

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE ADMINISTRATOR OF THE DEPARTMENT OF YOUTH AND FAMILY DEVELOPMENT TO ENTER INTO A USE AGREEMENT WITH THE TENNESSEE RIVER SOCCER D/B/A THE NORTH RIVER SOCCER ASSOCIATION TO OPERATE AND MAINTAIN THE SOCCER COMPLEX LOCATED AT 4500 ACCESS ROAD, WITH THE UTILITIES BEING PAID BY THE CITY OF CHATTANOOGA.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That the Administrator of the Department of Youth and Family Development enter into a Use Agreement with the Tennessee River Soccer d/b/a The North River Soccer Association to operate and maintain the soccer complex located at 4500 Access Road, with the utilities being paid by the City of Chattanooga.

The initial term of the Agreement is one (1) year with an option to renew for four (4) additional one (1) year terms.

ADOPTED: _____, 2014

/mem

City of Chattanooga



Resolution/Ordinance Request Form

Date Prepared: 12/12/14

Preparer: Carla Johnson

Department: Youth & Family Development

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

Authorization for the Administrator of the Department of Youth and Family Development to enter into a Use Agreement with the Tennessee River Soccer Company d/b/a The North River Soccer Association to operate and maintain the soccer complex located at 4500 Access Road.

The initial term of the Agreement is one (1) year with an option to renew for four (4) additional one-year(1) terms.

Name of Vendor/Contractor/Grant	Tennessee River Soccer Co.	New Contract/Project? (Yes or No)	Yes
Total project cost \$	0.00	Funds Budgeted? (YES or NO)	Yes
Total City of Chattanooga Portion \$	Utilities	Provide Fund <u>See</u> Comments	
City Amount Funded \$	Utilities	Provide Cost Center <u>See</u> Comments	
New City Funding Required \$	0	Proposed Funding Source if not budgeted	
City's Match Percentage %		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)

Utilities paid by the City of Chattanooga

Approved by: _____

DESIGNATED OFFICIAL/ADMINISTRATOR

Reviewed by: FINANCE OFFICE

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

Revised: October, 2011

USE AGREEMENT

THIS USE AGREEMENT is made between **TENNESSEE RIVER SOCCER COMPANY d/b/a THE NORTH RIVER SOCCER ASSOCIATION**, (hereafter "North River") and the **CITY OF CHATTANOOGA DEPARTMENT OF YOUTH AND FAMILY DEVELOPMENT RECREATION DIVISION**, a municipality of the State of Tennessee (hereinafter the "City"). This use agreement is subject to the following terms and conditions:

1. Property Subject to Use Agreement. This Agreement covers the portion of the property located at 4500 Access Road south of the Norfolk Southern Railroad right-of-way and includes four lighted, fully-equipped soccer fields, a concession stand and all infrastructures and hereafter shall be referred to as the "Premises" or "site".

2. Term. The term of this Agreement will be for a period of one (1) year, beginning on _____ and shall terminate on _____. The City and North River, by mutual written assent, shall have the option to renew this agreement for four (4) additional one (1) year terms.

3. Rent. North River shall pay rent to the City in the amount of One and 00/00 (\$1.00) Dollars. The City shall pay the cost of all utilities.

4. Use of Premises. North River shall have the right and authority to utilize the Premises to support its club sports soccer league and other related events and activities during the term of this agreement. In the event the City desires to use the Premises for its own use, the City agrees to notify North River in writing of said use of the Premises. North River shall be responsible for all expenses related to its programs and operations. The City and North River may jointly be responsible for physical and structural improvements by mutual consent. North River shall not make any improvements to the Premises without written consent of the City. North River shall not discriminate against any person's use of the Premises based on such person's race, color, gender, religion, handicap, age, or national origin. North River shall use the premises in accordance with the City's rules and regulation governing the use, maintenance and operation of park and recreation facilities. So as to assure the North River's ability to maintain order in its programs, North River does hereby take notice of the City's authority to promulgate such rules and regulations pursuant to its Ordinances and laws. North River grants to the City the authority to enforce these rules and regulations on the subject Premises during such times as they are under North River's control.

