

10-R-0751

(Do Not Write Above This Line)

A RESOLUTION BY  
COMMUNITY  
DEVELOPMENT/HUMAN  
RESOURCES COMMITTEE

A RESOLUTION AUTHORIZING  
THE MAYOR, ON BEHALF OF  
THE CITY, TO RENEW AND  
AMEND THE MEMORANDUM OF  
UNDERSTANDING WITH THE  
NORTH ATLANTA SWIM  
ASSOCIATION, INC., FOR THE  
PURPOSE OF OPERATING THE  
CHASTAIN PARK SWIMMING  
POOL; AND FOR OTHER  
PURPOSES.

ADOPTED BY

SUBSTITUTE MAR 2 1 2011

COUNCIL

- CONSENT REFER
- REGULAR REPORT REFER
- ADVERTISE & REFER
- 1st ADOPT 2nd READ & REFER
- PERSONAL PAPER REFER

Date Referred \_\_\_\_\_  
 Referred To: \_\_\_\_\_  
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Committee \_\_\_\_\_  
 Date \_\_\_\_\_  
 Chair \_\_\_\_\_  
 Referred To \_\_\_\_\_

First Reading

Committee CO/HR  
 Date 4/27/10  
 Chair \_\_\_\_\_  
 Action \_\_\_\_\_  
 Fav, Adv, Hold (see rev. side) \_\_\_\_\_  
 Other \_\_\_\_\_

Members 5/11/10 (H)

6/15/10 (H)  
6/29/10 (H)  
 Refer To 8/11/10 (H)

Committee CO/HR  
 Date 3/15/10  
 Chair \_\_\_\_\_  
 Action \_\_\_\_\_  
 Fav, Adv, Hold (see rev. side) \_\_\_\_\_  
 Other Subst.

Members [Signature]  
 Refer To [Signature]

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Committee \_\_\_\_\_  
 Date \_\_\_\_\_  
 Chair \_\_\_\_\_  
 Action \_\_\_\_\_  
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Members \_\_\_\_\_

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 Other \_\_\_\_\_

Members \_\_\_\_\_

Refer To \_\_\_\_\_

- FINAL COUNCIL ACTION
- 2nd
  - 1st & 2nd
  - 3rd
  - Consent
  - V Vote
  - RC Vote

CERTIFIED

CERTIFIED  
 MAR 2 1 2011

ATLANTA CITY COUNCIL PRESIDENT

[Signature]

CERTIFIED  
 MAR 2 1 2011

[Signature]  
MUNICIPAL CLERK

MAYOR'S ACTION

APPROVED

MAR 3 0 2011

WITHOUT SIGNATURE  
BY OPERATION OF LAW



**A SUBSTITUTE RESOLUTION BY  
COMMUNITY DEVELOPMENT/  
HUMAN RESOURCES COMMITTEE**

**10-R-0751**

**A RESOLUTION AUTHORIZING THE MAYOR, ON BEHALF OF THE CITY, TO ENTER A MEMORANDUM OF UNDERSTANDING WITH THE CHASTAIN PARK ATHLETIC CLUB FOR THE PURPOSE OF OPERATING THE CHASTAIN PARK SWIMMING POOL; AND FOR OTHER PURPOSES.**

**WHEREAS**, the North Atlanta Swim Association, Inc., (“NASA”) has leased and operated the Chastain Park Swimming Pool and grounds (the “Pool”) since 1992; and

**WHEREAS**, the City of Atlanta (“City”) entered into a Memorandum of Understanding (“Agreement”) with NASA that is dated July 28, 2005, and that was authorized by a resolution adopted by the Atlanta City Council on May 16, 2005, and approved by the Mayor on May 23, 2005; and

**WHEREAS**, the Agreement has a term of five years with one additional two-year renewal option upon the mutual agreement between both parties; and

**WHEREAS**, the initial five year term expired July 27, 2010. Through three letter agreements, the parties extended the term of the Agreement through and including March 27, 2011 or until an Agreement between the parties is executed, whichever is earlier; and

**WHEREAS**, NASA has changed its name to Chastain Park Athletic Club (“CPAC”), though nothing other than the Association’s name has been modified; and

**WHEREAS**, CPAC is changing certain terms of the Agreement, and the City’s Department of Parks, Recreation and Cultural Affairs (“DPRCA”) recommends that the City enter a new Memorandum of Understanding (“Memorandum of Understanding” or “MOU”) with CPAC rather than renewing the current Agreement;

**WHEREAS**, the DPRCA Commissioner recommends that the MOU have a term of five years with one five-year renewal option contingent upon approval by both the City and CPAC. This term length will facilitate CPAC’s ability to raise monetary donations for the Pool’s improvement; and

**WHEREAS**, the new terms of the MOU will enhance CPAC’s ability to better serve the needs of the public, and enhance and grow the Pool.



**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA, AS FOLLOWS:**

**Section 1.**

The Mayor, on behalf of the City, is hereby authorized to enter a Memorandum of Understanding with CPAC that is substantially similar to Exhibit A hereto, and at a minimum shall do the following:

- 1) The MOU shall have a term of five years with one five-year renewal option, contingent upon the approval of the City and CPAC.
- 2) CPAC may continue to have the Pool open after Labor Day, and may open the pool prior to Memorial Day, provided that it pays for all utilities and other costs arising from said extended season.
- 3) CPAC may close the pool during its CPAC hours for swim meets, special events, and any other purpose. During special events when the entire pool is rented for a private purpose and is not open to the general public, CPAC may allow for alcohol to be sold, distributed, or consumed, provided that CPAC complies with all applicable laws and permit requirements.
- 4) CPAC may use the Pool facilities for non-pool purposes year round.
- 5) The fees and hours for the Pool shall be as set forth on the Exhibit B hereto, entitled "Chastain Park Athletic Club (CPAC) at Chastain Park Swimming Pool". CPAC may modify its association fees contingent upon written approval from the Commissioner of the Department of Parks, Recreation and Cultural Affairs.

**Section 2.**

To the extent that CPAC is donating time and resources to the city, the City hereby accepts the donation.

**Section 3.**

The City Attorney or her designee is hereby directed to prepare the MOU for execution by the Mayor.

**Section 4.**

The MOU shall not become binding upon the City, and the City shall incur neither obligation nor liability thereunder, until the same has been approved by the City Attorney or her designee as to form, executed by the Mayor, attested to by the Municipal Clerk, and delivered to CPAC.

A true copy,

*Rhonda Daughin Johnson*  
Municipal Clerk

ADOPTED by the Atlanta City Council  
RETURNED WITHOUT SIGNATURE OF THE MAYOR  
APPROVED as per City Charter Section 2-403

