

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION AUTHORIZING THE ADMINISTRATOR FOR THE DEPARTMENT OF YOUTH AND FAMILY DEVELOPMENT TO ENTER INTO A RENTAL AGREEMENT WITH THE MCCALLIE/GPS AQUATIC CLUB FOR USE OF THE FACILITY AND WARNER PARK SWIMMING POOL, FOR THE PERIOD OF MAY 18, 2015 THROUGH AUGUST 28, 2015, BETWEEN THE HOURS OF 6:30 A.M. AND 9:30 A.M., MONDAY THROUGH SATURDAY, FOR A TOTAL CONTRACT RENTAL FEE IN THE AMOUNT OF TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00).

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BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That it is hereby authorizing the Administrator for the Department of Youth and Family Development to enter into a Rental Agreement with the McCallie/GPS Aquatic Club for use of the facility and Warner Park Swimming Pool, for the period of May 18, 2015 through August 28, 2015, between the hours of 6:30 a.m. and 9:30 a.m., Monday through Saturday, for a total contract rental fee in the amount of \$2,500.00.

ADOPTED: \_\_\_\_\_, 2015

/mem

# City of Chattanooga



## Resolution/Ordinance Request Form

Date Prepared: 4/23/2015

Preparer: Bonnie Weller

Department: Youth & Family Development

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

Authorization for the Administrator of the Department of Youth and Family Development to enter into a rental agreement

with the McCallie/GPS Aquatic Club, for use of the facility Warner Park Swimming Pool, from May 18, 2015 through August 28, 2015,

between the hours of 6:30 a.m. and 9:30 a.m., Monday through Saturday, for a total contract rental fee in the amount of

Two Thousand Five Hundred and 00/100 (\$2,500.00) Dollars.

Name of Vendor/Contractor/Grant	<u>McCallie/GPS Aquatic Club</u>	New Contract/Project? (Yes or No)	<u>Yes</u>
Total project cost \$	<u>2,500.00</u>	Funds Budgeted? (YES or NO)	<u>No</u>
Total City of Chattanooga Portion \$	<u>0.00</u>	Provide Fund	<u>1100</u>
City Amount Funded \$	<u>0.00</u>	Provide Cost Center	<u>N10204</u>
New City Funding Required \$	<u>0.00</u>	Proposed Funding Source if not budgeted	<u>N/A</u>
City's Match Percentage %	<u>0%</u>	Grant Period (if applicable)	<u>N/A</u>

List all other funding sources and amount for each contributor.

<u>Amount(s)</u>	<u>Grantor(s)</u>
\$ _____	_____
\$ _____	_____
\$ _____	_____

Agency Grant Number \_\_\_\_\_

CFDA Number if known \_\_\_\_\_

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

Approved by: Lutone Jennings, Sr.

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 ("Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by and between the CITY OF CHATTANOOGA, TENNESSEE, a municipal corporation, ("City") and the MCCALLIE/GPS AQUATIC CLUB ("MCGPS").

**WHEREAS**, the City owns and operates the Warner Park Swimming Pool located at 1254 East Third Street, Chattanooga, TN 37404;

**WHEREAS**, the City desires to rent the Warner Park Swimming Pool to MCGPS for use at certain designated times and days;

**WHEREAS**, MCGPS desires to rent the Warner Park Swimming Pool from the City for use at certain designated times and days;

**NOW, THEREFORE**, in consideration of the covenants and agreements herein contained, the City and MCGPS agree as follows:

**WITNESSETH:**

1. **Right to Use.** Upon payment of the rental fee, the City does hereby grant to MCGPS the right and privilege to use the Warner Park Swimming Pool between the hours of 6:30 a.m. and 9:30 a.m. Monday through Saturday from May 18, 2015 through August 28, 2015 ("Contracted Hours"). The Aquatic Division of the Department of Youth and Family Development ("YFD") reserves the right to schedule additional programs during the Contracted Hours. Programs scheduled will not compromise the existing programs but will work in accordance with the MCGPS Aquatic Club practice. Allotted space for each program if necessary will be at the discretion of the City Aquatic Coordinator.

2. **Rental Fee.** The contract rental fee for the duration of this Agreement is Two Thousand Five Hundred Dollars (\$2,500.00).

3. **Term.** This Agreement shall be effective from the date of execution through August 28, 2015.

