



Huntsville, Alabama

308 Fountain Circle
Huntsville, AL 35801

Cover Memo

Meeting Type: City Council Regular Meeting **Meeting Date:** 7/27/2023

File ID: TMP-3178

Department: Administration

Subject:

Type of Action: Approval/Action

Resolution authorizing the Mayor to enter into a Facility Use and Operation Agreement between the City of Huntsville and The Arts Council, Inc. dba Arts Huntsville.

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: N/A

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

Additional Comments: N/A

RESOLUTION NO. 23-____

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, is hereby authorized to enter into a Facility Use and Operation Agreement between the City of Huntsville and The Arts Council, Inc. dba Arts Huntsville, on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said memorandum of understanding is substantially in words and figures similar to that certain document attached hereto and identified as "Facility Use and Operation Agreement between the City of Huntsville and The Arts Council, Inc. dba Arts Huntsville" consisting of ten (10) pages and the date of July 27, 2023, 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 of the City of Huntsville, Alabama.

ADOPTED this the 27th day of July, 2023.

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

APPROVED this the 27th day of July, 2023.

Mayor of the City of
Huntsville, Alabama

Facility Use and Operation Agreement
Between the City of Huntsville, Alabama,
and The Arts Council, Inc. dba Arts Huntsville

FACILITY USE AND OPERATION AGREEMENT

This Agreement is made and entered into on the 27th day of July, 2023, by and between the **City of Huntsville**, a municipal corporation in the State of Alabama, hereinafter referred to as the “City,” and **The Arts Council, Inc. dba Arts Huntsville**, an Alabama non-profit corporation, hereinafter referred to as “The Arts Council.”

WITNESSETH:

WHEREAS, City is the owner of a certain premises known as the Sandra Moon Community Center (“The Moon”), consisting of a building (the “Building”) and related improvements located at 7901 Bailey Cove Road SE, Huntsville, Alabama, 35802. An outline of the said building is shown in the drawing attached hereto and incorporated herein by reference as Attachment “A”; and

WHEREAS, the City has acquired and renovated The Moon to be used for the provision of services to the surrounding community; and

WHEREAS, The Arts Council has served as the City's local arts agency since its founding in 1962;

WHEREAS, The Arts Council has managed the City's Arts and Cultural Grant Program since its establishment in 2013;

WHEREAS, The Arts Council has managed the City’s Public Art Program since the development of Huntsville’s Public Art Master Plan in 2015; and

WHEREAS, The Arts Council has particular knowledge and ability to assist the City with development of the arts, entertainment and cultural sector, arts and cultural grants, public art, and arts facilities; and

WHEREAS, The Arts Council has the expertise and ability to solicit, receive and administer grant funding and sponsorships in support of arts promotion and arts facilities; and

WHEREAS, The Arts Council has a positive reputation within the Huntsville community which gives it the ability to increase public support and contributions to arts promotion and arts facilities; and

WHEREAS, the City and The Arts Council desire to work cooperatively toward the development of the arts, entertainment and cultural sector, arts and cultural grants, public art, and arts facilities;

NOW, THEREFORE, FOR AND IN CONSIDERATION of the mutual covenants and agreements contained hereinbelow, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1.0 OCCUPATION AND OPERATION OF THE MOON.

(a) The Arts Council shall assume occupancy and control of those portions of the Building designated “The Arts Council” in Attachment “A” and utilize the said space to provide office and rehearsal space to Huntsville’s nonprofit arts organizations.

(c) All remaining space in the Building shall be reserved for use by the City of Huntsville Parks and Recreation Department.

2.0 TERM. The term of this Agreement shall be two (2) years, commencing on August 14, 2023. The parties may mutually consent to renew this Agreement open completion of The Moon theater renovations; however, any such renewal(s) must be approved by the Huntsville City Council.

3.0 CONSIDERATION.

(a) As consideration for the use and occupancy of its respective area of The Moon to complete its mission, The Arts Council will perform the activities described in Section One of this Agreement and will operate and maintain The Moon in a manner satisfactory to the City of Huntsville.

(b) As consideration for the services provided by The Arts Council as manager of The Moon arts facilities and sublessor to Huntsville non-profit arts organizations, the City will pay The Arts Council the sum of \$50,000 annually, as professional services, payable in quarterly installments of \$12,500, commencing in October 2023. This funding may be increased by amendment to this agreement.

4.0 MAINTENANCE OF THE MOON BY THE ARTS COUNCIL. The City shall be responsible for the maintenance of the roof, parking area, sidewalks, HVAC, plumbing, wiring and alarm and structural systems of The Moon and also for those areas of the Building reserved for City use. The Arts Council shall be responsible for all other routine maintenance of its designated area of the Building.

