



Huntsville, Alabama

305 Fountain Circle
Huntsville, AL 35801

Cover Memo

Meeting Type: City Council Regular Meeting **Meeting Date:** 8/8/2024

File ID: TMP-4434

Department: Administration

Subject:

Type of Action: Approval/Action

Resolution authorizing a Facilities Use Agreement between the City of Huntsville and The Board of Trustees of The University of Alabama for and on behalf of the University of Alabama in Huntsville for use of Spragins Hall for Jazz in the Park event in case of rain.

Resolution No.

Finance Information:

Account Number: N/A

City Cost Amount: N/A

Total Cost: N/A

Special Circumstances:

Grant Funded: N/A

Grant Title - CFDA or granting Agency: N/A

Resolution #: N/A

Location: (list below)

Address:

District: District 1 ☐ District 2 ☐ District 3 ☐ District 4 ☐ District 5 ☐

Additional Comments:

RESOLUTION NO. 24-

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be and is hereby authorized to enter into a Facilities Use Agreement between the City of Huntsville and The Board of Trustees of The University of Alabama for and on behalf of the University of Alabama in Huntsville, 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 the attached hereto and identified as “Facilities Use Agreement between the City of Huntsville and The Board of Trustees of The University of Alabama for and on behalf of the University of Alabama in Huntsville.” consisting of five (5) pages and the date of August 8, 2024 appearing in the margin of the first page together with signature of the President or President Pro Tem of the City Council of the City of Huntsville, Alabama, with an executed copy to be kept on file in Office of the City Clerk of the City of Huntsville, Alabama.

ADOPTED this 8th day of August, 2024.

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

APPROVED this 8th day of August, 2024.

Mayor of the City of Huntsville,
Alabama

UAH ATHLETIC FACILITIES USE AGREEMENT

THIS AGREEMENT (the “**Agreement**”) is entered into by and between The Board of Trustees of The University of Alabama, a constitutional and educational instrumentality of the State of Alabama, incorporated by statute, for and on behalf of The University of Alabama in Huntsville (the “**University**”) and The City of Huntsville (the “**User**”).

RECITALS

The University owns and operates Spragins Hall (the “**Facility**”), an athletic venue situated on its campus in Huntsville, Alabama.

The User has requested the use of the Facility and certain ancillary facilities, identified below, for the following purpose(s):

Jazz in the Park backup Facility

The University is willing to make the Facility available to the User on the terms and conditions set forth in this Agreement.

AGREEMENT

1. Property.

a. The University hereby grants to the User a license and right to use the Facility and the ancillary facilities identified in Paragraph 1(b.) on the terms and conditions hereafter stated for the following timeframes:

_____ during the periods of time designated on Exhibit A.

 x during those periods of time requested in writing by the User at least forty-eight (48) hours in advance and approved by the University.

b. The ancillary facilities (collectively, including the Facility, the “**Facilities**”) shall include the following:

Spragins Gym, Varsity Room, Restrooms, Locker rooms, concessions stand

c. The User understands and agrees that the Facilities shall be available for use by the University, by University-related groups, and by the general public during non-designated times and that User does not hold or obtain any rights or privileges other than those stated in this Agreement.

d. A representative of the University and a representative of the User shall conduct a simultaneous on-site visit to the Facilities at or near the beginning of the Term and at the conclusion of the Term to observe and agree on the condition of the Facilities. Any issues relating to the condition of the Facilities shall be noted in a writing duly executed by both representatives.

2. Term. The Term of this Agreement shall be as follows:

From Sept 1, 2024

Through Sept 30, 2024

President of the City Council of
the City of Huntsville, Alabama
Date: August 8, 2024

Any extension of this Term must be in writing, duly executed by both the University and User.

3. Use Payment.

- a. The User agrees to pay the following:

\$ ____0____ Host will have the opportunity to operate a concession stand for profit.

In the event of an extension of this Agreement pursuant to paragraph 2 above, the User agrees to pay the University a Use Fee at the same rate as identified above.

- b. The User further agrees to submit these payments as follows: N/A

4. User Rights and Obligations

a. The User shall have the exclusive right to use the Facilities for the purposes identified during those periods of time set out in Exhibit A or otherwise agreed to herein. In the event of a change in the time or date of the need for Facilities use, the User agrees to provide notice in writing of such change to the University, and the University shall, if feasible, accommodate and approve such change. The University's approval must be in writing. Notice of a change in a date/time of use scheduled in Exhibit A (a modification, addition, or deletion) must be communicated to the University seven (7) days in advance.

b. The User shall be responsible for the general maintenance of the Facilities during each use. All equipment needed for, and expenses associated with, such duties shall be borne by the User.

c. The User will keep all Facilities' areas reasonably clean, including picking up litter, trash, etc. from both interior (if access is provided) and exterior areas after any use of the Facilities.

d. The User agrees to clean the restroom, if applicable, immediately following each use of the Facilities during the Term.

e. The User will be responsible for turning off all Facility lights, including any and all building lights, immediately after each Facility use.

