

CITY COUNCIL AGENDA ITEM COVER MEMO

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

Meeting Type: Regular

Meeting Date: 11/5/2015

Action Requested By:  
Planning

Agenda Item Type  
Resolution

Subject Matter:

Revocable License Agreement.

Exact Wording for the Agenda:

Revocable License Agreement between the City of Huntsville and U.G. White Hardware, 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.

This agreement will grant UGWH a revocable license to occupy air space above the public sidewalk for the location of a sign at 115 Clinton Avenue.

Associated Cost:

Budgeted Item: Not applicable

MAYOR RECOMMENDS OR CONCURS: No

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

Date: 10/28/2015

## ROUTING SLIP CONTRACTS AND AGREEMENTS

Originating Department: Planning

Council Meeting Date: 11/5/2015

Department Contact: Jim McGuffey

Phone # 256-427-8019

Contract or Agreement: Agreement

Document Name: Revocable License Agreement between COH & U.G. White Hardware, LLC

City Obligation Amount: 0

Total Project Budget: 0

Uncommitted Account Balance: 0

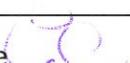
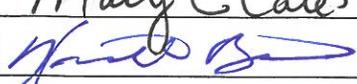
Account Number: N/A

### Procurement Agreements

<u>Select...</u>	<u>Select...</u>
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### Grant-Funded Agreements

<u>Select...</u>	Grant Name:
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Department	Signature	Date
1) Originating		10-28-15
2) Legal	Mary C. Cates	10-3-15
3) Finance 		11/4/15
4) Originating		
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		

RESOLUTION NO. 15-\_\_\_\_\_

**BE IT RESOLVED** by the City Council of the Huntsville, Alabama, that the Mayor be, and is hereby authorized to enter into a Revocable 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 "Revocable License Agreement between the City of Huntsville, Alabama and U.G. White Hardware, LLC, consisting of four (4) pages, 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

**REVOCABLE LICENSE AGREEMENT**

This Revocable License Agreement ("License") is made and entered into on the 5<sup>th</sup> day of November, 2015, by and between the City of Huntsville, a municipal corporation in the state of Alabama, hereinafter referred to as "City," and U. G. White Hardware, L.L.C., hereinafter referred to as "UGWH".

**WITNESSETH:**

**WHEREAS**, UGWH is the owner of the property at 115 Clinton Avenue East in the City of Huntsville, Alabama ("UGWH premises"); and

**WHEREAS**, UGWH is in the process of opening or has opened a hardware and mercantile store at the UGWH premises and in connection therewith desires to affix an attached accessory sign to the exterior portion of the front of the UGWH premises which would extend over the public sidewalk immediately adjacent to the UGWH premises; and

**WHEREAS**, the Zoning Ordinance for the City of Huntsville, Alabama allows attached accessory signs in the zoning district in question not to exceed 50 square feet in size and to project up to 16 inches from the building and the Board of Zoning Adjustment of the City of Huntsville, Alabama granted a variance for the proposed sign in order to allow it to be a total of 99 square feet in size and to project 84 inches from the face of the building, subject to the applicant's obtaining from the City a right to use the public air space above the public sidewalk; and

**WHEREAS**, the City is desirous of granting to UGWH a revocable license to occupy the air space above the public sidewalk for its sign, which space the City is not currently using or in need of, subject to the terms and conditions of this License.

**NOW, THEREFORE** in consideration of the mutual benefits and premises contained herein, the City and UGWH agree as follows:

1. Subject to the terms and conditions hereinafter set forth, UGWH is hereby granted a revocable license to occupy the air space above the public sidewalk adjacent to the UGWH premises at 115 Clinton Avenue East in order to install and maintain said attached accessory sign, at a location commencing at least 13 feet above ground level and for no other purpose. Such right includes the temporary right to use the public sidewalk adjacent to the building for the installation, periodic maintenance, and removal of the sign. All cost, expense, and risk associated with the installation, maintenance, and removal of the sign and the use of City property shall be that of UGWH's, including without limitation the cost of utilities associated with the illumination of the sign, which utilities UGWH shall be solely responsible for obtaining. In no event shall the City, its present and future officials, officers, employees, agents,

\_\_\_\_\_  
PRESIDENT OR PRESIDENT  
PRO TEM OF THE CITY COUNCIL  
OF HUNTSVILLE, ALABAMA

November 5, 2015  
DATE

contractors, and subcontractors incur any costs whatsoever associated with the sign or be liable to UGWH for any damage to or destruction of the sign regardless of the cause.

