



A SUBSTITUTE ORDINANCE BY

04-O-0451

COMMUNITY DEVELOPMENT/HUMAN RESOURCES COMMITTEE

AN ORDINANCE AUTHORIZING THE MAYOR OR HER DESIGNEE, ON BEHALF OF THE CITY, TO ENTER INTO VENDING AGREEMENTS FOR THE 2004, 2005, AND 2006 ATLANTA JAZZ FESTIVAL AND MONTREUX ATLANTA MUSIC FESTIVAL, AND DIRECTING THAT ALL JAZZ FESTIVAL VENDING FEES BE DEPOSITED INTO THE JAZZ FESTIVAL TRUST FUND ACCOUNT, FUND CENTER NUMBER 3P02 464101 N41S0201QNA0, AND THAT ALL MONTREUX FESTIVAL VENDING FEES BE DEPOSITED INTO THE MONTREUX FESTIVAL TRUST FUND ACCOUNT, FUND ACCOUNT CENTER NO. 3P02 464101 N41S0202QNA0; AND FOR OTHER PURPOSES.

WHEREAS, the City of Atlanta (“City”) produces two music festivals each year for the benefit of its citizens, the Atlanta Jazz Festival (“Jazz Festival”) and the Montreux Atlanta Music Festival (“Montreux Festival”) (collectively, the “Festivals”);

WHEREAS, the Jazz Festival is held throughout the month of May, culminating during the Memorial Day weekend, and includes approximately one hundred free events and approximately five events for which an admission price is charged; and

WHEREAS, the Montreux Festival is held for up to five consecutive days, including the Labor Day weekend, and includes approximately ten free events and fifteen events for which an admission price is charged; and

WHEREAS, one way that the City pays for the Festivals is through vending at the Festivals. Numerous vendors request the ability to sell and/or advertise their goods at these Festivals, including vendors selling merchandise, and vendors selling food and drinks. The City determines the types and quality of food, drinks, and merchandise that the City desires to have available, and determines the quantity of each type of vendor that is needed at each festival; and

WHEREAS, based upon the City’s determination of its needs, and the information submitted by vendors, the City selects vendors for each of the Festivals; and

WHEREAS, as the producer of the Festivals, the City must negotiate and enter contracts with each of the vendors that it selects (“Vendor Agreements”); and

WHEREAS, the Vendor Agreements establish that a particular vendor is being hired to vend at one of the Festivals. The City’s payment to the vendor takes the form of producing the festival, and thereby providing thousands of potential customers for the



vendor. Typically, because of the large number of attendees, and because the number of vendors at the Festivals is limited, vendors at the Festivals derive a tremendous amount of revenue; and

WHEREAS, in addition to providing its vending services for the City, the vendor compensates the City for providing potential customers by paying a contract price. The contract price required by the City is based on the market rate for the right to vend at a large, well-attended outdoor festival, and is also based on whether the vendor is selling goods or advertising goods, whether the goods being sold are edible, the cost of the goods being sold, and the size of the space being provided to the vendor; and

WHEREAS, the Vendor Agreements are different from a vending permit received by a vendor wishing to vend on City public property. A Vendor Agreement is a revenue generating contract between the City and a vendor, whereby the vendor provides a service for the City. In contrast, with a vending permit, the vendor is not fulfilling a City need, nor providing a specific service for the City. A person desiring a vending permit submits an application to the City Police Department, and requests a particular vending location plus two alternatives. If the applicant for the vending permit passes the criminal background check, s/he will be placed on a master list and the desired vending location will be assigned on a first come, first served basis; and

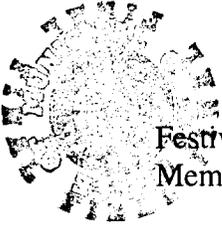
WHEREAS, when a private organizer sponsors an outdoor festival, the organizer receives a City Outdoor Festival permit for her/his event, and that permit allows for vending during the festival. The private organizer then contracts with vendors to sell goods and merchandise at the festival, and the vendors are not required to obtain a vending permit from the City of Atlanta; and

WHEREAS, similarly, the City of Atlanta Bureau of Cultural Affairs receives a City permit to hold the Jazz and Montreux Festivals, and this permit precludes the need for vendors at the Festivals to obtain a City vending permit; and

WHEREAS, the contract price paid by vendors entering Vendor Agreements for providing services at one of the Festivals is different from the fee paid by vendors receiving a vending permit to vend on public property; and

WHEREAS, the Vendor Agreements must be made after the City hires the artists for each of the Festivals, and determines the landscape of each of the Festivals. Therefore the Vendor Agreements must be made within a relatively close time proximity to the Festivals, and the City does not have time to select and contract with the Festivals' vendors as set forth in the Procurement Code. The Vendor Agreements for the Festivals should be exempt from the Procurement Code; and

WHEREAS, during one or more of the Festivals, the City may determine that it is advantageous to contract with a company to manage all Festival vending. A vending management company would be responsible for selecting, contracting with, coordinating, managing, and handling any and all necessary arrangements regarding any and all



Festival vendors ("Vendor Management") for that portion of the Festival occurring on Memorial Day weekend or Labor Day weekend, as applicable; and

WHEREAS, based upon the reduced number of employees in the Bureau of Cultural Affairs, the Bureau is unable to self perform the Vendor Management for the 2004 Jazz Festival; and

