



Huntsville, Alabama

305 Fountain Circle
Huntsville, AL 35801

Cover Memo

Meeting Type: City Council Regular Meeting **Meeting Date:** 12/5/2024

File ID: TMP-4885

Department: Parks and Recreation

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 Food Bank of North Alabama.

Resolution No.

Finance Information:

Account Number: TBD

City Cost Amount: NA

Total Cost: TBD

Special Circumstances:

Grant Funded: NA

Grant Title - CFDA or granting Agency: NA

Resolution #: NA

Location: (list below)

Address: Martin Luther King Service Center

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

Additional Comments:

This agreement is for use of the Martin Luther King Service Center.

RESOLUTION NO. 24-_____

WHEREAS The City Council of the City of Huntsville, Alabama, does hereby declare in accordance with the Code of Alabama (1975) that the Mayor be, and he his hereby authorized to enter into a Facility Use and Operation Agreement between the City of Huntsville (“City”) and the Food Bank of North Alabama (“Licensee”) 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 and Operation Agreement between the City of Huntsville and Food Bank of North Alabama,” consisting of eleven (11) pages, including one attachment, and the date of December 5, 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 5th day of December, 2024

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

APPROVED this the 5th day of December, 2024

Mayor of the City of Huntsville, Alabama

Facility Use and Operation Agreement
Between the City of Huntsville, Alabama, and
Food Bank of North Alabama

FACILITY USE AND OPERATION AGREEMENT

This Agreement is made and entered into on the 5th day of December, 2024, by and between the **City of Huntsville** ("City"), a municipal corporation in the State of Alabama, and **Food Bank of North Alabama** ("Licensee"), an Alabama 501(C)(3) Non-Profit Corporation.

WITNESSETH:

WHEREAS, City is the owner of a certain building known as the Martin Luther King, Jr. Service Center (the "Center") located upon that certain real property of the City of Huntsville, Madison County, Alabama more particular described in Paragraph 1 of this license, and,

WHEREAS, the City has a public interest in promoting community welfare by providing hunger relief services to residents of low and moderate income, and,

WHEREAS, Food Bank of North Alabama is an organization that provides such services to the Huntsville community,

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 Center.

- (a) Licensee shall be permitted to use and occupy the lobby of the Center as designated in Exhibit "A" and utilize the said space to provide community services. Services will include, but not be limited to, the following programs that the Licensee currently offers: 1) hunger relief programs that immediately feed hungry people in need; and 2) local food initiatives that address hunger's root causes by fostering entrepreneurship and healthy food access.

President of the City Council of the
City of Huntsville, Alabama
Date: December 5, 2024

(b) Licensee shall not use the Center, nor permit the Center to be used by any of its officers, directors, agents, employees, licensees, or invitees for any unlawful or immoral purpose; in any manner so as to injure persons or property in, on, or near the facility; or for any purpose not described in this agreement.

(c) All remaining space in the Center shall be reserved for use by the City of Huntsville. Licensee's use the Lobby of the Center shall not significantly impair the use of the Lobby for ingress and egress to other parts of the building by the City of Huntsville, its employees, agents, or contractors, or any other entity to which the City of Huntsville authorizes the use of any other part of the Center.

2.0 TERM. The term of this agreement shall be one (1) year, commencing on November 1, 2024. The parties may mutually consent to renew this agreement for up to twenty-four (24) additional terms. This Agreement will be renewed automatically for one (1) additional year at the end of each calendar year unless terminated by one of the parties as provided herein. The Director of General Services shall have the authority to execute the renewal on behalf of the City.

3.0 CONSIDERATION. As consideration for the use and occupancy of the Center lobby, Licensee will perform the activities described in Section One of this agreement and will maintain the Center lobby in a manner satisfactory to the City of Huntsville.

4.0 MAINTENANCE OF THE CENTER LOBBY BY THE LICENSEE. The City shall be responsible for all maintenance of the Center, including parking area, sidewalks, HVAC, plumbing, wiring, and alarm and structural systems of the Center and also for those areas of the Building reserved for City use. City shall be responsible for janitorial service and routine maintenance.

