

12-0-0013

(Do Not Write Above This Line)

AN ORDINANCE BY
COMMUNITY
DEVELOPMENT/HUMAN
RESOURCES COMMITTEE

AN ORDINANCE AUTHORIZING
THE MAYOR TO ENTER INTO A
MEMORANDUM
UNDERSTANDING WITH THE
CHASTAIN PARK CONSERVANCY,
AND FOR OTHER PURPOSES.

ADOPTED BY

FEB 06 2012

COUNCIL
Substitute

- CONSENT REFER
- REGULAR REPORT REFER
- ADVERTISE & REFER
- 1ST ADOPT 2ND READ & REFER
- PERSONAL PAPER REFER

Date Referred

1/17/12

Referred To:

CD/HR

Date Referred

Referred To:

Date Referred

Referred To:

First Reading

Committee _____
Date _____
Chair _____
Referred To _____

Committee
CD/HR

Date
1/31/12

Chair
Stephan

Action

Fav, Adv, Hold (See rev. side)

Other

Members

Refer To

Committee

Date

Chair

Action

Fav, Adv, Hold (See rev. side)

Other

Members

Refer To

Committee

Date

Chair

Action

Fav, Adv, Hold (See rev. side)

Other

Members

Refer To

Committee

Date

Chair

Action

Fav, Adv, Hold (See rev. side)

Other

Members

Refer To

Committee

Date

Chair

Action

Fav, Adv, Hold (See rev. side)

Other

Members

Refer To

Committee

Date

Chair

Action

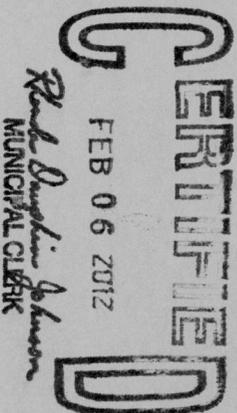
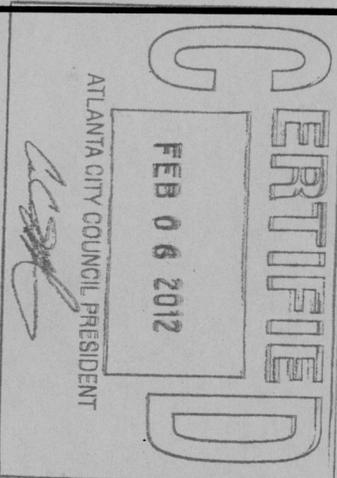
Fav, Adv, Hold (See rev. side)

Other

Members

- 2ND FINAL COUNCIL ACTION
- 1ST & 2ND Readings
- 3RD
- Consent
- V Vote
- RC Vote

CERTIFIED



MAYOR'S ACTION

APPROVED

FEB 15 2012

WITHOUT SIGNATURE
BY OPERATION OF LAW



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

12-O-0013

A SUBSTITUTE ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A MEMORANDUM OF UNDERSTANDING WITH THE CHASTAIN PARK CONSERVANCY; WAIVING SECTION 110-3 (I) OF THE CODE OF ORDINANCES OF THE CITY OF ATLANTA, GEORGIA; AND AUTHORIZING THE CITY TO REIMBURSE THE CHASTAIN PARK CONSERVANCY FOR SECURITY SERVICES IN AN AMOUNT NOT TO EXCEED TWENTY THOUSAND DOLLARS PER YEAR AND AUTHORIZING THE REIMBURSEMENT FOR INSTALLATION OF FIVE FIXED POSITION CAMERAS IN CHASTAIN PARK IN AN AMOUNT NOT TO EXCEED FORTY NINE THOUSAND NINE HUNDRED FIFTY DOLLARS AND NO CENTS (\$49,950.00); TO BE CHARGED TO AND PAID FROM FUND, DEPARTMENT, ACCOUNT AND ACCOUNT NUMBER: 7701 (TRUST FUND) DEPARTMENT-140401 (CULTURAL AFFAIRS ADMINISTRATION) ACCOUNT- 5212001 (CONSULTING/PROFESSIONAL SERVICES) FUNCTION ACTIVITY- 6110000 (CULTURAL/RECREATION ADMINISTRATION) PROJECT- 600372 (CHASTAIN AMPHITHEATER PARKING) FUNDING SOURCE- 69999 (FUNDING SOURCE FOR NON CA); AND FOR OTHER PURPOSES.

WHEREAS, the Chastain Park Conservancy (“CPC”) is a 501(c)(3) non-profit organization dedicated to the preservation and restoration of Chastain Park located in Atlanta, Georgia, (the “Park”), to the benefit of both the citizens of Atlanta and its many visitors; and

WHEREAS, the City and CPC entered into a Memorandum of Understanding adopted by Council on February 20, 2006 and approved by the Mayor on February 28, 2006, pursuant to Resolution 06-O-0288; and

WHEREAS, the Memorandum of Understanding had a initial term of five (5) years;

WHEREAS, the City wishes to continue to facilitate CPC’s work on the Park by creating a cooperative relationship with CPC, as CPC is providing a valuable service to the City; and