(a) Neither The Arts Council nor its sublessees shall, in any manner, deface or injure the Building and will pay the cost of repairing any damage or injury done to the Building or any part thereof by The Arts Council or its employees, agents, contractors, invitees, or sublessees, ordinary wear and tear excepted. The Arts Council agrees that it will keep the Building and the fixtures therein in clean, safe, sanitary and good order and condition and will, at the expiration or other termination of the term of this Agreement, remove all goods and effects not the property of City and at The Arts Council’s expense and shall (i) promptly surrender to City possession of its portion of the Building (including keys, locks and any fixtures or other improvements which The Arts Council hereby acknowledges are owned by the City) in good order and repair (ordinary

wear and tear and damage due to casualty or condemnation excepted) and broom clean, (ii) remove therefrom all signs, goods, effects, machinery, furniture, fixtures computer/telephone cabling and equipment used in conducting The Arts Council's trade or business which is not owned by the City, and (iii) repair any damage caused by such removal. The City has the right to access all sections of the Building (including those provided for the use of The Arts Council and each of its sublessees) at reasonable times and in a reasonable manner to inspect the Building for proper use and maintenance and to perform any functions required by this Agreement.

(b) Neither The Arts Council nor its sublessees shall attach any sign(s) to the exterior of the Building unless the design, nature, and content thereof have been approved by the City, which approval shall not be unreasonably withheld. The Arts Council shall at its expense maintain and repair any such sign(s) and may upon the expiration of the term of this or any renewal thereof, remove said sign(s). All signs shall comply with all applicable laws and ordinances.

(c) All injury to The Moon caused by moving the property of The Arts Council of its sublessees into, on, or out of, the Building and all breakage done by The Arts Council, or the agents, servants, employees, visitors, or sublessees of The Arts Council, shall be repaired by The Arts Council, at the expense of The Arts Council. In the event that The Arts Council shall fail to do so, then City shall have the right to make such necessary repairs, alterations, and replacements (structural, nonstructural, or otherwise) and any charge or cost so incurred by City shall be paid by The Arts Council. This provision shall be construed as an additional remedy granted to City and not in limitation of any other rights and remedies which City has or may have in said circumstances.

(d) All keys to the Building shall be issued solely by the City's Director of General Services, and The Arts Council or its sublessees shall not copy any said key without the express written consent of the City. The Director of General Services shall determine how many keys are issued to The Arts Council and its sublessees.

(e) All personal property of The Arts Council in The Moon shall be at the sole risk of The Arts Council. City shall not be liable for any accident to or damage to the personal property of The Arts Council or its sublessees resulting from the use or operation of elevators or of the heating, cooling, electrical or plumbing apparatus unless caused by the negligence of City, its employees, agents, or contractors. City shall not, in any event, be liable for damages to the personal property resulting from water, steam or other causes unless caused by the negligence of City, its employees, agents or contractors. The Arts Council hereby expressly releases the City from any liability incurred or claim by reason of damage to The Arts Council's personal property, other than any liability incurred or claim by reason of the negligence of City, its employees, agents, or contractors.

5.0 UTILITIES. The City will provide utilities to The Moon throughout the term of this Agreement.

6.0 JANITORIAL SERVICES. The City will provide reasonable and customary janitorial services for all publicly-accessible areas of The Moon. The City shall retain the sole discretion to choose and/or revise the janitorial provider fulfilling said services to The Moon.

7.0 PEST CONTROL. The City will cover the routine maintenance cost of pest control for the Building throughout the term of this Agreement. Pest control required outside of routine maintenance that is deemed by the pest control company to be necessary due to negligence of The Arts Council or its sublessees will be billed to The Arts Council at current market rate.

8.0 ALTERATIONS AND IMPROVEMENTS BY THE ARTS COUNCIL. No alterations, additions, or improvements to The Moon, except such as may be otherwise provided for in this Agreement, shall be made without first obtaining City's written consent, and any improvements, additions or alterations requested by The Arts Council after such consent shall have been given, shall be installed by and under the sole control and supervision of City. All requests for alterations, additions, or improvements shall be accompanied by architectural drawings depicting both the existing and proposed layout or depicting the existing and proposed condition of the alteration, addition, or improvement in question. City agrees to give The Arts Council a contract price for all approved alterations, additions, or improvements and will endeavor to complete all work in a timely and workmanlike manner. Any and all fixtures installed, excepting trade fixtures, shall, at City's option, remain on The Moon premises as the property of the City, without compensation to The Arts Council, or, shall be removed therefrom and The Moon restored to its original condition at cost of The Arts Council at the expiration or sooner termination of this Agreement. The Arts Council shall, at its own cost, repair any damage caused by the removal of trade fixtures restoring The Moon to its original condition.

