



Huntsville, Alabama

308 Fountain Circle
Huntsville, AL 35801

Cover Memo

Meeting Type: City Council Regular Meeting **Meeting Date:** 10/13/2022

File ID: TMP-2148

Department: Administration

Subject:

Type of Action: Approval/Action

Resolution authorizing the Mayor to enter into a Facility Use Agreement between the City of Huntsville the Huntsville/Madison County Chamber of Commerce for the Cummings Research Park 60th Anniversary Family Fun Day.

Resolution No.

Finance Information:

Account Number: NA

City Cost Amount: NA

Total Cost: NA

Special Circumstances:

Grant Funded: NA

Grant Title - CFDA or granting Agency: NA

Resolution #: NA

Location:

Address: Cummings Research Park West, Lake 4.

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

Additional Comments:

RESOLUTION NO. 22-_____

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and he is hereby, authorized to enter into a Facility Use Agreement by and between City of Huntsville and Huntsville/Madison County Chamber of Commerce, which agreement is substantially the same in words and figures as that certain document attached hereto and identified as “**Facility Use Agreement between City of Huntsville, Alabama, and Huntsville/Madison County Chamber of Commerce**”, consisting of eight (8) pages (including Exhibits A and B), and the date of October 13, 2022, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, and an executed copy of said document after being signed by the Mayor, shall be 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, 2022.

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

APPROVED this the 13th day of October, 2022.

Mayor of the City of Huntsville, Alabama

FACILITY USE AGREEMENT
BETWEEN THE CITY OF HUNTSVILLE AND
HUNTSVILLE/MADISON COUNTY CHAMBER OF COMMERCE

FACILITY USE AGREEMENT BETWEEN THE CITY OF HUNTSVILLE
AND HUNTSVILLE/MADISON COUNTY CHAMBER OF COMMERCE

This License Agreement (the "Agreement") is entered into this 13th day of October, 2022, by and between the City of Huntsville, a municipal corporation in the State of Alabama (hereinafter referred to as the "City" or "Licensor"), and Huntsville/Madison County Chamber of Commerce, (hereinafter referred to as "Licensee").

1. Use of Premises and Timing.

(a) Subject to the terms and conditions of this License Agreement, the City hereby grants Licensee a license to utilize that portion of the land located at Lake 4, Cummings Research Park West, Huntsville, Alabama, which is shown on the map attached hereto and incorporated herein by reference as "**Exhibit A**" and hereinafter referred to as the "Premises" to be used for the "Cummings Research Park 60th Anniversary Family Fun Day" (the "Event").

(b) Licensee may access the Premises for Event set-up starting at 12:00 noon on Friday, October 21, 2022, and concluding at 6:00 p.m. on Friday, October 21, 2022. The Event shall commence at 7:00 a.m. on Saturday, October 22, 2022, and shall conclude no later than 4:00 p.m. on Saturday, October 22, 2022. The take-down of the Event and restoration of the Premises shall begin when the Event ends and conclude no later than 7:00 p.m., Saturday, October 22, 2022. Take down and restoration will resume Sunday, October 23, 2022 at 8:00 a.m. and conclude no later than 1:00 p.m., Sunday, October 23, 2022.

2. Security. Licensee shall be responsible for the provision of security within the Licensed Premises during the period of the lease. Licensee shall hire the number of officers and supervisory personnel as recommended by the Huntsville Police Department for the Event. Licensee agrees that the Supervisor of such security officers shall be authorized to make the determination that the Event should be cancelled in the event of inclement weather conditions, security issues, or other threats to the safety of the sponsor or attendees of the Event.

3. Alcoholic Beverages. Licensee shall not sell, serve, or allow alcoholic beverages to be consumed on the Premises.

4. Restroom Facilities. There are no public restroom facilities located at the Premises. If restroom facilities are needed for the Event, Licensee shall coordinate with the City's Department of Parks and Recreation or contract with a rental company to provide all necessary portable toilet facilities as recommended by industry standards for the projected attendance to the Event. At least some of the units must meet ADA standards for accessibility

President of the City Council of the
City of Huntsville, Alabama
Date: October 13, 2022

5. Set up and Construction of Event Exhibits. Licensee shall not affix any materials to the Premises without the prior approval of the City's Director of Landscape Management. Licensee shall obtain the approval of the City's Director of General Services prior to the use of electrical power for any part of the Event. Electricity may be obtained only from sources authorized by the General Services Director.

6. Alteration of Premises. Licensee may not remove or alter any trees or make any other changes to the Premises without the prior approval of the Director of Landscape Management.

7. Vandalism or Weather Damage. Licensee shall promptly repair any damage to the Premises caused by vandalism or weather events. The City shall not be responsible for any damage to property of Licensee, its sponsors, vendors, patrons or any other third parties.

