

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number: _____

Meeting Type: Regular

Meeting Date: Sep 8, 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 a license agreement between the City of Huntsville and University Storage, LLC d/b/a the Guardian Company to provide access and use of a driveway at Fire Station #5 to perform structural repairs to their property.

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.

The Guardian Storage building abuts the driveway for Fire Station #5. The owner needs to perform structural repairs to correct a drainage issue and there is no other way to gain access to their building since it abuts the driveway for the station.

Associated Cost: NA

Budgeted Item: Not Applicable

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head: 

Date: 9-2-16

**ROUTING SLIP
CONTRACTS AND AGREEMENTS**

Originating Department: Fire and Rescue

Council Meeting Date: 9/8/2016

Department Contact: Lesley Easter

Phone # 256-427-5053

Contract or Agreement: Agreement

Document Name: Guardian Storage License Agreement

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>WME-Jeff</i>	9-2-16
2) Legal	<i>Mary Cates</i>	9-2-16
3) Finance	<i>M. J. [unclear]</i>	9-3-16
4) Originating	<i>WME-Jeff</i>	9-2-16
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 University Storage, LLC d/b/a the Guardian Company, which said Agreement is attached hereto and identified as "License Agreement between the City of Huntsville and University Storage, LLC d/b/a the Guardian Company", to provide access and use of a driveway at Fire Station #5 to perform structural repairs to their property, consisting of six (6) pages plus one (1) additional page consisting of Exhibit A and one (1) additional page consisting of Exhibit B and the date of September 8th, 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 8th day of September, 2016.

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

APPROVED this the 8th day of September, 2016.

Mayor of the City of Huntsville,
Alabama

**LICENSE AGREEMENT BETWEEN
THE CITY OF HUNTSVILLE
AND UNIVERSITY STORAGE, LLC
d/b/a THE GUARDIAN COMPANY**

**LICENSE AGREEMENT BETWEEN THE CITY OF HUNTSVILLE
AND UNIVERSITY STORAGE, LLC d/b/a THE GUARDIAN COMPANY**

This License Agreement (the "Agreement") is entered into this ____ day of September, 2016, by and between the City of Huntsville, a municipal corporation in the State of Alabama (hereinafter the "City"), and University Storage, LLC d/b/a the Guardian Company, an Alabama limited liability company (hereinafter "Guardian").

WHEREAS, the Huntsville Fire & Rescue Department's (HF&R) Station 5 is located at 2503 University Drive, NW, Huntsville, Alabama; and

WHEREAS, the land upon which Station 5 sits is owned by the City; and

WHEREAS, Guardian's location at 2501 University Drive, NW Huntsville, Alabama, abuts the City-owned property; and

WHEREAS, Guardian has a necessity to perform structural work to the building located upon its property; and

WHEREAS, the only way for Guardian to access the area where the structural work is to be performed is to have access to and use of the driveway for Station 5 set forth as Exhibit "B" attached hereto and incorporated herein by reference; and

WHEREAS, the City is agreeable to Guardian having access to its property on the terms and conditions set forth herein;

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

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

1. **License.** The City hereby grants Guardian a non-exclusive license for use of the Station 5 driveway for use solely by vehicles necessary to complete the structural repairs set forth in Exhibit "A" attached hereto and incorporated herein by reference. The driveway is hereinafter referred to as the "Licensed Area". Guardian's use of the Licensed Area shall be on a non-interference basis with regard to the regular HF&R activities at Station 5. The Station 5 Captain on-shift shall have authority at any and all times to order Guardian to vacate the Licensed Area. Guardian, its contractors, employees and agents shall promptly comply with any such order.

2. **Term.** The term of this Agreement shall be forty-five (45) days commencing on September 12, 2016.

3. **License Fee.** The license fee for the license granted herein is Ten Dollars (\$10.00).

4. **Damage to the City Property.** Guardian shall promptly repair (or, at the City's discretion, reimburse the City for any cost of repair of) any damage to City Property resulting from its use of the license granted herein. The City shall not be responsible for any damage to property of Guardian, its contractors, subcontractors, agents, employees or any other third parties.

5. **Compliance with Laws.** Guardian agrees to comply with all ordinances, laws, rules and regulations pertaining to the use of the Licensed Area and shall not use the Licensed Area in an unlawful manner nor create or allow to exist any nuisances or trespass nor deface or damage the Licensed Area or adjoining City property.

