

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE ADMINISTRATOR OF THE DEPARTMENT OF PARKS AND RECREATION TO ENTER INTO AN AGREEMENT WITH McKAMEY ANIMAL CENTER AND CHATTANOOGA GOODWILL INDUSTRIES FOR THE OPERATION OF A DOG PARK LOCATED AT HERITAGE PARK IN CHATTANOOGA, TENNESSEE.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That the Administrator of the Department of Parks and Recreation be and is hereby authorized to enter into an agreement with McKamey Animal Center and Chattanooga Goodwill Industries for the operation of a dog park located at Heritage Park in Chattanooga, Tennessee.

ADOPTED: _____, 2013.

/mms

City of Chattanooga



Resolution/Ordinance Request Form

Date Prepared: January 15, 2013

Preparer: Wanda Eckstein

Department: Parks & Recreation

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

A resolution is needed authorizing the Administrator of the Department of Parks and Recreation to enter into an Agreement with McKamey Animal Center and Chattanooga Goodwill Industries for the operation of a dog park located at Heritage Park in Chattanooga, Tennessee.

Name of Vendor/Contractor/Grant, etc. _____
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) _____
Funds Budgeted? (YES or NO) _____
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)

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

KCF

**AGREEMENT BETWEEN THE CITY OF CHATTANOOGA, TENNESSEE, MCKAMEY
ANIMAL CENTER AND CHATTANOOGA GOODWILL INDUSTRIES, INC.**

This Agreement made and entered into effective as of the ____ day of _____, 2013, by and between the City of Chattanooga, Tennessee, a municipal corporation (hereinafter "City"), Animal Care Trust (hereinafter "ACT") and known as McKamey Animal Center (hereinafter "MAC") and Chattanooga Goodwill Industries, Inc., a Tennessee non-profit corporation (hereinafter "Goodwill").

WITNESSETH:

WHEREAS, the Parties wish to develop and operate a dog park located at Heritage Park in Chattanooga, Tennessee;

WHEREAS, City plans to construct a dog park in Heritage Park to be operational as of October 2010 and to maintain said park to enhance the quality of life of citizens through well-maintained parks;

WHEREAS, MAC and the City entered into an Operating Agreement on July 1, 2008 for MAC to operate the facility at 4500 North Access Road, Chattanooga, Tennessee and to provide animal care services to the City, including enforcement of the Chattanooga City Code regarding animals;

WHEREAS, MAC desires to work in conjunction with the City and Goodwill to facilitate the operation of the dog park in Heritage Park;

WHEREAS, Goodwill desires to work in conjunction with the City and MAC to facilitate the operation of the dog park in Heritage Park;

NOW THEREFORE, in consideration of the respective covenants, agreements, conditions, and terms stated herein and at the time and in the manner provided herein, the Parties agree as follows:

ARTICLE 1

BASIC AGREEMENT

1. RESPONSIBILITIES OF THE PARTIES

A. City of Chattanooga. City agrees to perform the following functions to further the establishment and operation of the dog park at Heritage Park:

- 1) City agrees to construct, to the extent allowed by the City's budget, a dog park located at Heritage Park, 1428 Jenkins Road, Chattanooga, Tennessee to be completed by December 31, 2010.
- 2) City agrees to provide maintenance for the dog park, including trash removal, waste and wash stations, and fence repair.
- 3) City agrees to be responsible for any utilities that are provided to the dog park, including but not limited to water and electricity.
- 4) City agrees to be responsible for any necessary signage for the dog park.
- 5) City agrees to establish annual fees and daily fees for use of the park and procedures for use of the dog park.
- 6) City agrees to procure magnetic entrance cards.

B. McKamey Animal Center. MAC agrees to perform the following functions to further the establishment and operation of the dog park at Heritage Park:

- 1) **MAC agrees to accept and process dog park annual fee applications, to collect all annual fees and to obtain liability waivers, naming the City as an additional insured, from all members.**
- 2) **MAC agrees to maintain and issue, at its sole expense, park entrance identification, which shall include magnetic key cards or other entrance coding system approved by the City and dog tags for those obtaining annual passes, and day passes to the park to be available for non-resident visitors. The dog tags issued by MAC shall be highly visible and distinctively colored.**
- 3) **MAC agrees to provide monitoring of dog park applicants to ensure that all canines using the dog park have current city-required pet licenses and rabies vaccinations.**
- 4) **MAC agrees to take appropriate measures to ensure that annual fees are kept current.**

C. Goodwill Industries. Goodwill agrees to perform the following functions to further the establishment and operation of the dog park at Heritage Park.

