

RESOLUTION NO. 26091

A RESOLUTION AUTHORIZING THE ADMINISTRATOR OF THE DEPARTMENT OF EDUCATION, ARTS & CULTURE TO NEGOTIATE AND ENTER INTO A LICENSE AGREEMENT WITH CHATTANOOGA PUBLIC MARKET, INC. FOR OKTOBERFEST ON SATURDAY, OCTOBER 24, 2009, TO BE HELD AT RENAISSANCE PARK, COOLIDGE PARK, WALNUT STREET BRIDGE, AND BLUFF VIEW.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That the Administrator of the Department of Education, Arts & Culture to negotiate and enter into a License Agreement with Chattanooga Public Market, Inc. for Oktoberfest on Saturday, October 24, 2009, to be held at Renaissance Park, Coolidge Park, Walnut Street Bridge, and Bluff View.

ADOPTED: October 6, 2009

/mms

LICENSE AGREEMENT

THIS AGREEMENT, made and entered into by and among the CITY OF CHATTANOOGA, TENNESSEE, a municipal corporation of the State of Tennessee (hereinafter referred to as "Licensor"), and CHATTANOOGA PUBLIC MARKET, INC. (hereinafter referred to as "Licensee").

W I T N E S S E T H:

1. PREMISES. That in consideration of the covenants and agreements herein expressed and of the faithful performance by the Licensee of all such covenants and agreements, Licensor does hereby demise, License, and assign unto the Licensee and the Licensee does hereby rent and take as Licensee and assign all of the Licensor's interests and rights for the use of the real property lying in the City of Chattanooga, Hamilton County, Tennessee, known as Walnut Street Bridge and Coolidge Park. All of the property described herein above shall be known as the "Licensed Area." The Licensed Area shall not include the Tennessee Aquarium Plaza, generally bounded by Riverfront Parkway, Chestnut Street, Second Street and Market Street.
2. RENT. As a City sponsored event, Licensee shall pay to Licensor and Licensor shall accept from Licensee as rental the amount of Zero Dollars. As additional rent, Licensee shall keep and maintain the demised premises clean and in good repair and shall keep and maintain any improvements thereon clean and in good repair.
3. PAYMENTS TO LICENSOR. Licensor will receive eighty percent (80%) of all sales fees and vendor fees collected from use of Coolidge Park by Licensee and Licensor will receive twenty percent (20%) of all sales fees and vendor fees collected from use of Walnut Street Bridge. Sales fees shall include _____. Vendor fees shall include _____ for any vendor not selling food or beverages.
4. TERM. The term of this License (the "License Term") shall be for Saturday October

24, 2009 and Sunday October 25, 2009. For the period of October 24, 2009 through October 25, 2009, Licensee shall have the exclusive control of the Licensed Area to produce the 2009 Renaissance Oktoberfest Festival including, without limitation, non-exclusive advertising and sponsorship activities, various entertainment events, artistic activities, and solicitation of vendors for the event.

5. REPAIRS, MAINTENANCE AND IMPROVEMENTS. This agreement is made and entered into upon the following express covenants and conditions, all and every one of which the Licensee hereby covenants and agrees to and with the Licensor to keep and perform;

(a) That the Licensee will cause the Licensed Area to be kept clean and generally cared for during said term, excepting as otherwise provided.

(b) That Licensee will quit and surrender up said premises to the Licensor at the end of the License Term in the same condition as the date of the commencement of this License, ordinary use and anticipated wear thereof excepted, and excepting as otherwise provided in this License.

6. INDEMNITY, LIABILITY, AND LIABILITY INSURANCE. The Licensee shall provide a comprehensive liability insurance policy naming the City of Chattanooga as an additional insured to protect the Licensee and the City against all claims for injuries to members of the public and damage to property of others arising out of the use of the Licensed Area during the term of the License. The liability limits shall not be less than;

Bodily Injury	\$ 1,000,000.00 to each person \$1,000,000.00 each occurrence
Property Damage	\$ 1,000,000.00 each occurrence

That the Licensee agrees to save the Licensor, its officers, agents, employees, successors, and

assigns, harmless and to indemnify them against any and all claims or liability for any claims, actions, causes of action, suits or demands of any sort for damages on account of personal injuries or injuries to property related to or arising out of the use of the premises by the Licensee or any of its exhibitors, officers, agents, employees, successors, assigns, licensees, or independent contractors.