WHEREAS, it is in the City's best interest to contract with a vending management company for the 2004 Jazz Festival so that the City does not forgo a significant revenue generating opportunity; and

WHEREAS, Premier Events Management ("PEM") is an experienced vending management company that has provided Vendor Management services at previous Jazz Festivals. The Bureau of Cultural Affairs recommends that the City contract with PEM, whereby PEM will handle all Vending Management for that portion of the 2004 Jazz Festival occurring on Memorial Day weekend.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA, as follows:

Section 1. The Mayor or her designee, on behalf of the City, is authorized to enter Vendor Agreements for the 2004, 2005, and/or 2006 Jazz Festival and/or the 2004, 2005, and/or 2006 Montreux Festival. The Commissioner or her designee shall use her discretion to establish written criteria by which to select vendors. The written criteria shall further the artistic and business objectives of the Festivals. Upon selection of each vendor, the Commissioner or her designee shall document her rationale for each selection, indicating how that selection was consistent with the written criteria. The Vendor Agreements shall indicate, at a minimum, the type of product that the vendor will be selling or advertising, the dates and times during which the vending shall be permitted, the location of the vending, the size of the vending area that will be provided by the City, and the contract price to be paid by the vendor. All vending contract prices quoted in the Vendor Agreements shall be for a vending booth at either of the two Festivals during the three-day Memorial Day or Labor Day weekend, as applicable. These vending fees shall be in the following ranges: the fee for vending merchandise shall be between \$300 through \$2,000; the fee for vending food and/or non-alcoholic drinks shall be between \$750 through \$5,000; and the fee for persons or companies wishing to advertise a particular product at a vending booth shall be between \$5,000 through \$15,000. Lastly, the fee for vending drinks, including beer, shall be calculated based upon a percentage of gross receipts, whereby that percentage shall be, at a minimum, 25%. The Commissioner or her designee shall develop a schedule of criteria by which the exact vending prices shall be determined, and applied consistently amongst vendors within the same category. The Vendor Agreements shall require each vendor to comply with all rules, regulations, laws, and policies of all governmental agencies having jurisdiction over the Festivals, including but not limited to the Fulton County Health Department.



Section 2. For the 2004 Jazz Festival only, the Mayor, or her designee, on behalf of the City, is authorized to enter an agreement with Premier Events Management, whereby PEM shall be responsible for Vending Management for that portion of the 2004 Jazz Festival occurring on Memorial Day weekend ("2004 Festival"). The City's contract with Premier shall be substantially similar to the draft contract attached hereto as Exhibit A. The Vending Management services performed by Premier shall include but not be limited to selecting, contracting with, coordinating with, and managing all 2004 Festival vendors, and handling any and all necessary arrangements regarding any and all 2004 Festival vendors. In exchange for this service, the City shall pay PEM 18% of the vending fees paid by food vendors. PEM shall provide the following services without any charge to the City: Vending Management of all merchandise vendors; Vending Management of all corporate vendors; Consultation services regarding the overall design and layout of the 2004 Jazz Festival; and Consultation and assistance with 2004 Festival sponsors to assure their satisfaction. In addition, Premier will self-perform the vending of beverages, including beer. In its capacity as beverage vendor, Premier will pay the City 25% of the first \$25,000 it earns at the 2004 Festival, 30% of their gross receipts between the amount of \$25,001 through \$40,000, and 35% of all gross receipts exceeding \$40,000.

Section 3. All Jazz Festival vending fees shall be deposited into the Jazz Festival Trust Fund Account, Fund Account Center No. 3P02 464101 N41S0201QNA0, and shall be used to pay for Jazz Festival costs only. All Montreux Festival vending fees shall be deposited into the Montreux Festival Trust Fund Account, Fund Account Center No. 3P02 464101 N41S0202QNA0, and shall be used to pay for Montreux Festival costs only. All Jazz Festival costs, if any, shall be charged to and paid from Jazz Festival Trust Fund Account, Fund Account Center number 3P02 524001 N41S0201QNA0. All Montreux Festival costs, if any, shall be charged to and paid from Montreux Festival Trust Fund Account, Fund Account Center number 3P02 524001 N41S0202QNA0.

Section 4. All ordinances in conflict herewith are hereby repealed for purposes of this Ordinance only, and only to the extent of the conflict.

