

# CITY COUNCIL AGENDA ITEM COVER MEMO

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

Meeting Type: Select...

Meeting Date: 5/26/2016

Action Requested By:

Community  
Development

Agenda Item Type

Ordinance

Subject Matter:

Lease Agreement between the City of Huntsville and FRE of Alabama, LLC. for property located on Bell Avenue.

Exact Wording for the Agenda:

Ordinance declaring the property owned by the City and located at 2400 Bell Avenue surplus and further authorizing the Mayor to enter into a lease agreement with FRE of Alabama, LLC for the said property.

**Note: If amendment, please state title and number of the original**

Item to be considered for: ~~Action~~ Introduction 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 Lease Agreement allows FRE of Alabama, LLC additional time to remove the WTKI radio tower from property the City purchased in May of 2015.

Associated Cost:

Budgeted Item: Select...

MAYOR RECOMMENDS OR CONCURS: Select...

Department Head: Murphy B. Jordan

Date: 5/10/2016

## ROUTING SLIP CONTRACTS AND AGREEMENTS

Originating Department: Community Development

Council Meeting Date: 5/26/2016

Department Contact: Scott Erwin

Phone # 427-5423

Contract or Agreement: Contract

Document Name: Lease of Site for Telecommunications Equipment Between the City of Huntsville and F...

City Obligation Amount:

Total Project Budget:

Uncommitted Account Balance:

Account Number:

### Procurement Agreements

|                  |                  |
|------------------|------------------|
| <u>Select...</u> | <u>Select...</u> |
|------------------|------------------|

### Grant-Funded Agreements

|                    |                    |
|--------------------|--------------------|
| <u>Federal HUD</u> | <u>Grant Name:</u> |
|--------------------|--------------------|

| Department                                  | Signature            | Date    |
|---|----------------------|---------|
| 1) Originating                              | <i>M. Erwin</i>      | 5/10/16 |
| 2) Legal                                    | <i>Mary C. Cates</i> | 5/20/16 |
| 3) Finance                                  | <i>Rachel Biggs</i>  | 5/20/16 |
| 4) Originating                              |                      |         |
| 5) Copy Distribution                        |                      |         |
| a. Mayor's office<br>(1 copies)             |                      |         |
| b. Clerk-Treasurer<br>(Original & 2 copies) |                      |         |
|   |                      |         |

ORDINANCE NO. 16 - \_\_\_\_\_

**WHEREAS**, the City of Huntsville is the owner of a certain parcel of land located at 2400 Bell Avenue NW, Huntsville, AL 35816.

**WHEREAS**, the property located at 2400 Bell Avenue NW, Huntsville, AL 35816 has been identified as surplus and is no longer needed for a public or municipal purpose by the City of Huntsville; and

**WHEREAS**, the City desires to lease the said real property to FRE of Alabama, LLC.

**NOW THEREFORE BE IT ORDAINED** by the City Council of the City of Huntsville, Alabama, that the property located at 2400 Bell Avenue NW, Huntsville, AL 35816 be declared as surplus and is no longer needed for a public or municipal purpose by the City of Huntsville; and

**BE IT FURTHER ORDAINED** by the City Council of the City of Huntsville, Alabama that the Mayor be authorized and directed to dispose of said property owned by the City of Huntsville, Alabama, described herein, and to enter into a Lease Agreement with FRE of Alabama, LLC., on behalf of the City of Huntsville, which said Agreement is substantially in words and figures similar to that certain document attached hereto and identified as "LEASE OF SITE FOR TELECOMMUNICATIONS EQUIPMENT BETWEEN THE CITY OF HUNTSVILLE AND FRE OF ALABAMA, LLC CONTRACT", consisting of seven (7) pages, and the date of May 26 2016, 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; and

**BE IT FURTHER ORDAINED**, that the Mayor and the Clerk-Treasurer shall be authorized to execute any and all further documents as necessary to complete the lease of the said real property.

**ADOPTED** this the 26th day of May, 2016.

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

**APPROVED** this the 26th day of May, 2016.

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

ATTEST:

\_\_\_\_\_  
Kenneth Benion, Clerk Treasurer

**LEASE OF REAL ESTATE FOR  
TELECOMMUNICATIONS EQUIPMENT  
BETWEEN THE CITY OF HUNTSVILLE AND  
FRE OF ALABAMA, LLC**

**LEASE OF SITE FOR TELECOMMUNICATIONS EQUIPMENT  
BETWEEN THE CITY OF HUNTSVILLE AND FRE OF ALABAMA, LLC**

This Lease of Site for Telecommunications Facilities (this "Lease") is made and entered into on the \_\_\_\_ day of May, 2016, by and between the City of Huntsville, a municipal corporation in the State of Alabama, hereinafter referred to as "Lessor" and FRE of Alabama, LLC, an Alabama limited liability company, hereinafter referred to as "Lessee".

