

RESOLUTION NO. 32289

A RESOLUTION TO AMEND RESOLUTION NO. 32207 TO PROVIDE THAT RIVERCITY COMPANY WILL PROVIDE CONSULTING SERVICES FOR “EVOLVING OUR RIVERFRONT PARKS” BASED ON AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF CHATTANOOGA, HAMILTON COUNTY, TENNESSEE, AND RIVERCITY COMPANY FOR A COST OF FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) FROM THE CITY AND SEVEN HUNDRED THOUSAND DOLLARS (\$700,000.00) FROM HAMILTON COUNTY, NOT TO EXCEED ONE MILLION TWO HUNDRED THOUSAND DOLLARS (\$1,200,000.00), AS SET FORTH IN THE ATTACHED AGREEMENT.

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BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That it is hereby amending Resolution No. 32207 to provide that RiverCity Company will provide consulting services for “Evolving our Riverfront Parks” based on an Interlocal Agreement between the City of Chattanooga, Hamilton County, Tennessee, and RiverCity Company for a cost of \$500,000.00 from the City and \$700,000.00 from Hamilton County, not to exceed \$1.2 million, as set forth in the attached agreement.

ADOPTED: October 29, 2024

/mem

**INTERLOCAL DESIGN DEVELOPMENT MANAGEMENT AGREEMENT**  
**FOR THE EVOLVING OUR RIVERFRONT PARKS PROJECT**

THIS INTERLOCAL DESIGN DEVELOPMENT MANAGEMENT AGREEMENT (this “Agreement”) is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2024 (“Effective Date”), by and among **THE CITY OF CHATTANOOGA**, a Tennessee municipal corporation, (the “City”), **HAMILTON COUNTY, TENNESSEE**, a political subdivision of the state of Tennessee (the “County”), and **THE RIVERCITY COMPANY**, a Tennessee nonprofit corporation (hereinafter “RCC”).

WHEREAS, the parties hereto desire that RCC perform certain Services (as hereinafter defined) to assist the City with respect to the organization, coordination, and management of the design development phase (the “Design Development Phase”) of improvements to the riverfront parks, commonly referred to as the 21st Century Waterfront park, along the Tennessee River in downtown Chattanooga, Tennessee, pursuant to a conceptual framework plan known as *Evolving Our Riverfront Parks* (the “Project”).

WHEREAS, the geographic Project boundaries include approximately one-half of 201 Riverfront Parkway (the greenspace east of Erwin Marine Riverfront), 100 and 151 Riverfront Parkway (Ross’s Landing), and the greenspace immediately east of 100 Riverfront Parkway to the base of the Market Street Bridge (the “Hard Edge”).

WHEREAS, the City and the County desire to financially contribute to the Design Development Phase of the Project (as hereinafter defined) in accordance with Tenn. Code Ann. Section 12-9-104; and

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City, the County, and RCC hereby agree as follows:

1. **DEFINITIONS.** As used in this Agreement, the following capitalized terms have the meaning set out below:

1.1 “**Applicable Laws**” means all applicable local, state, and federal laws, executive orders, rules, regulations, codes, orders, and decrees, as amended, modified or supplemented from time to time.

1.2 “**Design Consultant**” means any design professional and/or consultant engaged by RCC to design any portion of the Project, including, but not limited to, urban planners, architects, space planners, landscape architects, and/or other consultants.

1.3 “**Effective Date**” means the date first indicated above; provided, however, if no such date is indicated, the Effective Date will be the date on which this Agreement is signed by the last of the parties to sign it.

1.4 “**Expiration Date**” means the date that is thirty (30) days following the final Design Development Phase payment to any Design Consultant.

2. **SCOPE OF SERVICES.** RCC will provide, or cause to be provided through its affiliates, the following Services (collectively, the “Services”):

2.1 Recommend Design Consultants, and, subject to the City and County’s approval, not to be unreasonably withheld, conditioned, or delayed, negotiate and contract with any Design Consultant for design development services to facilitate the advancement of the Design Development Phase of the Project.

2.2 Manage and serve as a Project liaison between the City and County and the Design Consultants during the Design Development Phase of the Project.

2.3 Review and timely pay all invoices of the Design Consultants associated with the Design Development Phase of the Project.

2.4 Review proposed designs and work product for the Design Development Phase of the Project provided by the Design Consultants.

3. **GENERAL PROVISIONS.**

3.1 Compliance with Laws. RCC will perform the Services in compliance with all Applicable Laws as to the provision of Services.

3.2 Consultation with Client. RCC agrees to make itself available at all reasonable times to consult with appropriate representatives of the City and County concerning any of the Services performed or to be performed by RCC or any Design Consultant under this Agreement. The City and County will provide complete and accurate information regarding the Design Development Phase of the Project and will provide timely updates and revisions regarding the requirements for the Design Development Phase of the Project. The City and County will provide guidance and personnel as reasonably necessary to assist RCC with the Design Development Phase of the Project.