A true copy,

Franka Daughin Johnson
Municipal Clerk

ADOPTED by the Council
APPROVED by the Mayor

April 19, 2004
April 27, 2004

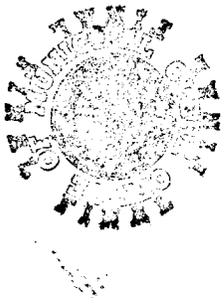
Vending Management Agreement

- (1) The City of Atlanta ("City") and Premier Events Management ("Premier") hereby enter this Vending Management Agreement ("Agreement") this ____ day of _____, 2004.
- (2) The City and the Premier agree that Premier shall select, contract with, coordinate, manage, and handle any and all necessary arrangements regarding any and all vendors for that portion of the 2004 Atlanta Jazz Festival occurring at Piedmont Park between noon on May 29, 2004, and continuing through 11:00 PM on May 31, 2004 ("Festival"). These vendors shall include but not be limited to food vendors, merchandise vendors, and corporate vendors.
- (3) Premier shall select the Festival vendors by consulting with the Director of the City's Bureau of Cultural Affairs ("Director") or her designee to determine the types, quantity, and quality of food, drinks, and merchandise that the City desires to have available at the Festival. Based upon the City's stated needs, Premier shall create and maintain a list of objective criteria by which it will select Festival vendors, including but not limited to past performance of the potential vendor at other festivals, financial stability of the potential vendor, ability to contribute to the required variety of food, drinks and/or merchandise, and ability to provide the necessary quantity of the desired food, drinks, and/or merchandise. Premier's selection of Festival vendors shall not be based on or influenced by familial, financial, or personal relationships between a potential Festival vendor and any officer or employee of Premier, or any elected official or employee of the City.
- (4) In its implementation of this Agreement, including but not limited to its selection of Festival vendors, Premier shall not discriminate based upon race, creed, color, religion, sex, national origin, marital status, parental status, age, physical handicap, sexual orientation, or gender identity.
- (5) Premier shall charge each Festival vendor a vending fee. Premier shall be responsible for collecting each vending fee in full. The vending fee for food vendors shall range between \$750- \$5,000, based upon the size of the vendor's Festival booth. The vending fee for merchandise vendors shall range between \$300 - \$2,000, based upon the size of the vendor's Festival booth. The vending fee for corporate vendors shall range between \$5,000 - \$15,000, based upon the size of the vendor's Festival booth. As compensation for its services, Premier shall retain 18% of the Festival food vendors' vending fees. Premier shall pay the remainder of the Festival food vendors' vending fees (82%) to the City. Premier shall not retain any of the Festival merchandise and corporate vendors' vending fees, and shall pay 100% of those fees to the City. Premier shall maintain written documentation indicating the name of the Festival vendor, the vending fee charged by Premier, the basis for charging that vending fee amount, the date the vending fee was collected, the amount of the vending fee paid to the City, and the date of payment to the City.
- (6) Premier shall act as a consultant to and assist the City with the overall design and layout of the Festival. It shall also develop and manage the CAD rendition of the Festival site map. Lastly, it shall consult with and provide assistance to sponsors and front house sponsors during the Festival to ensure that the sponsors

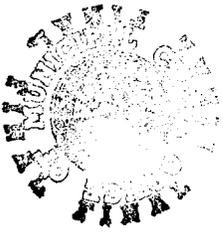


feel pleased and appreciated. Premier shall not charge the City any additional fee for these services.

- (7) Premier shall be the "Official Beverage Concessionaire" for the Festival, meaning that Premier shall be the sole Festival vendor selling beer, and shall be the sole Festival vendor selling only beverages. Festival food vendors shall also be permitted to sell non-alcoholic beverages. In addition, Premier shall be permitted to sell Minute Maid Soft Frozen Lemonade, and nighttime glow sticks. Premier shall pay the City a percentage of its Gross Receipts derived from the sale of these products. For the first \$25,000 of Gross Receipts earned, Premier shall pay the City 25% of those Gross Receipts. Premier shall pay the City 30% of its Gross Receipts that are between \$25,001 through \$40,000. Premier shall pay the City 35% of its Gross Receipts that exceed \$40,000. For purposes of this Agreement, the term "Gross Receipts" shall include all monies paid or payable to Premier for sales made or services rendered (to someone other than the City) at or from the Festival, regardless of when, where, or whether the business transaction occurs during the Festival or at Piedmont Park, as well as any other revenues of any type arising out of or in connection with Premier's operations at the Festival, provided, however, that any taxes imposed by law which are separately stated to and paid by the customer and directly payable to the taxing authority by Premier, shall be excluded.
- (8) All payments due to the City by Premier pursuant to this Agreement shall be paid no later than 5:00 P.M. on July 1, 2004. The payment shall be accompanied by a memo setting forth an accounting of Premier's Festival-related finances, including but not limited to the Gross Receipts obtained from each Festival vendor, a breakdown of the total Gross Receipts received for each of the three types of Festival vendors (food, merchandise and corporate), plus the Gross Receipts obtained by Premier in its capacity as Official Beverage Concessionaire of the Festival. The memo shall also indicate the percentage and amount of each of the Gross Receipts paid to the City by category of Festival vendor.
- (9) Premier's Festival management responsibilities shall include, but not be limited to: assigning vendors their Festival booth; making certain that each Festival vendor is operating its booth from noon through 11:00 PM on May 29, 30, and 31, 2004, regardless of the weather, unless the City directs otherwise; providing Festival vendors with electrical service; and making certain that Festival vendors comply with all applicable Federal, State, City, and County laws and regulations, and with the Festival rules established by the City. All Festival vendors must set up their booths on May 28, 2004, between 9:00 AM and 5:00 PM. All Festival vendors must have all of their belongings removed from Piedmont Park no later than 1:00 PM June 1, 2004. Premier shall make certain that vendors do not bring any glass into Piedmont Park. All tents used at Festival booths must be weighted, and Premier shall ensure that no spikes or stakes are utilized by Festival vendors. No storage shall be permitted behind or outside of the vendor's Festival booth. Premier shall ensure that no vendor disposes of grease or oil used in cooking except in an approved manor. Premier shall ensure that no vendor discharges any liquid in the storm water sewer system in the park.