WHEREAS, in order to provide the services it performs regarding the Park, the CPC must raise a significant amount of funds. One manner of raising those funds is through concession sales. CPC desires to operate or cause to be operated concessions sales in the Park (“Concessions Program”) as a means of fundraising. Fifty percent of the net revenues from the Concessions Program shall be retained by CPC for park improvements and maintenance. The other fifty percent of the net revenues shall be provided to the Department of Parks, Recreation, and Cultural Affairs to be deposited into a trust fund. The City shall not profit from this revenue, but rather shall utilize the revenue for park



maintenance and improvements at parks throughout the City for which no conservancy is present; and

WHEREAS, the Atlanta Code of Ordinances, section 110-3 establishes a fee for vending within City parks of \$2,000 per month for weekends and \$2,000 per month for weekdays; and

WHEREAS, given that the mission of CPC is to improve and maintain the Park, given that the cost of CPC's work of improving and maintaining the park is high, and given the importance of the concessions fundraising to enabling the CPC to fulfill its mission, it is in the best interest of the City to allow CPC to obtain a new vending permit(s) for its Concessions Program. Additionally, given that fifty percent of CPC's Concessions Program net revenue will benefit CPC and consequently the Park, and given that fifty percent of CPC's Concessions Program net revenue will be given back to the Department of Parks, Recreation, and Cultural Affairs, it is in the best interest of the City to maximize said net revenue by waiving the parks vending fee; and

WHEREAS, the Park requires security services and under the circumstances it is in the City's best interest to have CPC provide these services in an amount not to exceed twenty thousand dollars (\$20,000.00) per year; and

WHEREAS, as part of Park security the Department of Parks, Recreation and Cultural Affairs ("DPRCA") has proposed to install five fixed position cameras ("Cameras") to improve public safety; and

WHEREAS, the Cameras will be located in the red lot and in various other locations throughout the Park; and

WHEREAS, the Cameras will be connected wirelessly to the City ONSSI NDVMS network video monitoring system; and

WHEREAS, the Cameras will be monitored by the City Police Department at the Zone 2 precinct and the E911 Video Integration Center; and

WHEREAS, under the circumstances it is in the City's best interest to have CPC purchase and install the Cameras in an amount not to exceed Forty Nine Thousand Nine Hundred Fifty Dollars and No Cents (\$49,950.00); and

WHEREAS, a surcharge on ticket sales from the Chastain Amphitheater supports a Trust Fund with the purpose of mitigating the impacts of the concerts upon the Park and the neighboring community; and

WHEREAS, the Commissioner of DPRCA ("Commissioner") desires to fund the purchase and installation of the Cameras from the Trust Fund; and

WHEREAS, it is in the best interest of the City to continue its relationship with CPC and enter into a Memorandum of Understanding (“MOU”) with CPC.

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

SECTION 1:

The Mayor is hereby authorized, on behalf of the City, to enter into an MOU with CPC regarding the roles and obligations of each of the two parties in the development, maintenance, and enhancement of the Park. The MOU shall be substantially similar to the MOU attached hereto as Exhibit A. Said MOU shall at a minimum provide the following:

- a) The MOU shall make clear that the City owns the Park and shall have authority to make all final decisions regarding the Park, but shall exercise its authority in the spirit of good faith cooperation with CPC.
- b) The MOU shall provide CPC with the authority and the responsibility to develop, maintain, and enhance the Park in a manner consistent with the MOU.
- c) The MOU shall provide CPC with the authority and primary responsibility for raising additional funds for the Park, and for overseeing the use of the funds it raises, making certain that the funds are utilized consistent with the MOU. Said fundraising efforts may include without limitation operation of the Concessions Program.
- d) The MOU shall have a term of five years with an option of one five-year renewal upon mutual agreement of the parties.

SECTION 2:

To the extent that CPC is donating time and money to the City, the City hereby accepts the donation.

SECTION 3:

Section 110-3(i) of the Code of Ordinances of Atlanta, Georgia is hereby waived such that CPC is authorized to receive vending permit(s) for its Concessions Program for locations of the Park designated in the MOU, provided that CPC meets all of the criteria set forth in Atlanta Code of Ordinances section 30-1401 through 30-1460, entitled “Vending on Public Property”, as may be amended and re-codified from time to time. CPC shall be permitted to operate its Concessions Program without paying a vending fee. Fifty percent of the net revenues from the Concessions Program shall be retained by CPC for park improvements and maintenance, and fifty percent of the net revenues from the



Concessions Program shall be provided to the Department of Parks, Recreation and Cultural Affairs to be deposited into a trust fund to be utilized for park maintenance and improvements at parks throughout the City for which no conservancy is present.

SECTION 4:

CPC is authorized to provide security services in the Park and the City is authorized to reimburse CPC in an amount not to exceed twenty thousand dollars (\$20,000.00) per year.

SECTION 5:

The City is authorized to reimburse CPC for the purchase and installation of five fixed position cameras in the Park in an amount not to exceed Forty Nine Thousand Nine Hundred Fifty Dollars and No Cents (\$49,950.00).

