12/4/12

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE DIRECTOR OF GENERAL SERVICES TO ENTER INTO A LEASE AGREEMENT, IN SUBSTANTIALLY THE FORM ATTACHED, WITH DIAGNOSTIC RADIOLOGY CONSULTANTS, P.A. TO LEASE ONE HUNDRED SEVENTY-THREE (173) SQUARE FEET FOR AN X-RAY EXAMINATION AREA AT THE CITY OF CHATTANOOGA WELL ADVANTAGE CENTER.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That it is hereby authorizing the Director of General Services to enter into a lease agreement, in substantially the form attached, with Diagnostic Radiology Consultants, P.A. to lease 173 square feet for an x-ray examination area at the City of Chattanooga Well Advantage Center.

ADOPTED: _____, 2012

/mms

City of Chattanooga

Resolution/Ordinance Request Form

Date Prepared: November 20, 2012

Preparer: Dan L. Thornton **Department:** General Services

Brief Description of Purpose for Resolution/Ordinance: **Res./Ord. #** _____ **Council District #** 8

A RESOLUTION AUTHORIZING THE DIRECTOR OF GENERAL SERVICES TO ENTER INTO A LEASE AGREEMENT, IN SUBSTANTIALLY THE FORM ATTACHED, WITH DIAGNOSTIC RADIOLOGY CONSULTANTS, P.A. TO LEASE ONE HUNDRED SEVENTY-THREE (173) SQUARE FEET FOR AN X-RAY EXAMINATION AREA AT THE CITY OF CHATTANOOGA WELL ADVANTAGE CENTER.

Name of Vendor/Contractor/Grant, etc. Diag. Radiology Consult.

Total project cost $ _____

Total City of Chattanooga Portion $ _____

City Amount Funded $ _____

New City Funding Required $ _____

City's Match Percentage % _____

New Contract/Project? (Yes or No) YES

Funds Budgeted? (YES or NO) N/A

Provide Fund _____

Provide Cost Center _____

Proposed Funding Source if not budgeted _____

Grant Period (if applicable) _____

List all other funding sources and amount for each contributor.

Amount(s)	Grantor(s)
$	
$	
$	

Agency Grant Number

CFDA Number if known

Other comments: (Include contingency amount, contractor, and other information useful in preparing resolution)

Lease agreement will be prepared and approved by City Attorney.

Approved by: _____

Reviewed by: FINANCE OFFICE

DESIGNATED OFFICIAL/ADMINISTRATOR

Please submit completed form to @budget, City Attorney and City Finance Officer

Revised: 1/26/09

EAST 11TH STREET
CITY OF CHATTANOOGA
WELLNESS CENTER
Lease Space for X-Ray Room: 173 SF
BALDWIN STREET
0
30'
60'
SCALE: 1" = 30'

LEASE AGREEMENT

This Lease Agreement ("Agreement") is made this ___ day of _____, 2012, but is effective for all purposes as of the ___ day of _____, _____ (the "Effective Date") by and between City of Chattanooga, ("Lessor") and Diagnostic Radiology Consultants, P.A., ("Lessee").

RECITALS

WHEREAS, Lessee is in need of office space to be used for the rendering of certain medical services, including diagnostic imaging services and matters related thereto, which office space is needed by Lessee on a full-time basis; and

WHEREAS, Lessor has available reception area space and a diagnostic examination room within the Lessor's Premises located at 612 E. 11th Street, Chattanooga, TN 37402, which are sufficient for Lessee's needs; and

WHEREAS, Lessee desires to lease the Clinic Space (as defined hereinafter), from Lessor, and Lessor desires to lease the Clinic Space to Lessee, for a specified time period and on the terms and conditions set forth in this Agreement;

NOW THEREFORE, in consideration of the mutual covenants and conditions herein contained, the parties hereto agree as follows:

1. LEASED PREMISES. Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, a portion of the Lessor's Premises containing approximately 173 square feet of the space contained in the Lessor's Premises, as more particularly described on **Exhibit A** attached hereto and made a part hereof ("Clinic Space"). Lessee shall be entitled to the exclusive permitted use of the Clinic Space. Lessee shall be entitled to the nonexclusive use of the Lessor's Premises common areas (the waiting area, restrooms and hallways through which ingress and egress to the Clinic Space is granted).

