

RESOLUTION NO. 31519

A RESOLUTION AUTHORIZING A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF CHATTANOOGA AND CHATTANOOGA KIWANIS YOUTH FOUNDATION, INC. REGARDING THE INCLUSIVE PLAYGROUND PROJECT AT JACK BENSON HERITAGE PARK.

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BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That it is hereby authorizing a Memorandum of Understanding between the City of Chattanooga and Chattanooga Kiwanis Youth Foundation, Inc. regarding the inclusive playground project at Jack Benson Heritage Park.

ADOPTED: March 7, 2023

/mem

**MEMORANDUM OF UNDERSTANDING BETWEEN  
CHATTANOOGA KIWANIS YOUTH FOUNDATION, INC.  
AND  
THE CITY OF CHATTANOOGA**

This Memorandum of Understanding (“MOU”) is entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by and between CHATTANOOGA KIWANIS YOUTH FOUNDATION, INC., a Tennessee nonprofit corporation with an address of P.O. Box 1103, Chattanooga, TN 37401 (“KYF”) and the CITY OF CHATTANOOGA, a Tennessee municipal corporation with its principal office located at 101 E. 11th Street, Chattanooga, Tennessee 37402 (the “City”).

**WHEREAS**, the City owns Jack Benson Heritage Park (“JBH Park”) located at 1428 Jenkins Road, Chattanooga, Tennessee, as depicted on **Exhibit A**, which is attached hereto and incorporated herein by reference; and

**WHEREAS**, KYF is a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code and has committed to support a project, initiated by concerned citizens of the Chattanooga area (the “HIP Committee”), to acquire and install an inclusive playground project called Harvesting Inclusive Play (the “Project”) at JBH Park generally as depicted on **Exhibit B**, which is attached hereto and incorporated herein by reference, to be in the general location cross-hatched on **Exhibit A**; and

**WHEREAS**, KYF has offered to cooperate with the HIP Committee in soliciting contributions and grants from various sources, and accounting for funds raised to pay for the Project; and

**WHEREAS**, the City has given KYF and the HIP Committee permission to use the City Seal in its marketing, solicitation, and fundraising efforts for the sole purpose of identifying JBH Park as a City-owned park as set forth in **Exhibit C**, which is attached hereto and incorporated herein by reference; and

**WHEREAS**, in an effort to give KYF and the HIP Committee time to engage in their fundraising efforts, the City has agreed not to make any improvements during the next eighteen (18) months to the space where the pending Project will be located in JBH Park; and

**WHEREAS**, the HIP Committee and KYF agree to meet with the City during the eighteen (18) month fundraising period quarterly on or about the dates set forth in **Exhibit D**, which is attached hereto and incorporated herein by reference, to discuss the status of the fundraising efforts; and

**WHEREAS**, the parties agree that any further collaboration and/or engagement between the parties that takes place after the eighteen (18) month fundraising period shall be discussed between the parties and memorialized in separate written agreements signed by both parties.

**NOW THEREFORE**, in consideration of the promises and covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree to the following:

1. **Effective Date.** The Effective Date of this MOU shall be the date upon which this MOU is signed by the City’s Authorized Signatory.
2. **Term.** The term of this Agreement shall begin on the Effective Date and shall end on March 1, 2025.
3. **Purpose.** This MOU serves the following four purposes: 1) This MOU allows KYF to set forth the general plans and specifications for the Project; 2) This MOU gives KYF and the HIP Committee written permission to use the City Seal, as specified in attached **Exhibit C**, in its marketing, solicitation, and fundraising efforts as it works to raise funds for the Project; 3) This MOU memorializes the City’s agreement to not perform any improvements or other work at the proposed location of the Project during the eighteen (18) month fundraising period; and 4) This MOU provides a schedule, as specified in attached **Exhibit D**, during which the parties will meet over the course of the eighteen (18) month period to discuss fundraising updates.
4. **The Project.** Samples of the all-inclusive playground equipment to be included in the Project as attached hereto as **Exhibit E** and incorporated herein by referenced. References to any operating and maintenance standards, for the Project, as prepared by Park and Play Structures, a subsidiary of PlayCore (the “Vendor”), are attached hereto as **Exhibit F** and incorporated herein by reference. The Vendor has been selected by the HIP Committee out of three competitive bids for the Project. The Vendor is already an approved contractor for the City.
5. **City Improvements.** Subject to approval of funding, the City shall be responsible for improving the drainage, parking and restroom facilities that will serve the Project.
6. **Fundraising and Planning Schedule and Modifications.** Attached hereto as **Exhibit D** is a projected timeline for fundraising and planning for the Project. Any changes to the design, cost and installation of the Project, as well as an accounting of the funds raised for the Project, will be discussed at each of the coordination meetings set forth in the timeline. Any recommendations from KYF regarding modifications to the timeline and/or the plans and specifications for the Project shall require approval of the City, which approval shall not be unreasonably withheld or delayed.
7. **Fundraising Efforts.** The City acknowledges that KYF and the HIP Committee will engage in fundraising efforts for the Project including general solicitations of individuals and businesses, fundraising events, grant requests, and requests to other area governmental sources, and that the HIP Committee and KYF are authorized to publicize that the Project is being undertaken to enhance JBH Park. In accordance with the terms set forth in the written statement from the City’s Mayor, which is attached hereto as

**Exhibit C**, the City authorizes KYF and the HIP Committee to utilize the City’s Seal in such publications and solicitations.

8. **Notice of Attaining Fundraising Target.** KYF shall notify the City when sufficient funds have been raised to move forward with the acquisition and installation of the all or a portion of the Project in accordance with the approved plans and specifications. Further, KYF shall advise the City if fundraising activities will continue in order to fund additional portion of, or amenities to, the Project. Any partial installation or additional amenities shall be subject to approval by the City before installation at JBH Park, which approval shall not to be unreasonably withheld or delayed. Prior to installation of the all or any portion of the Project, KYF shall meet with the City to discuss any agreement(s) that are needed between the parties to govern the installation and future ownership of the Project.
9. **Completion and Maintenance of the Project.** When the Project is completed and installed, and all payments made by or on behalf of KYF to Vendor and its qualified installers, and all warranties from Vendor and it qualified installers are assigned to the City, the City will accept the donation of the Project and will maintain the Project in compliance with the maintenance standards provided by Vendor. The City shall also maintain, repair or replace, as needed, the drainage system at JBH Park designed and installed by the City.
10. **Ownership Rights.** When installed, the Project shall be open to the public and nothing contained in this MOU shall be construed or intended to give KYF or the HIP Committee any ownership rights or other interest in JBH Park. Upon installation of the Project at JBH Park, the City shall continue to solely own, control, and maintain JBH Park.
11. **Insurance Requirements.** Prior to any work within JBH PARK on the Project by the HIP Committee, KYF, Vendor or its qualified installers, or any volunteers:
  - a. KYF shall provide the City a copy of each contract with the Vendor and its qualified installation contractors for review and approval to confirm that such include the City as a third-party beneficiary and include insurance requirements and indemnity provisions substantially similar to those in past agreements between Vendor and the City for other playgrounds; and
  - b. KYF shall require all volunteers working on the Project to execute the City’s “Waiver and Release of Liability Standard Form”, in substantially the form of **Exhibit G** attached hereto and incorporated herein by reference, and KYF shall provide evidence of general liability insurance, naming the City as an additional insured and covering the activities of KYF volunteers providing any assistance on the Project within JBH Park.
12. **Notice.** Any notices, documents, correspondence or other communications concerning this MOU shall be addressed to the contact person for each party as set forth below:

If to KYF:

Chattanooga Kiwanis Youth Foundation  
Attn: President  
P.O. Box 1103  
Chattanooga, TN 37401

If to City:

Chattanooga Parks & Outdoors  
Attn: Scott Martin  
200 River Street  
Chattanooga, TN 37405

With a copy to:

Harvesting Inclusive Play Committee  
Attn: Bliss Welch  
P.O. Box 156  
Harrison, TN 37341  
Tel: (423) 322-4397

With a copy to

Office of the City Attorney  
100 E. 11th Street, Suite 200  
Chattanooga, TN 37402  
Tel: (423) 643-8250

