

AGREEMENT

THIS AGREEMENT (the "Agreement") is made this _____ day of February, 2023 (the "Effective Date") by and between WATERTOWN RIVERFEST INC, a Wisconsin non-stock corporation. ("Watertown Riverfest Inc") and the CITY OF WATERTOWN, WISCONSIN (the "City").

RECITALS

WHEREAS, the City has taken on responsibility to cover the financial costs for an Annual Riverfest Celebration for 30 years by designating a committee to organize and host the event and setting up Fund 12 for payment of costs; and,

WHEREAS, the group of individuals that have been responsible for planning, scheduling, and budgeting the Annual Riverfest Celebration for the last 30 years have decided to retire; and,

WHEREAS, concerns have been raised about the ability to continue the Annual Riverfest Celebration when current projections show the event will create a substantial financial liability for the City under its current structure; and,

WHEREAS, Watertown Riverfest Inc wishes to carry on the Annual Riverfest Celebration on behalf of the City and is willing to take on responsibility and ownership of the event going forward; and,

WHEREAS, the City wishes Watertown Riverfest Inc to take on the responsibility and ownership of the Annual Riverfest Celebration.

NOW THEREFORE, the City and Watertown Riverfest Inc for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, agree as follows:

ARTICLE I CITY'S OBLIGATIONS

1. Transfer of Funds. The City shall transfer the balance of Fund 12 funds designated for the Annual Riverfest Celebration to Watertown Riverfest Inc via check made payable to Watertown Riverfest Inc within 30 (thirty) days of this Agreement being fully executed.

2. Special Event Application. The City shall cooperate with Watertown Riverfest Inc in approving and setting up the special event under the applicable ordinances, including, but not limited to Watertown Ordinance Ch. 428.

Watertown Riverfest Inc. anticipate the following requests associated with its initial special event application in 2023, *inter alia*:

- a. **Illumination:** Illumination of the Riverfest Ground shall be sufficient to light the entire area of the event at the rate of at least five lumens except during fireworks and in areas that are access restricted after dark. Lights will also be able to be restored in public areas during fireworks.
- b. **Noise:** Watertown Riverfest Inc will seek approval for the following noise standard (to the exclusion of others): Peak sound pressure level shall not exceed 105 dB 'A' weighted at the FOH (front of house) mix position as measured by the venue's SPL meter. An "Amplified Music Permit" shall be applied for by Watertown Riverfest Inc. Quiet hours shall be 11 pm to 5 am. Notwithstanding any provision to the contrary, Watertown Riverfest Inc shall be permitted to operate at full volume from 8am (to support sound checks and the carnival) to 11pm each day of the festival.
- c. **Open Containers:** Watertown Riverfest Inc shall establish its open container boundaries with prominent signs and Watertown Auxiliary Police or Watertown Police officers at all street and sidewalk entrances. Personnel shall observe and prevent attendees from bringing alcohol on premises and removing open containers from premises. Service of open containers will only be permitted within boundaries defined by fences and signs.
- d. **Dispensing Fermented Malt Beverages / Wine:** Watertown Riverfest Inc (or its duly licensed vendors) shall be allowed to dispense to any person up to four (4) fermented malt beverages and/or wine at a time for removal from the event licensed premises, and no person shall remove at one time more than four (4) such fermented malt beverages and/or wine from the event licensed premises.
- e. **Alcoholic Beverage Protocol:** Watertown Riverfest Inc shall use different-colored paper or plastic cups of a different color than its alcoholic beverage cups, but the cups shall not bear the name of the event or a sponsor's name. The cups may bear the printed name of a non-alcoholic beverage (e.g., "7up") but may not bear the name of an alcoholic beverage (e.g., "Miller Lite").

Acknowledging that the applicable municipal ordinances and the needs and implementation of the Annual Riverfest Celebration by Watertown Riverfest Inc may change from time to time, Watertown Riverfest Inc reserves the right to add, remove, and supplement the above permitting requests. The above is provided to afford advance notice to the City of anticipated special event permit requests. By executing this agreement, neither the City nor Watertown Riverfest Inc are bound to the permitting requests contained above.

