RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A LEASE AND MANAGEMENT AGREEMENT WITH NORTH CHICKAMAUGA CREEK CONSERVANCY, IN SUBSTANTIALLY THE FORM ATTACHED, FOR THE LEASE AND MANAGEMENT OF A COMMUNITY GARDEN AT GREENWAY FARMS PARK COMMUNITY GARDEN AT 5051 GANN STORE ROAD, A PORTION OF TAX PARCEL NO. 110-021, FOR A TERM OF ONE (1) YEAR, WITH THE OPTION TO EXTEND UP TO FOUR (4) ADDITIONAL ONE (1) YEAR TERMS.

_____

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That it is hereby authorizing the Mayor to execute a Lease and Management Agreement with North Chickamauga Creek Conservancy, in substantially the form attached, for the lease and management of a community garden at Greenway Farms Park Community Garden at 5051 Gann Store Road, a portion of Tax Parcel No. 110-021, for a term of one (1) year, with the option to extend up to four (4) additional one (1) year terms.

ADOPTED: _____, 2016

/mem

City of Chattanooga

Resolution/Ordinance Request Form

Date Prepared: March 10, 2016

Preparer: Cary Bohannon **Department:** General Services

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

A RESOLUTION REQUEST AUTHORIZING THE MAYOR TO EXECUTE A LEASE AND MANAGEMENT AGREEMENT WITH NORTH CHICKAMAUGA CREEK CONSERVANCY, IN SUBSTANTIALLY THE FORM ATTACHED, FOR THE LEASE AND MANAGEMENT OF A COMMUNITY GARDEN AT GREENWAY FARMS PARK COMMUNITY GARDEN AT 5051 GANN STORE ROAD, A PORTION OF TAX PARCEL NUMBER 110-021, FOR A TERM OF ONE (1) YEAR, WITH THE OPTION TO EXTEND UP TO FOUR (4) ADDITIONAL ONE (1) YEAR TERMS.

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

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: _____

DESIGNATED OFFICIAL/ADMINISTRATOR

Reviewed by: FINANCE OFFICE

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

Revised: 1/26/09

Greenway Farms Park Community Garden
Lease and Management Agreement

This Agreement is entered into this _____day of _____, 2016 ("Effective Date"), by and between the City of Chattanooga, a Tennessee municipal corporation ("City"), and North Chickamauga Creek Conservancy ("Conservancy"), a Tennessee nonprofit corporation with its principal place of business at 4960 Gann Store Road, Chattanooga, Tennessee, (collectively, "Parties"), for the lease and management of a community garden at Greenway Farms Park Community Garden, located at 5051 Gann Store Road, Chattanooga, Tennessee, and more particularly described herein and identified in the Community Garden Diagram attached hereto as **Exhibit A** and incorporated herein by reference.

WITNESSETH:

WHEREAS, Conservancy is dedicated to conserving and enhancing the important natural, cultural and recreational resources of the North Chickamauga Creek watershed for the present and future use and enjoyment of its human and natural inhabitants;

WHEREAS, Conservancy is dedicated to promoting gardening and sustainability through supporting the efforts of Greenway Farms Park Community Garden;

WHEREAS, City recognizes the work of Conservancy as vital to the community and Greenway Farms Park Community Garden as a positive contribution to the community;

WHEREAS, City is the owner of Greenway Farms Park Community Garden;

WHEREAS, City has determined it would be in the best interest of City to enter into an Agreement with Conservancy to lease Greenway Farms Park Community Garden to Conservancy and allow it to provide for the operation of Greenway Farms Park Community Garden under the terms and conditions set forth herein; and

NOW, THEREFORE, in consideration of the mutual efforts of the Parties to promote and support the development of Greenway Farms Park Community Garden, and in consideration of the respective covenants, agreements, conditions and terms stated herein, the Parties agree as follows:

1. **PREMISES AND PERSONAL PROPERTY.**

1.1 **Premises.** Subject to the terms set forth in this Agreement, City leases to Conservancy and Conservancy leases from City, Greenway Farms Park Community Garden, identified as Tracts 1, 2, 3, and 4 and Shed 1, Shed 2, and Shed 3 in **Exhibit A** (hereafter "Premises").

