

Introduced by _____ Council Bill No. R 159-11

A RESOLUTION

authorizing an agreement with The Curators of the University of Missouri to allow use of University property for the annual Halloween event.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF COLUMBIA, MISSOURI, AS FOLLOWS:

SECTION 1. The City Manager is hereby authorized to execute an agreement with The Curators of the University of Missouri to allow use of University property for the annual Halloween event. The form and content of the agreement shall be substantially as set forth in "Exhibit A" attached hereto and made a part hereof as fully as if set forth herein verbatim.

ADOPTED this _____ day of _____, 2011.

ATTEST:

City Clerk

Mayor and Presiding Officer

APPROVED AS TO FORM:

City Counselor

HEARNES CENTER
THE CURATORS OF THE
UNIVERSITY OF MISSOURI

USE OF FACILITIES
AGREEMENT

THIS AGREEMENT, made and entered into this ___ day of _____, by and between THE CURATORS OF THE UNIVERSITY OF MISSOURI, a public corporation, hereinafter referred to as "Owner," and City of Columbia hereinafter referred to as "Permittee."

WITNESSETH:

I

SPECIAL TERMS AND CONDITIONS

1. That under the terms and conditions hereof, the Owner grants to Permittee the use and occupancy of that portion of the Hearnes Center described as follows: **FIELDHOUSE**

2. Under this Agreement, Permittee is entitled to the use and occupancy of the above-described premises on the following dates and times: **FROM 07:00AM October 31, 2011 to 11:00PM October 31, 2011**

The granted use and occupancy of the premises is limited to the following purpose: **Halloween Activities**

3. The Permittee agrees to furnish all needed properties and everything necessary to said performance not hereinafter agreed to be furnished by the Owner under the General Terms and Conditions hereof.

4. For the use and occupancy of the above-described premises the Permittee agrees to pay a facility usage fee for the One day(1) period as follows: A fee of One Thousand Three Hundred Dollars (\$1,300.00) for agreed upon setups.

Payment of the rental will be made in the following manner: Payment of rental and expenses will be made upon receipt of the University invoice.

II

GENERAL TERMS AND CONDITIONS

5. **INDEMNITY AND INSURANCE.** The Permittee agrees to conduct its activities upon the premises so as not to endanger any person lawfully thereon and to indemnify and save harmless the Owner against any and all claims for loss, injury or damage to persons or property, including claims of volunteers of Permittee or any contractor or subcontractor of Permittee, arising from the negligent activities conducted by the Permittee, its agents, members or guests. Permittee hereby agrees to indemnify and save harmless the Owner, its officers, agents and employees from and against any and all loss of or damage to property, including property of the Owner, or injuries to or death of any person or persons and shall defend, indemnify and save harmless the Owner, its officers, agents and employees from any and all claims, damages, suits, costs, expense, liability, actions or proceedings in any way resulting from or arising out of Permittee's negligent acts in connection herewith or its performance on

the premises of Owner, including negligent acts of commission or omission of volunteers, representatives or agents of the Permittee. The Permittee agrees to carry for the full term of this agreement and at Permittee's own expense, Public Liability and Property Damage Insurance against all claims or suits as set forth above and in other provisions of this agreement in the following minimums:

Limits of Liability:	
BODILY INJURY	Not less than combined single
AND PROPERTY	of One Million Dollars
DAMAGE	(\$1,000,000.00)

The insurance policy shall name The Curators of the University of Missouri and Permittee as Additional Insureds. shall provide that "The required insurance shall not be canceled or altered except after ten (10) days written notice has been received by The Curators of the University of Missouri." The insurance policy shall provide that "The term 'the insured' is used severally and not collectively and the insurance afforded by this policy shall apply separately to each insured against whom claim is made or suit is brought; provided, however, that the inclusion herein of more than one insured shall not operate to increase the limits of the company's liability." Permittee shall furnish a certified copy of the insurance policy(s) or a certificate of insurance providing the required coverage to Owner prior to the commencement of this rental term. The required insurance shall be written by an insurance company which is reasonably acceptable to and approved by The Curators of the University.