**WITNESSETH:**

**WHEREAS**, Lessor is the owner of a certain parcel of land located at 2400 Bell Avenue NW, Huntsville, AL 35816 and more particularly described in Exhibit "A" attached hereto and incorporated herein by reference; and

**WHEREAS**, this certain parcel of land (hereinafter referred to as the "Premises") was transferred by warranty deed from Lessee to Lessor on May 28, 2015; and

**WHEREAS**, pursuant to the real estate sales contract between Lessor and Lessee, Lessee was allowed twelve months from the closing date to remove the existing radio tower and associated buildings and equipment on the Premises; and

**WHEREAS**, Lessee desires additional time to remove the said radio tower and associated buildings and equipment from the Premises; and

**WHEREAS**, Lessor desires to lease the Premises to Lessee pursuant to the terms and conditions set forth herein;

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

1. Premises. Lessor hereby leases to Lessee and Lessee hereby leases from Lessor, the Premises according to the terms and conditions set forth herein.
2. Communications Equipment. For the purposes of this agreement, all of Lessee's equipment, building, panels, tower, generator, cables, wires, antennas, microwave dishes and accessories shall hereinafter collectively be referred to as the "Communications Equipment".

\_\_\_\_\_  
**President of the City Council of the  
City of Huntsville, Alabama**  
**Date: May 26, 2016**

Lessor hereby grants permission to Lessee to maintain the Communications Equipment on or in the Premises at its current location and in its current condition.

Lessee agrees that it will not make any alterations or additions to the above approved Communications Equipment without the prior written consent of Lessor in each case obtained. Lessee further agrees that it will maintain the Communications Equipment in accordance with all federal, state and local laws, rules and regulations.

3. Use. Lessee will use the Leased Premises for the purpose of operating the Communications Equipment. Tenant will abide by all local, State and Federal Laws and obtain all permits and licenses necessary to operate its system. Tenant shall use the Leased Premises for no other purpose without the prior written consent of Lessor.

4. Term. The primary term of this Sublease shall be for the period beginning May 28, 2016 (the "Commencement Date") and continuing through February 28, 2017.

5. Condition of Premises. The Premises are delivered to Lessee and are being Leased "AS IS" and "WITH ALL FAULTS," and Lessor makes no representation or warranty of any kind, expressed or implied, with respect to the condition of the Premises (including habitability, fitness or suitability for particular purpose of the Premises). TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, LESSOR HEREBY DISCLAIMS, AND LESSEE WAIVES THE BENEFIT OF, ANY AND ALL IMPLIED WARRANTIES, INCLUDING IMPLIED WARRANTIES OF HABITABILITY, FITNESS, OR SUITABILITY FOR LESSEE'S PURPOSE. LESSEE ACKNOWLEDGES THAT NEITHER LESSOR NOR ANY AGENT OF LESSOR HAS MADE ANY REPRESENTATION OR WARRANTY WITH RESPECT TO THE PREMISES OR WITH RESPECT TO THE SUITABILITY OF SAME FOR THE PURPOSE HEREIN INTENDED. BY OCCUPYING THE PREMISES, LESSEE SHALL BE DEEMED TO HAVE ACCEPTED THE SAME AS SUITABLE FOR THE PURPOSE HEREIN INTENDED.

6. Rent. Lessee shall pay monthly rent in advance on the first day of each month beginning on June 1, 2016. Lessee shall pay Lessor at the address designated in Section 9 of this Lease, an amount equal to Four Hundred Dollars (\$400.00) no later than the fifth (15<sup>th</sup>) day of each month. Lessee shall pay Lessor a late payment charge equal to five percent (5%) of the late payment for any payment not paid when due.

7. Extensions. There shall be no extensions to the term of this Lease Agreement.

8. Utilities. Lessee shall be solely responsible for and promptly pay all charges for utilities used or consumed by Lessee on the Premises.

