



Huntsville, Alabama

305 Fountain Circle
Huntsville, AL 35801

Cover Memo

Meeting Type: City Council Regular Meeting **Meeting Date:** 9/12/2024

File ID: TMP-4591

Department: Administration

Subject:

Type of Action: Choose an item.

Resolution authorizing a Facility Use Agreement between the City of Huntsville and Apollo Foundation, Inc.

Resolution No.

Finance Information:N/A

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 he is hereby authorized on behalf of the City of Huntsville, a Municipal Corporation in the State of Alabama, to enter into an agreement by and between the City of Huntsville and the Apollo Foundation Inc., which said agreement is substantially in words and figures similar to that certain document attached hereto and identified as an Consulting Agreement between the City of Huntsville and the Apollo Foundation Inc. consisting of seven (7) pages and one (1) exhibit with the date of September 12, 2024 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 12th day of September 2024.

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

APPROVED this the 12th day of September 2024.

Mayor of the City of Huntsville, Alabama

FACILITY USE AGREEMENT
BETWEEN THE CITY OF
HUNTSVILLE AND
APOLLO FOUNDATION, INC.

FACILITY USE AGREEMENT BETWEEN THE CITY OF HUNTSVILLE
AND APOLLO FOUNDATION, INC.

This License Agreement (the “Agreement”) is entered into this 12th day of September, 2024, by and between the City of Huntsville, a municipal corporation in the State of Alabama (hereinafter referred to as the “City” or “Licensor”), and Apollo Foundation, Inc., an Alabama domestic nonprofit corporation (hereinafter referred to as “Licensee”).

WHEREAS, the City of Huntsville has a public interest in promoting a vital and thriving community; and

WHEREAS, Apollo Foundation, Inc., is an organization devoted to promoting awareness and appreciation of history;

WHEREAS, Apollo Foundation, Inc. desires to sponsor a fundraising event called the “2024 WhistleStop Festival” to include a barbeque cookoff, live music, and food trucks, to be held at the MidCity District parking lot, located at 0 Commerce Place Drive NW, Huntsville, Alabama 35806;

WHEREAS, the City has determined that the event will further enhance the economic vitality and growth of the Huntsville community;

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

1. Use of premises, timing, and road closures.

(a) Subject to the terms and conditions of this License Agreement, the City hereby grants Licensee a license to utilize those premises owned by Licensor, which are shown on the map, attached hereto and incorporated herein by reference as **Exhibit A**, and hereinafter referred to as the “Premises” (and being the MidCity District parking lot, located at 0 Commerce Place Drive, NW, Huntsville, Alabama 35806) to be used for an event called the “2024 WhistleStop Festival” (the “Event”), which shall be a fundraiser and a community engagement event.

(b) Licensee’s access to the Premises shall be subject to subsection 1(c) concerning the road closure of Fame Street between MidCity Drive and Makers Way. Licensee may access the Premises for Event set-up, which shall start Thursday morning, October 17, 2024, beginning at 8:00 AM and lasting until 10 PM. Event set-up shall continue on Friday morning, October 18, 2024, beginning at 7:00 AM and lasting until 2:00 PM. The two-day Event shall commence for attendees on Friday afternoon, October 18, 2024, at 4:00 PM and last until 11:00 PM. The Event

shall resume Saturday morning, October 19, 2024, beginning at 10:00 AM and shall conclude no later than 12:00 midnight. Participants in the barbeque cookoff event will be allowed to remain on the Premises beyond the regular Event hours to perform duties related to the cookoff. The cleanup/take-down of the Event and restoration of the Premises shall begin Sunday morning, October 20, 2024, at 5 AM and shall last until that afternoon at 1 PM.

(c) All road closings mentioned in 1(b) shall be as set forth in the special event permit issued by the Huntsville Police Department for the Event. It is the intent of the parties to this Agreement that roads closed in connection with the 2024 WhistleStop Festival shall remain open as long as is reasonably practicable preceding the event and reopened as soon as is reasonably practicable following the event.

2. Security.

(a) Licensee shall be responsible for the provision of security within the Premises during the period of the Agreement. Licensee shall hire off-duty City of Huntsville Police officers through the Huntsville Police Department to provide security services for the event and shall hire the number of officers and supervisory personnel as recommended for the event by the Huntsville Police Department.

(b) In addition, at its sole costs and expense, Licensee may provide additional security for the Event, including a sufficient security detail, as approved by the Huntsville Police Department.