MAR 21, 2011

MAR 30, 2011



- (D) Sell individual or group swimming lessons or other classes and programs. Rates shall be commercially reasonable and subject to the approval of the Commissioner, where such approval shall not to be unreasonably, withheld, conditioned, or delayed.
- (E) Operate food and beverage concessions or subcontract the same in accordance with the requirements of this MOU.
- (F) Close the Pool as needed for maintenance, repair, and/or safety instruction, provided that any closure in excess of one day shall be contingent upon prior written consent from the Commissioner.
- (G) Close the Pool during Public Hours and Free Swim for CPAC swim meets, provided that said closure is pre-approved in writing by the Commissioner.
- (H) Hold special events or private functions during Public Hours and Free Swim, including but not limited to aquatic sports events, provided that said events: 1) shall not preclude public access to and use of the Pool during Public Hours or Free Swim; 2) shall not interfere with the City's use of the Pool for Camp Best Friends in accordance with Section B(6)(a) hereof, and/or other City event about which CPAC received written notice prior to approving the date for the special event; 3) shall receive the advance written approval of the Commissioner, where such approval shall not be unreasonably withheld, conditioned, or delayed; and 4) shall receive any and all other approval required pursuant to any other law or ordinance applicable to the Pool.
- (I) Close the Pool to the public during CPAC Hours for any reason consistent with the terms of this MOU.
- (J) Rent the Pool for special events or functions during CPAC Hours, provided that said rental receives the advance written approval of the Commissioner, where such approval shall not be unreasonably withheld, conditioned, or delayed. During those times when the pool is rented or used for a private adult-only event during CPAC Hours and is not open to the general public, CPAC may allow for alcohol to be served, sold, and/or consumed, provided that CPAC receives any and all approvals and permits required pursuant to all applicable laws. CPAC shall be liable for any and all damage and injuries that arise from a Pool rental, or from a special event/function during CPAC Hours, other than for City special events/functions.
- (K) CPAC may use all portions of the Pool Facilities other than the Pool itself, including without limitation the pool deck, grounds, and lower level of the Chastain Park Pool Bathhouse, for private



functions year-round, including outside the Pool Season and the Extended Season (as defined below). CPAC shall be liable for any and all damage and injuries that arise from of a private function at the Pool Facilities, other than City functions.

- (L) Sell aquatics, sports, wellness, and safety-related materials and services and goods at the Pool.
  - (M) Receive and expend all proceeds derived from all fees and sales as authorized herein.
- ii. The CPAC Membership fees shall not be exceptional or exclusionary so as to discourage the general public from joining. The City has approved the CPAC Membership fees set forth on Exhibit B hereto. CPAC may charge guests of members a commercially reasonable fee during "Association Fee" times. Should CPAC wish to make alterations to its fees or fee structure, such changes shall require advance review and approval by the Commissioner, who shall evaluate whether the new fees comply with this paragraph. In both instances, the Commissioner's approval shall not be unreasonably withheld, conditioned, or delayed if the requirements of this paragraph have been met.
  - iii. CPAC shall honor all current and future City-issued season swim passes during Public Hours. CPAC swim passes shall be valid at the Pool at all times or as determined by CPAC.
  - iv. CPAC shall, upon not less than seven (7) days prior notification by the City, provide free admission to participants in the City's programmed swim activities, including but not limited to Camp Best Friends, provided that the admission and use of the Pool by the participants shall occur during Public Hours and/or Free Swim. For all City programmed swim activities other than Camp Best Friends, the City shall endeavor to schedule the number and scope of such activities with CPAC so that CPAC members and the public are not discouraged from using the Pool during and by reason of the frequency of and/or unreasonable number of participants in such activities, as determined by the Commissioner.
  - v. CPAC shall use the revenue earned from operating and managing the Pool as follows:
    - (A) CPAC shall utilize earned revenues to pay for the operation of the Pool, including without limitation the costs set forth in Section A(2) below. In the event there are excess funds that are not required for the operation of the Pool, CPAC shall use such excess funds for capital improvements to the Pool (which shall be subject to City's approval as provided in Section D(1)), Pool



maintenance costs, or for the establishment of a sufficient Pool reserve fund.

(B) In the event that CPAC determines that such excess funds, or any portion thereof, are not required for Pool operations, capital improvements or maintenance, CPAC may use said funds for Pool-related functions, operational expenses for Chastain Park, and programming expenses for Chastain Park, all as deemed appropriate by CPAC and as approved by the Commissioner (or by the City Council if deemed necessary by the Commissioner). Where approval is required by the Commissioner only, her/his approval shall not be unreasonably withheld, conditioned, or delayed. In no event shall these excess funds be utilized to pay for bonuses or other costs not authorized by this Section A(1)(b)(v).

vi. CPAC shall post all fees in prominent public view.

**c. Days and Hours of Pool Operation**

- i. Subject to subsection (ii) below, CPAC shall operate the Pool for public and private access and use of the Pool itself beginning no later than the Friday preceding Memorial Day, and beginning no earlier than May 1, through and ending no earlier than Labor Day and continuing no later than September 30 (hereinafter referred to as the "Pool Season").
- ii. Subsection (i) above notwithstanding, CPAC may operate the Pool for public and private use prior to and after the Pool Season ("Extended Season"), provided that CPAC pays for all utility and other costs arising directly from the Extended Season.
- iii. With the exception of Pool use for special events/private functions and swim team practices and meets, where CPAC is opening and operating the Pool for private use, it must also open and operate the Pool for public use. The schedule of public use during times other than the Pool Season shall be determined by mutual agreement of CPAC and the Commissioner, provided that no private use shall be permitted until the hours are agreed upon in writing by the Commissioner.
- iv. The hours of operation set forth on Exhibit B may be modified for week days during the Pool Season when the Atlanta Public Schools (hereinafter "APS") are in session, provided that said revised hours are approved in writing by the Commissioner.



- v. CPAC shall have full discretion in determining the Pool's hours of operation during the Extended Season, provided that said hours begin no earlier than 5:00 a.m. and end no later than 11:00 p.m.
- vi. CPAC shall have the right to allow access and use of the Pool to only CPAC members after 5:00 PM daily and between 10:00 AM and Noon on weekends ("Association Fee Hours" or "CPAC Hours"). CPAC shall have full discretion in determining if and when the Pool is open during CPAC Hours. When CPAC chooses to allow only CPAC members at the Pool, CPAC shall close the Pool no earlier than 4:30 PM, and shall empty the entire Pool area, including the pool itself and the Pool deck, of all persons by no later than 4:45 PM or fifteen minutes after the Pool closure. CPAC may restart Pool operations for CPAC members only no earlier than 5:00 PM or thirty minutes after the Pool closure.
- vii. CPAC shall have the right to designate "Free Swim" periods at its discretion during the Pool Season when APS is not in session, provided that Free Swim shall not start prior to 10:00 am and must last for no less than 2.75 uninterrupted hours each weekday.
- viii. For those Pool Season week days when APS is in session, Free Swim shall last for no less than 1.5 hours, and shall begin no earlier than 3:00 PM. The Free Swim period shall be posted in writing at the entrance to the Pool. On said weekdays, CPAC shall implement the City's policy regarding Pool access for people under the age of twenty-one (21) years (other than accompanied Pre-School children) during school hours.
- ix. CPAC shall post all hours of operation in prominent public view.
- x. Any decisions regarding hours of operation, including without limitation decisions made by CPAC in its sole discretion, may be modified for reasons of public safety as reasonably determined by the Chief of the Atlanta Police Department and/or the Chief of the Atlanta Fire Rescue Department.

**d. Pool Staffing.**

- i. CPAC shall make certain that all Pool lifeguards and the Pool manager (hereinafter referred to collectively as the "Water Safety Staff") are certified in "Lifeguard Training", "C-PRO", "Cardiopulmonary Resuscitation", and "First Aid".
- ii. CPAC shall make certain that all of the Pool staff, including but not limited to the Water Safety Staff, are trained and certified on the basic operation and use of an Automatic External Defibrillator.



State of Georgia  
County of Fulton

## **Chastain Park Pool Services Memorandum of Understanding**

This Memorandum of Understanding (hereinafter the "MOU") is made and entered into this \_\_\_\_ day of March \_\_\_, 2011, by and between the City of Atlanta, a municipal corporation of the State of Georgia (hereinafter the "City") and The Chastain Park Athletic Club, Inc., a 501(c)(3) Georgia Non-Profit Corporation (hereinafter "CPAC") (hereinafter, the City and CPAC may be referred to collectively as the "Parties" or singularly as the "Party").