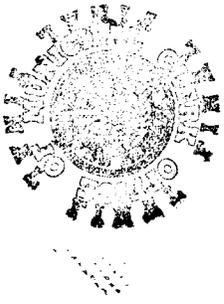


- (10) Premier shall be responsible for ascertaining that the prices charged by all Festival vendors, including itself, are reasonable. Specifically, Festival vendors may not charge more than 10% higher prices at the Festival for like or similar merchandise as would be charged at an Atlanta restaurant or merchandise store.
- (11) Premier shall not permit Festival vendors to sell or display any weapons or drug use paraphernalia, nor any counterfeit, bootleg, or pornographic products or materials. Vendors in violation of this policy must be removed from Piedmont Park, and their merchandise shall be subject to confiscation.
- (12) Premier may issue each Festival vendor no more than one parking pass for the designated vendor parking area. Vehicles parked in any other area, or without a parking pass, will be subject to towing at the owner's expense. All vehicles used by Festival vendors for loading and unloading must be removed from the designated Festival area no later than 1:00 PM each day of the Festival.
- (13) Premier shall be responsible for keeping the designated vending area neat, clean, and free of loose trash. Premier shall have responsibility for making certain that the trash at and around each Festival booth is collected, bagged, tied closed, and stacked in designated locations. Premier shall have the responsibility for making certain that all grease, oil or food stains are removed from the pavement at the end of the festival.
- (14) Premier shall provide the Director by facsimile or hand delivery with information about the proposed Festival vendors' merchandise prior to entering an agreement with the vendor. The Director or her designee must approve the type, quantity, quality and price of the items being sold prior to Premier's entering contracts with the proposed Festival vendors. If the Director or her designee does not respond to the information submitted by Premier within seven working days of receiving said information, the information shall be deemed approved by the City.
- (15) It is the City's policy that vendors at the Festival shall conduct their operations in a first class, business like, efficient, courteous, and accommodating manner, and Premier shall be responsible for enforcing this policy. During the Festival, the Director or her designee shall have the right to make reasonable objections to the quality of articles sold, the character of the service rendered to the public, the prices charged, and the appearance and condition of the designated vending area. Premier agrees to promptly discontinue or remedy any objectionable practice.
- (16) Premier shall maintain for at least eighteen months or, in the event of a claim by the City, until such claim of the City for payments hereunder shall have been fully ascertained, accurate records of all Gross Receipts from all activity conducted pursuant to this Agreement. Said records shall also contain the information required pursuant to paragraph (5) of this Agreement. Upon the Director's or her designee's written request, Premier shall make available immediately to the Director or her designee, for inspection and copying, any and all books, records and accounts pertaining to Premier's operations under this Agreement. The intent and purpose of this paragraph (16) is that Premier shall keep and maintain records that will enable the City to ascertain, determine and audit, if so desired by the City, clearly and accurately, the share of Gross Receipts received by the City, and that the form and method of Premier's



reporting of Gross Receipts will be adequate to provide a control and test check of all Gross Receipts derived by Premier under this Agreement. Should any examination, inspection or audit of Premier's books and records by the City disclose an underpayment by Premier, Premier shall promptly pay the City the amount of such underpayment. Should any examination, inspection or audit of Premier's books and records by the City disclose an underpayment by Premier in excess of two percent (2%) of the total consideration due, Premier shall promptly pay the City the amount of such underpayment, plus interest thereon at the rate of 5% per month, from the date due until the date collected, and shall reimburse the City for all costs incurred in the conduct of such examination, inspection, and audit. If the City deems it necessary to utilize the services of legal counsel in connection with collecting the reimbursement for such examination, inspection or audit, then Premier shall reimburse the City for reasonable attorney's fees and litigation expenses as part of the aforementioned costs incurred.

- (17) In addition to its agreement to obtain and maintain the insurance as set forth herein below, Premier agrees to release, indemnify, defend and hold harmless the City, its elected officials, officers, agents, employees, successors, assigns, and its authorized representatives from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, injuries, obligations, losses, judgments, charges, interest, attorneys' fees, costs, causes of action of every kind and character, whether in law or in equity, and expenses of whatsoever kind or nature, whether arising before or after completion of the services to be performed pursuant to this Agreement, and in any manner directly or indirectly caused, occasioned, or contributed to in whole or in part, or claimed to be caused, occasioned or contributed to in whole or in part by reason of any act, omission, fault or negligence whether active or passive of Premier, its lower-tier suppliers, subcontractors, any of the Festival vendors, or of anyone acting under its direction or control or on its behalf in connection with or incidental to the performance of this Agreement. The aforesaid release, indemnity and hold harmless obligations, or portions or applications thereof, shall apply even in the event of the fault or negligence, whether active or passive, or strict liability of the parties released, indemnified or held harmless to the fullest extent permitted by law, but in no event shall they apply to liability caused by the willful misconduct or sole negligence of the party released, indemnified or held harmless. Premier agrees to specifically waive any immunity provided against this indemnity by any industrial insurance or workers' compensation statute. Premier further agrees that the agreement to indemnify and hold harmless the parties released shall not be limited to the limits or terms of the liability insurance, if any, required under this Agreement. Lastly, Premier agrees that the indemnification obligations shall survive any termination or expiration of this Agreement.
- (18) Premier shall require all other Festival vendors, and contractors and subcontractors performing any work related to this Agreement, to sign an agreement with Premier that includes the indemnification provision set forth in paragraph (17) of this Agreement, with the exception that the name of the Festival vendor, contractor or subcontractor shall replace "Premier" in said indemnification provision.



