

RESOLUTION NO. 29895

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A MEMORANDUM OF UNDERSTANDING, IN SUBSTANTIALLY THE FORM ATTACHED, WITH RIVER CITY COMPANY FOR NON-EXCLUSIVE RIGHTS TO SPONSOR EVENTS AT MILLER PARK UP TO FIFTY THOUSAND DOLLARS (\$50,000.00) PER YEAR FOR A PERIOD OF FORTY (40) YEARS IN EXCHANGE FOR RAISING FUNDS FOR THE RENOVATION OF MILLER PARK.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, that it is hereby authorizing the Mayor to enter into a Memorandum of Understanding, in substantially the form attached, with River City Company for non-exclusive rights to sponsor events at Miller Park up to \$50,000.00 per year for a period of forty (40) years in exchange for raising funds for the renovation of Miller Park.

ADOPTED: April 23, 2019

/mem

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“MOU”) is entered into by and between the City of Chattanooga, Tennessee (the “City”), a Tennessee municipal corporation and River City Company, a Tennessee nonprofit corporation (“River City”) (collectively, the “Parties”) on _____, 2019 (the “Effective Date”).

RECITALS

WHEREAS, River City works with the City to support economic development for Downtown Chattanooga, as well as social and cultural growth for Downtown Chattanooga; and

WHEREAS, the City has completed a renovation of the City’s Miller Park (“Miller Park”) for use by the public as an outdoor venue for entertainment and other public purposes; and

WHEREAS, River City has been instrumental in the renovation of Miller Park through its fundraising efforts by receiving over \$2,715,000 in donations from area businesses and philanthropic organizations; and

WHEREAS, River City and City acknowledge and agree that the City charges certain fees for the use of Miller Park as set forth in Ordinance No. 13363; and

WHEREAS, in consideration of River City’s fundraising campaign for the renovation of Miller Park, the City desires to appropriate the sum of Fifty Thousand Dollars (\$50,000.00) to River City to be used for the waiver of park fees for events sponsored by River City.

NOW THEREFORE, in consideration of River City’s fundraising efforts and other good and valuable consideration, the Parties agree as follows:

1. **Incorporation of Recitals.** The representations, covenants, and recitations set forth in the foregoing recitals are material to this MOU and are hereby incorporated into and made a part of this MOU as if fully set forth in this Paragraph 1.

2. **Appropriation of Funds.** In exchange for raising funds in the amount of \$2,715,000 for the renovation of Miller Park, the City agrees that River City will have the nonexclusive right to sponsor events at Miller Park to the extent that such events do not conflict with the provisions contained in that certain Marketing Agreement effective May 29, 2018, a copy of which is attached hereto as **Exhibit A** and incorporated by reference. Subject to budgetary constraints, the City agrees to appropriate the sum of Fifty Thousand Dollars (\$50,000.00) per year

to River City for a period of forty (40) years to be used for events sponsored by River City and held in Miller Park.

3. **Donors.** The Parties acknowledge and agree that multiple donors donated funds to River City for the renovation of Miller Park as shown on **Exhibit B** (the “Donors”), and that River City will be allowed to award fee waivers to the Donors in such manner as River City deems equitable.

4. **Term.** The term of this MOU shall commence on the Effective Date and shall be for a period of forty (40) years. The City may terminate this MOU at any time following River City’s award of fee waivers totaling \$2,000,000 or due to budgetary constraints. City shall give River City written notice of its intention to terminate, and such notice shall be received at least twenty (20) days prior to the termination date.

5. **Annual Reporting Requirements; Appropriation of Funds.** River City shall comply with all federal, state, and local laws governing annual reporting requirements of River City’s business affairs and transactions, which includes without limitation compliance with T.C.A. § 6-54-111 and Chattanooga City Code Sec. 2-526 as to City of Chattanooga appropriations, outlining the procedures for receiving appropriations from governmental entities. All reports required by state and local law shall be submitted by March 1 of each year during the term of this MOU. During the term of this MOU, River City must, within ninety (90) days after the end of each fiscal year submit to the City a copy of its annual audited financial report for that fiscal year. For the purposes of this section, the amount of funds deemed appropriated under this MOU shall be the sum of Fifty Thousand and No/100 Dollars (\$50,000.00).

6. **Records Retention and Audit.**

a. All records relating in any manner whatsoever to this MOU, or any designated portion thereof, which are in the possession of River City or any of River City’s independent contractors, associates, and/or subcontractors, shall be made available for inspection and copying upon written request to the City. Additionally, said records shall be made available upon request by the City to any state, federal or other regulatory authorities and any such authority may review, inspect and copy such records. River City shall maintain and protect these records for no less than seven (7) years after the expiration of sooner termination of this MOU, or for any longer period of time as may be required by applicable law, good professional practice, and upon notice during the pendency of any claims or litigation arising from this MOU.

b. The City, or its assigns, may audit all financial and related records (including digital) associated with the terms of this MOU. The City may further audit any of River City’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. All such records shall be maintained in accordance with general accepted accounting principles. River City 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.

c. 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. River City will reimburse the City for the total costs of an audit that identifies significant findings that would benefit the City.

d. 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.

