

RESOLUTION NO. 30762

A RESOLUTION AUTHORIZING THE MAYOR OR HIS DESIGNEE TO ENTER INTO A RIGHT OF ENTRY PERMIT AND LICENSE AGREEMENT FOR PLAYGROUND DEVELOPMENT OF SOUTHSIDE COMMUNITY PARK WITH THE TRUST FOR PUBLIC LAND, IN SUBSTANTIALLY THE FORM ATTACHED, FOR THE DEVELOPMENT OF A PLAYGROUND AT THE SOUTHSIDE COMMUNITY PARK, IDENTIFIED AS TAX PARCEL NO. 155M-A-001, AND TO ACCEPT THE EQUIPMENT AND THE INSTALLATION AT AN APPROXIMATE VALUE OF SIXTY-SIX THOUSAND EIGHT HUNDRED EIGHTY-NINE DOLLARS (\$66,889.00).

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BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That it is hereby authorizing the Mayor or his designee to enter into a Right of Entry Permit and License Agreement for playground development of Southside Community Park with the Trust for Public Land, in substantially the form attached, for the development of a playground at the Southside Community Park, identified as Tax Parcel No. 155M-A-001, and to accept the equipment and the installation at an approximate value of \$66,889.00.

ADOPTED: May 18, 2021

/mem

**RIGHT OF ENTRY PERMIT AND LICENSE AGREEMENT FOR  
PLAYGROUND DEVELOPMENT OF SOUTHSIDE COMMUNITY PARK**

Licensee:

TPL

The Trust for Public Land  
202 Tremont Street  
Chattanooga TN 37405  
Tel: 423-265-5229

Licensor:

City

City of Chattanooga  
Attn: Department of Economic and  
Community Development  
100 E. 11th Street, Suite 200  
Chattanooga, TN 37402  
Tel: 423-643-7502

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**RECITALS**

This Right of Entry Permit and License Agreement ("Agreement") is made and entered into between The Trust for Public Land, a California nonprofit corporation ("TPL" or "Licensee") and the City of Chattanooga ("City" or "Licensor") as of the date of the last party to execute this document, with respect to the following facts:

- A. The City owns the property identified as the Southside Community Park in Chattanooga, Tennessee, and more particularly described on **Exhibit "A"** (referred to herein as the "Property" or "Parks").
- B. TPL is a national non-profit land conservation organization that has as one of its purposes the "Parks for People" program, which assists local communities to build new parks in their neighborhoods; and TPL is authorized by the City of Chattanooga to carry out land protection and implementation of the Chattanooga Greenways Program.
- C. The parties desire to enter into this License to allow TPL, and TPL's agents, contractors and representatives (including, as necessary, representatives, agent, employees and sub-contractors and their employees of GameTime, Inc. and other contractors to be determined (collectively, its "Contractors")), to enter onto the Property pursuant to the terms of this License for the development of a playground at the Southside Community Park, as more fully described in Paragraph 2, below (the "Work").
- D. This Agreement constitutes a Right of Entry Permit and License for TPL, its Contractors and their agents and employees to enter the Property and construct the Work, and also contains the terms governing TPL's oversight of the Work, and City's acceptance of the Work and assumption of responsibility following acceptance.

**NOW, THEREFORE**, in consideration of the foregoing premises, the parties mutually agree as follows:

- 1. CONTROLLING AGREEMENT:** In the event of any conflict or inconsistency between the terms of this Agreement and the terms of the Final Acceptance and Assignment Agreement identified in **Exhibit "B"**, (the "Final Acceptance") attached hereto and incorporated herein by reference, the terms of the Final Acceptance shall control.

2. **GRANT OF LICENSE:** TPL, its employees, contractors, and agents, after execution of this Agreement by the City, is hereby granted a nonexclusive license to access the Property to perform the following activities under the terms of this Agreement: from the date of this License until this License terminates as hereinafter provided, TPL and its Contractors, at TPL's sole cost and expense, shall have the right to enter upon and to cause its Contractors, and any sub-contractors, agents, and representatives to enter upon the Property to inspect, evaluate, survey, excavate, fill, and grade, and construct the playground which includes, without limitation, grading, site work, storage and installation of those items listed in **Exhibit "C"**, the temporary construction of a chain link fence, and the installation of signage with TPL's branding and logo on the Property (the "Permitted Activities"). Such tests may include soils and environmental tests, and possibly including geotechnical boring which will cause disturbance to the boring areas.
  
