

RESOLUTION NO. 26653

A RESOLUTION AUTHORIZING THE ADMINISTRATOR OF THE DEPARTMENT OF PARKS AND RECREATION TO ENTER INTO AN AGREEMENT WITH THE BOYS AND GIRLS CLUBS OF CHATTANOOGA, INC. FOR THE USE OF THE SOUTH CHATTANOOGA RECREATION CENTER.

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 an agreement with the Boys and Girls Clubs of Chattanooga, Inc. for the use of the South Chattanooga Recreation Center.

ADOPTED: April 5, 2011

/mms

HOF

AGREEMENT

This OPERATING AGREEMENT (hereinafter the "AGREEMENT") entered into this day of _____, 2011, by and between the CITY OF CHATTANOOGA (hereinafter the "CITY") and the BOYS AND GIRLS CLUBS OF CHATTANOOGA, INC., a non-profit corporation (hereinafter "Club"):

WHEREAS the parties hereto wish to enter into an agreement regarding the use of the South Chattanooga Recreation Center facility located at 1151 West 40th Street, Chattanooga, TN 37409, for the purpose of operating a Boys and Girls Club co-existing with the City recreation center at that site;

NOW THEREFORE, in consideration of the premises and the mutual promises herein, the parties agree as follows:

1. Facility. The property to be used by Club pursuant to this Agreement shall be the area consisting of the building, grounds and parking lot located at and known as South Chattanooga Recreational Center facility located at 1151 West 40th Street, Chattanooga, TN 37409 ("Center" or "Facility").
2. Use. The Club shall operate a Boys and Girls Club at the Facility. The Club agrees to participate in joint planning for center services and will submit a list of recommendations of use to the Center Manager for coordination with youth recreation programming. Both parties agree to work together to prevent service duplication, maximizing all available resources. Club will submit a schedule of uses to the Center Director for coordination with youth recreation and programming. Club's membership shall be available to youth between ages 6 and 18 years, without regard to race, sex, creed, color, religion or handicap.
3. Supervision. The parties shall be responsible for the proper supervision of all activities and events which shall take place in connection with their respective programs. City shall not be responsible for any supervision of activities or events of the Club.
4. City Responsibilities.
City shall be responsible for:
 - A. Utilities (including electric, water, sewer and gas) and HVAC;
 - B. Garbage service;
 - C. Repairs and maintenance of the Facility (building, systems, grounds, etc.);
 - D. Custodial and janitorial care;

- E. Providing space where Club may establish an office for its program staff;
- F. Center Director shall be the site manager for the Facility and shall coordinate its uses. City will act reasonably and in good faith so that the programs of City and Club can be implemented and operated for the purpose of serving the general public and Club's membership; and
- G. Subject to City's approval, Club shall be allowed at Club's expense to place interior and exterior signage at the Facility for identification of the Club.

5. **Club Responsibilities.**

Club shall be responsible for:

- A. Developing and carrying out Club programs in accordance with the Club's mission. Club programs are designed for youth 6 through 18 years of age;
- B. Maintaining hours of operation as follows: school year 1:00 p.m. through 9:00 p.m. Monday - Friday; summer and holidays 8:00 a.m. through 6:00 p.m. Monday - Friday. If Club desires additional hours of operation, Club will submit a request to City for review and approval;
- C. Club agrees to employ and supervise personnel with appropriate qualifications and experience and in sufficient numbers to provide the Club's programs;
- D. Operating supplies and materials for Club programs;
- E. Any Facility modifications and/or alterations are subject to approval by City;
- F. Telephone line service for Club;
- G. Club will act reasonably and in good faith so that the programs of City and Club can be implemented and operated for the purpose of serving the general public and Club's membership;
- H. Club agrees to provide to the City any and all fees for Club members attending the center's summer day camp program; and
- I. Club agrees to provide a \$15,000.00 program services fee to the City upon signing of this Agreement. In the event that the agreement is renewed, Club agrees to provide an additional \$15,000.00 program services fee upon renewal.

6. **Liabilities.**

- A. Neither the City nor Club will assume any current or subsequent debts or liabilities of the other, whether incurred prior to or after the effective date of this Agreement.

- B. Club shall indemnify and hold harmless City from all demands, claims, or causes of action for personal injury or property damage as the result of the negligence of Club or its employees or agents during the term of this Agreement. Club agrees to maintain at all times during the term of this Agreement, a Commercial General Liability insurance policy in the minimum amount of \$1,000,000.00 for Bodily Injury to each person, \$1,000,000.00 for Bodily Injury each occurrence, and \$1,000,000.00 for property damage each occurrence, naming the City as an additional insured. Club shall provide City with a Certificate of Insurance evidencing such coverage upon execution of this Agreement, and copies of all subsequent renewals thereafter to the City Risk Manager.
- C. City shall, to the extent permitted by law and in particular, subject to the provisions of the Tennessee Governmental Tort Liability Act, Tenn. Code Ann. § 29-20-101, *et seq.* indemnify and hold harmless Club from any and all demands, claims or causes of action for personal injury or property damage as a result of the negligence of City or its employees or agents during the term of this Agreement. City may self-insure itself for any such claims. City does not waive any right to assert limited liability with respect to any demand, claim or cause of action as permitted under applicable Tennessee law.