1.2 **Personal Property.** No personal property owned by the City will be leased to Conservancy under the terms of this Agreement. Conservancy is solely responsible for any personal property it stores on Premises. City will not bear responsibility for the loss, theft or destruction of any personal property of Conservancy.

2. **TERM OF AGREEMENT.**

2.1 **Term.** This Agreement shall be for a term of one (1) year (the "Initial Term"), commencing on the Effective Date of this Agreement.

2.2 **Extended Terms.** This Agreement may be extended up to four (4) additional one (1) year periods commencing at the end of the Initial Term. Any option for extension shall be exercised in writing at least three (3) months prior to the end of the Initial Term and any subsequent extended term. The City shall have the option to accept the extended term or terminate the Agreement following the Initial Term of the extended term.

3. **NAME.** The name of Premises shall remain "Greenway Farms Park" during the term of this Agreement, unless both Parties agree to a name change in writing.

4. **EMPLOYEES.** All employees of City currently employed at Premises will remain in those positions consistent with the City's personnel policies. Conservancy is not responsible for the management or supervision of any City employees at Premises.

5. **USE OF PREMISES.**

5.1 **Permitted Use.** Conservancy shall use and continuously occupy Greenway Farms Park during the term of this Agreement solely for the operation of Premises and related and incidental purposes, as described more fully herein. City shall retain unrestricted access to enter and use Premises for any purpose at its discretion and without prior approval of Conservancy. Conservancy shall not use or permit Premises to be used for any other purpose without prior written consent of City.

5.2 **Days and Hours of Operation.** Except in the case of public disaster or other major emergency, or as otherwise authorized in writing by City, Premises shall be open for operation during normal park hours, Sunday through Monday, from sunrise to sunset, but in any event shall remain open no later than 9:00 p.m.

5.3 **No Improper Uses or Nuisances.** Conservancy shall not use, nor suffer or permit any person to use Premises for any improper, immoral or offensive purpose, nor for any purpose in violation of any local, state or federal law, now in effect or hereafter enacted or adopted. Conservancy shall exercise reasonable efforts not to permit to be carried on any activity that would constitute an actionable nuisance under the laws of the State of Tennessee.

6. **MANAGEMENT AND SUPERVISORY RESPONSIBILITIES.** Conservancy is hereby given general authority by City to manage and supervise the day-to-day operation of Premises as an independent contractor and to perform the specific duties set forth in this Agreement. Conservancy shall assign numbered plots on a first come, first serve basis as identified in **Exhibit A**. Conservancy shall oversee the operations and ensure compliance with the terms set forth in the Gardener Agreement, attached hereto as **Exhibit B** and incorporated herein by reference.

7. **CAPITAL IMPROVEMENTS AND ALTERATIONS.**

7.1 **Improvements and Alterations.** Conservancy shall not make any expenditures of funds for capital improvements or make alteration to Premises without the express written permission of the Administrator for the Department of Public Works. Upon completion of any pre-approved project, Conservancy shall provide copies of the final as-built plans and specifications to the Department of Public Works, Director of Parks Maintenance. Any alterations or capital improvements made by Conservancy shall comply with all applicable local, state and federal laws, rules and regulations. Conservancy shall obtain any required permits for such alterations and capital improvements, at its expense. In the event that Conservancy undertakes any improvement projects, Conservancy shall maintain records of all capital projects and provide a report of all capital projects to Department of Public Works, Director of Parks Maintenance on a semi-annual basis.

7.2 **Title to Improvements.** All appurtenances, fixtures, improvements, equipment, additions and other property attached to or installed in Premises during the term of this Agreement shall be and remain the property of City and shall not be removed by Conservancy.

7.3 **Capital Appropriations.** City may make capital appropriations to Conservancy for use on capital projects to the extent allowed by the budget for each fiscal year of the term of this Agreement.

8. **MAINTENANCE.** Conservancy shall be responsible for maintaining Premises in a clean, safe, sanitary and sightly condition, and as necessary to maintain any applicable licenses and permits. Conservancy shall also be responsible for ensuring compliance with the maintenance requirements set forth in **Exhibit B**.