SECTION 6:

All work shall be charged to and paid from 7701 (Trust Fund) Department- 140401 (Cultural Affairs Administration) Account- 5212001 (Consulting/Professional Services) Function Activity- 6110000 (Cultural/Recreation Administration) Project- 600372 (Chastain Amphitheater Parking) Funding Source- 69999 (Funding Source for Non CA)..

SECTION 7:

The City Attorney or her/his designee is hereby directed to prepare the MOU for execution by the Mayor, and the MOU shall be approved as to form by the City Attorney or her/his designee.

SECTION 8:

The MOU shall not become binding upon the City, and the City shall incur neither obligation nor liability there under, until the same has been signed by the Mayor and delivered to CPC.

SECTION 9:

All ordinances and resolutions in conflict herewith are hereby repealed for purposes of this Ordinance only, and only to the extent of the conflict.

A true copy,

Deputy Municipal Clerk

ADOPTED by the Atlanta City Council
APPROVED as per City Charter Section 2-403

Feb. 06, 2012
Feb. 15, 2012



MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF ATLANTA AND THE CHASTAIN PARK CONSERVANCY, INC.

This Memorandum of Understanding (“MOU”), dated this ____ day of January, 2012, is between the City of Atlanta (“City”) and the Chastain Park Conservancy, Inc. (“CPC”) (collectively, “the Parties”).

I. Background

The CPC is a 501(c)(3) non-profit organization dedicated to the preservation and restoration of Chastain Park located in Atlanta, Georgia. , Chastain Park, including two (2) open space field areas, the “Fields” and the maintenance shed located on the premises, the “Shed,” are sometimes collectively referred to herein as the “Park” and more particularly described on Exhibit A attached hereto and incorporated herein by reference. The CPC’s mission includes enhancing, maintaining and preserving the Park, to the benefit of both the citizens of Atlanta and its many visitors. The City and the CPC have established a cooperative, public-private partnership with each other so that the City can assist the CPC with its mission. The City wishes to continue this public-private partnership.

The purpose of this MOU is to lay the foundation for a cooperative working relationship between the Parties, and to establish the role of each Party in that relationship, as the Parties work together to further their common goal of developing, enhancing, improving and maintaining the Park. Enhancement, maintenance, and preservation of the Park shall include but not be limited to the design, installation and maintenance of improvements to the Park; design, installation, and maintenance of environmentally friendly landscape improvements; design, organization and implementation of programs in the Park; and maintenance of the Park so that it is consistently in a safe and attractive condition. While pursuing the goals set forth in this MOU, the Parties will remain sensitive to the impact of work and activities in the Park upon residents of the surrounding neighborhoods and will strive to accomplish these goals in a manner that minimizes disruption to the neighbors.

II. General Agreements: Role of Each Party in Working Relationship

The following is a list of agreements regarding the basic roles of the City and the CPC in their working relationship established by this MOU.

- A. The City shall maintain ownership of the Park.
- B. The City shall maintain its authority to make all final decisions regarding the Park, but shall exercise this authority in the spirit of good faith cooperation with the CPC.



- C. All City decisions regarding the Park that arise from this MOU or the Master Plan (i) shall be made by the Commissioner of the Department of Parks, Recreation and Cultural Affairs, (the "Commissioner") or her/his designee, unless the Commissioner, the City Attorney, the Atlanta Mayor or the Atlanta City Council determines that the decision should be made in some other manner and (ii) shall be communicated in writing to the CPC.

- D. The CPC shall develop, maintain, and manage the Park consistent with this MOU and the Master Plan adopted by Atlanta City Council on March 3, 2008 or subsequently approved revisions (the "Master Plan"). Subject to the limitations set forth in this MOU, the CPC shall be the primary custodian, other than the City, for restoring, enhancing, maintaining and preserving all areas of the Park not currently under occupation or management by a third party.

- E. Project proposals and implementation plans for improvements and other initiatives in the Park shall be prepared by the CPC, based on available and anticipated funds and the Master Plan. The CPC shall comply with the City's review and approval process for park projects, improvements and initiatives, said process to be established by the Commissioner. The CPC shall be responsible for identifying any and all other governmental bodies and/or regulatory agencies from which approval must be obtained. The CPC shall not begin work on these projects, improvements or other initiatives until it has successfully completed the City's review and approval process, and it has received written approval or permits from any other governmental body or regulatory agency from which approval is required. CPC will forward copies of all final approval or permit documents to the Commissioner for inclusion in Department of Parks, Recreation, and Cultural Affairs files.

- F. The CPC shall be responsible for implementing projects, improvements or other initiatives that have been approved as set forth in this MOU and the Master Plan. During the term of this MOU and upon completion of any improvement made to the Park by CPC title to any and all such improvements shall pass and be vested in the City upon completion.

- G. When a decision regarding the Park is to be made solely by the Commissioner, the Commissioner or designee, shall review, provide feedback on, and if appropriate, provide approval of any and all submissions by the CPC within thirty days of receipt thereof. In the event that the approval process requires more than Commissioner approval, as determined pursuant to section II. C above, this thirty day time limit shall not apply.

