

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number: _____

Meeting Type: Regular

Meeting Date: Oct 13, 2016

Action Requested By: Planning

Agenda Type: Resolution

Subject Matter:

Resolution authorizing the Mayor to execute an agreement between the City of Huntsville and Parkway Place SPE, LLC

Exact Wording for the Agenda:

Resolution authorizing the Mayor to execute a Brand Development Vendor Agreement between the City of Huntsville and Parkway Place SPE, LLC for the temporary display of The Big Picture banner stands at Parkway Place Mall

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 allow for the temporary display of 22 Big Picture banner stands to be located at Parkway Place Mall for approximately 1 week. Per the agreement, there are no monetary obligations for the City of Huntsville.

Associated Cost: _____

Budgeted Item: _____

MAYOR RECOMMENDS OR CONCURS: _____

Department Head: Michael B. Jones Date: 10/15/16

ROUTING SLIP CONTRACTS AND AGREEMENTS

Originating Department: **Planning**

Council Meeting Date: **10/13/2016**

Department Contact: **Kimberly Gosa**

Phone # **427-5115**

Contract or Agreement: **Agreement**

Document Name: **Brand Development Vendor Agreement**

City Obligation Amount: **0.00**

Total Project Budget: **0.00**

Uncommitted Account Balance:

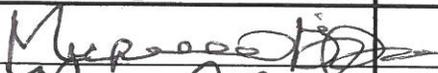
Account Number:

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		10/5/16
2) Legal		10/12/16
3) Finance		10/13/16
4) Originating		
5) Copy Distribution		
a. Mayor's office (1 copies)		10/13/16
b. Clerk-Treasurer (Original & 2 copies)		

RESOLUTION NO. 16-_____

BE IT RESOLVED by the City Council of Huntsville, Alabama, that the Mayor be, and is hereby authorized to enter into an agreement with Parkway Place SPE, LLC., 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 "Brand Development Vendor Agreement" consisting of four(4) pages, and the date of October 13, 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.

ADOPTED this the 13th day of October, 2016

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

APPROVED this the 13th day of October, 2016

Mayor of the City of Huntsville,
Alabama

BRAND DEVELOPMENT VENDOR AGREEMENT

Revised: 4/10/2015

Unit/s:
CAS-10
Project #: 100-0642
Deal Type: Static Dis

THIS VENDOR AGREEMENT ("Agreement") is made and entered into as of the Effective Date below, by and between the Owner and Vendor set forth below. For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner and Vendor agree as follows:

1. Defined Terms.

(a) Effective Date: 10/21/2016

(b) Shopping Center: Parkway Place located at 2801 Memorial Parkway S Huntsville AL 35801

(Payment remittance address: Parkway Place SPE, LLC P.O. Box 74664 Cleveland OH 44194-4664)

(c) Owner: Parkway Place SPE, LLC, a Delaware limited liability company by CBL & Associates Management Inc., its managing agent.

(d) Vendor: The City of Huntsville, D/B/A The City of Huntsville

Vendor's Address: 308 Fountain Circle Huntsville, AL 35801

Contact: Ken Newberry Phone: 256-427-5112 Mobile:

E-Mail:

(e) Permitted Use: Use of the common area surrounding the lower level elevator for the City of Huntsville to display the Big Picture vision to the public. There will be 22 banner stands on display that tell the story of how the city plans to grow and show the direction of how they plan to get there. They will set up October 21st before the mall opens and take down the stands on October 31st and for no other use whatsoever.

(f) License Area: With respect to each License Area, as defined herein, Vendor's rights under this Agreement shall be limited to the specific unit(s) containing the square feet identified in the chart below (the "Terms Chart"). Vendor shall have no right to use any other area of Owner's premises, other than common areas open to the general public. Whenever in this Agreement the term "License Area" is used, such term shall refer individually to each unit, and collectively to all of the units listed below during the respective periods as shown in the Terms Chart, as applicable.

(g) Duration: With respect to each License Area, Vendor's rights under this Agreement, including set up and break down periods, the payment of Minimum Fees, shall commence on the Start Date listed in the Terms Chart (the "Commencement Date"), and shall end on the End Date listed in the Terms Chart (the "Expiration Date"), unless the License referenced in this Agreement is revoked earlier by Owner.

