

RESOLUTION OF THE CITY COUNCIL

No. 386

Approved July 10, 2018

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

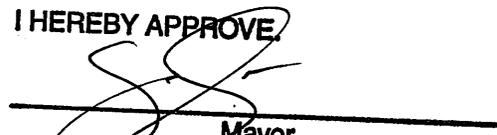
JUL 05 2018

READ AND PASSED


PRES.


CLERK

I HEREBY APPROVE



Mayor

Date: 7/10/18

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 installation by artist Barnaby Evans; and

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

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

WHEREAS, By establishing the WaterFire Arts Center on Valley Street in 2017, the organization has invested \$14 million in creating a valuable new cultural and educational resource for Providence and its residents and further established its role as an international tourist destination year round; and

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

WHEREAS, The City traditionally has provided substantial amounts of "in-kind" support to WaterFire; 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, to provide assurances to the general public that the City is exercising good stewardship over public resources, and to demonstrate to third-party funders that WaterFire has been able to attract significant public support; and

NOW, THEREFORE, the Parties agree as follows:

AGREEMENT

1. Term. This Agreement shall commence on April 1, 2018 for the 2018 WaterFire season. It is the goal of the Parties to negotiate a multi-year agreement prior to the 2019 WaterFire season.
2. Commitments of the City.

The City will provide support during the 2018 WaterFire season for up to 12 full fires and 6 partial fires. The following services will be donated as "in-kind" contributions:

- a. Parks Department
 - i. Maintenance staff expenses to clean and maintain park:
\$1572 per full fire
\$779 per partial fire (if vendors present)
 - ii. Permit Fees:
\$1650 per full fire
\$750 per partial fire
\$20 special event permit per fire
- b. 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
- c. Department of Art, Culture + Tourism
 - i. Special Events Application:
\$75 per full fire
\$50 per partial fire

i. 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.

j. Special Events Ordinance.

WaterFire shall be relieved of the obligation of filing separate Special Events permits for each event and 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 to present its operations plan and pending 2018 schedule for review and approval. WaterFire agrees to avoid scheduling full fires that coincide with the RI Pride Festival, July 4, and the Saturday of PVDFest.

k. Special Fire Effects Permits.

i. Standard Operating Procedures.

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 thereafter shall 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).

ii. Pre-SOP.

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

1. Additional Fires.

i. No Additional In-Kind Support.

The City will charge WaterFire for the actual cost of labor, equipment, and costs incurred, excluding all Permit and Application Fees outlined in Section 2 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 Section 2 Commitments of the City.

ii. City-Requested WaterFire Events.

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 2. 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 during or beyond the terms 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.

- d. Rhode Island Public Transportation Authority.

The City recognizes that the Exchange Street corridor is a critical linkage for RIPTA operations and will allow RIPTA buses to continue to use the Exchange Street bridge over the Woonasquatucket River during special events including WaterFire. Additionally, the City will make all reasonable efforts to minimize required RIPTA detours around Kennedy Plaza during special events. For pre-planned special events, the City agrees to notify RIPTA of its intent to alter traffic operations along the dedicated bus lanes in writing at least 30 calendar days in advance of the proposed change.

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 hereto with respect to the transactions contemplated herein, and this Agreement shall not be modified except in a writing executed by all parties hereto.
- c. Severability. The invalidity, illegality, or unenforceability of any provision hereof 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 contained herein.
- d. Waiver. The failure of any party to insist upon strict performance of a covenant hereunder or of any obligation hereunder, 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 hereunder, shall constitute a consent or waiver to or of any other breach or default in the performance of the same or any other obligation hereunder. No term or provision of this Agreement may be waived unless such waiver is in writing and signed by the party against whom such waiver is sought to be enforced.

THE PARTIES HEREBY ATTEST that the proceeding information is true and agreed to and also to comply with all the terms and conditions as stated above.

This Agreement is authorized on behalf of the Board of Directors of WaterFire Providence by:

Managing Director & CEO

Date

This Agreement is authorized on behalf of the City of Providence, with approval from the City Council, by:

Jorge O. Elorza, Mayor

Date

Approved as to form and correctness:

Jeffrey Dana, City Solicitor

Date

d. Public Safety.

The Providence Police Department is responsible for public safety. WaterFire will pay for the actual Police Department costs related to Police details during the terms of this agreement, up to \$28,500 for the 2018 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.

e. 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.

f. 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.

g. Website.

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

h. 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 the term of this Agreement. 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 contained therein.