2.3. Services Provided. In April of each year this Agreement is active, each City Department that ~~provided services to assist~~ is reasonably necessary to provide services in hosting the Annual Riverfest Celebration ~~in the prior year~~ shall meet with a designee from Watertown Riverfest Inc to discuss the scope, services, ~~provided by the Department the prior year and the~~ and estimated cost associated with providing those services for the current year. The parties shall negotiate in good faith to arrive at services agreements necessary to host the Annual Riverfest Celebration. Watertown Riverfest Inc shall contact the Department Head of each department it anticipates will be reasonably necessary to provide services to schedule the April Meetings.

3.4. Transfer of Riverfest Logo and IP. The City hereby transfers and assigns any and all right, title, interest and goodwill in or associated with the Intellectual Property or proprietary rights associated with the Annual Riverfest Celebration, as it exists now or has existed in the past, to Watertown Riverfest Inc including, but not limited to the logo.

5. Dates Park Reserved. The City will not rent the Riverfest Grounds to any other organization or individual from the Monday before to the Monday after the 2nd (second) full weekend in August. The City shall provide rent-free use of said Riverfest Grounds to Watertown Riverfest Inc for the purposes set forth in this agreement.

6. Riverfest Grounds Improvements. The City shall:

a. Conduct an Engineering inspection of the bandshell located on the Riverfest Grounds and certify that said bandshell is watertight and safe for use in sufficient time to serve the year 2023 Annual Riverfest Celebration.

b. Create additional permanent bathrooms reasonably serving the crowd attendance anticipated at the Annual Riverfest Celebration in sufficient time to serve the year 2024 Annual Riverfest Celebration.

c. Repave the parking lots serving the Riverfest Grounds in sufficient time to serve the year 2025 Annual Riverfest Celebration.

ARTICLE II WATERTOWN RIVERFEST INC'S OBLIGATIONS

1. Riverfest. Watertown Riverfest Inc shall accept all responsibility for planning, scheduling, and hosting the Annual Riverfest Celebration.

2. Application For Special Event Permit. Watertown Riverfest Inc shall apply for a special event permit for the event for 2023 on or before March 15, 2023. For each subsequent year Watertown Riverfest Inc shall apply for the special event permit on or

before January 5 of each year. The Special Event Permit may be for up to 4 (four) days which will include the 2nd (second) full weekend in August for each year.

3. Application for Outdoor open Container Entertainment event Permit. Watertown Riverfest Inc. shall apply for an Outdoor Open Container Entertainment event permit under Watertown Ordinance § 428-8 on or before June 1 of each year the event proceeds.

4. Location. The Annual Riverfest Celebration shall be held in Riverside Park, which includes the volleyball area, the ball diamonds, the island, swimming pool and entire park area between Labaree Street and the Rock River from Boughton Street west up to and including the west playground area. This area shall be designated the Riverfest Grounds. A map of the Riverfest Grounds is attached hereto and incorporated by reference as Exhibit A.

5. Termination of Agreement. Watertown Riverfest Inc. may terminate this Agreement by providing notice to the City of its desire to terminate this Agreement. ~~prior to submitting its application for special event license.~~ Upon termination under this provision Watertown Riverfest Inc shall provide a statement of all revenue received and expenses incurred in fulfilling its obligations for hosting the Annual Watertown Riverfest Celebration. ~~Any remaining funds shall be paid to the City of Watertown, or a 501(c)(3) nonprofit organization approved by the City of Watertown, and which agrees to assume Watertown Riverfest Inc's obligations under this agreement. Any remaining funds after valid liabilities are paid shall be distributed pursuant to Watertown Riverfest Inc's purpose, as articulated in its Articles of Incorporation.~~

ARTICLE III GENERAL PROVISIONS

1. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Wisconsin.