3. **TERM:** This Agreement shall become effective upon full execution and delivery hereof by the parties. This Agreement shall expire on the date upon which City delivers the Final Acceptance to TPL, accepting the completed Work and the Assignment of any Warranties, as described in Section 10 below, except as may be otherwise provided in this Agreement. In no event, however, shall the term of this Agreement exceed twelve (12) months, unless mutually agreed upon, in writing, by the parties. Notwithstanding any other provision herein, and regardless of the manner or duration of use of said Property by TPL, either party shall have the right to terminate this Agreement, if after giving five (5) business days' notice of the grounds thereof, the other party has failed to cure such grounds or, in the event the nature of the grounds for termination are such that more than five (5) business days is required to effect a cure, if within such five (5) business days the other party has failed to commence such cure and fails to diligently pursue it thereafter. Any notice hereunder to the other party may be given by delivering the same to the other party personally or by mailing the same addressed to the other party at the address herein given for notices. Upon any termination of this Agreement by termination, TPL shall promptly restore the Property to as nearly the same condition as before the Right of Entry was executed, to the satisfaction of City. In the event of TPL's failure to do so, the City may restore said Property entirely at the risk and expense of TPL, unless City decides to complete the Work without TPL's involvement.
  
4. **PAYMENTS:** TPL will be fully responsible for all payments for the cost of the Work in accordance with the terms of this Agreement.
  
5. **CONSTRUCTION MANAGEMENT:** TPL will provide general management of construction activity, including but not limited to scheduling construction activity, insuring construction meets the terms of this Agreement, conducting progress meetings, providing meeting minutes and coordinating communications between all parties. City staff will participate in the scheduled progress meetings to keep abreast of construction activity and to insure that work complies with the terms of this Agreement. City staff will insure that only Indemnified Parties as that term is defined below, are allowed on the site during TPL's use of the site during design and construction. TPL shall:

- A. Comply with and abide by all applicable rules, regulations, and directions of City.
- B. Comply with all applicable City ordinances, County, State and Federal laws, and in the course thereof obtain and keep in effect all permits and licenses required to conduct the permitted activities on the Property.
- C. Conduct Permitted Activities during normal business hours, Monday through Friday, at City's sole discretion. Weekend work or work on City holidays is not permitted. TPL's Program Manager, David Johnson shall contact the Department of Economic and Community Development and the Department of Public Works, at the City at least two (2) days prior to TPL's initial access to the Property, in regard to all access and Permitted Activities, and in the event of emergencies.
- D. Maintain to City's satisfaction the Property and surrounding area in a safe and sound condition, free from danger, injury or threat of harm to the public, and as to prevent the existence of an attractive nuisance.
- E. Assume the risks and bear all costs of damage or destruction, and loss due to theft, burglary or vandalism to any and all of TPL's or its Contractors' equipment, materials, tools, and vehicles owned, hired, leased, or used by TPL for this Agreement, except to the extent that such damage or destruction and loss result from the negligence or willful misconduct of City.
- F. Field verify utility locations prior to conducting permitted activities and repair or replace any and all park property lost, damaged, or destroyed as a result of, and either directly or indirectly connected with work done pursuant to this Agreement with due diligence and speed. TPL shall promptly notify the Department of Economic and Community Development and the Department of Public Works, at the City in the event of damage caused by TPL's activities to any of the Property, other than the prescribed activities authorized above. Should TPL fail to promptly make repairs after notice by City of damage, loss or destruction of park property, City may have repairs made and TPL shall pay all costs.
- G. Provide all safety and security signs, barricades, pedestrian and traffic cones, lights and other related safety fixtures or measures which will forewarn the public of the existence of any hazards related to the Permitted Activities, and of any detours necessary to prevent vehicular and/or personal injury or property damage accidents due to TPL's activities.
- H. Bear the sole cost and expense of all work performed by TPL and its Contractors.
- I. Keep a responsible representative on the Property during all work hours.
- J. Pay for all costs, fees or charges for the application, installation, maintenance, or use of any utilities or services required in the exercise of the permission herein given.

6. **REPAIR OF DAMAGE:** In addition to TPL's other responsibilities under this Agreement, if TPL becomes aware that any portion of the Property is damaged or threatened by any of the activities of TPL or its Contractors, or anyone acting by or through TPL hereunder, TPL shall promptly notify City of such damage or threat by facsimile or hand delivery. TPL shall remedy any and all such damage or threat and restore the Property to its previous condition, subject to City's approval.
  
