



Huntsville, Alabama

308 Fountain Circle
Huntsville, AL 35801

Cover Memo

Meeting Type: City Council Regular Meeting **Meeting Date:** 11/17/2022

File ID: TMP-2301

Department: Parks and Recreation

Subject:

Type of Action: Approval/Action

Resolution authorizing the Mayor to enter into a Facility Use Agreement between the City of Huntsville and Downtown Huntsville, Inc.

Type of Document: Resolution No.

Does this item need to be published? No

If yes, please list preferred date(s) of publication: _____

Finance Information: N/A

Account Number: N/A

City Cost Amount: N/A

Total Cost: N/A

Special Circumstances: N/A

Grant Funded: N/A

Grant Title - CFDA or granting Agency: N/A

Resolution #: N/A

Location: Big Spring Park East

Address: 201 Church Street Huntsville, AL 35801

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

Additional Comments:

This contract is for the "Tinsel Trail" event happening Downtown at Big Spring Park that will run from November 1, 2022 through January 10, 2022.

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 an Agreement by and between the City of Huntsville and Downtown Huntsville, Inc. , 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 "Facility Use Agreement between the City of Huntsville and Downtown Huntsville, Inc.", consisting of six (6) pages, and the date of November 17, 2022, 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 17^h day of November, 2022.

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

APPROVED this the 17th day of November, 2022.

Mayor of the City of Huntsville

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

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

This License Agreement (the "Agreement") is entered into this 17th day of November, 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 Downtown Huntsville, Inc., an Alabama non-profit corporation (hereinafter referred to as "DHI" or "Licensee").

WHEREAS, Downtown Huntsville, Inc. is an organization committed to encouraging, supporting, and promoting the ongoing cultural, aesthetic, social and economic vitality of the downtown area of Huntsville; and

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

WHEREAS, Downtown Huntsville, Inc. desires to stage an event known as the "Tinsel Trail" in Big Spring Park; and

WHEREAS, the City has determined that entering into this License Agreement will serve the public purpose of enhancing the economic vitality and growth of the Downtown Huntsville area;

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

1. **Use of Premises and Term.**

(a) Subject to the terms and conditions of this License Agreement, the City hereby grants DHI a license to utilize that portion of Big Spring Park East, located at 201 Church Street, Huntsville, AL 35801, 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 an event called the "Tinsel Trail" (the "Event"), which shall be a community event wherein individuals and organizations sponsor live holiday trees to be placed on the Premises.

(b) The term of this Agreement shall be from November 1, 2022, through January 10, 2023, inclusive.

2. **Alcoholic Beverages.** Licensee does not desire to and shall not furnish alcoholic beverages, which includes, but is not limited to, the retail sale of alcoholic beverages for on-

premises consumption as a part of the Event. The Licensee does, however, desire 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 3-27 of the Code of Ordinances of the City (“City Code”), within the Quigley 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 3-27, 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.

3. Set up and Construction of Event Exhibits. Licensee shall not affix any trees or other 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.

4. 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.

5. Vandalism or Weather Damage. Licensee shall promptly repair any damage to its property or 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.

6. 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 or create or allow to exist any nuisances or trespass or 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. The Premises are located in the Quigley Arts and Entertainment District, and the Event will occur during regular hours that the district is open. Licensee may allow patrons to take alcohol from the Premises only in accordance with Section 3-27 of the Code of Ordinances of the City of Huntsville.

7. 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 and to sell and serve food on the Premises. Licensee shall provide proof of proper permitting or licensure prior to or during the event.

8. 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.

9. 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. 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 9 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.

10. 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.

11. 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.

12. Fee. Licensee shall pay to the City the sum of Ten and no/100 Dollars (\$10.00) for the use of the Premises.

13. 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.

14. 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.

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

16. 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.

