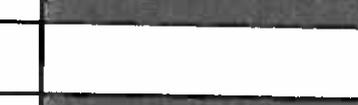
Account Number:

**Procurement Agreements**

<b>Not Applicable</b>	<b>Not Applicable</b>
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**Grant-Funded Agreements**

<b>Not Applicable</b>	<b>Grant Name:</b>
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Department	Signature	Date
1) Originating		4-21-15
2) Legal		4-21-15
3) Finance		4/21
4) Originating		4-21-15
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		

**CITY COUNCIL AGENDA ITEM COVER MEMO**

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

Meeting Type: Regular

Meeting Date: Apr 23, 2015

Action Requested By: Legal

Agenda Type: Resolution

**Subject Matter:**

Resolution authorizing the Mayor to enter into a Revocable License Agreement among the City of Huntsville, Alabama, Madison County, Alabama, and Legends Holdings, LLC

**Exact Wording for the Agenda:**

Resolution authorizing the Mayor to enter into a Revocable License Agreement among the City of Huntsville, Alabama, Madison County, Alabama, and Legends Holdings, LLC

**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: \_\_\_\_\_

Department Head:  \_\_\_\_\_

Date: 4-15-15

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 a Revocable License Agreement by and among the City of Huntsville, Alabama, Madison County, Alabama, and Legend Holdings, 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 "Revocable License Agreement by and among the City of Huntsville, Alabama, Madison County, Alabama, and Legend Holdings, LLC," consisting of eleven (11) pages including Exhibits A and B, and the date of April 23, 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 23rd day of April, 2015.

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

**APPROVED** this the 23rd day of April, 2015.

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

**Revocable License  
Agreement among the  
City of Huntsville,  
Alabama, Madison  
County, Alabama, and  
Legend Holdings, LLC**

**REVOCABLE LICENSE AGREEMENT**

**THIS REVOCABLE LICENSE AGREEMENT ("License") is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2015, by and among the *City of Huntsville, a municipal corporation in the State of Alabama*, ("City"), *Madison County, a County within the State Alabama* ("County"), and *Legend Holdings, LLC*, ("Licensee").**

**WITNESSETH:**

**WHEREAS**, Licensee owns real property in the City of Huntsville that is being commercially developed and is located at 3508 South Memorial Parkway, which is more particularly described on the attached Exhibit A, which is incorporated herein by reference ("Licensee Property"); and

**WHEREAS**, the Licensors are the owners of a parcel of land situated just to the south of Licensee Property, which is more particularly described on the attached Exhibit B, which is incorporated herein by reference ("Licensors Property"); and

**WHEREAS**, the Licensors Property has not been opened as a public road, but has been used over the years as a means of ingress and egress to and from adjacent or nearby uses; and

**WHEREAS**, Licensee, as a part of the development of its property, has submitted construction plans to the City which show an access point from the Licensee Property onto the Licensors Property; and

**WHEREAS**, as a condition to the approval of the construction plans Licensee is required to provide a written instrument showing that it has the right to access the Licensors Property as a means of ingress and egress to and from the Licensee Property and South Memorial Parkway; and

**WHEREAS**, the parties hereto are desirous of formalizing what appears up to this point to have been an implied license to use the Licensors Property as a means of ingress and egress for adjacent or nearby uses, including the property now owned by Licensee.

**NOW, THEREFORE** in consideration of the (a) the premises which are deemed a material part of this Agreement and, by this reference, are incorporated herein, (b) the mutual agreements, provisions, and terms of this Agreement set forth herein, and (c) the sum of Ten and No/100 (\$10.00) Dollars and other good and valuable consideration, the receipt and sufficiency of all of which is hereby expressly acknowledged, and intending to be legally bound hereby, Licensors and Licensee agree with and unto each other, as follows:

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

**1. Definitions, rules of construction; administration of License.**

(a) *Definitions.* When used in this License, the following capitalized words, terms and phrases shall have the following meanings:

*City* means the City of Huntsville, Alabama, and, where appropriate, the City Engineer who is hereby authorized to administer and enforce this License on behalf of the City and who may act through subordinates or designees.

*County* means Madison County, Alabama, and, where appropriate, the County Engineer who is hereby authorized to administer and enforce this License on behalf of the County and who may act through subordinates or designees.

*Development* means the commercial office development on the Licensee Property.