(c) Licensee agrees that, at any time, the Huntsville Police Department's Incident Commander assigned to the Event may require that the event be canceled, the conduct of the event be modified, or prescribe such other measures that may be necessary in the event of inclement weather conditions, security issues, threats to the health or safety of the sponsors or attendees of the Event or to the general public, or otherwise for public convenience or safety.

3. Fencing.

Licensee shall be permitted to erect a fence around the perimeter of the Premises (for any area where no fence is currently erected) provided no holes are drilled in any existing concrete, asphalt, brick or other impervious surface and further provided that the fence is not anchored in concrete or any other permanent material. Licensee understands and agrees that the actual fence location may be modified as directed by Licensors to provide for traffic and pedestrian safety.

4. Alcoholic beverages.

Licensee desires to and will allow the area being used for the Event to be included as a "district area," as that term is defined in Section 3-30 of the Code of Ordinances of the City ("City Code"), within the MidCity Arts and Entertainment District to the extent said district is open. Licensee shall only allow within the area of the Event alcoholic beverages that are in "approved containers," as that term is defined in Section 3-30, and shall otherwise comply with applicable provisions of Chapter 3, Article II of the City Code concerning unlawful acts and offenses related to alcoholic beverages.

5. Conditions of Licensee's use of the Premises.

(a) Compliance with laws: Licensee agrees to comply with all ordinances, laws, rules and regulations pertaining to the use of the Premises and shall not use the Premises in an unlawful manner nor create or allow to exist any nuisances or trespass nor deface or damage the Premises.

(b) Safety: Licensee agrees to take all reasonable precautions for the safety of Event attendees.

(c) Licenses and permits: Licensee shall obtain and maintain all licenses and permits and pay all fees necessary or required to hold the Event. Licensor may require Licensee to provide proof of proper permitting or licensure prior to or during the Event.

(d) Lighting: Licensee shall be responsible for providing adequate security lighting for the Premises during the Event.

(e) Stage/performance area: In the event Licensee installs a stage or other performance area upon the Premises, Licensee shall abide by all applicable laws for said installation including any applicable building, fire, and electrical codes, and in no event shall any holes be drilled in any existing concrete, asphalt, brick, or other impervious surface. Any such stage, tent or other temporary structure erected for the Event shall not be anchored in concrete or any other permanent material, or otherwise deface or damage any portion of the Premises.

(f) Access: Licensee shall, at all times, maintain handicap access throughout the Premises. Licensee shall maintain the Premises in such a way to meet the Americans with Disabilities Act (ADA) standards for accessibility.

(g) Restoration: Licensee agree to provide for and pay all costs and expenses associated with clean-up of, and damage to, Licensor's property, both within and outside of the Premises which relate to the Licensee's use of the Premises. The Premises shall be cleaned and restored entirely by Licensee within forty-eight (48) hours of the end of the Event, to the sole satisfaction of Licensor, except as provided otherwise herein.

(h) Electricity: No electricity will be provided by Licensor. Licensee must provide generators for electricity as needed.

(i) Restrooms: Licensee shall provide all necessary Port-O-Lets as recommended by industry standards for the projected attendance to the Event and shall assist with placement of the Port-O-Lets in an area designated by the Licensor. Licensee shall cause Port-O-Lets to be removed from the Premises no later than Wednesday following the event. At least some of the units must meet ADA standards of accessibility.

(j) Vendors: Licensee shall require all food, drink, and other vendors to obtain all necessary city license and Health Department food permits. Licensees shall provide proof of all license and food permits to Licensor.

(k) Trash: Licensee shall provide all trash containers (barrels and dumpsters) necessary to accommodate the volume of trash generated by the Event. Licensee must pick up all ground trash and empty all barrels by midnight on each night of the Event. All large dumpsters must be emptied and removed within forty-eight (48) hours of the end of the Event.

(l) Clean Up: Licensee is responsible for all clean-up of the premises and any cost associated with clean up.

(m) Admission: Licensee shall provide adequate personnel to collect all admission fees and staff all entrance and exit gates. Licensee shall be solely responsible for collection of all fees.

(n) Property Outside the Premises: To the extent the Event is conducted on property outside the Premises on property owned by or leased to others, Licensee shall be solely responsible for obtaining the right to conduct the Event on said property and nothing herein shall be construed to provide Licensee any interest in such property.

