

RESOLUTION NO. 31046

A RESOLUTION AUTHORIZING THE MAYOR OR HIS DESIGNEE TO COLLECTIVELY WITH HAMILTON COUNTY, ENTER INTO A LEASE AGREEMENT WITH THE CHATTANOOGA AREA CONVENTION & VISITORS BUREAU, INC., IN SUBSTANTIALLY THE FORM ATTACHED, FOR THE LEASE OF THE BUILDING AT 2 AQUARIUM WAY, SUITE 138, FURTHER IDENTIFIED AS A PORTION OF TAX PARCEL NO. 135K-A-001, WITH THE BUILDING TO BE USED EXCLUSIVELY FOR THE OPERATION OF A VISITOR INFORMATION CENTER, FOR A TERM OF FIVE (5) YEARS, WITH THE OPTION TO RENEW FOR TWO (2) ADDITIONAL TERMS OF TWO (2) YEARS EACH, AT THE CONSIDERATION OF ONE DOLLAR (\$1.00) PER YEAR.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That it is hereby authorizing the Mayor or his designee to collectively with Hamilton County, enter into a Lease Agreement with the Chattanooga Area Convention & Visitors Bureau, Inc., in substantially the form attached, for the lease of the building at 2 Aquarium Way, Suite 138, further identified as a portion of Tax Parcel No. 135K-A-001, with the building to be used exclusively for the operation of a Visitor Information Center, for a term of five (5) years, with the option to renew for two (2) additional terms of two (2) years each, at the consideration of one dollar (\$1.00) per year.

ADOPTED: March 8, 2022

/mem/v2

LEASE AGREEMENT

THIS LEASE AGREEMENT (“Lease”) made and entered into as of the ____ day of _____, 2022 (the “Effective Date”) by and among the City of Chattanooga, Tennessee, a municipal corporation, Hamilton County Tennessee, a political subdivision of the State of Tennessee (collectively, “Lessor”) and Chattanooga Area Convention & Visitors Bureau, Inc., a Tennessee nonprofit corporation, whose address is 736 Market Street, Suite 1800, Chattanooga, Tennessee 37402 (“Lessee”).

RE C I T A L S

WHEREAS, Lessee desires to lease facilities from Lessor to be used exclusively for the operation of a visitor information center; and

WHEREAS, Lessor has the appropriate authority to, and hereby agrees to lease to Lessee the space (defined below) containing approximately seven hundred two (702’) square feet on property identified in SECTION 1 below, which is situated on that certain parcel of land owned by Lessor and commonly known as the “Bunker.”

NOW, THEREFORE, in consideration of the faithful performance of the terms, covenants, and conditions and the mutual obligations of the parties as set forth herein, the parties agree as follows:

SECTION 1. Leased Premises; Lessor Access. Lessor leases to Lessee that certain building containing approximately seven hundred two (702’) square feet as shown in red on **Exhibit A**, attached hereto and incorporated by reference, identified as Tax Map No. 135K-A-001 and having an address of 2 Aquarium Way, Suite 138, Chattanooga, Tennessee 37402 (the “Leased Premises”). During the term of this Lease, Lessor or its designee shall have the right to access the

“mechanical room” located at the rear of the Leased Premises. Lessor, in exercising such access, will not unreasonably interfere with Lessee's use and/or occupation of the Leased Premises.

SECTION 2. Consideration; Utilization of Leased Premises. It is expressly agreed to and understood by the parties that the Leased Premises shall be used exclusively for the operation of a visitor information center. Lessee shall not utilize the Leased Premises for any other purposes without the express written approval of Lessor, which hereby designates their Mayors as Lessor's agents for this purpose. Lessee shall neither engage in nor allow illegal activities on the Leased Premises nor allow alcoholic beverages to be sold or consumed on the Leased Premises.

SECTION 3. Term. The term of this Lease shall commence upon execution by the parties (the “Effective Date”), shall be for an initial period of five (5) years (the “Initial Term”), and shall not renew automatically, but may be renewed upon mutual agreement of the parties for two (2) additional two (2) year terms (each a “Renewal Term”). After the Initial Term has completed, either party may terminate this Lease at any time without cause upon giving the other party written notice of its intention to terminate, and such notice shall be received at least thirty (30) days prior to the termination date.

