

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE ADMINISTRATOR OF THE DEPARTMENT OF YOUTH AND FAMILY DEVELOPMENT TO ENTER INTO A DONATION AGREEMENT WITH MIRACLE LEAGUE OF CHATTANOOGA, INC. FOR CONSTRUCTION OF A RECREATIONAL FACILITY FOR CITIZENS OF ALL ABILITIES KNOWN AS "MIRACLE FIELD" WITHIN A CERTAIN PORTION OF WARNER PARK.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That the Administrator of the Department of Youth and Family Development shall enter into a Donation Agreement with Miracle League of Chattanooga, Inc. for construction of a recreational facility for citizens of all abilities known as "Miracle Field" within a certain portion of Warner Park.

ADOPTED: _____, 2014

/mem

City of Chattanooga



Resolution/Ordinance Request Form

Date Prepared: 07/29/14

Preparer: Carla Johnson

Department: Youth & Family Development

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

Authorization for the City of Chattanooga to enter into a Donation Agreement with Miracle League of Chattanooga, Inc., for construction of a recreational facility for citizens of all abilities known as "Miracle Field" within a certain portion of Warner Park. The Administrator of the Department of Youth and Family Development shall be the City's agent for the purposes of any action that may be taken by the City.

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: October, 2011

AGREEMENT

THIS AGREEMENT (hereinafter called "Agreement") is made this _____ day of _____, 2014, (the "Effective Date"), by and between **THE CITY OF CHATTANOOGA**, a political subdivision of the State of Tennessee (hereinafter called "City"), and **Miracle League of Chattanooga, Inc.**, a Tennessee non-profit corporation (hereinafter called "League"). The Administrator of the Department of Youth and Family Development (the "Administrator") shall be the City's agent for the purposes of any action that may be taken by the City.

WITNESSETH:

WHEREAS, the City is the owner of that certain real property known as Warner Park, which property is more particularly described in Exhibit "A" attached hereto (referred to herein as "Warner Park"); and

WHEREAS, the League is desirous of constructing a recreational facility known as a "Miracle Field" within that certain portion of Warner Park as more particularly set forth in Exhibit "B" (the "Property"), which Miracle Field shall consist of and include the features further described in Exhibit "C" (the "Miracle Field"), upon the terms and conditions herein set forth, and the City is desirous of providing the Property upon which the Miracle Field shall be constructed;

NOW, THEREFORE, for and in consideration of the mutual terms, covenants, and conditions herein, the receipt and sufficiency of which are acknowledged by each party hereto, the parties, intending to be legally bound, covenant and agree as follows:

1. **Construction and Donation of Warner Park Miracle Field.**

(a) The League, at its sole cost and expense, agrees to construct and transfer to the City a Miracle Field as hereinafter set forth.

(b) Within one year after the Effective Date, the League shall produce and provide the City with architectural drawings, plans, designs, specifications, site plan and cost estimates with reference to the construction of the Miracle Field (the "Plans") for approval by the City, which approval shall not be unreasonably withheld. The Plans shall substantially comply with the City's master plan for Warner Park, if any. The Plans shall be approved by the City before the League begins construction on Miracle Field. The parties agree to work together to finalize the Plans for construction the Miracle Field.

(c) After the City has approved the Plans for the Miracle Field, the League shall enter into a contract with a qualified, licensed and bonded contractor for the purposes of construction and development of the Miracle Field in accordance with the City's Master Plan for Warner Park.

(d) The League shall provide the City or Administrator thirty (30) days written notice prior to beginning construction of the Miracle Field. The League shall provide with City with a construction schedule or timeline. The parties agree to coordinate the construction start date in accordance with scheduled activities at Warner Park and the premises of Warner Park.

(e) Should the Administrator make a recommendation that certain structural components not be constructed because of possible conflicts with the City's Building Codes, including fire prevention, either party may elect to terminate this Agreement. The parties agree to attempt to negotiate a resolution of the Administrator's decision. In the event an agreement is not reached, the decision of the Administrator to not allow construction of any identified structural component shall be the final decision of the City.

(f) Construction of Miracle Field shall be done expeditiously and the work shall be performed in a careful, skillful, diligent, good and workmanlike manner and this duty is non-delegable. Notwithstanding the foregoing, in the event that the construction of the Miracle Field shall not be substantially completed (the "Completion Date") on or before April 1, 2017 (the "Sunset Date"), this Agreement shall terminate, with no consequence, breach, or remedies owing by either party to the other, except remedies arising prior to the date of such termination.

(g) The League shall pay all costs and expenses to construct the Miracle Field and discharge any liens arising, should they arise, with respect to any equipment or personal property on or part of the Property due to the neglect or omission of the League after the Effective Date and prior to the Completion Date.

(h) All construction shall comply with the statutory requirements of all applicable building, plumbing and electrical codes, along with administrative regulations implementing same, regardless of whether such codes have been implemented by local ordinance or otherwise adopted by local authorities.

(i) Title and ownership of the Miracle Field, and any subsequent improvements shall immediately and automatically vest in the City on the Completion Date. Provided however, that the City agrees to grant the League priority rights to schedule games, tournaments and events for the use of Miracle Field. The City shall retain the right to operate the Miracle Field and related facilities after construction is completed. Miracle Field shall remain property of the City. The League shall have the right to remove its personal property used to construct Miracle Field after completion of Miracle Field.

(j) After the Completion Date, the Miracle Field shall be used by the City as a public park for the purposes of amusement and recreation to be enjoyed by the public generally. The City shall have the right to adopt reasonable rules and regulations in regard to the use of Miracle Field. The City agrees to work with the League to establish reasonable rules and regulations in for the use of Miracle Field. The City obligates itself by acceptance of this gift and donation to forever preserve and use Miracle Field for the purposes set forth in this Agreement. The parties acknowledge and agree that the Miracle Field, by its design and construction, shall be intended primarily to benefit persons with special needs, including physical disabilities, and that the rules referenced above may focus on such classes of persons. Notwithstanding the foregoing, however, no rule shall be implemented which (i) is not applied uniformly among all citizens of the City of Chattanooga, Tennessee, (ii) discriminates against or otherwise bars certain classes of persons from use of the Miracle Field in violation of any law, or (iii) violates any other law, regulation, or ordinance.

(k) The City obligates itself to keep Miracle Field in a reasonable state of repair for use and enjoyment by the public generally as a place for amusement and recreation so long as the Miracle Field is maintained and functional for the intended use. The City of agrees to accept Miracle Field for the exclusive use and benefit of the public and agrees to keep Miracle Field in reasonably good condition for the intended purposes.

(l) The standard provisions against discrimination based on religion, race, sex or creed, or any other protected category established by law shall be contained in all construction contracts for the Miracle Field and for construction on lands peripheral to the Miracle Field.

(m) The work to be performed by the League to construct Miracle Field shall be done by the League as an independent contractor and not as an Agent or Representative of the City. The League shall have no authority to enter into any binding agreements on behalf of the City. The League shall obtain all necessary building permits or licenses necessary to construct and develop Miracle Field and Improvements.

(n) The parties agree to execute a facility use agreement that will memorialize the League's right to use Miracle Field for League activities.

2. **Insurance and Indemnification.**

(a) The League, at its sole cost and expense, shall maintain, for the mutual benefit of City and the League, general public liability insurance against claims for personal injury, death or property damage occurring upon, in or about the Premises of Warner Park, and on, in or about the adjoining public and private thoroughfares during the construction phase of Miracle Field or no less than five (5) years after the date of execution of this agreement. The insurance required by this clause shall not be less than Two Million Dollars (\$2,000,000) per occurrence and Three Million Dollars (\$3,000,000) in the aggregate. City may require the League to increase the amount of insurance coverage after this agreement after the Completion Date to conform to the requirements of the Tennessee Governmental Tort Liability Act or in a commercially reasonable manner. Provided however, that in the event that the City requires such increase, the League shall have the right to terminate this Agreement with no consequence, breach, or remedies owing by either party to the other, except remedies arising prior to the date of such termination.

(b) The League shall require any contractor performing work on or at the Premises of Warner Park at the League's direction to carry and maintain, at no expense to City, a comprehensive general liability insurance policy, including, but not limited to, contractor's liability coverage, contractual liability coverage, completed operations coverage, broad form property damage endorsement and contractor's protective liability coverage, with insurance carriers and in amounts reasonably acceptable to City and worker's compensation or similar insurance, covering all persons employed by the League and The League's subcontractors, subleesees and assigns on the Premises of Warner Park, in form and amounts required by law.

(c) Certificates of all such insurance required pursuant to this section shall be delivered to the requesting party within fifteen (15) days following the requesting party's request therefor.

(d) The League shall indemnify City and save City harmless from and against any and all claims, actions, damages, liability and expenses (including, but not limited to, court costs, costs of defense and reasonable attorney's fees) in connection with loss or damage to property or injury or death to persons occurring in, on or about or arising out of construction of Miracle Field on the Property or the construction of improvements by (a) the League or, (b) any agents, employees, licensees, invitees, contractors or subcontractors of the League thereon, which are occasioned wholly by any act or omission of the League or the League's sublessee or assignee.

(e) City, to the full extent City may be liable pursuant to the Tennessee Governmental Tort Liability Act at Tennessee Code Annotated §29-20-101, *et seq.* ("TGTLA"), shall indemnify the League and save the League harmless from and against any and all claims, actions, damages, liability and expenses (including, but not limited to, court costs, costs of defense and reasonable attorney's fees) in connection with loss or damage to property or injury or death to persons occurring in, on or about or arising out of, the Premises of Warner Park or the construction of improvements by (a) City or (b) any agents, employees, licensees, invitees, contractors or subcontractors of City thereon, or occasioned wholly by any act or omission of City or City's sublessee or assignee.

(f) All such insurance policies required to be carried by the League hereunder shall be with an insurance provider licensed in the State of Tennessee. Public liability insurance policies evidencing such insurance shall name City and its designee as additional insureds and shall also contain a provision requiring the insurer to give at least thirty (30) days' prior written notice to City of any cancellation, modification or non-renewal of such insurance.

(g) The League shall at its own cost and expense, furnish City with a corporate surety bond, in all respects satisfactory to the City within sixty (60) days after the execution of this Agreement and prior to commencement of construction, from a surety company licensed to transact business in the State of Tennessee, in an amount equal to the total estimated cost of the construction required of the League pursuant to Section 1.(d) of this Agreement or as may be determined by the Administrator. The bond shall name the City as principal and the League as surety, to assure full and satisfactory performance by the League and its contractors of all obligations contained in this Agreement to build, construct, and

install the Miracle Field, improvements and landscaping upon the premises of Warner Park for use by the League and the public. In the event that the League obtains from its contractor or contractors similar bond or bonds in a similar amount, in all respects satisfactory to City, City, upon application by the League, and upon the naming of City as an additional obligee under the bond or bonds may consent to the cancellation of the surety bond or bonds originally furnished by the contractors for the League. The estimated costs of construction for the Miracle Field shall be One Million Dollars (\$1,000,000.00) for the purpose of a corporate surety bond of equivalent value. The League shall provide the City with a bond for the actual contract entered into by the League and a licensed and bonded contractor.

3. **Risk of Damage.** All of the League's personal property of every kind or description including, without limitation, inventory and trade fixtures, Improvements, which may at any time be on the Property shall be at the League's sole risk, or at the risk of those claiming under any right by its association, contractual or otherwise, of the League. City shall not be liable and shall be held harmless by the League for any damage or loss of the League's personal property on the Property.

4. **Time is of the Essence.** The parties agree that time is of the essence for this Agreement and the performance of all obligations hereunder. Failure of the League to timely construct the Miracle Field by the Completion Date may result in the City exercising all remedies under this Agreement.

5. **Environmental Indemnification.** City, pursuant to the TGTLA, hereby indemnifies and holds the League harmless from and against any loss, cost, damage or expense arising out of or relating to the presence of Hazardous Materials on the Property or the Premises of Warner Park as of the date of this Agreement or due to the act or omission of City or its agents, contractors or employees. The League hereby indemnifies and holds City harmless from and against any loss, cost, damage or expense arising out of or relating to the presence of Hazardous Materials on the Premises of Warner Park during the construction of the Miracle Field due to the act or omission of the League, its contractors or employees or arising from the exercise of rights granted to the League hereunder.

For purposes hereof, the term "Hazardous Materials" means (i) any "hazardous wastes" as defined by the Resource, Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et. seq.), as amended from time to time, and

regulations promulgated thereunder; (ii) any "hazardous, toxic or dangerous waste, substance or material" specifically defined as such in or for the purposes of the Comprehensive Environmental Response, Compensation, and Liability Act, any so-called "superfund" or "super lien" law, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, and specifically identified and known as a hazardous, toxic or dangerous waste, substance or material as of the date hereof including any petroleum, petroleum products or waste.

6. **Assignment and Subletting.** Neither the League nor the City may assign this Agreement without the prior written consent of the other party hereto.

7. **Remedies Upon Breach.** If any of the following shall occur:

(a) ***City's Remedies Upon the League Breach.*** In the event the League is in substantial breach of this Agreement (as set forth in Section 8 below), after notice to League by City specifically setting forth the nature of such breach, and after the expiration of 30 days from the date of such notice (or such additional reasonable time as is reasonably required) without the League having substantially cured such breach (and in addition to any other remedies provided elsewhere in this Agreement), City, at its option and after such notice and cure periods have expired, upon additional notice or demand from City, may, in addition to all other rights and remedies provided in this Agreement or otherwise at law or in equity, terminate this Agreement, complete construction of Miracle Field and take possession of Miracle Field.

(b) ***The League Remedies Upon City's Breach.*** In the event City is in breach of this Agreement, (and in addition to any other remedies provided elsewhere in this Agreement) the League shall be entitled to terminate this Agreement upon written notice to City or exercise and pursue all rights and remedies available at law or in equity. Notwithstanding the foregoing, in the event City is in breach of this Agreement and such breach continues for forty-five (45) days after receipt by City of written notice from the League of City's breach, the League may, at the League's option, cure City's breach and the cost of such cure shall be due and owing by City to the League or terminate this Agreement.

8. **Default.**

(a) ***City Breach Provisions.*** City shall be deemed in breach of this Agreement if City fails, whether by action or inaction, to timely comply with or

satisfy any of the obligations imposed on City under this Agreement for a period of thirty (30) days (unless otherwise herein specified) after the League delivers to City written notice of such default; provided, however, that if the default cannot, by its nature, be cured within such thirty (30) day period, but City commences and diligently pursues a cure of such default promptly within the initial thirty (30) day cure period (and thereafter cures such default as soon as possible with due diligence), then the League shall not exercise its remedies under Paragraph 7.

(b) ***The League's Breach Provisions.*** The League shall be deemed in breach of this Agreement if the League fails, whether by action or inaction, to timely comply with or satisfy any or all of the obligations imposed on the League under this Agreement for a period of thirty (30) days after City's delivery to the League of written notice of such default, including construction of the Miracle Field in a timely manner; provided, however, that if the default cannot, by its nature, be cured within such thirty (30) day period, but if the League commences and diligently pursues a cure of such default promptly within the initial thirty (30) day cure period, then City shall not exercise its remedies under Paragraph 7.

9. **Audit Provision.** The City or its assigns 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 claimed by the League. The City may further audit any of League's records to conduct performance audits (to identify waste and abuse or to determine efficiency and effectiveness of the contract or agreement) or to identify conflicts of interest.

The League shall at all times during the term of this Agreement and for a period of five (5) years thereafter, keep and maintained records of the work performed pursuant to this Agreement. Records to be kept and maintain shall include proper records of quotations, contracts, correspondence, invoices, vouchers, timesheets, and other documents that support actions taken by the League. Documents shall be maintained by the League necessary to clearly reflect all work and actions taken. All such records shall be maintained in accordance with generally accepted accounting principles. The League shall at its own expense make such records available for inspection and audit (including copies and extracts of records as required) by the City at all reasonable times and without prior notice.

10. **No Waiver.** No waiver of any of the terms, covenants and provisions, conditions, rules and regulations required by this Agreement, and no waiver of any legal or equitable relief of remedy shall be implied by the failure of City or the

League to assert any rights, or to declare any forfeiture, or for any other reason, and no waiver of any of said terms, provisions, covenants, rules and regulations shall be valid unless it shall be in writing signed by the waiving party.

