

RESOLUTION NO. 30189

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A LEASE AGREEMENT, IN SUBSTANTIALLY THE FORM ATTACHED, WITH THE HAMILTON COUNTY, TENNESSEE, BOARD OF EDUCATION FOR THE USE OF A PORTION OF TAX PARCEL NO. 168I-C-032, FOR THE OPERATION OF THE CEDAR HILL HEAD START/EARLY HEAD START PROGRAM LOCATED AT 4701 DIVINE STREET FOR A TERM OF ONE (1) YEAR WITH THE OPTION TO RENEW FOR THREE (3) ADDITIONAL TERMS OF ONE (1) YEAR EACH FOR THE AMOUNT OF ONE DOLLAR (\$1.00) PER TERM.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, that it is hereby authorizing the Mayor to enter into a Lease Agreement, in substantially the form attached, with the Hamilton County, Tennessee, Board of Education for the use of a portion of Tax Parcel No. 168I-C-032, for the operation of the Cedar Hill Head Start/Early Head Start Program located at 4701 Divine Street for a term of one (1) year with the option to renew for three (3) additional terms of one (1) year each for the amount of \$1.00 per term.

ADOPTED: January 14, 2020

/mem

LEASE AGREEMENT

This Lease Agreement (this "Lease" or the "Lease") is made and entered into on January 1, 2020 (the "Effective Date"), by and between the Hamilton County, Tennessee, Board of Education ("Lessor") and the City of Chattanooga, Tennessee, a municipal corporation ("Lessee").

RECITALS

WHEREAS, Lessee desires to lease facilities from Lessor to operate the Head Start/Early Head Start Program; and

WHEREAS, Lessor has the appropriate authority to, and hereby agrees to, lease to Lessee that certain building containing approximately 16,501 square feet located at 4701 Divine Avenue, Chattanooga, Tennessee; and

WHEREAS, the Lessee proposes to make certain improvements to the Leased Premises.

NOW, THEREFORE, in consideration of the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, Lessor and Lessee mutually agree as follows:

SECTION 1. Consideration; Leased Premises. Subject to the terms and conditions herein, Lessor hereby leases to Lessee, and Lessee accepts from Lessor, the premises described in **Exhibit A**, attached hereto and incorporated by this reference (the "Leased Premises"). In consideration of the valuable service provided to the citizens of Hamilton County by the City of Chattanooga, Department of Youth and Family Development Head Start/Early Head Start Program and in consideration of the desire of Hamilton County Schools to provide continuing education assistance to its citizens, Lessor does lease to Lessee, the structure and surrounding grounds currently used to house the Cedar Hill Head Start Center bearing the address of 4701 Divine Avenue, Chattanooga, Tennessee 37407.

SECTION 2. Lessee's Payment Consideration. The Lessee agrees to pay a lease payment for the Initial Term (defined below) of the Lease in the amount of One and No/100 Dollars (\$1.00). If the Lease is renewed as provided for in SECTION 3., Lessee shall pay an additional lease payment for each Renewal Term (defined below) in the amount of One and No/100 Dollars (\$1.00).

SECTION 3. Term. The initial term of this Lease shall commence on January 1, 2020 and shall end on December 31, 2020 (the "Initial Term"). Upon mutual written consent of the parties, Lessee shall have the right to renew this Lease for three (3) additional terms of one (1) year each immediately following the conclusion of the Initial Term (each, a "Renewal Term").

SECTION 4. Use of Premises. Lessee shall use the Leased Premises to operate the Head Start/Early Head Start Program (collectively, the "Program") in accordance with all city, county, state, and federal laws.

SECTION 5. Improvements to the Leased Premises. Lessee shall make all future necessary structural changes and improvements to the building and grounds to continue Lessee's

use and occupancy and all repairs or maintenance necessary to comply with federal, state or local laws regulating childcare subject to Lessee's budgetary constraints. All improvements made by Lessee to the Leased Premises, other than personal property, shall, upon completion, immediately become the property of Lessor and shall remain with the Leased Premises upon the expiration or termination of this Lease. Notwithstanding the foregoing, any movable structures, playground equipment, improvements, alterations, or additions on the surrounding grounds purchased during the Initial Term or any Renewal Term of this Lease by Lessee may be removed by Lessee at any time within six (6) months of the date of expiration or termination of this Lease. Any personal property not removed by Lessee, then, upon the expiration or termination of this Lease, any such personal property remaining at the Leased Premises shall inure to Lessor's benefit and shall become a part of the Leased Premises and shall belong to Lessor absolutely thereafter.