9.0 INSURANCE REQUIREMENTS. During the term of this Agreement, The Arts Council and its sublessees shall each satisfy the following insurance requirements:

A. MINIMUM SCOPE OF INSURANCE:

1. General Liability:

Insurance will be written on an occurrence basis. Claims-made coverage will be accepted only on an exception basis after the City's approval.

Commercial General Liability

Contractual

Personal Injury

Broad Form Property Damage

2. Workers' Compensation Insurance:

Statutory protection against bodily injury, sickness or disease or death sustained by employee in the scope of employment. Protection shall be provided by a commercial insurance company or a

recognized self-insurance fund authorized before the State of Alabama Industrial Board of Relations.

B. MINIMUM LIMITS OF INSURANCE:

1. General Liability:

Commercial General Liability on an "occurrence form" for bodily injury and property damage:

\$ 2,000,000 General Aggregate Limit

\$ 1,000,000 Each Occurrence

2. Workers' Compensation:

As Required by the State of Alabama Statute

C. OTHER INSURANCE PROVISIONS:

The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability Coverage's Only:

a. The City, its elected and appointed officials, employees, agents, and specified volunteers are to be covered as Additional Insureds, as their interests may appear, as respects: liability arising out of activities performed by or on behalf of The Arts Council for products used by and completed operations of The Arts Council or automobiles owned, hired, or borrowed by The Arts Council. Additional insured status shall be through ISO Additional Endorsement CG 2011 01 96 or equivalent that is sufficient to provide the coverage required by this Agreement.

b. The Arts Council's insurance coverage shall be primary insurance as respects the City, its elected and appointed officials, employees, agents, and specified volunteers, as their interests may appear as respects: liability arising out of activities performed by or on behalf of The Arts Council for products used by and completed operations of The Arts Council; or automobiles owned, hired, or borrowed by The Arts Council. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents, or specified volunteers shall be excess of The Arts Council's insurance and shall not contribute to it.

c. The Arts Council's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. All Coverages:

a. The Arts Council is responsible to pay all deductibles. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City. Cancellation of coverage for non-payment of premium will require ten (10) days written notice to the City.

b. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officers, employees, agents, or specified volunteers.

D. ACCEPTABILITY OF INSURERS:

Insurance is to be placed with insurers with an A. M. Best's rating of no less than **B+ V**.

E. VERIFICATION OF COVERAGE:

The City shall be indicated as a Certificate Holder and The Arts Council shall furnish the City with Certificates of Insurance reflecting the coverage required by this document. The A. M. Best Rating and deductibles, if applicable, shall be indicated on the Certificate of Insurance for each insurance policy. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

F. HOLD HARMLESS AGREEMENT:

1. Other Than Professional Liability Exposures:

The Arts Council, to the fullest extent permitted by law, shall indemnify and hold harmless the City, its elected and appointed officials, employees, agents and specified volunteers against all claims, damages, losses and expenses, including, but not limited to, attorney's fees, arising out of or resulting from The Arts Council's occupancy and use of The Moon, provided that any such claim, damage, loss or expense (1) is attributable to personal injury, including bodily injury sickness, disease or death, or injury to or destruction of tangible property, including loss of use resulting therefrom, and (2) is caused by any negligent act or omission of The Arts Council or any of its consultants, invitees or anyone directly or indirectly employed by it or anyone for whose acts it is legally liable. Such obligation should not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this paragraph.

10.0 INSPECTIONS OF THE MOON. City shall have the right to enter all areas of the Building at all reasonable times (but no less than once per year) for purposes of examining the Building for the purpose of discovering any defect or injury to the Building. The Arts Council shall, upon the discovery of any defect in or injury to The Moon or any appurtenance or apparatus connected therewith, or any need of repairs, promptly make the said repair.

11.0 ASSIGNMENT BY THE ARTS COUNCIL. The Arts Council may sublet all or a portion of its leased areas of the Building to Huntsville non-profit arts organizations with approval of the City, which approval the City shall not unreasonable withhold.

12.0 DEFAULT. In the event The Arts Council defaults on any of its obligations under this Agreement, the City shall give The Arts Council a 30-day period to correct said defaults. If The

Arts Council, in the City's sole discretion, fails to correct the said defaults, then the City may take any or all of the following actions:

(i) Terminate this Agreement as it relates to The Arts Council, in which event The Arts Council shall immediately surrender its occupation or possession of any portion of The Moon to the City.

(ii) City may do whatever The Arts Council is obligated to do by the provisions of this Agreement and may enter The Moon without being liable to prosecution or any claim for damages therefor, in order to accomplish this purpose. The Arts Council agrees to reimburse City immediately upon demand for any expenses which City may incur in thus effecting compliance with this Agreement on behalf of The Arts Council.

(iii) Pursue any and all other remedies available to City at law or in equity.