13. **Termination.** Either party hereto shall be entitled to terminate this MOU if the other party hereto materially defaults in its obligations hereunder and does not cure such default within thirty (30) days after written notice thereof, or if such default cannot be cured within thirty (30) days, such party initiates cure of such default within thirty (30) days and continues to pursue such cure to completion.
14. **Governing Law.** This MOU shall be governed by the laws of the State of Tennessee and the City Code of the City of Chattanooga.
15. **Waiver.** A waiver by either party of any terms or conditions of this MOU shall be in writing. Either party's failure to insist on enforcement of any of the terms or conditions of this MOU or to exercise any right hereunder, or either party's waiver of any terms or conditions does not waive any other terms, conditions, or rights, whether of the same or similar type.
16. **Severability.** The invalidity, illegality, or unenforceability of any provision of this MOU, or the occurrence of any event rendering any portion or provision of this MOU void, shall in no way affect the validity or enforceability of any other portion or provision of this MOU. Any void provision shall be deemed severed from this MOU, and the balance of this MOU shall be construed and enforced as if this MOU did not contain the particular portion or provision held to be void. The parties further agree to amend this MOU 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 Article shall not prevent this entire MOU from being void should a provision which is of the essence of this MOU be determined void.
17. **Assignment.** Neither City nor KYF shall assign any rights or duties under this MOU 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 obligations under this MOU.

18. **Third Party Rights.** Nothing in this MOU shall be construed to give any rights or benefits to anyone other than City, KYF and the HIP Committee.
19. **Entire Agreement.** This MOU, including the Exhibits attached hereto, represents the entire and integrated agreement between the parties hereto. All prior and contemporaneous communications, representations, and agreements by the parties, whether oral or written, relating to the subject matter of this MOU are hereby incorporated into and shall become a part of this MOU.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this MOU to be executed by and through their respective authorized signatories.

CITY OF CHATTANOOGA, TENNESSEE

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

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

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

Date: \_\_\_\_\_

CHATTANOOGA KIWANIS YOUTH FOUNDATION, INC.

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

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

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

Date: \_\_\_\_\_

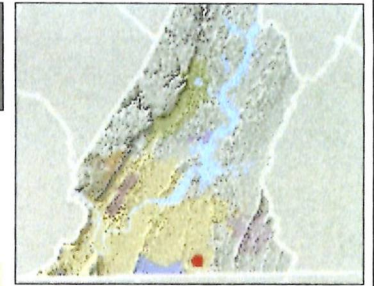
**EXHIBIT A**

Depiction of Jack Benson Heritage Park

[Attached]



# GISMO 5



## Legend

- Parcels
- County Boundary
- Recycling Centers
- Healthcare Facilities
- Emergency Services Locations
  - FIRE
  - MEDIC
  - POLICE
- Cemeteries
- Religious Facilities
- Schools
- Building Footprints
- Miscellaneous Structures
- Driveways
- Parking
- Water Bodies
- Other Water Bodies
- Recreational Areas
- Surrounding Hamilton

0 200.00 400.0 Feet



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.

**EXHIBIT B**

General Layout for the Project

[Attached]