7. **INDEMNIFICATION:** TPL shall defend, indemnify and hold the City, its officials, agents, employees and representatives (the "Indemnified Parties") harmless from and against any and all actions, costs, claims, losses, expenses including reasonable attorneys' fees, costs and expert witness fees and/or damages sustained by City attributable to the negligence, gross negligence, willful misconduct, recklessness or carelessness of TPL or its Contractors in performance of its obligations under this Agreement, including, without limitation by specification, property damage (including loss by theft or vandalism), and/or injury or death to any person or persons, for any claims arising from any injury or death to such persons. TPL's obligations in this paragraph shall remain in effect regardless of whether such obligations are covered by the insurance policies required to be maintained by TPL under this Agreement. Subject to the provisions of the Tennessee Governmental Tort Liability Act, T.C.A. § 29-20-101, *et seq*, City shall defend TPL and, if found liable, be responsible for paying damages arising from third party claims, suits, and liabilities, for personal injuries or damage to property, caused by any activities conducted by City on the Property, excepting any such injury, damage or loss, in whole or in part, by the negligence, gross negligence or willful misconduct of TPL. These indemnities shall survive the expiration or sooner termination of this Agreement.

The terms of this paragraph shall survive the termination or expiration of this Agreement.

8. **GENERAL INSURANCE REQUIREMENTS:** Without limiting TPL's indemnification of the City Indemnified Parties, and during the term of this Agreement, TPL shall provide and maintain and shall require its Contractors to maintain the following programs of insurance specified in this Agreement. Such insurance shall be primary to and not contributing with any other insurance or self-insurance programs maintained by City, and, such coverage shall be provided and maintained at TPL's own expense.
  - A. **Evidence of Insurance.** Certificate(s) or other evidence of coverage satisfactory to City shall be delivered to the Office of the City Attorney prior to entering the Property and commencing services under this Agreement. Such certificates or other evidence shall:
    - i. Specifically identify this Agreement.
    - ii. Clearly evidence all insurance required in this Agreement.
    - iii. Contain the express condition that the City is to be given written notice by mail at least thirty (30) days in advance of cancellation for all policies evidenced on the

certificate of insurance.

- iv. Include copies of the additional insured endorsement to the commercial general liability policy, adding the City Indemnified Parties as additional insured for all activities arising from this Agreement.
- B. Insurer Financial Ratings. Insurance is to be provided by an insurance company acceptable to the City, with an A.M. Best rating of not less than A: VII, unless otherwise approved by the City.
- C. Failure to Maintain Coverage. Failure by TPL to maintain the required insurance, or to provide evidence of insurance coverage acceptable to City, shall constitute a material breach of this Agreement upon which the City may immediately terminate or suspend this Agreement.
- D. Notification of Incidents, Claims or Suits. TPL shall report to City:
- i. Any accident or incident relating to services performed under this Agreement which involves injury or property damage which may result in the filing of a claim or lawsuit against TPL and/or City. Such report shall be made in writing within 24 hours of occurrence.
  - ii. Any third party claim or lawsuit filed against TPL arising from or related to services performed by TPL under this Agreement.
  - iii. Any injury to a TPL or sub-contractor employee, which occurs on the Property.
  - iv. Any loss, disappearance, destruction, misuse, or theft of any kind whatsoever of City property, monies or securities entrusted to TPL under the terms of this Agreement.
- E. Compensation for City Costs. In the event that TPL fails to comply with any of the indemnification or insurance requirements of this Agreement, and such failure to comply results in any costs to City, TPL shall pay full compensation for all costs incurred by City.
- F. Insurance Coverage Requirements for Contractors. TPL shall ensure any of its contractors performing services under this Agreement meet the insurance requirements of this Agreement by either:
- i. Providing evidence of insurance covering the activities of contractors, or
  - ii. Providing insurance certificates and additional insured notices submitted by contractors evidencing that contractors maintain the required insurance coverage. City retains the right to obtain copies of evidence of contractor's insurance coverage

at any time.

9. **INSURANCE.** TPL shall, and shall ensure that its Contractor, shall purchase and maintain during the life of this Agreement, insurance coverage which will satisfactorily insure Contractor against claims and liabilities which arise because of the execution of this Agreement, with the minimum insurance coverage as follows:

a. **Commercial General Liability Insurance**, with a limit of \$1,000,000 for each occurrence and \$2,000,000 in the general aggregate.

b. **Automobile Liability Insurance**, with a limit of \$1,000,000 for each accident, combined single limit for bodily injury and property damage.

c. **Worker's Compensation Insurance and Employer's Liability Insurance**, in accordance with statutory requirements, with a limit of \$500,000 for each accident.

d. **Professional Liability Insurance**, with a limit of \$1,000,000 for each claim and aggregate.

