CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number: _____

Meeting Type: Regular

Meeting Date: Nov 5, 2015

Action Requested By: Parks and Recreation

Agenda Type: Resolution

Subject Matter:

License Agreement between the City of Huntsville and Downtown Huntsville, Inc.

Exact Wording for the Agenda:

Resolution authorizing the Mayor to enter into a License Agreement between the City of Huntsville and Downtown Huntsville, 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.

Associated Cost: _____

Budgeted Item: Not Applicable

MAYOR RECOMMENDS OR CONCURS: _____

Department Head: _____

Date: 10/26/15

ROUTING SLIP
CONTRACTS AND AGREEMENTS

Originating Department: **Recreation Services** Council Meeting Date: **11/5/2015**

Department Contact: **Steve Ivey** Phone # **8021**

Contract or Agreement: **License Agreement between the City of Huntsville and Downtown Huntsville, I...**

Document Name: **License Agreement between the City of Huntsville and Downtown Huntsville, 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	S-01	10/26/15
2) Legal	Mary C. Cates	10/27/15
3) Finance	[illegible]	10/30/15
4) Originating	S-01	11/4/15
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		

Revised 04/15/2011

RESOLUTION NO. 15-____

WHEREAS the City Council of the City of Huntsville, Alabama, does hereby declare in accordance with Code of Alabama (1975) that the Mayor be, and he is hereby authorized to enter into a License Agreement between the City of Huntsville and Downtown Huntsville, 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 " License Agreement between the City of Huntsville and Downtown Huntsville, Inc.," consisting of six (6) pages, including Exhibit "A" and the date of November 5, 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 5th day of November, 2015.

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

APPROVED this the 5th day of November, 2015.

Mayor of the City of
Huntsville, Alabama

LICENSE AGREEMENT BETWEEN THE CITY OF HUNTSVILLE AND DOWNTOWN HUNTSVILLE, INC.

This License Agreement (the "Agreement") is entered into this _____ day of November, 2015, by and between the City of Huntsville, a municipal corporation in the State of Alabama (hereinafter the "City"), and Downtown Huntsville, Inc., an Alabama non-profit corporation (hereinafter "DHI").

WHEREAS, DHI is an organization committed to encouraging, supporting and promoting the ongoing cultural, aesthetic, social and economic vitality of the downtown area of Huntsville; and

WHEREAS, the City of Huntsville has a public interest in promoting a vital and thriving downtown area; and

WHEREAS, DHI desires to stage an event known as the "Tinsel Trail" in Big Spring Park; and

WHEREAS, the City has determined that entering into this License Agreement will serve the public purpose of enhancing the economic vitality and growth of the Downtown Huntsville area;

NOW THEREFORE, for and in consideration of the mutual covenants herein, the parties agree as follows:

1. Use of Premises. Subject to the terms and conditions of this License Agreement, the City hereby grants DHI permission to utilize that portion of Big Spring Park designated as the "Event Area", which is shown in the drawing labeled "2015 Layout" attached hereto as Exhibit "A", and which is hereinafter referred to as the "Premises" to be used for an event called the "Tinsel Trail" (the "Event") which shall be a community event wherein individuals and organizations sponsor live holiday trees to be placed on the Premises.

2. Term. The term of this Agreement shall be from November 16, 2015 through January 6, 2016, inclusive.

3. Set up and Construction of Event Exhibits. DHI shall not affix any trees or other materials to the Premises without the prior approval of the City's Director of Landscape Management. DHI shall obtain the approval of the City's Director of General Services prior to

the use of electrical power for any part of the Event. Electricity may be obtained only from sources authorized by the General Services Director.

4. Alteration of Premises. DHI may not remove or alter any trees or make any other changes to the Premises without the prior approval of the Director of Landscape Management.

5. Vandalism or Weather Damage. DHI shall promptly repair any damage to its property or the Premises caused by vandalism or weather events. The City shall not be responsible for any damage to property of DHI, its sponsors, or third parties.

6. Compliance with Laws. DHI 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. DHI shall not sell, serve or allow alcoholic beverages on the premises.

7. Licensing and Permits. DHI shall obtain and maintain all licenses and permits and pay all fees necessary or required to hold the event and to sell and serve food on the Premises. DHI shall provide proof of proper permitting or licensure prior to or during the event.

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

9. Indemnification; non-liability. The City, 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; DHI, 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 DHI, its agents, employees or contractors, or of any occupant, visitor or user of any portion of the Premises under the terms of this Agreement. DHI shall indemnify and hold harmless and does hereby agree to indemnify and hold harmless the City, 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). DHI's duty to indemnify shall not apply to loss, injury, death or damage arising by reason of the negligence or misconduct of the indemnitees. DHI's duties hereunder shall survive the termination or expiration of this Agreement.

Nothing contained in this section 9 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 DHI's duty of indemnification.

10. Restoration. DHI agrees to provide for and pay all costs and expenses associated with clean-up of, and damage to, the City's property resulting from DHI's use of the

Premises. The Premises shall be cleaned and restored entirely by DHI no later than the end of the Agreement term, to the sole satisfaction of the City.

11. Insurance. DHI 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 DHI 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. Additional Insured status shall be through ISO Additional Endorsement CG 20 10 11 0413 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.

