

RESOLUTION NO. 28865

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A LEASE AGREEMENT, IN SUBSTANTIALLY THE FORM ATTACHED, WITH HIXSON UNITED METHODIST CHURCH FOR USE OF THE ATHLETIC FIELDS BY THE CITY OF CHATTANOOGA FOR THE PURPOSE OF THE SITE BEING USED AS A PUBLIC PARK, RECREATION GROUNDS OR ATHLETIC FIELDS, SUBJECT TO THE TERMS OF THE AGREEMENT, FOR A TERM OF FOUR (4) YEARS.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That it is hereby authorizing the Mayor to execute a Lease Agreement, in substantially the form attached, with Hixson United Methodist Church for use of the athletic fields by the City of Chattanooga for the purpose of the site being used as a public park, recreation grounds or athletic fields, subject to the term of the agreement, for a term of four (4) years.

ADOPTED: December 13, 2016

/mem

CITY OF CHATTANOOGA NON-PROFIT LEASE

This Standard Non-Profit Lease Agreement (“Agreement”) is entered into as of the stated Effective Date by and between the Lessor and Lessee (collectively “Parties”) identified in SECTION 1 for use of the lands as further identified in SECTION 1.

RECITALS

WHEREAS, Lessee desires to lease facilities from Lessor to be used exclusively for the operation of programs authorized by the Lessee and more fully described herein; and

WHEREAS, Lessor has the appropriate authority to, and hereby agrees to lease to Lessee that certain lands and structures containing the approximate square footage stated herein, situated in the City of Chattanooga, Hamilton County, Tennessee;

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:

SECTION 1. General Terms.

Effective Date	
Leased Premises Address	Hixson United Methodist Church Athletic Fields (“Leased Premises”) 1413 Gadd Road Hixson, Tennessee
Lessor	Hixson United Methodist Church 5301 Old Hixson Pike Hixson TN 37343
Lessee	City of Chattanooga, a Tennessee municipal corporation 101 East 11th Street Chattanooga, TN 37402
Tax Map No.	100J-A-005 Identified as Lot 2 in Exhibit A.

Legal Description	The Leased Premises occupy the property identified as Lot 2 on Exhibit A .
Lease Term	This Lease shall be in effect for a term of four years from the Effective Date.
Lease Purpose	Lessor authorizes the Lessee to lay out, plant, improve and maintain such lands for the purposes of being used as a public park, recreation grounds, or athletic fields subject to the terms of this Agreement.
Fair Market Rental Value Calculation	Lessee shall pay to Lessor nominal rent in the amount of \$1.00 per year for the initial Lease Term and any renewal terms. FMR is based on the City's rental rates for sports fields which shall be \$50.00 per game/field and \$50.00 per two hours of practice. FMR calculation for two hundred (200) days shall be ten thousand dollars and no cents (\$10,000.00).
Notice to Lessor	Hixson United Methodist Church % Alex Buttram 531 Old Hixson Pike Hixson, TN 37343
Notice to Lessee	City of Chattanooga General Services/Real Property 101 East 11th Street, Suite G4 Chattanooga, TN 37402 With a copy to: City of Chattanooga Office of the City Attorney 100 East 11th Street, Suite 200 Chattanooga, TN 37402 (423) 643-8250

SECTION 2. Leased Premises. Lessor leases to Lessee that certain lands located at the above-stated leased premises address situated in the City of Hixson, Hamilton County, Tennessee, identified by Tax Map Number identified in SECTION 1 and shown as Lot 2 in the diagram attached hereto as **Exhibit A** and incorporated herein by reference. Said Leased Premises may not be utilized on Wednesday evenings after 5:00 p.m. or Sundays without express prior approval of Lessor.

SECTION 3. Consideration; Utilization of Leased Premises. It is expressly agreed to and understood by the Parties that the Leased Premises shall be used exclusively for the purpose

as defined in SECTION 1 as Lease Purpose, the purposes of which are authorized by the Lessor or for other charitable purposes for the community's benefit. Lessee shall not utilize the Leased Premises for any other purposes without the express written approval of Lessor. Lessee shall neither engage in nor allow illegal activities on the Leased Premises nor allow alcoholic beverages to be sold or consumed on the Leased Premises.

SECTION 4. Term. The Term of this Lease shall commence upon the Effective Date for the Lease Term as stated in SECTION 1. Either party may terminate this Lease at any time without cause upon giving the other party written notice of its intention to terminate, and such notice shall be received at least thirty (30) days prior to the termination date.

SECTION 5. Lease Payments. Lessee shall, during the Term of this Lease, pay to Lessor the net annual rent of One Dollar (\$1.00) per year, with the first annual payment due on the Effective Date of this Lease and subsequent annual payments due on the anniversary date of the Effective Date of this Lease. As additional consideration, the Lessee agrees to use the property exclusively for purposes authorized by the Lessor and described in SECTION 1 of this Agreement. All rents payable by Lessee to Lessor under this Lease shall be paid to Lessor at the Notice address specified in SECTION 1.

