

RESOLUTION NO. 31603

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A LEASE AGREEMENT, IN SUBSTANTIALLY THE FORM ATTACHED, WITH THE HAMILTON COUNTY BOARD OF EDUCATION RELATIVE TO WASHINGTON HILLS COMMUNITY CENTER, PARCEL NO. 129F-B-012, CONSISTING OF APPROXIMATELY SEVENTEEN POINT SEVEN (17.7) ACRES.

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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 the Hamilton County Board of Education relative to Washington Hills Community Center, Parcel No. 129F-B-012, consisting of approximately 17.7 acres.

ADOPTED: May 16, 2023

/mem

## LEASE AGREEMENT

This lease agreement (this “Lease” or the “Lease”) is made and entered into as of this \_\_\_ day of \_\_\_\_\_, 2023, (the “Effective Date”), by and between the Hamilton County Board of Education (“Lessor”) and the City of Chattanooga, Tennessee, a municipal corporation (“Lessee”).

### RECITALS

**WHEREAS**, the Lessee desires to lease facilities from Lessor to operate a Community Center; and

**WHEREAS**, the Lessor owns a certain parcel of real property located within the Chattanooga city limits more particularly described as parcel number 129F-B-012, consisting of approximately 17.7 acres (the “Property”), and commonly known as the Washington Hills Community Center (the “Community Center”); and

**WHEREAS**, the Lessor uses only a portion of the Property as part of the Hamilton County Schools; and

**WHEREAS**, the Lessee has for many years operated the Recreation Center on that portion of the Property that the Board does not use; and

**WHEREAS**, both the Lessor and Lessee would benefit from a clear understanding regarding the use of the Property;

**NOW, THEREFORE**, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, Lessor and Lessee agree as follows:

1. **Leased Premises.**

- (a) Subject to the terms and conditions herein and pursuant to T.C.A. § 49-2-203(b)(10), Lessor hereby leases to Lessee, and Lessee accepts from Lessor a portion of the Property as more particularly described on **Exhibit A**, attached hereto, and incorporated by this reference (the “Leased Premises”). The Leased Premises specifically includes the football field adjoining the Recreation Center and abutting Oakwood Drive.

- (b) The Leased Premises specifically excludes the Washington Alternative Learning Center located at 7821 Hancock Road in Chattanooga, TN as well as the adjoining baseball field, outdoor basketball courts, and the undeveloped land to the south.
- (c) Notwithstanding Section 1(b), the Lessee shall have the right to use any outdoor athletic facilities located on the Property at any time school is not in session and these facilities are not being used for school purposes. The Lessee shall be given preference over other groups that might otherwise wish to use these facilities pursuant to the Lessor's community use policy.
- (d) Lessor and Lessee authorize the Superintendent of Schools of Hamilton County and the City Mayor to establish a formal boundary for the Leased Premises if the respective administrations believe such established boundaries are necessary to effectuate the purpose of this Lease.

2. **Consideration.**

As consideration for this Lease, Lessee hereby agrees to permit Lessor to use, without fee or other cost, the football field, and other facilities of the Recreation Center (the "Recreation Center Facilities") provided, however, that this right to use the Recreation Center Facilities will not interfere with any previously scheduled event or program at the Recreation Center.

3. **Permitted Use.**

Lessee is authorized to operate a recreation center on the Leased Premises. Any different or additional use of the Leased Premises must be specifically authorized by Lessor in writing.

4. **Term.**

The initial term of this Lease shall be twenty (20) years commencing on \_\_\_\_\_, 2023, and ending on \_\_\_\_\_, 2043 (the "Initial Term"). Upon mutual written consent of the parties, Lessee shall have the right to renew this Lease for an additional term of twenty (20) years immediately following the conclusion of the Initial Term (the "Renewal Term").

5. **Leasehold Improvements to the Leased Premises.**

Lessee shall make all future necessary structural changes and improvements to the building and grounds to continue Lessee's use and occupancy and all repairs or maintenance necessary to comply with federal, state, or local laws, subject to Lessee's budgetary constraints. All improvements made by Lessee to the Leased Premises, other than personal property, shall, upon completion, immediately become the Property of Lessor, and shall remain with the Leased Premises upon the expiration or termination of this Lease.

Notwithstanding the foregoing, any movable structures, playground equipment, improvements, alterations, or additions on the surrounding grounds purchased during the Initial Term or the Renewal Term of this Lease by Lessee may be removed by Lessee at any time within six (6) months of the date of expiration or termination of this Lease. Any personal property not removed by Lessee, then, upon the expiration or termination of this Lease, any such personal property remaining at the Leased Premises shall inure to Lessor's benefit and shall become a part of the Leased Premises and shall belong to the Lessor absolutely thereafter.

For the purposes of this Lease, the term "Leasehold Improvements" shall include, without limitation, all improvements, installations, alterations, and additions from time to time made, erected or installed on or in any part of the Leased Premises by or on behalf of Lessee, including, without limitation, all partitioning, doors, and hardware, heating, air-conditioning, ventilation, mechanical, electrical, and utility installations, light fixtures, floor and window coverings, decorations, finishes, and fixtures, howsoever, affixed and whether movable or immovable, excepting only Lessee's personal property.