5. Care, Management and Maintenance of the Premises. North River shall keep the Premises neat and orderly. The City shall perform mowing of grass and trash removal and maintain the Premises. North River or the City may utilize community partners to assist in maintaining, renovating and caring for the leased premises and facilities. North River shall make an immediate written report to the City when they become aware of a condition requiring maintenance that is beyond their capability to perform. North River will be responsible for purchasing all equipment that may be necessary for the use of the Premises, including but not limited to, field maintenance equipment, soccer equipment, concession stand equipment, trash cans and bulletin board. The City will be responsible for maintaining the fields of play, fence repair, ball field lighting maintenance and improvements as determined by the City. North River

agrees to maintain the Premises in good repair while the Premises are under of North River and to indemnify the City for required repairs that are attributable to a breach of this duty. North River will not be held responsible for destruction of real property or premises by the general public when the facility is not being utilized by North River.

6. Facility Scheduling. The priority in scheduling events shall be North River first and the City second. North River will make the facility available for use for the Ultimate Frisbee Tournaments and other events when requested to do so by the City. North River may prohibit use of the facility for activities which are inconsistent with the purpose of this agreement and which are destructive to the facility. During the period of this agreement, and any renewals thereof, North River, solely, shall manage all recreational programs for the benefit of the public, in accordance with the terms set forth herein. In addition to the regular programs governed by North River, the facility shall be made reasonably available for other users in the event that such programs shall develop within the community. Any member of the public who qualifies under applicable rules may participate in such programs and events without discrimination as to race, color, sex, religion, handicap, age or national origin.

7. Revenue. Revenue derived from concessions and other activities shall remain the sole and exclusive property of North River and shall be used by North River in furtherance of its activities and programs at the site. All concession operations will be carried out in accordance with applicable health regulations. All items sold in concessions shall be of first quality. North River agrees to charge only a reasonable market price for items sold in concessions. Prices consistent with prices charged in concessions for other city parks, or similar public or private facilities, shall be deemed reasonable. North River shall pay all debts incurred by it for the purchase of goods or services used in the operation of the concessions.

8. Liability. In no event shall the City bear liability for loss, expense, attorney's fees or claims for injury or damages arising out of acts or omissions in the performance of this Agreement on the part of North River. Likewise, North River shall bear no liability for loss, expense, attorneys' fees or claims for injury or damages arising out of acts or omissions in the performance of this Agreement on the part of the City. It is the express intention of the Parties hereto that neither shall bear liability for injury or loss caused by the other Party, and each shall be responsible for injury or loss as provided by applicable Tennessee law. North River agrees to indemnify and to hold harmless the City for any and all claims, suits, causes of action, judgments, or damages (including damage for care and loss of services because of bodily injury, sickness, or disease, including death, resulting therefrom) sustained by it or any person or persons, and because of injury to, or destruction of, property (including loss of use thereof) caused by or arising out of, or resulting from, the use of the above-described property. This indemnity also specifically includes court and attorneys' fees. North River shall also require each recreational program participant to sign a statement that he or she will save the City and North River harmless from any and all claims, suits, causes of action, judgment or damages (including damages for care and loss of services because of bodily injury, sickness, or disease, including death, resulting therefrom) sustained by it or any person or persons, and because of injury to, or destruction of, property (including loss of use thereof) caused by or arising out of, or resulting from, the use of the above-described property. This indemnity also specifically includes court costs. The original signed statement will be maintained in North River's files for a period of one (1) year.

9. Insurance. North River shall at all times during the term of this Agreement, and any renewal terms, carry public liability insurance covering itself and its use and occupancy of the Premises against all claims arising from injuries, including death, to the members of the public or damage to property arising out of any act or omission of North River or North Rivers' agents, employees or subcontractors. In addition, the insurance shall specifically insure North Rivers' contractual duty to defend and indemnify the City against such claims or suits. The general public liability and property damage insurance shall carry an endorsement in the form satisfactory to the City to the effect that North River shall save the City from all claims and damage whatsoever, including patent infringement. The general public liability insurance shall be kept in force at all times during the term of this agreement. The liability limits shall not be less than:

- i) Bodily injury - \$500,000 each person
\$1,000,000 each occurrence
- ii) Property Damage - \$250,000 each occurrence
\$500,000 – aggregate

North River shall maintain during the term of this Agreement, and any renewal terms, comprehensive motor liability insurance that shall protect North River and the City against all claims for injuries to members of the public and damage to property of others arising from the use of motor vehicles and shall cover the operation on or off the Premises of all motor vehicles licensed for highway use, whether they are owned, non-owned or hired. The liability limits shall not be less than:

- i) Bodily injury - \$250,000 each person
\$500,000 each occurrence
- ii) Property Damage - \$250,000 each occurrence

North River shall maintain workmen's compensation insurance that shall protect North River against all claims under Tennessee Workmen's compensation laws based on claims for injury, disease or death of employees, which, for any reason, may not fall within the provisions of a workmen's compensation law. This policy shall also include an endorsement providing for coverage in all states. North River shall require subcontractors to provide similar workmen's compensation insurance for the all of the subcontractors employees unless such employees are covered under North River's workmen's compensation insurance. The liability shall not be less than amounts required by Tennessee State law.