In the event City employs an attorney on account of any violation of any of the terms or conditions of this Agreement by The Arts Council, The Arts Council shall pay all expenses incurred including a reasonable attorney's fee.

13.0 SURRENDER. Upon the termination of this Agreement, The Arts Council shall deliver up its portion of the Building in the same condition as the same was in at the commencement of the term of this Agreement (with the exception of any remodeling or structural changes previously approved by City), reasonable and ordinary wear and tear and damage by fire and other casualty or condemnation excepted. Neither vacating the Building by The Arts Council, nor the delivery of possession to City, shall be deemed a surrender or an acceptance of surrender of The Arts Council's interest in The Moon unless so stipulated in writing by City.

14.0 FIRE, OTHER CASUALTY. If a fire, casualty, or taking renders The Moon or any part thereof unfit for use and occupancy as intended in this Agreement, The Arts Council's obligations under this Agreement shall be reduced to only those that can safely be performed in The Moon in its then-existing condition. If a substantial portion of The Moon is damaged by fire, casualty or taking, the City and The Arts Council shall each have the right to terminate this Agreement by notice given to the other party at any time within sixty (60) days after the date of such damage, casualty or taking.

15.0 MISCELLANEOUS. The parties hereto further agree as follows:

15.1 The non-enforceability or illegality of any provision of this Agreement shall not render the other provisions unenforceable, invalid, or illegal.

15.2 The paragraph headings contained herein are only for convenience and reference, and are not intended to be part of this Agreement or in any manner to define, limit or describe the scope and intent of this Agreement for the particular paragraph to which they refer.

15.3 Any notice or other communication provided for hereunder will be in writing and may be (i) served by personal delivery, (ii) made by electronic mail or facsimile transmission, or

(iii) sent by overnight courier service (with all fees prepaid) to the receiving parties as follows, or to any other address which either party may hereafter designate for itself in writing:

City: City of Huntsville, Alabama
Post Office Box 308
Huntsville, Alabama 35804-0308
Attention: Director of Parks and Recreation

with a copy to: City Attorney's Office
Post Office Box 308
Huntsville, Alabama 35804-0308
Attention: City Attorney

The Arts Council, Inc.: The Arts Council, Inc. dba Arts Huntsville
Attention: Allison Dillon-Jauken
700 Monroe Street, Suite 2
Huntsville, Alabama 35801

If either party hereto changes its address or other contact information for purposes of this Agreement, the party so changing shall give the other party appropriate written notice of change of address in the manner specified above.

15.4 The parties further agree that this Agreement is to be deemed to have been prepared jointly by the parties hereto, after arm's length negotiations, and that any ambiguity or uncertainty existing herein, if any, shall not be interpreted against the other party.

15.5 It is expressly understood that this Agreement sets forth the entire agreement of the parties and supersedes any prior written or oral agreements between them concerning the subject matter contained herein, oral, or otherwise, and that there is no other agreement between the parties other than that contained herein.

15.6 The parties further agree to sign any and all instruments or documents necessary to carry out the full purpose and intent of this Agreement.

15.7 This Agreement shall be binding upon the parties, and their successors in interest.

15.8 Each party to this Agreement shall be responsible for the payment of all costs, expenses, legal fees, and disbursements incurred or to be incurred by it or any of them in negotiating and preparing this Agreement, and all documents required to be delivered pursuant to this Agreement and in otherwise performing the transactions contemplated by this Agreement.

IN WITNESS WHEREOF, the parties hereunto entered into this on the day first written above.

THE ARTS COUNCIL, INC. dba Arts Huntsville a private, non-profit corporation in the State of Alabama

By: _____
Allison Dillon-Jauken, Executive Director

THE CITY OF HUNTSVILLE, a municipal corporation in the State of Alabama

By: _____
Tommy Battle, Mayor

ATTEST:

Shaundrika Edwards, City Clerk

STATE OF ALABAMA)
COUNTY OF MADISON)

I, the undersigned, a notary public in and for said County, in said State, hereby certify that Allison Dillon-Jauken, whose name as Executive Director of THE ARTS COUNCIL, INC. dba Arts Huntsville, a non-profit corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, (s)he, in his or her capacity as such officer, executed the same voluntarily for and as the act of said corporation on the day the same bears day.

GIVEN under my hand and official seal this the ____ day of _____, 2023.

Notary Public

STATE OF ALABAMA)
COUNTY OF MADISON)

I, the undersigned, a notary public in and for said County, in said State, hereby certify that Tommy Battle and Shaundrika Edwards, whose names as Mayor and City Clerk of The City of Huntsville, a municipal corporation are signed to the foregoing instrument, and who are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they, in their capacity as such officers, executed the same voluntarily for and as the act of said corporation on the day the same bears day.

GIVEN under my hand and official seal this the ____ day of _____, 2023.

Notary Public