RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A PREMISES USE AGREEMENT WITH RIVERMONT YOUTH ATHLETIC ASSOCIATION, INC., IN SUBSTANTIALLY THE FORM ATTACHED, FOR THE USE OF THE ATHLETIC FIELDS AND BUILDINGS LOCATED AT 1096 LUPTON DRIVE ON A PORTION OF TAX MAP NO. 118K-A-009, FOR A TERM OF THREE (3) YEARS WITH AN OPTION TO RENEW FOR TWO (2) ADDITIONAL ONE (1) YEAR TERMS.

_____

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That the Mayor be and is hereby authorized to execute a Premises Use Agreement with Rivermont Youth Athletic Association, Inc., in substantially the form attached, for the use of the athletic fields and buildings located at 1096 Lupton Drive on a portion of Tax Map No. 118K-A-009, for a term of three (3) years with an option to renew for two (2) additional one (1) year terms.

ADOPTED: _____, 2016

/mem

City of Chattanooga

Resolution/Ordinance Request Form

Date Prepared: JULY 13, 2016

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

Brief Description of Purpose for Resolution/Ordinance: **Res./Ord. #** _____ **Council District #** 2

A RESOLUTION REQUEST AUTHORIZING THE MAYOR TO EXECUTE A PREMISES USE AGREEMENT WITH RIVERMONT YOUTH ATHLETIC ASSOCIATION, INC., IN SUBSTANTIALLY THE FORM ATTACHED, FOR THE USE OF THE ATHLETIC FIELDS AND BUILDINGS LOCATED AT 1096 LUPTON DRIVE ON A PORTION OF TAX MAP NUMBER 118K-A-009, FOR A TERM OF THREE (3) YEARS WITH AN OPTION TO RENEW FOR TWO (2) ADDITIONAL ONE (1) YEAR TERMS.

Name of Vendor/Contractor/Grant, etc.	Rivermont Youth Athletic Association	New Contract/Project? (Yes or No)	NO
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)

Prior approval for the Agreement with the Association was by Resolution 23205 on November 27, 2001.

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 STANDARD PREMISES USE AGREEMENT

1. General Terms. This Standard Premises Use Agreement ("Agreement") is entered into on the stated Effective Date between the Tenant and Landlord (collectively "Parties") for use of the athletic fields and buildings (hereafter "Premises") located at the below stated Premises Address and as more specifically described in the Legal description set forth in paragraph 1 and outlined in red on the Premises Diagram attached hereto as **Exhibit A** and incorporated herein by reference.

Effective Date	
Premises Use Term	The initial Premises Use Term extends for three (3) years from the Effective Date with an option to renew for two (2) additional one (1) year terms upon mutual agreement of the Parties and upon submission by Tenant to Landlord of the Landlord's Option to Renew standard form with thirty (30) days' advance notice.
Landlord	City of Chattanooga, a Tennessee municipal corporation
Tenant	Rivermont Youth Athletic Association, Inc., a not-for-profit corporation registered in the state of Tennessee.
Premises Address	1096 Lupton Drive, Chattanooga, Tennessee
Tax Map No.	A portion of Tax Map No. 118K-A-009
Legal Description	A portion of RIVERMONT PARK CARTER DRIVE TO TENN RIVER PB67 PG196 See also **Exhibit A** attached hereto and incorporated herein by reference.
Notice to Landlord	Questions/communication regarding property management shall be directed to: City of Chattanooga Department of Public Works, Parks Division 1250 Market Street, Suite 2100 Chattanooga TN 37402 E: amathis@chattanooga.gov P: 423-643-6163 or 423-643-5956 City of Chattanooga, General Services/Real Property 101 East 11th Street, Suite G4 Chattanooga, TN 37402 Copy to: Office of the City Attorney 100 East 11th Street, Suite 200 Chattanooga, TN 37302 (423) 643-8250

Notice to Tenant	Rivermont Youth Athletic Association, Inc. Attn: Jim McGill P.O. Box 193 Hixson, TN 37343 (423) 645-9495 jimmcgillcpa@live.com
Fair Market Rental Value Calculation	Ten thousand dollars and 00/100 ($10,000.00). FMRV is based on an estimate of 200 days (games and/or practice) and a field rental rate of fifty dollars ($50.00) per day, per field for leagues/games and fifty dollars ($50.00) per two (2) hour practice session per field.