- H. The City shall have the right to oversee all work performed upon the Park, including but not limited to projects, construction of capital improvements, landscaping, and other initiatives. Though the City has the right to oversee all work being performed at the Park by or on behalf of the CPC, it is not obligated to do so. In addition, though the City has the right to suspend a Park project being



performed by or on behalf of the CPC if the project creates a safety hazard, it is not obligated to inspect the work to determine if a safety hazard exists, and shall not be deemed liable by the CPC in the event that the City does not detect a safety hazard. The quality and safety of the work performed by or on behalf of the CPC is the responsibility of the CPC and not the City.

- I. The CPC shall have primary responsibility for raising additional funds for the Park, and will oversee the use of funds it raises, making certain that the funds are utilized consistent with the Master Plan and this MOU. The CPC may solicit and receive funds from individuals and corporate sponsors. In the event that a private sponsor requests recognition for its contribution in the form of on-site signs or other notices to the public that shall remain in the Park for greater than six months, the CPC is not authorized to agree to such recognition unless and until receiving approval from the Commissioner and the City Council. Where the sign or other public notice shall remain in the Park for six months or less, the CPC must receive prior written approval from the Commissioner. If multiple of such signs are used, they shall be consistent in overall shape and dimensions.
- J. Other parties may contribute to the improvement of the Park, as long as all gifts are in conformance with the Master Plan and subject to City approval and oversight.
- K. The Commissioner or her/his designee shall invite the CPC to review and provide comments and feedback on issues of mutual concern, including without limitation: (i) all lease renewals or modifications for Park property; (ii) changes to tangible property, structures and vegetation within the Park (exclusive of emergency actions required to maintain safety, security or asset integrity); (iii) plans for capital improvements in the Park; and (iv) permits for Park outdoor events.
- L. The Commissioner shall invite the CPC to review and provide comments on the City's plan for expenditures from the Chastain Park trust fund.
- M. The City shall be responsible for any claim, damage, loss or expense arising from the Park that is attributable to intentional or sole negligent acts, errors, or omissions by the City, its consultants/contractors or their officers, agents or employees, or, its consultants'/contractors' subconsultants/subcontractors, or their officers, agent or employees.
- N. CPC hereby releases and shall indemnify, defend, and hold harmless the City, its elected officials, officers, agents, employees, authorized representatives, successors, and assigns from and against any and all suits, actions, legal or administrative proceedings, claims, debts, demands, damages, liabilities, injuries, obligations, losses, judgments, charges, interest, attorneys' fees, costs, causes of action of every kind and character, whether in law or equity, and expenses of every kind or nature, whether arising before or after the termination of this MOU



and in any manner directly or indirectly caused, occasioned, or contributed to in whole or in part, or claimed to be caused, occasioned, or contributed to in whole or in part, by reason of any act, omission, fault or negligence whether active or passive of CPC, its officers, employees, agents, subcontractors or of anyone acting under its direction or control or on its behalf in connection with or incidental to this MOU. CPC's aforesaid release, indemnity, and hold harmless obligations, or portions or applications thereof, shall apply even in the event of the fault or negligence, whether active or passive, or strict liability of the parties released, indemnified or held harmless to the fullest extent permitted by law, but in no event shall they apply to liability caused by the willful misconduct or sole negligence of the party released, indemnified, or held harmless. CPC specifically waives any immunity provided against this indemnity by any industrial insurance or workers' compensation statute. CPC further agrees that this agreement to indemnify, defend, and hold harmless the parties released shall not be limited to the limits or terms of the insurance, if any, required under this MOU. This indemnification and hold harmless provision shall survive any termination or expiration of this MOU.

- Q. ~~Q.~~ Any personnel employed by or volunteering on behalf of the CPC shall be deemed "employees" or "volunteers" respectively of the CPC, and shall not be deemed employees or volunteers of the City. The CPC shall remain responsible for the supervision, management and control of such employees and volunteers and any payroll, taxation or other employment obligation incident to their work.
- P. ~~P.~~ The CPC shall maintain general liability insurance in the amount of \$1,000,000 bodily injury and property damage combined single limit, regarding all work performed at the Park by CPC's employees, volunteers, contractors and subcontractors, including but not limited to demolition and construction work. The City shall be covered as an additional insured under the general liability insurance policy, and such insurance shall be primary with respect to the additional insured.
- Q. ~~Q.~~ The City and the CPC shall not discriminate based upon race, creed, color, religion, sex, national origin, marital status, age, physical handicap, sexual orientation, or gender identity in the implementation of the Master Plan or this MOU.
- R. ~~R.~~ The CPC shall not assign nor transfer any of the rights set forth in this MOU without prior written approval from the Commissioner.
- S. ~~S.~~ The CPC shall maintain records and accounts in connection with the performance of this MOU that will accurately document all funds received by the CPC and all costs incurred by the CPC, both direct and indirect, of whatever nature, for a period of three (3) years from the expiration of this MOU unless otherwise specified by applicable law. The City of Atlanta or its designated representatives shall have the right to examine and copy the records and accounts



at all reasonable times, with advance notification. The City reserves the right to audit the CPC's records and accounts. Any such audit will be commenced within one year of the expiration of this MOU.