2. TERM. The term of this Agreement is for three (3) year(s) commencing on the Effective Date and ending on _____. Thereafter, the Agreement shall renew automatically for two (2) consecutive additional terms of one (1) year each (each, a "Renewal Term") unless ninety (90) days before the end of the then current term a party shall notify the other in writing that it has elected not to renew this Agreement. This Agreement may be terminated early for cause by either party as specified in Section 8, Section 13, Section 15.3, Section 15.4 and Section 15.5. In addition, either party may terminate this Agreement without cause upon sixty (60) days written notice to the other party. However, in the event that (i) Lessor elects to terminate this Agreement without cause pursuant to this Section 2, (ii) Lessee terminates this Agreement for cause pursuant to Section 8, or (iii) the Agreement is not renewed or expires pursuant

to this Section 2, Lessor shall pay to Lessee a termination fee (the "Termination Fee") in an amount equal to the actual operating losses incurred by Lessee in connection with the provision of imaging services to Lessor's employees during the term of this Agreement; provided, however, Lessor shall not be required to pay the Termination Fee if the parties mutually agree to enter into a new agreement for the lease of the Clinic Space following any termination or expiration of this Agreement.

3. REMEDY. In the event of the expiration or early termination (for any reason) of this Agreement, Lessor shall have the right to re-enter and repossess the Clinic Space, with or without legal action.

4. BUSINESS CONDUCTED IN THE CLINIC SPACE; PERMITTED USE. Lessee shall use the Clinic Space to engage in the practice of diagnostic imaging and Lessee's clinical and administrative personnel shall conduct themselves in a manner consistent with the recognized standards of the profession and with all applicable ethical guidelines, policies and procedures and federal, state and local laws and regulations. Lessee shall use the Clinic Space for the sole purpose of providing diagnostic imaging services for the Lessor's Wellness Program.

5. OBLIGATIONS OF LESSEE.

5.1 During the entire term of this Agreement, those physicians and other clinical staff affiliated with Lessee shall maintain the appropriate licensure to practice in the State of Tennessee, and shall remain in good standing with the appropriate governing board or agency which exercises supervisory authority with regard to examination and licensing of health care providers in Tennessee (the "State Board"), and with any applicable federal, state or local certification or licensing agency or office (an "Agency"), without restriction and not subject to any sanction, exclusion order, or other disciplinary order with respect to their participation in any federal or state health care program.

5.2 RESPONSIBILITIES. Lessee shall conduct its medical practice in compliance with federal, state and local laws and regulations, as well as comply with all the policies established by Lessor generally regarding the flow of patients throughout the Clinic Space and the Lessor Premises, including the following:

(a) Lessee shall use the Clinic Space for the purpose of providing diagnostic imaging medical services only, unless otherwise agreed to in writing by Lessor and Lessee and Lessee will maintain the radiology room in good condition.

(b) During the term of this Agreement Lessee shall be the exclusive provider of diagnostic imaging services, and at its sole expense, shall provide all equipment and personnel necessary to provide such services.

(c) Lessee shall not hire any employees, independent contractors or other associates who will be physically located in the Clinic Space who are currently employed in any capacity by Lessor without first obtaining the prior written consent of Lessor.

(d) Lessee shall pay its own state, federal, social security and unemployment taxes, and licensing costs, professional fees, marketing expenses, etc. Lessee's physicians and other clinical staff shall, except as otherwise may be set forth in any other written agreement with Lessor, select its own patients, determine its own schedules and generally conduct its practice consistent with its best clinical judgment and discretion.

(e) Lessee's physicians, clinical staff and administrative staff shall abide by any and all reasonable policies and procedures established by Lessor regarding or involving the Clinic Space.

(f) Lessee shall be responsible for furnishing the diagnostic radiology room with such furniture and equipment, as Lessee deems necessary.