(19) The following insurance requirements must be met by Premier, by every other Festival vendor, and by every contractor and subcontractor that performs work related to the Festival for or on behalf of Premier, and shall be included in a contract between Premier and each of its contractors and subcontractors, and the Festival vendors. Compliance is required by all contractors of any tier and by all Festival vendors, including Premier. Insurance requirements are based on information received as of the date of this Agreement. The City reserves the right to adjust or waive any or all requirements based on receipt of additional information pertinent to this Agreement.

- (a) Premier shall not allow its contractors or subcontractors, or any Festival vendor to commence any work of any kind pursuant to this Agreement until all Insurance requirements contained in this Agreement shall have been complied with, and until evidence of such compliance satisfactory to the City as to form and content has been filed with the City. The Accord Certificate of Insurance or a pre-approved substitute is the required form in all cases where reference is made to a Certificate of Insurance or an approved substitute.
- (b) Any and all companies providing insurance required pursuant to this Agreement must meet the minimum financial security requirements set forth below. These requirements conform to the ratings published by A.M. Best & Company in the current Best's Key Rating Guide - Property - Casualty. The ratings for each company must be indicated on the Accord Certificate of Insurance form. For all contracts, regardless of size, companies providing Insurance under this Agreement must have a current:
 - i. Best's Rating not less than A-; and current;
 - ii. Best's Financial Size Category not less than Class IX; and
 - iii. Authorization issued by the Georgia Insurance Commissioner to conduct and transact insurance contracts.

If the issuing company does not meet these minimum requirements, or for any other reason shall be or become unsatisfactory to the City, written notification shall be mailed by the City to Premier, who shall promptly itself, or require its contractor or Festival vendor to obtain a new policy issued by an insurer acceptable to the City, and shall submit evidence of the same to the City as required herein.

- (c) Premier, every other Festival vendor, and every contractor and subcontractor that performs work related to the Festival for or on behalf of Premier, shall procure and maintain Workers' Compensation and Employer's Liability Insurance in the following limits, such insurance to cover each and every employee who is or may be engaged in work related to the Festival:

Workers' Compensation Statutory

Employer's Liability

Bodily Injury by Accident/Disease \$100,000 each accident

Bodily Injury by Accident/Disease \$100,000 each employee

Bodily Injury by Accident/Disease \$500,000 policy limit

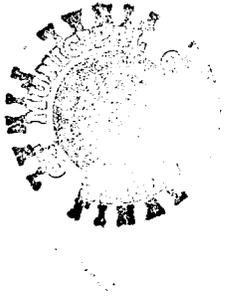
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- (d) Premier, every other Festival vendor, and every contractor and subcontractor that performs work related to the Festival for or on behalf of Premier, shall procure and maintain General Liability Insurance in an amount not less than \$1,000,000 Bodily Injury and Property Damage combined single limit. The following specific extensions of coverage shall be provided and shall be indicated on the Acord Certificate of Insurance:
1. Comprehensive Form
 2. Contractual Insurance - (Blanket or specific applicable to this contract)
 3. Personal Injury
 4. Broad Form Property Damage
 5. Premises - Operations

- (e) Premier, every Festival vendor, and every contractor and subcontractor that performs work related to the Festival for or on behalf of Premier shall procure and maintain Automobile Liability Insurance with not less than \$500,000 Bodily Injury and Property Damage combined single limit. The following extensions of coverage shall be provided and shall be indicated on the Certificate of Insurance:

1. Comprehensive Form
2. Owned, Hired, Leased and Non-owned vehicles to be covered.

In the event that Premier, the Festival vendor, or the contractor or subcontractor does not own any automobiles in the corporate name, non-owned and hire automobile coverage will be maintained in the amount indicated above.

- (f) Upon failure of Premier to furnish, deliver, and maintain such insurance as herein provided, the City may provide Premier with a written notice demanding that such insurance be so provided. In the event that Premier fails or refuses to provide, or cause to be provided, such insurance within thirty (30) days from the date of receipt of such notice, the City shall thereafter be entitled to suspend, discontinue, or terminate this Agreement. Failure of Premier to take out and/or to maintain any required insurance shall not relieve Premier from any liability under this Agreement, nor shall these requirements be construed to conflict with the obligation of this Agreement concerning indemnification.
- (g) The City shall be covered as an additional insured under any and all Insurance required pursuant to this Agreement, and such insurance shall be primary with respect to the additional insured. Confirmation of this shall appear on the Accord Certificate of Insurance and on any and all applicable Insurance policies.
- (h) Each and every agent acting as Authorized Representative on behalf of a company affording insurance coverage pursuant to this Agreement shall warrant when signing the Accord Certificate of Insurance that specific



authorization has been granted by the company for the agent to bind coverage as required and to execute the Accord Certificate of Insurance as evidence of such coverage. In addition, each every agent shall warrant when signing the Accord Certificate of Insurance that the agent is licensed to do business in the State of Georgia and that the company or companies are currently in good standing in the State of Georgia.