If any of the above cited policies expire during the life of this Agreement, it is the Contractor's responsibility to forward renewal Certificates within ten (10) days after the renewal date containing all the aforementioned insurance provisions. Certificates must specifically cite the following provisions:

i. City of Chattanooga, its agents, representatives, officers, directors, officials and employees must be named an Additional Insured under the following policies:

- a) Commercial General Liability
- b) Auto Liability

ii. Contractor's insurance must be primary insurance as respects performance of subject contract.

iii. All policies, except Professional Liability Insurance, if applicable, waives rights of recovery (subrogation) against City of Chattanooga, its agents, representatives, officers, directors, officials and employees for any claims arising out of work or services performed by Contractor under this Agreement.

10. **FINAL ACCEPTANCE AND ASSIGNMENT OF WARRANTY:**

A. TPL, when it completes construction of the Work at the Property, shall notify City that it is ready to have the improvements inspected by City. Within ten (10) City business days of receipt of said notice, City shall inspect the improvements and reasonably determine whether the improvements have been constructed in accordance with this License and to

a level of quality and workmanship for City to issue its Notice of Acceptance of the Work. If the improvements are unacceptable, within ten (10) City business days after inspection, City shall provide TPL with a list of items that need to be corrected in order for City to issue its Notice of Acceptance of the Work, or issuance of said notice will be delayed until all items on the list are corrected.

- B. Upon approval of the improvements by the City, the parties shall execute the Final Acceptance, and TPL shall assign to the City any and all warranties, if any, it received from the construction of the Work, in the Final Acceptance attached hereto as Exhibit B.
- C. The Final Acceptance shall confirm that the City assumes and accepts responsibility for the maintenance, removal, or replacement of the constructed improvements and assumes responsibility with respect to the improved Property.

**11. NOTICES:** Notices desired or required by this Agreement or by any law now or hereinafter in effect are deemed given when sent by U.S. Postal Service Certified Mail or by a reliable over-night courier with postage or charges prepaid to TPL as follows:

David Johnson, Program Manager  
The Trust for Public Land  
202 Tremont Street  
Chattanooga, TN 37405

With a copy to:

J. Alex Ghio, Senior Counsel  
The Trust for Public Land  
306 North Monroe Street  
Tallahassee, Florida 32301

or such other place as may hereinafter be designated in writing by TPL.

Notices, Certificates of Insurance and/or Self-Insurance and envelopes containing the same to City shall be addressed to:

City of Chattanooga  
Attn: Real Property of ECD  
101 E. 11th Street, Suite G4  
Chattanooga, TN 37402

With a copy to:

City Attorney's Office  
100 East 11th Street, Suite 201  
Chattanooga, TN 37402



12. **INTENTIONALLY OMITTED.**
13. **INDEPENDENT STATUS.** This Agreement is by and between City and TPL. It is not intended and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture or association as between City and TPL. TPL understands and agrees to bear the sole responsibility and liability for furnishing Workers' Compensation benefits to any person for injuries arising from or connected with services performed on behalf of TPL pursuant to this Agreement.
14. **EMPLOYEES.** All references to "TPL" herein are deemed to include the employees, agents, Contractors and subcontractors of any tier, and anyone else required under written contract with the TPL to access the Property.
15. **LIMITATIONS.** It is expressly understood that in permitting the right to use the Property, no estate or interest in real property is being conveyed to TPL, and that the right to use is only a nonexclusive, revocable and unassignable permission to use the Property in accordance with the terms and conditions of this Agreement.
16. **AMENDMENTS.** The Property, Permitted Activities, and term, may be amended during the term of this agreement, upon TPL's prior written request to City, subject to the City's discretion.
17. **ASSIGNMENT.** This Agreement is personal to TPL, and in the event TPL shall attempt to assign or transfer the same in whole or part all rights hereunder shall immediately terminate.
18. **AUTHORITY TO STOP.** In the event that an authorized representative of the City finds that the activities being conducted on the Property unnecessarily endanger the health or safety of persons on or near said Property, the representative may require that this Agreement immediately be suspended until said endangering activities cease, or until such action is taken to eliminate or prevent the endangerment.
19. **ALTERATIONS AND IMPROVEMENTS.** TPL has examined the Property and knows the condition thereof. TPL accepts the Property in the present state and condition and waives any and all demand upon the City for alteration, repair, or improvement thereof. All improvements to the Property installed by TPL shall remain upon termination of this Agreement and become the property of City.
20. **TRANSFER OF OPERATING RESPONSIBILITY/CLOSURE.** In the event the City transfers operating responsibility of a Park and the licensed Property to a newly formed or existing governmental agency, this Agreement shall terminate on the date of said transfer to such agency, unless that agency agrees to assume this Agreement. City agrees to use its best efforts to obtain said assignment in the event the City transfers its operating responsibility for a Park to a newly-formed or existing governmental agency. In the event