6. **Specific Improvements to the Leased Premises.**

During the Initial Term, Lessee shall make the improvements to the Leased Premises as more particularly described on **Exhibit B** (the "Improvements"). On or prior to the Effective Date, Lessee shall submit to Lessor a plan for Lessee's Improvements ("Lessee's Plan") containing a detailed description of the Improvements to be made by Lessee. The Lessee's Plan shall be subject to Lessor's written approval, which the Lessor agrees not unreasonably to withhold. 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 as set forth in **Exhibit B** or to authorize Lessee to make any further additions, improvements, or alterations to the Leased Premises,

except as may be required by law. Lessor shall not be liable for the cost of the Improvements made by Lessee.

7. **Easements.**

This Lease is subject to any and all existing easements and rights of way. Additionally, Lessor reserves an easement for ingress and egress through the Recreation Center's parking lot onto Oakwood Drive.

8. **Quiet Possession.**

The Lessor covenants to keep the Lessee in quiet possession of the Leased Premises during the term of this Lease or the Renewal Term.

9. **Termination by Lessor.**

In the event Lessor determines that it has a need to use the Leased Premises for any purpose, then Lessor may terminate this Lease upon giving the Lessee eighteen (18) months advance written notice. If Lessor elects to terminate this Lease on or before the end of the Initial Term or the Renewal Term, Lessor agrees to pay to Lessee the present value of the Improvements made during the Initial Term or the Renewal Term of this Lease as set forth on **Exhibit B**. In determining the present value of any such Improvements, the costs shall be discounted by the City's bond rate applicable to each such Improvement.

10. **Termination by Lessee.**

Lessee shall have the right to terminate this Lease Agreement for the following reasons:

- (a) Loss of government funding that makes continued use of the Leased Premises impractical, in which case the Lessee shall give prompt written notice to the Lessor of the anticipated termination date; or
- (b) Lessee, in its sole discretion, shall choose to terminate the Lease, in which case the Lessee shall give nine (9) months written notice of termination to Lessor.

- (c) In the event Lessee exercises its right to terminate this Lease according to his Section 10, Lessor shall not be obligated to pay the present value of the Improvements on the Leased Premises otherwise required under Section 9 and described in Exhibit B.

11. **Termination and Holding Over.**

Upon termination of this Lease at the expiration of the Initial Term hereof or the Renewal Term, Lessee shall surrender the Leased Premises to Lessor in its good condition as received ordinary wear and tear and damage by fire or other casualty accepted. Lessee covenants to Lessor that it shall vacate the Leased Premises on or before thirty-one (31) days following the expiration of the term hereof or any extension thereof, including removal of all personnel and property.

12. **Lessee's Insurance.**

Lessee shall maintain at its own expense:

(a) Property, fire, and extended coverage in an amount sufficient to reimburse Lessee for all of its equipment, trade fixtures, inventory, and other personal property located on the Leased Premises, including the Leasehold Improvements constructed both prior to the Effective Date of this Lease and during the term of the Lease. The coverage referred to in this subsection (a) shall include Lessor as a loss payee and provide that any proceeds recoverable in the event of loss shall be payable to both Lessor and Lessee as their interests appear to rebuild the buildings located on the Leased Premises. Lessee, upon execution of this Lease, shall furnish Lessor with a Certificate of Insurance evidencing compliance of this subsection. Should this policy be cancelled before the expiration date, notice will be delivered to Lessor in accordance with the policy provisions governing notice of cancellation to Lessee.

(b) General liability. Lessee is self-insured and does not carry or maintain commercial general liability insurance. A copy of the Lessee's Certificate of Self-Insurance is attached as **Exhibit C**. Lessee shall maintain at its own expense:

13. **Damage or Destruction.**

Reconstruction by Lessor. If all or any part of the Leased Premises are at any time rendered untenable by damage from fire or other casualty, Lessor shall, within thirty (30) days following such destruction or damage, commence diligently to reconstruct, rebuild or repair that part of the Leased Premises which was damaged

or destroyed or rebuilt according to plans and specifications and working drawings other than those used in the original construction of the Leased Premises. The nature, quality, and functionality of the facility and services in the Leased Premises as repaired or rebuilt will be reasonably similar to those in the Leased Premises prior to the damage and destruction. Lessor agrees to complete the reconstruction within one hundred eighty (180) days of the date of damage or destruction. In the event Lessor is delayed in the commencement or completion of repairs by *force majeure* as set forth in Paragraph 17, Lessor's delay for commencement or completion of reconstruction shall be extended in accordance with Paragraph 17. The Lessor's responsibility to repair or rebuild shall not exceed the proceeds of the insurance available to Lessor for this purpose pursuant to Section 12(a).

14. **Operational Costs; Maintenance.**

Lessee agrees to be responsible for all operational costs of the Recreation Center, including, without limitation, to cost of employees, utilities, materials and supplies, and equipment. Lessee shall be responsible for all daily facility care to both the buildings and the grounds of the Leased Premises. Lessee shall provide minor maintenance and repairs that can be performed by maintenance employees of the Community Center. Such maintenance and repairs shall comply with all applicable governmental building and installation codes.

