A SUBSTITUTE RESOLUTION BY COMMUNITY DEVELOPMENT/ HUMAN RESOURCES COMMITTEE

12-R-1723

A SUBSTITUTE RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A LEASE AND SERVICE AGREEMENT WITH THE GARDEN HILLS POOL AND PARK ASSOCIATION, INC., FOR THE PURPOSE OF OPERATING THE GARDEN HILLS SWIMMING POOL, COMMUNITY CENTER AND ATHLETIC FIELDS ON BEHALF OF THE DEPARTMENT OF PARKS, RECREATION, AND CULTURAL AFFAIRS; AND FOR OTHER PURPOSES.

WHEREAS, the City of Atlanta ("City") owns the Garden Hills Swimming Pool, Community Center and Athletic Fields (collectively the "Facilities"); and

WHEREAS, pursuant to Resolution 07-R-0581 adopted by the Atlanta City Council on May 7, 2007, and approved by the Mayor on May 14, 2007, the City and the Garden Hills Pool and Park Association, Inc., (the "Association") entered into a service agreement to operate the Facilities on behalf of the Department of Parks, Recreation, and Cultural Affairs ("DPRCA") which has expired; and

WHEREAS, the Association has been operating the Facilities since 2002 pursuant to Resolution 02-R-0567 adopted by the Atlanta City Council on April 1, 2002, and approved by the Mayor on April 5, 2002, and provides valuable services to the City and the community through its operating of the Facilities, including improvements, renovations and donations; and

WHEREAS, the City desires to continue its relationship with the Association by entering into a new Lease and Services Agreement with the Association for operation of the Facilities (the "Agreement") at no cost to the City; and

WHEREAS, the term of the Agreement will be for a period of five (5) years from the date the Agreement is executed, with an option to renew for an additional five (5) years upon mutual consent of the parties; and

WHEREAS, in order to raise funds to construct a new pool house facility the Association desires to name the Garden Hills Pool House in honor of Daniel Lee "Dan" Martin during the term of the Agreement; and

WHEREAS, the City appreciates the Association's valuable contributions at the Facilities and supports the naming of the Garden Hills Pool House in honor of Daniel Lee "Dan" Martin subject to the conditions set forth in Part II - Chapter 2 - Article I Section 2-2 Naming of public facilities and streets in honor of persons., of the City of Atlanta Code of Ordinances (the "Code"); and

WHEREAS, it is in the best interest of the City to enter into the Agreement with the Association to define the cooperative relationship between the parties, and to establish the role and obligations of each party in that relationship.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA, that the Mayor or his designee, on behalf of the City, is authorized to enter into the Agreement with the Association in substantially the same form as attached hereto as Exhibit A.

BE IT FURTHER RESOLVED, that the Agreement shall be for an initial term of five (5) years with an option to renew for additional five (5) years upon the mutual consent of the parties.

BE IT FURTHER RESOLVED, that the Association may name the Garden Hills Pool House in honor of Daniel Lee "Dan" Martin during the term of the Agreement subject to the conditions set forth in the Code.

BE IT FURTHER RESOLVED, that the City Attorney, or her designee, is hereby directed to prepare the Agreement for execution by the Mayor.

BE IT FINALLY RESOLVED, that the Agreement will not become binding upon the City, and the City will incur no obligation or liability under it until it has been approved by the City Attorney as to form, executed by the Mayor, attested to by the Municipal Clerk, and delivered to the Association.

EXHIBIT A

State of Georgia

County of Fulton

Garden Hills Service and Lease Agreement

This Services and Lease Agreement (hereinafter the "Agreement") is made and entered into this _____ day of _____, 2013, by and between the City of Atlanta, a municipal corporation of the State of Georgia (hereinafter the "City") and the Garden Hills Pool and Park Association, Inc., a Georgia 501(c)(7) Corporation (hereinafter the "Association") (hereinafter, the City and the Association may be referred to collectively as the "Parties" or singularly as the "Party").

