



Huntsville, Alabama

308 Fountain Circle
Huntsville, AL 35801

Cover Memo

Meeting Type: City Council Regular Meeting **Meeting Date:** 10/12/2023

File ID: TMP-3483

Department: Urban Development

Subject:

Type of Action: Approval/Action

Resolution authorizing the Mayor to enter into a Festival Agreement between the City of Huntsville, Alabama and C3 Presents, L.L.C., to produce and manage a large scale, Multi-Day Music Festival at John Hunt Park.

Resolution No.

Finance Information:

Account Number: 3080-71-00000-530000-BUDGET01- (Please see internal notes)

City Cost Amount: \$3,000,000.00

Total Cost: \$3,000,000.00

Special Circumstances:

Grant Funded: N/A

Grant Title - CFDA or granting Agency: N/A

Resolution #: N/A

Location: (list below)

Address: N/A

District: District 1 ☐ District 2 ☐ District 3 ☐ District 4 ☐ District 5 ☐

Additional Comments:

Three (3) year Agreement with C3 Presents LLC to produce and manage a large scale, multi-day music festival in Huntsville, Alabama within John Hunt Park Festival Grounds.

FESTIVAL AGREEMENT

This Festival Agreement (the “Agreement”) is entered into effective as of the 16th day of October, 2023 (the “Effective Date”) by and between the City of Huntsville, Alabama (the “City”) and C3 Presents, LLC (“C3”). In this Agreement the City and C3 are collectively referred to as the “Parties,” and each, individually, as a “Party.”

RECITALS

A. C3 is in the business of, among other things, producing music festivals and other large events, including Austin City Limits Music Festival, Lollapalooza Music Festival in Chicago, previous U.S Presidential Inaugurations, and the NFL Draft.

B. Because of the positive publicity and economic impact a music festival can have on a city, the City wishes to enter into this Agreement with C3 for a production of a music festival in the City.

For and in consideration of the mutual covenants, rights, and obligations set forth in this Agreement, the Parties agree as follows:

1. The Festival and C3’s Obligations.

(a) In this Agreement, “Festival” means a music festival to be produced by C3 and held at John Hunt Park festival grounds (the “Venue”) located at 2151 Airport Road, Huntsville, Alabama 35801. The Parties anticipate that the capacity for the first Festival will be at least 30,000. Unless the Parties mutually agree otherwise, the Festival will be held beginning the last Saturday of September or the weekend before Austin City Limits Music Festival of each year. The Parties will mutually agree on the length of each Festival, but they anticipate each Festival will be two days on a Saturday and a Sunday. The Parties intend for C3 to produce three (3) Festivals, one per calendar year beginning in 2025, subject to the terms hereof.

(b) For each Festival, C3 will provide general production services consistent with other music festivals that it produces, including the following:

- Determine all programming and talent selection;
- Manage Venue logistics – secure and manage on-site staff and security as needed;
- Production and operations, including site build and strike, site design and technical drawings, planning timelines, service provider coordination, stage, sound, lights, power, portable structures, fencing and barricades, furniture, specialty equipment, waste management and cleanup, backstage catering, telecommunications, crowd safety, volunteer program, accessibility, greening efforts, staffing and labor managements, food and beverage concessions, and merchandise concessions;

**President of the City Council of the City
of Huntsville, AL**
Date: October 12, 2023

- Contract with all vendors – including caterers, decorating, lighting, security, clean-up, and staging;
- Booking, contracting with, and paying all talent for the Festival.
- Coordinate travel and accommodations for talent and staff;
- Creative services, including designing and producing signage, site décor and enhancements. C3 will use assets – such as logo, type treatment, fonts, and related artwork;
- On-site management – set-up and tear-down;
- Restore Venue to status quo ante within a reasonable period of time following each Festival, reasonable wear and tear excepted and any damage to the extent caused by the City or its employees or contractors excepted;
- Create and manage rental order for the Festival;
- Secure tenting and other necessary accommodations where needed; and
- In cooperation with the City, providing security – both public and private.

(c) C3 will consult with the City on the genre of the Festival, the name of the Festival, and the creative elements of the Festival.

(d) On or before January 15th of each calendar year in which C3 produces a Festival under this Agreement, C3 will provide written notification to the City of whether it intends to hold the Festival during such calendar year, the anticipated dates of the Festival, and the proposed initial layout of the Festival. Unless the City, within 15 days of receipt of such notification, reasonably objects to any portion of such notification, then the items in such notification will be deemed approved. Both parties agree to work in good faith to resolve issues, if any, regarding the proposed initial layout and anticipated dates provided by C3 to the City.