6. **FIRE AND VIS MAJOR.** That in case the said premises or any part thereof shall be destroyed or damaged by fire or any other cause, or if any other casualty or unforeseen occurrence shall render the fulfillment of this permit by the Owner impossible, including without limitation thereto the requisitioning of the premises by the United State Government or any arm or instrumentally thereof or by reason of labor disputes, then and thereupon this permit shall terminate and the Permittee shall pay rental for said premises only up to the time of such termination at the rate herein specified and the said Permittee hereby waives any claim for damages for compensation should this permit be so terminated.

7. **CONTROL OF BUILDING.** That in rendering said space to Permittee, Owner does not relinquish the right to control the management thereof, and to enforce all the necessary and proper rules for the management and operation of the same; and that the Owner, its agents, its employees and the director of said building may enter the same and all of the demised premises at any time and on any occasion. Owner reserves the right through the director and its representatives to eject any objectionable person or persons from said building and upon the exercise of this authority through the director, agents or police officers, the Permittee hereby waives an right and all claims for damages against Owner. Unless otherwise specified in writing, Owner shall be privileged to schedule other similar events both before and after dates of this agreement without notice to Permittee.

8. **DEFACEMENT OF BUILDING.** That said Permittee shall not injure nor mar, nor in any manner deface said premises and shall not cause nor permit anything to be done whereby said premises shall be in any manner injured or marred or

defaced nor shall he drive nor permit to be driven any nails, hooks, tacks or screws in any part of said building nor shall he make or allow to be made any alteration of any kind therein. That if said premises, or any portion of said building or grounds during the term of this permit shall be damaged by the act, default or negligence of Permittee or by the Permittee's agent, volunteers, patrons or any person or persons admitted to said premises by said Permittee, the Permittee will pay to Owner upon demand such sum as shall be necessary to restore said premises to their original condition. Permittee hereby assumes full responsibility for the character, acts and conduct of all persons admitted to said building or to any portion of said building and grounds by consent of Permittee or by or with the consent of any person acting for or on behalf of said Permittee.

9. **BOX OFFICE FACILITIES AND ADMISSION CONTROL.** Only employees under the direct control and supervision of Owner shall be **permitted use of** box office facilities. All ticket sales must be done through owners box office , Permittee shall not admit or permit to be admitted numbers of persons to said building or to any portion of said buildings and ground in excess of capacity as further provided in Section 15 herein.

10. **EXHIBITORS.** In the event that the above-described portion of said building is not vacated by Permittee on the date named at the end of the term for which said portions of building are to be used by Permittee in accordance with this agreement, the Owner shall be and is hereby authorized to move from said building at the expense of the Permittee, goods, wares, merchandise and property of any and all kinds and description which may be then occupying the portion of said building on which the term of the permit has expired, and said Owner shall not be liable for any damages or losses to said goods, wares, merchandise or other property which may be sustained, either by reason of such removal or the place to which it may be removed and the Owner is hereby expressly released from any and all claims for damages of whatever kind or nature. For such additional period beyond the term of this agreement as any effects of Permittee may so remain in the building, Owner shall be entitled to charge the sum per day as provided in this agreement as the payment to be made for time for move in and move out. Provided Owner's own use of the premises is not adversely affected, Permittee will be notified and granted a reasonable length of time to remove such effects before any of the foregoing actions are taken. It will be mutually agreed upon as to what is reasonable. Notwithstanding the above, it is understood between the parties that Permittee's event does not include exhibitors.

11. **ELECTRICITY.** Multiple plugs such as twin sockets, cube taps, etc., will not be permitted. Any such connections found will of necessity be rewired to conform with Owner and fire regulations. All exhibitors' electrical equipment shall be properly wired and meet Fire Underwriters specifications.

12. **WATER.** Owner agrees to furnish water by means of the appliances installed for toilet or janitor purposes, but for no other purpose, unless otherwise specifically provided for in this agreement. Water closets and water apparatus will not be used for any other purpose other than for which they are constructed and no sweepings, rubbish, rages, paper or other substances shall be thrown herein. Any damage resulting to them on account of misuse of any nature or character whatever shall be repaired by Permittee to satisfaction of Owner.

13. **HEAT AND AIR CONDITIONING.** The Owner agrees to furnish heat or air conditioning for said premises. The provision concerning air conditioning is not applicable to the Fieldhouse portion of the Hearnes Center.

