

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number: _____

Meeting Type: Regular

Meeting Date: Jan 14, 2016

Action Requested By: Fire and Rescue

Agenda Type: Resolution

Subject Matter:

Approval of Agreement

Exact Wording for the Agenda:

Resolution authorizing the Mayor to enter into an agreement between the City of Huntsville and Green Mountain Volunteer Fire Department Inc. for the lease of a fire truck.

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 provide a replacement truck to Green Mountain Volunteer Fire Department. The truck currently leased by GMVFD is not operational and the cost of repairs is being evaluated.

Associated Cost: NA

Budgeted Item: Not Applicable

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head: *AW McFarley*

Date: Dec 28, 2015

**ROUTING SLIP
CONTRACTS AND AGREEMENTS**

Originating Department: Fire and Rescue

Council Meeting Date: 1/14/2016

Department Contact: Lesley Easter

Phone # 256-457-2036

Contract or Agreement: Agreement

Document Name: GMVFD Truck Lease 2016

City Obligation Amount: NA

Total Project Budget: NA

Uncommitted Account Balance: NA

Account Number: NA

Procurement Agreements

<u>Not Applicable</u>	<u>Not Applicable</u>
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Grant-Funded Agreements

<u>Not Applicable</u>	Grant Name:
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Department	Signature	Date
1) Originating	<i>BW McFarland J</i>	
2) Legal	<i>Mary Clato</i>	1-4-2016
3) Finance <i>CC</i>	<i>Mary Clato</i>	1-5-2016
4) Originating	<i>BW McFarland J</i>	
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		

RESOLUTION NO. 16- _____

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor is hereby authorized to enter into an Agreement, by and between the City of Huntsville, a municipal corporation in the State of Alabama, and Green Mountain Volunteer Fire Department, Inc, which said Agreement is attached hereto and identified as "Agreement between the City of Huntsville and the Green Mountain Volunteer Fire Department, Inc." whereby the city will lease a fire truck to Green Mountain Volunteer Fire Department Inc., consisting of six (6) pages and the date of January 14th, 2016, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, and 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 14th day of January, 2016.

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

APPROVED this the 14th day of January, 2016.

Mayor of the City of Huntsville,
Alabama

Lease Agreement Between the
City of Huntsville, Alabama and
the Green Mountain Volunteer
Fire Department, Inc.

LEASE AGREEMENT

This Lease Agreement (this "Lease") is made and entered into on the ____ day of January, 2016 by and between the **City of Huntsville**, a municipal corporation in the State of Alabama (hereinafter "City") and the **Green Mountain Volunteer Fire Department, Inc.**, an Alabama non-profit corporation (hereinafter "GMVFD").

WITNESSETH:

WHEREAS, the majority of the property on Green Mountain is within the city limits of Huntsville and is therefore within Huntsville Fire and Rescue's (hereinafter "HFR") primary response area; and

WHEREAS, the community of Green Mountain established a volunteer fire department in 1967 to aid the City of Huntsville with response time because of the mountainous terrain of the community which would affect response time, especially during inclement weather; and

WHEREAS, GMVFD's only fire truck is out for repair and may not even be repairable; and

WHEREAS, the City owns a 1986 Pierce fire truck VIN# 1P9CA01D8GA040445 (hereinafter "Truck"), which it can make available to GMVFD; and

NOW, THEREFORE, FOR AND IN CONSIDERATION of the mutual covenants and agreements contained hereinbelow, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1.0 **LEASED PREMISES.** The City, in consideration of the rents, covenants, and agreements contained herein to be paid and performed by GMVFD, hereby leases the Truck to GMVFD.

2.0 **TERM.** The term of this Lease shall be one (1) year, commencing on the date of execution by the last party and extending for one year. The parties may, by mutual consent, extend the Lease for two additional one-year terms.

3.0 **RENTAL.** GMVFD shall pay the City the sum of Ten Dollars (\$10.00) per year in consideration for the rental for the Truck.

4.0 **USE OF TRUCK.** GMVFD shall utilize the Truck for firefighting activity. During periods of inclement weather HFR will staff Fire Station 13 as provided in the Lease Agreement adopted and approved by the Huntsville City Council on July 24, 2014, as provided by

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

Resolution No. 14-560. During periods HFR staffs Fire Station 13, HFR will assume operation and control of the Truck. During periods when the Truck is utilized by HFR, the indemnification obligations set forth in section 7.0 of this Agreement shall not apply.

5.0 USE AND MAINTENANCE OF THE TRUCK. GMVFD shall utilize the Truck in a reasonable manner, subjecting it only to normal wear and tear. The City will provide fuel, service and repair for the Truck throughout the term of this Lease and any extensions thereto.

6.0 INSURANCE REQUIREMENTS. During the term of this Lease, GMVFD shall satisfy the following insurance requirements:

A. Collision Insurance:

GMVFD shall keep the Truck insured against damage or destruction commonly covered under collision coverage in the amount of \$10,000.00; the proceeds of such policy or policies shall be used for the repair or replacement of the Truck.

B. General Liability:

General Liability on an "occurrence form" for bodily injury and property damage:

\$ 4,000,000 General Aggregate Limit
\$ 1,000,000 Each Occurrence

The City, its elected and appointed officials, employees, agents and specified volunteers are to be covered as Additional Insureds, as their interests may appear, as respects: liability arising out of activities performed by or on behalf of GMVFD for products used by and completed operations of GMVFD; or automobiles owned, leased, hired or borrowed by GMVFD. Additional insured status shall be through ISO Additional Endorsement CG 20 10 11 85 or equivalent that is sufficient to provide the coverage required by this Agreement.