Terms Chart

Unit	Square Footage	Start	End
CAS-10	150.00	10/21/2016	10/31/2016

2. **Agreement.** Owner hereby grants to Vendor a non-transferable, revocable license to occupy and use the License Area during the Mall Hours only. Owner may revoke this License granted by virtue of this Agreement at any time at Owner's sole discretion for any reason upon not less than twenty-four (24) hours' notice.

3. **Fee.** Vendor shall pay the Fee to Owner, without notice, demand or set off, at Owner's office at the Shopping Center on or before the Payment Date, by certified check or money order only. **THE FEE WILL BE \$0.00. JB**

4. **Damage Deposit:** Vendor deposits herewith the sum of \$0.00, due upon Vendor execution of this Agreement unless otherwise noted, (Waived), as a damage deposit which shall be applied towards fees and other charges due under this Agreement and as a surety for the performance by Vendor of the terms of this Agreement under which Vendor may be in default or for any sum which Owner may expend by reason of Vendor's default in respect of any of the terms of this Agreement including any damages which may result to the License Area. Within thirty (30) days after the expiration or earlier termination of the term of this Agreement there shall be an accounting with payment to Owner or reimbursement to Vendor, as the case may be, of the aforesaid sum. As used in this paragraph, the term "expiration" shall mean the End Date listed in the Terms Chart.

5. **Terms and Conditions.** By signing below, Vendor acknowledges receipt of the Vendor Terms and Conditions and agrees that such terms and conditions are incorporated into this Agreement.

6. **Rider and Exhibits to Agreement:** Certain Exhibits and Rider are attached to this Agreement and are hereby made a part hereof. Any conflict or inconsistency between the terms of the main body of this Agreement and the terms of the Exhibits or Rider shall be resolved in favor of the terms of the Rider or Exhibits.

In witness whereof, the parties have executed this Agreement as of the Effective Date.

VENDOR: The City of Huntsville

DBA: The City of Huntsville

By: _____

Name: _____

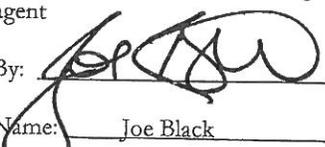
Title: _____

(if applicable)

Date: _____

OWNER: Parkway Place SPE, LLC, a Delaware limited liability company

By: CBL & Associates Management, Inc., its managing agent

By:  _____

Name: Joe Black

Title: MANAGER

Date: 10-12-16

VENDOR TERMS AND CONDITIONS

By signing the Vendor Agreement ("Agreement"), with respect to each License Area identified in the Terms Chart, Vendor accepts the following terms and conditions, which are incorporated into the Agreement. Initially capitalized terms used herein shall have the meanings set forth for them in the Agreement.

1. **Condition of License Area.** The License Area will be delivered to Vendor in as-is condition at the commencement of the Agreement. At the expiration of this Agreement, Vendor shall return the License Area to Owner in the same condition, with Vendor's merchandise and property and all trash placed in appropriate receptacles. If Vendor fails to return the License Area in the required condition, Vendor shall reimburse Owner any costs incurred by Owner in restoring the License Area to the required condition. Any merchandise and property of Vendor which is not removed from the License Area and Shopping Center at the expiration of this Agreement shall be deemed abandoned and may be disposed of by Owner in Owner's sole discretion, at Vendor's expense.

2. **Vendor's Covenants.** Vendor shall:

(a) Comply with all laws, regulations, ordinances and codes applicable to Vendor's use and occupancy of the License Area, including trademark laws, fire codes, occupational health and safety laws and the Americans with Disabilities Act;

(b) Collect and/or pay all sales and other taxes and fees due in connection with Vendor's sales and activities in and from the License Area, and pay all fees due in connection with Vendor's activities in the License Area (such as music licensing fees);

(c) Properly supervise and control all employees, contractors, volunteers and invitees of Vendor so that such individuals comply with this Agreement;

(d) Keep the License Area in a clean, safe and orderly condition;

(e) Obtain any permits or approvals necessary for Vendor's use and occupancy of the License Area for the Permitted Use;

(f) Not play music or permit any loud or objectionable noises, flashing lights, megaphones, loudspeakers or similar devices within the License Area. Unless otherwise noted in this contract;

(g) Not make any alterations (including holes) in the License Area;

(h) Not affix any signs to any surfaces inside or outside the License Area without Owner's consent;

(i) Not distribute handbills or promotional materials outside the License Area;

(j) Not bring to the Shopping Center nor permit within the License Area any hazardous or dangerous substances or items;

(k) Comply with all other rules and regulations established by Owner.