7. ASSIGNMENT OR SUBLETTING. The Licensee has represented to Licensor that it desires and does License the Licensed Area for the sole purpose of producing the "2009 Renaissance Oktoberfest Festival" and for no other purpose and does therefore, covenant and agree not to assign this License or sublet the premises for any other purpose than the production of said Festival.

8. USE OF PREMISES. During the period of exclusive control herein defined, the Licensee shall have the right to control access and restrict the use of the Licensed Area to patrons of the Festival and participants therein. The Licensee shall have the duty of providing its own personnel to control the points of public access. The Licensor shall provide one or more park police officers or regular police officers to help secure and patrol the area provided that they shall not be used for the purposes of controlling patron access to the Licensed Area. The Licensee shall be solely responsible for controlling access to the Licensed Area, including but not limited to controlling the area for purposes of alcohol consumption.

9. ADDITIONAL LICENSEE OBLIGATIONS. The Licensee shall be solely responsible and shall make available reasonable facilities for the health, sanitation, fire, police, and utility services needed by the patrons of the Festival. This shall include, without limitation, the provision of adequate water, portable toilets, a first-aid station, emergency telephone or communication facilities, security guards, and fire protection.

10. CONCESSIONS/PERMITS. It is understood and agreed that Licensee may have concession booths for the sale of beer and other alcoholic beverages for the use of its adult patrons.

The Licensee shall procure all necessary permits therefore, and shall comply with all applicable laws and regulations. Licensee specifically agrees to carefully monitor all sales or consumption of such alcoholic beverages to preclude the sale to use by minors or intoxicated persons.

11. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS. Licensee will comply with all laws of the United States and of the State of Tennessee, all ordinances of the City of Chattanooga, all relevant resolutions of Hamilton County, Tennessee, and all rules and regulations of the police and fire departments or other municipal authorities of the City of Chattanooga and Hamilton County, Tennessee, and will obtain and pay for necessary permits and licenses, and will not do or suffer to be done anything on said premises during the term of this License in violation of any such laws, ordinances, rules or requirements, and if the attention of said Licensee is called to any such violation on the part of Licensee or of any person employed by or admitted to said premises by Licensee, Licensee will immediately desist from and correct such violation.

That Licensee shall not, without express permission of Licensor, make any permanent improvements to the Licensed Area and such approval or disapproval shall not be unreasonably delayed or withheld.

12. NUISANCES. Licensee covenants and agrees not to create or suffer to be created or maintained on the Premises Area any nuisances.

13. BREACH OF CONTRACT. In the event of any breach of any of the terms or provisions of this agreement, Licensor shall, in addition to all other recourse, have the right to immediately terminate this agreement, to enter and obtain possession of the entire premises, and to remove and exclude all property of the Licensee therefrom. If it should become necessary for the Licensor to employ an attorney to assist any right or enforce any obligation under this agreement, or

any of them, Licensor shall be entitled to recover, in addition to all other costs and expenses, the reasonable costs and charges of such attorney.

14. ENTIRE AGREEMENT. This License Agreement contains all of the agreements between the parties herein and may not be modified in any manner unless by agreement in writing signed by the parties hereto or their respective successors in interest.

15. SEVERABILITY. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal or in conflict with an applicable law, the validity of the remaining provisions of this Agreement shall not be affected thereby.

16. NON-DISCRIMINATION PROVISION. Licensee agrees to comply with all federal, state and local non-discrimination provisions that the City of Chattanooga is under a duty to comply with under federal, state or local law when utilizing this City facility. Licensee agrees not to discriminate against any participant on the basis of race, color, religion, sex, age or national origin. Licensee further agrees to comply with all federal, state and local laws regarding treatment and accommodations for individuals with disabilities.

IN WITNESS WHEREOF, the Parties hereto have caused their duly authorized representatives to execute this Agreement on their respective behalf on this _____ day of October, 2009.

ATTEST:

CITY OF CHATTANOOGA, TENNESSEE

ATTEST:

CHATTANOOGA PUBLIC MARKET, INC.