- (20) This Agreement shall be in effect until all of the obligations set forth herein are completed.
- (21) Premier grants the City, including but not limited to the Bureau of Cultural Affairs, the right to make reference to Premier, to the fact that the Premier is managing the Festival vendors, to the fact that Premier is the Official Beverage Concessionaire of the Festival, and/or to the details of this Agreement, in the public domain, including but not limited to in any marketing materials advertising and promoting the Festival and/or any of the Festival events. These marketing materials include but are not limited to press releases and promotional materials.
- (22) Without prior written consent of City, Premier may not assign, transfer or convey any of its interest under this Agreement, nor delegate any of its obligations or duties under this Agreement.
- (23) The City may terminate this Agreement for convenience, without cause, at any time during the term, or any extension thereof, by giving the Successful Proponent 15 days written notice of its election to do so and by specifying the effective date of the termination. Further, if Premier fails to fulfill any of its obligations pursuant to this Agreement, the City may terminate the Agreement for that default. Should the City terminate this Agreement for default prior to Premier's completion of the services outlined in this Agreement, Premier shall reimburse the City for all additional expenses incurred by the City as a result of said termination, including but not limited to staff time.
- (24) Time is of the essence in this Agreement and each and every obligation and undertaking set forth herein.
- (25) This Agreement contains the entire agreement between the City and Premier, and no representations or agreements, oral or otherwise, among them not embodied herein shall be of any force and effect.
- (26) This Agreement shall be construed and enforceable in accordance with the laws of the State of Georgia.
- (27) It is understood and agreed by and between the City and Premier that if any covenant, condition, or provision contained in this Agreement is held to be invalid by any court of competent jurisdiction, such invalidity shall not affect the validity of any other covenant, condition or provision herein contained.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized officials and officers, to be attested, as of the day and year first above written.

ATTEST:

PREMIER EVENTS MANAGEMENT:



Secretary (Seal)

ATTEST:

Sworn to and subscribed
before me this _____ day
of _____, 2004.

Notary Public

by: _____
Title

CITY OF ATLANTA:

Camille Love, Director
Bureau of Cultural Affairs

RCS# 5618
4/19/04
6:11 PM

Atlanta City Council

Regular Session

04-O-0451

VENDING AGRMNT 2004, 2005 2006 ATLANTA
JAZZ FESTIVAL & MONTREUX ATL MUSIC FEST
ADOPT ON SUB

YEAS: 13
NAYS: 0
ABSTENTIONS: 0
NOT VOTING: 3
EXCUSED: 0
ABSENT 0

NV Smith	NV Archibong	Y Moore	Y Mitchell
Y Starnes	Y Fauver	Y Martin	Y Norwood
Y Young	Y Shook	Y Maddox	Y Willis
Y Winslow	Y Muller	Y Boazman	NV Woolard

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CITY COUNCIL
ATLANTA, GEORGIA

A SUBSTITUTE ORDINANCE BY

04-O-0451

COMMUNITY DEVELOPMENT/HUMAN RESOURCES COMMITTEE

AN ORDINANCE AUTHORIZING THE MAYOR OR HER DESIGNEE, ON BEHALF OF THE CITY, TO ENTER INTO VENDING AGREEMENTS FOR THE 2004, 2005, AND 2006 ATLANTA JAZZ FESTIVAL AND MONTREUX ATLANTA MUSIC FESTIVAL, AND DIRECTING THAT ALL JAZZ FESTIVAL VENDING FEES BE DEPOSITED INTO THE JAZZ FESTIVAL TRUST FUND ACCOUNT, FUND CENTER NUMBER 3P02 464101 N41S0201QNA0, AND THAT ALL MONTREUX FESTIVAL VENDING FEES BE DEPOSITED INTO THE MONTREUX FESTIVAL TRUST FUND ACCOUNT, FUND ACCOUNT CENTER NO. 3P02 464101 N41S0202QNA0; AND FOR OTHER PURPOSES.

WHEREAS, the City of Atlanta (“City”) produces two music festivals each year for the benefit of its citizens, the Atlanta Jazz Festival (“Jazz Festival”) and the Montreux Atlanta Music Festival (“Montreux Festival”) (collectively, the “Festivals”);

WHEREAS, the Jazz Festival is held throughout the month of May, culminating during the Memorial Day weekend, and includes approximately one hundred free events and approximately five events for which an admission price is charged; and

WHEREAS, the Montreux Festival is held for up to five consecutive days, including the Labor Day weekend, and includes approximately ten free events and fifteen events for which an admission price is charged; and

WHEREAS, one way that the City pays for the Festivals is through vending at the Festivals. Numerous vendors request the ability to sell and/or advertise their goods at these Festivals, including vendors selling merchandise, and vendors selling food and drinks. The City determines the types and quality of food, drinks, and merchandise that the City desires to have available, and determines the quantity of each type of vendor that is needed at each festival; and

WHEREAS, based upon the City’s determination of its needs, and the information submitted by vendors, the City selects vendors for each of the Festivals; and

WHEREAS, as the producer of the Festivals, the City must negotiate and enter contracts with each of the vendors that it selects (“Vendor Agreements”); and

WHEREAS, the Vendor Agreements establish that a particular vendor is being hired to vend at one of the Festivals. The City’s payment to the vendor takes the form of producing the festival, and thereby providing thousands of potential customers for the

vendor. Typically, because of the large number of attendees, and because the number of vendors at the Festivals is limited, vendors at the Festivals derive a tremendous amount of revenue; and

WHEREAS, in addition to providing its vending services for the City, the vendor compensates the City for providing potential customers by paying a contract price. The contract price required by the City is based on the market rate for the right to vend at a large, well-attended outdoor festival, and is also based on whether the vendor is selling goods or advertising goods, whether the goods being sold are edible, the cost of the goods being sold, and the size of the space being provided to the vendor; and