2. Term. Tenant and the Landlord agree that the Tenant may enter and use the Premises for the Term set forth in paragraph 1.

3. Fair Market Rental Value and Payment Terms. Tenant agrees to pay annual rent in the amount of one dollar ($1.00) and fulfill certain other responsibilities as more fully described in the Management and Operations Obligations in **Exhibit B** attached hereto and incorporated herein by reference.

4. Control. In rendering the Premises to Tenant, Landlord does not relinquish the right to control the management thereof, or to enforce all the necessary and proper rules for the management in operation of the Premises outlined in this Agreement and set forth in **Exhibit B**. Landlord, its designated agents, employees and managers on duty, may enter the Premises at any time and on any occasion. Landlord reserves the right to have ejected any objectionable person or persons from the Premises, and upon the exercise of its authority, the Tenant hereby waives any right and all claims for damages against the Landlord. Tenant is prohibited from adding or removing locks without prior written approval of the Landlord.

5. Code of Conduct. Tenant has read and agrees to adhere to any and all Codes of Conduct and/or Premises Rules and Regulations that may be specific to the Premises as may currently exist or be adopted during the term of this Agreement.

6. Waste. Tenant shall commit no waste, nor suffer the same to be committed thereon, nor injure nor misuse the Premises.

7. Indemnification. Tenant shall indemnify, hold harmless, protect and defend Landlord, and its officials, employees, administrators, successors or assigns (the "Indemnified Parties") for and against any and all demands, claims, suits, damages, losses, liabilities, costs and expenses, including, but not limited to, court costs and attorney's fees (the "Indemnified Matters"), directly or indirectly, arising out of any property damage or loss, bodily injuries, sickness, disease or death, in connection with the Tenant's use of the Premises or from any violations of all laws, including, without limitation, copyright laws, by every person connected with Tenant's occupancy and use of the Premises covered by this Agreement. Tenant's indemnification obligations under this Indemnification paragraph shall apply whether the Indemnified Matters are due in part to the contributory fault or negligence of the Indemnified Parties or others; provided, however, that Tenant shall not be obligated to indemnify the Indemnified Parties for

the Indemnified Parties' respective primary negligence. Tenant's defense obligations under this Indemnification paragraph shall be with attorneys approved by Landlord. Notwithstanding anything in this Agreement to the contrary, the provisions of this Indemnification paragraph shall survive any expiration or termination of this Agreement and each Party shall remain obligated to the other Party under all provisions of this Agreement that expressly or by their nature extend beyond and survive the expiration or termination of this Agreement.

8. Insurance. Tenant agrees to obtain and keep in full force and effect the following insurance policies:
    a. General Liability. General liability insurance with a company licensed to do business in Tennessee with a minimum limit of not less than $1,000,000.00 for bodily injury, personal injury and property damage. In the event said general liability insurance contains general aggregate limit, it shall be no less than two times the per occurrence limit. The foregoing general liability insurance policy shall not contain exclusions from coverage relating to participants in any event held by Tenant on the Premises, legal liability activities or issues related to occupancy by Tenant of the Premises.
    b. Abuse and Molestation. Tenant shall maintain a policy of insurance covering physical abuse and sexual molestation with coverage of no less than $1,000,000.00 combined single limits, per occurrence and aggregate. Said coverage shall be maintained for the term of the Agreement, any optional renewals and for a period of one year following the termination or expiration of the Agreement. Said coverage must contain no sub-limits and apply to all Tenant employees, agents, contractors, and volunteers.
    c. Additional Insured. Tenant shall furnish the Landlord with a Certificate of Insurance naming the Landlord as an Additional Insured for general liability and abuse and molestation coverage and certifying that insurance heretofore required is in force and will remain in full force and effect during the term of this Agreement. The Certificate Holder shall be listed as the City of Chattanooga, General Services/Real Property, 101 East 11th Street, Suite G4, Chattanooga, Tennessee 37402. Such insurance must be on file with the Department of General Services and approved by Landlord prior to occupancy of the Premises by Tenant.

