

RESOLUTION NO. 25669

A RESOLUTION AUTHORIZING THE ADMINISTRATOR OF THE DEPARTMENT OF PARKS AND RECREATION TO ENTER INTO A LEASE AGREEMENT WITH SERGEANT DAVID FRYE FOR A HOUSE LOCATED AT 406 BROWN ROAD, AS REFERENCED IN CASE NO. MR-2008-153, IN CONSIDERATION OF ONE HUNDRED DOLLARS (\$100.00) PER MONTH IN RENT AND SERGEANT FRYE'S SECURITY SERVICES AT BROWN ACRES GOLF COURSE AND BRAINERD GOLF COURSE, IN SUBSTANTIALLY THE FORM ATTACHED HERETO.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That the Administrator of the Department of Parks and Recreation be and is hereby authorized to enter into a Lease Agreement with Sergeant David Frye for a house located at 406 Brown Road, as referenced in Case No. MR-2008-153, in consideration of \$100.00 per month in rent and Sergeant Frye's security services at Brown Acres Golf Course and Brainerd Golf Course, in substantially the form attached hereto.

ADOPTED: September 23, 2008

/add

LEASE AGREEMENT

THIS LEASE AGREEMENT is executed as of this _____ day of _____, 2008, by and between the CITY OF CHATTANOOGA (hereinafter referred to as "Lessor"), and SERGEANT DAVID FRYE (hereinafter referred to as "Lessee"), to be effective for the term specified herein.

RECITALS

WHEREAS, Lessor agrees to lease to Lessee a portion of residential real property located at 406 Brown Road, Chattanooga, Tennessee, to include only the Brown Acres Rental House, which is a residential house approximately one thousand one hundred and thirty four square feet (1,134 Sq. Ft.) and;

WHEREAS, Lessor is the owner of certain real property located at 406 Brown Road, Chattanooga, Tennessee, commonly known as Brown Acres Golf Course;

WHEREAS, Lessee is employed by the City of Chattanooga as a Sergeant in the Chattanooga Police Department;

WHEREAS, Lessor seeks security to be provided at Brown Acres Golf Course and Brainerd Golf Course; and

WHEREAS, Lessee seeks to provide security for Brown Acres Golf Course and Brainerd Golf Course in the amount of 11.25 hours per month, for which he will be compensated at his overtime rate; and

NOW, THEREFORE, in consideration of the faithful performance of the terms, covenants, and conditions, and the mutual obligations of the parties as set forth herein, the parties agree as follows:

- 1) **TERM:** The term of this Lease shall be for a period of one (1) year commencing on October 1, 2008 and ending on September 30, 2009. Lessor and/or Lessee may terminate this Lease at any time during its term upon providing sixty (60) days written notice to the other party of the intent to terminate. This agreement will be automatically renewed for another term of one year unless notification by either party is made within the sixty (60) day period prior to the date of termination. Lessee acknowledges that he is not entitled to any compensation in the event Lessor exercises its right to terminate this lease, except for (a) reimbursement on an un used monthly prorated basis of any prepaid rental for the lease year in which the termination occurs, and (b) return of any movable furniture, fixtures and equipment purchased or provided by Lessee as allowed by Paragraph Five (5) herein.

- 2) **RENT:** Lessee shall pay to Lessor and Lessor shall accept from Lessee as rental the amount of One Hundred Dollars (\$100.00) per month. As additional rent, Lessee shall keep and maintain the demised premises clean and in good repair and shall keep and maintain any improvements thereon clean and in good repair. Payment is due and payable in advance at the end of the preceding month. The parties agree the market rate of rental for the leased premises is five hundred fifty dollars (\$550.00) per month based upon the appraisal conducted on October 16, 2007. The parties agree that the Lessee receives four hundred fifty dollars (\$450.00) each month in valuable consideration for providing security for the City of Chattanooga at Brown Acres Golf Course and Brainerd Golf Course. The parties further agree that the Lessee's current overtime rate is thirty eight dollars and sixty one cents per