(a) Licensee shall not, in any manner, deface or injure the Center and will pay the costs of repairing any damage or injury done to the Center or any part thereof by the Licensee or the Licensee's employees, agents, contractors, or invitees, ordinary wear and tear excepted. Licensee agrees that it will keep the building and the fixtures therein in a 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 the City and at the Licensee's expense and shall (i) promptly surrender to City possession of the lobby (including keys, locks, and any fixtures or other improvements which the Licensee 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 Licensee'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 Center (including those provided for the use of Licensee) 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) Licensee shall not attach any sign to the exterior of the Center unless the design, nature, and content thereof have been approved by the City, which approval shall not be unreasonably withheld. Licensee installing any sign shall at its expense maintain and repair such sign and may upon the expiration of the term of this or any renewal thereof, remove said signs. All signs shall comply with all applicable laws and ordinances.
- (c) All injury to Center caused by moving the proper of Licensee into, on, or out of the Center and all breakage done by Licensee or the agents, servants, employees, or visitors of Licensee, shall be repaired at the expense of the Licensee. In the event Licensee shall fail to do so, then the 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 Licensee. 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 Center shall be issued solely by the City's Director of General Services, and the Licensee 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 Licensee.
- (e) All personal property of the Licensee in the Center shall be at the sole risk of the Licensee. City shall not be liable for any accident to or damage to the personal property of the Licensee 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. Licensee hereby expressly releases the City from any liability incurred or claim by reason of damage to the Licensee'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 Center throughout the term of this Agreement.

6.0 ALTERATIONS AND IMPROVEMENTS BY LICENSEE. No alterations, additions, or improvements to the Center, 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 Licensee after such consent shall have been given, shall be installed by and under the sole control and supervision of the 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 License 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 Center premises as the property of the City, without compensation to the License, or, shall be removed therefrom and the Center restored to its original condition at the cost of the Licensee at the expiration or sooner termination of this Agreement. Licensee shall, at its own cost, repair any damage caused by the removal of trade fixtures restoring the Center to its original condition.

7.0 INSURANCE REQUIREMENTS. During the term of this agreement, Licensee shall 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

No Exclusion for Sexual Misconduct or Molestation

2. Worker's 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. Waivers of subrogation in favor of the City shall be endorsed to Worker's Compensation coverage.

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. Worker's Compensation

Licensee shall maintain, during the course of this Agreement, Worker's Compensation coverage as prescribed by the laws of the State of Alabama and Employer's Liability Coverage in an amount of not less than one million dollars (\$1,000,000).

C. OTHER INSURANCE PROVISIONS

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

1. General Liability and Automobile Liability Coverages 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 Licensee for products used by and completed operations of the Licensee or automobiles owned, hired, or borrowed by Licensee. 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 Licensee's insurance coverage shall be primary insurance as respect 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 Licensee for products used by and completed operations of the Licensee; or automobiles owned, hired, or borrowed by the Licensee. Any insurance or self-insurance

maintained by the City, its officers, officials, employees, agents, or specified volunteers shall be in excess of the Licensee's insurance and shall not contribute to it.

c. The Licensee's insurance shall apply separate 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 Licensee 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 the Certificate Holder and the Agency 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:

Licensee, 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 Licensee's occupancy and use of the Center, 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 Agency 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.

8.0 INSPECTIONS OF THE CENTER. 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. Licensee shall, upon the discovery of any defect in or injury to the Center or any appurtenance or apparatus connected therewith, or any need of repairs, promptly make the said repair.

9.0 ASSIGNMENT BY LICENSEE. Licensee covenants and agrees not to assign any of its rights or obligations under this Agreement, without the express written consent of the City.

10.0 DEFAULT. In the event Licensee defaults on any of its obligations under this Agreement, the City shall give the Licensee a 30-day period to correct said defaults. If the Licensee, in the City's sole discretion, fails to correct the said defaults, then the City may take any or all of the following actions:

10.1 Terminate this Agreement, in which event the Licensee shall immediately surrender its occupation or possession of any portion of the Center to the City.

10.2 City may do whatever the Licensee is obligated to do by the provisions of this Agreement and may enter the Center without being liable to prosecution or any claim for damages therefor, in order to accomplish this purpose. Licensee 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 Licensee.

10.3 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 Licensee, the Licensee shall pay all expenses incurred including a reasonable attorney's fee.

11.0 SURRENDER. Upon the termination of this Agreement, Licensee shall deliver up its portion of the Center 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 Licensee, nor the delivery of possession to City, shall be deemed a surrender or an acceptance of surrender of Licensee's interest in the Center unless so stipulated in writing by City.

12.0 FIRE, OTHER CASUALTY. If a fire, casualty, or taking renders the Center or any part thereof unfit for use and occupancy as intended in this Agreement, Licensee's obligations under this Agreement shall be reduced to only those that can safely be performed in the Center in its then-existing condition. If a substantial portion of the Center is damaged by fire, casualty, or taking, City and Licensee 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.

13.0 Miscellaneous. The parties hereto further agree as follows:

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

13.2 The paragraph headings contained herein are only for convenience and reference, and are not intended to be a 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.

13.3 (a) 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 services (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
P.O. Box 308
Huntsville, AL 35804-0308
Attn: Director of Parks and Recreation

with a copy to: City Attorney's Office
P.O. Box 308
Huntsville, AL 35804-0308
Attn: City Attorney

Licensee Food Bank of North Alabama
P.O. Box 18607
Huntsville, AL 35804

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.

13.4 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.