(e) Subject to Sections 2 and 9, as between C3 and the City, C3 is responsible for all costs associated with the production of the Festival.

(f) Subject to Section 3, nothing in this Agreement precludes any Party from providing similar services for itself or to other entities, so long as providing those services does not interfere with such Party's timely fulfillment of its obligations under this Agreement. No Party will have any right by virtue of this Agreement or any relationships created by this Agreement in or to such other ventures or activities or to the income or proceeds derived from another Party's ventures or activities. Each Party may produce other festivals, without such festivals being subject to the terms of this Agreement. Without limiting the generality of the foregoing, subject to Section 3 hereof, the City may, in its discretion, contract with another vendor for the production of music festivals at any location within the City, including at the Venue.

(g) Each Party will devote its commercially reasonable efforts and the necessary resources in providing its services and obligations in a professional manner. Each Party will determine the manner in which its services and obligations are to be performed and the specific hours to be worked by its personnel.

2. The City's Obligations.

(a) Except as herein provided, for the first three years the Festival is held, the City will allocate a total of \$3,000,000.00 (the "Loss Allocation") to be used by C3 under the terms of this Section 2. For each Festival, C3 may use the Loss Allocation as follows: If any year's Festival suffers a net loss, then the City will reimburse C3 for such net loss up to the following:

Festival	Maximum Loss Reimbursed by the City
Year 1 – Anticipated to be 2025	\$1,000,000.00
Year 2 – Anticipated to be 2026	\$1,000,000 + any unused amount from Year 1
Year 3 – Anticipated to be 2027	\$1,000,000 + any unused amounts from Year 1 and Year 2

If, in any year, a loss exceeds such year's Loss Allocation, such loss carries forward to future years. For illustration purposes only:

- (i) If the Festival loses \$1,500,000.00 in 2025 and \$500,000.00 in 2026 and makes a profit in 2027, then the City would reimburse C3 \$1,000,000.00 in 2025 and \$1,000,000.00 in 2026 (which includes the loss carried forward from 2024).
- (ii) If the Festival loses \$900,000.00 in 2025, \$300,000.00 in 2026, and \$1,200,000.00 in 2027, then the City would reimburse C3 \$900,000.00 in 2025, \$300,000.00 in 2026, and \$1,200,000.00 (which includes unused amounts from previous years) in 2027.
- (iii) If the Festival loses \$1,000,000.00 in 2025, \$900,000.00 in 2026, and \$1,300,000.00 in 2027, then the City would reimburse C3 \$1,000,000.00 in 2025, \$900,000.00 in 2026, and \$1,100,000.00 in 2027.

Notwithstanding the foregoing or any other provision herein contained, in the event that C3 cancels all or any part of any Festival for any reason other than force majeure, C3 shall not be entitled to any reimbursement or loss subsidy for such year.

(b) In any year in which C3 is seeking some of the Loss Allocation, within a reasonable time, not to exceed 120 days, following the Festival, C3 will provide the City with a preliminary report regarding the Festival's net profit or net loss (a "Preliminary Report"). C3 will determine each Festival's profit or loss consistent with its accounting practices with respect to other festivals that it produces. In calculating each Festival's profit or loss, C3 may include an allocation for its staff and services directly and demonstrably attributable to the Festival, with such allocation consistent with what C3 receives for other comparable festivals. Included with each Preliminary Report, C3 will

provide all information reasonably necessary to enable the City to independently verify and confirm the amounts reported as profit or loss, as the case may be, by C3, including all sources and totals of revenues and the specific line item and related invoices for claimed expenses. If the City disputes any claimed totals of profit or loss attributable to the subject Festival in a Preliminary Report, the Parties shall meet and work in good faith to resolve the discrepancy. If after receipt of the Preliminary Report or the resolution of any claimed dispute as to the results of a Preliminary Report, as the case may be, the City owes C3 any money under this Section 2, C3 shall send written notice of the same to the City, and the City will pay such amount within 30 days of the City's receipt of such notice of the amount owed. C3 has no obligation to provide a Preliminary Report in any year in which it is not seeking any of the Loss Allocation from the City.

(c) If the City fails to pay any amount it owes under this Agreement within 30 business days of the date such payment is due, interest will begin to accrue at the rate of the lesser of 5% annual interest or the maximum amount allowed by law, with interest continuing to accrue until the amount owed is paid.

(d) For each Festival, the City will, at no charge to C3, provide C3 with the following City services: police, fire, and medical, and, further, will not charge C3 rent for use of the Venue.