### **Preamble**

The North Atlanta Swim Association and City entered into a MOU on July 28, 2005 (hereinafter the "Agreement") to set forth the terms of their public-private partnership for the staffing and operating of the Chastain Park Pool and grounds (hereinafter the "Pool"). The North Atlanta Swim Association has subsequently changed its name to The Chastain Park Athletic Club, Inc., though no other changes to the corporation were made. The Pool is owned by the City and is a public recreational facility. It is bordered by Elliott Galloway Way (formerly Pool Road), West Wieuca Road and the Galloway School property line. The "Pool" includes the pool, the pool deck and stands, the grounds around the pool and improvements and facilities on those grounds, the concession stand, and the lower level of the Chastain Park Pool Bathhouse which includes the restrooms and changing areas. The "Pool" does not include the upper level of the Chastain Park Pool Bathhouse, which is leased by the City to The Galloway Schools, Inc., nor the back rooms portion of the lower level of the Chastain Park Pool Bathhouse also currently leased by the City to The Galloway Schools, Inc., which are currently used as storage facilities by The Galloway School, Inc.

The term of the Agreement was five years, with one two-year MOU option upon mutual consent of the Parties. The Agreement provided that CPAC shall assist the City in the management and operation of the Pool by providing and paying for such things as management services and lifeguards, while honoring City requirements such as free swim periods, and access for the Camp Best Friends program.

The Parties now wish to enter into a Memorandum of Understanding ("MOU") that is similar to the Agreement, but which includes certain changes as well. Through this MOU and in accordance with the terms and conditions herein, CPAC will assist the City in the management and operation of the Pool by providing and paying for management services, certain maintenance and repair services as provided herein, lifeguards, and expanded Pool hours. In its management and operation of the Pool, CPAC shall honor all existing requirements of the City as described herein including, but not limited to: setting forth a period of each weekday during the "Pool Season" (as defined below in section A(1)(c)(i)) when people may use the Pool without paying an entrance or usage fee ("Free Swim"), providing access for the Camp Best Friends Summer Program, and complying with other guidelines



required by the City. CPAC shall have the authority to enter into a management contract with a licensed, insured and experienced (as reasonably determined by the Commissioner of the Department of Parks, Recreation and Cultural Affairs (the "Commissioner") based upon industry standards) pool manager or management company to oversee the day-to-day operation of the Pool, including maintaining water quality and providing or securing certified lifeguards at staffing levels required by the City. CPAC shall be solely responsible for paying for the manager or management company out of Pool membership dues, daily fees, and other sources as set forth in this MOU.

**WITNESSETH:**

**WHEREAS**, the City owns the Pool located in Chastain Park; and

**WHEREAS**, CPAC wishes to operate and manage the Pool at no cost to the City except as expressly provided for in this MOU, in a manner generally consistent with the operation and management of the Garden Hills Pool and Piedmont Park Pool, both of which are run by private entities; and

**WHEREAS**, allowing CPAC to operate and manage the Pool will free City resources, staff, and funds for other activities of the Department of Parks, Recreation and Cultural Affairs ("DPRCA"), and therefore is in the best interest of the City; and

**WHEREAS**, this MOU was authorized by Resolution 10-R-0751, adopted by the Atlanta City Council on March 21, 2011, and approved by the Mayor on \_\_\_\_\_, 2011, and a copy of said Resolution is attached hereto marked Exhibit "A".

**NOW, THEREFORE**, in consideration of the mutual covenants between the Parties hereto and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and CPAC agree as follows:

**A. CPAC Responsibilities**

**1. Management and Operations.** CPAC shall, at its sole cost and expense, and, subject to the terms and conditions hereinafter prescribed, staff, manage and operate the Pool (or subcontract such staffing, management and operation, as described and pursuant to the provisions set forth in subsection a below) in a safe, clean, healthy and orderly manner so as to offer a high quality and affordable recreational experience to the citizens and residents of the City.

**a. CPAC's Right to Subcontract.** CPAC may elect to subcontract the staffing and/or operation of the Pool to a licensed and certified company or manager specializing in the staffing and operation of public swimming pools, subject to approval by the Commissioner, where such approval shall not be unreasonably withheld, conditioned or delayed.



- i. CPAC shall incorporate a complete copy of this MOU by attachment to each and every subcontract for the provision of staffing and operations services (hereinafter, entities to whom CPAC subcontracts Pool staffing and operations services shall be referred to as “Subcontractor” or “Subcontractors”) and shall ensure that the Subcontractor shall satisfy each and every required insurance coverage and limit, and every other material obligation set forth in this MOU, including but not limited to certification and coursework requirements for water safety staff.
  - ii. CPAC shall provide the City with a full copy of each and every subcontract that it has entered into for the staffing and / or operation of the Pool at least thirty days prior to opening the Pool for public use.
  - iii. CPAC shall not transfer, assign or subcontract any other interest or responsibility under this MOU, except as may already be expressly provided for herein, without prior written consent of the Commissioner, where such consent shall not be unreasonably withheld, conditioned, or delayed.
- b. Pool Fees and Revenue.** CPAC shall use commercially reasonable efforts to raise all funds necessary for the operation of the Pool. CPAC shall use commercially reasonable efforts to operate the Pool in such a manner that the Pool shall become self-supporting from earned revenues during the term of the MOU.
- i. CPAC shall be permitted to perform the following:
    - (A) Charge Pool admission or usage fees during “Public Hours” as indicated on Exhibit B hereto (“Public Hours”), at a cost that is established by the Atlanta Code of Ordinances.
    - (B) Sell City annual passes or memberships for Pool access during Public Hours at a cost that is established by the Atlanta Code of Ordinances. The City annual pass will provide the owner thereof access to the Pool in accordance with the terms of this MOU. The City annual pass will also provide the owner thereof with access to all other City-owned pools in the same manner as the City’s Summer Pass.
    - (C) Sell CPAC Memberships for the “Extended Hour” and “Association Fee” times set forth on Exhibit B hereto (“CPAC Hours”) and at the rates set forth on Exhibit B hereto, provided that CPAC membership is not denied to any Atlanta citizen based upon where s/he lives or works. CPAC may modify its membership fees for CPAC Hours, however, modifications shall be contingent upon prior written consent from the Commissioner, where such consent shall not be unreasonably withheld, conditioned, or delayed.



- iii. CPAC shall make certain that the Pool manager is a "Certified Pool Operator", meaning that s/he has successfully completed all Certified Pool Operator coursework, and that all of the coursework was provided by a licensed program of instruction (i.e. American Red Cross, Ellis and Associates or the National Swimming Pool Foundation, etc.). During the Pool hours of operation, if the Pool manager is not on site, at least one member of the Pool staff on site must be a "Certified Pool Operator", as defined above.
- iv. CPAC shall provide written proof of the required staff certifications and course attendance of each member of the Pool' staff to the DPRCA Aquatics Program Manager (hereinafter referred to as the "Aquatics Manager") at least ten (10) days prior to the beginning of the Pool Season each year. For those members of the Pool staff added after this ten (10) day deadline, CPAC shall provide written proof of staff certifications and course attendance to the Aquatics Manager prior to allowing the potential employee to provide water safety services at the Pool.
- v. The City reserves the right to verify any and all certification and course information and to disallow any potential Pool staff member who does not meet the certification and course requirements set forth in subsections i, ii, and iii above. CPAC shall not open or otherwise allow the Pool to be operated until proof of the certifications and coursework of each of the Pool staff required to meet with minimums outlined in the City's "Aquatics Manual" has been made to the full and complete satisfaction of the City. In the event that the City provides training(s) for any of said certification and/or course requirements, the City shall notify CPAC of the training(s), and the Pool staff shall be permitted to attend. Where a member of the Pool staff attends a training, CPAC shall be required to pay, or cause to be paid, any and all fees associated with her/his attending the course(s) and/or receiving the certification(s). Such payment must be received prior to the beginning of the training.
- vi. CPAC, and its Subcontractor if applicable, guarantee that at all times that the Pool is open for public and/or private use, any person who is operating, staffing, and/or managing the Pool shall possess the requisite certifications and coursework for doing the job that s/he is performing, as is described in subsections (d)(i), (ii), and (iii) above.
- vii. CPAC shall ensure that the required staffing levels for the Pool shall meet or exceed State, County and City minimums as outlined in the City's "Aquatics Manual". CPAC acknowledges that it has received and is in possession of the City's Aquatics Manual.