- T. ~~T.~~ Title to all of the CPC's improvements of such a nature as cannot be removed without substantial damage to the Park, or some portion thereof, shall vest in City upon completion of construction or installation.
- U. ~~U.~~ The CPC shall submit to the Commissioner, copies of the monthly progress reports that the CPC prepares and submits to the CPC Board of Directors. When new improvements are completed by the CPC, the CPC will also submit digital and "hard" copies of "as built" drawings, operations and maintenance manuals, and test results (if pertinent to the work or requested in advance) to the Commissioner for future reference within 60 days of completion.

III. City Responsibilities

In addition to the responsibilities listed above, the City shall have the following responsibilities:

- A. Maintain the full range of existing commitments to the Park, including basic maintenance, litter control, and utilities commitments, and provide a letter reflecting those commitments to the CPC for fundraising purposes.
- B. Provide maintenance of the Park infrastructure, excluding the Fields and except where the maintenance is handled by a third party pursuant to a written agreement between the City and said third party.
- C. Provide sanitation services for the Park at no cost to the CPC. Sanitation services shall include weekly garbage collection.
- D. Provide, or arrange and pay for provision of utilities for the Park.
- E. Protect the Park and the new investments therein by coordinating the management of events held in the Park with the CPC, such that the management is consistent with design features and other guidelines set forth in the Master Plan.
- F. Make certain that all funds committed by the City to the Park are used effectively, efficiently, and as intended.
- G. Upon request, provide copies of all permits to the CPC which are approved for festivals, large gatherings and the like ("event"). Copies shall be submitted to CPC at least thirty (30) days in advance of said event.

IV. CPC Responsibilities

In addition to the responsibilities listed above, the CPC shall have the following responsibilities:

- A. Actively pursue and engage in fundraising to support initiatives for enhancing the Park.
- B. Create an environmentally friendly Park design that will include, but is not limited to, green spaces, lighting, native plant landscaping, paths and water fountain(s), consistent with the Master Plan.
- C. In addition to the City's performance of routine maintenance, provide additional maintenance so that the Park remains in a safe and attractive condition, and so that all capital improvements are adequately maintained to protect the investments made. The CPC shall submit an annual maintenance plan for review and approval to the Commissioner no later than January 1 of each year. The maintenance plan shall set forth the Park maintenance activities that the CPC proposes to perform in the upcoming year. The CPC shall not begin said maintenance until the maintenance plan is approved in writing by the Commissioner.
- D. Provide year-round litter control and recycling program at the Park.
- E. Maintain all plants and vegetation planted to meet the design requirements of the Master Plan.
- F. Support maintenance activities to improve and protect the Park consistent with the Master Plan and this MOU.
- G. Organize, design, implement and/or support programming activities consistent with the Master Plan and this MOU.
- H. The CPC shall not remove or demolish, in whole or in part, any improvements located in the Park without the prior written consent of the Commissioner, who may, in her/his discretion, condition such consent upon the obligation of the CPC to replace the same by an improvement specified in such consent.
- I. Serve as the major catalyst for interested parties to be involved with the Park through advocacy, volunteer, and/or fundraising activities, and through working with the CPC Board of Directors.
- J. Where the CPC holds or manages a cleanup, vegetative removal, and/or recycling program, the CPC must make arrangements for debris removal from selected sites and must receive approval for said arrangements from the Commissioner or her/his designee at least two weeks prior to the program. Where the program does not require any City services, the CPC shall provide the City with advance notice of the program within twenty-four hours of the program's being scheduled.



- K. The CPC may operate or cause to be operated concessions at the Park after receiving approval and appropriate permits from the City, provided that fifty percent of the net revenues from the concessions shall be retained by the CPC for park improvements and maintenance, and fifty percent of the net revenues from the concessions shall be provided to the Department of Parks, Recreation, and Cultural Affairs to be deposited into a trust fund to be utilized for park maintenance and improvements at parks throughout the City for which no conservancy is present. The CPC shall submit an annual concessions plan for review and approval to the Commissioner no later than January 1 of each year.
- L. Notify the Commissioner or designee, within twenty-four hours upon discovering a safety, sanitary, and/or maintenance issue that needs to be addressed in the Park regardless of whether the CPC intends to resolve the issue. In the event any emergency necessitates the CPC's spending a total of \$1,000 or less in order to quickly remediate such emergency, the City shall reimburse the CPC for the full amount (the aggregate of all expenses related to the emergency must not exceed \$1,000) of the cost of such remediation, provided that the City has identified the situation as an emergency and approved the CPC's work prior to the work being performed and upto twenty thousand dollars (\$20,000.00) per year. The Commissioner may increase re-imbusement amount in writing, on a case by case basis, at his/her sole discretion.
- M. Notify the Commissioner within three hours of learning of any issue regarding or arising in the Park that involves the media or the police or fire departments or emergency medical services.
- N. Make certain that all funds committed by or to the CPC for use regarding the Park are used effectively, efficiently, and as intended.
- O. Provide security services at CPC's expense for the Park in addition to any police services provided at the Park by the Atlanta Police Department. The City may, at City's sole discretion and based on funds availability, reimburse CPC for its provision of security services in an amount not to exceed \$20,000.00 per fiscal year.

V. Shed

- A. CPC shall maintain and manage use of the Shed consistent with this MOU.

