

RESOLUTION NO. 30254

A RESOLUTION AUTHORIZING THE CITY OF CHATTANOOGA AND THE SHEPHERD YOUTH AND FAMILY DEVELOPMENT CENTER TO ACCEPT A DONATION FROM AARP TENNESSEE AND ENTER INTO A PARTNERSHIP AGREEMENT, IN SUBSTANTIALLY THE FORM ATTACHED, WITH FITLOT OUTDOOR FITNESS PARKS TO RECEIVE A FULLY FUNDED AARP FITLOT OUTDOOR FITNESS PARK AND OF WHICH WILL INCLUDE EQUIPMENT, CONSTRUCTION, AND INSTALLATION COSTS ASSOCIATED THEREWITH, FOR A TOTAL COMBINED APPROXIMATE AMOUNT OF ONE HUNDRED SEVENTY THOUSAND THIRTY DOLLARS (\$170,030.00) AND AS OUTLINED MORE FULLY IN THE ATTACHED DONATION LETTER.

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BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That the City of Chattanooga and the Shepherd Youth and Family Development Center are hereby authorized to accept a donation from AARP Tennessee and enter into a Partnership Agreement, in substantially the form attached, with FitLot Outdoor Fitness Parks to receive a fully funded AARP FitLot Outdoor Fitness Park and of which will include equipment, construction, and installation costs associated therewith, for a total combined approximate amount of \$170,030.00 and as outlined more fully in the attached donation letter.

ADOPTED: March 03, 2020

/mem

## FITLOT PARTNERSHIP AGREEMENT

FitLot, Inc. (referred to herein as FitLot) is pleased that CITY OF CHATTANOOGA, a Tennessee municipal corporation (referred to herein as “Community Partner”) has agreed to collaborate with FitLot (collectively, the “Parties”) on the construction of a FitLot outdoor fitness park at the CITY OF CHATTANOOGA SHEPHERD YOUTH AND FAMILY DEVELOPMENT CENTER located at 2124 Shepherd Road in Chattanooga, Tennessee (the “Project”) sponsored by AARP. This FitLot Partnership Agreement (referred to herein as the “Agreement”), dated as of the date signed by the City’s authorized signatory (the “Effective Date”), sets forth the Parties obligations in connection with the Project and certain matters on which the Parties have agreed.

1. **Obligations and Rights of the Community Partner.** The Community Partner shall work with FitLot and AARP to plan and build the Project. By executing this contract, the Community Partner is agreeing to each of the following obligations, in each case meeting the requirements provided by FitLot:

A. **Project Site.**

- (i) **Ownership:** Prior to the execution of this Agreement, the Community Partner shall provide FitLot with sufficient proof of land ownership or approval from the property owner for the Project. The Community Partner is the owner of the outdoor fitness park in its entirety, for the lifetime of the park, including the equipment and/or safety surfacing purchased by FitLot. A diagram/pictorial representation of the outdoor fitness park is attached hereto as **Exhibit A**.
- (ii) **Permits:** The Community Partner agrees to assist FitLot in obtaining all necessary permits and licenses regarding the installation, possession, and use of the Project in compliance with applicable laws and regulations.
- (iii) **Preparation:** The Community Partner will use its best efforts to make sure that the site is safe for volunteers, including children. This responsibility includes, without limitation, conducting up to two utility checks as reasonably requested by FitLot with the appropriate utility companies with the first test being completed within two weeks of the Agreement being signed. All utility check documentation shall be provided to the FitLot project manager upon completion.
- (iv) **Maintenance:** Maintenance of the Project and supervision of its use is the responsibility of the Community Partner. The Community Partner, as owner of the property involved in the Project, agrees to collaborate with FitLot during the Project planning process to develop a maintenance program for the Project and agrees to maintain the Project before and after the build to ensure, to the extent reasonably possible, a safe and attractive space. A copy of the written maintenance program for the Project is attached hereto as **Exhibit B**. In furtherance of the foregoing, in the event any fitness park included in the Project is no longer permitted to be located at its original site of construction

or such site is no longer owned or controlled by the Community Partner, the Community Partner shall promptly notify FitLot and shall, at the Community Partner's sole cost and expense, take such steps as may be reasonable, given the circumstances at the time and the condition of the Project's equipment and surfacing, to either (i) make a reasonable attempt to obtain the agreement of the subsequent owner of the original site to continue to make the Project available in the same manner contemplated as of the completion of the Project and to maintain (or permit the Community Partner to maintain) the Project in accordance with the maintenance program, or (ii) to promptly and safely relocate the Project's equipment (including any permanent signage and other fixtures) to an alternate site owned or controlled by the Community Partner. If the original site is no longer owned or controlled by the Community Partner and there is no alternate site owned or controlled by the Community Partner available, the Community Partner will remain responsible for the Project equipment and its disposition, and the manner and details of such disposition shall be at the sole discretion of the Community Partner.