(e) The City will provide C3 with additional matching marketing dollars for the Festival such that the City will, in each year, provide C3 with money for marketing equal to the amount C3 otherwise spends in payments to third parties on direct marketing of each Festival. The City's matching marketing dollars are capped at the following amounts: \$200,000.00 for the first Festival, \$150,000.00 for the second Festival, and \$100,000.00 for the third Festival. C3 shall provide the City all documentation reasonably necessary to enable the City to verify the amounts spent by C3 on advertising for each Festival. In no event may C3 include as a marketing cost any amounts paid or allocated to the costs of C3 personnel, the costs or internal allocations of personnel charged, or general marketing of other festivals sponsored or promoted by C3.

(f) At no additional charge to C3, the City will ensure that the Venue has water, internet, cell service, and sewer lines for flushable vax toilets.

3. Exclusivity.

(a) During the Term, the City will ensure that, unless C3 consents otherwise, no other music festival is produced or held at the Venue that either (a) has a sellable capacity of 20,001 or greater; and (ii) gross revenue from ticket sales exceed \$2,000,000.00. For any music festival events at the Venue exclusively involving local producers and/or involving local non-profits, the Parties will in good faith consider exceptions to the exclusivity requirements of this section.

4. Term and Termination.

(a) The term of this Agreement (the “Term”) commences on the date of this Letter and will terminate on December 31, 2026; provided, however, that if the first festival is not held until 2025, then the Term will continue until December 31, 2027.

(b) Notwithstanding Section 4(a), C3 and the City each acknowledges that this Agreement is not binding on either Party until it has been approved by the City Council of the City.

(c) This Agreement may be terminated by either Party: (i) upon 30 days written notice to the other Party in the event of a material breach of this Agreement by the other Party that remains uncured during the 30-day notice period; (ii) if the other Party makes a general assignment for the benefit of creditors, files a voluntary petition in bankruptcy or for reorganization or arrangement under the bankruptcy laws, if a petition in bankruptcy is filed against such Party, or if a receiver or trustee is appointed for all or any part of the property or assets of such Party; (iii) by a written agreement executed by both Parties. If a Party gives the other Parties written notice of a material breach, the notice must specify the breach and the action necessary to cure the breach.

(d) If any year during the term beginning in 2025, C3 elects not to hold the Festival for any reason including an event of force majeure, then subject to the provisions hereof, the term of this Agreement will extend by one year.

(e) Notwithstanding the foregoing or any other provision herein contained:

- i. if any calendar year during the term beginning in 2025, C3 elects not to hold the Festival for any reason other than an event of force majeure, then, within 60 days following C3’s communication of such decision, the City may terminate this Agreement by providing written notice to C3.

5. Tracking and Auditing. During the Term and for two years after termination or expiration of this Agreement, each Party will maintain business and financial records that contain information sufficient to verify the completeness and accuracy of all payments under this Agreement and of all amounts claimed by C3 for payment by the City. Throughout the Term and for two years after termination or expiration, each Party may, at its own expense and on 30 days advance written notice to another Party, have its auditors examine the other Party’s records for the sole purpose of certifying the accuracy of any Preliminary Report submitted by C3, as well as all other reports, certifications, notices, or other demands for payment and determining the amount of fees due, if any, to the Party requesting the audit.

6. Intellectual Property. With the exception of pre-existing intellectual property of the City, all intellectual property directly related to the Festival (including the Festival name and any unique logo created in connection therewith) will, as between the City and C3, be owned by C3. If, after termination or expiration of this Agreement, C3 elects not to hold the Festival in Huntsville, Alabama, then, upon the City's request, C3 will in good faith discuss with the City the City's potential acquisition or license of the name of the Festival if the City wishes to continue to produce the Festival.

7. Confidentiality. In this Agreement, "Confidential Information" means the terms of this Agreement, the business plans, strategies, and target artists to play at the Festival, and any financial information, including budgets, related to the Festival. The Parties will maintain the strict confidentiality of all Confidential Information. No Party breaches this Agreement if the Confidential Information is required by law to be disclosed. Notwithstanding the preceding sentence, if a Party believes at any time that it is compelled by applicable law to disclose any Confidential Information, it will notify and consult with the other Party before making any such disclosure and the Parties will cooperate with one another to minimize and avoid any such disclosure to the fullest extent permitted by law. C3 acknowledges that the City, as a public entity, is subject to laws requiring certain disclosures. A Party will immediately notify the other Party if it becomes aware of any unauthorized disclosure of Confidential Information, or, in the case of the City, if it is required by law to disclose information, it will notify C3 before such disclosure.