VI. Use of Fields

- A. CPC shall care for and maintain the Fields to include mowing; using sound horticultural practices, and science to enable year round use, with playing areas closed only for maintenance; rest; grass growth; or due to weather related conditions to maintain the Fields. Correct.



- B. Programming for the Fields shall be as set forth on Exhibit B attached. All times that are not previously reserved as listed on Exhibit B will be scheduled and reserved by the City.
- C. A schedule of programmed events on the Fields shall be kept by CPC and shall be readily available for inspection by the City.
- D. CPC shall maintain 1 unprogrammed field on the Fields intended for free play and use by any users of Chastain Park.
- E. CPC shall have all coaches participate in a national Coaches Certification Program.
- F. When fields are not being used as scheduled in Exhibit B, Fields will remain open for use. Field reservations and scheduling shall be determined by each Party in accordance with Exhibit B.
- G. Specialty equipment (such as nets for soccer balls and soccer goals) may be installed or placed on the Fields, so long as the placement and use of such specialty equipment does not interfere with the normal use and operations of the Fields by the other users.
- H. No metal cleats shall be permitted on the Fields.
- I. With the express consent of the City, CPC may determine closure of the Fields due to adverse weather or site conditions.
- J. Security, by off-duty Atlanta Police Department officers, or other private security companies, shall be provided to the Fields by CPC based upon reasonable requests and needs.

VII. Contractors Performing Work on the Park

- A. The CPC shall require all contractors and subcontractors performing any work on behalf of the CPC related to this MOU to sign an agreement with the CPC that includes the following indemnification provision, with the exception that the name of the contractor or subcontractor shall replace “Contractor” as used herein below:

“Indemnification and Hold Harmless Clause”

- 1. **Releases and Indemnification:**

Contractor hereby releases and shall indemnify, defend, and hold harmless the City of Atlanta, its elected officials, officers, agents, employees,

authorized representatives, successors, and assigns from and against any and all suits, actions, legal or administrative proceedings, claims, debts, demands, damages, liabilities, injuries, obligations, losses, judgments, charges, interest, attorneys' fees, costs, causes of action of every kind and character, whether in law or equity, and expenses of every kind or nature, whether arising before or after the termination of this Agreement and in any manner directly or indirectly caused, occasioned, or contributed to in whole or in part, or claimed to be caused, occasioned, or contributed to in whole or in part, by reason of any act, omission, fault or negligence whether active or passive of Contractor, its officers, employees, agents, subcontractors or of anyone acting under its direction or control or on its behalf in connection with or incidental to this Agreement.

2. Negligence and Waiver

Contractor's aforesaid release, indemnity, and hold harmless obligations, or portions or applications thereof, shall apply even in the event of the fault or negligence, whether active or passive, or strict liability of the parties released, indemnified or held harmless to the fullest extent permitted by law, but in no event shall they apply to liability caused by the willful misconduct or sole negligence of the party released, indemnified, or held harmless. Contractor specifically waives any immunity provided against this indemnity by any industrial insurance or workers' compensation statute. Contractor further agrees that this agreement to indemnify, defend, and hold harmless the parties released shall not be limited to the limits or terms of the insurance, if any, required under this Agreement. This Indemnification and Hold Harmless provision shall survive any termination or expiration of this Agreement.

B. The following insurance requirements must be met by every contractor and subcontractor that performs work related to the Park for or on behalf of the CPC, and shall be included in a contract between the CPC and each of its contractors and subcontractors. Compliance is required by all contractors of any tier. Insurance requirements are based on information received as of the date of this MOU. The City reserves the right to adjust or waive any or all requirements based on receipt of additional information pertinent to this MOU.

1. The CPC shall not allow its contractors or subcontractors to commence any work of any kind pursuant to this MOU until all Insurance requirements contained in this MOU shall have been complied with, 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.



2. Any and all companies providing insurance required pursuant to this MOU must meet the minimum financial security requirements set forth below. These requirements conform to the ratings published by A.M. Best & Company in the current Best's Key Rating Guide - Property - Casualty. The ratings for each company must be indicated on the Accord Certificate of Insurance form. For all contracts, regardless of size, companies providing Insurance under this MOU must have a current:

- i. Best's Rating not less than A-; and current;
- ii. Best's Financial Size Category not less than Class IX; and
- iii. Authorization issued by the Insurance Commissioner, State of Georgia, to conduct and transact insurance contracts.

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 the CPC, who shall promptly itself, or require its contractor to, obtain a new policy issued by an insurer acceptable to the City, and shall submit evidence of the same to the City as required herein.