3. **Risk of Loss.** Owner is not liable for any loss of or damage to Vendor's merchandise, equipment or other property within the License Area or Shopping Center. Vendor shall secure its property at all times, including periods in which the Shopping Center is not open to the public. Owner shall not be liable for, and Vendor hereby waives any claims for, any damage caused by fire or other peril includable in the coverage afforded by an All Risk (except for those items specifically excluded) insurance policy (whether or not such coverage is in effect) no matter how caused, it being understood that Vendor will look solely to Vendor's insurer for reimbursement of any losses suffered by Vendor.

4. **Insurance.** ~~Vendor shall, at its expense, carry (i) commercial general liability insurance covering claims for personal injury, death and property damage, on an occurrence basis, including contractual liability coverage, with limits of not less than One Million Dollars (\$1,000,000) per occurrence, naming Owner and the Additional Insureds as additional insureds, and (ii) if required by law, workers' compensation insurance for Vendor's employees. Vendor shall provide a certificate of insurance evidencing the required insurance on or before the Payment Date. **Vendor is a governmental entity and is self-insured. Vendor shall be responsible for its liability per the terms of Title 11, Chapter 47 of the Alabama Code (1975).**~~

5. **Indemnification.** ~~Vendor agrees to defend, indemnify and hold Owner, the Additional Insureds, and their respective employees, agents and contractors, harmless from and against any claims or liabilities (including reasonable attorneys' fees) arising out of Vendor's use and occupancy of the License Area or Vendor's breach of this Agreement. **Vendor is a governmental entity existing under the laws of the state of Alabama and cannot indemnify or hold harmless any entity. Vendor shall bear its liability per the terms of Title 11, Chapter 47 of the Alabama Code (1975) and as specifically limited by Alabama Code 11-47-190.**~~

6. **Default.** ~~If Vendor defaults on any obligation hereunder, Owner may immediately revoke the license granted herein in its entirety or at Owner's option, with respect to any License Area, and/or exercise any other rights and remedies available to Owner at law or in equity. Vendor will reimburse Owner for any attorneys' fees and other expenses incurred by Owner in exercising Owner's rights hereunder. Vendor waives notice of default and the right to cure any default.~~

7. **Relocation:** Owner reserves the right to move, relocate, adjust or substitute the License Area, in Owner's sole discretion. Owner shall make every reasonable effort to do so in such a way as to be least disruptive to Vendor's business operations.

8. **Miscellaneous.**

(a) The failure of Owner to insist upon performance of any term or covenant in this Agreement shall not be deemed a waiver of the right to require performance in the future.

(b) All notices or communications required or permitted to be given hereunder shall be deemed given and received upon personal delivery (including by overnight courier) or three business days after mailing by certified mail, to Vendor at Vendor's address or to Owner at the Shopping Center.

(c) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

~~(d) Vendor hereby waives all claims against Owner for lost profits or revenues, business interruption, indirect or incidental damages, and punitive and exemplary damages. Vendor acknowledges and agrees that Owner shall not be personally liable for any default under this Agreement, and that Vendor shall look solely to the equity of Owner in the Shopping Center for the recovery of amounts due from Owner. Vendor is an Alabama governmental entity that does not operate as a for-profit business and will have no claim for loss of profits. Vendor's damages for breach of contract shall not exceed the total fee defied in this agreement.~~

(e) All of the representations and obligations of the parties with respect to the subject matter of this Agreement are contained in this Agreement, and Vendor is not relying upon any oral representations or promises in entering into this Agreement. No modification, waiver or amendment of this Agreement shall be binding upon a party unless in writing and signed by both parties.

(f) This Agreement shall be governed by and construed in accordance with the laws of the state where the Shopping Center is located.