- 1) **Goodwill agrees to develop and distribute a brochure regarding the Dog Park and annual fee information.**
- 2) **Goodwill agrees to provide free educational programs designed to increase responsible pet ownership and improve the health and safety of canines in the community.**

1.1 FEE COLLECTION PROCEDURES.

In the furtherance of the fee collection responsibility set forth above, MAC shall perform the following:

- A. MAC will accept from the public cash, checks, Master Card and Visa for all dog park fees. However, City park fees shall not be discounted by any credit card processing fee, and City shall receive one hundred percent (100%) of all monies collected for dog park fees paid to the City under this Agreement.
- B. The initial annual fee for the dog park shall be Twenty-five Dollars (\$25.00) per year for each canine.
- C. City shall, in cooperation with MAC, develop a format for the forms for dog park annual fees.
- D. MAC will be responsible for maintaining accurate record keeping for annual fees and daily fees collected for the dog park.
- E. MAC agrees that all funds and fees received by it pursuant to this Agreement, except licensing fees as set out in this Agreement, shall be expended on operating costs of MAC and shall not be used for capital expenditures.

1.2 TERM.

This Agreement shall be effective upon its full execution by the appropriate officials shown on the signature page of this document.

The term of the Agreement will expire on _____, unless earlier terminated pursuant to the provisions of this Agreement.

The term of this Agreement may be extended for an additional one-year term by mutual agreement of the parties in writing.

1.3 FEE DISTRIBUTION.

Under the terms of this Agreement, MAC shall be responsible for collecting and distributing on a quarterly basis all fees associated with the dog park. MAC shall receive 33.33% of all fees collected. Goodwill shall receive 33.33% of all fees collected under this Agreement. City shall retain 33.33% of all fees collected under this Agreement. In no event shall the portion of fees received by MAC and Goodwill exceed \$9,999.00.

All funds paid to MAC or retained by MAC in the form of fees pursuant to this Agreement shall be used by MAC solely for the operation and maintenance of the MAC facility located at 4500 North Access Road, Chattanooga, Tennessee.

1.4 ACCOUNTING AND FEE PAYMENT SCHEDULE.

Payments for fee distribution will be on a quarterly basis. MAC shall send a check along with a detailed accounting of the fee distribution to the City and Goodwill quarterly by the fifteenth day of the month following the quarter as set forth in Section 1.3 of this Agreement.

1.5 RECORDS.

MAC shall maintain records for five (5) years, on forms provided by MAC and approved by City or on computer duplicates of disc in a format to be mutually agreed-upon, of all dog park annual applications and fees collected for both annual fees and daily passes. All information

concerning dog park fees collected by MAC shall be made available to the Mayor or Administrator of the Department of Parks and Recreation, or their designee, immediately upon request during regular MAC business hours.

1.6 DOG PARK HOURS.

The dog park shall have hours of operation as established by the City. Both Goodwill and MAC shall be notified by City of the hours of operation for the dog park and shall be notified of any changes to the hours of operation made by City. Each Party to this Agreement agrees to provide the agreed-upon responsibilities during the hours of operation of the dog park.

1.7 ACCOUNTS, RECORDS & REPORTING.

A. MAC Fund Accounts.

MAC shall keep all funds, accounts, and financial records for the operation of the dog park in accordance with this Agreement segregated from all of MAC's funds, accounts, and financial records.

B. Monthly and Annual Reports.

1. MAC shall deliver to the City Council an annual report on or by the _____ day of _____ each year, of all membership fees and daily park fees collected by MAC.
2. MAC shall also submit to the City the following reports by the fifteenth (15th) business day of each month. Such reports shall include, but not be limited to, the following:

- ◆ Total number of membership applications applied for each month;
- ◆ Fees collected each month for dog park membership fees; and
- ◆ Fees collected each month for dog park daily passes.

3. MAC must, within the first quarter of a new contract period (or as soon as such report is available), submit to the City Finance Department a copy of their annual audited financial report for the contract year having just ended during which this Agreement was in effect.

If any of the required reports or records in this Agreement are not given to the City within thirty (30) days of the agreed upon time frame, the contractual amount paid by the City to MAC each month will be reduced by ten percent (10%) for each month such report or record is delayed.

C. ACCESS TO RECORDS.

Upon two (2) business days written notice to MAC, the City shall have access to any books, documents, papers, and records of MAC that are directly pertinent to this Agreement for the purpose of conducting audits, if desired.