- B. Promotion. The Community Partner will seek prior approval from FitLot and/or the AARP for any materials that reference the Project or Program or contain the logos or other intellectual property of FitLot and/or AARP, including, without limitation, press releases, fliers and promotional materials. The Community Partner shall collaborate with FitLot and AARP to secure media coverage. The Community Partner agrees to mention FitLot and AARP on all promotional material subject to the obligations set forth in Section 2 herein.
- C. Signage. The Community Partner shall allow the names and logos of FitLot and AARP to be displayed on permanent Project signage, which shall be substantially in the form provided to the Community Partner during the application process and mounted in a mutually agreed location on poles.
- D. Logo placement on shade canopy and surfacing. In coordination with Section 2.A. (Sponsorship Benefits), Community Partner agrees to maintain the AARP branded surfacing and canopy for at least the duration of the manufacturer's warranty of 10 years. After 10 years, the Community Partner has the option of replacing the canopy and/or surfacing with an unbranded canopy and/or surfacing of the original color. If Community Partner chooses not to replace the AARP branded canopy and flooring after their respective warranties expire, the Community Partner shall remain obligated to maintain those materials in good repair.
- E. Warranty. The fitness equipment and the safety-surfacing related to the Project may be covered under warranty by the applicable manufacturers; a copy of such warranties will be provided upon completion of the project. The Community Partner acknowledges that any warranties and/or guarantees on any equipment or material are subject to the respective manufacturer's terms thereof, and the Community Partner agrees to look solely to such manufacturers for any such

warranty and/or guarantee. Community Partner agrees that neither FitLot nor AARP, nor any of their respective parents, subsidiaries, affiliates, directors, officers, managers, partners, members, shareholders, employees, agents or representatives, have made nor are in any manner responsible or liable for any representation, warranty or guarantee, express or implied, in fact or in law, relative to any equipment or material, including, without limitation, its quality, mechanical condition or fitness for a particular purpose.

- F. **Insurance.** The Community Partner represents that it is self-insured for both workers' compensation and general liability lines of coverage and is responsible for providing coverage for its own employees and against liability for bodily injury, death, and property damage that may arise out of or be based on the use of the Project at Shepherd Youth and Family Development Center located at 2124 Shepherd Road in Chattanooga, Tennessee, from 30 (thirty) calendar days before the completion of the Project and for the duration of the Community Partner's ownership of the FitLot park.. This self-insurance shall be primary over any other insurance covering FitLot and AARP.

FitLot shall purchase and maintain during the life of this Agreement, insurance coverage which will satisfactorily insure FitLot against claims and liabilities which arise because of the execution of this Agreement, with the minimum insurance coverage as follows:

- (i.) **Commercial General Liability Insurance**, with a limit of \$1,000,000 for each occurrence and \$2,000,000 in the general aggregate.
- (ii.) **Automobile Liability Insurance**, with a limit of \$1,000,000 for each accident, combined single limit for bodily injury and property damage.
- (iii.) **Worker's Compensation Insurance and Employer's Liability Insurance**, in accordance with statutory requirements, with a limit of \$500,000 for each accident.
- (iv.) **Professional Liability Insurance**, with a limit of \$1,000,000 for each claim and aggregate.

FitLot shall not commence work under this Agreement until a Certificate of Insurance has been submitted to the Community Partners showing proof that FitLot has obtained the necessary insurance coverage.

If any of the above cited policies expire during the life of this Agreement, it is FitLot's responsibility to forward renewal Certificates within ten (10) days after the renewal date containing all the aforementioned insurance provisions. Certificates must specifically cite the following provision:

- i. All policies, except Professional Liability Insurance, if applicable, waives rights of recovery (subrogation) against City of Chattanooga, its agents, representatives, officers, directors, officials and employees for any claims arising out of work or services performed by FitLot under this Agreement.