SECTION 6. Alterations. All improvements, additions, appliances, fixtures, playground equipment and all other property whatsoever kind or nature that is affixed to the property and becomes attached to and a part of the land, shall belong to the Lessor. All improvements that are not of a permanent nature and are not affixed to the land shall continue to belong to the Lessee, or its sublessee, and may be removed by the Lessee in whole or in part at any time before the termination of this Lease, or within thirty (30) days thereafter. If Lessee desires to make

improvements to the Leased Premises, it shall be required to submit a detailed description of the improvements to be made to Lessor (the "Lessee's Plan"). The Lessee's Plan shall be subject to Lessor's written approval. Lessor's approval of Lessee's Plan shall in no event, unless expressly set forth in such approval, be deemed to create any obligations on the part of the Lessor to do any work or make the improvements or to authorize Lessee to make any further additions, improvements, or alterations to the Leased Premises. In the event Lessor approves Lessee's Plan, the Parties shall execute an amendment to this Lease setting forth the obligations of the Lessee with respect to the construction of improvements in accordance with Lessee's Plan, which shall be attached as an exhibit to the lease amendment.

SECTION 7. Quiet Possession. The Lessor covenants to keep the Lessee in quiet possession of the Leased Premises during the term of this Lease.

SECTION 8. Termination and Holding Over. Upon termination of this Lease, at the expiration of the term hereof or any extension thereof, Lessee shall surrender the Leased Premises to Lessor in as good condition as received, ordinary wear and tear and damage by fire or other casualty excepted. Lessee covenants to Lessor that it shall vacate the Leased Premises on or before thirty (30) days following the expiration of the term hereof or any extension thereof including removal of all personal property. Any personal property of Lessee which is not removed from the Leased Premises after termination of this Lease shall be deemed abandoned and may be disposed of by Lessor in any manner without accounting or being liable to Lessee. Lessee shall surrender all keys to the Leased Premises at or before the termination of this Lease.

SECTION 9. Insurance. Lessee is a self-insured entity and will provide the Lessor proof of same in the form of a Certificate of Self-Insurance.

SECTION 10. Assignment or Sublease. Lessee reserves the right to enter into an agreement with a third party to oversee the scheduling, operations and supervision of the recreational and related activities, including operations of the concessions. Lessee shall provide Lessor written notice of any subcontractors performing activities and operations on the Premises. Such activities and operations shall not be inconsistent with the Lease Purpose stated in SECTION 1.

SECTION 11. Non-Discrimination. Lessee covenants to comply with all federal, county, and city laws and ordinances in regard to discrimination due to handicap, age, race, color, religion, sex, national origin, or any other classification protected by said laws.

SECTION 12. No Warranties. Lessee takes and accepts the Leased Premises from Lessor "AS IS," that is at its condition as of the Effective Date of this Lease, upon the terms and conditions herein contained.

SECTION 13. Utility Services, Water Quality Fees and Taxes. Any applications and connections for necessary utility services on the Leased Premises shall be made in the name of Lessee only. Lessee shall be solely liable for utility charges as they become due, including, but not limited to, those for water, gas, electricity, telephone, and water quality fees assessed to Lot 2 as shown in plat book of record in Book 104, Page 103, further identified as 100J-A-005. It shall be a breach of this Lease to fail to keep such payments current. Lessor shall pay all state, county and city taxes which may be assessed against the property.

SECTION 14. Repairs and Maintenance. Lessee shall make and pay for all repairs, maintenance, and replacements to the Leased Premises which are necessary to keep the same in good state of repair and operating order during the Lease Term. Lessee shall not suffer or permit

any waste or neglect of the Leased Premises. Lessee has the authority to remove any potentially unsafe building or structure that, in the opinion of the Lessee, is beyond repair. Any repairs made by Lessee shall be done in a workmanlike manner and within a reasonable period of time. Lessor shall not be liable for the cost of any repairs, maintenance or replacements made by or through Lessee.

SECTION 15. Laws and Ordinances. Lessee covenants to comply with all state, county, and city laws and ordinances, including those regarding nuisances insofar as the Leased Premises are concerned, and that the Lessee will not by any act of its agents or officers render the Lessor liable therefor.

SECTION 16. Possession. If this Lease should at any time become void or forfeited, no demand shall be necessary to a recovery of possession of the Leased Premises, and the Lessor shall be entitled to immediate possession.

SECTION 17. Right to Enter. The Lessor shall have the right to enter into and upon said Leased Premises or any part thereof, at all reasonable hours for the purpose of examining the same, or making such repairs, additions, or alterations as may be necessary for the safety, comfort, and preservation thereof.