SECTION 4. Lease Payments. Lessee shall, during the Initial Term or any Renewal Term of this Lease, pay to Lessor the net annual rent of One Dollar (\$1.00) per year, with the first annual payment due on the Effective Date of this Lease and subsequent annual payments due on the anniversary date of the Effective Date of this Lease. All rentals payable by Lessee to Lessor under this Lease shall be paid to Lessor at the address herein designated in SECTION 27.

SECTION 5. Capital Improvements and Alterations. Lessee will expend at least One Hundred Fifty Thousand Dollars (\$150,000.00) to make capital improvements to the Leased Premises on or before May 30, 2023, as described on **Exhibit B**, attached hereto and incorporated

by reference (the “Project”). All construction contracts shall require that the general contractor constructing the improvements furnish and keep in force throughout the performance of the construction Project a separate payment and performance bond, each in an amount and form satisfactory to the City Attorney. The bonds shall also guarantee to the Lessor that all work shall be free of all mechanic’s and materialman’s liens. The bonds shall name the Lessor as obligee and shall be in such form and with such sureties as the Lessor may approve prior to commencement of construction. Lessee shall require its contractors to comply with the same insurance requirements that the Lessee is required to meet in Section 9 of this Agreement. Notwithstanding the provisions contained in Section 3 regarding termination, if construction of the Capital Improvements is not completed by within fifteen (15) months following the approval and execution of this Lease by the Chattanooga City Council, Lessor shall have the right to terminate this Lease upon thirty (30) days’ written notice to Lessee.

Lessor will assign a Project Manager (“PM”) to the Project for the duration of the Project. Those duties shall include but not be limited to the oversight of the Project schedule, the basis of the design in the best interest of the Lessor in meeting all required codes, regulations, permits, etc. for local, state and federal provisions. The PM will be involved in the conceptual planning, 30-60-90% design reviews, and 100% design plans permitting. The PM will be an oversight for the construction phase and will be involved in the regularly scheduled construction progress meetings and site inspections during construction for verification that the Project is being built to the plans and specifications. The Lessee will remain in communication with the assigned PM for the duration of the Project.

Lessee agrees that no other improvements, additions, or alterations shall be made to the Leased Premises without obtaining Lessor's written approval. If Lessee desires to make improvements to the Leased Premises, it shall be required to submit a detailed description of the improvements to be made to Lessor (the "Lessee's Plan"). The Lessee's Plan shall be subject to Lessor's written approval. Lessor's approval of Lessee's Plan shall in no event, unless expressly set forth in such approval, be deemed to create any obligations on the part of the Lessor to do any work or make the improvements or to authorize Lessee to make any further additions, improvements, or alterations to the Leased Premises. In the event Lessor approves Lessee's Plan, the parties shall execute an amendment to this Lease setting forth the obligations of the Lessee with respect to the construction of improvements in accordance with Lessee's Plan, which shall be attached as an exhibit to the lease amendment. Notwithstanding the terms contained in this Section 5, nothing herein shall be deemed to require Lessee to secure the prior written approval of Lessor for minor repairs and maintenance undertaken as to the Leased Premises provided that Lessee thereafter promptly reports to Lessor the nature of any such alternation or repair.

SECTION 6. Quiet Possession. The Lessor covenants to keep the Lessee in quiet possession of the Leased Premises during the Initial Term and any Renewal Term of this Lease.

SECTION 7. Termination and Holding Over. Upon termination of this Lease, at the expiration of the Initial Term hereof or any Renewal Term thereof, Lessee shall surrender the Leased Premises to Lessor in as good condition as received, ordinary wear and tear and damage by fire or other casualty excepted. Lessee covenants to Lessor that it shall vacate the Leased Premises on or before thirty (30) days following the expiration of the Initial Term or any Renewal Term hereof including removal of all personal property. Any personal property of Lessee which is not removed from the Leased Premises after termination of this Lease shall be deemed

abandoned and may be disposed of by Lessor in any manner without accounting or being liable to Lessee. Lessee shall surrender all keys to the Leased Premises at or before the termination of this Lease.