12. Rent. DHI shall pay to the City the sum of $10.00 (Ten and no/100 dollars) as rental for the use of the Premises.

13. 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.

14. 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 DHI, its successors and permitted assigns, and the City, its successors and assigns.

(b) DHI 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 DHI 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.

15. The parties represent and warrant that they have full authority to enter into this Agreement.

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.

LICENSOR:
THE CITY OF HUNTSVILLE, ALABAMA

ATTEST

_____
Charles E. Hagood
City Clerk-Treasurer

By:_____
Tommy Battle, Mayor

LICENSEE:
DOWNTOWN HUNTSVILLE, INC.

ATTEST

_____

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 voluntarily for and as the act of said municipal corporation on the day the same bears day.

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

_____
Notary Public

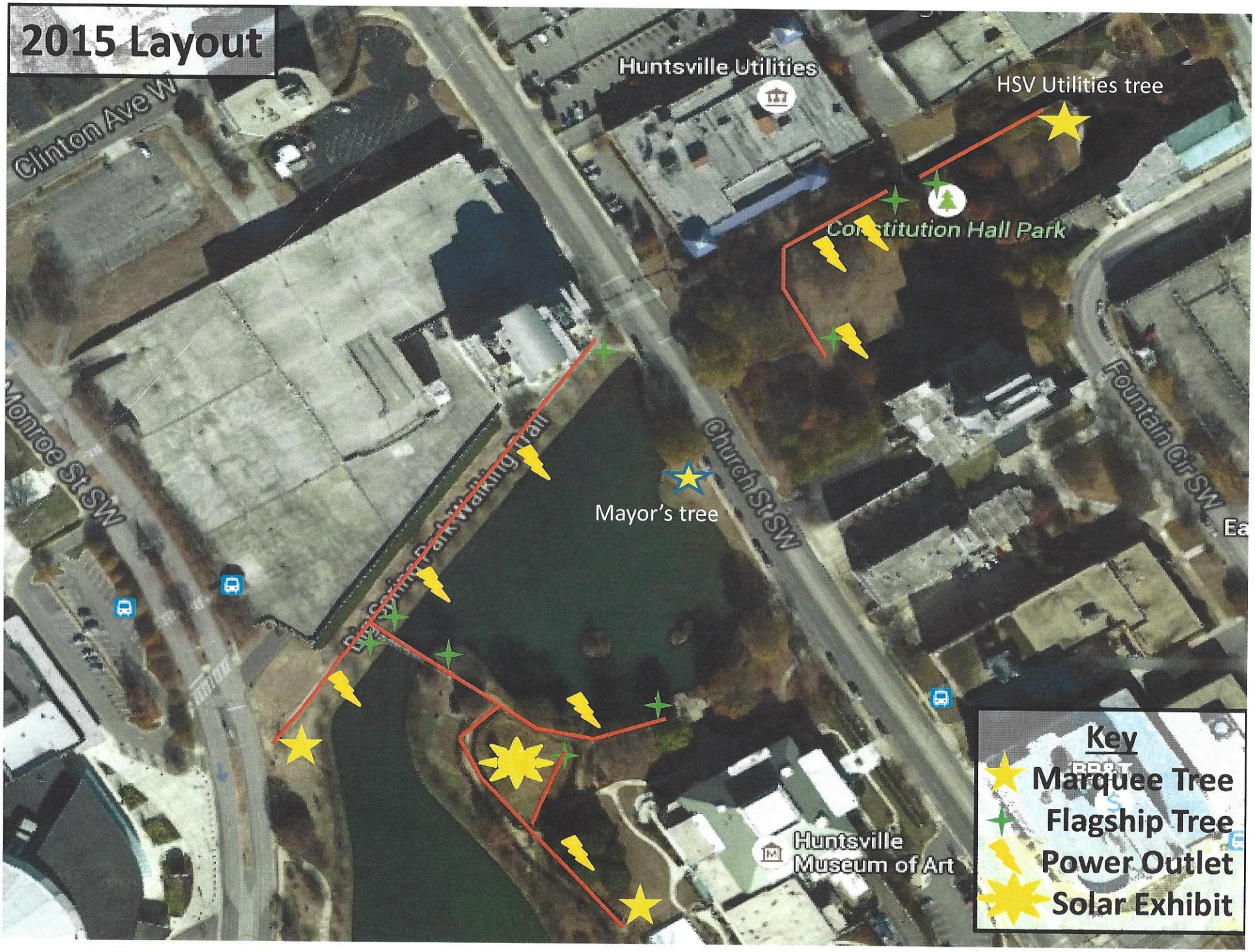
STATE OF ALABAMA)
COUNTY OF MADISON)

I, the undersigned, a notary public in and for said County, in said State, hereby certify that _____, whose name as _____ of Downtown Huntsville, 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 officer, executed the same voluntarily for and as the act of said corporation on the day the same bears day.

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

_____
Notary Public

2015 Layout


Huntsville Utilities
HSV Utilities tree
Clinton Ave W
Constitution Hall Park
Monroe St SW
Church St SW
Fountain Cir SW
Mayor's tree
Huntsville Museum of Art
Key
Marquee Tree
Flagship Tree
Power Outlet
Solar Exhibit