**Pool Standards.**

- i. CPAC shall schedule the Pool's required Operational Certification Inspection by the appropriate County Health Department, and the inspection must occur at least two weeks prior to the beginning of the Pool Season. CPAC shall notify the City within one business day of arranging the inspection, to enable the City's Swimming Pool Maintenance personnel to be in attendance during said Operational Certification Inspection.
- ii. CPAC shall keep and maintain the Pool, and any and all improvements and equipment at the Pool, in good and sanitary order and repair, and in good, safe, and presentable condition, consistent with such condition as of the date hereof and the highest forms of business practices for the industry. This responsibility shall include but not be limited to cutting the grass located inside the Pool fence, collecting trash located within ten feet of the outside of the Pool fence, and placing the collected trash in a City-provided trash receptacle. In addition, where Pool maintenance or repair is required, CPAC shall be responsible for individual Pool repairs costing \$1,000 or less, and in the aggregate no more than \$20,000 per year. For individual repairs costing in excess of \$1,000, or in the aggregate in excess of \$20,000 per year, CPAC shall be responsible for notifying the Department of Parks, Recreation and Cultural Affairs Customer Service Call Center (404.546.6813), either by phone or in writing of the need for the repairs and indicating whether CPAC is requesting the City to perform the work . The responsibility and cost of such repairs will be governed by
- iii. CPAC agrees that after the Pool has been filled with water before the Pool Season, it shall have the responsibility to maintain the Pool in a clean, sanitary condition pursuant to the maintenance provisions of Section (ii) above and Section (B)(1) below, and shall monitor the filtration and chemical purifier systems to ensure that the Pool's water environment remains stable and free of bacteria, fungi, algae and microbial aquatic growth.
- iv. CPAC shall comply with City's sanitation procedures as contained in the Aquatics Manual, including but not limited to sanitizing the Pool deck, the portions of the bathhouse which it is authorized to use hereunder, and restroom facilities on a daily basis.
- v. CPAC shall be responsible for supplying and shall maintain a full complement of life-saving equipment near the Pool at all times, including but not limited to ring buoys, rescue tubes, and one standard-issue first aid kit, and an Automatic External Defibrillator.
- vi. CPAC shall be responsible for supplying and maintaining a full complement of lifeguard chairs and umbrellas.



- vii. CPAC shall grant to the City unrestricted access to the Pool for operational inspections, repair, maintenance and any other purposes that the City deems proper, provided that the City does not unreasonably interfere with CPAC Hours activities. .
- viii. CPAC shall, at the conclusion of the Swim Season, or at the conclusion of the extended season (as described in section A(1)(c)(ii) above) if applicable, winterize the Pool so as to protect internal plumbing and filtration systems from freeze damage.

**f. Security.**

- i. CPAC shall staff and maintain security at the Pool as deemed necessary by the Commissioner after consultation with CPAC, or by CPAC with approval by the Commissioner, such approval not to be unreasonably withheld, conditioned, or delayed. At a minimum, said security responsibility shall be in effect at all times when the Pool is filled with water, unless and until such time that CPAC installs a Pool cover.
- ii. CPAC shall keep the Pool fence, bathhouse (the portions for which it is responsible hereunder), restrooms and utility room locked and secured at all times when the Pool is closed or otherwise not open to the public.
- iii. CPAC shall provide security between the hours of 10:00 AM through 9:00 PM during the Pool Season on days when the Pool is closed to the public, as deemed necessary by the Commissioner after consultation with CPAC, or by CPAC subject to the approval of the Commissioner, such approval not to be unreasonably withheld, conditioned, or delayed.
- iv. If conditions and situations dictate, as shall be determined by CPAC after consultation with the City, CPAC shall utilize the services of a security guard for the purpose of protecting against trespass during times that the Pool is closed, other than the times listed in subsection iii above
- v. CPAC shall not change or re-key any locks to the Pool, bathhouse, restrooms, utility room, or fence unless it provides prior written notice to the Commissioner. In the event that locks are lost, stolen or vandalized, CPAC shall notify the Commissioner who shall promptly provide replacements or arrange emergency repairs, as appropriate. CPAC shall be responsible for the replacement cost of such locks and/or the costs of the needed repairs where the circumstances leading to the need for the repair and/or replacement arise as described in section (B)(1)(c) of this MOU.



**g. Consumable Supplies.**

CPAC shall, at its sole cost and expense, provide all chemicals and consumable supplies necessary to operate and maintain the Pool, including but not limited to: (1) Chlorine; and (2) Soda Ash.

**2. Payment of Costs and Expenses.** CPAC shall pay the full and complete cost and expense of managing and operating the Pool, except where otherwise indicated in this MOU. These costs and expenses shall include but not be limited to telephone costs, staff salaries and benefits, the cost of any and all Subcontractors or service providers as CPAC may elect to employ, and each and every other expense or cost arising from the management and operation of the Pool for and during the term of the MOU.

**3. Accounting**

- a. CPAC shall maintain records of all accounts, receipts, expenditures, cash reserves, program activities and attendance figures which shall accurately reflect the detailed financial and programmatic operations of the Pool, including but not limited to the operation of concession sales. These records shall be made available to the City during the normal business hours of CPAC, upon the City's request.
- b. CPAC shall deliver to the Commissioner a monthly report of attendance and revenue, including but not limited to revenue derived from concession sales.
- c. CPAC shall provide an Annual Financial Report (consisting of an Income Statement and Balance Sheet) and a copy of CPAC's annual last-filed federal tax return to the Commissioner for each calendar year of the MOU not later than March 1 of each year, and sixty days after the date of the expiration of this MOU. The Annual Financial Report shall present CPAC's receipts, expenditures, assets and liabilities, and all revenue generated at and by the Pool during the most recent Pool Season and shall be approved by CPAC's Board of Directors. The Annual Financial Report for the operation of the Pool may be included by CPAC as part of the Annual Financial Report CPAC provides to the City with respect to its operation of all facilities governed by the terms of the Operating MOU. The City reserves the right to require the certification of the Annual Financial Report by a Certified Public Accountant should the City have questions or concerns about the report, if applicable.
- d. CPAC shall provide an Annual Performance Report to the Commissioner for each calendar year of the MOU not later than sixty (60) days after the end of each Pool Season. The Performance Report shall present the Pool's attendance numbers and any programs or special events sponsored by CPAC.