SECTION 8. Indemnity. Lessee, as a material part of the consideration to be rendered to Lessor, hereby waives all claims against Lessor for injuries or damage for any cause arising at any time to persons in or about said Leased Premises where said injuries or damages occur as a result of the use of the Leased Premises by Lessee or from the failure of Lessee to keep the Leased Premises in good condition and repair, as herein provided. Lessee will indemnify Lessor and hold it harmless from and against any and all claims, actions, damages, liability and expense in connection with loss of life, personal injury and/or damage to property arising from or out of the occupancy or use by Lessee of the Leased Premises or any part thereof occasioned wholly or in part by any act or omission of Lessee, its invitees, agents, employees, or contractors. Lessee further agrees to defend, pay all costs of defense, including reasonable attorney's fees, and/or any judgment or costs for any claim or suit brought against Lessor as a result of any claim brought against Lessee, its invitees, agents, employees, or contractors. This indemnification of Lessor shall survive the expiration or sooner termination of the Initial Term or any Renewal Term of this Lease.

SECTION 9. Insurance. At its sole expense, Lessee shall procure and maintain during the term of this Lease insurance of the types and in the amounts described below against claims for injuries to persons or damages to property which may arise from or in connection with this Lease.

- (a) Commercial General Liability Insurance, with a minimum limit of \$1,000,000 for each occurrence and \$2,000,000 in the general aggregate.

- (b) Automobile Liability Insurance, with a limit of \$1,000,000 for each accident, combined single limit for bodily injury and property damage.
- (c) Workers' Compensation Insurance and Employer's Liability Insurance, in accordance with statutory requirements, with a limit of \$1,000,000 for each accident.

If any of the above-cited policies expire during the life of this Lease, it is the Lessee's responsibility to forward renewal Certificates within ten (10) days prior to the expiration date containing all the aforementioned insurance provisions. Such insurance will:

- (1) Contain or be endorsed to contain a provision that includes the Lessor, its officials, officers, and employees as insureds with respect to liability arising out of work or operations performed by or on behalf of Lessee including materials, parts, or equipment furnished in connection with such work or operations. The coverage will contain no special limitations on the scope of protection afforded to the above listed insureds. Liability coverage can be provided in the form of an endorsement to Lessee's insurance or as a separate owner's policy; and
- (2) For any claims related to this Lease, be primary insurance as respects the Lessor, its officials, officers and employees. Any insurance or self-insurance programs covering the Lessor, its officials, officers and employees will be in excess of insurance and will not contribute with it.

- (d) Additional Insurance Requirements. Lessee shall include Lessor as additional insureds on Lessee's commercial general liability policy. Proof of said insurance shall be provided to Lessor's Risk Managers on a standard ACORD form signed by the authorized insurance agent/broker.

Lessee shall:

- (1) Prior to the Effective Date, furnish Lessor with a signed ACORD certificate of insurance and any amendatory endorsements effecting coverage required by this section. Lessee agrees that such insurance will not be cancelled, allowed to expire, or be materially reduced in coverage without thirty (30) days' prior written notice to the Lessor's Risk Managers;
- (2) If requested by Lessor, provide signed copies of endorsements and policies in lieu of or in addition to certificates of insurance;
- (3) Place such insurance with an insurer that is licensed to do business in Tennessee and companies should be rated B+X or better by the A.M. Best's Rating Guide or as approved by Lessor's Risk Managers; and
- (4) Require all contractors to maintain during the terms of this Lease, commercial general liability insurance, business automobile liability insurance and workers' compensation/employer's liability.

Furthermore, any deductibles or self-insured retentions must be declared to and approved by Lessor.

Lessor shall add the Leased Premises to its existing insurance policy. Lessee shall be responsible for insuring its personal property.

SECTION 10. Assignment or Sublease. Lessee shall neither assign nor transfer this Lease or any interest herein nor sublease the Leased Premises or any part thereof to anyone during the term of this Lease or any extensions or holdovers.

SECTION 11. Discrimination. Lessee covenants to comply with all federal, state, county, and city laws and ordinances in regard to discrimination due to handicap, age, race, color, religion, sex, national origin, or any other classification protected by said laws.

SECTION 12. Nonprofit Status. Lessee shall provide evidence of its status as a nonprofit social welfare organization under Section 501(c)(4) of the Internal Revenue Code prior to the Effective Date and maintain its status as a nonprofit social welfare organization at all times during the term of this Lease. Failure of Lessee to maintain its 501(c)(4) status shall constitute a default under this Lease.

SECTION 13. No Warranties. Lessee takes and accepts the Leased Premises from Lessor “AS IS, WITH ALL FAULTS” that is at its condition as of the Effective Date of this Lease, upon the terms and conditions herein contained.