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**

By: _____
Kenneth Benion
City Clerk-Treasurer

By: _____
Tommy Battle, Mayor

**LICENSEE:
DOWNTOWN HUNTSVILLE, INC.**

By: _____

Its: _____

Tinsel Trail Tree Map



Key:

----- Tree Trail

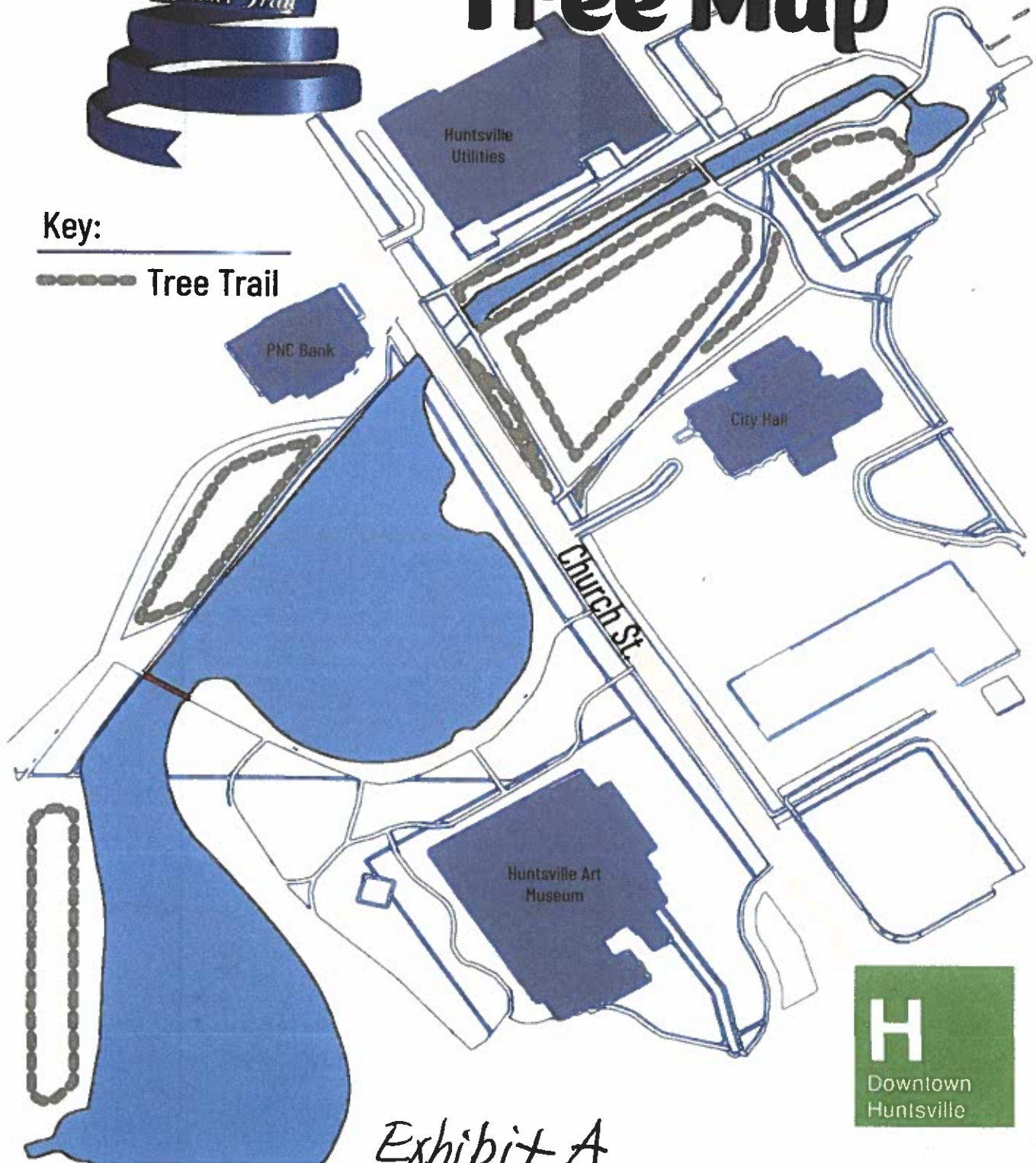


Exhibit A