(g) Lessee shall not make any alterations, improvements, or additions to the Clinic Space without the prior, express, and written consent of Lessor. All such alterations, replacements, changes, additions and improvements that may be made, erected, installed, or affixed on or in the Clinic Space during the term of this Agreement shall be, and shall be deemed to be, part of the realty and the sole and absolute property of Lessor. Notwithstanding the foregoing, the parties agree that any diagnostic imaging equipment located in the Clinic Space (the "Imaging Equipment") during the term of this Agreement is and shall remain the property of Lessee; provided, however, that, following the termination or expiration of this Agreement, the parties may mutually agree upon the transfer of the Imaging Equipment from Lessee to Lessor at the purchase price identified in **Exhibit B** attached hereto.

(h) Upon termination of this Agreement, at the expiration of the term hereof, or an extension thereof, Lessee shall surrender the Clinic Space to Lessor in as 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 Clinic Space on or before thirty-one (31) days following the expiration of the term hereof or any extension thereof or earlier termination of this Agreement, including the removal of all personnel and personal property.

(i) Should the Lessor at any time rightly seek to recover possession of the Clinic Space and be obstructed or resisted therein, and any litigation

thereon ensues, the Lessee shall be bound to pay the Lessor reasonable attorney's fees.

5.3 INSURANCE. Lessee shall maintain at all times throughout the term of this Agreement: (i) professional liability insurance covering the activities of Lessee at the Clinic Space and any of its medical or clinical employees and agents, in an amount no less than $1,000,000.00 per occurrence and $3,000,000.00 in the aggregate; and (ii) comprehensive general public liability insurance covering personal injury, death, or property damage at the Clinic Space or the common areas specifically identified in Section 1 above with limits of at least $1,000,000.00 per occurrence and $3,000,000.00 in the aggregate. In addition, Lessee shall be responsible for obtaining casualty insurance with respect to its personal property. The insurance obtained by Lessee hereunder shall be obtained from a reputable insurance company reasonably satisfactory to Lessor which is authorized to sell liability insurance policies in Tennessee, and shall cover all professional services provided to patients. Such insurance policies shall name Lessor as an additional insured. Lessee shall make available to Lessor a certificate of insurance evidencing the required coverage prior to providing any diagnostic imaging services. Lessee shall provide immediate notification to Lessor of any proposed or actual cancellation or modification of such insurance coverage. Failure to maintain the insurance coverage required at all times during the term of this Agreement shall constitute a material breach of this Agreement.

5.4 CONTACT. Lessee shall report to Lessor any administrative problems or concerns arising in or related to the Clinic Space as soon as practicable. Dan Thornton, Director of General Services, or any successor designated by her/him in writing, shall be the designated contact person for such problems or concerns. Notice shall be given at the address set forth in Section 14.

6. FURNISHING AND MANAGING THE COMMON AREA. Lessor shall, at its expense, be responsible for furnishing that portion of the Clinic Space other than the radiology room. Lessor shall be responsible for the management of the Clinic Space other than the radiology room and shall be responsible for routine cleaning of the radiology room in a manner consistent for rooms where that type of care and service is provided; provided, however, that Lessor shall have no obligation to clean the Imaging Equipment located therein. Lessee may, if Lessee is not in default on any of the terms and conditions of this Agreement, remove at the termination of this Agreement any office furniture or medical equipment purchased or provided by Lessee. If Lessee causes any damage to the Clinic Space in removing Lessee's property, Lessee shall pay for all repairs necessary to restore the Clinic's Space to its original condition as of the Effective Date.

7. RENT. In consideration for the use of the Clinic Space, Lessee shall pay Lessor rent in the amount of Two Hundred Sixteen and 25/100 ($216.25) per month. Interest shall accrue at the rate of 1.5% per month until paid on any amount not

paid by the due date. The rent shall be due on the Effective Date of this Agreement and thereafter on the first day of each succeeding month (with rentals for portions of a month, if any, being prorated). The rent shall be subject to renegotiation and appropriate adjustment annually on each anniversary date of the Effective Date to reflect changes in the cost of space. Any changes in the rent shall be set in advance and specified in writing prior to each Renewal Term by addendum to this Agreement. Lessor and Lessee acknowledge and represent that any and all rent paid over the term of this Agreement reflects their best estimate of fair market value in arms-length transactions. Moreover, Lessor and Lessee acknowledge and represent that the Clinic Space does not exceed that which is reasonable and necessary for the legitimate business purposes of the arrangement. The parties agree, upon reasonable request, to cooperate in the exchange of information to the extent possible to verify that the costs hereunder in fact reflect fair market value.