Preamble

The Association and City entered a lease agreement on July 30, 2002 (hereinafter the "2002 Lease") to set forth the terms of their public-private partnership for the staffing and operating of the Garden Hills Pool (hereinafter the "Pool"), as well as the Garden Hills Community Center and Play Field. The Pool, Community Center and Play Field are owned by the City and are public recreational facilities. They are bordered by Pinetree Drive on the north, 341 Pinetree Drive on the east, 338 East Wesley Road on the south, and Rumson Road on the west. The term of the 2002 Lease was three (3) years, with one two-year renewal option. The 2002 Lease expired on July 29, 2005 and a revised lease was authorized by Resolution 07-R-0581, adopted by the Atlanta City Council on May 07, 2007 and approved by the Mayor on May 14, 2007, and signed on June 19, 2007 with a term of five (5) years from the date the agreement was executed, with an option to renew for one (1) additional two (2) year term upon mutual agreement between the parties.

By this Agreement, the Association seeks to lease the Community Center and assist the City in the management and operation of the Pool and Play Field by providing and paying for management services, lifeguards, expanded Pool hours and by organizing volunteers and community groups to preserve and improve the Pool and Play Field. This shall free City resources, staff, and funds for other activities of the Department of Parks, Recreation and Cultural Affairs ("DPRCA").

In its management and operation of the Pool, the Association shall honor all existing requirements of the City including, but not limited to: free swim periods, access for the Camp Best Friends Summer Program, current and extended hours of operation, and other guidelines required by the City. The Association shall have the authority to enter into a management contract with a licensed, insured and experienced pool management company to oversee the day-to-day operation of the Pool, including maintaining water quality and providing certified lifeguards at staffing levels required by the City. The Association shall be solely responsible for paying for the management company out of Pool membership dues, daily fees, and other sources as set forth in this Agreement.

WITNESSETH:

WHEREAS, the City has previously leased the Pool to the Association in the 2002 Lease; and

WHEREAS, the 2002 Lease expired on July 29, 2005, and was renewable for an additional two year term; and

WHEREAS, the 2002 Lease has been successful and beneficial to the City and to the Garden Hills community; and

WHEREAS, this Agreement was authorized by Resolution 12-R-____, adopted by the Atlanta City Council on _____, 2013, and approved by the Mayor on _____, 2013.

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 the Association agree as follows:

A. Community Center & Play Field

The City leases to the Association and the Association leases from the City, subject to the terms and conditions hereinafter set forth the Community Center & Play Field including all of the improvements therein

1. The Community Center and Play Field shall be used for community programming by the Association and by any other entity to whom the Association rents all or a portion of the Community Center and/or Play Field. The Community Center and Play Field may also be used for the sale of concessions by the Association only.

   When the Association allows programming by other entities or person(s), it shall charge such entities a rental rate as agreed to in advance by the Commissioner. In addition, the Association, at its discretion, may charge a renter a refundable sanitation and security bond. .

2. The Association may utilize and/or rent all or a portion of the Community Center and/or Play Field. The rental rate charged must be determined by and consistent with the community center fee schedule as agreed to in advance by the Commissioner. The Association, at its discretion, may also charge a refundable sanitation and security bond.

3. All monetary and in-kind rental payments shall be retained by the Association, and the Association shall oversee their use. The Association shall utilize the monetary rental payments for the sole purpose of maintenance, improvement and/or operation of the Community Center and/or Play Field, and/or to benefit the Association's programming at the Community Center, Pool or Play Field. In-kind payments must be for the same purpose. The Association shall be solely responsible for making certain that use of the rental payments is consistent with this Agreement.

4. The Association's decision of who may reserve all or a portion of the Community Center and/or Play Field must be based upon written objective criteria, and must not be based upon the race, creed, color, religion, sex, national origin, marital status, parental status, age, disability status, sexual orientation, and/or gender identity of any person(s), or of any volunteer, participant, or any other person(s) associated with the entity.