9. Law Observance. Tenant agrees that every person connected with the Tenant's occupancy and use of the Premises covered by this Agreement shall abide by, conform to and comply with all the laws of the United States of America, State of Tennessee, ordinances of the City of Chattanooga and Hamilton County, Tennessee, and the rules and regulations of the Landlord for management of the Premises. Tenant will not do or allow to be done anything on the Premises during the Term of this Agreement in violation of any such laws, ordinances, rules or regulations, and if the attention of the Tenant is called to any such violation on the part of the Tenant or any person employed by or admitted to the Premises by Tenant, shall agree to immediately desist from and correct the violation.

10. Fire and Casualty. In the event that the Premises or any part thereof shall be destroyed or damaged by fire or any other cause, or if any other casualty or unforeseen occurrence shall render the fulfillment of this Agreement by the Landlord impossible, including without limitation thereto, the requisitioning of the Premises by the United States government or any arm or instrumentality thereof, or by reason of labor disputes, this Agreement shall terminate and the Tenant shall provide the in-kind services set forth in this Agreement only up to the time of such

termination at the rate herein specified and the Tenant hereby waives any claim amount in addition thereto.

11. Responsibility for Tenant's Property. Landlord assumes no responsibility for any property placed on the Premises by Tenant, and the Landlord is hereby expressly relieved and discharged from any and all liability for any loss, injury, or damage to persons or property that may be sustained by reason of the occupancy of the Premises.

12. Defacement. Tenant shall not injure, mar, or deface the Premises and shall not cause or permit anything to be done whereby the Premises shall be in any manner injured, marred or defaced. Nor shall the Tenant drive or permit to be driven, any nails, hooks, tacks, screws or bolts, in any part of the Premises. Nor shall Tenant make or allow to be made any alteration of any kind therein or thereon, nor tape any adhesive tape or stickers at any location therein. If the Premises, during the Term of this Agreement, shall be damaged by the act, default or negligence of the Tenant, or by the Tenant's agents, employees or any persons admitted to the Premises by Tenant, Tenant shall pay to Landlord, upon demand, such sum as has been documented and shall be necessary to restore the Premises to its original condition, ordinary use and wear accepted.

13. Care of Premises. Tenant agrees to cause the Premises to be kept clean, orderly and generally cared for during the term of this Agreement. Tenant further agrees to immediately notify Landlord of damage and/or heavy wear to the premises, including all structures, lighting, storm water components and general site work.

14. Tenant Default. Tenant shall be in default under this Agreement if any of the following occur:

    a. Tenant fails to carry out the obligations described in **Exhibit B** when the same are required to be performed.

    b. Tenant or any of its officers, directors, employees or agents fails to perform or fulfill any other term, covenant or condition contained in this Agreement and Tenant fails to commence a cure thereof within five (5) business days after Tenant has been served with written notice of such default; or Tenant makes a general assignment for the benefit of creditors.

15. Landlord Default. Landlord shall be in default under this Agreement if Landlord fails to perform or fulfill any term, covenant, or condition contained in this Agreement; and Landlord fails to commence a cure thereof within five (5) business days after Landlord has been served with written notice of such default. Nothing contained herein shall be construed as excusing either party from diligently commencing or pursuing a cure within a lesser time if reasonably possible. Notwithstanding the clauses above, if the breach by Tenant or any of its officers, directors, employees or agents of such other term, covenant or condition, is such that it threatens the health, welfare or safety of any person or property, then Landlord may, in its discretion, require that such breach be cured in less than five (5) business days or immediately.