the City closes a Park, this Agreement shall terminate upon the effective date of such closure. City shall provide written notice to TPL immediately upon any consideration by the City of the possibility of transferring or closing a Park. City shall provide TPL with as much prior written notice of any such transfer or closure of a Park as reasonably possible, but in no case less than ten (10) City business days, before the effective date of any such transfer or closure. TPL shall be permitted to continue operations on the licensed Property for the remaining portion of the year in which it receives any such notice specifying the effective date of the transfer or closure of a Park.

21. **DISPUTE RESOLUTION.** Claims, disputes, or other matters in question between the parties to this Agreement arising out of or relating to this Agreement, or breach thereof, shall be subject to mediation in Chattanooga, Tennessee, in accordance with the following provisions:
  - a. The mediation shall be conducted by a mediator mutually acceptable to both parties.
  - b. The parties agree to share equally in the expense of the mediation.
  - c. Such mediation may include the Contractor or any other person or entity who may be affected by the subject matter of the dispute.
  - d. Unless the parties agree otherwise, mediation shall be a condition precedent to the exercise of any legal remedy other than a proceeding seeking an immediate injunction or restraining order to protect the rights of a party pending litigation. Notwithstanding the issuance of an injunction or restraining order, or the refusal of a court to issue such an order, the dispute shall continue to be subject to mediation.
22. **HAZARDOUS MATERIALS.** Hazardous materials may exist at a site where there is no reason to believe they could or should be present. The City and TPL agree that the discovery of unanticipated hazardous materials constitutes a changed condition mandating a renegotiation of the scope of work or termination of services. City and TPL also agree that the discovery of unanticipated hazardous materials may make it necessary for TPL to take immediate measures to protect health and safety. City agrees to compensate TPL for any equipment decontamination or other costs incident to the discovery of unanticipated hazardous materials. TPL agrees to notify City when unanticipated hazardous materials or suspected hazardous materials are encountered. City agrees to make any disclosures required by law to the appropriate governing agencies.
23. **WAIVER.** A waiver by either City or TPL of any breach of this Agreement shall be in writing. City's failure to insist on performance of any of the terms or conditions of this Agreement or to exercise any right or privilege, or City's waiver of any breach does not waive any other terms, conditions, or privileges, whether of the same or similar type.
24. **SEVERABILITY.** The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this

Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision held to be void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this paragraph shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

25. **INTEGRATION.** This Agreement represents the entire and integrated agreement between City and TPL. All prior and contemporaneous communications, representations, and agreements by TPL, whether oral or written, relating to the subject matter of this Agreement are hereby incorporated into and shall become a part of this Agreement.
26. **SUCCESSORS AND ASSIGNS.** City and TPL each binds itself and its directors, officers, officials, partners, successors, executors, administrators, assigns, and legal representatives to the other party of this Agreement and to the directors, officers, officials, partners, successors, executors, administrators, assigns, and legal representatives of such other party in respect to all provisions of this Agreement.
27. **ASSIGNMENT.** Neither City nor TPL shall assign any rights or duties under this Agreement without the prior written consent of the other party. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Agreement. Nothing contained in this paragraph shall prevent TPL: from employing independent contractors, associates, and subcontractors to assist in the performance of the services; however, other agreements to the contrary notwithstanding, in the event TPL employs independent contractors, associates, and subcontractors to assist in performance of the services, TPL shall be solely responsible for the negligence, gross negligence or willful misconduct of the independent contractors, associates, and subcontractors so employed.
28. **THIRD PARTY RIGHTS.** Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than City and TPL.
29. **RELATIONSHIP OF PARTIES.** Nothing contained herein shall be construed to hold or to make the City a partner, joint venturer, or associate of TP:, nor shall either party be deemed the agent of the other, it being expressly understood and agreed that the relationship between the parties is and shall at all times remain contractual as provided by the terms and conditions of this Agreement.
30. **NON-DISCRIMINATION.** TP: agrees to comply with all federal, state, and local non-discrimination laws and regulations. TPL agrees not to discriminate against any participant in this Agreement on the basis of race, color, religion, sex, age or national origin or any other protected class. TPL further agrees to comply with all federal, state and local laws regarding treatment and accommodations for individuals with disabilities.