1.8 NOTICES.

Invoices, communication, and details concerning this Agreement will be directed to the following representatives:

City of Chattanooga
Administrator of the Department of Parks & Recreation
1102 South Watkins Street
Chattanooga, Tennessee 37404

With a copy to **City Attorney's Office**
100 East 11th Street, Suite 200
Chattanooga, Tennessee 37402

McKamey Animal Center
4500 North Access Road
Chattanooga, Tennessee 37415

Chattanooga Goodwill Industries
3500 Dodds Avenue
Chattanooga, Tennessee 37407

ARTICLE 2

TERMINATION

2.1 RIGHT OF TERMINATION FOR CAUSE.

The City reserves the right to suspend or terminate this Agreement for cause upon written notice to MAC or Goodwill if (1) either MAC or Goodwill fails to properly perform its material obligations under this Agreement, or (2) MAC or Goodwill materially has violated any material provision of this Agreement and has failed to properly perform or to properly cure any such violation following thirty (30) days written notice to MAC or Goodwill from the City notifying MAC or Goodwill of such violation.

2.2 RIGHT OF TERMINATION WITHOUT CAUSE.

Any Party may terminate this Agreement without cause with sixty (60) days written notice to the other Parties. In the event of termination by one Party, the entire Agreement between all Parties shall be terminated. The remaining Parties may choose to renegotiate another Agreement and attempt to replace the terminating Party.

ARTICLE 3

INSURANCE

3.1 At no additional cost to the City, MAC and Goodwill will procure and maintain for the duration of this Agreement insurance of the types and in the amounts described below against claims for injuries to persons or damages to property which may arise from or in connection with the performance of this Agreement by MAC and Goodwill, its agents, representatives, employees, volunteers, or subcontractors.

3.2 COMMERCIAL GENERAL LIABILITY INSURANCE.

MAC and Goodwill agree during the term of this Agreement and any extensions and renewals to maintain Commercial General Liability Insurance, or equivalent form, with a combined single limit of not less than Five Hundred Thousand dollars (\$500,000.00) per occurrence for property damage, personal injury, and bodily injury, or One Million Dollars (\$1,000,000.00) general aggregate, at MAC's sole cost and expense, with commercially reasonable increases in coverage thereafter, but in no event less than the limits set by the Tennessee Governmental Tort Liability Act, as may be amended. The City shall be named as an additional insured on the liability policy prior to providing services under this Agreement.

3.3 WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE.

MAC and Goodwill shall maintain workers' compensation insurance with statutory limits as required by the State of Tennessee and employers' liability insurance with limits of not less than One Million Dollars (\$1,000,000). MAC and Goodwill shall require each of its subcontractors to provide workers' compensation for all of the subcontractor's employees to be engaged in such work unless such employees are covered by MAC's and Goodwill's workers' compensation insurance coverage.

3.4 ADDITIONAL INSURANCE REQUIREMENTS AND INDEMNIFICATION.

MAC and Goodwill hereby agree to indemnify the City to the extent authorized by law and not more, including City officers, agents, and employees against and hold harmless from any and all claims, demands and/or causes of action for: (1) loss of or damage to the property; (2) injury or death, including civil rights actions, to any person or for any cause whatsoever during the term of this Agreement and any extension thereof caused by the negligence of MAC or Goodwill. MAC and Goodwill shall include the City as an additional insured on all business and property insurance. Proof of said insurance shall be provided to the City's Risk Manager.

3.5 ACT and Goodwill shall:

- A. Prior to commencement of services, furnish City with original certificates of insurance and any amendatory endorsements affecting coverage required by this Article, and provide that such insurance will not be cancelled, allowed to expire, or be materially reduced in coverage except on thirty (30) days prior written notice to the City Attorney of the City of Chattanooga;**
- B. If requested by City, provide certified copies of endorsements and policies in lieu of or in addition to certificates of insurance.**
- C. Replace certificates, policies and endorsements for any such insurance expiring prior to completion of services;**
- D. Maintain such insurance from the time services commence until services are satisfactorily completed, and note that failure to maintain or renew coverage or to provide evidence of renewal may be treated by City as a breach of contract;**
- E. Place such insurance with an insurer that is licensed to do business in Tennessee and has an A.M. Best Company rating of no less than A:V; and**
- F. Require any subcontractors to maintain during the terms of this Agreement, Commercial General Liability Insurance, Business Automobile Liability Insurance and Workers' Compensation/Employers' Liability Insurance (unless subcontractor's employees are covered by MAC's insurance) in the same manner as specified for MAC and Goodwill, and**

furnish subcontractors' certificates of insurance to City immediately upon request.

Furthermore, any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either (1) the insurer will reduce or eliminate such deductibles or self-insured retention as respects this Agreement or (2) MAC will provide a financial guarantee satisfactory to City, which guarantees payment of losses and related investigations, claims administration and defense expenses.

