

RESOLUTION NO. 30438

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A FIRST AMENDMENT TO BERTHING AGREEMENT, IN SUBSTANTIALLY THE FORM ATTACHED, WITH THE REINERT GROUP, LLC, WITH INSURANCE LIMITS NOT LESS THAN THREE MILLION DOLLARS (\$3,000,000.00) IN A SINGLE OCCURRENCE.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, that it is hereby authorizing the Mayor to enter into a First Amendment to Berthing Agreement, in substantially the form attached, with the Reinert Group, LLC, with insurance limits not less than \$3 million in a single occurrence.

ADOPTED: August 4, 2020

/mem

FIRST AMENDMENT TO BERTHING AGREEMENT

This First Amendment to Berthing Agreement (the “Agreement”) by and between the City of Chattanooga (“City”) and Reinert Group, LLC (“Reinert”) (collectively, the “Parties”) is made effective _____, 2020 (the “Effective Date”).

RECITALS

WHEREAS, the Parties entered into the Agreement effective December 21, 2018, defining the roles and responsibilities of the parties with an Effective Date of January 1, 2019; and

WHEREAS, the parties desire to amend the Agreement as provided herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements, the parties hereby agree as follows:

AMENDMENT

1. Section 9, Paragraph 3 of the Agreement is hereby deleted in its entirety and replaced with the following:

Reinert shall, at Reinert’s expense, purchase and maintain for the benefit of the City a policy or policies of public liability and property damage insurance, issued in the name of the Reinert and naming the City as an additional named insured, with limits not less than Three Million Dollars (\$3,000,000.00) for injury to and/or death of any one person in a single occurrence, and not less than Three Million Dollars (\$3,000,000.00) for injury to and/or death of more than one person in a single occurrence, and not less than Three Million Dollars (\$3,000,000.00) for damage to property in a single occurrence. The insurance policy shall include contractual liability coverage, which shall recognize and include the indemnification provisions of this Agreement. The Parties agree to review the insurance coverage within six (6) months of the Effective Date of this First Amendment and thereafter on an annual basis. Commercially reasonable increases during the term of this Agreement may be required depending upon insurance marketing conditions at the time of each review.

2. Section 9 of the Agreement is hereby modified by the addition of a new subparagraph 9.1 as follows:

9.1 ADDITIONAL INDEMNITY FOR COVID-19.

3. Reinert shall indemnify, save and hold harmless and defend the City, its officers, officials, agents and employees from any and all claims, losses, injuries, damages

and liabilities to persons or property related to COVID-19 in connection with the Premises or Reinert's use thereof during the term of this Agreement.

4. Section 17 is hereby amended by the following additional subsections:

(j) No party shall have any liability to the other hereunder by reason of any delay or failure to perform any obligation or covenant if the delay or failure to perform is occasioned by *force majeure*, meaning any act of God, storm, fire, casualty, unanticipated work stoppage, strike, lockout, labor dispute, civil disturbance, riot, war, national emergency, act of Government, act of public enemy, pandemic or epidemic, or other cause of similar or dissimilar nature beyond its control. The provisions of this paragraph shall not operate to excuse Reinert from prompt payment of any fees or other charges due under this Agreement.

(k) Any waiver by the Parties of any default or breach of any one or more of the terms, conditions, or covenants of this Agreement shall not be construed to be a waiver of any subsequent or other breach or default of the same or of any other term, covenant or condition of this Agreement. No delay, failure, or omission of City to insist on strict enforcement of any term, covenant or condition, or to exercise any right, privilege or option arising from any breach or default shall impair any such right, privilege or option, or be construed as a waiver of or acquiescence in such breach.

(l) Reinert shall use the Premises in compliance with all federal, state, county and local governmental laws, statutes, executive orders, ordinances and codes, and shall comply with all Center for Disease Control guidelines and recommendations.

5. No other modifications, amendments or changes of the provisions of the Agreement are to be affected by this First Amendment.

IN WITNESS WHEREOF, the parties have executed this First Amendment to the Agreement on the _____ day of _____, 2020, at Chattanooga, Hamilton County, Tennessee.

CITY OF CHATTANOOGA

REINERT GROUP, LLC

By: _____
ANDY BERKE, *Mayor*

By: _____

Printed Name _____

Title: _____