2. All notices or demands pursuant to this License shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested to the following addresses:

If to the City, to:        Director of Urban Development  
                                  City of Huntsville  
                                  308 Fountain Circle  
                                  Huntsville, AL 35801

If to UGWH, to:         UG White Hardware, LLC  
                                  101 North Jefferson St.  
                                  Athens, AL 35611  
                                  \_\_\_\_\_

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

3. Unless revoked or terminated sooner, as hereinafter provided, the term of this License shall be for a period commencing on the date written above and ending November 5, 2040. UGWH shall pay to the City a non-refundable license fee of \$200.00 at the beginning of the term.

4. Under this License UGWH understands and agrees that it acquires no vested right to the use of City property or any portion thereof, including without limitation the public sidewalk and the air space above the sidewalk. The City, through its Director of Urban Development, his successor or their respective designee or designees (hereinafter "Director"), may, at any time, terminate this License and revoke all rights granted hereunder, by notifying UGWH of same. UGWH may, at any time, terminate this License by notifying the Director of its intent to do so. Notwithstanding anything contained to the contrary in this License, in the event UGWH sells, leases, or otherwise transfers the UGWH premises, except as security for a debt where possession remains with UGWH, then this License shall automatically be revoked without the need for further action by the City.

5. UGWH shall, at its sole cost and expense, install and maintain the proposed sign, including without limitation its components, in good condition, order, and repair, and in a safe and presentable manner free from graffiti. Damage to the sign shall be repaired as soon as practicable. Maintenance to the sign, including its components, shall include but not necessarily be limited to routine maintenance such as regular cleaning and minor repairs, and to non-routine maintenance such as major repairs or reconstruction. UGWH, or those otherwise performing on its behalf, shall not damage or deface public property nor interfere with the general operation and use of City property, including without limitation public streets and sidewalks and other improvements such as landscaping and irrigation systems. UGWH shall promptly remove or

correct, to the satisfaction of the Director, any obstruction, damage, or defect in any City property including without limitation the right-of-way caused by UGWH, or those otherwise performing on its behalf.

6. UGWH agrees to comply with all federal, state, and local ordinances, laws, rules, and regulations applicable to the installation and maintenance of the sign and the rights granted hereunder, including without limitation the use of City property, as such may be from time to time amended, and shall not use City property in an unlawful manner. UGWH shall be responsible for obtaining all required licenses and permits in connection with the sign including without limitation building and electrical permitting.

7. Proposed schedules for the installation, non-routine maintenance, and removal the sign, including without limitation components thereof, shall be submitted to the Director for his prior approval. The Director may approve the schedule, or provide an alternate schedule for the proposed activity where he finds that the proposed schedule would likely interfere with City activities or projects, City permitted or licensed activities, special events, utilities projects, or other such use of City property (hereinafter referred to collectively as "protected activities"). The Director may at any time and from time to time require UGWH to stop any work being performed on City property in regard to its sign where he finds that such activity is interfering with protected activities or has the likelihood of posing a risk to the public health, safety, or welfare. The Director shall have the right to inspect the installation at any time and from time to time and order remediation where he determines that City property has been damaged or defaced by the installation.

8. UGWH hereby agrees to indemnify and hold harmless and does indemnify and hold harmless the City, its present and future 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 UGWH's exercise of the rights granted by this License including but not limited to UGWH's intentional or negligent acts or failures to act, either sole or concurrent, with respect to all or any of its obligations, performances, or other actions contemplated in this License (including but not limited to the intentional or negligent acts or failures to act, either sole or concurrent, of UGWH's employees, agents, contractors, subcontractors, and volunteers).

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

This paragraph shall survive the expiration, revocation, or termination of this License.

9. Upon expiration, revocation, or the termination of this License, UGWH shall, at its sole cost, expense, and risk, within 30 days of the removal order of the Director, remove the sign and restore the City property to the condition it was in immediately prior to the installation of the

sign, as determined by the Director. Failing therein, UGWH shall pay to the City as liquidated damages \$100.00 for each day that UGWH does not comply with the removal order.

10. UGWH shall maintain insurance coverage throughout the term of this License and shall include the licensed area, including without limitation the public sidewalk and space occupied by the sign in the premises on its insurance policy and shall name the City as additional insured.

11. Failure of the City 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 City 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.

12. 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. UGWH submits to the jurisdiction of the courts of Alabama located in Madison County, Alabama.

13. 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 UGWH and the City and not incorporated herein shall be of any force or effect. Any amendment to this License shall be in writing and executed by UGWH and the City.

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

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

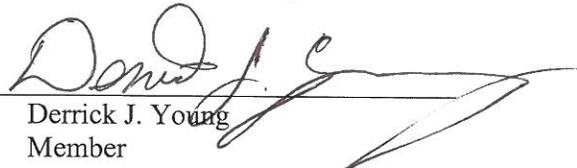
**THE CITY OF HUNTSVILLE, ALABAMA**

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

**ATTEST:**

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

**U. G. WHITE HARDWARE, L.L.C.**

By:   
Derrick J. Young  
Its: Member

**ATTEST:**

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