9. **FISCAL MATTERS.**

9.1 **Revenue and Payment of Expenses.** Conservancy shall collect and manage, through its accounts, all earned revenue produced from the operation of Premises to be used to fund the future operation and maintenance of Premises. All operating expenses shall be the obligation of Conservancy and shall be paid by Conservancy promptly when due. All expenditures of Conservancy shall be made in the name of Conservancy and not in the name of the City or Premises. Conservancy is not authorized to bind the City to any contract, agreement or obligation.

9.2 **Fee Schedule.** The Parties agree that any fees charged for use of Premises shall be established by Conservancy and detailed in **Exhibit B**. All prices and fees must be displayed and visible to Premises' patrons. All prices and fees established by Conservancy must be reported in writing to the Public Works Department on an annual basis.

9.3 **Annual Budget.** On or before March 1st of each year throughout the term of this Agreement, Conservancy shall at its sole expense, prepare and submit to the City Mayor and City Council for its review an annual report and budget setting forth a summary of the operations of Premises, a summary of the services provided by Conservancy at Premises, and the estimated gross revenues, operating expenses and

capital expenses of Premises for the following fiscal year. The City Council may, at its discretion, provide comments or suggestions to Conservancy on a submitted budget. In addition, the City Council shall have the right to disapprove the budget in the event that City Council determines that any Appropriation, where applicable, or other gross revenues are projected to be expended for purposes inconsistent with the requirements of this Agreement. If the submitted budget is not approved following discussion between the Parties, this Agreement shall immediately terminate as set forth in Section 10.

9.4 **Annual Accounting.** In the event Conservancy receives funds appropriated by City, Conservancy shall arrange for an audit of its books and records by an independent, certified public accountant, which audit shall be conducted at Conservancy's sole cost and expense and shall cover the previous fiscal year. Conservancy shall deliver to the City Council and City Mayor a signed copy of each such annual audit within one hundred twenty (120) days after the end of the fiscal year covered by the Audit.

9.5 **Annual Reporting Requirements.** In the event that the Conservancy requests funds from the City, Conservancy shall be required to comply with all federal, state, and local laws governing annual reporting requirements of Conservancy's business affairs and transactions, which includes, but is not limited to, compliance with T.C.A. § 6-54-111 and Chattanooga City Code Sec. 2-526 as to City of Chattanooga appropriations, outlining the procedures for receiving appropriations from governmental entities. All reports required by state and local law shall be submitted by March 1 of each year during the term of this Lease and any holdovers or extensions.

Should the City appropriate funds, Conservancy must, within ninety (90) days of the end of each fiscal year that it spends funds appropriated by City, submit to City a copy of its annual audited financial report for that fiscal year.

9.6 **Books and Records.** Conservancy shall establish and maintain books, records and systems of account relating to Premises' gross revenues, operating expenses, and capital funds in accordance with generally accepted accounting principles. Such books, records and systems of account shall be retained by Conservancy in accordance with generally accepted accounting practices and all applicable laws, and, immediately upon termination of this Agreement, all retained books, records and systems of account shall be delivered to the City. All Conservancy revenues shall be supported by documentation of a daily reconciliation process of pre-numbered receipts (electronic data processing system generated at the point of sale being acceptable). Conservancy shall provide a receipt to any person or entity remitting funds to Conservancy. All Conservancy expenditures shall be supported with documentation and information to clearly identify the purpose and use of funds expended.

9.7 **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 claimed by Conservancy. City may further audit any Conservancy 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.

Conservancy 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 Conservancy. Documents shall be maintained by Conservancy necessary to clearly reflect all work and actions taken. All such records shall be maintained in accordance with generally accepted accounting principles. Conservancy shall, at its 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 the Conservancy and any subcontractors or suppliers of goods or services to the extent that those subcontracts or agreements relate to fulfilment of the Conservancy'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. Conservancy 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 local law, whether those rights, powers, or obligations are express or implied.

10. **TERMINATION.** Should the Conservancy be found to have failed to perform its services in a manner satisfactory to City as per the specifications and requirements of this Agreement, City may terminate this Agreement immediately for cause. City shall be sole judge of non-performance. Further, either party may terminate this Agreement with or without cause by giving the other party not less than ninety (90) days written notice of such intent.