8. TERMINATION DUE TO MATERIAL BREACH. Upon any material breach of this Agreement by the other party, either party may terminate this Agreement early for cause upon written notice of the breach to the other party and with an opportunity to cure the breach within thirty (30) days of written notice of the breach.

9. INDEMNIFICATION AND HOLD HARMLESS. Lessee, its employees, agents, partners, officers and directors, if applicable, shall indemnify and hold harmless Lessor, its employees, agents, officials and directors, if applicable, from any and all demands, actions, losses, damages, orders, or judgments (including settlements, court costs, and attorneys' fees, regardless of the outcome of such claim or action) (collectively, the "Losses") from claims by third parties arising out of or related to: (1) the use of the Lessor's Premises, including the Clinic Space, by Lessee or the conduct of the Lessee in the Lessor's Premises, including the Clinic Space; or (2) the performance or nonperformance by the Lessee of professional services. The foregoing indemnification does not apply to the extent that any Loss is caused by the action or omission of the Lessor. Upon written notice provided by the Lessor of such a third-party claim or action hereunder, the Lessee will defend, at its own expense, any such claim or action. This obligation shall be deemed continuing and shall survive any termination or expiration of this Agreement. Notwithstanding anything in this Agreement to the contrary, any liability of Lessor is expressly limited to the coverages, amounts and procedural requirements set forth in the Tennessee Governmental Tort Liability Act, as such now exists or may hereinafter be amended.

10. RELATIONSHIP OF PARTIES.

10.1 STATUS AS AN INDEPENDENT CONTRACTOR. Lessee and Lessor are independent parties. Both parties (and their respective employees and agents) at all times will act as independent contractors and not as partners, agents,

shareholders, members or employees' of each other. Neither party shall hold itself out to third parties as a partner, employee, shareholder, member or agent of or joint venturer with the other party in the leasing of space and equipment or in the provision of patient services under this Agreement. Each party shall have the exclusive responsibility for the payment of all sales and use taxes, business taxes, payroll (employment) taxes, income taxes or similar taxes imposed by reason of the operation of its respective medical practice in the Lessor's Premises, including the Clinic Space.

10.2 COMPLIANCE WITH LAWS. Lessee shall act at all times in compliance with all federal, state and local laws, including but not limited to, those of the Medicare and Medicaid Programs and all currently accepted and approved methods and practices of patient evaluation and treatment. It shall be deemed a material breach of this Agreement if Lessee shall fail to observe this requirement, and, in such event, Lessor may terminate this Agreement immediately.

(a) Both parties to this Agreement agree to and are committed to comply with any and all applicable requirements of the Standards for Privacy of Individually Identifiable Health Information, the Standards for Electronic Transactions, and the Security and Electronic Signature Standards, in their final form, under the "Health Insurance Portability and Accountability Act" ("HIPAA"). Furthermore, both parties agree to maintain medical record confidentiality, to appropriately safeguard the privacy of patients' protected health information and to follow appropriate procedures to ensure that their respective patients' confidentiality rights are not abridged in accordance with applicable state and federal privacy and confidentiality laws.

(b) 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. Further, 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.

(c) The parties expressly agree that nothing contained in this Agreement shall require either party to refer patients to the other party. Notwithstanding any unanticipated effect of any provisions of this Agreement, neither party will intentionally conduct itself in such a manner as to violate the applicable federal or state fraud and abuse or self-referral laws.

10.3 INCURRING FINANCIAL OBLIGATIONS. Lessee shall be responsible for all personal and professional expenses of its own employees or agents, including but not limited to, professional liability insurance premiums, personal and

professional expenses, membership fees, dues, and expenses involved in attending conventions and meetings.