16. Termination by Reason of Default. Upon default pursuant to paragraph 15, the non-breaching party may, at its option, upon written notice or demand upon the other party, cancel and terminate this Agreement and obligations of the Parties with respect thereto.

17. Injunctive Relief. In addition to any other remedy available at law, equity, or otherwise, Landlord shall have the right to seek to enjoin any breach and to obtain specific performance of this Agreement by Tenant upon meeting its burden of proof of such breach or threatened breach, as required by applicable statute or rule of law.

18. Condition of Premises. Landlord makes no representation or warranty of any kind (express or implied) regarding the suitability of, or compliance with applicable laws by, the Premises, as maintained, for any aspect of the Tenant's intended use. Accordingly, Tenant acknowledges and agrees that it has made an adequate investigation and inspection of the Premises and its own determination regarding the suitability thereof for Tenant's intended use. **TENANT FURTHER ACKNOWLEDGES AND AGREES THAT THE PREMISES SHALL BE DELIVERED BY LANDLORD TO TENANT "AS IS," "WHERE IS," AND "WITH ANY AND ALL FAULTS," AND WITHOUT ANY REPRESENTATION OR WARRANTY OF ANY KIND (EXPRESS OR IMPLIED), INCLUDING, BUT NOT LIMITED TO, REPRESENTATIONS AND WARRANTIES AS TO THE MARKETABILITY AND FITNESS FOR USE OF ANY PARTICULAR PURPOSE, AND SHALL BE USED BY TENANT AT TENANT'S OWN RISK.** Tenant is responsible for any and all destruction of any portion of the Premises by the general public or Tenant's invitees onto the Premises during the duration of this Agreement.

19. Safety and Security. Notwithstanding anything contained in this Agreement to the contrary, Landlord undertakes no obligation whatsoever for the safety or security of any property or person, including, but not limited to, Tenant, or any of the employees, agents, representatives, participants, invitees, or attendees of Tenant for use of the Premises.

20. Return of Facility. Tenant shall return the Premises to Landlord upon the expiration or earlier termination of this Agreement in the same condition as when received and shall reimburse Landlord for any and all documented costs, expenses, charges, or fees incurred in the repair or replacement of damage to the Premises as a result of the acts or omissions of the Tenant, or the employees, agents, representatives, participants, invitees or attendees of Tenant.

21. Assignments. Neither this Agreement nor any other rights or obligations hereunder may be assigned or transferred in any manner whatsoever by Tenant without the prior written consent of City.

22. Notices. Any notice, consent or other communication given pursuant to this Agreement shall be in writing and shall be effective either (i) when delivered personally to the Party for whom intended; (ii) upon delivery by an overnight courier service that is generally recognized as reliable, and the written records maintained by the courier shall be *prima facie* evidence of delivery; or (iii) on delivery (or attempted delivery) by certified or registered mail, return receipt requested, postage prepaid as of the date shown by the return receipt, in any case addressed to such party as identified in the Notice section in paragraph 1, or as a party may designate by written notice given to the other party in accordance therewith.

23. Discretionary Matters. Any decision affecting any matter not expressly provided for in this Agreement shall rest solely within the discretion of the Landlord.

24. Surrender of Facility. Tenant agrees to quit and surrender up Premises to the Landlord at the end of the Term in the same condition as at the Effective Date of this Agreement.

25. Smoking. The Parties understand and agree that smoking is not allowed inside any building on the Premises. Any outside area designated by Tenant for smoking must be at least fifty (50) feet from the entrance of any building.

26. Attorneys' Fees and Litigation Expenses. If Tenant defaults in the provision of services or any charge for which Tenant is liable hereunder or in the performance of any obligation on the part of Tenant to be performed under this Agreement, then in such event, Tenant covenants and agrees to pay all costs and expenses, including reasonable attorneys' fees, incurred by Landlord in the enforcement of Landlord's rights hereunder.