G. Liability. Any liability of Community Partner to FitLot for any claims, damages, losses, or costs arising out of or related to acts performed by Community Partner under this Agreement shall be governed by the Tennessee Governmental Tort Liability Act, T.C.A. § 29-20-101, *et seq.* This provision shall survive any termination or expiration of this Agreement.

H. No Responsibility. Given that AARP is solely funding the Project and that FitLot is solely coordinating/facilitating the Project, FitLot and AARP shall not be responsible nor liable for claims or damages arising from any breach of this Agreement or use of the outdoor fitness park. This provision shall survive any termination or expiration of this Agreement.

**2. Rights of AARP.**

A. Sponsorship Benefits. In recognition of the AARP's contribution, AARP shall receive logo placement on any recognition materials developed for the Project, including project signage, banners, press releases, web site, newsletter stories, and flyers provided AARP consents with written permission in each instance.

**3. Obligations and Rights of FitLot.**

A. Fitness Park Build. FitLot shall provide technical and organizational leadership and guidance for the Project and shall:

- (i) Coordinate AARP's participation, provide fitness park design, planning meetings, and work with local installers to procure and install the equipment and materials in a timely manner.

- (ii) Manage construction logistics for the Project, coordinate site preparation activities with the Community Partner, and inventory equipment and materials, and assure that the necessary tools and materials are available.

- (iii) Provide educational and promotional materials to support the Project, nametags and other general supplies.

B. Inspection. FitLot will have a Certified Playground Safety Inspector review the fitness park structure at the conclusion of the installation to ensure that the structure is safe and built to all manufacturers standards and guidelines.

C. Grant Funds. FitLot will administer grant program funds in connection with the Project in the amount of Eleven Thousand Thirty Dollars and 00/100

(\$11,030.00) that have been awarded to Community Partner to be used to hire local fitness professionals to activate the park with free community fitness classes for the first three years after the completion of the fitness park. [Confirm disbursement details.]

D. Promotion. FitLot will provide proposed promotional materials relating to the Project for FitLot and AARP's review and approval, which approval shall not be unreasonably withheld or delayed. These promotional materials will be consistent with those benefits set forth in the corporate benefits package.

4. Accounting and Audits. FitLot shall maintain all pertinent financial and accounting records pertaining to this Agreement in accordance with generally accepted accounting principles and other procedures

5. General Provisions.

A. Donation. FitLot hereby acknowledges and agrees that the Project will be a donation to the Community Partner. The donation shall include any and all fitness equipment, materials, supplies, structures, installation, construction, site work, and labor relating to and/or arising out of the Project. Neither FitLot nor AARP shall receive any compensation, whether monetary or otherwise, from Community Partner for any equipment, materials, supplies, structures, installation, construction, site work, and labor relating to and/or arising out of the Project.

B. Approval of Governing Body. Fit Lot hereby acknowledges and agrees that the donation of the Project to the City of Chattanooga shall be approved by the Chattanooga City Council prior to either of the parties performing any obligations or acts under this Agreement. In the event that the Chattanooga City Council approves the donation of the Project, the related Resolution shall be attached to this Agreement as **Exhibit C**.

C. Term. The term of the Agreement shall commence on the Effective Date of the Agreement and remain in effect until the completed installation of the outdoor fitness park. Provisions relating to the ongoing maintenance of and other obligations related to the Project shall survive any termination or expiration of this Agreement, including but not limited to the following provisions: Maintenance, Logo Placement on Shade Canopy and Surfacing, Warranty, Insurance, and No Responsibility.

D. Termination for Breach. Any party may terminate this Agreement upon 15 days notice upon one or more of the following:

(a) any party's violation of any federal, state, or local law or regulation.

(b) any party's breach of any of the terms or conditions of this Agreement that has not been cured within 30 days written notice of such breach.