3. Workers' Compensation and Employer's Liability Insurance

Every contractor and subcontractor that performs work related to the Park for or on behalf of the CPC 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 related to the Park:

Workers' Compensation Statutory

Employer's Liability

Bodily Injury by Accident/Disease \$500,000 each accident

Bodily Injury by Accident/Disease \$500,000 each employee

Bodily Injury by Accident/Disease \$500,000 policy limit

4. Commercial General Liability Insurance

Contractor/Consultant must procure and maintain Commercial General Liability Insurance on form (CG 00 00 01 or equivalent) in an amount not less than **\$1,000,000 per occurrence subject to a \$2,000,000 aggregate**. The following indicated extensions of coverage must be provided:

- Contractual Liability
- Broad Form Property Damage



- Premises Operations
- Personal Injury
- Advertising Injury
- Fire Legal Liability
- Medical Expense
- Independent Contractor/Consultants/SubContractor/Consultants
- Products – Completed Operations
- Pesticide or Herbicide Applicator Coverage
- Additional Insured Endorsement* (primary& non-contributing in favor of the City of Atlanta)
- Waiver of Subrogation in favor of the City of Atlanta

5. Automobile Liability Insurance

Every contractor and subcontractor that performs work related to the Park for or on behalf of the CPC shall procure and maintain Automobile Liability Insurance with not less than \$500,000 Bodily Injury and Property Damage combined single limit. The following extensions of coverage shall be provided and shall be indicated on the Certificate of Insurance:

1. Comprehensive Form
2. Owned, Hired, Leased and Non-owned vehicles to be covered.

In the event the contractor or subcontractor does not own any automobiles in the corporate name, non-owned and hire automobile coverage will be maintained in the amount indicated above.

6. Upon failure of the CPC to ascertain that each of its contractors and subcontractors furnishes, delivers, and maintains such insurance as herein provided, this MOU, at the election of the City, may be declared forthwith suspended, discontinued, or terminated. Failure of a CPC's contractor or subcontractor to take out and/or to maintain any required insurance shall not relieve the CPC, its contractors or subcontractors, from any liability under this MOU, nor shall these requirements be construed to conflict with the obligation of this MOU concerning indemnification.
7. 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.
8. 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.

9. The City shall be covered as an additional insured under any and all Insurance (except Workers' Compensation) required pursuant to this MOU, and such insurance shall be primary with respect to the additional insured. Confirmation of this shall appear on the Accord Certificate of Insurance and on any and all applicable Insurance policies. Contractor/Consultant must also submit to City an Additional Insured Endorsement (Form CG 20 10 (11/85) or its equivalent) evidencing City's rights as an Additional Insured.
10. Each and every agent acting as Authorized Representative on behalf of a company affording coverage pursuant to this MOU shall warrant when signing the Accord Certificate of Insurance that specific authorization has been granted by the company for the agent to bind coverage as required and to execute the Accord Certificate of Insurance as evidence of such coverage. In addition, each every agent shall warrant when signing the Accord 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.

VIII. Term of MOU

This MOU will commence as of the date of its full execution, as shall be reflected on the first page of the MOU, and the MOU will continue in effect for five (5) years. Upon mutual agreement of the Parties, the Parties may renew this MOU for one additional five-year term.

IX. Suspension of Work and Termination of MOU

- A. In the event that the City determines that any work being performed on the Park, or any failure to perform work on the Park, is inconsistent with the Master Plan, this MOU, and/or the project, improvement or initiative plans approved as set forth in section II above, the City shall immediately contact the CPC in writing and shall articulate the corrective action required. The City shall state the number of days that the CPC shall have to implement the corrective action, and shall make such determination based upon the seriousness of the matter, the safety implications of the matter, and the amount of time that it would reasonably take to implement that type of correction. The City shall be reasonable with regard to



granting extensions of time if the CPC indicates that it needs additional time and is making a good faith effort to implement the corrective action.

1. The CPC shall use its best efforts to implement the corrective action within the time set forth by the City in its written notice. In the event that the CPC needs additional time to implement the corrective action, it shall request an extension of time for a defined time period.
 2. In the event that the CPC does not make a good faith effort to implement the corrective action within the time frame established by the City, either originally or in an extension of time, the City shall have the right to suspend the offending project until the corrective action is implemented, at no cost to the City.
 3. In the event that the offending action is a failure to perform work, including but not limited to maintenance work, and in the event that the CPC does not make a good faith effort to implement the corrective action within the time frame established by the City, either originally or in an extension of time, the City shall have the right to perform the work or direct that the work be performed. The CPC shall reimburse the City for the reasonable cost of performing the work.
 4. In the event that the City and the CPC disagree about the corrective action to be implemented, the Parties shall attend Alternative Dispute Resolution (“ADR”) in an attempt to resolve the matter. The work at issue shall be suspended until the completion of the ADR.
 5. Should the Parties be unable to resolve the corrective action issue after ADR, the City shall have the right to terminate this MOU for cause, at no cost to the City.
- B. In the event that the City determines that any work being performed on the Park creates a safety hazard, the City shall suspend the work immediately and shall bear no cost associated with the suspension. The City shall immediately notify the CPC, in writing and by telephone that the work has been suspended and the corrective action required. The work shall remain suspended until the corrective action is implemented.
- C. In the event that the City determines that any failure to perform work on the Park is creating a safety hazard, the City may close the Park, and shall bear no cost associated with the closure. The City shall immediately notify the CPC, in writing and by telephone that the Park has been closed and the corrective action required. The City may keep the Park closed until the corrective action is implemented.