7. **Notices.** All notices and other communications given hereunder by the Parties shall be in writing and shall be delivered personally or by mail, postage prepaid, and the date of any notice by certified mail shall be deemed the date of certification thereof delivered by or addressed to the Parties as follows:

City of Chattanooga, Tennessee
ATTN: _____
101 E. 11th Street
Chattanooga, TN 37402

With a copy to:
Office of the City Attorney
100 E. 11th Street, Suite 200
City Hall Annex
Chattanooga, TN 37402

River City Company
ATTN: _____
850 Market Street
2nd Floor Miller Plaza
Chattanooga, TN 37402

With a copy to:
Miller & Martin
ATTN: Allen L. McCallie
Volunteer Building, Suite 1200
832 Georgia Avenue
Chattanooga, TN 37402

8. Miscellaneous Provisions.

8.1. Applicable Law. This MOU shall be construed and interpreted pursuant to the laws of the State of Tennessee. Should there be any provision thereof to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the legality, validity, and enforcement of the remaining provisions shall not be affected, but shall continue in full force and effect. Any disputes between the Parties may only be submitted to a court of competent jurisdiction in Hamilton County, Tennessee.

8.2. Entire Agreement. This MOU represents and constitutes the entire understanding between the Parties and supersedes all other leases, agreements, and communications between the Parties, whether oral or written, concerning the subject matter herein. Any amendment to this MOU must be in writing and adopted by lawful resolution of the respective governing bodies to be bound thereby.


8.3. Binding Effect. The terms and conditions of this MOU shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

8.4. Headings. Section headings are for convenience of reference only and shall not limit or otherwise affect the meanings of this MOU.

[signatures on following page]

IN WITNESS WHEREOF, the parties have executed this MOU on the 26th day of March, 2019.

RIVER CITY COMPANY

By: 
Kim White, President

CITY OF CHATTANOOGA, TENNESSEE

By: _____
Andy Berke, Mayor

EXHIBIT A

MARKETING AGREEMENT

This Marketing Agreement ("Agreement") is entered into by and between the City of Chattanooga, Tennessee ("City"), a Tennessee municipal corporation and the Electric Power Board of Chattanooga, Tennessee ("EPB"), acting by and through the governing Board of the Electric Power Board of Chattanooga ("EPB") which under Section 10.31 of the City Charter has exclusive control of the assets, properties and operation of EPB.

RECITALS

A. The City is engaged in a complete renovation and rehabilitation of the City's Miller Park ("Miller Park") to enhance its use as a public place of natural beauty in an urban setting, and also as a venue for the enjoyment of outdoor entertainment and other public purposes.

B. There is to be a stage included within Miller Park for outdoor entertainment, public performances, and other presentations for residents of the City of Chattanooga as well as those of the larger community included in EPB's service area outside the City limits.

C. The entire urban block on which Miller Park is located is adjacent to an entire urban block which was purchased by EPB and on which it constructed its headquarters office building together with an attached parking garage.

D. The governing Board of EPB has concluded by action taken in its meeting of July 29, 2016, that its investment in, and the value of, its headquarters office building and parking garage, will be both preserved and enhanced by the rehabilitation, renovation and improvement of the adjacent urban block named Miller Park.

E. The governing Board of EPB also concluded that the redevelopment of a large area composed of urban blocks serves as a catalyst to achieve economic development activity, all resulting in new businesses and becoming customers of EPB to the benefit of EPB's future fiscal health; and that the renovation and rehabilitation of Miller Park will have such effects upon EPB for enhancement of development in the City.

(a) The exclusive right during the term of this Agreement for naming rights to the performance venue located in Miller Park to be named by EPB as described in this Agreement. Under this provision, unless hereafter otherwise designated by EPB, the performance venue will bear the name "EPB Community Stage" with all announcements and references during events at and on the performance venue to specify events and performances as being conducted at or on the "EPB Community Stage" or such other name as EPB shall designate and are to be so identified in any verbal announcements from the stage, communications in any media referencing the venue as a location for any kind of event, and any other communications or visual representation pertaining to the venue.

(b) Prominent signage on the venue that is clearly visible to attendees at Miller Park events, such signage to bear the EPB logo and the name "EPB Community Stage." The City or its agent will provide EPB reasonable notice and opportunity to review the final approval of the design and installation of the signage.

(c) Prominent EPB signage throughout Miller Park at appropriate places during scheduled events and performances that is clearly visible to passing pedestrian and vehicular traffic along both the Martin Luther King, Jr. Boulevard and the Market Street sides of Miller Park.