f. The User may sell, directly or through a third party contracting with the User, concessions at any outdoor area in and around the Facilities. All supplies, equipment, and personnel needed for concessions sales shall be provided by the User or by such third party, and the User shall be entitled to retain all revenue generated by concessions sales. The User shall comply with any Madison County Health Department regulations pertaining to such concessions sales and shall be responsible for the payment of all applicable taxes and fees associated therewith.

g. The User shall be financially responsible for all reasonable repair or replacement costs necessitated by damages occurring to the interior of any of the Facilities to which it is given access by this Agreement. The User agrees further to consider payment for damage to exterior areas of the Facilities caused by User employees, students, or attendees at User practices and/or games. The User shall furnish a written report to the University in a timely manner regarding any observed damage to the interior or exterior of the Facilities. The University may withhold from the Damage Deposit a reasonable amount for repair, cleaning, restoration, etc. of any damage for which the User is responsible under this Agreement.

h. The User shall provide the University a timely written report describing any observed incidents (disturbances, injuries, etc.) occurring during periods of User use of the Facilities.

i. The User shall provide any security that it deems necessary or appropriate for periods of User use of the Facilities.

j. User shall comply with the reasonable directions of the University's officers and obey all applicable policies, rules and regulations established by the University, including its Child Protection Policy.

5. Indemnification. Subject to the municipal liability limits provided for by Alabama law, the User hereby agrees to indemnify, defend, and hold harmless the University and its trustees, officers, agent, and employees against any and all claims, liabilities, losses, damages, or costs (excluding attorney's fees) arising out of, connected with, or resulting from the User's use of the Facilities, unless finally determined to be solely attributable to the intentional and willful conduct of the University.

6. Insurance.

UAH recognizes the city is self-insured as a municipal corporation under Alabama law and accepts changes to normal requirements/limitations under Code of Alabama 11-93-1 et seq.

7. Damage or Destruction of Facilities. If the Facilities are damaged by fire or other casualty, this Agreement and all obligations hereunder shall immediately terminate. All proceeds from insurance protecting the Facilities shall be paid to and become the sole property of the University.

8. Notices. All notices, requests, claims, demands, and other communications hereunder shall be in writing and shall be given by delivery in person, or sent by facsimile and confirmed by telephone, or sent by registered or certified mail (postage prepaid, return receipt requested), or provided as subsequently designated in writing, to the following officials:

To the University:
Dr. Cade Smith
Director of Athletics, UAH
301 Sparkman Drive, SPR 205
Huntsville, Alabama 35899

To the User:
Bruce Pitts
Deputy City Attorney
P.O. Box 308
Huntsville, AL 35801

9. Termination. The University reserves the right to terminate this Agreement at any time on twenty-four (24) hours' written notice to the User, upon default of the User on any condition herein set forth, or upon violation by the User of any governmental ordinances, regulations, statutes, or laws.

10. Severability. If any provision, clause, or part of this Agreement or the application thereof is held invalid or unenforceable for any reason, the remainder of this Agreement shall not be affected thereby.

11. Future Agreements. The User acknowledges and understands that the terms and conditions set forth in this Agreement have been negotiated by the University with respect to the Term hereof only. In the event the User wishes to seek a right to use the Facilities for one or more subsequent periods of time, the University shall have the prerogative to propose and require different terms and conditions.

12. Governing Law, Forum Selection and Immunity. This Agreement shall be governed by and construed under the laws of the State of Alabama. The University does not waive and specifically reserves all immunities to which it is entitled by the constitution, laws, and statutes of the United States and the State of Alabama, including, without limitation, the immunities contained within Article 1, section 14, of the Constitution of Alabama. Any claim for damages against the University must be made through the Alabama State Board of Adjustment. Exclusive jurisdiction and venue of any claims that are not barred by immunity, nor required to be filed before the State Board of Adjustment, shall lie in the United States District Court for the Northern District of Alabama, Northeastern Division (Huntsville), or the Circuit Court of Madison County, Alabama.

13. Construction and Captions. This Agreement will be applied, construed, and interpreted without any regard to any rule or principle of construction concerning the drafting or authorship of the Agreement. The headings or captions in this Agreement are for convenience of reference only and shall not affect the construction or interpretation of the provisions.

14. Entire Agreement. The University and the User acknowledge that no representation, promise, inducement, or agreement not herein expressed has been made in connection with this Agreement. No oral understandings, statements, promises, or inducements contrary to the terms of this Agreement exist. They acknowledge that this Agreement contains the entire agreement between them regarding the subject matter hereof and supersedes and replaces any and all prior oral and/or written agreements, arrangements, or understandings between them relating to the subject matter hereof.

15. Amendments. This Agreement may be amended only by a written instrument duly executed by both parties.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in duplicate original copies by their respective authorized officials on the dates indicated below.

[Signatures on next page.]

**THE BOARD OF TRUSTEES OF
THE UNIVERSITY OF ALABAMA FOR AND ON BEHALF
OF THE UNIVERSITY OF ALABAMA IN HUNTSVILLE**

By:  _____
Todd Barré 07/15/2024
Vice President for Finance and Administration

THE CITY OF HUNTSVILLE

By: _____
Tommy Battle
Mayor
Date: 08/08/2024