C. GMVFD's Coverage to be Primary

GMVFD's insurance coverage shall be primary insurance as respects the City, its elected and appointed officials, employees, agents and specified volunteers, as their interests may appear. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents or specified volunteers shall be excess of GMVFD's insurance and shall not contribute to it.

D. Acceptability of Insurers:

Insurance is to be placed with insurers with an A. M. Best's rating of no less than **B+ V**.

E. Verification of Coverage:

The City shall be indicated as a Certificate Holder and GMVFD shall furnish the City with Certificates of Insurance reflecting the coverage required by this document. The A. M. Best

Rating and deductibles, if applicable, shall be indicated on the Certificate of Insurance for each insurance policy. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

7.0 INDEMNIFICATION.

GMVFD, to the fullest extent permitted by law, shall indemnify and hold harmless the City, its elected and appointed officials, employees, agents and specified volunteers against all claims, damages, losses and expenses, including, but not limited to, attorney's fees, arising out of or resulting from GMVFD's use of the Truck, provided that any such claim, damage, loss or expense (1) is attributable to personal injury, including bodily injury sickness, disease or death, or to injury to or destruction of tangible property, including loss of use resulting therefrom, and (2) is caused by any negligent act or omission of GMVFD or any of their consultants, or anyone directly or indirectly employed by them or anyone for whose acts they are legally liable. Such obligation should not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this paragraph.

8.0 DEFAULT. In the event: (a) rent in this Lease or any other payment required hereunder to be paid by GMVFD is not paid at the time and place when and where due; (b) GMVFD shall fail to comply with any term, provision, condition, or covenant of this Lease, other than the payment of rent, and shall not cure such failure within ten (10) days after written notice to GMVFD of such failure to comply; (c) any petition is filed by or against GMVFD under any section or chapter of the National Bankruptcy Act as amended, (d) GMVFD shall become insolvent or make a transfer in fraud of creditors; (e) GMVFD shall make an assignment for benefit of creditors; (f) a receiver is appointed for a substantial part of the assets of GMVFD in any of such events, City shall have the option to do any one of the following in addition to and not in limitation of any other remedy permitted by law or by this Lease:

(i) Terminate this Lease, in which event GMVFD shall immediately surrender the Truck to the City.

(ii) Pursue any and all other remedies available to City at law or in equity.

In the event City employs an attorney on account of the nonpayment of rent or other violation of any of the terms or conditions of this Lease by GMVFD, GMVFD shall pay all expenses incurred including a reasonable attorney's fee.

9.0 SURRENDER. Upon the termination of this Lease, GMVFD shall deliver up the Truck in the same condition as it was in at the commencement of the term of this Lease (with the exception of reasonable and ordinary wear and tear and damage by fire and other casualty excepted).

10.0 MISCELLANEOUS. The parties hereto further agree as follows:

16.1 The non-enforceability or illegality of any provision of this Lease shall not render the other provisions unenforceable, invalid or illegal.

16.2 The paragraph headings contained herein are only for convenience and reference, and are not intended to be part of this Lease or in any manner to define, limit or describe the scope and intent of this Lease for the particular paragraph to which they refer.

16.3 The words "City" and "GMVFD", when used in this Lease, shall be construed as plural whenever the number of the parties to this Lease shall require.

16.4 Any and all notices or other communications required or permitted by this Lease or by law to be served on or given to any party hereto, by another party to this Lease, shall be in writing, and shall be deemed duly served when personally delivered to the party, City or GMVFD, to whom they are directed, or in lieu of such personal service, when received if sent by United States Mail, Postage Prepaid, Certified Mail, Return Receipt Requested, and addressed as follows:

City: City of Huntsville, Alabama
615 Washington Street
Huntsville, Alabama 35801
Attention: Director of General Services

with copy to: City Attorney's Office
Post Office Box 308
Huntsville, Alabama 35804-0308
Attention: City Attorney

GMVFD: Green Mountain Volunteer Fire Department, Inc.
13013 Shawdee Road
Huntsville, AL 35803

If either party hereto changes its address for purposes of this Agreement, the party so changing shall give the other party appropriate written notice of change of address in the manner specified above.

16.5 The parties further agree that this Lease is to be deemed to have been prepared jointly by the parties hereto, after arm's length negotiations, and that any ambiguity or uncertainty existing herein, if any, shall not be interpreted against the other party.

16.6 It is expressly understood that this Lease sets forth the entire agreement of the parties and supersedes any prior written or oral agreements between them concerning the subject matter contained herein, oral or otherwise, and that there is no other agreement between the parties other than that contained herein.

16.7 The parties further agree to sign any and all instruments or documents necessary to carry out the full purpose and intent of this Lease.

16.8 This Lease shall be binding upon the parties, and their successors in interest.

16.9 Each party to this Lease shall be responsible for the payment of all costs, expenses, legal fees and disbursements incurred or to be incurred by it or any of them in negotiating and preparing this Lease, and all documents required to be delivered pursuant to this Lease and in otherwise performing the transactions contemplated by this Lease.

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

WITNESS:

**GREEN MOUNTAIN VOLUNTEER
FIRE DEPARTMENT, INC.**
a non-profit corporation

By: _____

By: *Randall Seweryn*
Its: *Cliff*

Its: _____

ATTEST

CITY OF HUNTSVILLE, ALABAMA

By: _____

By: _____

Kenneth Benion

Tommy Battle

Its: City Clerk-Treasurer

Its: Mayor

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 Kenneth Benion, 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 corporation on the day the same bears day.

GIVEN under my hand and official seal this the ____ day of _____, 2016.

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 RUSSELL RAWSON, whose name as CHIEF of Green Mountain Volunteer Fire Department, Inc., a non-profit corporation, 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, (s)he, in his or her 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 26th day of DECEMBER, 2016¹⁵. *SK*


Notary Public

My Commission Expires 07/01/2019