ARTICLE 4

NON-DISCRIMINATION

MAC and Goodwill:

- A. Shall not discriminate against any employees, applicants for use of the dog park, or citizens using the dog park because of race, age, color, religion, national origin, sex or disability;**
- B. Shall insure that any employees, applicants for use of the dog park, or citizens using the dog park, will be treated without regard to their race, age, color, religion, national origin, sex or disability;**
- C. Shall, in all solicitations or advertisements for employees placed by or on behalf of it, state that all qualified applicants will receive consideration for employment without regard to race, age, color, religion, national origin, sex or disability;**
and,

D. Shall include these provisions in every subcontract or sublease let by or for it.

ARTICLE 5

MISCELLANEOUS PROVISIONS

5.1 INDEPENDENT CONTRACTOR.

MAC and Goodwill, including all of their respective agents, employees, and volunteers, shall render all services under this Agreement as an independent contractor and will not be considered an employee of the City, nor will it be entitled to any benefits, insurance, pension, or workers' compensation as a employee of the City.

5.2 ASSIGNMENT.

MAC and Goodwill shall not assign or transfer any interest in this Agreement without obtaining the prior written approval of City.

5.3 SUBCONTRACTORS TO THE AGREEMENT.

MAC and Goodwill shall not enter into a subcontract for any of the services performed under this Agreement without obtaining the prior written approval of the City.

5.4 WRITTEN AMENDMENTS.

This Agreement may be modified only by a written amendment or addendum, which has been executed and approved by the appropriate officials shown on the signature page of this Agreement.

5.5 REQUIRED APPROVALS.

The Parties shall not be bound by this Agreement until it is approved by the appropriate officials shown on the signature page of this Agreement. Further, the Parties shall not be bound by this Agreement until it is approved by the Chattanooga City Council by Resolution.

5.6 ARTICLE CAPTIONS.

The captions appearing in this Agreement are for convenience only and are not a part of this Agreement, and they do not in any way limit or amplify the provisions of this Agreement.

5.7 SEVERABILITY.

If any provision of this Agreement is determined to be unenforceable or invalid, such determination will not affect the validity of the other provisions contained in this Agreement. Failure to enforce any provision of this agreement does not affect the rights of the parties to enforce such provisions in another circumstance, nor does it affect the rights of the parties to enforce any other provisions of this Agreement at any time.

5.8 FEDERAL, STATE AND LOCAL REQUIREMENTS.

MAC and Goodwill are responsible for full compliance with all applicable federal, state, and local laws, rules and regulations.

5.9 GOVERNING LAW.

This Agreement will be governed and construed in accordance with the laws of Tennessee.

5.10 ENTIRE AGREEMENT.

This Agreement forms the entire Agreement between City, MAC and Goodwill. Any prior representations, promises, or agreements, oral or otherwise, between the parties, which are not embodied in this writing, will be of no force or effect.

5.11 RECORDS AUDIT.

City or its assign may audit all financial and related records (including digital) associated with the terms of this Agreement including timesheets, reimbursable out-of-pocket expenses, materials, goods, and equipment of MAC and Goodwill. City may further audit any MAC or Goodwill records to conduct performance audits or to identify conflicts of interest.

MAC and Goodwill shall at all times during the term of this Agreement and for a period of five years after the end of this Agreement, keep and maintain records of the work performed and fees collected pursuant to this Agreement. This shall include proper records of quotations, contracts, correspondence, invoices, vouchers, timesheets, and other documents that support actions taken by MAC and Goodwill under the terms of this Agreement shall be maintained by the MAC and Goodwill. Documents necessary to clearly reflect all

work and actions taken. All such records shall be maintained in accordance with generally accepted accounting principles. MAC and Goodwill shall at their own expense make such records available for inspection and audit (including copies and extracts of records as required) by City at all reasonable times and without prior notice

The obligations of this Section shall be explicitly included in any subcontracts or agreements formed between MAC and Goodwill and any subcontractors or suppliers of goods or services to the extent that those subcontracts or agreements relate to fulfillment of MAC's or Goodwill's obligations to City. Costs of any audits conducted under the authority of this section and not addressed elsewhere will be borne by the City unless the audit identifies significant findings of misappropriation of City funds or property. MAC and Goodwill shall reimburse City for the total costs of an audit that identifies significant findings that would benefit City. This Section shall not be construed to limit, revoke, or abridge any other rights, powers, or obligations relating to audit which City may have by federal, state, or municipal laws, whether those rights, powers, or obligations are express or implied.

Entered into as of the day and date first above written

ANIMAL CARE TRUST

A Tennessee Non-profit Corporation

By _____

CITY OF CHATTANOOGA

A Municipal Corporation

By _____

CHATTANOOGA GOODWILL INDUSTRIES

A Tennessee Non-profit Corporation

By _____