On the termination of this Agreement for any reason, City shall have full authority to re-enter and take full possession of Premises without the necessity of obtaining any legal process. Conservancy stipulates that City shall not be liable to prosecution or for damages for resuming possession of Premises. Conservancy shall quit and surrender the said Premises, including all grounds and all structures, to which the City holds title in as good or better condition as when accepted by Conservancy, reasonable wear and tear excepted.

In the event of any violation of this Agreement by Conservancy, or if City or its authorized representative shall deem any conduct on the part of Conservancy to be unlawful or a danger to safety and/or health of Conservancy, its employees or any other person, City shall have the right to immediately terminate this Agreement and remove Conservancy and its employees from Premises.

11. **INDEMNIFICATION.** Conservancy agrees to protect, defend, indemnify and hold the City and its officers, employees and agents free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees or other expenses or liabilities of every kind and character, including reasonable attorneys' fees, arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings or causes of action of every kind and character in connection with or arising directly or indirectly out of this Agreement and/or the management of Premises by Conservancy.

12. **LIMITATION OF CITY'S LIABILITY.**

City shall not be liable to Conservancy in any manner whatsoever for failure to furnish or delay in furnishing any service provided for in this Agreement and no such failure or delay shall constitute actual or constructive eviction of Conservancy nor operate to relieve it from prompt and punctual performance of each and all of the covenants to be performed herein by Conservancy.

City shall not be liable to Conservancy, its sublessees, vendors, patrons or guests for damage to person or property on Premises.

City shall not be liable for any theft or loss of property of Conservancy, its sublessees, patrons, guest or vendors.

City shall not be liable to Conservancy, its sublessees, vendors, patrons or guests for injury or damage to person(s) or property sustained or claimed to have been sustained as a result of alcohol consumption on the Premises.

13. **INSURANCE.** The Conservancy shall procure the following insurance with insurance companies licensed in the State of Tennessee, and shall file evidence of such insurance with General Services. Any contractor engaged by Conservancy to perform work on the Premises shall be required by Conservancy to maintain insurance as required in subsections 13.1 through 13.4 and insure against liability for injury to persons and property arising out of all such contractor's operations and naming the City as an additional insured. Said Contractor must provide proof of insurance to General Services.

13.1. **Commercial General Liability.** Coverage shall have minimum limits for bodily injury of $1,000,000 per Occurrence and $2,000,000 in the general aggregate.

13.2. **Workers' Compensation.** Insurance covering all employees meeting Statutory Limits in compliance with all then applicable State and Federal laws.

13.3 **Automobile Insurance**. Vehicles owned and used by Conservancy and its employees for business purposes relating to Premises operations under this Agreement shall at all times be insured against loss or damage resulting to persons with minimum liability limits of $1,000,000 per accident, combined single limit for bodily injury and property damage.

13.4 **Special Requirements.** City shall be listed as the Certificate Holder and included as an Additional Insured on the Comprehensive General Liability and Automobile policies, as required by subsections 13.1 and 13.3 of this Agreement.

Current, valid insurance policies meeting the requirement herein identified shall be maintained by Conservancy during the duration of this Agreement. Renewal certificates shall be sent to General Services within ten (10) days after the renewal date. The City shall be notified in writing within ten (10) days of any modification or cancellation of any required insurance coverage.

14. **NOTICES.** All notices from City to Conservancy shall be deemed duly served if mailed, postage prepaid, by registered or certified mail to Conservancy at the following address:

North Chickamauga Creek Conservancy
Attn: Tim Laramore
4960 Gann Store Road
Chattanooga, Tennessee 37343

All notices from Conservancy to City shall be deemed served if mailed, postage prepaid, by registered or certified mail to City at the following address:

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

A courtesy copy of any notice sent to City shall be mailed to the City Attorney at the following address:

City of Chattanooga
Office of the City Attorney
100 E. 11th Street, Suite 200
Chattanooga, Tennessee 37402

15. **NO PARTNERSHIP OR AGENCY**. Nothing herein contained shall create or be construed as creating a partnership between City and Conservancy. Conservancy is not an agent of the City. It is understood and agreed by the Parties that the relationship of Conservancy and City is to be and shall remain that of an independent contractor with respect to all services performed under this Agreement.

