



HUNTSVILLE

The Star of Alabama

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number: 15.u.

Meeting Type: City Council Regular Meeting

Meeting Date: 4/11/2019

Type of Action: Approval/Action

Agenda Type: CITY COUNCIL

Subject:

Resolution authorizing the Mayor to enter into a Lease Agreement between the City of Huntsville and the Huntsville City Board of Education. (Kling)

Account Number:**City Obligation Amount:****Total Project Budget:****Other Comments:****Grant Funded:****Grant Name - Resolution #:****Resolution #:****ATTACHMENTS:**

Description

- Board of Education res
- Board of Education Lease

RESOLUTION NO. 19-_____

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, does hereby declare in accordance with Code of Alabama (1975) that the Mayor be, and is hereby authorized to enter into a Lease Agreement by and between the City of Huntsville and the Huntsville City Board of Education, 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 a "Lease Agreement between the City of Huntsville and the Huntsville City Board of Education" consisting of seventeen (17) pages and the date of April 11, 2019 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 11th day of April, 2019.

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

APPROVED this the 11th day of April, 2019.

Mayor of the City of
Huntsville, Alabama

**Lease Agreement Between the
City of Huntsville, Alabama and
the Huntsville City Board of Education**

LEASE AGREEMENT

This Lease Agreement (this “Lease”) is made and entered into on the _____ day of _____, 2019, by and between the **City of Huntsville**, a municipal corporation in the State of Alabama, hereinafter referred to as the “City,” and the **Huntsville City Board of Education**, a political subdivision of the State of Alabama, hereinafter referred to as the “Board”.

WITNESSETH:

WHEREAS, the City is the owner of a certain property located at 2800 Poplar Avenue, Huntsville, Alabama, upon which a building is situated (hereinafter the “Building”); and

WHEREAS, the Board has the need for space to house multiple educational programs; and

WHEREAS, the City desires to lease to the Board that portion of the Building highlighted in yellow on Exhibit A (the “Leased Premises”) on the terms and conditions set forth in this Lease;

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 **LEASED PREMISES**, City, in consideration of the rents, covenants, and agreements contained herein, to be paid and performed by the Board, hereby leases unto the Board the Leased Premises. The Board shall have the right to utilize the parking area in front of the school (south side of the Building) and the larger area to the east of the Building during school hours during the Term of this Lease. Both parking areas are highlighted in yellow in Exhibit B attached hereto. Although the theater is managed by the City’s Parks and Recreation Department, the Board may schedule the use of the theater at no rent with solely the standard cleaning fee assessed.

2.0 **TERM.**

The term of this Lease shall be ten (10) years and 2 months, commencing on May 1, 2019 and continuing through June 30, 2029. At the conclusion of the initial term, the Board shall have the option to extend the lease for two additional five (5) year terms upon providing written notice at least sixty (60) days prior to the expiration of the then current term of its intent to extend the term to the Mayor (with a copy to the City Attorney) and having the said request approved in writing by the Mayor. The terms and conditions of all renewal terms shall be the same as set forth

in this Lease Agreement. The Board may terminate this Lease without penalty at any time by providing the City 180 days' notice of its intent to terminate.

3.0 RENTAL. The Board's compensation to the City for use of the facility shall be proper maintenance of the facility as set forth in paragraph 6.0 of this agreement.

4.0 USE OF LEASED PREMISES. The parties agree that the Board will use and occupy the Leased Premises for the operation of educational programs and related educational purposes including extracurricular activities provided or sponsored by the Huntsville City Schools and will remain in full compliance with all applicable state, federal and local laws, regulations and ordinances. The Board shall not use the Leased Premises for any other purposes without the City's prior written consent.

5.0 QUIET ENJOYMENT. City covenants that the Board, meeting all obligations herein specified and observing the covenants hereof, shall peaceably and quietly have, hold and enjoy the Leased Premises during the term hereof and any extensions thereto.

6.0 MAINTENANCE OF LEASED PREMISES BY THE BOARD.

(a) The City shall be responsible for the maintenance of the roof, parking area, sidewalks, fire alarm and structural systems of the Leased Premises. The Board shall be responsible for all other maintenance of the Leased Premises including, but not limited to, the HVAC system, plumbing, wiring, security systems/alarms and pest control. The Board shall be responsible for all janitorial and related functions and to keep the facility in a clean and well-kept condition. The Board shall have no responsibility for any maintenance, custodial service, or cost of utilities for the theater.