7. Termination.

- A. The term of this Agreement shall be one (1) year and may be renewed for four (4) additional one (1) year terms unless City or Club gives the other written notice of termination at least forty-five (45) days prior to the end of any such term.
- B. Upon breach of any term of this Agreement by Club, Club shall be given thirty (30) days after receipt of written notice of same to comply. Upon failure to cure such breach within the time prescribed by the City, or, if not time prescribed, to take steps reasonably designed to cure such breach within sixty (60) days after receipt of such notice, City shall have the right to terminate this Agreement upon giving an additional fifteen (15) days' written notice to Club.
- C. Upon breach of any term of this Agreement by City, City shall be given thirty (30) days after receipt of written notice of same to comply. Upon failure to cure such breach within the time prescribed, or to take steps reasonably designed to cure such breach within sixty (60) days after receipt of such notice, Club shall have the right to terminate this Agreement upon giving an additional fifteen (15) days' written notice to City.
- D. Upon termination, City will have no responsibility to the Club to provide for a new facility for Club.

8. Miscellaneous.

- A. This Agreement shall not be assigned by either party.
- B. Any notices under this Agreement shall be in writing and given to City at the Facility to attention of the Center's Director and to Club at the Facility to the attention of the Club's President.
- C. This Agreement shall be governed by the laws of the State of Tennessee.
- D. Club will comply with all laws of the United States and of the State of Tennessee, all ordinances of the City of Chattanooga, all relevant resolutions of Hamilton County, Tennessee, and all rules and regulations of the police and fire departments or other municipal authorities of the City of Chattanooga and Hamilton County, Tennessee, and will obtain and pay for necessary permits and licenses, and will not do or suffer to be done anything on said premises during the term of this Club in violation of any such laws, ordinances, rules or requirements, and if the attention of said Club is called to any such violation on the part of Club or of any person employed by or admitted to said premises by Club, Club will immediately desist from and correct such violation.
- E. Club covenants and agrees not to create or suffer to be created or maintained on the facility any nuisances.
- F. This 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.
- G. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal or in conflict with an applicable law, the validity of the remaining provisions of this Agreement shall not be affected thereby.
- H. Club agrees to comply with all federal, state and local non-discrimination provisions that the City of Chattanooga is under a duty to comply with under federal, state or local law when utilizing this City facility. Club agrees not to discriminate against any participant on the basis of race, color, religion, sex, age or national origin. Club further agrees to comply with all federal, state and local laws regarding treatment and accommodations for individuals with disabilities.
- I. The City or its assign may audit all financial and related records (including digital) associated with the terms of the contract or agreement including timesheets, reimbursable out of pocket expenses, materials, goods, and equipment claimed by the Club. The City may further audit any Club records to conduct performance audits (to identify waste and abuse or to determine efficiency and effectiveness of the contract or agreement) or to identify conflicts of interest. The

Club shall at all times during the term of the contract or agreement and for a period of five years after the end of the contract, keep and maintain records of the work performed pursuant to this Contract or Agreement. This shall include proper records of quotations, contracts, correspondence, invoices, vouchers, timesheets, and other documents that support actions taken by the Club. Documents shall be maintained by the Club necessary to clearly reflect all work and actions taken. All such records shall be maintained in accordance with generally accepted accounting principles. The Club shall at its own expense make such records available for inspection and audit (including copies and extracts of records as required) by the City at all reasonable times and without prior notice. The obligations of this Section shall be explicitly included in any subcontracts or agreements formed between the Club and any subcontractors or suppliers of goods or services to the extent that those subcontracts or agreements relate to fulfillment of the Club's obligations to the City. Costs of any audits conducted under the authority of this section and not addressed elsewhere will be borne by the City unless the audit identifies significant findings that would benefit the City. The Club shall reimburse the City for the total costs of an audit that identifies significant findings that would benefit the City. This Section shall not be construed to limit, revoke, or abridge any other rights, powers, or obligations relating to audit which the City may have by Federal, State, or Municipal law, whether those rights, powers, or obligations are express or implied.

IN WITNESS WHEREOF, the Parties hereto have caused their duly authorized representatives to execute this Agreement on their respective behalf on this ___ day of _____, 2011.

ATTEST:

CITY OF CHATTANOOGA, TENNESSEE

LARRY ZEHNDER, Administrator of
Parks and Recreation Department

ATTEST:

BOYS AND GIRLS CLUBS OF
CHATTANOOGA, INC.