- 31. **DRUG FREE WORKFORCE.** TPL certifies that it will provide a drug-free workplace and agrees to comply with the applicable requirements of the Drug-Free Workplace Act of 1988.
- 32. **FEDERAL OR STATE FUNDING.** In the event that the services provided by this Agreement are funded in whole or in part by federal or state grants, TPL agrees to abide by all applicable federal and state laws, regulations, grant conditions and procedures.
- 33. **COMPLIANCE WITH LAWS.** The City has entered into this agreement with TP: relying on its knowledge and expertise to provide the services contracted for. As part of that reliance, TPL represents that it knows and understands the relevant and applicable federal and state laws that apply to the services provided through this Agreement, and agrees to comply with these relevant and applicable federal and state laws.

TPL understands and acknowledges the applicability to it of the American with Disabilities Act, the Immigration Reform and Control Act of 1986, and the Drug Free Workplace Act of 1988.

- 21. **GOVERNING LAW.** This Agreement shall be governed in accordance with the laws of the State of Tennessee.

**TPL: THE TRUST FOR PUBLIC LAND**

By: \_\_\_\_\_  
 By: Jenny Park  
 Its: Tennessee State Director

Who hereby personally covenants, guarantees and warrants that he/she has the power and authority to obligate TPL to the terms and conditions in this Agreement.

**CITY:**

By: \_\_\_\_\_  
 By:  
 Its:

Approved as to form:

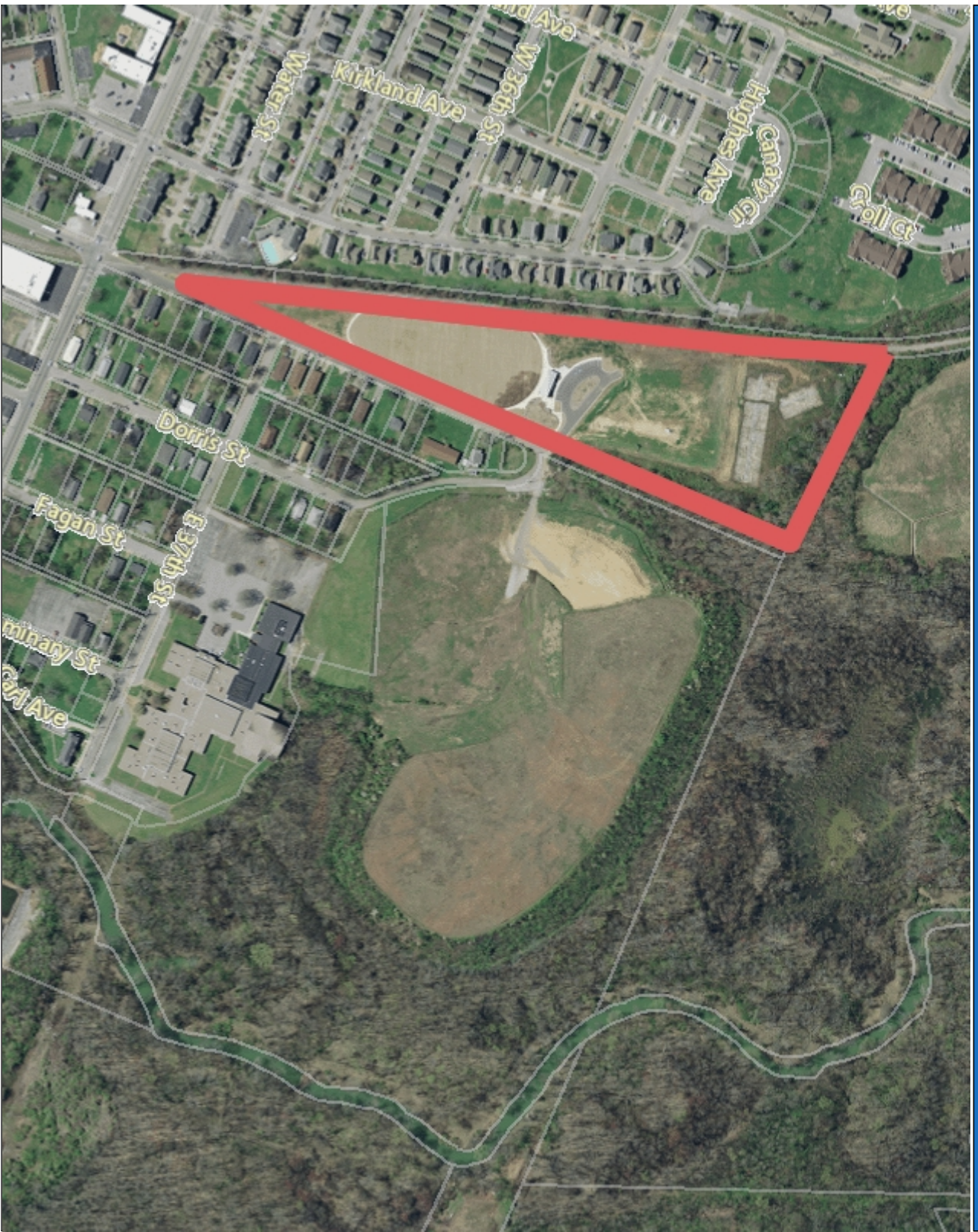
By: \_\_\_\_\_  
 City Attorney

# EXHIBIT "A"

Page 1 of 2

Beginning in the western line of Central Avenue at its intersection with the eastern right of way line of The Nashville, Chattanooga and St. Louis Railroad and at monument number ten (10) on said plat; thence North five (5) degrees forty-four (44) minutes five (5) seconds East, along the eastern line of said Railroad right of way, sixteen hundred twenty-nine and ninety-three hundredths (1629.93) feet to monument number eleven (11); thence continuing along said Railroad right of way line a chord bearing of North three (3) degrees-forty-four (44) minutes thirty-five (35) seconds East and a chord distance of one hundred seventy-four and fifty-eight hundredths (174.58) feet to monument number twelve (12) in the southern line of the tract conveyed by Vine Street Orphans Home et al to Southern Wood Preserving Company by deed dated December 26, 1939, and registered in Book 790, page 603 in the Register's Office of Hamilton County, Tennessee; thence South sixty-six (66) degrees eighteen (18) minutes fifteen (15) seconds East, along the southern line of said Southern Wood Preserving Company tract, five hundred thirty-five and fifty-one hundredths (535.51) feet to monument number thirteen (13) lying in the western line of Central Avenue, as shown on said plat; thence South twenty-two (22) degrees forty-seven (47) minutes forty-five (45) seconds West, along said western line of Central Avenue, seventeen hundred fourteen and eighty-six hundredths (1714.86) feet to the point of beginning, and containing ten and one hundred seventy thousandths (10.170) acres, more or less, and being a part of the same property conveyed by the Tuberculosis Sanatorium Association of Chattanooga and Vine Street Orphans Home to Chattanooga' Housing Authority by warranty deed dated December 15, 1950, and recorded in the Register's Office of Hamilton County, Tennessee, in Book 1043, page 223.



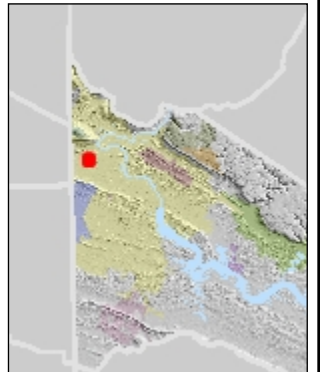


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NAD\_1983\_StatePlane\_Tennessee\_FIPS\_4100\_Feet  
© Latitude Geographics Group Ltd.



Disclaimer: This map is to be used for reference only, and no other use or reliance on the same is authorized. This map was automatically generated using HCGIS Mapping System. Parcel lines are shown for reference only and are not intended for conveyances, nor is it intended to substitute for a legal survey or property abstract.

Legend  
□ Parcels



## EXHIBIT "A"

**Exhibit B**  
**Final Acceptance and Assignment of Warranty**

Date  
City of Chattanooga

RE: **FINAL ACCEPTANCE and ASSIGNMENT OF WARRANTY**

Dear Friends:

This Final Acceptance and Assignment of Warranty (“**Assignment**”) is made by and between The Trust for Public Land (“**TPL**”) and the City of Chattanooga, in connection with construction of a portion of the Southside Community Park (the “**Work**”).

In connection with the City of Chattanooga’s (the “**City**”) acceptance of the Work (the “**Final Acceptance**”) installed at \_\_\_\_\_, Chattanooga, Tennessee, owned/managed by the City, TPL, as general contractor for the Work is hereby assigning any and all Warranties to the City as listed below:

[\_LIST ANY WARRANTIES OBTAINED BY TPL\_]

The City hereby accepts this assignment and agrees to assume responsibility for the maintenance and operation of and liability for the Work (excepting the Indemnification provision set forth in Paragraph 7 of the Right of Entry Permit and License Agreement) pursuant to the terms of the Entry Permit and License Agreement for Design, Preparation, Clearing and Construction of Southside Community Park.