SECTION 6. Specific Improvements to the Leased Premises. During the Initial Term, Lessee shall make the improvements to the Leased Premises as more particularly described on **Exhibit B** (the "Improvements"). On or prior to the Effective Date, Lessee shall submit to Lessor a plan for Lessee's Improvements (Lessee's Plan") containing a detailed description of the Improvements to be made by Lessee. The Lessee's Plan shall be subject to Lessor's written approval, which the Lessor agrees not unreasonably to withhold. Lessor's approval of Lessee's Plan shall in no event, unless expressly set forth in such approval, be deemed to create any obligations on the part of the Lessor to do any work or make the Improvements as set forth in **Exhibit B** or to authorize Lessee to make any further additions, improvements, or alterations to the Leased Premises, except as may be required by law. Lessor shall not be liable for the cost of the Improvements made by Lessee.

SECTION 7. Quiet Possession. The Lessor covenants to keep the Lessee in quiet possession of the Leased Premises during the term of this Lease.

SECTION 8. Termination and Holding Over. Upon termination of this Lease at the expiration of the Initial Term hereof or any Renewal Term, Lessee shall surrender the Leased Premises to Lessor in as good condition as received, ordinary wear and tear and damage by fire or other casualty excepted. Lessee covenants to Lessor that it shall vacate the Leased Premises on or before thirty-one (31) days following the expiration of the term hereof or any extension thereof including removal of all personnel and property.

SECTION 9. Insurance. Lessee is self-insured and does not carry or maintain commercial general liability insurance. A copy of the Lessee's Certificate of Self-Insurance is attached as **Exhibit C**. Lessor agrees to provide fire insurance on the building.

SECTION 10. Operational Costs; Maintenance. Lessee agrees to be responsible for all operational costs of the Program, including, but not limited to, costs of employees, utilities, materials and supplies, and equipment. Lessee shall be responsible for all daily facility care to both the buildings and the grounds of the Leased Premises. Lessee shall provide minor maintenance and repairs that can be performed by maintenance employees of the Program. Such maintenance and repairs shall comply with all applicable governmental building and installation codes.

SECTION 11. Utility Services and Water Quality Fees. Any applications and connections for necessary utility services on the Leased Premises shall be made in the name of Lessee only. Lessee shall be solely liable for utility charges as they become due, including, but not limited to, those for water, gas, electricity, cable, internet and telephone. Lessee shall also be responsible for the payment of water quality fees charged to the Leased Premises.

SECTION 12. Termination by Lessor. The occurrence of any of the following acts shall constitute an immediate, material, non-curable default by Lessee:

- a. Abandonment of the Leased Premises, except for causes of *force majeure* (i.e. acts of God, strikes, civil disturbances, wars, explosions, or acts beyond the reasonable control of Lessee); and
- b. Use of the Leased Premises in any manner other than use that is directly related to the Use of the Premises as set forth in Section 1. of this Lease.

SECTION 13. Sale of Leased Premises. In the event Lessor desires to sell the Leased Premises and terminate this Lease, it must give written notice at least nine (9) months prior to the proposed termination date. In the event the Lease is terminated early by Lessor, Lessor shall pay to Lessee the costs of the Improvements based upon a proportion of (i) the amount of time which has passed since the alterations or improvements were completed; and (ii) the amount of time remaining on the Lease at the time the alterations or Improvements were completed and shall allow Lessee to remove any movable structures, playground equipment, etc. as set forth in Section 5 above.

SECTION 14. Termination by Lessee. Lessee shall have the right to terminate this Lease Agreement for the following reasons:

- a. Loss of government funding. Notice of loss of government funding by Lessee shall be given to Lessor, in writing, as soon as practical after notice is received by Lessee. In the event Lessee exercises its right to terminate this Lease due to loss of government funding, Lessor shall not be obligated to pay the costs of Improvements on the Leased Premises otherwise required under Section 5; or
- b. Lessee gives nine (9) months' written notice of termination to Lessor.

SECTION 15. Force Majeure. The parties 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 the parties 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.

SECTION 16. Miscellaneous Provisions.

(a) Waiver. Any waiver by the parties of any default or breach of any one or more of the terms, conditions, or covenants of this Lease 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 Lease. No delay, failure, or omission of Lessor to reenter 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.

(b) Entire Agreement. This Lease Agreement constitutes the entire agreement between the parties pertaining to this Lease Agreement and supersedes all prior and contemporaneous agreements, representations, and understandings. No supplement, modification, or amendments of this Lease Agreement shall be binding unless executed in writing by the parties.