- D. Either Party shall have the right to terminate this MOU without cause at any time prior to the MOU's expiration by giving written notice to the other Party at least thirty (30) days prior to the date such termination is to be effective, and such termination shall be at no cost to either of the Parties. In the event of such termination, the CPC shall remain obligated to utilize or cause to be utilized all donated and/or committed funds as intended by the donor, pursuant to section IV N above.



IN WITNESS WHEREOF, the City and the CPC have caused this MOU to be executed by their duly authorized officials, the day and year first above written.

ATTEST:
Sworn to and subscribed
Before me this _____ day
of _____, 2011.

**CHASTAIN PARK
CONSERVANCY, INC.:**

Notary Public

_____, PRESIDENT

ATTEST:

CITY OF ATLANTA:

Municipal Clerk (Seal)

KASIM REED, MAYOR

RECOMMENDED:

Commissioner,
Department of Parks, Recreation,
and Cultural Affairs

APPROVED:

Chief Procurement Officer

APPROVED AS TO FORM:

City Attorney



EXHIBIT A

Property Description:

**Chastain Park
The Fields
Maintenance Shed**



Fields Programming

EXHIBIT B

AT\8322399-18322399.2

EXHIBIT B

	WINTER			SPRING			SUMMER			FALL			TOTAL		
	Mid-November - January			February - Mid-May			Mid-May - Mid-August			Mid-August - Mid-November			TOTAL YEAR		
	Mid-November	January	Total	February	Mid-May	Total	Mid-May	Mid-August	Total	Mid-August	Mid-November	Total	Mid-November	January	Total
6 a.m. - 8 a.m.	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
9 a.m. - 12 p.m.	120	120	240	180	180	360	168	168	336	720	720	144	144	288	
12 p.m. - 3 p.m.	30	30	60	120	120	240	132	132	264	360	360	96	96	192	
3 p.m. - 5 p.m.	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
5 p.m. - 6 p.m.	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
Total Hours	660	120	780	300	300	600	300	300	600	1,176	1,176	240	240	1,416	
<i>Hours (Total Hours)</i>															
NRD Hours	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
% of Total	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	
% of Prime Time	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	
Colony Hours	0	0	0	150	0	150	0	0	0	0	0	0	0	150	
% of Total	0%	0%	0%	17%	0%	25%	0%	0%	0%	0%	0%	0%	0%	11%	
% of Prime Time	0%	0%	0%	50%	0%	25%	0%	0%	0%	0%	0%	0%	0%	15%	

NRD
 1. 10/1/2014
 2. 10/1/2014
 3. 10/1/2014

Document comparison done by Workshare DeltaView on Wednesday, November 02, 2011 10:55:10 AM

Input:	
Document 1	interwovenSite://ATLANTA/AT/8322399/1
Document 2	interwovenSite://ATLANTA/AT/8322399/2
Rendering set	Standard

Legend:	
<u>Insertion</u>	
<u>Deletion</u>	
<u>Moved from</u>	
<u>Moved to</u>	
Style change	
Format change	
<u>Moved-deletion</u>	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
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Deletions	37
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	49

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2/06/12
2:43 PM

Atlanta City Council

CONSENT I

02/06/2012 AGENDA SECTION I

ADOPT

YEAS: 10
NAYS: 0
ABSTENTIONS: 0
NOT VOTING: 3
EXCUSED: 0
ABSENT 3

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

CONSENT I

		02-06-12
ITEMS ADOPTED ON CONSENT	ITEMS ADOPTED ON CONSENT	ITEMS ADVERSESED ON CONSENT
1. 12-O-0010	36. 12-R-0113	44. 12-R-0121
2. 10-O-1808	37. 12-R-0114	45. 12-R-0122
3. 11-O-1540	38. 12-R-0115	46. 12-R-0123
4. 12-O-0013	39. 12-R-0116	47. 12-R-0124
5. 12-O-0080	40. 12-R-0117	48. 12-R-0125
6. 12-O-0087	41. 12-R-0118	49. 12-R-0126
7. 12-O-0046	42. 12-R-0119	50. 12-R-0127
8. 12-O-0047	43. 12-R-0120	51. 12-R-0128
9. 12-O-0048		52. 12-R-0129
10. 12-O-0077		53. 12-R-0130
11. 12-O-0054		54. 12-R-0131
12. 12-O-0055		55. 12-R-0132
13. 12-O-0057		56. 12-R-0133
14. 12-O-0061		57. 12-R-0134
15. 12-O-0062		58. 12-R-0135
16. 12-O-0085		59. 12-R-0136
17. 11-R-1132		60. 12-R-0137
18. 12-R-0089		61. 12-R-0138
19. 12-R-0090		62. 12-R-0139
20. 12-R-0091		63. 12-R-0140
21. 12-R-0092		64. 12-R-0141
22. 12-R-0154		65. 12-R-0142
23. 11-R-1581		66. 12-R-0143
24. 12-R-0083		67. 12-R-0144
25. 12-R-0086		68. 12-R-0145
26. 12-R-0110		69. 12-R-0146
27. 12-R-0111		70. 12-R-0147
28. 12-R-0148		
29. 12-R-0149		
30. 12-R-0106		
31. 12-R-0107		
32. 12-R-0108		
33. 12-R-0109		
34. 12-R-0096		
35. 12-R-0097		