3.3 Additional Service Providers. RCC, the City, and the County acknowledge and agree that RCC may require the services of Design Consultants. RCC shall cooperate with and coordinate such Design Consultants in order to achieve the City and County’s objectives for the Design Development Phase of the Project. The City and County shall reasonably cooperate with Design Consultants; but it is expressly agreed and understood that the City and County shall not be responsible for the engagement or the services delivery of any Design Consultants, and all Design Consultants shall be engaged directly by RCC and paid from the Project Funds (as hereinafter defined) as disbursed by RCC.

3.4 Services. RCC will provide the Services in accordance with this Agreement and with the degree of care, skill, and diligence normally provided by project managers of its caliber in the performance of comparable services in projects of a similar nature and location to that contemplated by the Project.

3.5 Use of Design Consultants. The City and County acknowledge and agree that RCC may, from time-to-time, subcontract or delegate all or any portion of the performance of the Services to a Design Consultant.

3.6 City Design Specifications. The City will provide its design specifications for the Design Development Phase of the Project to RCC and any applicable Design Consultants. The City will be responsible for reviewing the Project designs to ensure compliance with the City's standards and requirements.

4. **PROJECT FUNDS.**

4.1 City and County. The City shall contribute Five Hundred Thousand and 00/100 /Dollars (\$500,000.00) and the County shall contribute Seven Hundred Thousand and 00/100 Dollars (\$700,000.00) for a total of One Million Two Hundred Thousand and 00/100 Dollars (\$1,200,000.00) (the "Project Funds") for the Project for the purpose of supporting Design Consultants fees and associated costs for the first half of the Project.

4.2 RCC. RCC will contribute management services of the Project Funds for the Design Development Phase. RCC will establish a dedicated restricted account for fiscal management of all Project Funds, and the Project Funds shall only be used for design development purposes associated with the Design Development Phase of the Project. RCC shall ensure that no Project Funds are used for any other purpose.

5. **CHANGES.**

5.1 Force Majeure. Subject to the provisions of this Section 5.1, RCC will not be liable for any delay in performance under this Agreement caused by "Force Majeure," which shall mean any circumstance beyond RCC's reasonable control, including, without limitation, Acts of God, strikes, lockouts, material or labor restrictions by any governmental authority, civil riot, flood, war or other action of military forces, pandemic, epidemic, terrorism, sabotage, vandalism, fire, legislative or administrative interference, or break-down of equipment (each, a "Delaying Cause"). RCC will promptly give notice to the City of any Delaying Cause.

6. **REPORTS AND RECORDS.**

6.1 Reports. RCC will prepare and submit quarterly reports, including, but not limited to, progress reports, accounting, and project status the Design Development Phase, to the City and County as part of the Services.

6.2 Records. RCC will maintain books, records, documents and other evidence pertaining to costs, charges, fees and other expenses to the extent, and in such detail, related to the Design Development Phase of the Project and copies will be provided to the City and County.

7. **TERM AND TERMINATION.**

7.1 **Term of Agreement; Completion.** This Agreement will be in effect for the period of time commencing on the Effective Date and expiring on the Expiration Date.

8. **INDEMNIFICATION.**

8.1 **RCC Indemnity.** RCC will indemnify, defend and hold harmless the City and the County, its officers, directors, and employees from and against any and all third party claims, losses, liens, demands, reasonable attorneys' fees, damages, liabilities, judgments, costs, expenses, obligations, causes of action, or suits (collectively "Claims") to the extent that such Claims are caused by any gross negligence, fraud or willful misconduct of RCC or its employees.

8.2 **City and County Indemnity.** In reliance upon RCC's indemnification obligations set forth in Section 8.1 above, and subject to Applicable Law, including but limited to, the provisions of Tenn. Code Ann. §20-20-101 *et seq.* (TGTLA) and Tenn. Code Ann. § 62-6-123, the City and the County shall not, indemnify, defend and/or hold harmless RCC and its affiliates, and its and their respective officers, directors and employees (collectively, the "Indemnified Parties") from and against all Claims to which an Indemnified Party may be subject or suffer, except to the extent that any such Claim is caused by the gross negligence, fraud, or willful misconduct of the City or the County or their employees as may be enforceable under Tennessee law. The City and County shall defend, and if found liable, be responsible for paying damages, subject to the limits of liability pursuant to the TGTLA, for the negligent acts or omissions of government employees, arising from third party claims, suits, liabilities and judgments, caused by the negligent acts or omissions of government employees, except to the extent that such injury, damage, or loss, is caused, in whole or part by the acts of RCC or its employees.

8.3 **Survival.** It is expressly understood and agreed that the foregoing provisions of this Section 8 survive any expiration or termination of this Agreement to the extent the circumstances creating a liability covered hereby arose prior to such expiration; provided, however, under no circumstances shall such survival extend beyond twenty-four (24) months after the expiration or termination of this Agreement.

9. **LIMITATION OF LIABILITY.** IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL, SPECIAL, PUNITIVE, EXEMPLARY OR ANY OTHER SIMILAR DAMAGES OR LOSS (INCLUDING DAMAGES FOR LOSS OF BUSINESS, USE, PRODUCTION, INCOME, LOSS OF PROFITS, CONTRACT SAVING OR FOR ANY FINANCING COSTS OR ANY OTHER FINANCIAL OR ECONOMIC LOSS OR THE LIKE), ARISING OUT OF ANY PERFORMANCE OF THIS AGREEMENT OR IN FURTHERANCE OF THE PROVISIONS OR OBJECTIVES OF THIS AGREEMENT, REGARDLESS WHETHER SUCH DAMAGES ARE BASED ON TORT, WARRANTY, CONTRACT OR ANY OTHER LEGAL THEORY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. The waiver of consequential damages set forth herein are fundamental elements of the basis of this Agreement between RCC and the City and the County. It is expressly understood and agreed that the foregoing provisions of this Section 9 shall survive any expiration or termination of this Agreement to the extent the circumstances creating a liability covered

hereby arose prior to such expiration and are filed within twenty-four (24) months after the expiration or termination of this Agreement as set forth in Section 8.3 above.

10. **MISCELLANEOUS.**

10.1 Notices. All notices provided in connection with this Agreement will be in writing, and be delivered by first-class mail with postage prepaid, certified or registered mail with postage prepaid and return receipt requested, by courier, or facsimile transmission with a copy simultaneously sent by first-class mail with postage prepaid, and will be deemed effective upon receipt by the addressee at the following address, or to such different addressee or address as the parties may designate by written notice to each other:

If to RCC:                   The RiverCity Company  
Attn: Emily Mack  
2<sup>nd</sup> Floor, Miller Plaza  
Chattanooga, TN 37402  
Email: [emack@rivercitycompany.com](mailto:emack@rivercitycompany.com)

If to City:                   The City of Chattanooga  
Attn: Scott Martin  
Department of Parks and Outdoors  
200 River Street  
Chattanooga, TN 37402  
Email: [sdmartin@chattanooga.gov](mailto:sdmartin@chattanooga.gov)

With a copy to:           Office of City Attorney  
Attn: Phillip A. Noblett  
100 E. 11<sup>th</sup> Street, Suite 200  
Chattanooga, TN 37402  
Email: [pnoblett@chattanooga.gov](mailto:pnoblett@chattanooga.gov)

If to County :             Hamilton County Parks and Recreation  
Administration Office  
Attn: Matt Folz  
1250 Market Street  
Chattanooga, TN 37402  
Email: [MattF@hamiltontn.gov](mailto:MattF@hamiltontn.gov)

With a copy to :         Office of Hamilton County Attorney  
Attn: Rheubin Taylor  
204 Courthouse  
625 Georgia Avenue  
Chattanooga, TN 37402  
Email : [rmtaylor@hamiltontn.gov](mailto:rmtaylor@hamiltontn.gov)

10.2 No Assignment. This Agreement may not be assigned by any party without the written consent of the other parties.

10.3 No Waiver. No waiver of any term, condition or provision of this Agreement will be deemed or will constitute a waiver of any other term, condition or provision, whether similar, nor will any waiver constitute a continuing waiver. No waiver will be binding unless made in writing and signed by the party making the waiver.

10.4 Reference to Days. All references in this Agreement to “days” will, unless otherwise specified, mean calendar days.

10.5 Headings. The headings in this Agreement are included for convenience only and will not affect the construction or interpretation of any provision in this Agreement.

10.6 Severability. Every term, condition or provision of this Agreement is severable from the others. If a court of competent jurisdiction holds any term, condition or provision of this Agreement to be invalid, unenforceable or illegal in whole or in part for any reason, the validity and enforceability of the remaining terms, conditions or provisions, or portions of them, will not be affected.

10.7 Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the Services, and supersedes all prior and contemporaneous understandings, agreements and representations whether oral or written. No supplement, modification or amendment of this Agreement will be binding unless in a writing which states that it is an amendment of this Agreement, and which is signed by an authorized representative of each party.

10.8 Governing Law. This Agreement will be construed in accordance with and governed by the laws of the state of Tennessee.

10.9 Counterparts. This Agreement may be executed in counterparts, each of which will be considered an original. This Agreement, to the extent signed and delivered by means of a facsimile machine, electronic mail or other electronic method containing a reproduced signature, shall be treated in all manner and respects as an original contract and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person.

**[SIGNATURES ON FOLLOWING PAGE]**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the first day written above.

**THE CITY:**

**THE CITY OF CHATTANOOGA**, a Tennessee municipal corporation

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**THE COUNTY:**

**HAMILTON COUNTY TENNESSEE**, a political subdivision in the State of Tennessee

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**RCC:**

**THE RIVERCITY COMPANY**, a Tennessee nonprofit corporation

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_