(c) Applicable Law. This Lease Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Tennessee.

(d) Severability. If any provision of this Lease 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.

(e) Sublease, Assignment, or Transfer. Lessee shall not sublet, assign or transfer this Lease or any interests therein to anyone without the express written permission of Lessor. Further, neither this Lease nor any interest herein shall be subject to transfer by attachment, execution, proceedings in insolvency or bankruptcy, or receivership, unless a receivership is sought by Lessor.

(f) 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, to the addresses and parties as follows:

Lessor: Hamilton County Department of Education
Attn: Director of Auxiliary Services
3074 Hickory Valley Road
Chattanooga, Tennessee 37421

A copy to: D. Scott Bennett, Esq.
Flatiron Building
Suite 300
Chattanooga, Tennessee 37402

Lessee: City of Chattanooga
Real Property of ECD
1001 Lindsay Street
Chattanooga, Tennessee 37402

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

IN WITNESS WHEREOF, Lessor and Lessee have executed this Lease as of the day and year set forth above.

LESSOR:

HAMILTON COUNTY, TENNESSEE,
BOARD OF EDUCATION

By: _____

Printed Name: _____

Title: _____

LESSEE:

CITY OF CHATTANOOGA, TENNESSEE

By: _____

ANDY BERKE, *Mayor*

STATE OF TENNESSEE :
:
COUNTY OF HAMILTON :

Before me, the undersigned Notary Public for the state and county mentioned above, personally appeared _____, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence) and who, upon oath, acknowledged that he/she is the _____ of HAMILTON COUNTY, TENNESSEE, BOARD OF EDUCATION and that he/she as such _____, being authorized to do so, executed the foregoing instrument for the purpose therein contained by signing the name of the organization by himself/herself as _____.

Witness my hand and seal, at office in, this ___ day of _____, 2020.

Notary Public

My Commission Expires:

STATE OF TENNESSEE :
:
COUNTY OF HAMILTON :

Before me, the undersigned Notary Public for the state and county mentioned above, personally appeared Andy Berke, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence) and who, upon oath, acknowledged that he is the Mayor of the CITY OF CHATTANOOGA and that he as such Mayor, being authorized to do so, executed the foregoing instrument for the purpose therein contained by signing the name of the organization by himself as Mayor.

Witness my hand and seal, at office in, this ___ day of _____, 2020.

Notary Public

My Commission Expires:



Legend
Parcels

Chattanooga



Portion of Parcel 1681-C-032

0 100.00 200.00 Feet



NAD_1983_StatePlane_Tennessee_FIPS_4100_Feet
© Latitude Geographics Group Ltd.



Disclaimer: This map is to be used for reference only, and no other use or reliance on the same is authorized. This map was automatically generated using HCGIS Mapping System. 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.

Exhibit “B”

Head Start at Cedar Hill

Stabilize peeling paint - \$12,000

In order to maintain a safe environment, all paint in child and adult occupied spaces must be stabilized.

Asbestos abatement - \$33,000

In order to maintain a safe and compliant environment, all asbestos that might be found through environmental toxin assessments must be abated.

Roots in sewer -\$1,500

In order to maintain property sewer function, roots will be removed from sewer lines and regular maintenance will be performed.

Camera upgrades with accompanying network - \$60,000

To maintain a safe environment.



City of Chattanooga
Employee Benefits Division

CERTIFICATE OF SELF-INSURANCE

This is to certify that the City of Chattanooga Government is a self-insurer in accordance with the Tennessee Governmental Tort Liability Act.

The funded Self-Insurance Plan is established under the provisions of the Tennessee Governmental Tort Liability Act, T.C.A. § 29-20-403, et. seq., which establishes the limits of liability for governmental entities in the State of Tennessee. For all claims against a self-insuring governmental entity, the Act establishes a maximum limit of liability of Three Hundred Thousand (\$300,000.00) Dollars for bodily injury or death of any one (1) person in any one (1) accident, occurrence or act, and Seven Hundred Thousand (\$700,000.00) Dollars for bodily injury or death of all persons in any one (1) accident, occurrence or act, and One Hundred Thousand (\$100,000) Dollars for injury or destruction of property of others in any one (1) accident, occurrence or act. The provisions of the above limits shall apply to any action arising on or after July 1, 2007.

By: Madeline Green
Madeline Green
Director of Risk Management and Insurance