#### **4. Emergencies**

- a. CPAC shall use the Emergency 911 number to summon Police, Fire or Emergency Medical personnel should events or situations dictate. After summoning emergency personnel, CPAC shall immediately notify the Aquatics Manager.
- b. CPAC shall contact the City's Customer Service Call Center (404.546.6813) to report system malfunctions, break-ins and any other damage to the any part of the Pool that requires emergency repair service. The City shall undertake emergency repairs to the Pool in a prompt and timely manner, subject however, to City's backlog of emergency repairs required at other City-owned swimming pools. The City's procedure shall be to respond to emergency calls in the order by which the emergency requests are received.
- c. CPAC shall provide the Commissioner and the Aquatics Program Manager with the names and telephone numbers of no less than three (3) CPAC officials who can be contacted by the City at night and on weekends and holidays in the event that emergencies arise at the Pool.
- d. CPAC shall comply with City's emergency procedures as contained in the Aquatics Manual.

### **B. Additional City and CPAC Responsibilities**

#### **1. Maintenance and Repair**

- a. CPAC shall maintain the Pool in proper operating condition, and shall bear the maintenance costs, including capital repair costs, associated therewith as hereinafter provided. These maintenance responsibilities shall include but not be limited to maintenance and repair of the Pool, the Pool Bathhouse (only portions thereof which CPAC is authorized to use under this MOU), concession stand, restrooms, utility spaces, fence, gates, interior and exterior lights, doors, windows, plumbing, electrical system, filtration and chemical purification systems, pumps, motors, fans and blowers. In effecting such maintenance responsibilities, CPAC shall be responsible for individual Pool repairs (which for purposes of this MOU shall include replacement of Pool items) and maintenance costing \$1,000 or less, and in the aggregate not more than \$20,000 per year, though CPAC shall not allow any individual repair or maintenance to worsen to such a degree that the expense exceeds \$1,000 total.
- b. Section B(1)(a) notwithstanding, the City shall charge, and CPAC shall pay the City, the full cost of labor, parts and materials for Pool repairs (except to the extent that the need for the work arises from the intentional misconduct or negligence of the City, its employees, officials, and/or agents) if the City



reasonably determines that the damage or actions necessitating the repair either: 1) resulted from mismanagement, negligence, gross negligence, or intentional misconduct by CPAC, CPAC's officers, employees, agents, contractor/subcontractor, or volunteers; or 2) arose from Pool rentals or special events as set forth in sections (A)(1)(H), (J), and/or (K) above. The City shall provide CPAC written notice and a reasonable period of time to accomplish any repairs before the City undertakes the work.

- c. Section B(1)(a) notwithstanding, the City shall charge, and CPAC shall pay the City, the full cost of labor, parts and materials for repairs of plumbing, filtration and purification components in the event that the City determines that damages resulted from the improper operation of said systems by CPAC, CPAC's employees or CPAC's Subcontractor, but the City shall provide CPAC written notice and a reasonable period of time to accomplish any repairs before the City undertakes the work.
- d. Where the cost of an individual repair or maintenance exceeds \$1,000 or the aggregate annual cost of repairs and maintenance exceeds \$20,000, and the need for repair does not arise pursuant to Section B(1)(b) or B(1)(c) above, CPAC may consult with the Commissioner and determine what if any financial resources the City may contribute to the project at issue. Except as otherwise provided in this MOU, in no event shall the City be required to assist with the payment of any maintenance or repair. Where the City does not have adequate financial resources to perform the necessary service (as reasonably determined by the Commissioner), and where the Pool's net revenues are not sufficient to pay the cost of the needed repair or maintenance, and where CPAC in its reasonable judgment does not have other financial resources available to perform the needed repair or maintenance, CPAC shall have the right to terminate this MOU without cause by written notice to the City, in which case CPAC shall have no responsibility or liability with respect to the needed repair or maintenance unless otherwise required by Section F of this MOU. If the Commissioner reasonably determines that failure to perform the repair or maintenance results in a material risk to the safety of people and/or property, the Commissioner, at her/his sole discretion, may terminate this MOU without cause by written notice to CPAC. Said termination shall be at no cost to the City, and all rights and obligations of the parties hereto shall terminate except for the obligations set forth in Section F of this MOU.
- e. For individual repairs or maintenance costing in excess of \$1,000, or in the aggregate in excess of \$20,000 per year, where the Commissioner has approved the City's performance or payment of any portion of the repair or maintenance, CPAC shall be responsible for notifying the DPRCA Customer Service Call Center, either in writing or by phone (404.546.6813), of the need for the repairs and maintenance and indicating whether CPAC is requesting the City to perform and/or pay for all or a portion of the work. In the event that CPAC has more than three repair and/or maintenance requests at one time, CPAC must submit those requests in writing to the Customer Service Call Center. Upon the



Commissioner's written consent, the City will respond to such maintenance and repair requests in a reasonable manner through its work order system based on the City's adopted budget and the resources available. Where CPAC intends to perform all or a portion of the work, it shall inform the Call Center of the date by which CPAC intends to perform the work, and shall notify the Call Center when the repair/maintenance has been completed.

- f. The City shall undertake emergency repairs as is set forth in section A(4)(b) above.

## 2. Seasonal Preparation

- a. At the request of CPAC, the City shall, at its sole cost and expense, have the Pool filled with fresh water, fully functional and otherwise prepared for service by no later than fourteen (14) days prior to the first day of each Pool Season. In the alternative, CPAC may request that the City provide these services prior to the first day of the Extended Season, provided that CPAC gives the City at least forty-five days advance notice of the Extended Season opening date. (The Pool may need to be drained and refilled at other times during the year for repairs, system upgrades, contamination, etc.) The responsibility for scheduling the appropriate County Health Department's inspection for the Pool's Operational Certification shall rest with CPAC.
- b. The City, at its sole cost and expense, shall provide trash receptacles for CPAC's use. The trash receptacles shall be no larger than forty gallons. The City shall make good faith efforts to provide trash receptacles that are similar to other receptacles in the Park, contingent on the City's adopted budget and the City's ability to provide similar amenities to all other City parks.

**3. Trash Removal.** The City shall, at its sole cost and expense, provide trash pickup services at the Pool on a daily basis, as well as recycling pickup if it is available, during the Pool Season. The City, if requested by CPAC, shall provide trash pickup services from City provided trash receptacles (as described in Section B(2)(b)(i) above) for CPAC special events for private use during periods outside the Pool Season, at CPAC's sole cost and expense.

**4. Utilities.** The City shall pay for the water to fill the pool itself and for the other water and sewer services for the Pool. The City shall also pay for electricity for the Pool and Pool facilities, except that CPAC shall be responsible for paying all costs arising directly from Pool use during all Extended Seasons.

**5. Regulatory Signage.** The City shall, at its sole cost and expense, install standard regulatory signage at the Pool regarding rules and regulations. Such signs shall be written in English and Spanish where the City has adequate funds available for such



signage. CPAC shall be responsible for installing and paying for all other signage, including but not limited to signs regarding fees and hours of operation.

## **6. City's Use of Pool**

- a. The City shall give a minimum seven (7) days prior notice to CPAC of the City's intended use of the Pool involving ten (10) or more Camp Best Friends Summer Program participants. The City shall have the option of satisfying this requirement by providing CPAC with a schedule of planned visits to the Pool by Camp Best Friends Summer Program sites at least seven (7) days prior to the start of the Pool Season. On those occasions where Camp Best Friends brings participants to the Pool, the participants shall be accompanied by camp counselor(s) that shall supervise the participants' behavior in and out of the water. Such counselors shall not be deemed Pool staff or Water Safety Staff, and shall not be responsible for the Pool safety of the participants. CPAC shall not be responsible for any damages, injuries or claims arising out of the acts or omissions of such camp counselor(s) unless the damages, injuries and/or claims are caused by the failure of general pool safety matters for which CPAC is responsible. All Pool safety and lifeguard responsibilities shall belong to CPAC and its Subcontractors where applicable.
- b. The City shall ensure that Camp Best Friends Summer Program participants visiting the Pool shall be accompanied by a sufficient number of Summer Camp Counselors.