Jack Benson Heritage Park  
1428 Jenkins Road  
Chattanooga, Tennessee 37421

Bliss Products and Services

This play equipment is recommended for children ages:  
5-12

Minimum Area Required:  
Per Site

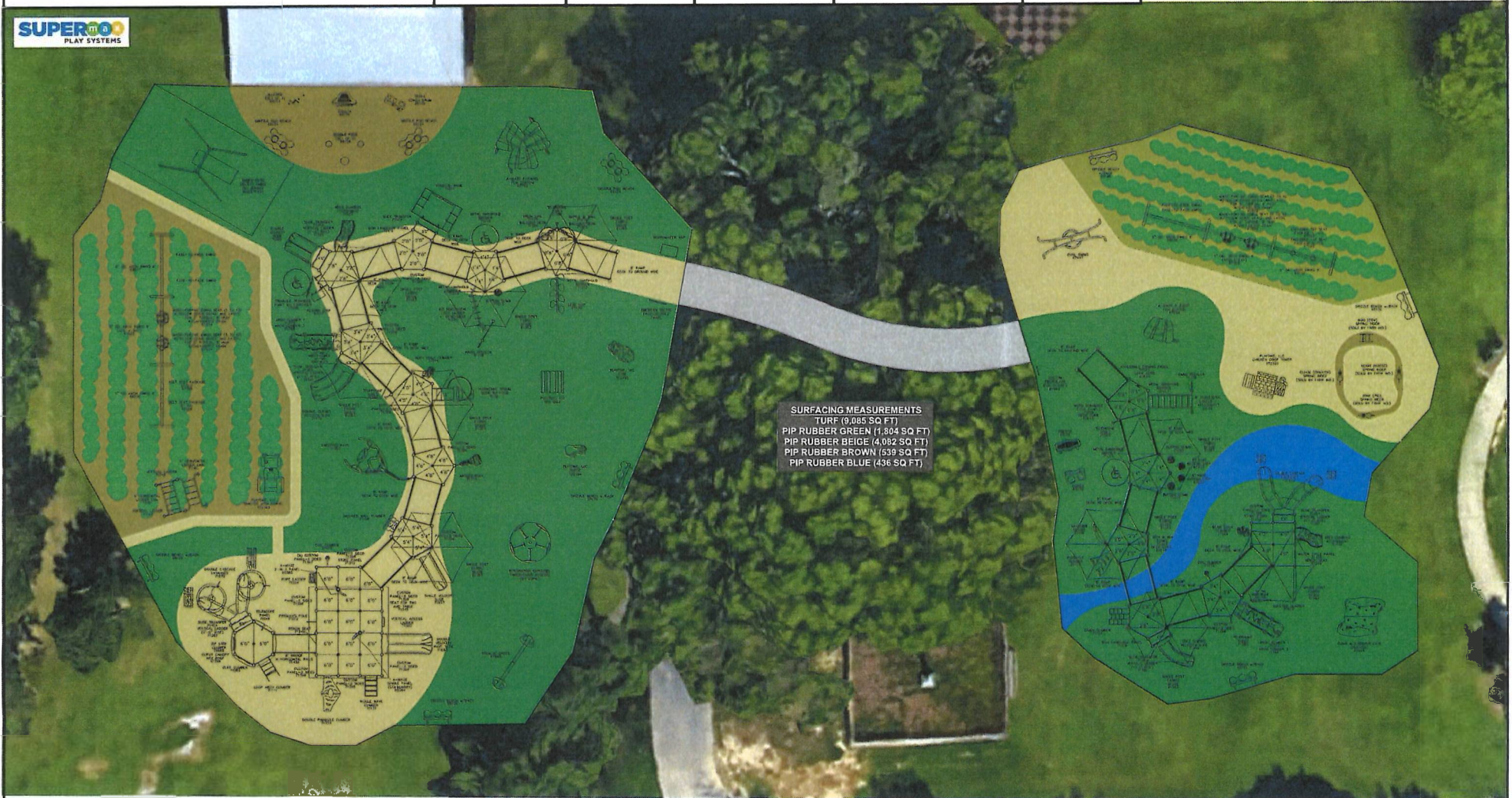
Scale: 3/32" = 1'-0"  
This drawing can be scaled only when in an 24" x 36" format

Drawn By:  
Chris Yates  
Date:  
5/8/18  
Quote Number:  
645-116229

play&park  
structures

544 Chestnut Street  
Chattanooga, TN 37402  
800-727-1907 / www.playandpark.com

User Capacity  
460-500  
Critical Fall Height  
8'-0"



**SURFACING MEASUREMENTS**  
TURF (9,085 SQ FT)  
PIP RUBBER GREEN (1,804 SQ FT)  
PIP RUBBER BEIGE (4,082 SQ FT)  
PIP RUBBER BROWN (539 SQ FT)  
PIP RUBBER BLUE (436 SQ FT)

**IMPORTANT:** Never install play equipment over hard, unresilient surfaces such as asphalt, concrete, or compacted earth. It is the owner's responsibility to ensure the "minimum area required" contains an appropriate amount of resilient material to cushion accidental falls.

**EXHIBIT C**

Letter from City's Mayor

[Attached]