8. Representations and Warranties and Disclaimers. Each Party represents and warrants the following to the other Parties: (i) such Party has the power and authority to enter into and perform its obligations under this Agreement; (ii) such Party will perform its obligations under this Agreement in a commercially reasonable manner; and (iii) any trademarks and intellectual property provided by such Party under this Agreement do not and will not violate any applicable law or regulation or infringe any proprietary, intellectual property, contract or tort right of any person.

9. Indemnification.

(a) By C3. C3 will indemnify, hold harmless and defend the City respective directors, officers, employees and agents from and against any action, claim, demand or liability, including reasonable outside attorneys' fees, to the extent such claim arises out of or is based upon: (i) the misconduct or negligent actions or omissions of C3 or its directors, officers, employees, contractors, and agents in performing under this Agreement; (ii) the failure of C3 or its directors, officers, employees, contractors, and agents to comply with all applicable laws; (iii) C3's breach of this Agreement; or (iv) C3's breach or infringement of any third party's intellectual property rights.

(b) By the City. If and to the extent permitted by Alabama law, the City will indemnify, hold harmless and defend C3 and its respective directors, officers, employees and agents from and against any action, claim, demand or liability, including reasonable outside attorneys' fees, to the extent such claim arises out of or is based upon: (i) the

misconduct or negligent actions or omissions of the City or its directors, officers, employees, contractors, and agents in performing under this Agreement; (ii) the failure of the City or its directors, officers, employees, contractors, and agents to comply with all applicable laws; (iii) the City's breach of this Agreement; or (iv) the City's breach or infringement of any third party's intellectual property rights.

10. Insurance.

(a) C3 will maintain at its own cost and expense commercial general liability insurance with minimum limits of \$5,000,000.00 general aggregate limit (which may be a combination of general liability and excess policies) and \$1,000,000.00 each occurrence sub-limit. C3 will name the City and its officers, directors, and employees as an additional insured on the policy. C3 will immediately notify the City if any such insurance lapses or is denied for any reason. C3 will cause the appropriate insurance carriers to give the City 30 days' written notice before the policy or policies are materially altered or cancelled. Upon request, C3 will furnish the City certificates from the carriers evidencing C3's compliance with this section.

(b) The City will maintain, including through self-insurance, at its own cost and expense commercial general liability insurance with minimum limits of \$5,000,000.00 general aggregate limit (which may be a combination of general liability and excess policies) and \$1,000,000.00 each occurrence sub-limit. To the extent any such insurance is obtained through a third-party insurance company, (i) the City will name C3, its parents and affiliates and their respective officers, directors, and employees as additional insureds on the policy, (ii) the City will immediately notify C3 if any such insurance lapses or is denied for any reason, (iii), the City will cause the appropriate insurance carriers to give C3 30 days' written notice before the policy or policies are materially altered or cancelled, and (iv) upon request, the City will furnish C3 certificates from the carriers evidencing the City's compliance with this section.

(c) Each Party will ensure that its subcontractors, if any, for the Festival maintain commercially reasonable insurance coverage of the type and amount satisfactory to the Party contracting with such subcontractor, and will make good faith efforts to have such insurance name C3 and the City as additional insureds.

11. LIMITATION OF DAMAGES. NO PARTY TO THIS AGREEMENT WILL BE LIABLE TO ANY OTHER PARTY TO THIS AGREEMENT FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES (INCLUDING DAMAGES FOR LOSS OF USE, POWER, BUSINESS GOODWILL, REVENUE OR PROFIT, NOR FOR INCREASED EXPENSES, OR BUSINESS INTERRUPTION) ARISING OUT OF OR RELATED TO THE PERFORMANCE OR NON PERFORMANCE OF THIS AGREEMENT.

12. Independent Contractors. C3 and the City and their respective personnel, are and will be independent contractors and no Party by virtue of this Agreement will have any right, power or authority to act or create any obligation on behalf of the other

Parties, unless expressly provided in this Agreement. This Agreement does not constitute and may not be construed as constituting an employment relationship, joint-employer relationship, a partnership, or joint venture between the Parties.

13. Notices and Submissions. All notices and payment under this Agreement are effective if hand delivered or sent by overnight courier or by certified mail, return receipt requested to the following addresses:

C3 Presents, LLC
1645 E. 6th Street, Suite 150
Austin, Texas 78702
Attn: Ted Heinig

City of Huntsville
308 Fountain Circle
Huntsville, Alabama 35801
Attn: Matt Mandrella

Any Party may change its address for notice and payment by giving written notice to the other Parties.