hour as of June, 2008. The parties agree that Lessee will provide 11.5 hours of security services per month to the Brown Acres Golf Course and Brainerd Golf Course. Lessee shall not work more than 11.5 hours of overtime in any month period in providing security for Brown Acres Golf Course and Brainerd Golf Course. In the event that the compensation paid to the Lessee changes for his regular full-time employment during the period of the Lease agreement, the Lessee shall immediately notify the manager of the Brown Acres Golf Course and the Administrator of the Department of Parks and Recreation. Once notified of a change in compensation paid to Lessee, the Lessor shall adjust the number of hours of security services provided by the Lessee under this agreement. The formula for adjusting the number of hours per month shall be the market rate less the amount paid by the lessee (currently \$550 less \$100) divided by the hourly overtime rate and rounded down to the next quarter hour.

- 3) **USE OF PREMISES:** Lessee shall use these premises for no purpose other than residential property, which must be consistent with the zoning requirements of the property. Lessee shall not sublease any portion of the premises without the express written permission of the Lessor.
- 4) **UTILITIES:** Lessee shall pay all utilities, including electric, telephone and cable television utilities, if any, on the premises during the term of this lease, except that Lessor shall be responsible for water and sewer on the premises during the term of the lease.
- 5) **TAXES:** Lessee agrees to pay all taxes, through city withholding, on additional compensation received from the Lessor for security provided to the Brown Acres

Golf Course and Brainerd Golf Course. The Lessor agrees to pay the employer's portion of any payroll taxes or pension plan contributions due as a result of this agreement as required by Federal Law and Chattanooga City Code.

- 6) CALCULATION OF RENTAL RATE: Lessor shall have the right at any time to have a new appraisal conducted in order to establish the market rate for the rent of the leased premises. In the event that the market rate is increased, the Lessor shall have the option to increase the number of hours of security that must be provided by the Lessee.
- 7) REPAIRS, MAINTENANCE AND IMPROVEMENTS: Lessee accepts the leased premises in its present "as is" condition and Lessor shall be under no duty to make structural or cosmetic changes to the premises. Lessee shall keep and maintain the leased premises and any improvements thereon in good order and repair. Lessee may make alterations, additions, and improvements to the leased premises only upon written approval from Lessor. All such alterations, additions, or improvements made by lessee, except movable furniture, fixtures and equipment put in at the expense of the Lessee, shall inure to the benefit of Lessor and shall belong to lessor absolutely as soon as made or installed. Lessee may remove at the termination of the Lease any movable furniture, fixtures or equipment purchased or provided by Lessee that may be moved without damage to the permanent structure leased. Lessor shall have the right to make inspections of the leased premises at any reasonable time to insure compliance with this agreement.
- 8) CASUALTY INSURANCE AND DAMAGE: Lessor shall be under no duty to carry any fire or casualty insurance which would cover the property of Lessee

within the leased premises. If the premises are rendered totally or substantially untenable by fire or other casualty, this lease, at the option of Lessor or Lessee, shall terminate. The Lessee agrees that the Lessor shall not be responsible for the loss of any of the contents of the house, specifically including the Lessee's personal property.

- 9) INDEMNITY, LIABILITY AND LIABILITY INSURANCE: Lessee shall so conduct its activities upon the premises so as not to endanger any person or property lawfully thereon, and shall indemnify, save and hold harmless, and defend the Lessor, and all of its officers, agents, and employees from any and all claims from losses, injuries, damages and liabilities to persons to property occasioned wholly or in part by the acts or omissions of the Lessee, its agents, officers, employees, guests and patrons.

Lessee shall, at Lessee's expense, purchase and maintain the following insurance during the term of this agreement:

- a) Public liability insurance covering injury to one or more persons entering onto the premises with minimum limits of liability not less than One Million dollars (\$1,000,000.00).
- b) Property damage insurance covering property damage incurred on the leased premises with minimum limits of liability not less than One Million dollars (\$1,000,000.00).