16. **RULES OF OPERATION.** All additional rules adopted by Conservancy shall be in accordance with existing local, state and federal laws and must be approved by the Director of Parks Maintenance for the Department of Public Works prior to any adoption or publication of said rules.

17. **ASSIGNMENT.** Conservancy may not assign this Agreement, in part or in its entirety, without prior written approval of the Administrator of General Services for City. Any attempt to assign without such approval shall be void and shall constitute grounds for the cancellation of this Agreement at the option of the City.

18. **WAIVER**. The waiver by City of any breach of any term contained in this Agreement shall not be deemed to be a waiver of such term for any subsequent breach of the same or any other term. The subsequent acceptance of services under this Agreement by City shall not be deemed to be a waiver of any prior occurring breach by Conservancy of any term contained in this Agreement regardless of the knowledge of City of the prior existing breach at the time of the acceptance of such services.

19. **FORCE MAJEURE.** In the event Premises are damaged by fire, flood, civil disorder, acts of God or other casualty to such an extent, that in City's sole opinion, the continued operation of such Premises and use thereof by the Parties is not practicable or

desirable, City may immediately terminate this Agreement. City shall not be responsible for any losses by Conservancy due to such partial or complete destruction of the Premises.

20. **REMOVAL OF PROPERTY.** Conservancy shall not remove from Premises any of the Personal Property brought thereon or any replacements thereto by Conservancy for the purpose of this Agreement, except such items as may be removed with the express written permission of the Director of Parks Maintenance for the Department of Public Works. Upon termination of this Agreement for any reason, Conservancy may remove its own personal property, and shall do so within fifteen (15) days following the termination of this Agreement. All personal property shall thereupon become the sole and exclusive property of City.

21. **REPRESENTATIONS AND WARRANTIES.**

21.1 **Experience.** Conservancy is experienced in operation and management and hereby agrees to apply its best efforts and most efficient methods in the operations and management of Premises.

21.2 **Formation.** Conservancy is a non-profit corporation duly incorporated, validly existing and in good standing under the laws of the State of Tennessee. Conservancy shall at all times during the Term of this Agreement maintain its tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.

21.3 **Authority.** Conservancy has full power and authority to enter into this Agreement and to consummate the transactions contemplated by it. This Agreement has been duly authorized by all necessary action on the part of Conservancy and no other corporate or other action on the part of Conservancy is necessary to authorize execution of this Agreement.

22. **NO LIENS.** Conservancy will not suffer or through its actions or by anyone under its control or supervision, cause to be filed upon the property any lien or encumbrance of any kind. In the event any lien is filed, Conservancy shall cause such lien to be discharged within ten (10) days after written notice to do so from City and any such lien shall be cause for immediate termination of this Agreement.

23. **NO DANGEROUS MATERIALS OR CHEMICALS.** Conservancy shall not use or permit in Premises the storage of illuminating oils, oil lamps, turpentine, benzine, naphtha, or other similar substances, hazardous materials or explosives of any kind, or any substance or articles prohibited in the standard policies of fire insurance companies doing business in the State of Tennessee, nor operate any machinery that may cause damage to Premises. Additionally, Conservancy shall prohibit patrons from using any substances on Premises that could potentially contaminate the groundwater. Nothing contained in this paragraph shall preclude Conservancy from maintaining material and equipment for conducting activities on Premises that are customary in operating Premises. In all cases, dangerous materials and other potentially harmful equipment will be stored in a locked area.

24. **NON-DISCRIMINATION.** There shall be no discrimination as to race, gender, religion, color, creed or national origin against any worker, employee or applicant or any member of the public in the operations referred to by this Agreement; and further, there shall be no discrimination regarding any use, service, maintenance, or operation of Premises, nor will

Conservancy allow any subcontractors to so discriminate. All facilities located on Premises shall be made available to the public, subject to the right of Conservancy to establish and enforce rules and regulations to provide for the safety, orderly operation and security of the facilities.

25. **TENNESSEE LAW.** This Agreement shall be governed by and construed in accordance with the Law of the State of Tennessee.

26. **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.

27. **ENTIRE AGREEMENT.** This Agreement contains the sole and entire agreement of the parties and no prior or contemporaneous oral or written representation or agreement between the parties shall have legal effect. No provision of this Agreement shall be waived unless such waiver is expressly made in writing and signed by an authorized representative of such party.