All such insurance policies required to be carried by the North River by this agreement hereunder shall be with an insurance provider licensed in the State of Tennessee. Public liability insurance policies evidencing such insurance shall name City as an additional named insured 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. A copy of the insurance certificates shall be provided to the City as set forth in Section 16 of this agreement.

10. Termination. Either party shall have the right to terminate this Agreement on thirty (30) days written notice to the other or as set forth in Clause One (1) of this agreement.

11. Supervision of Personnel. Any person identified by North River to have control of the Premises shall have the duty to provide appropriate supervision of the premises during the stated times and to supervise the recreation activities occurring at these times. The City retains the right to assure the qualifications or competency of North River personnel working on the Premises and may request a listing of North River's personnel and their qualifications. Further, the City retains the right to reject certain North River personnel on the grounds of incompetence. North River will provide workers to operate the concession stand as service is reasonably necessary for North River's organized events and at such other times as the North River shall deem advisable.

12. Right of Inspection. The City shall have a right of entry or right to inspect the premises subject to this Agreement that may be exercised at any reasonable time.

13. Audit. The City or its assign may audit all financial and related records (including digital) associated with the terms of this lease agreement including timesheets, reimbursable out of pocket expenses, materials, goods, and equipment claimed by the parties to this agreement. The City may further audit any records of the parties to this agreement 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 Parties to this agreement shall at all times during the term of the contract or agreement and for a period of five (5) years after the end of this lease agreement, keep and maintain records of the work performed pursuant to this agreement. This shall include proper records of quotations, contracts, correspondence, invoices, vouchers, timesheets, and other documents that support actions taken by the Parties to this agreement. Documents shall be maintained by the necessary to clearly reflect all work and actions taken. All such records shall be maintained in accordance with generally accepted accounting principles. The Parties to this agreement shall at their 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. The obligations of this Section shall be explicitly included in any subcontracts or agreements formed between the Parties to this agreement and any subcontractors or suppliers of goods or services to the extent that those subcontracts or agreements relate to fulfillment of the obligations to the City under this agreement. 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 that would benefit the City. The Contractor shall reimburse the City for the total costs of an audit that identifies significant findings that would benefit the City. This Section shall not be construed to limit, revoke, or abridge any other rights, powers, or obligations relating to audit which the City may have by Federal, State, or Municipal law, whether those rights, powers, or obligations are express or implied.

14. Amendments and Modification to this Agreement. The parties from time to time may amend this contract by written agreement. Such amendments shall be effective upon the approval of the City and North River.

15. Assignment, Continuity and Severability. Neither party shall sell, assign, convey or otherwise devise by any method its rights under this Agreement. However, either party may enter into secondary agreements with other parties or agencies so as to permit the use by these other parties of the subject premises. Any and all secondary agreements must be approved in writing by both the Administrator of the Department of Parks and Recreation and authorized representative for North River. Such secondary agreements shall not vary the other rights and duties contained herein. This agreement shall be binding upon the parties and upon its successors. Should any provision of this contract be ruled to be invalid by a Court of competent jurisdiction, all other provisions shall be severable and remain in full force.

16. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee.

15. 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 North River:

Tennessee River Soccer Company
701 Market Street – Suite 1300
Chattanooga, TN 37402

If to City of Chattanooga:

City of Chattanooga
ATTN: General Services Division
101 E. 11th Street, Suite G4
Chattanooga, TN 37402

With a copy to:

Office of City Attorney
100 East 11th Street, Suite 200
Chattanooga, TN 37402

16. Authority. The City and North River hereby represent and warrant that each has the actual authority to enter into this Agreement and to perform its obligations herein. The provisions of this Agreement shall be binding upon and inure to the benefit of North River and the City, and to each of their respective representatives, successors and assigns, subject to the provision herein restricting assignment or subletting.

17. Entire Agreement. This Agreement together contains the entire agreement of the City and North River with respect to the subject matter of this Agreement and supersedes all prior agreements and understandings between the City and North River.

NOW, THEREFORE, we do hereby execute this Contract by making our signatures, to wit:

CITY OF CHATTANOOGA

By: _____

Printed Name: Andy Berke

Title: Mayor

TENNESSEE RIVER SOCCER COMPANY

By: _____

Authorized Representative

Printed Name: _____

Title: _____