11. **Notices.** All notices required or permitted by this Agreement shall be in writing, and shall be deemed properly delivered when and if (i) hand-delivered with receipt on the date set forth on the receipt or (ii) by overnight carrier, with receipt, on the date set forth on the receipt or (iii) sent in the United States mail, postage prepaid, certified or registered mail, return receipt requested on the date set forth on the receipt, addressed to the parties hereto at their respective addresses set forth below or as they may hereafter specify by written notice delivered in accordance herewith:

If to City:

City of Chattanooga
c/o Chattanooga Department of Youth and Family Development
501 West 12th Street
Chattanooga, TN 37402
Attention: Administrator

With a copy to:

City Attorney's Office
100 East 11th Street – Suite 200
Chattanooga, TN 37402

If to the League:

Miracle League of Chattanooga
Attention: Kim Chapman, President
6407 Cheltenham Road S
Hixson, TN 37343

With a copy to:

Minor, Bell & Neal
Attention: John T. Minor, V
745 College Drive, Suite B
Dalton, GA 30720

12. **Estoppel Certificate.** City and the League mutually agree that, at any time and from time to time, upon not less than ten (10) days' prior request by either party, the parties shall execute, acknowledge and deliver a statement in writing certifying (i) that this Agreement is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and identifying the modifications); (ii) and that, to the best of the certifying party's knowledge, such requesting party is not in default under any provisions of this Agreement (or if there has been a default, the nature of said default). It is intended that any such statement may be relied upon by any person proposing to acquire any interest in this Agreement or the Premises of Warner Park, or any prospective mortgage of or assignee of any mortgage upon, such interest.

13. **Invalidity of Particular Provisions.** If any covenant, agreement or condition of this Agreement or the application thereof to any person, firm or corporation or to any circumstance, shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such covenant, agreement or condition to persons, firms or corporations or to circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby. Each covenant, agreement or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

14. **Successors and Assigns.** The terms, covenants and conditions contained in this Agreement shall bind and inure to the benefit of City and the League, and their respective heirs, administrators, successors and assigns.

15. **Captions.** All captions, headings, titles, numerical references and computer highlighting are for convenience only and shall have no effect on the interpretation of this Agreement.

16. **Independent Covenants.** Each covenant, agreement, obligation or other provision of this Agreement to be performed by the League are separate and independent covenants of the League, and not dependent on any other provision of the Agreement.

17. **Number and Gender.** All terms and words used in this Agreement, regardless of the number or gender in which they are used, shall be deemed to include the appropriate number and gender, as the context may require.

18. **Waiver of Jury Trial.** City and the League waive trial by jury in the event of any action, claim, proceeding or counterclaim, whether judicial, civil, administrative or otherwise, brought by either City or the League against the other in connection with or arising out of this Agreement.

19. **Governing Law.** This Agreement shall be governed according to the laws of the State of Tennessee.

20. **Construction.** The terms and provisions of this Agreement shall not be construed against or in favor of a party hereto merely because such party or its counsel is the draftsman of this Agreement.

21. **Complete Agreement.** This writing contains the entire agreement between the parties hereto, and no agent, representative, or officer of City hereto has authority to make or has made any statement, agreement or representation, either oral or written, in connection herewith, modifying, adding or changing the terms and conditions herein set forth. No modification of this Agreement shall be binding unless such modification shall be in writing and signed by the parties hereto.

22. **No Partnership.** Nothing contained in this Agreement shall be construed to create a partnership, joint venture or relationship of principal and agent between City and the League. No provision of this Agreement shall be construed to confer any rights or remedies upon any party other than City and the League.

23. **Force Majeure.** Should any matter or condition beyond the reasonable control of either City or the League such as, but not limited to war, public emergency, acts of terrorism, calamity, fire, earthquake, flood, acts of God, strikes, labor disturbances, or actions, civil disturbances or riots, or any governmental restriction, prevent performance of this Agreement in accordance with the provisions hereof, in whole or in part, performance of this Agreement by either party shall be suspended or excused to the extent commensurate with such interfering occurrence.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

CITY OF CHATTANOOGA, TENNESSEE

By: _____

Print Name: _____
Title: _____

Miracle League of Chattanooga,
a Tennessee non-profit corporation

By: _____
Print Name: _____
Title: _____

DRAFT