14. Force Majeure. Any delay or failure of any Party to perform its obligations under this Agreement is excused to the extent that it is caused by an event or occurrence beyond its reasonable control, including acts of God, actions by governmental authority (whether valid or invalid), fires, floods, windstorms, explosions, riots, natural disasters, wars, sabotage labor problems, or artist injury, illness, or death provided the Party claiming force majeure promptly notifies the other Parties of the event of force majeure, the anticipated duration of the event of force majeure, and the steps being taken to remedy the failure. C3 may elect not to hold any Festival due to an event of force majeure, and shall notify the City of such election as soon as is practicable thereafter. If any Festival is canceled due to an event of force majeure: (i) upon C3's request, the City will provide the applicable Loss Allocation to such year's canceled Festival; (ii) this Agreement extends for one additional year; and (iii) both Parties obligations under Section 2 will apply to such additional year.

15. Assignment. No Party may assign its rights or powers under this Agreement without the express written consent of the other Parties. Any attempt to assign without the other Parties' consent will be null and void and will give the non-assigning Party the right to cancel and terminate this Agreement.

16. Injunctive Relief. In addition to any other relief that may be available to it upon violation of this Agreement, each Party is entitled to seek an injunction by any competent court enjoining and restraining any other Party and each and every other person concerned from violating this Agreement.

17. Governing Law and Venue. This Agreement will be construed under and in accordance with the laws of the State of Alabama excluding any conflict-of-law or choice of law rules or principle that might refer the governance or the construction of this Agreement to the law of another jurisdiction. The proper exclusive venue for resolution of any dispute related to this Agreement is only in Madison County, Alabama, and all Parties consent to jurisdiction in Madison County, Alabama.

18. Attorneys' Fees. If any Party commences any legal proceeding against the other Party with respect to any of the terms and conditions of this Agreement, the non-prevailing Party will pay to the prevailing Party all expenses of the litigation including reasonable outside attorneys' fees as may be fixed by the court having jurisdiction over the matter.

19. Entire Agreement. This Agreement contains the entire agreement between the Parties relative to the subject matter and supersedes any other prior understandings, written or oral, between the Parties with respect to this subject matter. THE PARTIES ACKNOWLEDGE AND AGREE THAT, IN ENTERING IN TO THIS AGREEMENT, THEY HAVE NOT IN ANY WAY RELIED UPON ANY ORAL OR WRITTEN AGREEMENTS, UNDERSTANDINGS, REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, NOT SPECIFICALLY SET FORTH IN THIS AGREEMENT. No variations, modifications, or changes in the Agreement are binding on any Party to the Agreement unless set forth in a document duly executed by or on behalf of such Parties.

20. Section References. When this Agreement makes reference to an article, section, paragraph, clause, schedule or exhibit, that reference is to an article, section, paragraph, clause, schedule or exhibit of this Agreement unless the context clearly indicates otherwise. Whenever the words "include," "includes," or "including" are used in this Agreement, they are deemed to be followed by the words "without limitation." Any reference to gender extends to and includes all genders.

21. Severability. If a mediator, arbitrator, or court holds, for any reason, that one or more provisions of this Agreement is invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision of this Agreement, but such provision will be deemed deleted, and the deletion will not affect the validity of other provisions of this Agreement.

22. Non-waiver. Any waiver by any Party of a breach of this Agreement by another Party will not be considered a waiver of any subsequent breach. To be effective, a waiver must be in writing.

23. Headings. The headings used in this Agreement are used for administrative purposes only and do not constitute substantive matter to be considered in construing the terms of this Agreement.

24. Counterparts and Electronic Delivery of Signatures. The Parties may execute this Agreement in any number of counterparts, each of which is deemed an original, but all of which together constitute one and the same instrument. This Agreement may be executed by facsimile, PDF, or other electronic signature. A signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission will have the same legal effect as delivery of an original signed copy of the Agreement.

25. Construction. All Parties have been advised to seek their own independent counsel concerning the interpretation and legal effect of this Agreement and have either obtained such counsel or have intentionally refrained from doing so and have knowingly and voluntarily waived such right. Consequently, the normal rule of construction to the effect that any drafting ambiguities are to be resolved against the drafting Party will not be employed in the interpretation of this Agreement or any amendment or exhibits.

By their authorized representative's signatures, the Parties agree to and accept this Agreement:

C3 PRESENTS, L.L.C.

By: _____
Ted Heinig
Festival Executive Producer

Date: _____

Attest: _____

Date: _____

CITY OF HUNTSVILLE
a municipal corporation in the State
of Alabama

By: _____
Tommy Battle
Its. Mayor

Date: _____

Attest: _____
Shaundrika Edwards
Its. City Clerk

Date: _____