8. 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. The Event shall further comply, at all times, with the Special Event Permit issued for it by the Huntsville Police Department.

9. Licensing and Permits. Licensee shall, if applicable, obtain and maintain all licenses and permits and pay all fees necessary or required to hold the Event. Licensee shall provide proof of proper permitting or licensure prior to or during the event.

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

11. Indemnification: non-liability. Licensee shall indemnify and hold harmless and does hereby agree to indemnify and hold harmless the City of Huntsville, its officials, officers, elected 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 further agrees to indemnify and hold harmless those named above for exposure, infection, and/or spread of COVID-19 related to Licensee's utilization of the Premises as more particularly set forth in **Exhibit B**, which is attached here to and incorporated herein by reference. 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 11 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.

12. Restoration. Licensee agrees to provide for and pay all costs and expenses associated with clean-up of, and damage to, the City's property resulting from Licensee's use of the Premises. The Premises shall be cleaned and restored entirely by Licensee no later than the end of the Agreement term, to the sole satisfaction of the City.

13. 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 except in the case of the indemnitee's or indemnitees' sole negligence. Coverage under the Licensee 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.

14. 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.

15. 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, its 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.

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

16. 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.

ATTEST

LICENSOR:
THE CITY OF HUNTSVILLE, ALABAMA

Kenneth Benion
City Clerk-Treasurer

By: _____
Tommy Battle, Mayor

LICENSEE:
HUNTSVILLE/MADISON COUNTY
CHAMBER OF COMMERCE

By: _____
Its: President & CEO

EXHIBIT "A"



EXHIBIT B

RELEASE, INDEMNIFICATION, AND HOLD HARMLESS RELATED TO CORONAVIRUS/COVID 19

Huntsville/Madison County Chamber of Commerce ("Licensee") has entered a Facility Use Agreement with the City of Huntsville for the use of a portion of the land located at Lake 4, Cummings Research Park West, Huntsville, Alabama, for times specified during the period Friday, October 21, 2022 through Sunday, September 23, 2022 for the Cummings Research Park 60th Anniversary Family Fun Day event, including set up and take down, and executes this document as further consideration for the use of the said facilities.

Coronavirus Disease 2019 ("COVID-19") is present in Alabama and constitutes a public health emergency. The State Board of Health has designated it to be a disease of epidemic potential and a threat to the health and welfare of the public.

While medical knowledge of COVID-19 is evolving, the virus is believed to spread from person-to-person contact and/or by contact with contaminated surfaces and objects, and even possibly in the air. People reportedly can be infected and show no symptoms and therefore spread the disease. The exact methods of spread and contraction are unknown, and there is no known treatment or cure for COVID-19. Evidence has shown that COVID-19 can cause serious and potentially life-threatening illness, permanent disability, and even death.

Although the City of Huntsville ("City") has put into place various preventive measures to reduce the spread of COVID-19, it cannot prevent Licensee or Licensee's guests and other persons present at the Event ("attendees") from being exposed to, contracting, or spreading COVID-19 while utilizing the City's services and Facilities for the Event. It is not possible to prevent the presence of the disease. Licensee agrees to take all reasonable precautions for the safety of attendees and shall provide all effort to protect attendees from exposure, infection, and/or spread of COVID-19 related to Licensee's utilization of the City's services and Facilities.

Licensee releases, absolves, and exonerates; covenants not to sue; and agrees to indemnify and hold harmless the City of Huntsville and all of its services, Facilities and grounds, its directors, officers, agents and employees against any and all liability, losses, claims, demands, actions, debts, expenses and causes of action of every name and nature for personal or bodily injury (including any resulting death), or other damages which may be sustained by any person, resulting from the exposure, infection, and/or spread of COVID-19, during, as a result of, incident to, or in any way arising out of the use of the Facilities. Said indemnification shall include but not be limited to reasonable attorney's fees and all court costs. This indemnification shall survive the Date of Event or earlier termination of this Agreement.

Licensee agrees to comply with any mandates of Alabama's Governor, State Health Officer, and/or the Alabama Department of Public Health with regard to COVID-19. In addition, Licensee agrees that attendees of Licensee's Event will be required to observe practices in keeping with State guidelines. Licensee understands and agrees that the law of the State of Alabama will apply to this agreement.

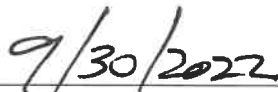
[SIGNATURE ON FOLLOWING PAGE]

I have carefully read and fully understand all provisions of this release, indemnification, and hold harmless.

Huntsville/Madison County Chamber of Commerce


Printed Name


Signature


Date