(b) The Board shall not in any manner deface or injure the Leased Premises and will pay the cost of repairing any damage or injury done to the Leased Premises or any part thereof by the Board or the Board's employees, agents, contractors or invitees, ordinary wear and tear excepted. The Board agrees that it will keep the Leased Premises and the fixtures therein in clean, safe, sanitary and good order and condition and will, at the expiration or other termination of the Lease term hereof, remove all goods and effects not the property of City and at the Board's expense shall (i) promptly surrender to City possession of the Leased Premises (including keys, locks and any fixtures or other improvements which the Board 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 Board's trade or business which is not owned by the City, and (iii) pay for repairs or any damage caused by such removal.

(c) The Board shall not attach any sign to the exterior of the Leased Premises unless the design, nature, and content thereof have been approved by City, which approval shall not be unreasonably withheld. The Tenant shall at its expense maintain and repair any such sign and may upon the expiration of the term of this Lease or any renewal thereof, remove said signs. All signs shall comply with all applicable laws and ordinances.

(d) All injury to the Leased Premises caused by moving the property of the Board into, on, or out of, the Leased Premises and all breakage done by the Board, or the agents, servants, employees and visitors of the Board, shall be repaired at the expense by the Board. 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 Board. The City will invoice the Board for the costs of any such repairs, and the Board shall pay within thirty (30) days of being invoiced by the City. 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.

(e) All personal property of the Board in the Leased Premises shall be at the sole risk of the Board. City shall not be liable for any accident to or damage to the personal property of the Board resulting from the use or operation 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 Board hereby expressly releases City from any liability incurred or claimed by reason of damage to the Board's personal property, other than any liability incurred or claimed by reason of the negligence of City, its employees, agents or contractors.

(f) The City shall manage all scheduling, cleaning and routine maintenance of the theater on behalf of the Board. Theater scheduling, cleaning, and maintenance shall be accomplished by the City at no cost to the Board.

7.0 UTILITIES. The Board shall pay a proportionate share of the Huntsville Utilities fees (including water, electric current, and natural gas, and sewer) of the Building throughout the term (including any renewal terms) of this Lease. The Board's proportionate share of the utilities shall be 56% as detailed on Exhibit C attached hereto. The City's Finance Department will invoice the Board monthly for its proportionate share of the previous month's utility bill.

8.0 ALTERATIONS AND IMPROVEMENTS BY THE BOARD. Attached hereto as Exhibit "D", and initialed by the signatory for the City and by the Superintendent of the Huntsville City Schools, is the City-approved Scope of Work to be completed at the cost and expense of the Board within 120 days of the date of execution of this Lease. Other than those set forth in Exhibit "D", no alterations, additions or Improvements to the Leased Premises shall be made without first obtaining the express written consent of the City's General Services Director. 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. A representative of the City's General Services Department will conduct a walkthrough of the Leased Premises with the Board prior to the Board moving out of the Leased Premises and negotiate in good faith on what fixtures, furniture, etc. will be removed by the Board and what, if any, repairs are needed. The Board shall be responsible for the costs of any repairs agreed upon during the walkthrough.

9.0 INSURANCE REQUIREMENTS. During the term of this Lease, the Board will require all contractors providing security services on the Leased Premises to have a commercial general liability policy with a \$2,000,000.00 general aggregate limit and \$1,000,000.00 per occurrence. The said policy shall include the City of Huntsville, its officers, employees and elected officials as additional insureds.

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

11.0 CITY'S RIGHT TO LOCATE AND ACCESS IT EQUIPMENT. Inasmuch as the Leased Premises are a portion of a larger building, the City may need to locate certain IT equipment related to communication and security systems for the entire building within a small portion of the Leased Premises in the areas formerly used by previous tenants for the operation of those or similar systems. The Board shall allow the City reasonable access at all times as necessary to those systems and, all efforts will be made by the City to access and locate such equipment with as little interference as possible to the Board.