27. Force Majeure. If any portion of the Premises is damaged by any cause whatsoever or if any other casualty or unforeseeable cause beyond the control of Landlord, including, without limitation, acts of God, fires, floods, epidemics, quarantine restrictions, terrorist acts, strikes, labor disputes, failure to pay utilities or unusually severe weather, prevents occupancy and use, or either, as granted in this Agreement, Landlord is hereby released by Tenant from any damage so caused thereby.

28. Annual Reporting Requirements; Appropriation of Funds. Tenant shall comply with all federal, state, and local laws governing annual reporting requirements of Tenant'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. During the term of this Lease, Tenant must, within ninety (90) days of the end of each fiscal year, submit to Landlord a copy of its annual audited financial report for that fiscal year. For the purposes of this Section, the amount of funds deemed appropriated to Tenant shall be based upon a fair market rental value as stated in the Fair Market Rental Value Calculation in paragraph 1. By January 1 of each year, Tenant shall submit a prioritized capital request list that includes cost estimates and perhaps any funding they have raised to assist with any requested item.

29. Audit Provisions. The term "Tenant" is used interchangeably to describe signatories to contracts, grants, and agreements with Landlord and applies to reflect the relationship with Landlord (i.e. Contractor, Licensee, Supplier, Vendor, Grant Recipient, etc.).

    a. Landlord or its assigns may audit all financial and related records, in whatever form, associated with the terms of this Agreement including timesheets, reimbursable out of pocket expenses, materials, goods, and equipment claimed by Tenant. Landlord may further audit any Tenant records to conduct performance audits (to identify waste and abuse or to determine efficiency and effectiveness of the Agreement) or to identify conflicts of interest;

    b. Tenant 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 Tenant. Documents shall be maintained by Tenant necessary to clearly reflect all work and actions taken. All such records shall be maintained in accordance with generally accepted accounting principles. Tenant, shall at its own expense, make such records available for inspection and audit (including copies and extracts of records as required) by Landlord at all reasonable times and without prior notice;

c. The obligations of this section shall be explicitly included in any subcontracts or agreements formed between Tenant and any subcontractors or suppliers of goods or services to the extent that those subcontracts or agreements relate to fulfillment of Tenant's obligations to Landlord;

d. Costs of any audits conducted under the authority of this section and not addressed elsewhere will be borne by Landlord unless the audit identifies significant findings that would benefit Landlord. Tenant shall reimburse Landlord for the total costs of an audit that identifies significant findings that would benefit Landlord; and

e. This section shall not be construed to limit, revoke, or abridge any other rights, powers, or obligations relating to audit which Landlord may have by Federal, State, or Municipal law, whether those rights, powers, or obligations are express or implied.

30. Governing Laws. This Agreement shall be governed by the laws of the State of Tennessee.

31. Entire Agreement. The Parties agree that all of the Agreement is fully set forth herein and that no oral statements or representations of any kind have been made upon which either party shall have the right to rely. This shall not limit the Landlord from imposing any reasonable additional rules or regulations which may be necessary in the best operations of the Premises.

32. Non-Discrimination. Tenant shall not discriminate against any patron, employee or invitee because of race, color, age, religion, sex, national origin, disability, or pregnancy. Further, Tenant shall take affirmative action to ensure that patrons and employees are treated without regard to their race, color, age, religion, national origin, sex, disability, or pregnancy.

33. Independent Contractor, No Partnership. For purposes of this Agreement, the Landlord and Tenant shall each be and remain an independent contractor with respect to all rights and obligations arising under this Agreement. Nothing herein contained shall make, or be construed to make, Landlord or Tenant a partner of one another, nor shall this Agreement be construed to create a partnership or joint venture between any of the Parties hereto or referred to herein. Notwithstanding, nothing in this Agreement precludes the Parties from partnering in the future and entering into a partnership agreement independent of this Agreement.

