

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A LEASE AGREEMENT WITH NORTH CHICKAMAUGA CREEK CONSERVANCY TO LEASE A ROOM FOR OFFICE SPACE WITHIN A BUILDING AT THE GREENWAY FARM, FOR AN AMOUNT OF ONE DOLLAR (\$1.00) PER YEAR, PLUS A FLAT FEE OF TWO HUNDRED FIFTY DOLLARS (\$250.00) PER YEAR TO COVER UTILITY COSTS AND LESSEE'S PRO RATA PORTION OF WATER QUALITY FEES, FOR THE PURPOSE OF THE LESSEE TO ASSIST THE CITY WITH THE DEVELOPMENT OF THE NORTH CHICKAMAUGA CREEK GREENWAY THROUGH ITS ADVOCACY, PROMOTION, AND CITIZEN ACTIONS.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, it is hereby authorizing the Mayor to enter into a Lease Agreement with North Chickamauga Creek Conservancy to lease a room for office space within a building at the Greenway Farm, for an amount of \$1.00 per year, plus a flat fee of \$250.00 per year to cover utility costs and Lessee's pro rata portion of water quality fees, for the purpose of the Lessee to assist the City with the development of the North Chickamauga Creek Greenway through its advocacy, promotion, and citizen actions.

ADOPTED: _____, 2015

/mem

City of Chattanooga



Resolution/Ordinance Request Form

Date Prepared: June 1, 2015

Preparer: Lee Norris

Department: Public Works/Parks

Brief Description of Purpose for Resolution/Ordinance: Res./Ord. # _____ Council District #: 3

A RESOLUTION REQUEST AUTHORIZING THE MAYOR TO ENTER INTO A LEASE AGREEMENT WITH NORTH CHICKAMAUGA CREEK CONSERVANCY TO LEASE A ROOM FOR OFFICE SPACE WITHIN A BUILDING AT THE GREENWAY FARM FOR AN AMOUNT OF ONE DOLLAR (\$1.00) PER YEAR PLUS A FLAT FEE OF TWO HUNDRED FIFTY DOLLARS (\$250.00) PER YEAR TO COVER UTILITY COSTS AND LESSEE'S PRO RATA PORTION OF WATER QUALITY FEES FOR THE PURPOSE OF THE LESSEE TO ASSIST THE CITY WITH THE DEVELOPMENT OF THE NORTH CHICKMAUGA CREEK GREENWAY THROUGH ITS ADVOCACY, PROMOTION, AND CITIZEN ACTIONS.

Name of Vendor/Contractor/Grant, etc.	<u>North Chick. Creek Conservancy</u>	New Contract/Project? (Yes or No)	<u>NO</u>
Total project cost \$	<u>N/A</u>	Funds Budgeted? (YES or NO)	<u>N/A</u>
Total City of Chattanooga Portion \$	<u>N/A</u>	Provide Fund	<u>N/A</u>
City Amount Funded \$	<u>N/A</u>	Provide Cost Center	<u>N/A</u>
New City Funding Required \$	<u>N/A</u>	Proposed Funding Source if not budgeted	<u>N/A</u>
City's Match Percentage %	<u>N/A</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)

There has been a prior agreement with the North Chickamauga Creek Conservancy; approved by Regional Planning Commission by action MR-2011-027.

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

**CITY OF CHATTANOOGA
AND
NORTH CHICKAMAUGA CREEK CONSERVANCY
LEASE**

THIS AGREEMENT (“Agreement”) is made this ____ day of _____, 20____ (the “Effective Date”), between the City of Chattanooga, hereinafter known as “Lessor,” and the North Chickamauga Creek Conservancy, hereinafter known as “Lessee.”

WHEREAS, the Lessee wishes to lease a room for office space within a building at the Greenway Farm, situated in the City of Chattanooga, Hamilton County, Tennessee, for a period of three (3) years with the option to renew for two (2) additional one (1) year terms and,

WHEREAS the Lessee assists Lessor with the development of the North Chickamauga Creek greenway through its advocacy, promotion and citizen actions including scheduling meetings, initiating contacts with property owners and general coordination efforts between the City, Trust for Public Lands, and the effected citizens in the area of the North Chickamauga Creek watershed; and,

Now, in consideration of the mutual promises and covenants between the parties, it is agreed by Lessor and Lessee as follows:

1. Leased Premises. Lessor leases to Lessee that certain room containing approximately 352 square feet located at 5051 Gann Store Road, Hixson, TN 37343, situated in the City of Chattanooga, Hamilton County, Tennessee, identified as a portion of Tax Map No. 110-021, more particularly described as shown by the crosshatched area on the attached drawing marked Exhibit “A” attached hereto and incorporated herein by reference (the “Leased Premises”).

2. Rental Fee. Lessee pays the Lessor the sum of One Dollar (\$1.00) per year and binds himself or herself to comply with the covenants and stipulations listed below and to take good care of the Leased Premises, and return the same at the expiration of said time, in as good order as received, ordinary wear and tear and natural decay expected, unless destroyed by lightning or other natural causes, or fire not caused by fault of the Lessee, and not to erect, or to permit to be erected on the premises any nuisance or commit any waste.

3. **Term.** The term of this Lease shall commence upon execution by the parties (the “Commencement Date”), shall be for a period of three (3) years, and shall not renew automatically, but may be renewed for two (2) one (1) year renewal terms upon mutual written agreement of the parties. Either party may terminate this Lease at any time without cause upon giving the other party written notice of its intention to terminate, and such notice shall be received at least thirty (30) days prior to the termination date.

4. **Holdover Provision.** If the Lessee uses the Leased Premises as provided herein after the expiration of the initial term of this Agreement and the Lessee continues to provide performance as required by this Agreement, such possession shall be construed as creating to month-to-month agreement for the use of the Leased Premises and not as a renewal or extension of this Agreement.

5. **Repairs, Maintenance and Improvements.** Lessee accepts the Leased Premises in their present “as is” condition and Lessor shall be under no duty to make structural or cosmetic changes to the same. Lessee agrees to maintain the Leased Premises in good order, including restoring any damaged part of the Leased Premises resulting during the term of this Agreement by Lessee’s ordinary use. Lessee shall make no alterations to the Leased Premises without first submitting plans and specifications for same to the Lessor and obtaining written consent for any said improvements. Lessee will make good or pay at the end of the Agreement, or on the vacation of said property for all glass broken in the windows, doors and other structural damage except as agreed below.

6. **Property Usage for Conservation Purposes.** The Lessee rents office space as herein provided and is entitled to use meeting rooms for the purpose of meeting with citizen groups and the North Chickamauga Creek Conservancy Board as needed without charge. In addition, community activities conducted by the Lessor and the Lessee using the Leased Premises are permitted without charge for such events as “Greenway Challenge” and the “Chickstock” events that bring attention to the mission of the Lessor’s Greenway and conservation endeavors.

7. **Nonprofit Status.** Lessee shall provide evidence of its status as a nonprofit civic organization under Section 501(c)(3) of the Internal Revenue Code prior to the Effective Date and maintain its status as a nonprofit charitable organization at all times during the term of this Agreement.

8. **Limitation of Lessor’s Liability.**

- (a) Lessor shall not be liable to Lessee in any manner whatsoever for failure to furnish or delay in furnishing any service or services provided for in this Agreement and no such failure or delay shall constitute actual or constructive eviction of Lessee nor operate to relieve from prompt and punctual performance of each and all of the covenants to be performed herein by Lessee.
- (b) Lessor shall not be liable to Lessee, its invitees, agents, employees, or contractors for damage to person or property caused by defects in the cooling, heating, electric, water or other apparatus or systems located in, on, or about the Leased Premises.
- (c) Lessor shall not be liable for any theft or loss of property of Lessee, invitees, agents, employees, or contractors.

9. **Attorney's Fee for Right to Recover Possession** Should the Lessor at any time rightly seek to recover possession of the Leased Premises, and be obstructed or resisted therein, and any litigation thereon ensues, the Lessee shall be bound to pay the Lessor a reasonable attorney's fee.

10. **Right to Enter**. The Lessor shall have the right to enter into and upon said Leased Premises or any part thereof, at all reasonable hours for the purpose of examining the same, or making such repairs, additions, or alterations as may be necessary for the safety, comfort, and preservation thereof.

11. **Subletting and Assignment**. Lessee shall neither sublet the whole or any part of the licensed premises, nor assign, nor mortgage this Agreement or any of its rights hereunder without the express approval of the Lessor.

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

13. Indemnity, Liability and Liability Insurance. Lessee shall conduct his activities on the Leased Premises subject to this Agreement so as not to endanger any persons or property therein. Lessee shall indemnify, save and hold harmless, and defend Lessor (including payment of reasonable attorney's fees), 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 the Lessee, including acts or omissions of his agents, officers, employees, guests, and/or patrons, to the full extent of its insurance coverage provided within this section. This section further requires the Lessee to indemnify, save and hold harmless, and defend the Lessor (including payment of reasonable attorney's fees), and all of its officers, agents, and employees, from any and all claims for injuries or damages resulting from the Lessee's use of the Leased Premises.

Notwithstanding the foregoing, the Lessee shall not be liable or held to indemnify on liability arising from any part of the Leased Premises which is under the control of, or is caused by, the act, omission, design, or construction by the Lessor. The Lessee shall, at the Lessee's expense, purchase and maintain, for the benefit of the Lessor, a policy or policies of public general liability insurance, issued in the name of the Lessee and naming the Lessor as an additional named insured, with limits not less than One Million and 00/100 (\$1,000,000.00) Dollars for injury to and/or death of any single person in a single occurrence, and not less than One Million and 00/100 (\$1,000,000.00) Dollars for injury to and death of more than one person in a single occurrence, and not less than One Million and 00/100 (\$1,000,000.00) Dollars 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.

The insurance policy shall be approved by the City Attorney as to form, which approval shall not be unreasonably withheld. The policy or policies shall be filed with the General Services Department. The Lessee shall, after securing approval by the City Attorney, file with the General Services Department a list of all insurance policies to be carried. Said insurance coverage must be maintained during the entire term life of this Agreement, plus any extension, and insurance policy shall contain a clause whereby the insurance company shall give written notice to the Administrator or 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 the

Lessee to cure such default, Lessor may, upon the date of cancellation or alteration of said insurance policy, without further notice, terminate this Agreement, and the Lessee shall immediately cease its operations and vacate the Leased Premises.

14. **Surrender of Leased Premises on Termination.** Lessee shall peaceably deliver possession of the Leased Premises to Lessor on the date of expiration or termination of this Agreement, whatever the reason for termination. Lessor shall have the right to re-enter and take possession of the Leased Premises on the date termination becomes effective without further notice of any kind and without instituting summary or regular legal proceedings.

15. **No Waiver.** Any waiver by the parties of any default or breach of any 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, covenant, or condition of this Agreement. No delay, failure, or omission of Lessor to re-enter the Leased Premises, 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 of or acquiescence in such breach of default.

16. **Force Majeure.** Lessor shall be excused for the period of any delay in the performance of any obligation hereunder when prevented by doing so by cause or causes beyond Lessor's control which shall include, without limitation, all labor disputes, civil commotion, war, war-like operations, invasion, rebellion, hostilities, military or usurped power sabotage, governmental regulations or controls, fire or other casualty, inability to obtain any material, services, or financing or through acts of God.