14. **LAW OBSERVANCE.** The Permittee agrees that every member connected with Permittee's use of said building and/or grounds and parking area shall abide by, conform to and comply with all the laws of the United States and the State of Missouri and the rules and regulations of The Curators of the University of Missouri for the management of said building and/or grounds and parking areas, and if the attention of said Permittee is called to such violation on the part of Permittee or any personnel employed by or admitted to said premises by said Permittee, said Permittee shall immediately desist from and correct such violation.

15. **SEATING CAPACITY.** That in no event shall tickets to any concert, entertainment, exhibition or athletic competition or any other use being made of said premises by Permittee, be sold or disposed of in excess of seating capacity of the house. That Permittee shall not admit to said premises a larger number of persons than can safely and freely move about in said areas and the decision of the Owner in this respect shall be final. Further, that Permittee will permit no chairs or movable seats to be or remain in the passageways and will keep all passageways clear at all times; that no portion of the sidewalks, grounds, entries, passages, vestibules, halls, elevators, abutting streets and all ways of access to public utilities of said building shall be obstructed by Permittee or used for any other purpose than for ingress to and egress from the demised premises.

16. **CONCESSIONS.** Owner reserves all rights not specifically granted to Permittee under the terms hereof, including but not limited to the sole right to sell or give away librettos, flowers, refreshments, cigars, cigarettes, candies, sandwiches, periodicals, and other merchandise, to control programs and to supervise the contents thereof, to take photographs and other privileges and the Permittee shall not engage in or undertake the same of any of the aforesaid or similar activities or privileges without the written consent of the Owner.

17. **FREE SAMPLES.** Neither Permittee, nor Permittee's exhibitors shall give away or sell items under the terms of this agreement without written permission from the owner; provided, however, that Permittee shall be permitted to distribute literature free of charge to its attendees.

18. **SIGNS AND POSTERS.** That said Permittee will not post or exhibit nor allow to be posted or exhibited signs, advertisements, showbills, lithographs, posters, or cards of any description inside or in front of or on any part of said building or grounds and parking areas except in the regular locations provided by Owner thereof, and will use post or exhibit only such signs, advertisement, showbills, lithographs, posters, or cards upon said billboard as related to the performance or exhibition to be given in the demised premises and for such period of time as designated by Owner. That Permittee shall take down and remove forthwith all signs, advertisements, showbills, lithographs, posters or cards of any description objected to by said Owner or its director. That Permittee further agrees not to allow any advertising media in advertising the event for which Permittee is granted this permit to imply that the Owner or The Curators of the University of Missouri is sponsoring such event.

19. **LOST ARTICLES.** That Owner shall have the sole right to collect and have custody of articles left in the building by persons attending any performance, exhibition or entertainment given or held in the demised premises and the Permittee or any person in Permittee's employ shall not interfere with the collection or custody of such articles.

20. **RADIO AND TV.** It is further covenanted and agreed that Permittee shall have the exclusive right to negotiate and enter into agreements for the granting of radio and television rights in connection with the staging of any game, performance or event under the terms of this permit, providing that prior consent is obtained from the Owner and further, that any and all revenue from said radio, television or other rights so granted, whether live, transcribed or filmed, shall be included in the gross receipts for such game or event in the same manner as the receipts from ticket sales and Owner shall be entitled to the same percentage thereof.

21. **RESPONSIBILITY FOR PROPERTY IN BUILDING.** Owner assumes no responsibility whatever for any property placed in said building and Owner is hereby expressly relieved and discharged from any and all liability for any loss or damage to property that may be sustained by reason of the occupancy of said building or any part thereof under this permit.

22. **CARE OF FACILITIES.** Permittee agrees to cause premises to be kept clean and generally cared for during said term.

23. **ASSIGNMENTS.** Permittee shall not assign this permit nor suffer any use of said premises other than herein specified.

24. **RE-ENTRY BY OWNER.** That if said premises or any part thereof shall become vacant during that said term, the said Owner or its representative may enter the same either by force or otherwise without being liable for any prosecution therefore, and may at its own option re-rent the said premises as the agent of said Permittee and receive the rent therefore, applying the same first to payment of such expense as may be incurred in re-entering the re-renting said premises and then to the payment of the rent due by these presents. Nothing herein contained shall be construed as imposing any obligation on the Owner to so re-rent or attempt to re-rent the same premises or in any way affect the obligation of the Permittee to forfeit its down payment for its use of facilities in case said premises shall not be so re-rented.