11. ACCESS TO BOOKS AND RECORDS. If and to the extent required by Section 1861(v)(l)(I) of the Social Security Act, upon the written request of the Secretary of Health and Human Services or the Comptroller General or any of their duly authorized representatives, the parties shall make available those contracts, books, documents and records necessary to verify the nature and extent of the costs of providing services to patients pursuant to this Agreement. Such inspection shall be available up to four years after the rendering of such services. If either party carries out any of the duties of this Agreement through a subcontract with a value of $10,000 or more over a 12-month period with a related individual or organization, it agrees to include this requirement in any such subcontract. No attorney-client, accountant-client, or other legal privilege will be deemed to have been waived by either party by virtue of this provision.

12. PROHIBITION ON ASSIGNMENT BY LESSEE. The benefits conferred under this Agreement may not be assigned by Lessee without the express written consent of Lessor.

13. CHANGES IN LAW. In the event that either party (i) due to its involvement in activities relating to this Agreement, becomes the subject of governmental regulatory action, the purpose of which is to enforce federal or state fraud and abuse or self-referral laws, or (ii) becomes aware of (a) a new written interpretation released by a governmental regulatory body involving federal or state fraud and abuse or self-referral laws, or (b) a material change in the regulatory atmosphere surrounding the exchange of compensation between health care providers as described in this Agreement, as evidenced by written commentary, written guidance, advisory opinions, fraud alerts, or any other written communications issued by a governmental regulatory body, that, in the reasonable opinion of such party's counsel, creates a substantial risk of subjecting such party to governmental regulatory action for violating federal or state fraud and abuse or self-referral laws, then Lessor and Lessee shall use reasonable efforts to revise this Agreement in a manner that would appropriately reduce or eliminate such substantial risk and if such revision is not agreed to by Lessee and Lessor, then either party may terminate this Agreement upon written notice to the other party.

14. NOTICES

Any notice required or desired to be served by either party hereto upon the other shall be deemed to have been properly given if such notice shall be in writing and either personally delivered, delivered by messenger or overnight courier, transmitted by a telefacsimile device, or sent certified mail, with postage prepaid, and addressed as follows:

City of Chattanooga
Attn: Dan Thornton, Director of General Services
100 E. 11th Street, Suite 101
Chattanooga, TN 37402

Diagnostic Radiology Consultants, P.A.
Attn: Rebecca Ratchford
1949 Gunbarrel Road, Suite 170
Chattanooga, TN 37421

Unless otherwise provided herein, the date which is five (5) days after the date of mailing, or the date of written confirmation of transmission if sent by facsimile, or the date of delivery if sent by messenger or overnight courier shall be deemed to be the date on which such notice was given. Either party may change its address for purposes of this Agreement by providing written notice to the other.

15. MISCELLANEOUS.

15.1 TRADEMARKS AND TRADE NAMES. Nothing in this Agreement shall give either party the right to use the name, symbols, trademarks, trade names, service marks, or copyrights of the other party. Any permitted use shall terminate upon the termination of such consent or termination of this Agreement, whichever first occurs.

15.2 NO THIRD PARTY RIGHTS. This Agreement has been made and is made solely for the benefit of the parties hereto and their respective successors and permitted assigns. Nothing in this Agreement is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the parties to it and their respective successors and permitted assigns. Nothing in this Agreement is intended, to relieve or discharge the obligation or liability of any third persons to any party to this Agreement.

15.3 EXCLUDED PROVIDER. Lessee hereby represents and warrants that it is not and at no time has been excluded from participation in any federally funded health care program, including Medicare and Medicaid. Lessee hereby agrees to immediately notify the other party of any threatened, proposed, or actual exclusion from any federally funded health care program, including Medicare and Medicaid. In the event that Lessee is excluded from participation in any federally funded health care program during the term of this Agreement, or if at any time after the Effective Date of this Agreement it is determined that Lessee is in breach of this Section 16.3, this Agreement shall, as of the effective date of such exclusion or breach, automatically terminate.