SECTION 14. Utility Services and Water Quality Fees. Except for electricity, any applications and connections for necessary utility services on the Leased Premises shall be made in the name of Lessee only. Lessee shall be solely liable for utility charges as they become due, including, but not limited to, those for water, gas, telephone, and water quality fees. It shall be a breach of this Lease to fail to keep such payments current.

SECTION 15. Repairs and Maintenance.

- (a) Lessee shall make and pay for all repairs, maintenance, and replacements to the Leased Premises which are necessary to keep the same in good state of repair and operating order. Lessee shall not suffer or permit any waste or neglect of the Leased

Premises and will take such steps as often as may be necessary to keep the buildings, and other improvements on the Leased Premises in a first-class and model condition. Any repairs made by Lessee shall be done in a workmanlike manner and within a reasonable period of time. Lessor shall not be liable for the cost of any repairs, maintenance or replacements made by or through Lessee. Notwithstanding the foregoing, Lessor shall be responsible for keeping the Leased Premises and all supporting systems (HVAC, electrical, plumbing, etc.) in good and reasonable working order.

SECTION 16. Limitation of Lessor's Liability.

- (a) Lessor shall not be liable to Lessee in any manner whatsoever for failure to furnish or delay in furnishing any service or services provided for in this Lease and no such failure or delay shall constitute actual or constructive eviction of Lessee nor operate to relieve from prompt and punctual performance of each and all of the covenants to be performed herein by Lessee.
- (b) Lessor shall not be liable to Lessee, its invitees, agents, employees, or contractors for damage to person or property caused by defects in the cooling, heating, electric, water or other apparatus or systems located in, on, or about the Leased Premises.
- (c) Lessor shall not be liable for any theft or loss of property of Lessee, invitees, agents, employees, or contractors.

SECTION 17. Laws and Ordinances. Lessee covenants to comply with all federal, state, county, and city laws and ordinances, including those regarding nuisances insofar as the Leased Premises are concerned, and that the Lessee will not by any act of its agents or officers render the Lessor liable therefor.

SECTION 18. Possession. If this Lease should at any time become void or forfeited, no demand shall be necessary to a recovery of possession of the Leased Premises, and the Lessor shall be entitled to immediate possession.

SECTION 19. Attorney's Fee for Right to Recover Possession. Should the Lessor at any time rightly seek to recover possession of the Leased Premises, and be obstructed or resisted therein, and any litigation thereon ensues, the Lessee shall be bound to pay the Lessor a reasonable attorney's fee.

SECTION 20. Right to Enter. Other than in emergent circumstances in which case the Lessor may enter as appropriate to respond, the Lessor shall, after providing reasonable advance notice to Lessee, have the right to enter into and upon said Leased Premises or any part thereof, at all reasonable hours for the purpose of examining the same, or making such repairs, additions, or alterations as may be necessary for the safety, comfort, and preservation thereof. Lessor shall not unreasonably interfere with Lessee's operations provided that this shall not be construed to prevent Lessor from responding as necessary to an emergent circumstance.

SECTION 21. Damage or Destruction. In the event the Leased Premises shall be damaged by fire, or other casualty, the Lessee shall give immediate notice thereof to the Lessor. This Lease shall, unless notice is given as set forth below, continue in full force and effect, and the Lessor shall, at its own expense, with reasonable promptness, subject to force majeure as defined in SECTION 26 and delays in making of insurance adjustments by Lessor, repair the Leased Premises. Lessor need not restore fixtures and improvements owned by Lessee or floor coverings, furnishings, personal property, and other decorative features furnished by Lessee. In the event the Leased Premises shall, before or after the Effective Date, be so damaged that the Lessor shall decide not to repair the same, or if the Lessor shall decide to demolish or rebuild the Leased

Premises for any reason whatsoever, upon notice to Lessee, the Initial Term or any Renewal Term of this Lease shall cease and terminate effective as of the time of the damage, and the accrued rent, if any, shall be paid up to the time of the damage. All proceeds of insurance payable as a result of fire or other casualty shall be the sole property of the Lessor.