## **C. Term**

This MOU shall have a term of five years, beginning on the date of execution, as set forth on the first page hereof. The MOU shall have one five-year renewal option contingent upon the mutual consent of the City and CPAC.

## **D. Improvements**

### **1. Capital Improvements**

- a. Capital Improvements are defined as Pool improvements, repairs, or new system installations having a minimum value of \$20,000.00 and a useful lifetime of no less than ten (10) years.
- b. CPAC has the authority to make Capital Improvements to the Pool at its own expense upon approval of those improvements by the Commissioner, and such approval shall not be unreasonably withheld, conditioned, or delayed. All such



improvements shall become the property of the City upon their installation and/or completion.

- c. CPAC may request that the City make and pay for Capital Improvements to the Pool. In a non-emergency situation, CPAC's requested Capital Improvements shall be incorporated into the Atlanta Strategic Action Plan (ASAP) or into the City's Capital Improvement Plan (CIP), whichever is applicable.
- d. Capital Improvement projects that are incorporated into the ASAP or CIP, whichever is applicable, shall be scheduled for implementation based on the availability of funding and previously scheduled projects of higher priority or of greater urgency.

## **2. Facility Improvements (Non-Capital)**

- a. Facility Improvements are defined as those improvements and repairs to the Pool that do not qualify as Capital Improvements.
- b. CPAC has the authority to make Facility Improvements to the Pool at its own expense, and Facility Improvements in excess of \$1,000 shall be approved by the Commissioner, such approval not to be unreasonably withheld, conditioned, or delayed. All such improvements shall become the property of the City upon their installation and/or completion.
- c. CPAC may request that the City make and pay for Facility Improvements to the Pool. In a non-emergency situation, Facility Improvements requested of the City by CPAC shall be subject to the City's final approval or disapproval based on the City's policies and the availability of funding

- 3. Limits on Improvements.** Notwithstanding CPAC's authority to make Capital Improvements or Facility Improvements under this MOU, CPAC shall not be obligated to make more than \$20,000 in Facility Improvements and Capital Improvements per year.

## **E. Insurance and Bonding Requirements**

The following general requirements apply to CPAC's operation of the Pool and other activities performed pursuant to this MOU, including without limitation any and all work performed pursuant to this MOU. Compliance is required of CPAC and Subcontractors of any tier.

1. Evidence of Insurance Required Before Work Begins - Neither CPAC nor Subcontractor shall commence any work of any kind under this MOU until all Insurance and Bond requirements contained in this MOU shall have been complied with as outlined below and until evidence of such compliance satisfactory to the City as to form and content has been filed with the City. The Accord Certificate of Insurance or a pre-approved substitute is the required form in all cases where reference is made to a



Certificate of Insurance or an approved substitute. In addition, the City shall require an additional insured endorsement confirming the commercial general liability coverage.

2. Minimum Financial Security Requirements - Any and all companies providing insurance required by this MOU must meet certain minimum financial security requirements set forth below. These requirements conform to the ratings published by A.M. Best & Co. in the current Best's Key Rating Guide. The ratings for each company must be indicated on the Certificate of Insurance form.
3. For all contracts, regardless of size, companies providing Insurance or Bonds under this MOU must have a current:
  - a. Best's Rating not less than A- and current.
  - b. Best's Financial Size Category not less than Class IX.
  - c. Companies must be authorized to conduct and transact insurance contracts by the Insurance Commissioner, State of Georgia.

If the issuing company does not meet these minimum requirements, or for any other reason shall be or become unsatisfactory to the City, written notification shall be mailed by the City to CPAC who shall promptly obtain a new policy or bond issued by an insurer acceptable to the City, and shall submit evidence of the same to the City as required herein.

4. Upon failure of CPAC to furnish, deliver and maintain such insurance or bonds as herein provided, the City shall provide CPAC with written notice thereof, and CPAC shall provide the required information to the City within thirty (30) days or be in Default hereunder. Failure of CPAC to take out and/or to maintain any required insurance or bonds shall not relieve CPAC from any liability under the MOU, nor shall these requirements be construed to conflict with the obligation of CPAC concerning indemnification.
5. Insurance Required For Duration of MOU - Any and all Insurance and Bonds required by this MOU shall be maintained during the entire length of this MOU, including any extensions thereto.
6. To the extent such notification is available from the insurer, the City shall, without exception, be given no fewer than 30 days notice prior to cancellation for other than non-payment of premiums or for material change of any insurance or bond required by this MOU. Non-payment of premiums shall require 10 days prior notice of cancellation. Confirmation of this mandatory 30 days notice of cancellation shall appear on the Accord Certificate of Insurance and on any and all Bonds and Insurance policies required by this MOU.



7. The City of Atlanta shall be covered as Additional Insured under any and all Insurance and Bonds required by this MOU, and such insurance shall be primary with respect to the Additional Insured. Confirmation of this shall appear on the certificate of insurance and any and all applicable Bonds and Insurance policies. Attached to each certificate of insurance shall be a copy of the Additional Insured Endorsement, with the exception of Workers' Compensation, Professional Liability Insurance or Payment and Performance Bonds.

8. Mandatory Subcontractor Compliance - CPAC shall incorporate a copy of these Insurance and Bond requirements in each and every contract with each and every Subcontractor of any tier, and shall require each and every Subcontractor of any tier to comply with all such requirements. CPAC agrees that if for any reason Subcontractors of any tier fail to procure and maintain Insurance and Bonds as required, all such required Insurance and Bonds shall be procured and maintained by CPAC at CPAC's sole cost and expense.

9. Authorizing and Licensing of Agent - Each and every agent acting as Authorized Representative on behalf of a company affording coverage under this MOU shall warrant when signing the Acord Certificate of Insurance that specific authorization has been granted by the companies for the agent to bind coverage as required and to execute the Acord Certificate of Insurance as evidence of such coverage. The City of Atlanta coverage requirements may be broader than the original policies, these requirements have been conveyed to the companies for these terms and conditions. In addition, each and every agent shall warrant when signing the Acord Certificate of Insurance that the agent is licensed to do business in the State of Georgia and that the company or companies are currently in good standing in the State of Georgia.

10. Workers' Compensation and Employer's Liability Insurance - CPAC shall procure and maintain Workers' Compensation and Employer's Liability Insurance in the following limits, such insurance to cover each and every employee who is or may be engaged in work under the MOU:

<u>Workers' Compensation</u> <u>Employer's Liability</u>	<u>Statutory</u>
Bodily Injury by Accident	<u>\$ 100,000</u> each accident
Bodily Injury by Disease	<u>\$ 100,000</u> each employee
Bodily Injury by Disease	<u>\$ 500,000</u> policy limit

11. General Liability Insurance - CPAC shall procure and maintain General Liability Insurance in an amount not less than \$2,000,000 per occurrence. The following specific extensions of coverage shall be provided and shall be indicated on the Certificate of Insurance:

- a. Comprehensive Form
- b. Personal Injury



- c. Broad Form Property Damage
- d. Premises – Operations

12. Automobile Liability Insurance - CPAC shall procure and maintain. Automobile Liability Insurance with not less than 500,000 combined single limit. The following extensions of coverage shall be provided and shall be indicated on the Certificate of Insurance:

- a. Comprehensive Form
- b. Owned, Hired, Leased and Non-owned vehicles to be covered.

In the event CPAC does not own any automobiles in the corporate name, non-owned vehicle coverage shall apply and must be endorsed on either CPAC's personal automobile policy or the General Liability coverage required under this MOU.

13. Property Insurance - CPAC shall procure and maintain for the life of this MOU an All Risk Property Insurance, including Flood coverage for the lower level of the Bathhouse if required by the City's Risk Manager. Flood coverage is not required for the Pool. The policy must name the City of Atlanta as a Named Insured . The policy will provide for full replacement cost of CPAC's interest in the physical structures and other real or personal property comprising the Pool.
14. The cancellation of any policy of insurance required by this MOU shall meet the requirements of notice under the laws of the State of Georgia as presently set forth in the Georgia Code.

#### **F. Hold Harmless Agreement**

In addition to its agreement to obtain and maintain insurance, as set forth hereinabove, CPAC agrees to indemnify, defend and hold harmless the City of Atlanta, its officials, agents and employees, from: 1) any and all losses, expenses, demands, damages, and claims against the City, and/or its officers, agents and/or employees, which arise out of any intentional bad act or omission, or out of any negligent act or omission of CPAC, or of any contractor or Subcontractor of CPAC, or of any of CPAC's officers, agents, or employees; 2) any and all losses, expenses, demands, damages, and claims which result from any condition created or maintained by CPAC, or by any contractor or Subcontractor of CPAC, or by any of CPAC's officers, agents, or employees, which condition was not specified to be created or maintained by this MOU; and 3) any and all losses, expenses, demands, damages, and claims arising from rentals or special events as set forth in sections (A)(1)(H), (J), and (K) above. CPAC further agrees that this MOU to indemnify and hold harmless the City of Atlanta, its officers, agents and employees shall not be limited to the limits or terms of the liability insurance required under this MOU. Lastly, CPAC shall incorporate a copy of these Hold Harmless requirements in each and every contract with each and every contractor and Subcontractor of any tier, except



that the name of the contractor or Subcontractor shall be substituted for the word "CPAC". The indemnification obligations set forth in this paragraph shall not apply to the extent that the liability is caused by the willful misconduct or negligence of the party indemnified or held harmless. This Paragraph F shall survive any termination or expiration of this MOU.

#### **G. Non-Discrimination**

1. During the performance of this MOU, CPAC agrees that it shall not discriminate based upon race, creed, color, religion, gender, national origin, marital status, age, parental status, disability, sexual orientation, or gender identity in the implementation of this MOU. Lastly, by execution of this MOU, CPAC certifies that, during the Term of this MOU, it shall be bound by and comply with the following statement:

"We the supplier of goods, materials, equipment or services covered by this MOU shall not discriminate against any volunteer, employee, or applicant for volunteerism or employment, because of the race, creed, color, religion, sex, national origin, marital status, domestic relationship status, familial status, political affiliation, parental status, age, disability, sexual orientation, or gender identity of such person."

As used here, the words 'shall not discriminate' shall mean and include without limitation the following:

Recruited, whether by advertising or other means; compensated, whether in the form of rates of pay or other forms of compensation; selected for training, including apprenticeship; promoted; upgraded; demoted; downgraded; transferred; laid off; and terminated.

CPAC agrees to and shall post in conspicuous places, available to employees and applicants for employment the provisions of the non-discrimination statement above, and the other provisions set forth in this Non-discrimination section.

2. CPAC shall in all solicitation or advertisement of employees, placed by or on behalf of CPAC, state that all qualified applicants will receive consideration for the employment without regard to race, creed, color, religion, sex, national origin, marital status, domestic relationship status, familial status, political affiliation, parental status, age, disability, sexual orientation, or gender identity.
3. CPAC shall take such action with respect to any contractor or subcontractor as the City may direct as a means of enforcing the provisions herein, including penalties and sanctions for noncompliance; provided, however, that in the event CPAC becomes involved in or is threatened with litigation as a result of such direction by the City, the City will enter into such litigation as is necessary to protect the interest of the City and to effectuate the Equal Employment Opportunity Program of the City of Atlanta.



4. CPAC shall include the provisions of this non-discrimination section in every contract and subcontract so that such provisions will be binding upon each contractor and Subcontractor.
5. A finding that a refusal by CPAC or contractor or Subcontractor to comply with any portion of this non-discrimination section may subject the offending party to cancellation of the MOU or contract or subcontract as appropriate.

#### **H. Jurisdiction**

This MOU is made and entered into in Fulton County, Georgia. In the event of any dispute, disagreement, or action arising under this MOU, the proper place for determination of such dispute, disagreement or legal action is within the jurisdiction of Fulton County, Georgia and based upon the laws of the State of Georgia.

#### **I. Access**

CPAC shall grant to the City unrestricted access to the Pool for operational inspections, repair, maintenance and other purposes as from time-to-time may become necessary.

#### **J. Notice**

1. All notices, demands, requests or replies provided for, permitted or appropriate under this MOU shall be in writing and may be delivered by any one of the following methods:
  - a. By personal delivery;
  - b. By deposit with the United States Postal Service as certified or registered mail, return receipt requested, postage prepaid to the addresses stated below; or
  - c. By deposit with an overnight express delivery service.
2. Notice deposited with the United States Postal Service or express delivery service in the manner described above shall be deemed effective one (1) business day after deposit therein. Notice by personal delivery shall be deemed effective at the time of personal delivery.
3. For purposes of official correspondence, notice, demand, request, reply or repayment, the address of City shall be:

The Commissioner  
City of Atlanta, Department of Parks, Recreation and  
Cultural Affairs  
233 Peachtree Street, Suite 1700  
Atlanta, Georgia 30303



The address of CPAC shall be:

Chastain Park Athletic Club  
P.O. Box 11602  
Atlanta, Georgia 30355  
Attn: President

**With a copy to:**  
Chastain Park Athletic Club  
76 Laurel Drive  
Atlanta, Georgia 30342

#### **K. Termination**

Either Party to this MOU shall have the right to terminate the MOU with or without cause by giving, one unto the other, at least one hundred fifty days notice of intent to terminate. Termination with cause may occur at anytime pursuant to the provisions set forth in section L below.

#### **L. Default**

1. Either Party shall be in default ("Default") under this MOU if the Party fails to keep, perform, observe, or comply with any of the material terms, conditions, covenants or requirements set forth in this MOU, and does not cure such material within thirty (30) days after receipt of written notice of such failure from the Commissioner or CPAC President, as appropriate, or if such failure cannot be cured within said thirty (30) day period, the Party does not commence such cure within that period and thereafter diligently pursue same to completion. If Default is made by either Party, as described in this section L, the other Party may terminate this MOU upon written notice to the defaulting Party as provided herein, subject to the right to cure as provided herein.
2. In the event of termination of this MOU by reason of the Default of any of the terms and conditions hereunder by either or both Parties hereto, or upon the termination of this MOU without cause, CPAC agrees to surrender possession of the Pool immediately and hereby grants to the City the right of possession thereof, with or without process of law, and the right to expel and to remove CPAC, its contractor(s) and/or Subcontractor(s) or any other person or party who may be occupying the Pool or any part thereof under claim of right by, through or under CPAC, and the City may repossess itself of the Pool as its estate, but such entry of the Pool by the City shall not constitute a trespass or forcible entry or detainer.

#### **L. Entire Agreement**

This MOU represents the entire and integrated agreement between the Parties and may be amended only by written instrument, unless otherwise provided herein. Where amended by



written instrument, the amendment must be signed by both Parties and authorized by appropriate City legislation.

**M. Liability**

It is mutually agreed between the Parties hereto that this MOU shall not become binding on CPAC or the City, and neither CPAC nor the City shall incur any liability upon the same, until said MOU has been fully executed by the Mayor and delivered to CPAC.

**IN WITNESS WHEREOF**, the Parties have hereunto set their hands and seals the day and year first written above.

ATTEST:

CITY OF ATLANTA:

\_\_\_\_\_  
Municipal Clerk

\_\_\_\_\_  
Mayor (Seal)

ATTEST:

CHASTAIN PARK ATHLETIC CLUB:

\_\_\_\_\_  
Corporate Secretary

\_\_\_\_\_  
President (Seal)

APPROVED:

APPROVED:

\_\_\_\_\_  
Commissioner, Department of Parks,  
Recreation and Cultural Affairs

\_\_\_\_\_  
Chief Procurement Officer

APPROVED AS TO FORM:

\_\_\_\_\_  
Senior Assistant City Attorney



**EXHIBIT A**  
**RESOLUTION**

See attached.



**EXHIBIT B**  
POOL HOURS AND FEES

See attached.



10/29/2010

**CHASTAIN PARK ATHLETIC CLUB (CPAC) at Chastain Park Swimming Pool**

**Chastain Park Pool Admissions:**

**Normal Summer Hours of Operation:**

6:00 AM	Extended Hrs.								
7:00 AM	Extended Hrs.								
8:00 AM	Extended Hrs.								
9:00 AM	Extended Hrs.								
10:00 AM	Assoc. Fee	Free Swim	Assoc. Fee						
11:00 AM	Assoc. Fee	Free Swim	Assoc. Fee						
12:00 PM	Public								
12:45 PM	Public								
1:00 PM	Public								
2:00 PM	Public								
3:00 PM	Public								
4:00 PM	Public								
4:30 PM	Transition								
5:00 PM	Assoc. Fee								
6:00 PM	Assoc. Fee								
7:00 PM	Assoc. Fee								
8:00 PM	Extended Hrs.								
9:00 PM	Extended Hrs.								
10:00 PM	Extended Hrs.								
11:00 PM	Extended Hrs.								

**Extended Hours**  
**Free Swim**  
**Public**  
**Association Fee**

These hours are scheduled on a discretionary basis by CPAC.  
 The hours that Chastain Park Swimming Pool is open to the public at no fee.  
 The hours that the pool is open to the public for a daily fee.  
 The regular hours that CPAC members are allowed to use the facility on their own.

**CPAC Daily Admissions Fees (public)**

Children (5 & under)	\$1.00
Children (16 & under)	\$2.00
Adults (17 - 64)	\$4.00
Seniors (65 & over)	\$2.00

**CPAC Free Swim Hours (Time slot may vary)**

Mon - Fri	10:00 am - 12:45 pm
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**CPAC Seasonal Membership Rates**

Household	\$450
Individual	\$225
Senior (65 & over)	\$125

**City of Atlanta:**

**City Pool Daily Admissions Fees**

Children (5 & under)	\$1.00
Children (16 & under)	\$2.00
Adults (17 - 64)	\$4.00
Seniors (65 & over)	\$2.00

**City Summer Pass (8 weeks)**

Youth	Resident	\$40.00	Non-resident	\$60.00
Senior		\$40.00		\$60.00
Adult		\$50.00		\$70.00
Family (4)		\$120.00		\$140.00
Each Addtl Child		\$15.00		\$35.00

**Chastain Park Pool Swimming Lesson Fees**

CPAC Member Rates	
\$90 for 3 private lessons - one student with one instructor	
\$150 for 3 semi-private lessons - two students with one instructor	
CPAC Non-Member Rates	
\$120 for 3 private lessons - one student with one instructor	
\$180 for 3 semi-private lessons - two students with one instructor	

**EXHIBIT B**



RCS# 927  
3/21/11  
2:25 PM

Atlanta City Council

REGULAR SESSION

CONSENT I                    EXCEPT 11-O-0323, 11-O-0324, 11-O-0325

RECONSIDER

YEAS: 14  
NAYS: 0  
ABSTENTIONS: 0  
NOT VOTING: 2  
EXCUSED: 0  
ABSENT 0

Y Smith	Y Archibong	Y Moore	NV Bond
Y Hall	Y Wan	Y Martin	Y Watson
Y Young	Y Shook	Y Bottoms	Y Willis
Y Winslow	Y Adrean	Y Sheperd	NV Mitchell

CONSENT I

RCS# 925  
3/21/11  
2:23 PM

Atlanta City Council

REGULAR SESSION

CONSENT I                    EXCEPT 11-O-0323, 11-O-0324, 11-O-0325

ADOPT

YEAS: 14  
NAYS: 0  
ABSTENTIONS: 0  
NOT VOTING: 2  
EXCUSED: 0  
ABSENT 0

Y Smith	Y Archibong	Y Moore	NV Bond
Y Hall	Y Wan	Y Martin	Y Watson
Y Young	Y Shook	Y Bottoms	Y Willis
Y Winslow	Y Adrean	Y Sheperd	NV Mitchell

CONSENT I

		03-21-11
ITEMS ADOPTED ON CONSENT	ITEMS ADOPTED ON CONSENT	
1. 11-O-0106	38. 11-R-0378	75. 11-R-0415
2. 11-O-0221	39. 11-R-0379	76. 11-R-0416
3. 11-O-0317	40. 11-R-0380	77. 11-R-0417
4. 11-O-0369	41. 11-R-0381	78. 11-R-0418
5. 11-O-0315	42. 11-R-0382	79. 11-R-0419
6. 11-O-0259	43. 11-R-0383	80. 11-R-0420
7. 11-O-0260	44. 11-R-0384	81. 11-R-0421
8. 11-O-0261	45. 11-R-0385	82. 11-R-0422
9. 11-O-0440	46. 11-R-0386	83. 11-R-0423
10. 11-O-0439	47. 11-R-0387	84. 11-R-0424
11. 11-O-0316	48. 11-R-0388	85. 11-R-0425
12. 11-O-0328	49. 11-R-0389	86. 11-R-0426
13. 11-O-0442	50. 11-R-0390	87. 11-R-0427
14. 11-R-0354	51. 11-R-0391	88. 11-R-0428
15. 11-R-0355	52. 11-R-0392	89. 11-R-0429
16. 11-R-0356	53. 11-R-0393	90. 11-R-0430
17. 11-R-0338	<b>Items Adversed on</b>	91. 11-R-0431
18. 11-R-0339	<b>Consent</b>	92. 11-R-0432
19. 11-R-0340	54. 11-R-0394	
20. 11-R-0341	55. 11-R-0395	
21. 11-R-0342	56. 11-R-0396	
22. 11-R-0364	57. 11-R-0397	
23. 11-R-0367	58. 11-R-0398	
24. 11-R-0359	59. 11-R-0399	
25. 10-R-0751	60. 11-R-0400	
26. 11-R-0357	61. 11-R-0401	
27. 11-R-0358	62. 11-R-0402	
28. 11-R-0438	63. 11-R-0403	
29. 11-R-0361	64. 11-R-0404	
30. 11-R-0433	65. 11-R-0405	
31. 11-R-0434	66. 11-R-0406	
32. 11-R-0346	67. 11-R-0407	
33. 11-R-0347	68. 11-R-0408	
34. 11-R-0348	69. 11-R-0409	
35. 11-R-0349	70. 11-R-0410	
36. 11-R-0437	71. 11-R-0411	
37. 11-R-0377	72. 11-R-0412	
	73. 11-R-0413	
	74. 11-R-0414	