



Huntsville, Alabama

308 Fountain Circle
Huntsville, AL 35801

Cover Memo

Meeting Type: City Council Regular Meeting **Meeting Date:** 5/11/2023

File ID: TMP-2858

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 The Brain Trust Foundation.

Resolution No.

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: (list below)

Address: Big Spring Park West 200 Church Street SW Huntsville, AL 35801

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

Additional Comments: This is a contract for the "Crush Wine and Food Festival" that is to be held on September 23, 2023.

RESOLUTION NO. 23-_____

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 The Brain Trust Foundation, 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 The Brain Trust Foundation," consisting of seven (7) pages, and the date of May 11, 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 11th day of May, 2023.

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

APPROVED this the 11th day of May, 2023.

Mayor of the City of Huntsville,
Alabama

FACILITY USE AGREEMENT
BETWEEN THE CITY OF HUNTSVILLE AND
THE BRAIN TRUST FOUNDATION

FACILITY USE AGREEMENT BETWEEN THE CITY OF HUNTSVILLE
AND THE BRAIN TRUST FOUNDATION

This License Agreement (the "Agreement") is entered into this 11th day of May, 2023, by and between the City of Huntsville, a municipal corporation in the State of Alabama (hereinafter referred to as the "City" or "Licensor"), and The Brain Trust Foundation, an Alabama Non-Profit Corporation, (hereinafter referred to as "Foundation" or "Licensee").

WHEREAS, the City has a public interest in promoting cultural and entertainment events that enhance the vitality of the downtown Huntsville area; and

WHEREAS, The Brain Trust Foundation desires to stage an annual event known as the "Crush Wine and Food Festival" to be held at Big Spring Park West, located at 200 Church Street, SW, Huntsville, Alabama 35801; and.

WHEREAS, The Brain Trust Foundation desires that the Crush Wine and Food Festival will provide an opportunity for the community to learn about Huntsville's wine and food industry; and

WHEREAS, The Brain Trust Foundation desires that a portion of the event proceeds be donated to the Foundation, a 501(c)(3) tax exempt organization dedicated to raising awareness of Parkinson's and other brain related diseases; and

WHEREAS, the City has determined that entering into this Agreement will serve a public purpose;

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

1. **Use of Premises, Timing and Road Closures.**

(a) Subject to the terms and conditions of this License Agreement, the City hereby grants Licensee a license to utilize that portion of Big Spring Park West, located at 200 Church Street, Huntsville, AL 35801, which is shown on the map attached hereto and incorporated herein by reference as **Exhibit A**, hereinafter referred to as the "Premises" to be used for an event called Crush Wine and Food Festival (the "Event"), which shall be a cultural and entertainment event from which a portion of the proceeds shall be donated to The Brain Trust Foundation, a

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

501(c)(3) tax exempt organization dedicated to raising awareness of Parkinson's and other brain related diseases. The Event shall be limited to the area outlined in red on Exhibit A.

(b) Subject to subsection 1(c) concerning any approved road closures, Licensee may access the Premises for three days of Event set-up, Wednesday, Thursday, and Friday, September 20, 21, and 22, 2023, starting at 8 a.m. each morning and concluding at 10:00 p.m. each night. The Event shall commence at 12:00 p.m. on Saturday, September 23, 2023, and shall conclude no later than 8:00 p.m. on the night of Saturday, September 23, 2023. The take-down of the Event and restoration of the Premises shall begin immediately after the event and be concluded no later than 10:00 p.m. on Saturday, September 23, 2023. Take down of the Event and restoration of the premises will resume at 8 a.m. on Sunday, September 24, 2023, and will conclude no later than 10 p.m. Sunday night.

(c) Any road closings shall be as set forth in the special event permit issued by the Huntsville Police Department for the Event.

2. Security. Licensee shall be responsible for the provision of security within the Premises during the period of the Agreement.

(a) The City of Huntsville Police Department may require Licensee to hire off-duty City of Huntsville Police officers through the Huntsville Police Department to provide security services for the Event. Licensee shall hire the number of officers and supervisory personnel as recommended for the Event by the Huntsville Police Department.

(b) In the alternative, at its sole cost and expense, Licensee may hire private security for the Event, if approved by the Huntsville Police Department.

(c) Licensee agrees that, at any time, the Huntsville Police Department may require that the Event be canceled, the conduct of the Event be modified, or prescribe such other measures that may be necessary in the event of inclement weather conditions, security issues, threats to the health or safety of the sponsors or attendees of the Event or to the general public, or otherwise for public convenience or safety.

3. Alcoholic Beverages.

(a) Licensee intends that the event will include the retail sale of alcoholic beverages for on-premises consumption. In such event, Licensee shall have secured all licensing necessary for such sale by at least one (1) week prior to the commencement date for the event unless the time specified by the state's or City's alcoholic beverage control laws requires an earlier time. Failing therein, the sale or service of alcoholic beverages shall not be permitted for the Premises.

(b) To the extent that the Event will be conducted in the Quigley Arts and Entertainment District during the regular hours that the district is open, the Event shall be subject to Section 3-27 of the Code of Ordinances of the City ("City Code") concerning Arts and Entertainment Districts. Licensee will apply for a permit to qualify as an Arts and Entertainment District Permittee pursuant to Section 3-27 of the Code of Ordinances of the City. To the extent that Licensee qualifies as an Arts and Entertainment District Permittee ("A&E Permittee") in relation to the event, it and the event shall be governed as such.

(c) In addition to the Premises, should Licensee include private property within the event area that is to be included within the area to be licensed to sell alcoholic beverages for on-premises consumption, then the Premises and the additional area shall be hereinafter referred to as the "licensed area."

(d) During any period(s) of time the Event is conducted outside the hours the Quigley Arts and Entertainment District is open, Licensee shall not allow alcohol to be taken outside of the licensed area. Licensee agrees to prevent any person from leaving the licensed area while in possession of any alcoholic beverage, unless Licensee is an A&E Permittee, and to prevent any person from bringing alcoholic beverages into the licensed area; and, to this end, the Huntsville Police Department may require security control at access points and appropriate signage.

(e) Licensee shall abide by all alcoholic beverage control laws of the state and City including the regulations of the Alabama Alcoholic Beverage Control Board. Licensee shall provide tamper-proof measures that identify persons of legal drinking age.

4. Restroom Facilities. There are no public restroom facilities located at the Premises. If restroom facilities are needed for the Event, Licensee shall provide all necessary Port-O-Lets as recommended by industry standards for the projected attendance to the Event and shall assist with placement of the Port-O-Lets in an area designated by the Licensor. Licensee shall cause Port-O-Lets to be removed no later than Tuesday following the Event, by 5:00 p.m. At least some of the units must meet ADA standards for accessibility

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 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.

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. 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.

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 and to sell and serve food on the Premises. 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. 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. Fee. Licensee shall pay to the City the sum of Two Thousand and No/100 Dollars (\$2,000.00) for use of the Premises.

15. 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.

16. 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.

17. 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**

Shaundrika Edwards
City Clerk

By: _____
Tommy Battle, Mayor

**LICENSEE:
THE BRAIN TRUST FOUNDATION**

By: _____
Its: _____

Spring Park



Pane E Vino Pizzeria
Pizza \$5

Huntsville
Museum of Art
Permanent &
rotating art exhibits

North Gate

South Gate

Old Market Monument



Williams Ave SW