SECTION 18. Damage or Destruction. In the event the Leased Premises shall be damaged by fire, or other casualty, the Lessee shall give immediate notice thereof to the Lessor. This Lease shall, unless notice is given as set forth below, continue in full force and effect, and the Lessor shall, at its own expense, with reasonable promptness, subject to force majeure as defined in SECTION 23 and delays in making of insurance adjustments by Lessor, repair the Leased Premises. Lessor need not restore fixtures and improvements owned by Lessee or floor

coverings, furnishings, personal property, and other decorative features furnished by Lessee. In the event the Leased Premises shall, before or after the Effective Date, be so damaged that the Lessor shall decide not to repair the same, or if the Lessor shall decide to demolish or rebuild the Leased Premises for any reason whatsoever, upon notice to Lessee, the term of this Lease shall cease and terminate effective as of the time of the damage, and the accrued rent, if any, shall be paid up to the time of the damage. All proceeds of insurance payable as a result of fire or other casualty shall be the sole property of the Lessor.

SECTION 19. Defaults. The occurrence of any of the following acts shall constitute an immediate, material, non-curable default by Lessee:

- a. Abandonment of the Leased Premises, except for causes of force majeure, as defined in the section entitled "Force Majeure;" and
- b. Any attempted assignment, transfer, or sublease in violation of the preceding section entitled "Assignment and Sublease;"
- c. Failure to pay rent as provided for herein or failure to perform any term, covenant, or condition of this Lease, other than those set forth in subparagraph A above, shall not constitute a default unless such breach is not cured within the time periods set forth below. Lessor shall give written notice to Lessee of such default and if Lessee does not cure any rent default within five (5) days, or other default within twenty (20) days, after the giving of such notice (or, if such default is of such a nature that it cannot be completely cured within such twenty (20) days), if Lessee does not commence such curing within twenty (20) days and thereafter proceed with reasonable diligence and in good faith to cure such defaults, then Lessor may terminate this Lease on not less than

three (3) days' written notice to Lessee, and on the date specified in said notice the term of this Lease shall terminate, and Lessee shall then quit and surrender the Leased Premises to Lessor. If this Lease shall have been so terminated by Lessor, Lessor may at any time thereafter resume possession of the Leased Premises by any lawful means and remove Lessee or other occupants and their effects.

SECTION 20. Remedies. The Parties' remedies hereunder are not exclusive but cumulative to other remedies provided by law or in equity in the event of default.

SECTION 21. Surrender of Leased Premises on Termination. Lessee shall peaceably deliver possession of the Leased Premises to Lessor on the date of expiration or termination of this Lease, whatever the reason for termination. Lessor shall have the right to re-enter and take possession of the Leased Premises on the date termination becomes effective without further notice of any kind and without instituting summary or regular legal proceedings.

SECTION 22. No Waiver. Any waiver by the Parties of any default or breach of any one or more of the terms, conditions, or covenants of this Lease shall be in writing and 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 Lease. No delay, failure, or omission of Lessor to re-enter the Leased Premises, 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 of default.

SECTION 23. Force Majeure. Lessor shall be excused for the period of any delay in the performance of any obligation hereunder when prevented by doing so by cause or causes beyond

Lessor's control which shall include, without limitation, all labor disputes, civil commotion, war, war-like operations, invasion, rebellion, hostilities, military or usurped power sabotage, governmental regulations or controls, fire or other casualty, inability to obtain any material, services, or financing or through acts of God.

SECTION 24. Notices. All notices and other communications given hereunder by the Parties shall be in writing and shall be delivered personally or by mail, postage prepaid, and the date of any notice by certified mail shall be deemed the date of certification thereof delivered by or addressed to the Parties set forth in SECTION 1.

SECTION 25. Other Provisions.

25.1 Applicable Law. This Lease shall be construed and interpreted pursuant to the laws of the State of Tennessee. Should there be any provision thereof to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the legality, validity, and enforcement of the remaining provisions shall not be affected, but shall continue in full force and effect. Any disputes between the Parties and/or default by Lessee may only be submitted to a court of competent jurisdiction in Hamilton County, Tennessee, and the prevailing party shall be entitled to recover all costs, expenses, and legal fees in defending such legal action.

25.2 Entire Agreement. This Lease represents and constitutes the entire understanding between the parties and supersedes all other leases, agreements, and communications between the Parties, whether oral or written, concerning the subject matter herein. Any amendment to this Lease must be in writing and adopted by lawful resolution of the respective governing bodies to be bound thereby.

25.3 Binding Effect. The terms and conditions of this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

25.4 Headings. Section headings are for convenience of reference only and shall not limit or otherwise affect the meanings of this Lease.

IN WITNESS WHEREOF, the Parties have executed this Lease on the effective date, at Chattanooga, Hamilton County, Tennessee.

LESSOR:	HIXSON UNITED METHODIST CHURCH BY: NAME/TITLE:
LESSEE:	CITY OF CHATTANOOGA BY: NAME/TITLE: Andy Berke, Mayor