4. **Compliance with State and Local Laws.** MCGPS covenants to comply with State laws and City laws and ordinances in regard to nuisances insofar as the premises are concerned and that MCGPS will not, by any act of its agents or officers, render the City liable therefore.

5. **Maintenance.** MCGPS covenants to keep the premises, including all equipment, in as good repair as when received, and MCGPS will be responsible for replacement of any damaged equipment or facilities.

6. **Right to Entry.** The City shall have the right to enter into and upon said premises or any part thereof at all reasonable hours for the purpose of inspecting the same, or making such repairs, additions, or alterations, as may be necessary for the safety, comfort, and preservation thereof. The City may, at its discretion, prohibit the use of the premises, including the swimming pool, by MCGPS during the aforementioned inspections or repairs, and MCGPS waives its right to use of the premises, including the swimming pool, and shall have no claim for damages under these circumstances. Planned maintenance shut down days will be communicated in advance to MCGPS, with the understanding that if the alternate pool is available, the City may provide services at that site.

7. **Termination.** This Agreement may be terminated by either party, without cause, upon fifteen (15) days written notice to the other.

8. **Indemnity, Liability and Liability Insurance.** MCGPS assumes full responsibility for the supervision of all persons using the facilities during the Contracted Hours. It is agreed that MCGPS will have a certified lifeguard on deck during the Contracted Hours. The City shall not be responsible for any damage or injury that might be sustained by MCGPS or any person using the premises during the Contracted Hours under the auspices of MCGPS, and the MCGPS agrees to indemnify the City and hold it harmless from any and all such loss, damages, or injury whatsoever as may be sustained or claimed by any person using the pool and appurtenant property under the provisions of this Agreement.

MCGPS shall conduct its activities on the premises subject to this Agreement so as not to endanger any persons or property therein. MCGPS shall indemnify, save and hold harmless, and defend the City, and all of its officers, agents, and employees, from any and all claims resulting from losses, injuries, damages, and liabilities to persons or properties resulting, wholly or in part, from acts or omissions of MCGPS, including acts or omissions of its agents, officers, employees, guests, and/or patrons, to the full extent of its insurance coverage provided within this section. This section further requires MCGPS to indemnify, save and hold harmless, and defend the City, and all of its officers, agents, and employees, from any and all claims for injuries or damages resulting from MCGPS's use of the premises.

Notwithstanding the foregoing, MCGPS shall not be liable or held to indemnify on liability arising from any part of the premises which is under the control of, or is caused by, the act, omission, design, or construction by the City. MCGPS shall, at MCGPS's expense, purchase and maintain, for the benefit of the City, a policy or policies of public liability and property damage insurance, issued in the name of MCGPS and naming the City of Chattanooga as an additional named insured, with limits not less than One Million Dollars (\$1,000,000.00) for

injury to and/or death of any single person in a single occurrence, and not less than One Million Dollars (\$1,000,000.00) for injury to and death of more than one person in a single occurrence, and not less than One Million Dollars (\$1,000,000.00) for damage to property in a single occurrence. Said insurance policy shall include contractual liability coverage which shall recognize and include the indemnification provisions of this Agreement.

Said policy shall be approved by the City Attorney, which approval shall not be unreasonably withheld, which policy or policies shall be filed with the City Risk Manager before execution of this Agreement. MCGPS shall, after securing approval by the City Attorney, file with the City Risk Manager a list of all insurance policies to be carried. Said insurance coverage must be maintained during the entire term of this Agreement, plus any extension, and each insurance policy shall contain a clause whereby the insurance company shall give written notice to the YFD Administrator or the Mayor at least sixty (60) days prior to any cancellation or alteration of said policy. Any notice of cancellation or alteration of insurance policies during the term of this Agreement shall be considered as a default. Following notice of cancellation or alteration of any said insurance policy during the term of this Agreement and the failure of MCGPS to cure such default, the City may, upon the date of cancellation or alteration of said insurance policy, without further notice, terminate this Agreement, and MCGPS shall immediately cease its operations and vacate the premises.

Said insurance coverage must be maintained during the term of this Agreement, and each insurance policy shall contain a clause whereby the insurance company shall give written notice to the YFD Administrator thirty (30) days prior to any cancellation or alteration of any of said insurance policies.