9. Notice. All notices to be delivered hereunder shall be delivered in writing to the other party by placing the same in the United States Mail, First Class postage prepaid, by prepaid overnight service through Federal Express, DHL or United Parcel Services or by hand delivery, to the addressee, addressed as follows

LESSOR:  
City of Huntsville  
P.O. Box 308  
HUNTSVILLE, AL 35804  
Attn: Scott Erwin  
Phone No: (256) 427-5423

LESSEE:  
FRE of Alabama, LLC

Either party hereto may change its address to which said notice shall be delivered or mailed by giving notice of such change as provided above. Notice shall be deemed given when delivered (if delivered by hand) or when postmarked (if sent properly by mail).

10. Liability and Indemnity. To the fullest extent permitted by law, Lessee agrees to indemnify, defend, and save Lessor, its appointed and elected officials, agents, employees and selected volunteers harmless from all claims (including reasonable costs and expenses of defending against such claims) resulting from damages to property, or from injury to or death of persons: (a) occurring on the Premises during the term of this Lease and any renewal terms, to the extent resulting wholly or in part from the acts or omissions of Lessee or its officers, agents, employees, contractors, subcontractors, customers or invitees; provided, however, that the foregoing indemnity shall not apply to the extent such claims, demands, costs, expenses, damages and liabilities result from the negligent or willful act or omission of Lessor or Lessor's officers, agents, employees, contractors, subcontractors, customers or invitees.

11. Environmental Indemnification. Lessee shall defend, indemnify and hold harmless Lessor, its appointed and elected officials, employees and agents from and against any and all losses, expenses (including reasonable legal expenses) of whatever kind and nature resulting from any accident, occurrence or condition caused by the release by Lessee of any toxic or hazardous substance or waste in, on, under, about or affecting the Premises which results in any injury or death of any person or damage to any property or which requires the removal or treatment of such hazardous or toxic substance or waste or any other remedial action or fine under the terms of any properly constituted law, regulation, rule or directive of any Federal, state or local governmental authority.

The provisions of this Section 11 shall survive the termination or expiration of this Lease and the surrender of the Premises by Lessee.

12. Insurance. Lessee 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 Leased

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 Lessee against all liability assumed by it hereunder as well as liability imposed by law. The City of Huntsville, its officers, employees, elected officials, 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, elected officials, agents, contractors or specified volunteers except it shall be limited in the case of the indemnitee's or indemnitees' sole negligence. 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.

13.  Holding Over . There shall be no holding over by Lessee. In the event that Lessee has not removed the Communications Equipment by the end of the Term of this Lease, then the Communication Equipment shall become the property of Lessor and Lessor may remove the said Communications Equipment and charge Lessee a removal fee equal to the cost of removal less any salvage value received by Lessor.

14.  Defaults and Remedies . In the event of Lessee's default as provided in this Lease, Lessor may, at its option, terminate this Lease without affecting its right to sue for all past due rentals, and any other damages to which Lessor may be entitled. Should Lessor be entitled to collect rentals or damages and be forced to do so through its attorney, or by other legal procedures, Lessor shall, upon receipt of a favorable ruling, be entitled to its reasonable costs and attorney fees thereby incurred upon said collection. Lessor shall be obligated to mitigate its damages notwithstanding its rights and remedies hereunder and/or at law.

15.  Assignment and Subletting . Lessee shall not assign or in any manner transfer this Lease or any estate or interest therein, or sublet the Premises or any part thereof, or grant any license, concession, or other right to occupy any portion of the Premises without the prior written consent of Lessor.

16.  Early Termination . The parties may, by mutual agreement and upon Lessee's removal of the Communications Equipment, terminate this Lease prior to the expiration of the term stated herein.

17.  Maintenance of the Premises . Lessor shall have no obligation to repair or maintain the Premises. Lessor shall have no liability for any damages or injury arising out of any condition or occurrence causing a need for such repairs.

18.  Alterations or Additions to the Premises . Lessee shall not make or permit to be made any alterations, additions, or improvements to the premises.

19. Utilities. Lessee shall be solely responsible for and promptly pay all charges for utilities used or consumed by Lessee on the Premises.

20. Miscellaneous.

(a) Nothing contained in this Lease 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 and agreed that neither the method of computation of Rental, nor any other provisions contained herein, nor any acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than the relationship of Landlord and Tenant. Whenever herein the singular number is used, the same shall include the plural, and words of any gender shall include each other gender.

(b) Except as expressly set forth in this Lease, Lessor shall not be required to make any expenditure, incur any obligation, or incur any liability of any kind whatsoever in connection with this Lease or the financing, ownership, construction, maintenance, operation, or repair of the Premises.