IN WITNESS WHEREOF, City and Conservancy have caused this Agreement to be executed in duplicate on this ____ day of _____, 2016.

ACCEPTED AND AGREED TO:

NORTH CHICKAMAUGA CREEK CONSERVANCY GROUP

By:_____
Printed Name:Tim Laramore
Title: _____

CITY OF CHATTANOOGA

By:_____
Printed Name: ANDY BERKE
Title: MAYOR OF CITY OF CHATTANOOGA

TRACT 1
TRACT 2
TRACT 3
TRACT 4
1
2
2B
3
4
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6
6B
7
8
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14
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16
17
SHED 1
SHEDS 2
SHED 3
Farm Store Rd

EXHIBIT A

EXHIBIT B

Greenway Farms Park Community Garden
Gardener Agreement

This Agreement governs the use of Greenway Farms Park Community Garden ("Premises") located at 5051 Gann Store Road, Chattanooga, Tennessee, by the garden plot holder ("Gardener").

In exchange for the use and enjoyment of the assigned garden plot, Gardener agrees as follows:

1. MANAGEMENT AUTHORITY. North Chickamauga Creek Conservancy (hereafter "Management") provides all management services for the Premises. Gardener agrees that the use and enjoyment of the assigned garden plot is at the sole discretion of Management consistent with the terms of this Agreement.

2. TERM. This Agreement extends for twelve (12) months after the date approved by Management ("Current Term"). Any extension to this Agreement shall be for four (4) additional twelve (12) month periods. Any option for extension shall be exercised in writing by Gardener at least thirty (30) days prior to the end of the Current Term.

3. PLOT ASSIGNMENT. Plots will be assigned on a first come, first serve basis by Management. Gardeners with assigned plots as of March 1, 2016, will receive preference for plots by notifying Management and paying annual fees for 2016 by March 10, 2016. Gardener is assigned a specific plot of either approximately 1500 square feet ("Large Plot") or approximately 500 square feet ("Small Plot"), subject to availability.

4. FEES. The fee for the use of the garden as set by Management shall be a non-refundable, annual fee in the amount of $50.00 for Large Plot and $15.00 per year for Small Plot, payable to Management on or before March 10, 2016.

5. SERVICES. Upon payment of dues, Gardener shall receive one spring tilling, an assigned garden plot, and water necessary to promote healthy plants. Management, at its discretion, may provide compost and other material available on a first come, first serve basis.

6. USE AND CARE:
    a. Gardener agrees to cultivate and plant the assigned garden plot within two weeks of being assigned a garden plot.
    b. Gardener agrees to care for the assigned garden plot on a weekly basis, and the assigned garden plot will not be left fallow or unused for any period of three weeks or longer, more than one time a year.
    c. Gardener will not expand the assigned plot beyond the measurements for either a Large or Small Plot or into paths or other plots.
    d. Gardener agrees to keep all plants within the limits of the assigned garden plot and will not allow any plants to grow more than six feet high.
    e. Gardener agrees to keep the plot free of weeds, pests and diseases.

f. Gardener agrees to maintain the assigned plot and the paths and surrounding areas in a clean and neat manner.
g. Gardener agrees to harvest only from the assigned garden plot. Gardener agrees to not take any item from Premises to which the Gardener does not possess legal ownership.
h. Gardener agrees to water the assigned plot according to visibly posted water-wise guidelines.

7. REFUSE. Gardener agrees to completely separate trash into three groups: 1) dead plants, leaves, and other green waste plant parts; 2) rocks, stones, and asphalt; and 3) paper, plastic, cardboard, wood, metal, etc. Gardener agrees to put each type of trash only in the areas designated specifically for each.

8. PERSONAL PROPERTY. Gardener agrees to remove all personal property from the premises and will not bring household trash for purposes of disposal on Premises.

9. ADHERENCE TO LAW. Gardener agrees to refrain from planting any plant deemed illegal under federal, state or local law.

10. VISITORS AND GUESTS. Gardener agrees to accompany all guests and visitors. All guests must follow all rules and policies required to be followed by the Gardener. Gardener agrees to supervise any guests under the age of [16] at all times when they are on the Premises. Gardener bears full responsibility for the behavior of all guests and visitors.

