

RESOLUTION NO. 30469

A RESOLUTION AUTHORIZING THE MAYOR OR HIS DESIGNEE TO ENTER INTO A FIRST AMENDMENT TO FACILITIES USE AGREEMENT AND OPTION TO RENEW, IN SUBSTANTIALLY THE FORM ATTACHED, WITH THE UNIVERSITY OF TENNESSEE ON BEHALF OF ITS CHATTANOOGA CAMPUS, FOR USE AS AN INDOOR SOFTBALL FACILITY ON A PORTION OF TAX MAP NO. 146G-A-001 AT 301 N. HOLTZCLAW AVENUE, FOR AN ADDITIONAL TERM OF ONE (1) YEAR.

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 First Amendment to Facilities Use Agreement and Option to Renew, in substantially the form attached, with the University of Tennessee on behalf of its Chattanooga Campus, for use as an indoor softball facility on a portion of Tax Map No. 146G-A-001 at 301 N. Holtzclaw Avenue, for an additional term of one (1) year.

ADOPTED: September 8, 2020

/mem

FIRST AMENDMENT TO FACILITIES USE AGREEMENT AND OPTION TO RENEW

This First Amendment to Facilities Use Agreement and Option to Renew (the "First Amendment") is made and entered into as of the _____ day of _____, 2020, by and between City of Chattanooga ("City" or "Grantor") and University of Tennessee on behalf of its Chattanooga campus ("UTC" or "Grantee"). (City and UTC are collectively referred to as the Parties). The Parties agree as follows:

RECITALS

- A. City and UTC entered into that certain Facilities Use Agreement effective July 9, 2018 (the "Original Agreement").
- B. The Parties now wish to amend the Original Agreement as provided herein.

AMENDMENT

Paragraph 6 of the Original Agreement is hereby deleted in this entirety and replaced by the addition of the following:

- 6. Compliance with Laws/Permits. Grantee agrees that every person connected with the Grantee's occupancy and use of the Property covered by this Agreement shall abide by, conform to and comply with all the laws of the United States of America, State of Tennessee, ordinances of the City of Chattanooga and Hamilton County, Tennessee, and rules and regulations of the Grantor for management of the Property. Additionally, Grantee agrees to abide by all Executive Orders issued by both the Governor of the State of Tennessee and the Mayor of the City of Chattanooga related to COVID-19. Grantee will not do or allow to be done anything on the Property during the Term of this Agreement in violation of any such laws, ordinances, rules or regulations, or Executive Orders and if the attention of the Grantee is called to any such violation on the part of Grantee, Grantee shall agree to immediately desist from and correct the violation.

RENEWAL

As set forth in Paragraph 4 of the Original Agreement, the Parties wish to extend the term for one (1) year beginning on December 1, 2020 and ending on December 1, 2021.

NO OTHER AMENDMENTS

Except as expressly amended herein, the Original Agreement remains in full force and effect.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Parties hereto have executed this First Amendment as of the day and year first above written.

CITY OF CHATTANOOGA

**UNIVERSITY OF TENNESSEE AT
CHATTANOOGA**

By: _____
Donna C. Williams
Administrator
Economic and Community Development

By: _____
Richard L. Brown, Jr.
Executive Vice Chancellor

FACILITIES USE AGREEMENT

This Facilities Use Agreement (“Agreement”) is entered into this 9th day of July, 2018, by and between City of Chattanooga, a municipal corporation (“Grantor”), and the University of Tennessee on behalf of its Chattanooga campus (“UTC”), a public institution of higher learning and instrumentality of the State of Tennessee (“Grantee”).

RECITALS

WHEREAS, Grantor is the owner of certain real property (Tax Map Number 146G-A-001) located at 301 N Holtzclaw Avenue in Chattanooga, Hamilton County, Tennessee (the “Property”), as more particularly described in EXHIBIT A which is attached hereto and incorporated herein by reference.

WHEREAS, Grantee desires to obtain the Grantor’s permission to enter onto the property, on a temporary basis, for the purpose of storing softball equipment and using the facility for expanded softball practice areas.

WHEREAS, the parties desire to enter into this Agreement whereby the Grantor will allow Grantee to enter the Property, on a temporary basis, for the purpose as stated above.

WHEREAS, Grantor desires to grant Grantee the temporary use of a portion of the Property, subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing recitals, the terms and conditions set forth below, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor and Grantee agree as follows:

1. **Right of Entry**. The Grantor hereby grants to Grantee and its agents, employees, and contractors the temporary right to enter onto the Property for the purpose as stated above and for no other purpose.
2. **Specified Entry**. This Agreement shall grant the Grantee the right to enter onto the specified sections of the Property as highlighted on EXHIBIT B which is attached hereto and incorporated herein by reference.
3. **Stored Equipment**. Grantee or its agents may store softball equipment on the Property during the term of this Agreement; provided, however, that Grantee and its agents shall be solely responsible for securing such equipment on the Property and the Grantor shall not be liable for any theft or damage to any equipment stored on the Property.
4. **Term**. The term of this Agreement shall commence on May 1, 2018 and automatically terminate on December 1, 2020 unless earlier terminated as provided herein. The term may be extended by written notice to Grantee in the sole and absolute discretion of the Grantor. This Agreement is subordinate to all prior or future rights and obligations of the Grantor in the Property, except that the Grantor shall grant no rights inconsistent with the reasonable exercise by Grantee of its rights under this Agreement.
5. **Liens**. Grantee shall not permit to be placed against the Property or any part thereof, any design professional's, mechanic's, materialman's, contractor's, or subcontractor's liens with regard to Grantee's actions upon the Property.
6. **Compliance with Laws/Permits**. Grantee shall, in all activities undertaken pursuant to this Agreement, comply and cause its contractors, agents, and employees to comply with all federal, state, and local laws, statutes, orders,

ordinances, rules, regulations, plans, policies, and decrees. Without limiting the generality of the foregoing, Grantee, at its sole cost and expense, shall obtain any and all permits which may be required by law, regulation or ordinance for any activities Grantee desires to conduct or have conducted pursuant to this Agreement.

7. **Inspection**. The Grantor may enter the designated portion of the Property complying with all safety rules and regulations thereon from time to time at reasonable times to verify Grantee's compliance with the terms and conditions of this Agreement.
8. **No Real Property Interest**. It is expressly understood that this Agreement does not in any way whatsoever grant or convey any permanent easement, lease, fee or other interest in the Property to Grantee. This Agreement is not exclusive and the Grantor specifically reserves the right to grant other rights of entry within the vicinity of the Property.
9. **Liability and Workers' Compensation Insurance**. Any liability of Grantee to Grantor and third party for damages, losses, or costs arising out of or related to acts performed under this Agreement will be governed by the Tennessee Claims Commission, Tenn. Code Ann. §§ 9-8-301 et seq. Grantee has elected not to participate in the Tennessee Worker's Compensation program pursuant to T.C.A. §50-6-106 (1)(B)(6) and has implemented an injury-on-duty program to provide certain benefits for its employees who sustain a job related injury, illness or occurrence arising out of the course and scope of employment.
10. **General Liability Insurance**. Grantee is self-insured as

evidenced by the Certificate of Insurance attached as EXHIBIT

C.

11. **Approval/Consent**. Each party hereby represents to the other that all approvals and consents have been obtained authorizing the execution of this Agreement by such parties.
12. **Termination**. This Agreement may be terminated at any time by either party upon thirty (30) days prior notice in writing to be served upon the other party.
13. **Notices**. Any notices, requests, and demands, or other communications required or committed under this Agreement shall be in writing and shall be effective upon receipt.

If served personally, Notice shall be sent by first class mail, registered or certified, postage prepaid, or if sent by a national recognized overnight delivery service, paid by the sending party and addressed as follows:

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

With a copy
to: City of Chattanooga
Office of the City Attorney
100 E. 11th Street, Suite 200
Chattanooga, TN 37402

Grantee: University of Tennessee
Attn: Dr. Richard L.
Brown, Jr.
Executive Vice Chancellor Finance & Operations, UTC
Department 5505
615 McCallie Avenue
Chattanooga, TN 37403

Any party may change its address for notices under this Agreement by giving

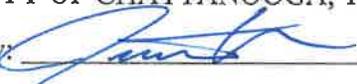
written notice of such change to the other party in accordance with the terms of this paragraph.

14. **Continuing Liability.** No termination of this Agreement shall release Grantee from any liability or obligation hereunder resulting from any acts, omission, or events prior to the termination of this Agreement, in restoration of the Property to its prior condition.
15. **Severability.** If any provision of this Agreement becomes or is found to be illegal or unenforceable for any reason, such cause or provision must first be modified to the extent necessary to make this Agreement legal and enforceable and then if necessary, severed from the remainder of the Agreement to allow the remainder of this Agreement to remain in full force and effect.
16. **Miscellaneous Provisions.**
 - a. Grantor and Grantee acknowledge and agree that the terms and conditions set forth herein constitute the complete and entire agreement between them concerning this Agreement and no other agreements representations or warranties have been made by or between them other than as set forth herein.
 - b. This Agreement may not be modified except by a document in writing. This Agreement is binding upon, and enforceable by the parties hereto and their respective successors and assigns.
 - c. This Agreement shall be governed by and constructed in accordance with the laws of the State of Tennessee.

IN WITNESS WHEREOF, Grantor and Grantee have set their hands by and through their respective duly authorized representative as of the date first above stated.

GRANTOR

CITY OF CHATTANOOGA, TENNESSEE

wcp By: 

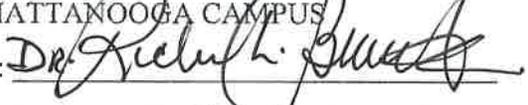
Printed Name: Justin C. Holland

Title: Administrator of Public Works

GRANTEE

UNIVERSITY OF TENNESSEE ON BEHALF OF ITS CHATTANOOGA CAMPUS


T. Forrest

By: 

Printed Name: Dr. Richard L. Brown, Jr.

Title: Executive Vice Chancellor

7/9/18



EXHIBIT A

Legal Description Tax Map Number 146G-A-001

BEGINNING at a 1/2-inch rebar with cap set in the south right-of-way of East Third Street, 42 feet from the center of the street, and in the west right-of-way of the Norfolk Southern Railroad, said 1/2-inch rebar with cap has Tennessee State Plane Coordinates- NAD 83 of North: 259404.7 and East: 2183985.7; runs thence with the right-of way of the Norfolk Southern Railroad as follows:

South 23 degrees 39 minutes 00 seconds West, 312.44 feet;

South 23 degrees 25 minutes 17 seconds West, 643.45 feet;

South 29 degrees 03 minutes 33 seconds West, 117.03 feet;

Along a curve to the left with an arc length of 198.31 feet, a radius of 975.30 feet, and a chord bearing and distance of South 23 degrees 17 minutes 30 seconds West, 197.97 feet;

South 17 degrees 28 minutes 00 seconds West, 40.40 feet to the west right-of-way of North Holtzclaw Avenue, thence with North Holtzclaw Avenue as follows:

North 55 degrees 38 minutes 53 seconds West, 0.87 feet;

South 34 degrees 43 minutes 13 seconds West, 1445.94 feet;

Along a curve to the left with an arc length of 204.15 feet, a radius of 1068.69 feet, and a chord bearing and distance of South 28 degrees 54 minutes 22 seconds West, 203.84 feet;

South 23 degrees 26 minutes 01 second West, 228.69 feet to a 1/2-inch rebar with cap set, 30 feet from the center of North Holtzclaw Avenue; thence leaving the right-of-way of North Holtzclaw Avenue along a curve to the right with a arc length of 39.42 feet, a radius of 25.00 feet, and a chord bearing and distance of South 68 degrees 36 minutes 20 seconds West, 35.46 feet to a 1/2-inch rebar with cap set in the north right-of-way of McCallie Avenue, 30 feet from the center of the road; thence with the McCallie Avenue North 66 degrees 11 minutes 59 seconds West, 1376.11 feet to a 1/2-inch rebar with cap set 31.00 feet from the center of a set of railroad tracks; thence with the right-of-way of the railroad North 39 degrees 38 minutes 26 seconds East, 1988.06 feet to a 1/2-inch rebar with cap set 33 feet from the center of the railroad tracks and 53 feet from the center of East Third Street; thence with the right-of-way of East Third Street as follows:

South 66 degrees 14 minutes 44 seconds East, 265.05 feet to a 1/2-inch rebar with cap set;

South 23 degrees 45 minutes 16 seconds West, 40.86 feet to a 1/2-inch rebar with cap set;

South 66 degrees 14 minutes 44 seconds East, 59.05 feet;

South 74 degrees 45 minutes 24 seconds East, 169.19 feet;

South 72 degrees 36 minutes 46 seconds East, 207.97 feet;

Along a curve to the right with an arc length of 49.94 feet, a radius of 3239.33 feet, and a chord bearing and distance of South 63 degrees 02 minutes 13 seconds East, 49.93 feet;

South 62 degrees 35 minutes 43 seconds East, 21.36 feet;

EXHIBIT A – pg. 2

Legal Description (cont.)

Along a curve to the left with an arc length of 133.91 feet, a radius of 3322.34 feet, and a chord bearing and distance of South 63 degrees 45 minutes 00 seconds East, 133.90 feet to the Point of Beginning, and containing 50.90 Acres, more or less, as surveyed by Thomas A. Young, Tennessee Registered Land Surveyor Number 2265, of L. I. Smith & Associates, 302 North Caldwell Street, Paris, TN 38242, on June 14, 2007. Bearings are based upon Tennessee State Plane Coordinate System – NAD 83.

Exhibit B – Property Description



City of
Chattanooga_easen

Exhibit C – Insurance Certificate



City of
Chattanooga ESM 9

May 23, 2018

Ms. Gail Hart
Mr. William Tucker
City of Chattanooga
Attn: Real Property of ECD
101 E 11th Street, Suite G4
Chattanooga, TN 37402

RE: University of Tennessee Liability and Workers' Compensation Coverage

Dear Ms. Hart and Mr. Tucker:

In response to your request for a certificate of insurance, please accept the attached as proof of insurance.

The University of Tennessee is an agency of the State of Tennessee and is "self-insured" under the Tennessee Claims Commission Act, Tenn. Code Ann. §§9-8-301, *et seq.* The limits of liability for general liability, professional malpractice, and automobile liability are \$300,000 per claimant and \$1,000,000 per occurrence.

If you have any questions concerning the liability of The University of Tennessee, please contact the Office of Risk Management.

Sincerely,

Ann Chappell Tallent

Ann Chappell Tallent, CP, CPS
Administrative Specialist III

act/m
Attachment

EXHIBIT C - pg. 2

STATE OF TENNESSEE



DAVID H. LILLARD, JR.
STATE TREASURER

TREASURY DEPARTMENT

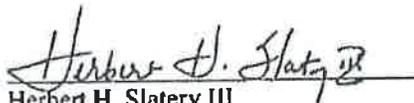
STATE CAPITOL
NASHVILLE, TENNESSEE 37243-0225

615.741.2956
David.Lillard@tn.gov

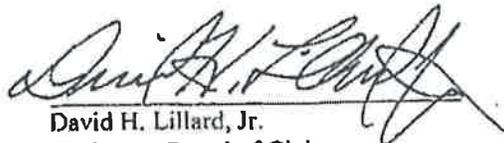
CERTIFICATE OF SELF-INSURANCE

The State of Tennessee self-insures its exposures in general liability, automobile liability, professional malpractice, and workers' compensation. The limits of liability for general liability, professional malpractice, and automobile liability are \$300,000 per person and \$1 million per occurrence. The limits of liability under workers' compensation are those set forth in T.C.A. § 50-6-101 et seq. Copies of the statutes that authorize actions against the State of Tennessee, establish the State's limit of liability, and authorize self-insurance through the Risk Management Fund, are set forth in T.C.A. § 9-8-101 et seq.

The State's self-insurance program insures all liability created under Title 9, Chapter 8 of the Tennessee Code Annotated, for all State departments, agencies and institutions, including State institutions of higher education, and any entity deemed by the General Assembly to be a State agency for the purpose of participating in the State's self-insurance program. This program is effective for any acts or omissions of the State or its employees that occur on or after January 1, 1985. Persons wishing to file a claim for damages against the State of Tennessee arising from an act or omission of the State or its employees should file a claim with the State Treasury Department, Division of Risk Management and Claims Administration, 15th Floor, Andrew Jackson State Office Building, 502 Deaderick Street, Nashville, Tennessee 37243-0202.


Herbert H. Slatery III
Attorney General and Reporter

October 24, 2014
Date


David H. Lillard, Jr.
Chairman, Board of Claims

October 13, 2014
Date