15. **Utility Services and Water Quality Fees.**

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, without limitation, for water, gas, electricity, cable, internet, and telephone. Lessee shall also be responsible for the payment of water quality fees charged to the Leased Premises.

16. **Taxes and Assessments.**

The parties agree that Lessor shall be responsible for any and all taxes, rates, levies, charges, and assessments.

17. **Force Majeure.**

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

18. **Miscellaneous Provisions.**

(a) **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 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 reenter 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.

(b) **Entire Agreement.** This Lease Agreement constitutes the entire agreement between the parties pertaining to this Lease Agreement and supersedes all prior and contemporaneous agreements, representations, and understandings. No supplement, modification, or amendments of this Lease Agreement shall be binding unless executed in writing by the parties.

(c) **Applicable Law.** This Lease Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Tennessee.

(d) **Severability.** If any provision of this Lease 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.

(e) **Sublease, Assignment, or Transfer.** Lessee shall not sublet, assign, or transfer this Lease or any interests therein to anyone without the express written permission of Lessor. Further, neither this Lease nor any interest herein shall be subject to transfer by attachment, execution, proceedings in insolvency or bankruptcy, or receivership, unless a receivership is sought by Lessor.



(f) 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, to the addresses and parties as follows:

Lessor: Hamilton County Department of Education  
Attn: Director of Auxiliary Services  
3074 Hickory Valley Road  
Chattanooga, Tennessee 37421

A copy to: D. Scott Bennett, Esq.  
Bennett & DeCamp, PLLC  
735 Broad Street, Suite 214  
Chattanooga, Tennessee 37402

Lessee: City of Chattanooga  
Real Property Office  
101 E. 11<sup>th</sup> Street, Suite G-18  
Chattanooga, Tennessee 37402

A copy to: Office of the City Attorney  
100 E. 11<sup>th</sup> Street, Suite 200  
Chattanooga, Tennessee 37402

**[signatures on following page]**

**IN WITNESS WHEREOF**, we have set our hands as authorized by the Hamilton County, Tennessee, Board of Education and the City of Chattanooga, Tennessee, respectively.

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Tiffanie Robinson,  
Chairwoman of the Hamilton Board of Education

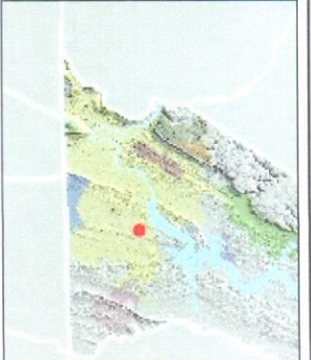
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Justin Robertson,  
Superintendent of Hamilton County Schools

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Tim Kelly, Mayor,  
City of Chattanooga

# Chattanooga



Legend  
Parcels

EXHIBIT "A"

0 200.00 400.00 Feet  
NAD\_1983\_StatePlane\_Tennessee\_FIPS\_4100\_Feet  
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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"  
Improvements to be made after the Effective Date

**Estimated Value of \$1,000,000.00**

The addition of a new, ground up construction of a multi-purpose room, including storage and kitchen space. Structural, electrical (power, lighting, low voltage, data, etc.), plumbing, mechanical, and finish modifications, improvements, and renovations to the existing building to accommodate the multi-purpose room addition.

**Estimated Value of \$500,000.00**

Interior renovations of the existing multi-purpose room, including selecting new finishes and fixtures, new lighting, as well as adjusting or modifying the existing HVAC system as possible. Adding building system controls and improved building security systems and security cameras. New landscaping as required by permitting. Improvements to parking lot and storm drainage as required by permitting. Modifications to the existing playground as may be required by construction of the new multi-purpose room.

**IMPROVEMENTS TO BE MADE AFTER THE EFFECTIVE DATE  
HAVE A TOTAL ESTIMATED VALUE OF \$1,500,000.00**

## EXHIBIT C



City of Chattanooga  
Human Resources Department

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Tim Kelly, Mayor

### CERTIFICATE OF SELF-INSURANCE

This is to certify that the City of Chattanooga Government is a self-insurer in accordance with the Tennessee Governmental Tort Liability Act.

The funded Self-Insurance Plan is established under the provisions of the Tennessee Governmental Tort Liability Act, T.C.A. § 29-20-403, et. seq., which establishes the limits of liability for governmental entities in the State of Tennessee. For all claims against a self-insuring governmental entity, the Act establishes a maximum limit of liability of Three Hundred Thousand (\$300,000.00) Dollars for bodily injury or death of any one (1) person in any one (1) accident, occurrence or act, and Seven Hundred Thousand (\$700,000.00) Dollars for bodily injury or death of all persons in any one (1) accident, occurrence or act, and One Hundred Thousand (\$100,000) Dollars for injury or destruction of property of others in any one (1) accident, occurrence or act. The provisions of the above limits shall apply to any action arising on or after July 1, 2007.

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Michael Anthony  
Director of Safety, Compliance, & Risk Management