11. PESTICIDE USE. Gardener will not apply any pesticides or chemicals of any kind on Premises without the prior approval of Management. Management reserves the right to limit the use of any and all pesticides and chemicals or approve said use subject to restrictions as Management deems necessary to ensure the safety of Gardeners and protection of Premises.

12. OTHER PROHIBITIONS:
    a. Gardner agrees to not make duplicate keys of any locks at the Premises or give a key or lock combination to another person.
    b. Gardener agrees to not bring weapons, pets, or other animals on the Premises. However, nothing in this paragraph shall exclude the use of a registered service animal.
    c. Gardener agrees to refrain from smoking, drinking alcoholic beverages, using illegal drugs, gambling on the Premises, or entering the Premises while under the influence of alcohol or illegal drugs.
    d. Gardener agrees to not install any fencing in the assigned plot and understands that any fencing, other than trellis and row fencing not taller than three feet, will be removed.
    e. Gardener agrees to not use abusive or profane language.
    f. Gardener agrees to refrain from engaging in, or permitting its guests or visitors to engage in, discrimination in employment of persons because of their race, religion, color, national origin, ancestry, age, physical handicap, medical condition, marital status, sexual gender or sexual orientation.

13. RELEASE. Gardener, on behalf of himself, his executors, administrators, heirs, next of kin, successors and assigns, hereby waives, releases and forever holds harmless the City of Chattanooga, Management, its officers, officials, employees, contractors, representatives, and volunteers from any and all claims, causes of action, lawsuits, judgments, demands, request for costs, and attorneys' fees resulting from bodily injuries, disability, death, property damage, and loss of use arising from or attributable to use of the Premises.

14. DISPUTES. In the event of a dispute between Gardeners with assigned garden plots, Gardener agrees to immediately bring such dispute to the attention of Management. Management, in its sole discretion, reserves the right to resolve any issue consistent with the terms of this Agreement. Management decisions will be final.

15. NON-COMPLIANCE. Failure of Gardener or any of Gardener's guests to follow any of the rules and regulations set forth as part of this Agreement may result in the following:
    a. Gardener will receive one verbal warning from Management.
    b. If no response or correction has been made within two weeks of the date of the verbal warning, Gardener will receive written notice.
    c. If no response or correction has been made within two weeks of the date of the written notice, Gardener will receive written final notification that Gardener has forfeited all gardening privileges associated with the assigned garden plot.
    d. Gardener is prohibited from re-applying for a garden plot for twelve (12) months from the date of termination.
    e. All re-applications after twelve (12) months will be reviewed and approved at Management's sole discretion.

16. TERMINATION. Notwithstanding paragraph 15, Management reserves the right to terminate this Agreement at its sole convenience with ten (10) days' written notice to the Gardener. In the event a Gardener is unable to control weeds or desires to relinquish the assigned garden plot, Gardener must notify Management immediately. Upon notice from Gardener, Management reserves the right to immediately terminate this Agreement and re-assign the garden plot. All fees are non-refundable.

17. TENNESSEE LAW. This Agreement shall be governed by and construed in accordance with the law of the State of Tennessee.

18. 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.

19. ENTIRE AGREEMENT. This Agreement contains the sole and entire agreement of the parties and no prior or contemporaneous oral or written representation or agreement between the parties shall have legal effect. No provision of this Agreement shall be waived unless such waiver is expressly made in writing and signed by an authorized representative of such party.

20. NOTICE. All notices from Gardener to Management shall be deemed duly served if mailed, postage prepaid, by registered or certified mail to Management at the following address:

North Chickamauga Creek Conservancy
Attn: Tim Laramore
4960 Gann Store Road
Chattanooga, Tennessee 37343

All communications by Management to Gardener should be mailed to the "Gardener Address" referenced below.

Gardener understands and agrees to the terms set forth in this Agreement and agrees to abide by said terms.

Gardener Name:	APPROVED BY: Management: NORTH CHICKAMAUGA CREEK CONSERVANCY
Gardener Address:	Name/Title:
Gardener Signature:	Signature:
Date Signed:	Date Approved: