

RESOLUTION NO. 29819

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A LICENSE AGREEMENT, IN SUBSTANTIALLY THE FORM ATTACHED, WITH FRIENDS OF THE FESTIVAL, INC. FOR RIVERBEND FESTIVAL 2019, FOR THE PERIOD OF MAY 24, 2019 THROUGH JUNE 4, 2019.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, that it is hereby authorizing the Mayor to execute a License Agreement, in substantially the form attached, with Friends of the Festival, Inc. for Riverbend Festival 2019, for the period of May 24, 2019 through June 4, 2019.

ADOPTED: February 26, 2019

/mem

RIVERBEND FESTIVAL LICENSE AGREEMENT

THIS AGREEMENT, made and entered into by and among the CITY OF CHATTANOOGA, TENNESSEE (“CITY”), a municipal corporation of the State of Tennessee, the CHATTANOOGA DOWNTOWN REDEVELOPMENT CORPORATION (“CDRC”), and the RIVER CITY COMPANY (“RIVER CITY”) (collectively, the “Licensors”), and FRIENDS OF THE FESTIVAL, INC. (“Licensee”).

W I T N E S S E T H:

1. That in consideration of the covenants and agreements herein expressed and of the faithful performance by the Licensee of all such covenants and agreements, Licensors do hereby license and assign their respective properties unto the Licensee and the Licensee does hereby take as Licensee and assignee, the right to use said real property lying in the City of Chattanooga, Hamilton County, Tennessee, including Ross’s Landing Park and properties in its vicinity as shown on the map attached hereto as **Exhibit A** and including all or parts of the properties which are described in **Exhibit B** (collectively, the “Licensed Premises”) for the sole purpose of producing the Riverbend Festival (“Riverbend”). Licensors reserve unto themselves the right to remove in their sole discretion parcels located to the South of Riverfront Parkway or to the North of Riverfront Parkway in the vicinity of the Marina that may hereinafter be developed or offered for development upon ninety (90) days’ notice. The Licensed Premises shall not include those properties that are licensed to Erwin Marine, Chattanooga Riverboat, Chattanooga Water Taxi or other similar operations which may be hereafter authorized by the Licensors. The City hereby reserves reasonable ingress and egress across and through the Licensed Premises for the operation

of these businesses. Licensee agrees to take the Licensed Premises “**AS IS,**” that is at its condition as of the date of this Agreement.

2. The term of this License (the “License Term”) shall be from May 24, 2019 through June 4, 2019. For the License Term, Licensee shall, subject to limitations otherwise expressed herein, have exclusive control of the Licensed Premises to produce the “Riverbend Festival” including, without limitation, exclusive advertising and sponsorship activities, various entertainment events, sports events, artistic activities, and race events. Licensee shall have non-exclusive access to the Licensed Premises for the set-up of facilities to support Riverbend for the period during the License Term. During the License Term, certain road closures will occur as coordinated with the Chattanooga Department of Transportation. Roads shall reopen no later than 2:00 p.m. on June 3, 2019. During these periods of non-exclusive and limited control, Licensee shall take all reasonable steps to avoid disruption of normal functions in Ross’s Landing Park and to the extent practicable shall allow normal park activities. Licensee shall at all time take reasonable measures after consultation with adjoining property owners and tenants to minimize the adverse impact that Riverbend shall create for said owners and tenants. Either party with just cause may terminate the Agreement upon ninety (90) days written notice.

3. The City of Chattanooga shall waive the rental fees as set forth in Chattanooga City Code Chapter 26. The Licensee shall remain subject to all other financial obligations assumed by Licensee herein.

4. 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 Licensors to keep and perform:

- a. That Licensee will cause the Licensed Premises to be kept clean and generally cared for during said term, excepting as otherwise provided. A refundable damage deposit of TWENTY-FIVE THOUSAND AND NO/100 (\$25,000.00) DOLLARS, will be paid by the Licensee to the City for the use and benefit of all Licensors in advance on or before June 1 of each year. During Riverbend, daily inspections will be made by representatives of the Licensors and Licensee to determine damage caused by Riverbend. When the total damage is estimated, Licensee shall make up any deficiency or a refund will be issued by the Licensors;
- b. That Licensee will quit and surrender up said premises to the Licensors at the end of the License Term in the same condition as the date of the commencement of this License, ordinary use and wear thereof excepted, and excepting as otherwise provided in this License;
- c. That the Licensee agrees to save the Licensors, their officers, officials, agents, employees, volunteers, 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, including reasonable attorneys' fees, for damages on account of alleged personal injuries, injuries to property, violations of all laws, including but not limited to intellectual property laws and copyright laws, 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;
- d. The Licensee shall provide a comprehensive liability insurance policy, including liability coverage for the sale and service of alcoholic beverages, naming the City of Chattanooga, the Chattanooga Downtown Redevelopment Corporation, and River City as additional insureds to protect the Licensee and Licensors against all claims for injuries to members of the public and damage to property of others arising out of the use of the Licensed Premises during the term of the License. The liability limits shall not be less than:

Combined limits for personal injury (including death) and property damage of not less than \$1,000,000 per occurrence, with excess liability of \$4,000,000 per occurrence, for a combined coverage of \$5,000,000 per occurrence.
- e. The Licensee has represented to Licensors that it desires and does license the Licensed Premises for the sole purpose of producing the "Riverbend Festival" and for no other purpose and does, therefore, covenant and agree not to assign this License or sublet or use the premises for any other purpose than the production of Riverbend;

- f. During the period of exclusive control, the Licensee shall have the right to control access and restrict the use of the Licensed Premises to patrons of Riverbend and participants therein, subject to Licensee's responsibility to provide reasonable ingress and egress for the Marina, the Southern Belle, and any other similar activity on the waterfront that has been duly authorized by the Licensors. The Licensee shall have the duty of providing its own personnel to control the points of public access. The City may but shall not be required to provide one or more 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 Premises. The Licensee shall be solely responsible for controlling access to the Licensed Premises and for providing a reasonable quantity and quality of security personnel consistent with the agreed security plan for the 2019 event, subject to annual review by the City;
- g. Licensee shall be solely responsible and at its own cost shall make available reasonable facilities for the health, sanitation, police, and utility services needed by the patrons of Riverbend. This shall include, without limitation, the provision of adequate water, portable toilets, a first-aid station, ambulance service, emergency telephone or communication facilities, security protection, and fire protection;
- h. 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 during Riverbend. 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 or use by minors or intoxicated persons;
- i. 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;

- j. Licensee shall not, without express permission of Licensors, make any permanent improvements to the Licensed Premises and such approval or disapproval shall not be unreasonably delayed or withheld;
- k. Licensee covenants and agrees not to create or suffer to be created or maintained on the Licensed Premises any nuisances;
- l. Notwithstanding any other provisions of this License, Licensee shall be responsible for damage to or destruction of the statue “Cherokee” located within Ross’ Landing Park and Plaza only if such damage or destruction is caused by the negligence of Licensee;
- m. Licensee shall be responsible for the payment of utility expenses during Riverbend within thirty (30) days of having been billed for same;
- n. Licensee shall be responsible for reimbursing the City for the cost of trash and recyclable material pick-up and disposal from the site within thirty (30) days of having been billed for same;
- o. All layouts of structures, stages, equipment, vendors, vehicles, etc. shall be reviewed and approved by the appointed representative for the City of Chattanooga and if any structure is placed upon property owned by River City or the CDRC, the placement of said structures must be approved by a River City or CDRC representative. The CDRC designates the appointed agent(s) of the City to act on its behalf with respect to this sub-section. Any changes made to this layout will also be reviewed and approved prior to placement;

5. Miscellaneous.

- a. 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 in the Program 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.
- b. Audit Provisions. The City or its assign may audit all financial and related records (including digital) associated with the terms of the contract or agreement including timesheets, reimbursable out of pocket expenses, materials, goods, and equipment claimed by the Licensee. The City may further audit any Contractor’s records to conduct performance audits (to

identify waste and abuse or to determine efficiency and effectiveness of the contract or agreement) or to identify conflicts of interest.

The Licensee shall at all times during the term of the contract or agreement and for a period of seven (7) years after the end of the contract, keep and maintain records of the work performed pursuant to this Agreement or Agreement. This shall include proper records of quotations, contracts, correspondence, invoices, vouchers, timesheets, and other documents that support actions taken by the Licensee. Documents shall be maintained by the Licensee necessary to clearly reflect all work and actions taken. All such records shall be maintained in accordance with generally accepted accounting principles. The Licensee shall at its own expense make such records available for inspection and audit (including copies and extracts of records as required) by the City at all reasonable times and without prior notice.

The obligations of this Section shall be explicitly included in any subcontracts or agreements formed between the Licensee and any subcontractors or suppliers of goods or services to the extent that those subcontracts or agreements relate to fulfilment of the Licensee's obligations to the City.

Costs of any audits conducted under the authority of this section and not addressed elsewhere will be borne by the City unless the audit identifies significant findings that would benefit the City. The Licensee shall reimburse the City for the total costs of an audit that identifies significant findings that would benefit the City.

This Section shall not be construed to limit, revoke, or abridge any other rights, powers, or obligations relating to audit which the City may have by Federal, State, or Municipal law, whether those rights, powers, or obligations are express or implied.

IN WITNESS WHEREOF, the City of Chattanooga, Tennessee, the Chattanooga Downtown Redevelopment Corporation, and the River City Company have caused this Agreement to be signed by duly authorized officers as of this ____ day of _____, 2019.

CITY OF CHATTANOOGA

FRIENDS OF THE FESTIVAL, INC.

BY: _____
Andy Berke, Mayor

BY: _____
D. C. Baker, Executive Director

CHATTANOOGA DOWNTOWN
REDEVELOPMENT CORPORATION

RIVER CITY COMPANY

BY: _____
Daisy W. Madison, President

BY: _____
Kim H. White, President