WHEREAS, the Vendor Agreements are different from a vending permit received by a vendor wishing to vend on City public property. A Vendor Agreement is a revenue generating contract between the City and a vendor, whereby the vendor provides a service for the City. In contrast, with a vending permit, the vendor is not fulfilling a City need, nor providing a specific service for the City. A person desiring a vending permit submits an application to the City Police Department, and requests a particular vending location plus two alternatives. If the applicant for the vending permit passes the criminal background check, s/he will be placed on a master list and the desired vending location will be assigned on a first come, first served basis; and

WHEREAS, when a private organizer sponsors an outdoor festival, the organizer receives a City Outdoor Festival permit for her/his event, and that permit allows for vending during the festival. The private organizer then contracts with vendors to sell goods and merchandise at the festival, and the vendors are not required to obtain a vending permit from the City of Atlanta; and

WHEREAS, similarly, the City of Atlanta Bureau of Cultural Affairs receives a City permit to hold the Jazz and Montreux Festivals, and this permit precludes the need for vendors at the Festivals to obtain a City vending permit; and

WHEREAS, the contract price paid by vendors entering Vendor Agreements for providing services at one of the Festivals is different from the fee paid by vendors receiving a vending permit to vend on public property; and

WHEREAS, the Vendor Agreements must be made after the City hires the artists for each of the Festivals, and determines the landscape of each of the Festivals. Therefore the Vendor Agreements must be made within a relatively close time proximity to the Festivals, and the City does not have time to select and contract with the Festivals' vendors as set forth in the Procurement Code. The Vendor Agreements for the Festivals should be exempt from the Procurement Code.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA, as follows:

Section 1. The Mayor or her designee, on behalf of the City, is authorized to enter Vendor Agreements for the 2004, 2005, and/or 2006 Jazz Festival and/or the 2004, 2005, and/or 2006 Montreux Festival. The Vendor Agreements shall indicate, at a minimum, the type of product that the vendor will be selling or advertising, the dates and times during which the vending shall be permitted, the location of the vending, the size of the vending area that will be provided by the City, and the contract price to be paid by the vendor. All vending contract prices quoted in the Vendor Agreements shall be for a vending booth at either of the two Festivals during the three-day Memorial Day or Labor Day weekend, as applicable. These vending fees shall be in the following ranges: the fee for vending merchandise shall be between \$300 through \$2,000; the fee for vending food and/or drinks shall be between \$750 through \$5,000; and the fee for persons or companies wishing to advertise a particular product at a vending booth shall be between \$5,000 through \$15,000. The Commissioner or her designee shall develop a schedule of criteria by which the exact vending prices shall be determined and applied consistently. The Vendor Agreements shall require each vendor to comply with all rules, regulations, laws, and policies of all governmental agencies having jurisdiction over the Festivals, including but not limited to the Fulton County Health Department.

Section 2. All Jazz Festival vending fees shall be deposited into the Jazz Festival Trust Fund Account, Fund Account Center No. 3P02 464101 N41S0201QNA0, and shall be used to pay for Jazz Festival costs only. All Montreux Festival vending fees shall be deposited into the Montreux Festival Trust Fund Account, Fund Account Center No. 3P02 464101 N41S0202QNA0, and shall be used to pay for Montreux Festival costs only.

Section 3. All ordinances in conflict herewith are hereby repealed for purposes of this Ordinance only, and only to the extent of the conflict.

**CONDITION FOR APPROVAL FORM
(TO ACCOMPANY LEGISLATION)**

COMMITTEE: CD/HR

DATE: 3/30/04

ORDINANCE # 04-0-0451 RESOLUTION # _____

REQUESTED BY: Committee

DIRECTED TO: Robin Shaha, Law Dept.

NATURE OF CONDITION FOR APPROVAL:

To receive a new, revised substitute with
additional language.

WHEN IS THIS INFORMATION DUE, AND TO WHOM?

April 12, 2004 + to committee members

WILL THIS RESULT IN AN AMENDMENT TO THE LEGISLATION?

YES () NO ()

WILL THIS RESULT IN A SUBSTITUTE TO THE LEGISLATION?

YES () NO ()

HAS THIS INFORMATION BEEN RECEIVED? YES () NO ()

DATE OF RECEIPT: _____

CITY COUNCIL
ATLANTA, GEORGIA

04- 8 -0451

AN ORDINANCE BY

COMMUNITY DEVELOPMENT/HUMAN RESOURCES COMMITTEE

AN ORDINANCE AUTHORIZING THE MAYOR OR HER DESIGNEE, ON BEHALF OF THE CITY, TO ENTER INTO AGREEMENTS WITH PERSONS OR COMPANIES WISHING TO VEND FOR THE 2004, 2005, AND 2006 ATLANTA JAZZ FESTIVAL AND MONTREUX ATLANTA MUSIC FESTIVAL, AND THAT ALL JAZZ FESTIVAL VENDING FEES BE DEPOSITED INTO THE JAZZ FESTIVAL TRUST FUND ACCOUNT, FUND CENTER NO. 3P02 464101 N41S0201QNA0, AND THAT ALL MONTREUX FESTIVAL VENDING FEES BE DEPOSITED INTO THE MONTREUX FESTIVAL TRUST FUND ACCOUNT, FUND ACCOUNT CENTER NO. 3P02 464101 N41S020QNA0; AND FOR OTHER PURPOSES.