All insurance required herein shall be secured from an insurance company or companies which shall have been approved by the Administrator of the Department of Parks and Recreation (hereinafter the "Administrator") and shall name the City

of Chattanooga, Tennessee as an additional insured therein. Lessee shall provide Lessor with copies of said insurance policies or insurance certificates evidencing payment of premiums prior to the signing of this agreement for review by the City Risk Manager. Each insurance policy provided by Lessee shall further contain a clause acceptable to the City Attorney whereby the insurance company will agree to give written notice to the Administrator and the Mayor of the City of Chattanooga, at least thirty (30) days prior to any cancellation or alteration of said insurance policy. The lapse of any insurance policy required in this paragraph shall constitute a breach of this lease agreement and shall be grounds for immediate termination of this lease agreement by Lessor.

10) **CAPITAL IMPROVEMENTS:** Lessee shall notify the Administrator in writing in advance of any expenditure on capital improvements and modifications to any structure or property subject to the Lease Agreement, and no such expenditures shall be made without the express written consent of the Administrator. Any and all permanent improvements become the property of the City of Chattanooga.

11) **WAIVER OF RIGHTS:** Failure of the Lessor or Lessee to insist upon strict performance of any of the terms, conditions, and covenants herein contained shall not be deemed to be a waiver of any rights or remedies that either party may have, and said failure shall not be deemed a waiver of any subsequent breach in the terms, conditions and covenants herein contained, except as may be expressly waived in writing.

12) **BREACH OF CONTRACT:** In the event of any breach of any of the terms or provisions of this agreement, Lessor shall, in addition to all other recourse, have the

right to immediately terminate this agreement, to enter and obtain possession of the entire premises, and to remove and exclude any and all persons from the premises, and remove and exclude all property of the Lessee there from. If it should become necessary for the Lessor to employ an attorney to assist any right or enforce any obligation under this agreement, or any of them, Lessor shall be entitled to recover, in addition to all other costs and expenses, the reasonable costs and charges of such attorney.

13) HOLDOVER PROVISION: If the Lessee remains in possession of the leased premises after the expiration of the term for which they are leased, and Lessee continues to pay the rent (as specified in Paragraph Two (2) of this agreement) and Lessor agrees to accept said rent, such possession shall be construed as creating a month-to-month tenancy and not as a renewal or extension of this lease; such shall not continue more than one (1) year.

14) ENTIRE AGREEMENT: This Lease Agreement contains all of the agreements between the parties herein and may not be modified in any manner unless by agreement in writing signed by the parties hereto or their respective successors in interest.

EXECUTED the day and month above stated.

LESSOR:

LESSEE:

LAWRENCE A. ZEHNDER, CPRP
Administrator
Department of Parks & Recreation

SERGEANT DAVID FRYE

STATE OF TENNESSEE
COUNTY OF HAMILTON

Before me, a Notary Public of the State and County aforesaid, personally appeared Lawrence A. Zehnder with whom I am personally acquainted, and who, upon oath, acknowledged himself to be the Administrator of the Department of Parks and Recreation of the City of Chattanooga, Tennessee, a municipal corporation, the within-named Lessor, and he, as such Administrator, being authorized so to do, executed the foregoing Lease Agreement for the purpose therein contained, by signing the name of the corporation by himself as Administrator of the Department of Parks and Recreation of the City of Chattanooga, Tennessee.

WITNESS my hand and seal at office in Hamilton County, Tennessee, this _____ day of _____, 2008.

My Commission Expires: _____

Notary Public

STATE OF TENNESSEE
COUNTY OF HAMILTON

Before me, a Notary Public of the State and County aforesaid, personally appeared Sergeant David Frye with whom I am personally acquainted, and who, upon oath, acknowledged herself to be the within-named Lessee and she executed the foregoing Lease Agreement for the purpose therein contained, by signing the name of Darde Long as herself.

WITNESS my hand and seal at office in Hamilton County, Tennessee, this _____ day of _____, 2008.

My Commission Expires: _____

Notary Public