



Huntsville, Alabama

305 Fountain Circle
Huntsville, AL 35801

Cover Memo

Meeting Type: City Council Regular Meeting **Meeting Date:** 7/25/2024

File ID: TMP-4417

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 Sky Elements, LLC, to conduct a drone light show as part of the 2024 Concerts in the Park.

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: (list below)

Address: Big Spring Park

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 to enter into a Facility Use Agreement by and between the City of Huntsville and Sky Elements, LLC, 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 Sky Elements, LLC,” consisting of six (6) pages including Exhibit 1, and the date of July 25, 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 of the City of Huntsville, Alabama.

ADOPTED this the 25th day of July, 2024.

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

APPROVED this the 25th day of July, 2024.

Mayor of the City of Huntsville, Alabama

FACILITY USE AGREEMENT
BETWEEN THE CITY OF HUNTSVILLE
AND SKY ELEMENTS, LLC

FACILITY USE AGREEMENT BETWEEN
THE CITY OF HUNTSVILLE AND SKY ELEMENTS, LLC

This License Agreement (the "Agreement") is entered into this **25th** day of **July**, 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 Sky Elements, LLC, a Texas Limited Liability Company (hereinafter referred to as "Sky Elements" or "Licensee").

WHEREAS, the City of Huntsville has an interest in hosting family-friendly, community-building events and programming as well as promoting itself as a technology-forward City; and

WHEREAS, the City of Huntsville has entered into an agreement with Arts Huntsville to co-produce with City of Huntsville Parks and Recreation a series of concerts and other forms of entertainment in Big Spring Park, referred to as "Concerts in the Park;" and

WHEREAS, shows incorporating lighted unmanned aircraft, more commonly known as "drone light shows," are growing in popularity as a safe, family-friendly mode of entertainment; and

WHEREAS, Sky Elements, LLC wishes to conduct a drone light show as part of Arts Huntsville and City of Huntsville Parks and Recreation's final 2024 Concerts in the Park event;

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

1. **Use of Premises and Timing.**

(a) Subject to the terms and conditions of this License Agreement, the City hereby grants Sky Elements a license to utilize the third (3rd) floor Garage M and the uncovered portions of the second (2nd) floor of Garage M, located at 717 Monroe St. SW (hereinafter "Premises"), and the airspace immediately above Premises, which is shown on the map attached hereto and incorporated herein by reference as **Exhibit 1**, to conduct a drone light show (hereinafter "Event").

(b) Licensee shall have access to the Premises beginning at 8:00 PM on Monday, August 5, 2024. The Event shall commence at 8:15 PM on August 5, 2024, and shall conclude no later than 9:00 PM that evening. Restoration of the Premises, if needed, shall begin immediately after the Event and conclude no later than 10:00 PM that evening.

President of the City Council of the
City of Huntsville, Alabama
Date: July 25, 2024

(c) City will be responsible for ensuring Premises are vacated by 8:00 PM on Monday, August 5, 2024 and remain vacated for the duration of the Event.

(d) Licensee agrees to restrict its unmanned aircraft as defined by 49 U.S.C. § 44801(11), exclusively to the airspace above the Premises.

2. Alteration of Premises. Licensee shall not affix any materials to the Premises without the prior written approval of the City's Director of Parking and Public Transit. Licensee shall obtain the prior written 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. Licensee may not make any other changes to the Premises without the prior written approval of the Director of Parking and Public Transit.

3. Compliance with Laws and Regulations. 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. Licensee shall further comply with all relevant federal laws and regulations promulgated by the Federal Aviation Administration (FAA), and shall obtain all necessary FAA notices, permits, and exemptions, including but not limited to the Notice to Air Missions (NOTAM) to advise local aircraft to stay clear of the area.

4. 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, as well as Arts Huntsville, officers, employees, agents, contractors and volunteers (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 4 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

5. 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.

6. 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.

7. 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.

8. 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.

(f) Nothing in this agreement shall make the City of Huntsville a party to any contract(s) between Sky Elements and any other third parties including, but not limited to, Arts Huntsville or Intuitive Research and Technology Corporation.

9. 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.

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: _____
Shaundrika Edwards
City Clerk

By: _____
Tommy Battle, Mayor

LICENSEE:
SKY ELEMENTS, LLC

By: Preston Ward
Its: General Counsel

EXHIBIT 1

