

RESOLUTION NO. 32420

A RESOLUTION AUTHORIZING THE ADMINISTRATOR FOR THE DEPARTMENT OF ECONOMIC DEVELOPMENT TO ENTER INTO A FIRST AMENDMENT TO AMENDED AND RESTATED AGREEMENT WITH MIRACLE LEAGUE OF CHATTANOOGA, INC., IN SUBSTANTIALLY THE FORM ATTACHED, FOR THE CLARIFICATION OF SPECIFIC RESPONSIBILITIES AS SET FORTH IN THE FIRST AMENDMENT TO AMENDED AND RESTATED AGREEMENT.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That it is hereby authorizing the Administrator for the Department of Economic Development to enter into a First Amendment to Amended and Restated Agreement with Miracle League of Chattanooga, Inc., in substantially the form attached, for the clarification of specific responsibilities as set forth in the First Amendment to Amended and Restated Agreement.

ADOPTED: March 11, 2025

/mem

FIRST AMENDMENT TO AMENDED AND RESTATED AGREEMENT

This FIRST AMENDMENT TO AMENDED AND RESTATE AGREEMENT (the "Amendment") is made and entered into effective as of _____, 2025, by and between the CITY OF CHATTANOOGA, a political subdivision of the State of Tennessee (the "City"), and MIRACLE LEAGUE OF CHATTANOOGA, INC., a Tennessee nonprofit corporation (the "League").

W I T N E S S E T H :

WHEREAS, the City and the League (collectively referred to herein as the "Parties") entered into that certain Amended and Restated Agreement dated April 12, 2017 (the "Agreement"); and

WHEREAS, the Parties have completed, undertaken, or performed certain duties pursuant to the Agreement, and certain provisions of the Agreement are no longer applicable or have changed in substance; and

WHEREAS, the Parties are desirous of amending and restating the Agreement.

NOW, THEREFORE, for and in consideration of the mutual terms, covenants, and conditions herein, the receipt and sufficiency of which are acknowledged by each party hereto, the Parties, intending to be legally bound, covenant and agree as follows:

1. Confirming Prior Donation of Specialized Facilities. The League previously donated to the City the Specific Use Facilities, and hereby ratifies and affirms that donation.

2. Maintenance, Repair, and Replacement. Paragraph 7.c of the Agreement is deleted in its entirety and replaced with the following:

c. The City shall, throughout the Term, at the City's sole cost and expense, pay for and supply to the League Improvements supplies, janitorial and trash services, and such other services as are consistent with those services provided to other athletic fields at Warner Park. The League may elect to provide or obtain, at the League's option and expense, any additional or alternative services the League may deem necessary or appropriate. The City shall bear all costs relating to repairs, maintenance, and replacement of the Property and the League Improvements in order to keep the Property and the League Improvements in a reasonable state of repair for the uses contemplated by this Agreement, specifically including replacement of the surfaces of the Specific Use Facilities at least every 10 years (or sooner if reasonably necessary, recommended by a third-party professional, or mutually agreed by the parties).

3. Remedies/Recoupment Right. Paragraph 7.d of the Agreement is hereby deleted in its entirety and replaced with the following:

In the event the League notices any maintenance, repair, or replacement issues that need to be made to the League Improvements, the League should submit a work order request to report the issue through the City's 311 Service Center. In addition to submitting a work order request through 311, the League shall notify the City's Director of Recreation, in writing, that a work order request has been submitted. Upon receiving the work order request, the City will address the maintenance, repair, or replacement issue. While the maintenance, repair, or replacement is being conducted on the League Improvements, the City will make adjustments, as needed, to ensure that the League can continue to use the League Improvements in a safe manner. Such adjustments may include, but not be limited to, temporarily relocating the League programming to another location while the maintenance, repair, or replacement is being performed. Furthermore, such adjustments shall be at the sole discretion of the City. While the maintenance, repair, or replacement is underway, the City will make every effort to impose little to no disruption to League programming.

4. Insurance. Section 8 of the Agreement is deleted in its entirety and replaced with the following:

a. The League shall, at all times during the Term of this Agreement and during any Renewal Term, and at the League's sole cost and expense, obtain and keep in force (or cause its agent to obtain and keep in force) general public liability insurance against claims for personal injury, death, or property damage occurring on the Property. The insurance required by this clause shall not be less than Two Million Dollars (\$2,000,000) per occurrence and Three Million Dollars (\$3,000,000) in the aggregate. Such insurance policy shall name The City as an additional insured. Additionally, the League shall provide (or cause its agent to provide) Sexual Abuse and Molestation liability insurance with policy limits of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate. The League shall obtain and maintain (or cause to be obtained and maintained) said policy during the term of this Agreement and for one (1) year following the termination or expiration of this Agreement. A certificate of all insurance shall be delivered to the City contemporaneously with League's execution and delivery of this Agreement.

b. The League shall indemnify City and save City harmless from and against any and all claims, actions, damages, liability and expenses (including, but not limited to, court costs, costs of defense and reasonable attorney's fees) in connection with the continued use of League Improvements during the Term of this Agreement and any

Renewal Term, which are occasioned primarily by any act or omission of the League or the League's sublessee or assignee. The provisions of this Paragraph 8.b shall survive the expiration or sooner termination of this Agreement.

c. Subject to the provisions of T.C.A. sections 29-20-101 *et seq.*, City shall defend and, if found liable, be responsible for paying damages arising from third party claims, suits, liabilities and judgments for personal injuries or damage to the Property primarily caused by any activities conducted by City on the Property. The provisions of this Paragraph 8.c shall survive the expiration or sooner termination of this Agreement.

d. The City shall, at all times during the Term of this Agreement and during any Renewal Term, and at the City's sole cost and expense, obtain and keep in force all risk property insurance on the Property and the League Improvements. The insurance required by this clause shall not be less than the replacement cost of all League Improvements and shall name the League as an additional insured. The City shall send the League a certificate of insurance on an annual basis, evidencing the coverage required by this Section.

5. Construction Requirements. The Parties acknowledge that the construction requirements referenced in Paragraph 9 of the Agreement are fully completed.

6. Destruction, Damage or Condemnation. Paragraph 13 of the Agreement is deleted in its entirety and replaced with the following:

If all or any portion of the Property shall be damaged by fire or other casualty or taken under power of eminent domain or rendered unusable for the League's uses (as set forth above) by reason of a governmental order or decree, the City shall diligently repair and restore the Property and the League Improvements to substantially the same condition they were in prior to such damage or destruction, and the insurance proceeds received from the insurance coverage required under this Agreement shall be used for such purpose to the extent available.

7. Remedies. Paragraphs 16.a of the Agreement is deleted in its entirety and replaced with the following:

a. In the event the League is in substantial breach of this Agreement (as set forth in Section 15, above), after notice to the League by the City specifically setting forth the nature of such breach, and after the expiration of 30 days from the date of such notice (or such additional reasonable time as is reasonably required) without the League having substantially cured such breach (and in addition to any other remedies provided elsewhere in this Agreement), the City, at its option and after such notice and cure periods

have expired, upon additional notice or demand from the City, may, in addition to all other rights and remedies provided in this Agreement or otherwise at law or in equity, terminate this Agreement.

8. Notices. The addresses for notices to the Parties are hereby updated as follows:

If to City: City of Chattanooga
c/o Chattanooga Department
of Parks and Outdoors
200 River Street
Chattanooga, TN 37405
Attn: Administrator

With a copy to: City Attorney's Office
100 East 11th Street – Suite 200
Chattanooga, TN 37402

AND

City of Chattanooga
Real Property Office
101 E. 11th Street, Suite G-18
Chattanooga, TN 37402

If to the League: Miracle League of Chattanooga
P.O. Box 5814
Chattanooga, TN 37406

With a copy to: Chambliss, Bahner & Stophel, P.C.
605 Chestnut Street, Suite 1700
Chattanooga, TN 37450
Attention: Kirby W. Yost

9. Ratification and Reaffirmation. Except as otherwise expressly provided in this Amendment, the Agreement remains in full force and effect, and all of the terms and provisions of the Agreement, as modified by this Amendment, are hereby ratified and reaffirmed by the City and the League.

10. Conflict. In the event of a conflict between the terms and provisions of this First Amendment and the terms and provisions of the Agreement, the terms and provisions of this First Amendment shall control in all events.

B. Capitalized Terms; Counterparts. Capitalized terms not defined herein shall have the meaning given to them in the Agreement. This Amendment may be executed in two or more counterparts, each of which shall be deemed to be an original. Execution and delivery of this Amendment by delivery of a facsimile or .pdf copy bearing the facsimile or .pdf signature of a

party shall constitute a valid and binding execution and delivery of this Amendment by such party. Such facsimile or .pdf copies shall constitute enforceable original documents.

[Signature Page Following]

IN WITNESS WHEREOF, the parties have signed and delivered this Amendment to Management Agreement, effective as of the date first written above.

CITY:

CITY OF CHATTANOOGA

By: _____
RICHARD J. BEELAND
Administrator of Economic Development

LEAGUE:

MIRACLE LEAGUE OF CHATTANOOGA, INC.

By: _____
Name: _____
Title: _____