(c) The captions used herein are for convenience only and do not limit or amplify the provisions hereof.

(d) This Lease and the exhibits attached hereto contain the entire agreement between the parties. No agreement shall be effective to change, modify or terminate this Lease in whole or in part unless such agreement is in writing and duly signed by the party against whom enforcement of such change, modification, or termination is sought.

(e) Lessee warrants that it has had no dealing with any broker or agent in connection with the negotiation or execution of this Lease. If any agent or broker shall make a claim for a commission or fee as a result of the actions or alleged actions of Lessee, Lessee shall be responsible for payment thereof and hereby indemnifies and holds Lessor harmless from such claim for commission or fees.

(f) If any clause or provision of this Lease is illegal, invalid, or unenforceable under present or future laws effective during the Lease Term, then and in that event, it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby. It is also the intention of the parties to this Lease that in lieu of each clause or provision of this Lease that is illegal, invalid, or unenforceable, there be added as a part of this Lease a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible in order to make such clause or provision legal, valid, and enforceable.

(g) Lessee warrants that it has the full right, power, and authority to enter into this Lease and to carry out its obligations under this Lease, and that the person signing this Lease on behalf of Lessee has been duly authorized by Lessee to execute this Lease.

(h) The terms, provisions, and covenants contained in this Lease shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors in interest and legal representatives except as otherwise herein expressly provided.

(i) Nothing herein expressed or implied is intended, or shall be construed, to confer upon or give to any person or entity, other than the parties hereto, any right or remedy under or by reason of this Lease.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Sublease Agreement as of the date and year first above written.

Attest:

LESSOR:

CITY OF HUNTSVILLE, ALABAMA

\_\_\_\_\_  
Kenneth Benion  
Clerk-Treasurer

\_\_\_\_\_  
By: Tommy Battle  
Its: Mayor

LESSEE: FRE OF ALABAMA, LLC

Witness:

 \_\_\_\_\_

  
By: \_\_\_\_\_  
Its: *Mangley McCombee*

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 with full authority for and as the act of said corporation as of the day the same bears day.

Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

(NOTARIAL SEAL)

STATE OF ALABAMA     )  
COUNTY OF MADISON    )

I, the undersigned, a notary public in and for said County, in said State, hereby certify that Fred Holland, whose name as Managing Member of FRE OF ALABAMA, LLC, 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 \_\_\_\_\_, executed the same with full authority for and as the act of said limited liability company as of the day the same bears day.

Given under my hand and seal of office this 12<sup>th</sup> day of May, 2016.

Cheryl A. Conner  
Notary Public

My Commission Expires:  
07/03/17

(NOTARIAL SEAL)

Exhibit A

All that part of the Southwest Quarter of Section 35, Township 3 South, Range 1 West in the City of Huntsville, Madison County, Alabama, particularly described as beginning at the center of the North boundary of Lot 5, Block 3, Gurley Addition as of record in the Office of the Judge of Probate of Madison County, Alabama, in Plat Book 1, Page 193; Thence from the point of true beginning South 7 degrees 59 minutes East 130.0 feet to a point on the North margin of Bell Avenue right-of-way, said point is also the Southeast corner of Lot 7, Block 3, Gurley Addition; Thence South 82 degrees 00 minutes West along the North margin of Bell Avenue right-of-way a distance of 96.0 feet to a point on the West margin of Lee Drive right-of-way; Thence South 5 degrees 35 minutes East along the West margin of said Lee Drive right-of-way a distance of 227.88 feet to a point on the North boundary of Brothers Heights Subdivision as recorded in the Office of the Judge of Probate, Madison County, Alabama, in Plat Book 1, Page 310; Thence South 81 degrees 21 minutes West along the North boundary of said Brothers Heights Subdivision a distance of 221.18 feet to a point on the East margin of Wilson Drive right-of-way; said point being on a curve to the left, having a radius of 644.97 feet; Thence along the arc of said curve and along the East margin of said Wilson Drive right-of-way a chord bearing and distance of North 22 degrees 01 minutes West 290.43 feet to the end of said curve; Thence North 34 degrees 52 minutes West and continue along the said right-of-way line 59.60 feet to the point of beginning of a curve to the left having a radius of 605.0 feet; Thence continuing along the said right-of-way line and along the said curve to the left a chord bearing and distance of North 36 degrees 17 minutes West 30.08 feet; Thence North 82 degrees 10 minutes East 438.37 feet to the point of true beginning and containing 2.485 acres, more or less.