WHEREAS, the City of Atlanta (“City”) produces two music festivals each year for the benefit of its citizens, the Atlanta Jazz Festival (“Jazz Festival”) and the Montreux Atlanta Music Festival (“Montreux Festival”) (collectively, the “Festivals”);

WHEREAS, the Jazz Festival is held throughout the month of May, and includes approximately one hundred free events and approximately five events for which an admission price is charged; and

WHEREAS, the Montreux Festival is held for up to five consecutive days, including the Labor Day weekend, and includes approximately ten free events and fifteen events for which an admission price is charged; and

WHEREAS, as the producer of the Festivals, the City must negotiate contracts with each of the performers and each of the sponsors and vendors; and

WHEREAS, one way that the City pays for the Festivals is through the collection of vending fees. Numerous vendors request the ability to sell and/or advertise their goods at these Festivals, including vendors selling merchandise, and vendors selling food and drinks. The City charges these vendors for the privilege of vending at the Festivals, and the charge is based on the market rate for the right to vend, whether the vendor is selling goods or advertising goods, whether the goods being sold are edible, the cost of the goods being sold, and the size of the space being provided to the vendor; and

WHEREAS, because the City allows for an unlimited number of vendors for the Festivals, and because these arrangements are made within a relatively close time proximity to the Festivals, the City does not have time to select and contract with Festivals’ vendors in the fashion set forth in the Procurement Code, and there is no benefit to the City from following the Procurement Code guidelines; and

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA, as follows:

Section 1. The Mayor or her designee, on behalf of the City, is authorized to enter agreements with persons or companies wishing to vend at the 2004, 2005, and/or 2006 Jazz Festival and/or the 2004, 2005, and/or 2006 Montreux Festival (“Vendor Agreements”). The Vending Agreements shall indicate, at a minimum, the type of product that the vendor will be selling or advertising, the dates and times during which the vending shall be permitted, the location of the vending, the size of the vending area that will be provided by the City, and the vending fee to be paid by the vendor. All vending fees quoted in the Vending Agreements shall be for a vending booth at either of the two Festivals during the three-day Memorial Day or Labor Day weekend, as applicable. These vending fees shall be in the following ranges: the fee for vending merchandise shall be between \$300 through \$2,000; the fee for vending food and/or drinks shall be between \$750 through \$5,000; and the fee for persons or companies wishing to advertise a particular product at a vending booth shall be between \$5,000 through \$15,000. The Commissioner or her designee shall develop a schedule of criteria by which the exact vending prices shall be determined and applied consistently.

Section 2. All Jazz Festival vending fees shall be deposited into the Jazz Festival Trust Fund Account, Fund Account Center No. 3P02 464101 N41S0201QNA0, and shall be used to pay for Jazz Festival costs only. All Montreux Festival vending fees shall be deposited into the Montreux Festival Trust Fund Account, Fund Account Center No. 3P02 464101 N41S0202QNA0, and shall be used to pay for Montreux Festival costs only.

Section 3. All ordinances in conflict herewith are hereby repealed for purposes of this Ordinance only, and only to the extent of the conflict.

04-0-0451

(Do Not Write Above This Line)

AN ORDINANCE BY

COMMUNITY DEVELOPMENT/HUMAN RESOURCES COMMITTEE

AN ORDINANCE AUTHORIZING THE MAYOR OR HER DESIGNEE, ON BEHALF OF THE CITY, TO ENTER INTO AGREEMENTS WITH PERSONS OR COMPANIES WISHING TO VEND FOR THE 2004, 2005, AND 2006 ATLANTA JAZZ FESTIVAL AND MONTREUX ATLANTA MUSIC FESTIVAL, AND THAT ALL JAZZ FESTIVAL VENDING FEES BE DEPOSITED INTO THE JAZZ FESTIVAL TRUST FUND ACCOUNT, FUND CENTER NO. 3P02 464101 N41S0201QNA0, AND THAT ALL MONTREUX FESTIVAL VENDING FEES BE DEPOSITED INTO THE MONTREUX FESTIVAL TRUST FUND ACCOUNT, FUND ACCOUNT CENTER NO. 3P02 464101 N41S020QNA0; AND ADOPTED BY PURPOSES.

APR 19 2004

Commissioner of Parks, Recreation and Cultural Affairs **COUNCIL**

- CONSENT REFER
- REGULAR REPORT REFER
- ADVERTISE & REFER
- 1st ADOPT 2nd READ & REFER
- PERSONAL PAPER REFER

Date Referred 3/15/2004
Referred to: Committee on Development / Human Resources

Date Referred

Referred To:

Date Referred

Referred To:

First Reading
Committee Date 3/15/04
Chair [Signature]
Referred To CG/HR

Committee CG/HR

Date 3/15/04

Action [Signature]

Fav, Adv, Hold (see rev. side) [Signature]

Other [Signature]

Members [Signature]

Refer To [Signature]

Committee

Date

Chair

Action

Fav, Adv, Hold (see rev. side)

Other

Members

Refer To

Committee

Date

Chair

Action

Fav, Adv, Hold (see rev. side)

Other

Members

Refer To

Committee

Date

Chair

Action

Fav, Adv, Hold (see rev. side)

Other

Members

Refer To

FINAL COUNCIL ACTION

2nd 1st & 2nd 3rd

Consent V Vote RC Vote

CERTIFIED

CERTIFIED
APR 19 2004

MUNICIPAL PRESIDENT PROTEVE

CERTIFIED
APR 19 2004

Ronald D. [Signature]
MUNICIPAL CLERK

MAYOR'S ACTION

APPROVED
APR 27 2004
MAYOR