(d) EPB shall be the sole and exclusive sponsor of Miller Park and activities therein within the business categories in which EPB conducts business. During the term of this Agreement, neither the City nor its agents shall allow any business competitors or potential business competitors of EPB as sponsors of events at Miller Park, such as, for example, companies in the business of residential and commercial communications, transportation, or transmission of data or information in any form whatsoever; businesses engaged in the offering of television, telephone, internet services, home automation services, wireless communications, residential and commercial energy companies and utility or non-utility providers of energy solutions, energy equipment, energy management or consulting services for electric power distribution, electric power generation, climate control and any and all other energy related services including without limiting the generality hereof, natural gas, solar, and comparable energy generation, energy delivery, or energy management

4. **Scheduling of Events.** The City, in its governmental capacity, is solely responsible for the scheduling, permitting, regulatory and other governmental requirements for the operation and activities at Miller Park. EPB assumes no responsibility therefor.

5. **Real Property.** No right or interest shall accrue to EPB in or to the real estate that comprises Miller Park.

6. **Funding Restrictions.** The funding transfer authorized and agreed herein from EPB's Fiber Optics Division to River City as the City has directed shall be solely from the non-electric revenues of EPB, and from EPB's Fiber Optics Division. It is agreed that no electric revenue funds shall be directly or indirectly transferred by EPB hereunder to River City for the use and benefit of the City. It is provided, however, that nothing in this Agreement prohibits EPB's Electric Division or its other business units from being a beneficiary, directly, indirectly or incidental even though payments made hereunder by EPB are solely by and through revenues generated or received by the EPB Fiber Optics Division including, without limitation, internet services, video services, telephone and other telecommunications services, and any other non-electric revenues hereinafter provided by EPB. To the extent that it is determined that any funds transferred under this Agreement to River City are contrary to the provisions of the City Charter, ordinances of the City, or the statutes, the provisions, terms or covenants of any contract or bond resolution of the City or EPB, rules and regulations of the State of Tennessee as between the costs of operations of municipalities and their respective agencies, board and commissions, then in such event the City shall return to the EPB such funds or portion thereof that are determined to be invalidly or inappropriately transferred. Should the City fail to fulfill its obligations for the full term of this Agreement, then in such event the City shall return to EPB such sums or portions thereof to the extent the City's obligations under this Agreement have not been, nor reasonably will be, fulfilled.

7. **Damages, Liabilities.** The City will have the sole responsibility for the operation, maintenance and security of Miller Park. The City will indemnify and hold harmless EPB from any and all liability and damages for any third party injuries and losses occurring on or related to or arising from the City's ownership, operation, and maintenance of Miller Park, excepting any caused by the sole

With a copy to:

River City Company
Attention: President
2nd Floor, Miller Plaza
850 Market Street
Chattanooga, TN 37402

10. **Routine Administration Matters.** The City, its officers, employees and agents and EPB shall maintain regular communications with each other in accordance with methods established hereunder regarding events to be scheduled at Miller Park, and the notice provisions in this Agreement shall not apply to routine communications relative to the administration of this Agreement. The City shall provide EPB sufficient notice if there is any change to the signage provided by the City as required in this Agreement. Administration, operation and management of Miller Park is solely the responsibility of the City and its designated agents in the City's exercise of its governmental functions, EPB having no responsibility therefor except to properly notify the City of such information necessary for EPB securing and exercising its sponsorship rights and other contractual provisions herein.

11. **Term.** This Agreement shall be effective upon its execution and notwithstanding that the payments herein are payable for over a period of forty (40) years, payable in advance, the rights of EPB hereunder shall continue in effect for a term of forty (40) years, beginning upon the date of completion of construction of Improvements, dedication and reopening of Miller Park for public use, which the City will notify EPB of the official day, which notice will be incorporated herein by reference in such notice.

12. **Assignment.** Neither the City, River City, nor EPB shall assign this Agreement without the consent of each party.

13. **Amendments.** No amendment to this Agreement shall be effective except in writing signed by authorized officers or representatives by each of the parties.

14. **Future Agreement Validity.** This Agreement represents the entire agreement between the City in its governmental capacity, River City as the agent of the City, and EPB in its proprietary activities. If this Agreement or any part hereof is determined to be invalid or unenforceable, then the remainder of the Agreement shall be effective and enforceable to the extent the intention of the parties can be implemented.

(Signatures on Following Page)

EXHIBIT B

DONOR	DONATION
Alice P. Lupton Trust	\$100,000
Benwood Foundation	\$700,000
Lyndhurst Foundation	\$500,000
Community Foundation	\$15,000
Maclellan Foundation	\$300,000
DeFoor Brothers	\$100,000
Fletcher Bright	\$100,000
HHM	\$20,000
Pinnacle Financial Partners	\$50,000
SmartBank	\$50,000
The Simpson Organization	\$150,000
SunTrust Foundation	\$100,000
Riverview Foundation	\$100,000
ELD	\$200,000
Miller Martin	\$20,000
First Tennessee	\$125,000
Osborne Foundation	\$50,000
Chambliss	\$10,000
Perimeter Properties	\$25,000
	\$2,715,000