SECTION 22. Defaults. The occurrence of any of the following acts shall constitute an immediate, material, non-curable default by Lessee:

- (a) The occurrence of any of the following acts shall constitute an immediate, material, non-curable default by Lessee:
 - (1) Abandonment of the Leased Premises, except for causes of force majeure, as defined in SECTION 26; and
 - (2) Any attempted assignment, transfer, or sublease in violation of SECTION 10 above.
- (b) Failure to pay rent as provided for herein or failure to perform any term, covenant, or condition of this Lease, other than those set forth in subparagraph A above, shall not constitute a default unless such breach is not cured within the time periods set forth below. Lessor shall give written notice to Lessee of such default and if Lessee does not cure any rent default within five (5) days, or other default within twenty (20) days, after the giving of such notice (or, if such default is of such a nature that it cannot be completely cured within such twenty (20) days), if Lessee does not commence such curing within twenty (20) days and thereafter proceed with reasonable diligence and in good faith to cure such defaults, then Lessor may terminate this Lease on not less than three (3) days' written notice to Lessee, and on the date specified in said notice the Initial Term or any Renewal Term of this

Lease shall terminate, and Lessee shall then quit and surrender the Leased Premises to Lessor. If this Lease shall have been so terminated by Lessor, Lessor may at any time thereafter resume possession of the Leased Premises by any lawful means and remove Lessee or other occupants and their effects.

SECTION 23. Remedies. The parties' remedies hereunder are not exclusive but cumulative to other remedies provided by law or in equity in the event of default.

SECTION 24. Surrender of Leased Premises on Termination. Lessee shall peaceably deliver possession of the Leased Premises to Lessor on the date of expiration or termination of this Lease, whatever the reason for termination. Lessor shall have the right to re-enter and take possession of the Leased Premises on the date termination becomes effective without further notice of any kind and without instituting summary or regular legal proceedings.

SECTION 25. No Waiver. Any waiver by the parties of any default or breach of any one or more of the terms, conditions, or covenants of this Lease shall be in writing and shall not be construed to be a waiver of any subsequent or other breach or default of the same or of any other term, covenant, or condition of this Lease. No delay, failure, or omission of Lessor to re-enter the Leased Premises, to insist on strict enforcement of any term, covenant, or condition, or to exercise any right, privilege or option arising from any breach or default shall impair any such right, privilege or option or be construed as a waiver of or acquiescence in such breach of default.

SECTION 26. Force Majeure. Lessor shall be excused for the period of any delay in the performance of any obligation hereunder when prevented by doing so by cause or causes beyond Lessor's control which shall include, without limitation, all labor disputes, civil commotion, war, war-like operations, invasion, rebellion, hostilities, military or usurped power

sabotage, governmental regulations or controls, fire or other casualty, pandemic or epidemic, inability to obtain any material, services, or financing or through acts of God.

SECTION 27. 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:

Lessor: City of Chattanooga, Tennessee
ATTN: Real Property Office
101 E. 11th Street, Suite G4
Chattanooga, TN 37402

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

Lessor: Hamilton County, Tennessee
Office of the County Mayor
Room 202, Hamilton County Courthouse
625 Georgia Avenue
Chattanooga, TN 37402

With a copy to: Office of the Hamilton County Attorney
Room 204, Hamilton County Courthouse
625 Georgia Avenue
Chattanooga, TN 37402

Lessee: Chattanooga Area Convention & Visitors Bureau, Inc.
736 Market Street, Suite 1800
Chattanooga, TN 37402

SECTION 28. Miscellaneous Provisions.

28.1 Applicable Law. This Lease 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 and/or default by Lessee may only be submitted to a court of competent jurisdiction in Hamilton County, Tennessee, and the prevailing party shall be entitled to recover all costs, expenses, and legal fees in defending such legal action.

28.2 Entire Agreement. This Lease 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 Lease must be in writing and adopted by lawful resolution of the respective governing bodies to be bound thereby.

28.3 Binding Effect. The terms and conditions of this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

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

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, the parties have executed this Lease on the ____ day of _____, 2022, at Chattanooga, Hamilton County, Tennessee.

LESSOR:

CITY OF CHATTANOOGA, TENNESSEE

BY: _____

JERMAINE FREEMAN

Senior Advisor for Economic Opportunity

LESSOR:

HAMILTON COUNTY, TENNESSEE

BY: _____

JIM M. COPPINGER, *Mayor*

LESSEE:

CHATTANOOGA AREA CONVENTION &
VISITORS BUREAU, INC.

BY: _____

Its: _____



EXHIBIT A
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