

RESOLUTION NO. 29543

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A FIRST AMENDMENT TO LEASE AGREEMENT, IN SUBSTANTIALLY THE FORM ATTACHED, WITH THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC RAILWAY COMPANY FOR THE CONTINUED OPERATION OF A 0.77 ACRE PARK, IDENTIFIED AS RIVERSIDE PARK LOCATED AT 1004 CRUTCHFIELD STREET, TAX PARCEL NO. 136C-G-001, FOR AN AMOUNT OF SIX HUNDRED DOLLARS (\$600.00) PER YEAR SUBJECT TO AN ANNUAL INCREASE BASED UPON THE CONSUMER PRICE INDEX.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That the Mayor is hereby authorized to execute a First Amendment to Lease Agreement, in substantially the form attached, with the Cincinnati, New Orleans and Texas Pacific Railway Company for the continued operation of a 0.77 acre park, identified as Riverside Park located at 1004 Crutchfield Street, Tax Parcel No. 136C-G-001, for an amount of \$600.00 per year subject to an annual increase based upon the consumer price index.

ADOPTED: July 17, 2018

/mem



FIRST AMENDMENT TO LEASE AGREEMENT

THIS FIRST AMENDMENT TO LEASE AGREEMENT (this "Amendment") is made as of the _____ day of _____, _____ by and between THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC RAILWAY COMPANY, an Ohio corporation (the "Landlord") and CITY OF CHATTANOOGA, a Tennessee government municipal corporation (the "Tenant").

WITNESSETH:

WHEREAS, Landlord and Tenant entered into that certain Lease Agreement dated December 5, 2014 (as amended, the "Lease"), for real property located at Milepost 334.51 in Chattanooga, Hamilton County, Tennessee, having an area of 33,750 square feet, more or less (the "Premises");

WHEREAS, Landlord and Tenant agree that the milepost 240-A referenced in the original lease document was incorrect, and the correct milepost for the real property is located at 334.51 in Chattanooga, Hamilton County, Tennessee.

WHEREAS, Landlord and Tenant desire to modify the rental payable by Tenant under the Lease and to make certain other changes to the Lease as hereinafter stated.

NOW THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Lease is hereby amended, and the parties hereto do agree as follows:

1. Adjustment of Base Rental. Commencing on December 5, 2018 (the "Commencement Date"), Tenant shall pay unto Landlord, without offset, abatement or demand, base rental in the amount of SIX HUNDRED AND 00/100 DOLLARS (\$600.00) per annum, payable in advance. Landlord shall send Tenant an annual invoice forty-five (45) days before the base rental is due. Commencing on the first anniversary of the Commencement Date and thereafter on each anniversary thereof during the term of the Lease, the amount of the base rental shall be increased (and not decreased) on an annual basis by the percentage of increase, if any, in the United States, Bureau of Labor Statistics Consumer Price Index for All Urban Consumers (CPI-U)(1982-1984 = 100) U.S. City Average, All Items (the "Index") as set forth below. If the Index has changed so that the base year differs from that used in this Paragraph, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics, to the 1982-84 base. If the Index is discontinued or revised during the term of the Lease, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised. The "Adjustment Date" shall mean the first anniversary of the Commencement Date and each anniversary thereof during the term of the Lease. The Index published nearest to the Commencement Date shall be the "Base Index". The Index published nearest to the date three (3) months prior to the then current Adjustment Date shall be the "Adjustment Index". On each Adjustment Date, the base rental shall be adjusted by multiplying the base rental payable under the Lease at the Commencement Date by a fraction, the numerator of which fraction is the applicable Adjustment Index and the denominator of which fraction is the Base Index. The amount so determined shall be the base rental payable under the Lease beginning on the applicable Adjustment Date and until

the next Adjustment Date (if any).

2. **Notice.** Any notice given pursuant to the Lease shall be in writing and sent by certified mail, return receipt requested, by hand delivery or by reputable overnight courier to:

(a) **Landlord:** c/o Director Real Estate, Norfolk Southern Corporation, 1200 Peachtree Street, NE – 12th Floor, Atlanta, Georgia 30309-3579 or at such other address as Landlord may designate in writing to Tenant.

(b) **Tenant:** City of Chattanooga, Real Property of ECD, 100 East 11th Street, Suite G4, Chattanooga, Tennessee 37402, or at such other address as Tenant may designate in writing to Landlord.

Any notice sent in the manner set forth above shall be deemed delivered three (3) days after said notice is deposited in the mail if sent by certified mail (return receipt requested), or upon receipt if sent by hand delivery or reputable overnight courier. Any change of notice address by either party shall be delivered to the other party by the manner of notice required hereby.

3. **Ratification; Successors and Assigns.** Landlord and Tenant acknowledge and agree that the Lease, as amended by this Amendment, is hereby ratified and confirmed and in full force and effect. This Amendment shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have executed this Amendment in duplicate, each part being an original, as of the year and date first above written.

Witness: As To Landlord

Signature
Name: _____

Witness: As To Landlord

Signature
Name: _____

Witness: As To Tenant

Signature
Name: _____

Witness: As To Tenant

Signature
Name: _____

LANDLORD:

**THE CINCINNATI, NEW ORLEANS AND
TEXAS PACIFIC RAILWAY COMPANY**
an Ohio corporation

By: _____
Name: _____
Title: _____

Date of Landlord Signature: _____

[SEAL]

TENANT:

CITY OF CHATTANOOGA
a Tennessee government municipal corporation

By: _____
Name: _____
Title: _____

Date of Tenant Signature: _____

[SEAL]