2. Modifications. This Agreement may be amended or modified only by a written instrument duly executed by both of the parties hereto.

3. Notices. Any notice required hereunder shall be given in writing, signed by the party giving notice, personally delivered or mailed by certified or registered mail, return receipt requested, or electronically delivered via e-mail to the parties' respective addresses as set forth below:

To the City: Mayor Emily McFarland
City of Watertown
106 Jones Street
Watertown, WI 53094
E-mail: emcfarland@cityofwatertown.org

Copy to: Atty. Steven T. Chesebro
City Attorney
City of Watertown
106 Jones Street
Watertown, WI 53094
E-mail: schesebro@cityofwatertown.org

To Watertown Riverfest Inc.: Watertown Riverfest Inc
Attention: Jonathan Lampe

E-mail: _____

Notice shall be deemed delivered (a) in the case of personal delivery, on the date when personally delivered; (b) in the case of certified or registered mail, on the date when deposited in the United States mail with sufficient postage to effect such delivery; or (c) in the case of electronic delivery via e-mail, on the date when any such e-mail was sent. Each party may change the address to which notice must be given by delivery of written notice to the other parties in accordance with this Section.

4. Severability of Provisions. In case any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if the invalid, illegal or unenforceable provision had never been contained herein.

5. Time of Essence. Time is of the essence.

6. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original.

7. Defaults; Litigation. No party shall be deemed to be in default under this Agreement for failure to perform any term or condition of this Agreement unless the other party (the "Non-Defaulting Party") has first given the party alleged to be in default (the "Defaulting Party") written notice describing such failure, and the Defaulting Party does not, within 30 (thirty) days thereafter, cure such failure (an "Event of Default"). Following an Event of Default, the Non-Defaulting Party shall have all rights and remedies available to it under law or in equity against the Defaulting Party. In connection

with any litigation arising out of this Agreement, the prevailing party shall be entitled to recover all costs incurred, including reasonable attorney's fees.

8. **Headings.** Descriptive headings are for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement.

9. **Authority to Sign.** Each of the persons signing below on behalf of any party hereby represents and warrants that they are signing with full and complete authority to bind the party on whose behalf of whom they are signing, to each and every term of this Agreement.

10. **Force Majeure:** Watertown Riverfest Inc shall not be liable for any failure or delay in the performance of its obligations under this agreement caused by forces beyond its control including, by way of example and not limitation: strikes and work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural disaster, acts of God, interruption, loss or disruption of utilities, communications or computer services, severe weather, flood, pandemic, and government action. Watertown Riverfest Inc shall use reasonable efforts to resume performance as soon as practicable under the circumstances.

The parties acknowledge that Watertown Riverfest Inc does not have ultimate control over its fundraising results. Watertown Riverfest Inc shall use reasonable efforts to fundraise amounts sufficient to plan, schedule and host the Annual Riverfest Celebration, however, Watertown Riverfest Inc shall be excused from further performance under this agreement in the event that its fundraising efforts fail to generate enough revenue to plan, schedule and host the Annual Riverfest Celebration.

11. **Limitation of Liability:** In no event shall Watertown Riverfest Inc's liability to the City exceed the amount transferred pursuant to Article I Paragraph 1.

12. **Headings:** Headings are included to assist the reader's navigation, and do not have any substantive meaning or interpretive value.

13. **Interpretation:** This Agreement is the product of negotiation between the parties, and the parties agree that no term shall be construed against any either party by application of any doctrine of interpretation against the draftsman—~~(contra proferentem)~~.

[Execution Page Follows]

This Agreement is executed this _____ day of February, 2023.

Watertown Riverfest Inc.

By: _____
Jonathan Lampe, President

Date: _____

CITY OF WATERTOWN

By: _____
Emily McFarland, Mayor

Date: _____

Attest: _____
Megan Dunneisen, City Clerk

Date: _____