15.4 JEOPARDY. Notwithstanding anything herein to the contrary, in the event the performance by either-party hereto of any term, covenant, condition or provision

of this Agreement jeopardizes the licensure of either party, the participation of either party in, or the payment or reimbursement from, Medicare, state sponsored Medicaid program, Blue Cross, or other public or private reimbursement or payment programs, or a party's full accreditation by any state or nationally recognized accrediting organization, or if for any other reason said performance should be in violation of any statute, ordinance, or be otherwise deemed illegal, or be deemed unethical by any recognized body, agency, or association in the medical field with respect to either party, the parties shall immediately initiate negotiations to resolve the matter through amendments to this Agreement. If the parties are unable to resolve the matter within ninety (90) days thereafter, either party may, at its option, terminate this Agreement forthwith.

15.5 FORCE MAJEURE. Neither party hereto shall be liable for any delay or failure in the performance of any obligation under this Agreement (excluding Lessee' s payment obligations hereunder) or for any loss or damage (including indirect or consequential damage) to the extent that such nonperformance, delay, loss or damage results from any contingency which is beyond the control of such party, provided such contingency is not caused by the fault or negligence of such party. Such contingencies for the purposes of this Agreement shall be acts of God, fires, floods, earthquakes, explosions, storms, wars, hostilities, blockades, public disorders, quarantine restrictions, embargoes, strikes or other labor disturbances, and compliance with any law, order or control of, or insistence by any governmental or military authority. The party claiming to be affected by such contingency shall give immediate notice to the other party, giving full particulars thereof, and all such contingencies shall, as far as is reasonably possible, be remedied with all reasonable efforts and dispatch. The existence of such contingencies shall justify the suspension of performance hereunder by either party and shall extend the time for such performance for a period equal to the period of delay; provided, however, that if such period of delay shall exceed sixty (60) days from the date of such notice, either party shall have the right to terminate this Agreement.

15.6 NO WAIVER. Any waiver by the parties of any default or breach of any of one or more of the terms, conditions, or covenants of this Agreement 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, condition, or covenant of this Agreement. No delay, failure, or omission of Lessor to re-enter the Clinic Space, 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 or acquiescence in such breach of default.

15.7 SEVERABILITY. The invalidity or unenforceability of any provisions of this Agreement shall not affect the validity or enforceability of any other provisions, which shall remain in full force and effect.

15.8 TITLES AND CAPTIONS. All section or subsection headings used herein are for convenience only and shall not be taken into consideration in any construction or interpretation of this Agreement or any of its provisions.

15.9 GOVERNING LAW. This Agreement shall be governed by and construed according to the laws of the State of Tennessee.

15.10 SURVIVAL. Any provisions of this Agreement extending beyond the term hereof shall survive the expiration or termination of this Agreement, regardless of the reason for such termination.

15.11 AMENDMENTS. This Agreement may not be changed orally, but only by an amendment to this Agreement in writing and signed by both Lessor and Lessee.

15.12 ENTIRE AGREEMENT. This Agreement, together with its Exhibits attached hereto, sets forth the entire agreement and understanding of the parties relating to the subject matter contained herein and merges all prior discussions between them, and neither party shall be bound by any definition, condition, warranty or representation other than as expressly stated in this Agreement. This Agreement represents all of the premises and equipment leased between the parties for the term of this Agreement.

15.13 AUTHORIZATION FOR AGREEMENT. The execution and performance of this Agreement by both parties have been duly authorized by all necessary and applicable laws, resolutions, and partnership action, and this constitutes valid and enforceable obligations of both parties in accordance with its terms.

[Signature Page Attached]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement through their duly authorized representatives.

Lessor:

City of Chattanooga

By: _____

LESSEE:

Diagnostic Radiology Consultants, P.A.

By: _____

EXHIBIT A

Clinic Space

EXHIBIT B

Purchase Price

In the event that the parties mutually agree upon the transfer of the Imaging Equipment pursuant to Section 5.2(g), the purchase price to be paid by Lessor to Lessee for such Imaging Equipment shall be as follows:

Year of Termination:	**Purchase Price:**
1	$80,000
2	$64,000
3	$48,000
4	$32,000
5	$16,000