12.0 ASSIGNMENT AND SUBLetting. The Board covenants and agrees not to assign this Lease or sublet said Leased Premises or any part of same, or in any other manner transfer the Lease or the Board's leasehold interest in the Leased Premises, without the written consent of City which shall not be unreasonably withheld. In the event of such subletting or assignment, the Board nevertheless shall remain liable for all of the terms and conditions of this Lease. Any consent to a subletting or assignment shall not be deemed a consent to any subsequent subletting or assignment. The Board shall submit to City in writing the name of the proposed sub-tenant or assignee, and the intended use and terms of occupancy.

13.0 DEFAULT. In the event: (a) rent in this Lease or any other payment required hereunder to be paid by the Board is not paid at the time and place when and where due; (b) the Leased Premises shall be deserted or vacated for a period lasting more than thirty (30) consecutive days; (c) the Board shall fail to comply with any term, provision, condition, or covenant of this Lease, and shall not cure such failure within thirty (30) days after written notice to the Board of such failure to comply; (d) any petition is filed by or against the Board under any section or chapter of the National Bankruptcy Act as amended, (e) the Board shall become insolvent or make a transfer in fraud of creditors; (f) the Board shall make an assignment for benefit of creditors; (g) a receiver is appointed for a substantial part of the assets of the Board in any of such events, City shall have the option to do any one of the following, in addition to and not in limitation of any other remedy permitted by law or by this Lease:

(i) Terminate this Lease, in which event the Board shall immediately surrender the Leased Premises to City.

(ii) Enter the Leased Premises without being liable to prosecution or any claim for damages therefor, and relet the Leased Premises, and receive the rent therefor, and the Board shall pay City any deficiency that may arise by reason of such reletting (plus all expenses incurred by such reletting), on demand at the office of the City.

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

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

In the event City employs an attorney on account of the nonpayment of rent or other violation of any of the terms or conditions of this Lease by the Board, the Board shall pay all expenses incurred including a reasonable attorney's fee.

14.0 SURRENDER. Upon the termination of this Lease, the Board shall deliver up the Leased Premises in the same condition as the same were in at the commencement of the term of this Lease (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 Leased Premises by the Board, nor the delivery of possession to City, shall be deemed a surrender or an acceptance of surrender of the Leased Premises unless so stipulated in writing by City.

15.0 FIRE, OTHER CASUALTY. If a fire, casualty, or taking renders the Leased Premises or any part thereof unfit for use and occupancy as intended in this Agreement, a just and proportionate abatement of rent shall be made as of the date of such fire, casualty, or taking. If a substantial portion of the Leased Premises is damaged by fire, casualty or taking, City and the Board shall each have the right to terminate this Lease by notice given to the other party at any time within sixty (60) days after the date of such damage, casualty or taking. If City fails to restore the Leased Premises to a condition substantially suitable for use and occupancy within one hundred eighty (180) days after said fire, casualty or taking, then the Board shall have a further right to terminate this Lease by notice given to City at any time after the expiration of said one hundred eighty (180) day period, but before the completion of said repair and restoration.

16.0 MISCELLANEOUS. The parties hereto further agree as follows:

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

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

16.3 The words "City" and "Board", when used in this Lease, shall be construed as plural whenever the number of the parties to this Lease shall require.

16.4 (a) All notices or demands pursuant to the Agreement shall be in writing and shall be deemed given if personally delivered or mailed via electronic mail, first class mail, or certified mail, return receipt requested to the following addresses:

City: City of Huntsville, Alabama
615 Washington Street
Huntsville, Alabama 35801
Attention: Director of General Services
(256) 427-5660

with copy to: City Attorney's Office
Post Office Box 308
Huntsville, Alabama 35804-0308
Attention: City Attorney
(256) 427-5026

Board: Huntsville City Board of Education
Attention: Superintendent
200 White Street
Huntsville, Alabama 35801

with a copy to: Y. Albert Moore, III
Lanier Ford
2101 West Clinton Ave., Suite 102
Huntsville, Alabama 35805
Post Office Box 2087
Huntsville, Alabama 35804-2087

If either party hereto changes its address 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.

16.5 The parties further agree that this Lease 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.

16.6 It is expressly understood that this Lease 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.

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

16.8 This Lease shall be binding upon the parties, and their successors in interest.

16.9 Each party to this Lease 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 Lease, and all documents required to be delivered pursuant to this Lease and in otherwise performing the transactions contemplated by this Lease.

[SIGNATURE PAGE TO FOLLOW AS PAGE 8]

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

WITNESS:

**HUNTSVILLE CITY BOARD OF
EDUCATION,**
a political subdivision of the State
of Alabama

By: _____
Christie Finley
Its: Superintendent

CITY OF HUNTSVILLE, ALABAMA

By:
Kenneth Benion
Its: City Clerk-Treasurer

By: _____
Tommy Battle
Its: Mayor

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 Kenneth Benion, whose names as Mayor and City-Clerk Treasurer of The City of Huntsville, a municipal corporation in the State of Alabama 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 _____, 2019.

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 Christie Finley, whose name as Superintendent of THE HUNTSVILLE CITY BOARD OF EDUCATION, a political subdivision of the State of Alabama, 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, she in her capacity as such officer, executed the same voluntarily for and as the act of said political subdivision of the State of Alabama on the day the same bears day.

GIVEN under my hand and official seal this the _____ day of _____, 2019.

Notary Public

EXHIBIT A



FIELD MEASUREMENTS
CAVALRY HILL BUILDING
2800 POPLAR NW
CITY OF HUNTSVILLE
HUNTSVILLE, ALABAMA 35816



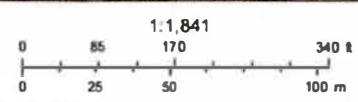
A100

EXHIBIT B

Cavalry Hill Parking Lot



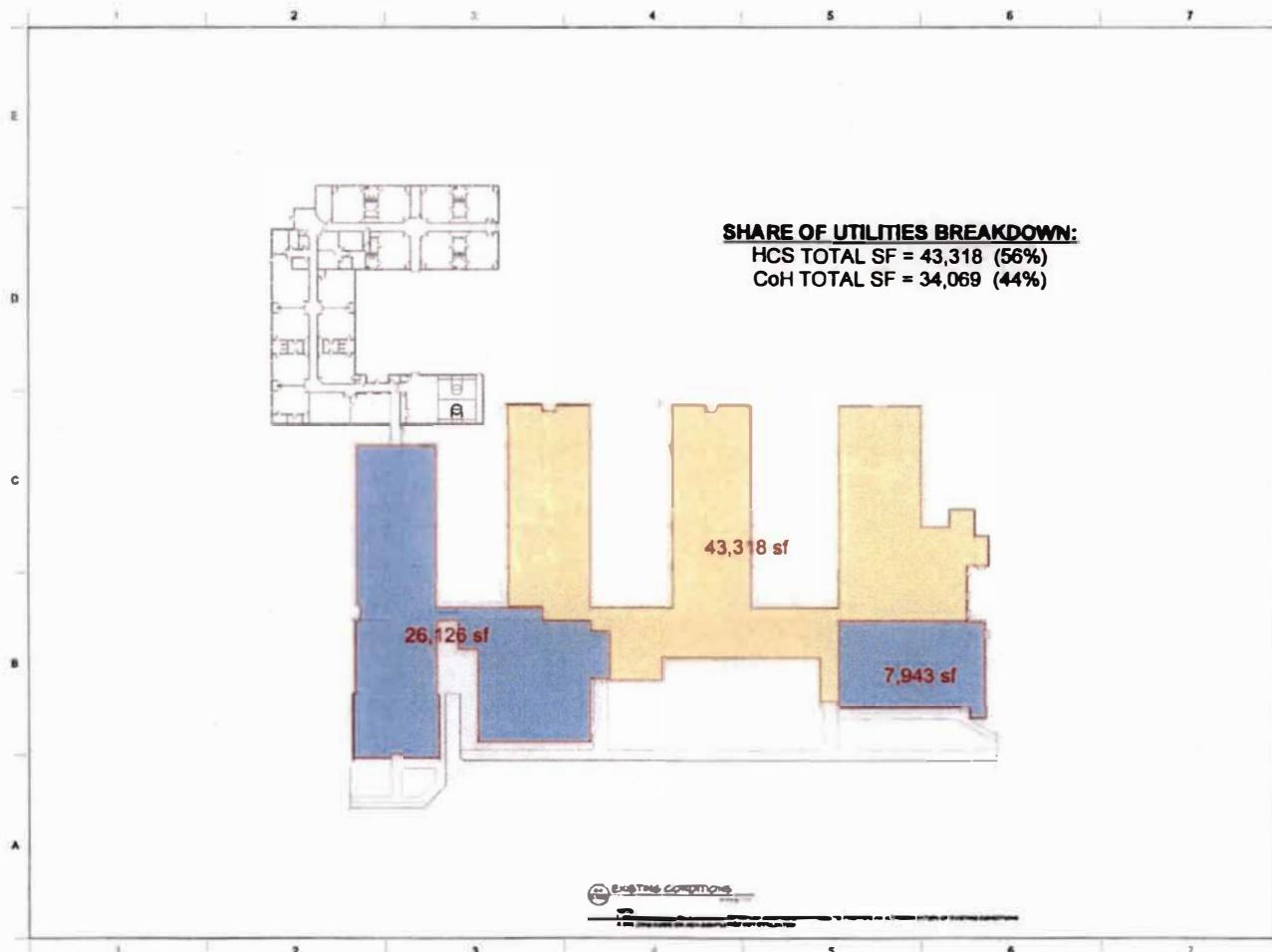
6/5/2018 11:03:46 AM



City of Huntsville, Alabama

PlanningGIS
City of Huntsville, Alabama

EXHIBIT C



E CITY OF HUNTSVILLE

D
C
B
A
FIELD MEASUREMENTS
CAVALRY HILL BUILDING
2800 POPLAR NW
CITY OF HUNTSVILLE
HUNTSVILLE, ALABAMA 35816

 PLAN NUMBER: 00000000000000000000000000000000
 DRAWN BY: JEFFREY G. COOPER
 CHECKED BY: JEFFREY G. COOPER
 APPROVED BY: JEFFREY G. COOPER
 COORDINATE FLOOR
 PLAN
A100

EXHIBIT D

Christie Finley
Superintendent



BOARD OF EDUCATION

Beth Wilder, President – District 2
Michelle Watkins, V. President – District 1
Pam Hill, 3rd Presiding Officer - District 5
Elisa Ferrell - District 3
Walker McGinnis - District 4

April 9, 2019

Mayor Tommy Battle
Huntsville City Hall
308 Fountain Circle
Huntsville, AL 35801

Dear Mayor Battle and Council Members,

I am writing you today to aid in your consideration of the Revised Cavalry Hills Lease that will be before the City Council during its April 11, 2019, meeting. On behalf of the Huntsville City Board of Education and all of Huntsville City Schools ("HCS"), I want to share our excitement for and commitment to the terms, goals, and purpose of the Revised Lease. Although the Board of Education has not yet voted to approve this document, I will recommend its approval during our April 18, 2019, Board Meeting. Based on my work with Board Members, I believe it will be approved.

However, I am a leader that believes in action and working towards the best for our students. As such, I wanted to highlight improvements that HCS has already made to the Cavalry Hills facility. The following list includes over \$137,000 worth of tasks we completed between June and August of 2018:

1. Removal of obsolete projectors and boards from classrooms;
2. Repainting of student areas;
3. Replacement of certain glass with polyurethane glass;
4. Preparation of electrical infrastructure for the three wings we are to occupy;
5. Acquiring HVAC equipment totaling approximately \$80,000;
6. Abatement of asbestos floor tile;
7. Improvements to network connectivity;
8. Began installation of security cameras, access control, and network cables; and
9. Purchase of a phone system.

The Revised Lease calls for approximately \$20,000 in additional renovations to be performed by the school system. While we are certainly committed to those enumerated renovations, I believe that the above list of renovations – performed almost a year ago – demonstrate clearly our commitment to this project. I know that this Revised Lease will provide the students of the ACE and LEAP programs a safe and positive school environment, and it will allow a few HCS administrators to relocate to Cavalry Hills to better serve those students.

I want to thank the City of Huntsville for its partnership with HCS, and I look forward to moving our students and staff in Cavalry Hills.

Best,

Christie Finley
Christie Finley, Superintendent

Post Office Box 1256 • Huntsville, Alabama 35807-4801

(256) 428-6800

www.huntsvillecityschools.org

AN EQUAL OPPORTUNITY EMPLOYER