(o) Assignment: Licensee may not assign its interest in this License Agreement without the express written consent of the Licensor.

6. Parking.

Event parking shall be available at public parking lots located in the area of the Mid City District.

7. Indemnification; non-liability.

Licensee shall indemnify and hold harmless and do hereby agree to indemnify and hold harmless the City of Huntsville, its officials, officers, elected and appointed officials, employees, agents, contractors and volunteers performing an authorized city function, (hereinafter referred to as "indemnitees") from and against any and all claims, liability, loss, judgments, suits, penalties, costs, expenses and damages aforesaid (including but not limited to reasonable attorneys' fees and expenses and court costs and fees). Licensee's duty to indemnify shall not apply to loss, injury, death or damage arising by reason of the sole negligence of the indemnitees. Licensee's duties hereunder shall survive the termination or expiration of this Agreement.

Nothing contained in this section 7 shall be construed as a waiver of any immunity of statutory protection of the City of Huntsville, Alabama, and no third party may expand any recovery against the City due to Licensee's duty of indemnification.

8. Insurance.

Licensee shall obtain and maintain in effect throughout the term of this agreement, Commercial General Liability with the following minimum limits:

\$1,000,000 Per Occurrence Limit
\$1,000,000 Personal and Advertising Injury
\$1,000,000 Products/Completed Operations
\$2,000,000 General Aggregate Limit

Such insurance shall be written on an occurrence basis and shall specifically insure Licensee 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

shall be named as additional insureds through ISO Additional Endorsement CG 20 10 or equivalent that is sufficient to provide coverage for ongoing operations and CG 20 37 or equivalent to provide coverage for completed operations. 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. Coverage under the Licensee's policy shall be written or endorsed to provide primary coverage to any other valid or collectible insurance. Any City of Huntsville coverage is noncontributory. Licensee shall provide a Certificate of Liability Insurance evidencing required insurance coverage and contractual verbiage prior to the commencement of any use of the facilities; however, failure of The City to procure the Certificate of Insurance does not waive any insurance provisions. The Certificate Holder section shall read as follows:

City of Huntsville, AL its officers, employees, elected officials, agents, contractors, and specified volunteers

Attn: City Attorney

P.O. Box 308

Huntsville, AL 35804

bruce.pitts@huntsvilleal.gov

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 Licensee entering upon the Premises upon the terms of this agreement. It is not the intention of the parties to limit the insurance coverage to the minimum limits stated in the contract, but the entire limits of coverage carried if limits are higher than those noted on the Certificate of Insurance.

9. Non-compliance.

In the event of any breach of any condition or term of this Agreement, the City may cancel the Event and terminate this Agreement at any time. Huntsville Police Department, Huntsville Fire and Rescue or any other official of the city of Huntsville acting within the line and scope of his/her authority may take any action they deem necessary in order to protect the public health or safety, to prevent damage or destruction to public or private property, or to enforce applicable laws.

10. Miscellaneous.

(a) This Agreement shall not be amended except by written instrument signed by the parties hereto. 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 with venue in the courts of Madison County, Alabama. This Agreement shall be binding upon and inure to the benefit of Licensee, their successors and permitted assigns, and the City, its successors and assigns.

(b) Licensee 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.

(d) If, for any reason, any agreement(s), provision(s), or term(s) of this Agreement (whether material to the bargain of City and Licensee or not) should be declared illegal, null and void, unconstitutional or unenforceable, in whole or in part, by any court of competent jurisdiction, the offending portion of this Agreement shall be deemed severed herefrom as though the same was never a part hereof; provided, however, the remainder of this Agreement shall not be impaired and shall remain in full force and effect according to its remaining agreements, covenants, provisions and terms.

11. The parties represent and warrant that they have full authority to enter into this Agreement.

12. Electronic Signatures. The parties acknowledge and agree that this Agreement may be executed by electronic signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature. Without limitation, "electronic signature" shall include faxed versions of an original signature or electronically scanned and transmitted versions (e.g. via pdf) of an original signature.

[SIGNATURES ON FOLLOWING PAGE]

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.

**LICENSOR:
ATTEST**

Shaundrika Edwards
City Clerk

THE CITY OF HUNTSVILLE, ALABAMA

By: _____
Tommy Battle, Mayor

APOLLO FOUNDATION, INC.

By: _____



Exhibit A