25. **DEFAULT BY PERMITTEE.** That the said Permittee further covenants that if any default is made in the payment of the rent or any part thereof at the times above specified, or any default is made in the covenant or agreement herein contained, this permit and the relationship of the parties at the option of the Owner shall cease and terminate and the relationship of the parties shall be the same in all respects as if said term had fully expired, and said Owner may re-enter the said premises and hold the same, remove all persons therefrom and resort to any legal proceedings to obtain such possession.

26. The Owner and the Permittee hereby agree, stipulate and recognize that in the entering of this Permit they are not in any way partners, co-partners or in any way jointly interested in any mutual enterprise but are to each other landlord and tenant respectively, and occupy that status only.

27. Smoking is prohibited in the building. The Permittee and his agents are required to assist in enforcing this regulation.

IN WITNESS WHEREOF, the parties have hereunto executed this agreement in duplicate the day and year first above written.

CITY OF COLUMBIA, MISSOURI

By: _____
Mike Matthes, City Manager

ATTEST:

Sheela Amin, City Clerk

APPROVED AS TO FORM:

Fred Boeckmann, City Counselor

CERTIFICATION: I certify that this contract is within the purpose of the appropriation to which it is to be charged, that is, Account No. 552-5510-602.13-01, and there is an unencumbered balance to the credit of such appropriation sufficient to pay therefor.

By: John Blattel, Director of Finance

THE CURATORS OF THE UNIVERSITY OF MISSOURI

By: _____
Jacquelyn Jones
Director, Business Services

ATTEST:

FOR ICA OFFICE USE ONLY

Mike Alden _____

Tim Hickman _____

Roger Crumpton _____

Source: Mike Hood 

FISCAL and VISION NOTES:

Agenda Item No. _____

TO: City Council
FROM: Mike Hood
DATE: September 12, 2011 
RE: MU Halloween Agreement

City Fiscal Impact Enter all that apply:	
\$1300	City's current net FY cost.
\$1300	Amount of Funds Already appropriated
\$0	Amount of budget amendment needed
\$0	Estimated 2 yr net costs: One-time
\$0	Operating / On-going
Program Impact:	
N	New program/ agency (Y/N)
N	Duplicates/expands an existing program (Y/N)
N	Fiscal impact on any local political subdivision (Y/N)
Resources Required:	
N	Requires add'l FTE personnel? (Y/N)
N	Requires additional facilities? (Y/N)
N	Requires additional capital equipment? (Y/N)
Mandates:	
N	Federal or state mandated? (Y/N)
Vision Implementation Impact Enter Below All That Applies: Refer to Website:	
Y	Vision Impact? (Y/N or if N, go no further)
12.2	Primary Vision, Strategy and/or Goal Item#
	Secondary Vision, Strategy and/or Goal Item#
Task #	FY10/FY11 Implementation Task#

EXECUTIVE SUMMARY:

This resolution authorizes the City to enter into an agreement with the University of the Missouri for the lease of the Hearnes Center on October 31, 2011 for the annual city-wide Halloween event called "Tiger Night of Fun".

DISCUSSION:

The "Tiger Night of Fun" event held at the University of Missouri Hearnes Center dates back to the 1990's. The event is coordinated by the Columbia Parks and Recreation Department and is sponsored by MU Athletics, KPLA and other local businesses.

The Parks and Recreation Department works with local businesses, clubs and non-profit agencies (Kiwanis, MU Adventure Club, Golden Key Honor Society) to provide fun, interactive activities for the youth that attend this event. The past few years, there have been 70-80 booths for the estimated 4300 attendees.

Under the terms of this agreement, the City agrees to provide the University a Certificate of Insurance and pay a \$1300 fee for use of the facility. The fee will pay for the labor costs associated with setting up and tearing down for this event.

FISCAL IMPACT:

City agrees to pay \$1,300 out of the Recreation Services operating budget for use of the facility.

VISION IMPACT:

The annual Halloween event, "Tiger Night of Fun", addresses vision goal 12.2 which calls for Columbia's recreational needs and desires to be met through effective public and private partnerships that provide outstanding, exciting, and diverse recreational facilities and events.

SUGGESTED COUNCIL ACTIONS:

Approve the resolution authorizing the City Manager to enter into this Agreement with the University of Missouri.