- E. Termination for Convenience. The Community Partner reserves the right to terminate this Agreement at its sole convenience for any reason with sixty (60) days written notice to FitLot prior to work beginning on the Project site. In the event of termination, FitLot must immediately stop all work and immediately cause any of its suppliers or subcontractors to cease any further work.
- F. Force Majeure: If any Party is delayed or prevented from fulfilling any of its obligations hereunder by any cause beyond its reasonable control, including, without limitation, to Acts of God, acts or omissions of civil or military authorities of a state or nation (including, without limitation, legal enactments, government orders or regulations), fire, labor dispute, lockout, strike, breakdown of origination or transmission facilities, interruption or preemption due to an event of overriding public interest or importance, flood, riot, act of terrorism (including, without, limitation safety or security measures relating thereto), national emergency, war (whether declared or undeclared), delay of transportation or any other force majeure or cause beyond the reasonable control of the party affected thereby, or inability due to any of the aforementioned or similar causes to obtain necessary labor, materials or facilities, such party shall not be liable hereunder for such delay or failure and any Party may terminate this Agreement if another is unable to perform any obligation hereunder for a period longer than thirty calendar days due to such force majeure event.
- G. Authority. Each signatory below represents that s/he has all requisite power and authority, including any necessary approval by its governing body, to execute and deliver this Agreement on behalf of the respective Parties, and to perform its obligations hereunder.
- H. Assignment and Transfer. This Agreement may not be assigned or transferred by either party without the prior written consent of the other Parties.
- I. Modification. This Agreement may be altered, modified or amended only by a written document signed by all Parties.
- J. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be an original and all of which, when taken together, shall constitute the same agreement and may be delivered by facsimile or electronic mail transmission with the same force and effect as if originally executed copies hereof were delivered.
- K. Notice. Any notices required or permitted to be given hereunder shall be sent by certified or registered United States mail, postage prepaid, by personal delivery addressed to the applicable party or by facsimile or electronic mail transmission (the receipt of which is confirmed) at the address set forth under such Parties signature below.
- L. Mediation. Claims, disputes, or other matters in question between the parties to this Agreement arising out of or relating to this Agreement, or breach thereof, shall be subject to mediation in Chattanooga, Tennessee, in accordance with the following provisions:

- a. The mediation shall be conducted by a mediator mutually acceptable to both parties.
  - b. The parties agree to share equally in the expense of the mediation.
  - c. Such mediation may include FitLot or any other person or entity who may be affected by the subject matter of the dispute.
  - d. Unless the parties agree otherwise, mediation shall be a condition precedent to the exercise of any legal remedy other than a proceeding seeking an immediate injunction or restraining order to protect the rights of a party pending litigation. Notwithstanding the issuance of an injunction or restraining order, or the refusal of a court to issue such an order, the dispute shall continue to be subject to mediation.
- M. Entire Agreement. This Agreement contains the entire agreement of the parties, and there are no other promises or conditions in any other agreement whether oral or written concerning the subject matter of this Agreement. This Agreement supersedes any prior written or oral agreement between the parties.
- N. Successors and Assigns. Community Partner and FitLot each binds itself and its directors, officers, partners, successors, executors, administrators, assigns, and legal representatives to the other party of this Agreement and to the directors, officers, partners, successors, executors, administrators, assigns, and legal representatives of such other party in respect to all provisions of this Agreement.
- O. Severability. If any provision of this Agreement will be held to be invalid or unenforceable for any reason, the remaining provision will continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision will be deemed to be written, construed, and enforced as so limited.
- P. Governing Law. This Agreement shall be construed in accordance with the laws of the State of Tennessee.
- Q. Waiver of Contractual Right. The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of the party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

**SIGNATURES ON FOLLOWING PAGE**

By executing this FitLot Partnership Agreement where indicated below, both FitLot and the Community Partner agrees, as of the Effective Date, to be legally bound by all of the terms and provisions set forth above.

**Chattanooga, Tennessee**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Name: Lurone Jennings  
Title: Administrator, Department of Youth and Family Development

Notices to the City shall be sent to:  
Department of Youth and Family Development  
Attn: Lurone Jennings or Jason McKinney  
501 W. 12<sup>th</sup> Street  
Chattanooga, TN 37402  
Tel.: (423) 643-6402 or (423) 643-6886  
Email: ljennings@chattanooga.gov or jmckinney@chattanooga.gov

**FitLot**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Name: Adam Mejerson  
Title: Executive Director  
Address: 4035 Washington Avenue, New Orleans, LA 70125  
Tel.: 504-264-1568  
Email: adam@fitlot.org