*Improvements* mean improvements, facilities, and appurtenances, to, over, under, upon, along, or through the Licensors Property, including the asphalt or other surface material and the Utilities.

*Licensee* means Legends Holdings, LLC, and its assignees.

*Licensee Property* means the parcel of land described in Exhibit A.

*Licensors* means either the City or the County, or both.

*Licensors Property* means the parcel of land described in Exhibit B.

*Utilities* mean the public utilities, including water, gas, electric, telecommunications sanitary sewer, and storm drainage facilities, that may be now and hereafter located upon, across, over, though, under, or upon the Licensors Property.

(b) **Rules of construction.** The following rules of construction shall apply to this License:

*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.

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

*Number.* Words in the singular include the plural. Words in the plural include the singular.

**2. Grant.** Subject to the term and conditions hereinafter set forth Licensors hereby grant to Licensee, its contractors, subcontractors, tenants, and invitees, a non-exclusive, revocable license on, over, across, along, and through the Licensors Property, for the purpose of vehicular and pedestrian ingress to and egress from Licensee Property and South Memorial Parkway and for no other purpose ("License"). Under this License Licensee understands and agrees that it acquires no vested right to use of the Licensors Property or any portion thereof. This grant does not include the right to use the Licensors Property as a parking lot or parking area or as a staging or parking area for construction on the Licensee Property.

**3. Maintenance obligations.**

(a) For purposes of this section, the phrase "maintain Licensors Property" means to keep, maintain, repair, replace, construct, or re-construct all or any portion of Licensors Property in order to keep the Licensors Property in good condition, order, or repair or otherwise open or viable as a means of vehicular and pedestrian ingress to and egress from Licensee Property and South Memorial Parkway.

(b) Licensee agrees that the Licensors may, but shall have no obligation to, maintain Licensors Property. Licensee may, at its sole cost, expense, and risk, undertake to maintain Licensors Property, but only after it has obtained approval from the City Engineer and the County Engineer. Notwithstanding the foregoing, Licensee agrees that Licensors may, at any time and from time to time, require Licensee, at its sole cost, expense, and risk, to perform routine maintenance of Licensors Property, including patching of potholes and minor repaving.

**4. Term of license; Assignment.**

(a) *Term.* Upon 30 days advance written notice to the other parties, the parties hereto may terminate this License. Upon termination, this License is automatically revoked without further action required by the parties. Notwithstanding the foregoing, in order for the City or the County to terminate this License their governing body must, by resolution, determine, in that body's sole discretion, that (1) the License is no longer needed for access, (2) the exercise of the License is or may be contrary to the public health, safety, or general welfare, (3) the License is or may be incompatible or would or may interfere with the then-current or future planned use of the Licensors Property, (4) the Licensors Property is to be sold or leased, or (5) the License is being exercised in a way that is in violation of the terms and conditions set forth in this License and Licensee has not cured the violation within the time specified by the Licensors. The Licensors reserve the right to and may, at any time and from time to time, temporarily close or block access

to the Licensors Property, in whole or part, for a public purpose, including a public works project, a public building project, Utilities installation, maintenance, or repair, or a special event. Licensee agrees that it shall have no recourse against the Licensors in the event that this License is terminated or access to the Licensors Property is temporarily closed or blocked, in whole or part.

(b) *Assignment.* Licensee may assign this License so long as Licensee notifies both Licensors of the assignment and the assignment expressly requires that the assignee assume all the duties, liabilities, and obligations imposed on Licensee under the License and the assignee expressly acknowledges and accepts such assignment in writing. In such event, Licensee shall be relieved of any and all liability under this License provided that Licensee provides to both Licensors a copy of the executed assignment and assumption agreement evidencing same.

**5. Conditions.** The grant of the License is subject to each of the following conditions and Licensee agrees that it shall be responsible for seeing that those using the Licensors Property under this License do not violate all or any of the conditions:

(a) Licensee shall not install or place, or allow others to install or place, any permanent or temporary signs on the Licensors Property.

(b) Licensee shall not use, or allow others to use, the Licensors Property as a parking lot or parking area or as a staging or parking area for construction on the Licensee Property.

(c) Licensee shall not interfere with, or allow others to interfere with, the use of the Licensors Property by others.

(d) Licensee shall not damage or destroy, or allow others to damage or destroy, the Licensors Property or Improvements. In the event Licensors Property or Improvements are damaged or destroyed by Licensee, or those using the Licensors Property under this License, Licensee shall promptly, at its sole costs and expense, restore, repair, or replace the Licensors Property or Improvements, to the sole satisfaction of the Licensors.

(e) The Licensors may require Licensee, or those performing on its behalf, to stop using the Licensors Property for all or any construction-related activity if, in the sole opinion of the Licensors, the activity is causing, or is likely to cause, damage to or destruction of Licensors Property or Improvements, or to unreasonably interfere with the use of the Licensors Property.

**6. Compliance with applicable laws.** Nothing in this License shall be construed to relieve Licensee, its contractors and subcontractors, and those otherwise acting on Licensee behalf, from complying with applicable City or County laws.

**7. Status of title.** The Licensors make no representations or warranties concerning the status of their interest or title in and to the Licensors Property. It shall be the sole responsibility of Licensee to conduct a title examination of the Licensors Property to determine if the Licensors have good and merchantable title in and to the Licensors Property.

**8. Indemnification and insurance.**

(a) Licensee for itself and its assignees hereby agrees to and does hereby indemnify and hold harmless both Licensors, their respective present and future elected and appointed officials, officers, employees, agents, contractors, and subcontractors from and against any and all claims, actions, judgments, damages of any kind or nature, fines, costs, liabilities, interest, or losses (including reasonable attorneys' fees and expenses and court costs and fees, through appeal), together with all costs and expenses of any kind or nature, which arise directly or indirectly from the Licensee's intentional, wanton, reckless or negligent acts or failures to act, either sole or concurrent, (including the intentional, wanton, reckless, or negligent acts or failures to act, either sole or concurrent, of Licensee's employees, agents, tenants, invitees, contractors, or subcontractors) with respect to all or any of its obligations, performances, or other actions contemplated in this License or its use of the Licensors Property.

Nothing contained in this paragraph 8 shall be construed as a waiver of any immunity or statutory protection or cap provided in favor of the Licensors and no third party may expand any recovery against the Licensors due to Licensee's duty of indemnification.

This subparagraph (a) shall survive the termination of this License.

(b) Licensee shall obtain and maintain in effect throughout the term of this License, general liability insurance, written on an occurrence basis, covering the Licensors Property in a minimum amount of ONE MILLION DOLLARS (\$1,000,000.00) combined single limit for bodily injury and property damage per occurrence, ONE MILLION DOLLARS (\$1,000,000.00) personal and advertising injury per occurrence, and TWO MILLION DOLLARS (\$2,000,000.00) aggregate policy limits. Such insurance shall specifically insure Licensee against all liability assumed by Licensee hereunder as well as liability imposed by law, and shall insure the City of Huntsville, Alabama, and Madison County, Alabama, and their respective present and future elected and appointed officials, officers, employees, agents, contractors, and subcontractors, who shall be named as Additional Insureds, as well as Licensee. 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 and the County Attorney, or their respective designees, prior to Licensee entering upon the Licensors Property under the terms of this License. Licensors may, at any time, require Licensee to provide a Certificate of Insurance or other proof of insurance.

**9. Miscellaneous.**

(a) Failure of the Licensors to insist on strict performance of any of the conditions, covenants, terms, or provisions of this License or to exercise any of its rights hereunder shall not waive such rights, but the Licensors shall have the right to enforce such rights at any time and take such action as might be lawful or authorized hereunder, either in law or equity.

(b) This License shall be binding upon and inure to the benefit of the parties, their respective heirs, personal representatives, successors and assigns.

(c) Any and all disputes arising out of this License shall be governed, construed, and enforced in accordance with the laws of the State of Alabama. All actions related to the validity, construction, interpretation, and enforcement of this License shall be instituted and litigated in the courts of Alabama. Licensee submits to the jurisdiction of the courts of Alabama located in Madison County, Alabama.

(d) This License contains the sole and entire agreement of the parties with respect to matters contemplated hereunder, and no representations, inducement, promise, or agreement, oral or written, between the Licensors and the Licensee and not incorporated herein shall be of any force or effect. Any amendment to this License shall be in writing and executed by the parties.

(e) If any term of this License is found to be void or invalid, such invalidity shall not affect the remaining terms of this License.

(f) 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 License.

(g) All notices or demands pursuant to this License shall be in writing and shall be deemed given if personally delivered or if mailed, by first class mail or certified mail, return receipt requested, as follows:

If to the Licensors, to: City Engineer, City of Huntsville,  
320 Fountain Circle, 2<sup>nd</sup> Floor  
P.O. Box 308  
Huntsville, AL 35804

Or, at his/her then-current address

And, to: Director of Public Works [Madison County Engineer],  
266-C Shields Road  
Huntsville, AL 35811

Or, at his/her then-current address

If to Licensee, to: Legend Holdings, LLC  
3350 L & N Drive  
Huntsville, AL 35801

Or, to the then-current owner of the Licensee Property according to the information on file in the Madison County Tax Assessor's Office

All notices or demands shall be deemed effective, if personally delivered, upon delivery, and if mailed, by first class or certified mail, three (3) days after mailing. Nothing herein shall prevent the parties from effecting personal delivery via e-mail.

**IN WITNESS WHEREOF** the parties have entered into this License as of the date first above written.

**The City of Huntsville, a municipal corporation  
in the State of Alabama**

By: \_\_\_\_\_  
Tommy Battle, Mayor

**ATTEST:**

\_\_\_\_\_  
Charles E. Hagood  
City Clerk-Treasurer

**Madison County, a County within the State of  
Alabama**

By: \_\_\_\_\_  
Dale W. Strong, Chairman  
Madison County Commission

**ATTEST:**

\_\_\_\_\_  
Kevin Jones  
County Administrator

**Legend Holdings, LLC, an Alabama limited  
liability company**

By: \_\_\_\_\_  
James Hoekenschnieder  
As Its: Managing Member

[acknowledgments on next page]

STATE OF ALABAMA           §  
  § ss.  
MADISON COUNTY           §

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, respectively, of the City of Huntsville, a municipal corporation in the State of Alabama, 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, as such officer and with full authority, executed the same voluntarily for and as the act of the City of Huntsville, a municipal corporation in the State of Alabama, as of the day the same bears date.

Given under my hand on this the \_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

STATE OF ALABAMA       §  
                                  § ss.  
MADISON COUNTY       §

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Dale W. Strong and Kevin Jones, whose names as Chairman of the Madison County Commission and County Administrator, respectively, of Madison County, a County within the State of Alabama 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, as such officers and with full authority, executed the same voluntarily for and as the act of said Madison County, a County within the State of Alabama, as of the day the same bears date.

Given under my hand on this the \_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

[acknowledgments continued on next page]

STATE OF ALABAMA     §  
                                  § ss.  
MADISON COUNTY     §

I, the undersigned authority, a Notary Public in and for said County in said State , hereby certify that James Hoekenschnieder, whose name as Managing Member of Legend Holdings, LLC, a limited liability company, 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, as such Managing Member and with full authority, executed the same voluntarily for and as the act of said company as of the day the same bears date.

Given under my hand on this the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

## **Exhibit A**

### **Licensee Property**

All that part of the Northeast Quarter of the Northwest Quarter of Section 13, Township 4 South, Range 1 West, in the City of Huntsville, Madison County, Alabama, particularly described as beginning due East 419.2 feet from the center of the South boundary of the Northeast Quarter of the Northwest Quarter of said Section 13, thence North 24 degrees 52 minutes West 118.0 feet; thence North 65 degrees 08 minutes East 250.0 feet; thence South 24 degrees 52 minutes East along the West margin of Memorial Parkway right-of-way a distance of 150.0 feet; thence South 65 degrees 08 minutes West along the North margin of Entrance Road to Fort Raymond W. Jones Armory, a distance of 185.8 feet; thence due West along the North boundary of the Fort Raymond W. Jones Armory tract as of record in Deed Book 236, Page 218, Probate Records of Madison County, Alabama, a distance of 70.8 feet to the place of beginning and containing 0.837 acres.

## **Exhibit B**

### **Licensors Property**

All that part of the Northwest Quarter of Section 13, Township 4 South, Range 1 West, particularly described as beginning at a point, said point of beginning being due West 170 feet from the center of the East boundary of Northwest Quarter of said Section 13; thence from the place of beginning South 26 degrees West 84.0 feet to a point; thence South 24 degrees 52 minutes East 62.5 feet to a point; thence North 26 degrees East 107.5 feet to a point; thence North 65 degrees 08 minutes East 167.5 feet to a point on the West margin of Memorial Parkway; thence North 24 degrees 52 minutes West along the West margin of said Memorial Parkway 50 feet to a point; thence South 65 degrees 08 minutes West 185.8 feet to place of beginning and containing .31 acres, more or less.