34. Waiver. The failure of any party to enforce any of the provisions of this Agreement, or any rights with respect hereto, or the failure to exercise any election provided for herein, will in no way be considered a waiver of such provisions, rights or elections, or in any way affect the validity of this Agreement. The failure of any party to enforce any of such provisions, rights or elections,

will not prejudice such party from later enforcing or exercise the same or any other provisions, rights, or elections which it may have under this Agreement.

35. Binding Agreement. This Agreement shall inure and bind to the benefit of and be binding upon all Parties hereto, their heirs, successors, and assigns.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Agreement as of the Effective Date.

Attest:	CITY OF CHATTANOOGA, TENNESSEE
	By: Name/Title: Andy Berke, Mayor

Attest	RIVERMONT YOUTH ATHLETIC ASSOCIATION, INC.
	By: Name/Title:

Exhibit A - Premises Diagram

Printed: Jul 13, 2016

Rivermont Youth Athletic Association, Inc.

Disclaimer: This map is to be used for reference only, and no other use or reliance on the same is authorized. Parcel lines are shown for reference only and are not intended for conveyances, nor is it intended to substitute for a legal survey or property abstract.

HCGIS

Exhibit B

Description of Management and Operations Obligations

Landlord Management and Operations responsibilities Landlord agrees to perform the management and operations responsibilities outlined below.		
Activity	Term	Frequency
Mow playing fields. Tenant to provide preseason, regular, postseason and tournament schedules at least one month prior to the start of each in order to facilitate mowing scheduling.	April-October	Weekly
Mow playing fields.	November-March	As needed
Repair fencing deemed by Landlord to be significantly damaged or worn. All repairs subject to availability of funds.	Year round	As needed but subject to availability of funds.
Coordinate maintenance and repairs to facilities, structures, lighting, storm water components and general site work.	Year round	As needed
Pay water and electric utility expenses	Year round	As billed
Pay water quality fees	Year round	As billed
Assist with litter and debris on the grounds outside of the playing surfaces and the hard surfaces directly around playing fields.	Year round	As needed
Provide receptacles for recycling collection. City recycling program will monitor and service receptacles.	Year round	Weekly or as needed
Select fields to renovate at each site. Renovations to include adding or removing infield mix, tilling, regrading, and rolling. Other turf maintenance may also be performed between seasons.	In between seasons.	Annually.
Tenant Obligations In exchange for leased space Tenant agrees to fulfill the obligations described below.		
Activity	Term	Frequency

Schedule and supervise the recreation and related activities at the Facility.	Year round	As needed
Purchase supplies for, clean and operate concession stands.	Year round	As needed
Remove litter from facility grounds.	Year round	Weekly (minimum) but as needed.
Service refuse receptacles. Provide and service all dumpsters.	Year round	Weekly (minimum) but as needed.
Replace liners in refuse receptacles.	Year round	Weekly (minimum) but as needed.
Monitor City recycling receptacles. Tenet will ensure only recyclable materials are disposed in receptacles.	Year round	Weekly (minimum) but as needed.
Provide routine infield maintenance, including but not limited to dragging and/or raking, edging, batter's box and pitching mound repair, lip maintenance. Addition of infield conditioner as needed. See Field Maintenance Guidelines attached hereto as **Exhibit C**.	April through October	Weekly
Provide routine infield maintenance, including but not limited to dragging and/or raking, edging, batter's box and pitching mound repair, lip maintenance. Addition of infield conditioner as needed. See **Exhibit C.**	November through March	Monthly
Line playing fields before scheduled games.	April through October	No more than five (5) days before game
Monitor wear and tear to grounds, facilities, structures, stormwater components and general site work. Tenant to provide to Landlord notification in writing of any issues that need to be addressed.	Year round	As needed
Make adjustments to any fence gates that fail to swing freely.	Year round	As needed
Purchase supplies and stock all restrooms.	Year round	As needed
Clean restrooms.	Year round	Weekly (minimum) but as needed.

Manage Concessions.	Year round	As needed