

# RESOLUTION OF THE CITY COUNCIL

No. 356

Approved July 24, 2019

RESOLVED, That the Members of the Providence City Council  
hereby Authorize the Mayor of the City of Providence to enter into a One-Year  
Agreement with Waterfire Providence.

IN CITY COUNCIL

JUL 18 2019

READ AND PASSED

*Salena Mats*  
PRES.

*Shawn Sellick*  
CLERK

I HEREBY APPROVE.

*[Signature]* Mayor  
Date: 7/24/19

**PARTNERSHIP AGREEMENT**  
**BETWEEN THE CITY OF PROVIDENCE AND WATERFIRE PROVIDENCE**

**RECITALS**

WHEREAS, the City of Providence ("City") and WaterFire Providence® ("WaterFire") (jointly, "the Parties") have enjoyed many years of successful collaboration in lightings of the internationally renowned, award-winning WaterFire art installation by artist Barnaby Evans; and

WHEREAS, WaterFire is an independent, Internal Revenue Code § 501(c)(3) non-profit arts organization whose mission is to inspire Providence and its visitors by revitalizing the urban experience, fostering community engagement and creatively transforming the City by presenting WaterFire for all to enjoy; and

WHEREAS, the City will continue to support WaterFire in fulfilling its mission and growing its capacity; and

WHEREAS, the City recognizes that WaterFire provides an exceptional public arts experience, and plays a significant role in defining Providence as a global cultural tourism destination that attracts an estimated one million visitors annually; and

WHEREAS, the City recognizes that WaterFire is an admission-free event that brings offers Providence residents a world class arts experience in their own community; and

WHEREAS, a study by the United States Army Corps of Engineers in 2012 established that WaterFire has an annual economic impact of \$114.3 million from visitor spending which generates over \$9,000,000 per year in direct tax revenue for the State of Rhode Island, and creates 1,294 jobs for community residents; and

WHEREAS, the City recognizes that WaterFire secures traditional and new media valued at over \$2,000,000 per year that paints Providence in a positive light, strengthens its Creative Capital brand and promotes it as a global cultural tourism destination; and

WHEREAS, in opening the WaterFire Arts Center in 2017, the organization invested \$14,000,000 in the Valley neighborhood, supporting one of the City's key initiatives as part of the Planning Department's Woonasquatucket Vision Plan, and created a valuable new cultural and educational resource for Providence and its residents and a world class exhibition space, advancing Providence as an international arts and culture tourism destination year-round; and

WHEREAS, the City traditionally has provided substantial in-kind support and services to WaterFire since its creation in 1994; and

WHEREAS, WaterFire raises money for its operations from sponsorship, grants, donations and earned income; and

WHEREAS, the governance and maintenance of publicly owned spaces within the City are the City's sole responsibility, and the Parties seek to create an operational framework related to the use and control of the public spaces made available to WaterFire during these installations and events; and

WHEREAS, over the years, with Parks Department permission and supervision, WaterFire staff and volunteers have devoted significant hours and effort, and purchased at their own expense or secured donated materials used in cleaning up the river and parks, painting bridges, light-posts and repairing other park infrastructure; and

WHEREAS, WaterFire recognizes and appreciates that the City provides substantial support for WaterFire despite its fiscal and governance constraints; and

WHEREAS, the Parties desire to continue this collaboration and to memorialize its terms; and

WHEREAS, it is necessary to delineate the terms and conditions of the Parties' collaboration and to quantify the amount of in-kind support associated with City services, to provide assurances to the general public that the City is exercising good stewardship over public resources, to demonstrate to third-party funders that WaterFire has been able to attract significant public support and that City's partnership with WaterFire is an important investment in the significant tangible and intangible economic and cultural impacts WaterFire creates;

NOW THEREFORE, the Parties agree as follows:

#### AGREEMENT

1. Term. This Agreement shall commence on July 1, 2019 and end on June 30, 2020.
2. Responsibilities. In partnership, the City and WaterFire will:
  - a. Coordinate the production and City services associated with installing and producing WaterFire in accordance with the terms outlined in this Agreement.
  - b. Develop and manage project budgets for jointly identified projects requiring shared fundraising, as needed.

At the time of the signing of this Agreement, the Parties are jointly executing the Woonasquatucket River Greenway Arts initiative. A copy of this agreement is included in Appendix A.

The Parties have also been engaged in developing a project list and budget for public space improvements, which incorporates existing grant funding sources and anticipates the achievement of certain fundraising goals. Depending upon the magnitude and timing of the grant funds and donations, the project budget is subject to adjustment. This Agreement is designed in part to bring some clarity to the budgetary process.

As joint projects are identified, the Parties will outline funding requirements and responsibilities in an appendix to this document. Provided the Parties are successful in raising additional funds, both Parties agree to review and change the scope of the Project budget as needed.

- c. This Agreement is not intended to capture any of WaterFire's regular General Operating Support and program sponsors. Should an existing Waterfire sponsor elect to increase support to WaterFire on behalf of a joint project, WaterFire will first apply the funds to Waterfire's operational support, with any additional funds flowing to the joint project. A sponsor will be considered shared when both parties have played a role in securing the sponsorship (including origination, program development, and crafting benefits or activations), and it is either an upsell or new sponsor. As needed, the Parties will review targets, progress, and allocations of sponsorship dollars. Increases from shared sponsors should result in an increase to mutually agreed upon project expenses. The Parties agree that, after these funds are raised, any further additional funds raised through sponsorship

will be used for the sole purpose of increasing programming and other expense requirements for the identified joint project.

3. Commitments of the City.

- a. The City will provide annual support during the contract term for up to 12 full WaterFire lightings and 6 partial WaterFire lightings. The following services will be donated as in-kind contributions:

Parks Department

- i. Maintenance staff expenses to clean and maintain park:  
\$1603 per full fire  
\$795 per partial fire (if vendors present)
- ii. Permit Fees:  
\$1670 per full fire  
\$770 per partial fire  
\$20 special event permit per fire

Public Works Department

- i. Application fees:  
\$1,100 per full fire
- ii. Traffic engineering expenses:  
\$2,178 per full fire
- iii. Waived parking revenue:  
\$590 parking revenue

Department of Art, Culture + Tourism

Special Events Application:

- \$75 per full fire
- \$50 per partial fire

Public Safety

The Providence Police Department is responsible for public safety. WaterFire will pay for the actual costs related to Police details during the contract term, up to \$28,500 for the 2019 WaterFire season. To the extent that the costs related to Police details exceeds this amount, the City will donate the remaining costs of these services. The actual costs and the assignment of each detail will be determined by the Police Department and will vary depending on the size and nature of the WaterFire event and the public safety needs.

Providence Emergency Management Agency

WaterFire is responsible for completing an Incident Action Plan approved by the Public Safety Commissioner or his/her designee that accounts for the safety of all attendees and participants at all venues and locations used for each installation, including additional security and safety measures.

The City reserves the right to cancel any specific WaterFire based on risk posed by severe weather conditions or human-made threats known through Homeland Security and intelligence agencies. The City agrees to work collaboratively with WaterFire should such a cancellation become necessary.

Sanitation Services

During the term of this Agreement, WaterFire shall provide at its expense a 30-yard dumpster for the disposal of waste generated by the WaterFire event. The dumpster shall be available for use by the City's Parks Department. The dumpster shall be placed at curbside in the parking lane of a street near the park where the WaterFire event is to occur. WaterFire shall arrange for the removal of the dumpster no later than 7:00 a.m. the next work day. The City shall waive the collection of parking meter revenue from the curbside location of the dumpster and exempt WaterFire from same.

#### Website

The City shall provide a link on its website to the WaterFire website.

#### Addendum

The addendum to this Agreement serves as a reference for the monetary amounts contained within this Agreement and as a representation of the estimated amount of in-kind support provided by the City during its term. To the extent the addendum is inconsistent with this Agreement, the terms of the Agreement control. The addendum in no way contractually binds the Parties by the amounts it contains.

#### Vending Permits

The City and WaterFire agree that, during the events, WaterFire shall be granted an exclusive blanket-vending permit to vend, sub-permit, and control vending and performances in the park areas adjacent to WaterFire, the closed streets, and the adjacent areas as determined and governed by the Providence Board of Licenses and the Providence Code of Ordinances.

#### Special Events Ordinance

WaterFire shall be relieved of the obligation of filing separate Special Events permits for each event; this Agreement will stand in lieu of these Special Event Permits. WaterFire will appear before the City's interdepartmental City Service Team by April 15 annually to present its operations plan and pending season schedule for review and approval. WaterFire agrees to avoid scheduling full WaterFire lightings that coincide with the RI Pride Festival, July 4, and the Saturday of PVDfest.

#### Special Fire Effects Permits

In the event that WaterFire establishes a manual for Standard Operating Procedures ("SOP"), and said SOP are approved by the City Fire Marshal or the Fire Marshal for the State of Rhode Island, WaterFire shall thereafter be relieved of the obligation and cost of applying for separate Special Fire Effects Permits for those WaterFire events that abide by the terms of the SOP. The SOP may be amended from time to time, subject to approval by the Fire Marshal. For any and all special fire effects beyond those provided for in the SOP, WaterFire shall be required to apply and pay the established fee for Special Fire Effects Permit(s).

Before the establishment of the SOP, the City shall relieve WaterFire of the established fee for the first five (5) Special Fire Effect Permits.

#### Additional Fires

The City will charge WaterFire for the actual cost of labor, equipment, and costs incurred, excluding all Permit and Application Fees outlined in Section 3.a, Commitments of the City, for any fire events that exceed the 18 total fires described

in this Agreement. WaterFire may substitute a partial lighting for an allowed full lighting if desired. WaterFire may not, however, substitute a full lighting for an allowed partial lighting without being charged by the City for the actual cost of additional labor, equipment, and costs incurred, excluding all Permit and Application Fees outlined in above.

In the event that the City requests a full or partial fire in addition to the 12 full and 6 partial fires provided for in this Agreement, the City shall provide those services outlined in Section 3.a. For any such City-commissioned fires, said services shall not be regarded as additional in-kind support from the City to WaterFire. This Agreement does not create a legal obligation on the part of WaterFire to execute City-requested WaterFire events.

### 3. WaterFire's Commitments

In exchange for the City's support and contributions, WaterFire shall provide the following to the City:

- a. **Sponsorship Credit.**  
WaterFire shall provide the City with sponsorship credit in all materials associated with the project, including but not limited to posters, rack cards, advertisements, and web site promotions. Additionally, WaterFire shall list the City as a season sponsor in all press releases and media advisories.
- b. **Website.**  
WaterFire shall provide a link on its website to the City's website.
- c. **Liability Insurance.**  
WaterFire shall provide the City with proof of liability insurance in the amount of five million dollars (\$5,000,000), naming the City of Providence, its departments, employees and/or agents, as additional insureds.
- d. **Board Representation.**  
WaterFire shall guarantee an ex-officio, non-voting seat on its board to the Director of the Department of Art, Culture + Tourism, City of Providence or the Mayor's designee.
- e. **Hardware.**  
WaterFire will remove all of the hardware installed to support the temporary installation thirty (30) days after the final fire of the season not to be reinstalled until 30 days in advance of the first fire of the new season. Hardware does not include the Brazier and anchor assemblies located in the river.
- f. **Electricity.**  
WaterFire will first attempt to engage the City Electrician to perform any work. An outside electrician can be brought in only if no City Electrician is available. If WaterFire is using a generator, use of an electrician of their choice is permissible.

### 4. Limitations.

- a. **Future WaterFire Seasons**  
This Agreement shall not provide a guarantee for the future costs of city services beyond its terms. Any future agreements will be based on the mutual agreement of the Parties. This Agreement shall not be construed as a guarantee that WaterFire events will occur beyond the term of this Agreement.

b. Public responsibility.

This Agreement acknowledges that WaterFire events are held on public property and it is the sole responsibility of the City to maintain and manage these spaces as it deems appropriate. WaterFire staff or board members may from time to time communicate concerns about the spaces or operations to the appropriate City department. It is expressly agreed that WaterFire is not responsible for maintaining the park, streets, paths, railings, handrails, surfaces, stages, cross-walks, curbs, rivers, bridges, docks, lights, traffic signals, or sidewalks and is not liable for any claims related to the use or condition of these components. It is further acknowledged that WaterFire is not responsible for controlling the public's access to or movement in, within or around the park.

c. Equal opportunity.

WaterFire agrees to comply with all applicable local, state, and federal laws that prohibit discrimination based on race, color, national origin, ancestry, religion, age, gender, sexual orientation, or disability.

5. Indemnification.

- a. WaterFire shall indemnify and hold harmless the City, its agents, officers, servants, and employees, from any and all claims, demands, suits, and compromise, including attorneys' fees, for damage to property and damage to persons which are the direct result from the use by WaterFire of the City's parks and facilities, unless such damages are caused by the willful misconduct or intentional wrong of the City, its agents, officers, servants and employees.
- b. The City shall indemnify and hold harmless WaterFire, its agents, officers, servants, and employees, from any and all claims, demands, suits, and compromise, including attorneys' fees, which may result from the use of the City's parks and facilities, unless such damages are caused by the willful misconduct or intentional wrong of WaterFire, its agents, officers, servants, and employees.

6. Miscellaneous

- a. Captions. Titles or captions of sections contained in this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Agreement or the intent of any provision.
- b. Merger. This Agreement constitutes the entire understanding between the Parties with respect to the events described, and this Agreement shall not be modified except in a writing executed by both Parties.
- c. Severability. The invalidity, illegality, or unenforceability of any provision of this Agreement shall not affect or impair any other provision, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been included.
- d. Waiver. The failure of any party to insist upon strict performance of a covenant or of any obligation, irrespective of the length of time for which such failure continues, shall not be a waiver of such party's right to demand strict performance compliance in the future. No consent or waiver, expressed or implied, to or of any breach or default in the performance of any obligation, shall constitute a consent or waiver to or of any other breach or default in the performance of the same or