17. **Modification or Amendment.** The Lessor reserves the right to modify or amend this Agreement, in the event that the Lessor determines that the Leased Premises are needed for any other municipal purpose or use. In the event that the Lessor declares a need for the Leased Premises, the Lessor shall have the right to modify or amend this Agreement upon providing thirty (30) day's written notice thereof to the Lessee. Following notice, the Lessor shall be

entitled to relocate the Lessee to comparable Leased Premises. In the event of modification, amendment or relocation pursuant to the terms of this Agreement, it is agreed and understood by the Lessee that no claim or action for damages or other compensation shall arise or be allowed by reason of such elimination modification or relocation. If the parties are unable to negotiate mutually acceptable amendments, either party shall have the right to terminate this Agreement.

18. **Quiet Possession.** Lessor covenants to keep the tenant in quiet possession of the premises during the term of the Agreement.

19. **Compliance with Laws.** 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 Lessee will not by any act of its agents or officers render the Lessor liable therefor.

20. **Alcoholic Beverages.** Lessee will not allow alcoholic beverages to be sold or consumed on the Leased Premises.

21. **Breach of Contract.** In the event of any breach of any of the items of the provisions of this Agreement, the Lessor shall have, upon the failure of the Lessee to cure any default within thirty (30) days after notice, the right to terminate this Agreement, to enter and obtain possession of the Leased Premises, to remove and exclude any and all persons from the Leased Premises, and to remove and exclude all property of the Lessee there from in addition to any other recourse identified in this Agreement. If it shall become necessary for the Lessor to employ an attorney to assert any right or to enforce any obligation of this Agreement after default by the Lessee, the Lessor shall be entitled to recover, in addition to all other costs and expenses, the reasonable costs and charges of such attorney if the Lessor is the prevailing party.

22. **Records Audit.** Lessor or its assign may audit all financial and related records (including digital) associated with the terms of this Agreement. Lessee shall at all times during the term of this Agreement and for a period of seven (7) years after the end of this 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 Lessee. Documents shall be maintained by Lessee necessary to clearly reflect all work and actions taken. All such records shall be maintained in accordance with generally accepted accounting principles. Lessee shall make such records available for inspection and audit (including copies and extracts of records as required) by Lessor at all reasonable times and without prior notice.

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

23. No Waiver. The failure of either party to this Agreement to insist upon the performance of any of the terms and conditions of the Agreement, or the waiver of any breach of any of the terms and conditions of this Agreement, shall not be construed as thereafter waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.

24. Utilities; Water Quality Fees. Lessee shall bear the expense for the use of any and all utilities on the premises and a pro rata portion of water quality fees. The Lessor and the Lessee agree to the flat fee of Two hundred fifty Dollars (\$250.00) per year to cover utility costs and Lessee's pro rata portion of water quality fees. This fee is based on the Lessee's 352 ft² office being six percent (7%) of the total square footage of the Greenway Farm Building.

25. Licenses, Compliance with Laws. Lessee agrees to obtain at his sole expense any and all state, city and county licenses and permits that may be required for its business operation.

26. Discrimination. 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.

27. Termination of Contract. Either party shall have the right to terminate this Agreement with or without cause upon thirty (30) days' written notice to the address set forth in Paragraph 28 of this Agreement.

28. Notices. All notices and other communications given hereunder by the parties shall be in writing and shall be delivered personally or by mail, postage prepaid, and the date of

any notice by certified mail shall be deemed the date of certification thereof delivered by or addressed to the parties as follows:

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

With a copy to: City Attorney
100 E. 11th Street, Suite 200
City Hall Annex
Chattanooga, TN 37402

Lessee: North Chickamauga Creek Conservancy
P. O. Box 358
Hixson, TN 37343

With a copy to: N/A

29. **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.

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

31. **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.

EXECUTED the day and date above written.

CITY OF CHATTANOOGA, TENNESSEE,

By: _____
ANDY BERKE, MAYOR

NORTH CHICKAMAUGA CREEK CONSERVANCY

By: _____

Printed Name: _____

Title: _____

Designer F.P.S. Date 3/12/15 Sheet No. 1 of

Checker Date Job No.

Description GREENWAY FARMS - FARMHOUSE FLOOR PLAN