City has delivered to TPL a fully executed Right of Entry Permit and License Agreement for Design, Preparation, Clearing and Construction of Southside Community Park. Such delivery, along with City’s signature below, shall constitute City’s Final Acceptance of the Equipment and City’s agreement to abide by the terms of the Warranty.

ASSIGNOR:  
The Trust for Public Land, a  
California nonprofit corporation

\_\_\_\_\_  
Name: Jenny Park  
Title: Tennessee State Director

AGREED TO AND ACCEPTED BY:  
City of Chattanooga

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST:  
By: \_\_\_\_\_

Reviewed and approved for execution  
By: \_\_\_\_\_

Approved as to form:  
By: \_\_\_\_\_  
City Attorney

**Exhibit C**  
**Permitted Activities**

**The Installation of:**

| Quantity | Part # | Description                                      |
|----------|--------|--|
| 6        | 26094  | GameTime - Triangular Shroud                     |
| 112      | 4862   | GameTime - 12" Playground Border                 |
| 1        | 4853   | GameTime - Playcurb Adapter-R                    |
| 1        | 4858   | GameTime - Access Playcurb-W/Adap                |
| 2        | 1470   | GameTime - 2686 Enclosed Tot Seat 3 1/2" Od      |
| 2        | 1483   | GameTime - 2955 Belt Seat 3 1/2" Od              |
| 2        | 18827  | GameTime - Primetime Swing Add A Bay 3 1/2" X 8' |
| 1        | 5167   | GameTime - Expression Swing Tandem               |
| 1        | 5151   | GameTime - Pt Solo Swing Frame 3 1/2" X 8'       |
| 1        | 19790  | GameTime - Dbl Swerve Zip 4'-6"/5'               |
| 1        | 36076  | GameTime - Stratus Climber                       |
| 1        | 36022  | GameTime - 90 Deg 2 Way X-Pod Step               |
| 1        | 36015  | GameTime - Pod Rocker                            |
| 1        | 36004  | GameTime - Sail Climbing Wall                    |
| 1        | 36023  | GameTime - 3 Way X-Pod Step                      |
| 1        | 36014  | GameTime - Arched Chain Net Link                 |
| 1        | 36031  | GameTime - Single Link Cross Beam Primetime 36   |
| 1        | 19214  | GameTime - Rung Enclosure                        |
| 1        | 18201  | GameTime - 36" Tri Punched Deck P/T              |
| 1        | 19057  | GameTime - Wave (Standard)                       |
| 1        | 19244  | GameTime - Thunderring Panel                     |
| 3        | 18200  | GameTime - 36" Sq Punched Deck P/T 1.3125        |
| 2        | 18671  | GameTime - Shingle Roof                          |
| 1        | 19104  | GameTime - Ridge Climber                         |
| 1        | 19035  | GameTime - Optional Access Step (3' & 5')        |
| 1        | 19285  | GameTime - Transfer Platform W/ Guardrail 3'     |
| 1        | 19122  | GameTime - Wave Zip Slide (2'-6" & 3')           |
| 1        | 19046  | GameTime - Tunnel-Up Climber                     |
| 1        | 19005  | GameTime - Transfer System W/Barrier (2' Rise)   |
| 1        | 19096  | GameTime - Schooner (4'-6" & 5')                 |
| 1        | 919    | GameTime - Whirl-Hydraulic Brake                 |
| 1        | 5120   | GameTime - Skyrun Zipline 75'                    |
| 8        | 12069  | GameTime - 3 1/2"Uprt Ass'Y Alum 14'             |



|   |         |   |
|---|---------|---|
| 3 | 12023   | GameTime - 3 1/2" Uprt Ass'Y Alum 8'                                |
| 2 | 12024   | GameTime - 3 1/2" Uprt Ass'Y Alum 9'                                |
| 1 | 178749  | GameTime - Owner's Kit  |
| 3 | 161290  | GameTime - Geo-Textile 2250 Sqft Roll                               |
| 1 | 161291  | GameTime - Geo-Textile 1125 Sqft Roll                               |
| 1 | INSTALL | GameTime - Installation of Playground Equipment, Playcurbs, and EWF |
| 1 | W63588  | GT-Impax - 5,919sf Engineered Wood Fiber-293CY-12" Compacted Depth  |