9. **Repairs, Maintenance and Improvements.** MCGPS accepts use of the premises in its present "as is" condition and the City shall be under no duty to make structural or cosmetic changes to the same. MCGPS agrees to maintain the premises and pool in good order, including restoring any damaged part of the premises or pool resulting during the term of this Agreement by MCGPS's use. MCGPS shall make no alterations to the premises without first obtaining written consent for any said improvements.

10. **Subletting and Assignment.** MCGPS shall neither sublet the whole or any part of the rented premises, nor assign, nor mortgage this Agreement or any of its rights hereunder without the express approval of the City.

11. **Casualty Insurance and Damage.** The City shall be under no duty to carry any casualty insurance which would cover the property of the Lessee within the premises, and MCGPS shall bear all risks of loss to its property. If the premises are rendered totally or substantially untenable by fire or other casualty, this Agreement, at the option of either party, shall terminate.

12. **Modification or Amendment.** The City reserves the right to modify or amend this Agreement, in the event that the City determines that the premises are needed for any other municipal purpose or use. In the event that the City declares a need for use of the premises, the City shall have the right to modify or amend this Agreement upon providing thirty (30) days' written notice thereof to MCGPS. Following notice, the City shall be entitled to allow MCGPS to use comparable premises if such facilities exist. In the event of modification, amendment or relocation pursuant to the terms of this Agreement, it is agreed and understood by MCGPS that no claim or action for damages or other compensation shall arise or be allowed by reason of such

amendment, modification or relocation. If the parties are unable to negotiate mutually acceptable amendments, either party shall have the right to terminate this Agreement.

13. **Alcoholic Beverages.** MCGPS will not allow alcoholic beverages to be sold, possessed or consumed on the premises.

14. **Breach of Contract.** In the event of a breach of any provision of this Agreement, the City shall have the right to terminate this Agreement as set forth in the termination provision of this Agreement, to enter and obtain possession of the premises, to remove and exclude any and all persons from the premises, and to remove and exclude all property of MCGPS therefrom in addition to any other recourse identified in this Agreement.

15. **Notices.** All notices or communications which this Agreement requires or permits to be given shall be in writing and shall be mailed or delivered to the respective address as set forth below or to such other address as may be designated in writing by either party.

To the City as follows:

Youth and Family Development  
501 West 12<sup>th</sup> Street  
Chattanooga, Tennessee 37402

To the Lessee as follows:

**McCallie/GPS Aquatic Club**  
500 Dodds Ave.  
Chattanooga, TN 37404

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16. **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be illegal or in conflict with an applicable law, the validity of the remaining provisions of this Agreement shall not be affected thereby.

17. **Conflict of Laws.** The interpretation and enforcement of this Agreement shall be construed according to the laws of the State of Tennessee.

18. **Entire Agreement.** This Agreement contains the entire agreement between the parties hereto and may not be modified in any manner unless by agreement in writing signed by the parties hereto or their respective successors in interest. All the terms of this Agreement shall inure to the benefit of the successors and assigns of the parties to this Agreement. The provisions of this section shall not be deemed a waiver of any of the conditions against assignment set forth in this Agreement.

19. **Audit Provision.** The City or its assign may audit all financial and related records of MCGPS (including digital) associated with the terms of this Agreement. The City may further audit any MCGPS records related to this Agreement to conduct performance audits (to identify waste and abuse or to determine efficiency and effectiveness of the Agreement) or to identify conflicts of interest. MCGPS shall, at all times during the term of the Agreement and for a period of five (5) years after the end of the Agreement, keep and maintain records of the work performed pursuant to this Agreement. All such records shall be maintained in accordance with generally accepted accounting principles. MCGPS 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. 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. MCGPS shall reimburse the City for the total costs of an audit that identifies significant findings that would benefit the City.

20. **Non-Discrimination Provision.** MCGPS agrees to comply with all federal, state and local non-discrimination provisions that the City of Chattanooga is under a duty to comply

with under federal, state or local law when utilizing this City facility. MCGPS agrees not to discriminate against any participant on the basis of race, color, religion, sex, age or national origin. MCGPS further agrees to comply with all federal, state and local laws regarding treatment and accommodations for individuals with disabilities.

IN WITNESS WHEREOF, the parties have caused their respective names to be signed by their duly authorized officials this \_\_\_\_ day of \_\_\_\_\_, 2015.

CITY OF CHATTANOOGA, TENNESSEE  
Department of Youth and Family Development

By: \_\_\_\_\_  
Lurone Jennings, Administrator

**McCallie/GPS Aquatic Club**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_