6. **Insurance and Indemnity Requirements.** Guardian shall carry insurance of the following kinds and amounts in addition to any other forms of insurance or bonds required under the terms of the contract specifications. Guardian shall procure and maintain for the duration of the term of this Agreement, or as later indicated, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the actions hereunder by Guardian, its agents, representatives, employees, contractors or subcontractors.

A. MINIMUM SCOPE OF INSURANCE:

1. General Liability:

Insurance will be written on an occurrence basis. Claims-made coverage will be accepted only on an exception basis after the City's approval. General Liability Coverage and City's Contractors Protective Insurance should be written by the same insurance company.

Commercial General Liability

Products and Completed Operations
Contractual
Personal Injury

Broad Form Property Damage

2. **Automobile Liability:**

Business Automobile Liability providing coverage for all owned, hired and non-owned autos. Coverage for loading and unloading shall be provided under either automobile liability or general liability policy forms.

3. **Workers' Compensation Insurance:**

Statutory protection against bodily injury, sickness or disease or death sustained by employee in the scope of employment. Protection shall be provided by a commercial insurance company or a recognized self-insurance fund authorized before the State of Alabama Industrial Board of Relations. Waivers of subrogation in favor of the City shall be endorsed to Worker's Compensation coverage.

4. **Employers Liability Insurance:**

Covering common law claims of injured employees made in lieu of or in addition to a worker's compensation claim.

B. **MINIMUM LIMITS OF INSURANCE:**

1. **General Liability:**

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

\$ 2,000,000 General Aggregate Limit
\$ 1,000,000 Products - Completed Operations Aggregate
\$ 1,000,000 Personal & Advertising Injury
\$ 1,000,000 Each Occurrence

2. **Automobile Liability:**

\$ 1,000,000 Combined Single Limit per accident for bodily injury and property damage.

3. **Workers' Compensation:**

As Required by the State of Alabama Statute

4. **Employers Liability:**

\$ 100,000 Bodily Injury by Accident or Disease
\$ 500,000 Policy Limit by Disease

C. OTHER INSURANCE PROVISIONS:

The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability Coverage's Only:

- a. 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 Guardian for products used by and completed operations of Guardian; or automobiles owned, leased, hired or borrowed by Guardian. Additional insured status shall be through ISO Additional Endorsement CG 2011 01 96 or equivalent that is sufficient to provide the coverage required by this Agreement.
- b. Guardian'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 Guardian's insurance and shall not contribute to it.
- c. Guardian's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. All Coverages:

- a. Guardian is responsible to pay all deductibles. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City. Cancellation of coverage for non-payment of premium will require ten (10) days written notice to the City.
- b. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officers, employees, agents or specified volunteers.

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 Guardian 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 the commencement of the term of this Agreement. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

F. CONTRACTORS AND/OR SUBCONTRACTORS WORKING FOR THE CONTRACTOR:

Guardian shall include all contractors, subcontractors and/or consultants as insureds under its policies or shall furnish separate certificates and/or endorsements for each contractor, subcontractor and/or consultant.

G. HOLD HARMLESS AGREEMENT:

Guardian, 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 Guardian's use of the License granted herein, 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 Guardian 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.

7. Early Termination. In the event of any breach of any condition or term of this Agreement, the City may terminate this Agreement at any time.

8. Miscellaneous.

(a) This Agreement shall not be amended except by written instrument signed by the parties hereto.

(b) 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. Venue to enforce any provision of this Agreement shall be in the Circuit Court of Madison County or the United States District Court for the Northern District of Alabama, Northeastern Division.

(c) This Agreement shall be binding upon and inure to the benefit of Guardian, its successors and permitted assigns, and the City, its successors and assigns.

(b) Guardian 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.

9. 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.

ATTEST

**LICENSOR:
THE CITY OF HUNTSVILLE, ALABAMA**

Kenneth Benion
City Clerk-Treasurer

By: _____
Tommy Battle, Mayor

WITNESS

**LICENSEE:
UNIVERSITY STORAGE, LLC d/b/a
THE GUARDIAN COMPANY**

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 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 municipal 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 _____, whose name as _____ of University Storage, LLC d/b/a the Guardian 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, she, in her capacity as such officer, executed the same voluntarily for and as the act of said entity on the day the same bears day.