13.5 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 than that contained herein.

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

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

13.8 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 in this Agreement.

IN WITNESS WHEREOF, the parties hereto, by their respective duly authorized officers or representatives, have each executed this Agreement, effective as of the date first above written.

CITY OF HUNTSVILLE, ALABAMA

By: _____

Tommy Battle

Its: Mayor

Attest: _____

Shaundrika Edwards

Its: City Clerk

FOOD BANK OF NORTH ALABAMA, INC.

By: _____

Its: _____

CONSTRUCTION FLOOR PLAN
SCALE 1/8" = 1'-0"

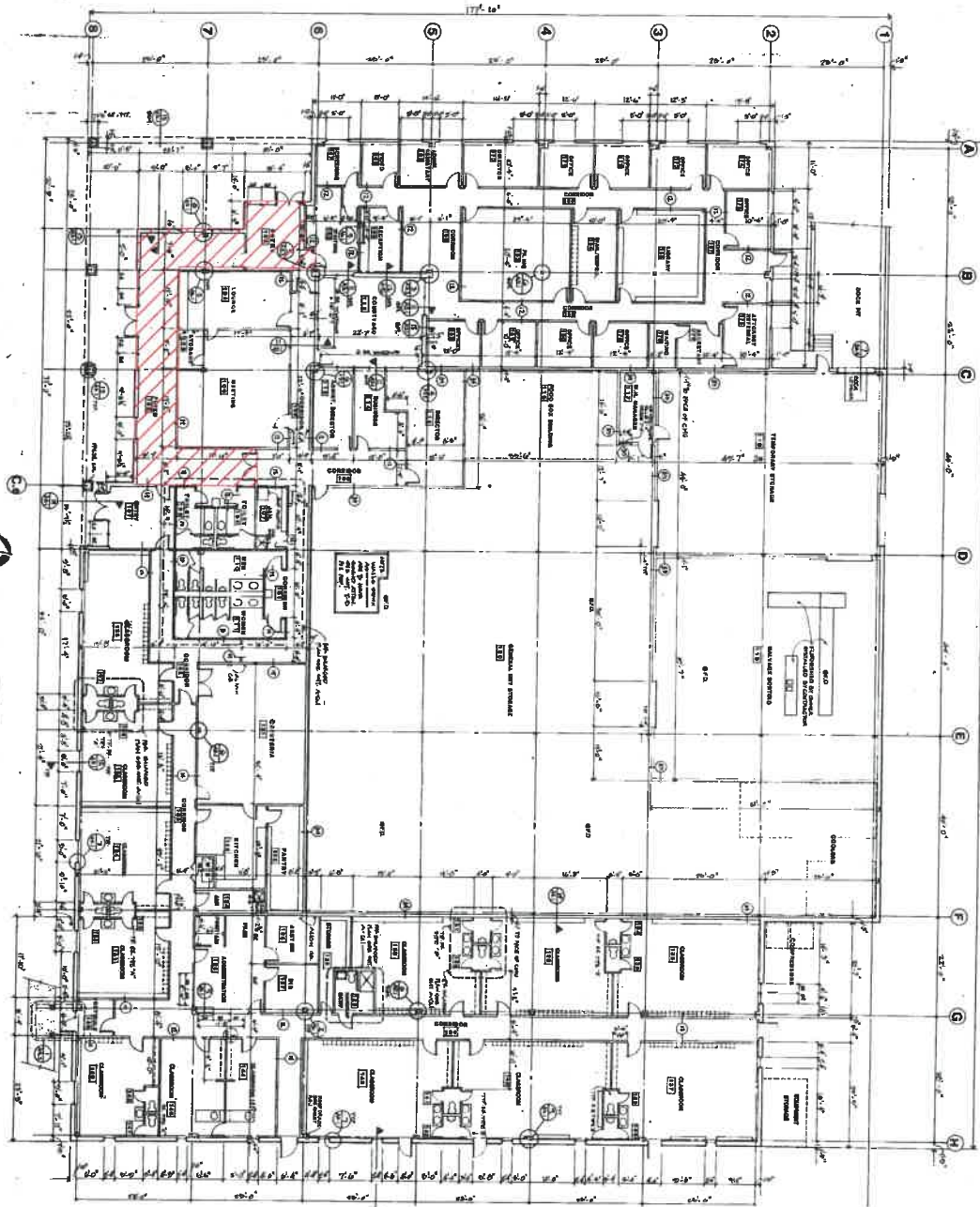


EXHIBIT
A

COMMUNITY SERVICES BUILDING
FOR
HUNTSVILLE HOUSING DEVELOPMENT, INC.
HUNTSVILLE, ALABAMA
CONSTRUCTION FLOOR PLAN



GORDON LEWIS
ARCHITECT
HUNTSVILLE, ALABAMA

A1.1C

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