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

Notary Public

Exhibit A



DATE 04/20/16

P.O. Box 5340
Decatur, Al 35601
PHONE: 256-580-3210
FAX: 256-580-3211

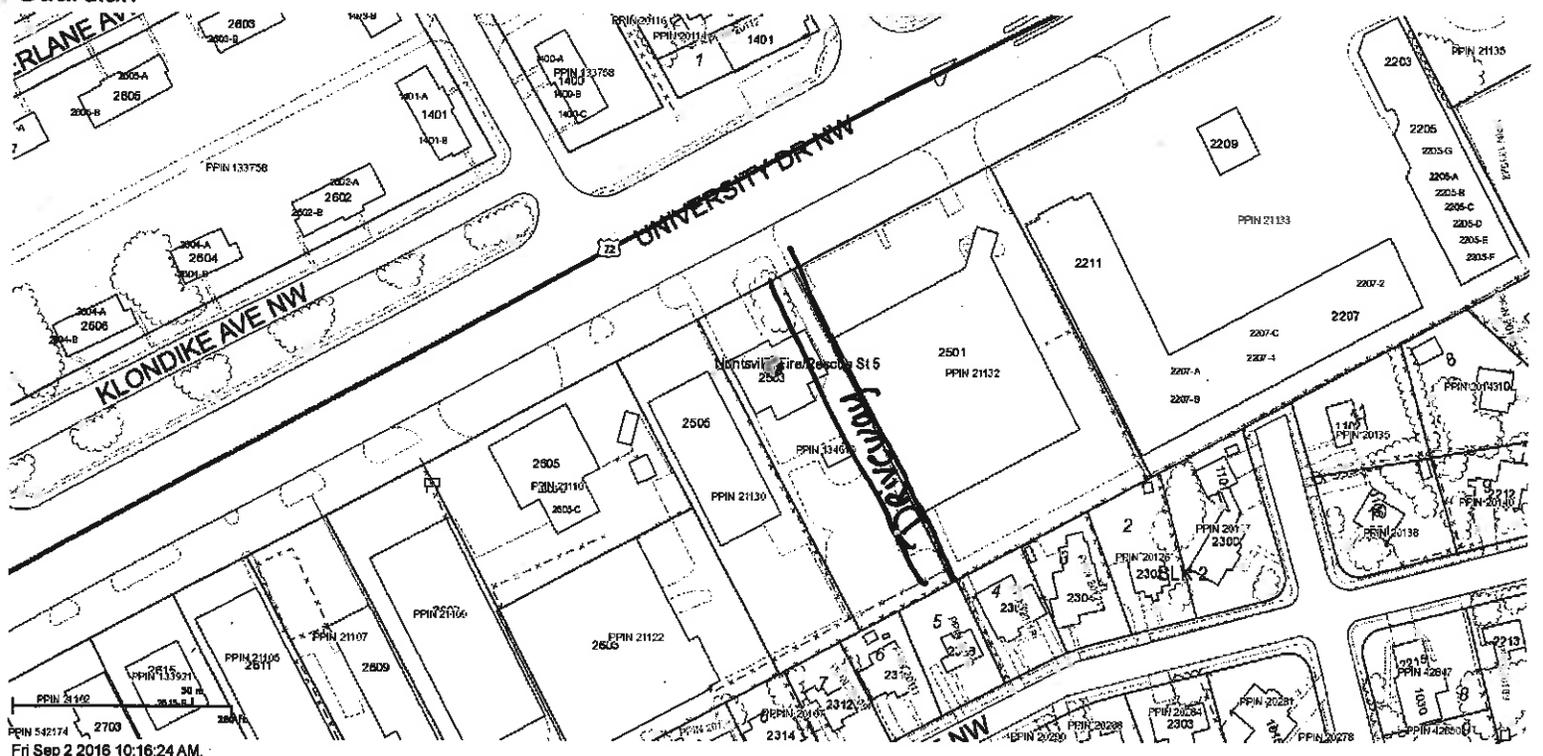
SUBMITTED TO: PAM SHEPPARD
JOB ADDRESS: 2501 UNIVERSITY DR.
HUNTSVILLE, AL 35816

PHONE#:

SCOPE OF WORK(ALSO SEE ATTACHED GRAPH): INSTALL APPROXIMATELY 180FT OF EZ FLOW WITH 3 ROWS. REMOVE SOIL FOR ACCESS TO FOOTER AND FOUNDATION WALL. SEAL FOUNDATION WALL WITH MR. BASEMENT WATERPROOFING SEALANT AND ATTACH 20MIL LINER TO FOUNDATION WALL. ALL EZ FLOW WILL DRAIN INTO EXISTING DRAIN. FENCE WILL HAVE TO BE REMOVED ON BOTH ENDS OF BUILDING AND REPLACED BY ALLIED. ALL WORK TO BE PERFORMED ON WEST WALL OF BUILDING.

Exhibit B

Guardian



Fri Sep 2 2016 10:16:24 AM