5. The Association shall prepare and maintain an online calendar of upcoming Community Center and Play Field uses, and shall make this available to the public on the Association website.

6. The Association shall not vacate nor abandon the Community Center and/or Play Field at any time during the term hereof; and, if the Association shall abandon, vacate, or surrender the Community Center and/or Play Field or be dispossessed by operation of law or otherwise, any personal property belonging to the Association and left upon the Community Center, Play Field or any portion thereof and any or all of the Association's improvements and facilities thereon shall, at the option of the City, be deemed to be abandoned by the Association and shall, at the option of the City, become the property of the City.

7. The City maintains its right to use the Community Center and/or Play Field at all times, provided that it request use of the facilities at least fourteen (14) calendar days in advance and its use does not conflict or interfere with the Association's programming at or use of the Community Center and/or Play Field.

8. The City shall provide the Association with a key to the Community Center. The key must be in the possession of an adult Association member only. The Association shall keep the Community Center locked and secured at all times when the Association is not using the Community Center, except for those times when the City is present in the Community Center at the time when the Association leaves the building. The Association shall not change or re-key any locks to the Community Center without the prior authorization of the Commissioner. In the event that the Community Center key is lost or stolen, or the lock is vandalized, the Association shall notify the Commissioner or her/his designee via phone or email, who shall promptly provide replacements or arrange emergency repairs, as appropriate.

9. The City shall not be required to provide or pay for any sanitation services, janitorial services, or staff at the Community Center. The City shall be relieved of all its responsibilities to the extent that the responsibilities pertain to the Community Center.

10. As part of its maintenance of the Community Center and Play Field, the Association shall provide, among other things, lawn services, sanitation, janitorial, and pest control services. Pest control services shall include without limitation termite control services.

11. The Association shall not owe monthly rent to the City regarding the Community Center and Play Field. In exchange for a waiver of monthly rent, the Association shall maintain and improve the Community Center and Play Field as set forth in this Agreement. All costs associated with managing and operating the Community Center and Play Field, including but not limited to program costs, shall be the responsibility of the Association.

12. Association shall operate the Play Field for public and private use and use according to a schedule determined by the Association and agreed to in advance by the Commissioner. Private use of the Play Field shall be limited to twenty (20) hours per week.

B. Pool

1. **Management and Operations.** Association shall, at its sole cost and expense, and, subject to the terms and conditions hereinafter prescribed, staff, manage, maintain and operate the Pool 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. **Association's Right to Subcontract.** Association may elect to subcontract the staffing and operation of the Pool to a licensed and certified company specializing in the staffing and operation of public swimming pools, subject to approval by the Commissioner or her/his designee.

      i. Association shall incorporate a complete copy of this Agreement by attachment to each and every subcontract for the provision of staffing and operations services 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 Agreement, including but not limited to certification and coursework requirements for water safety staff.

      ii. Association shall provide 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. Association shall not transfer, assign or sublease any other interest or responsibility under this Agreement without prior written consent of the City.

b. **Fees and Revenue.** Association shall raise all funds necessary for the operation of the Pool. Association shall operate the Pool in such a manner that it shall become self-supporting from earned revenues during the term of the Agreement.

i. Association shall be permitted to perform the following:

(A) Charge admission or usage fees consistent with City of Atlanta Code of Ordinances.

(B) Sell annual passes or memberships pursuant to a schedule determined by the Association and approved by the City.

(C) Sell "Association" memberships pursuant to a schedule determined by the Association and approved by the City, provided that Association membership is not denied to any citizen of the City of Atlanta based upon where s/he lives or works.

(D) Close the Pool during Public Hours and Free Swim for Association sponsored swim meets, provided that said closure is pre-approved in writing by the Commissioner.

(E) Sell individual or group swimming lessons pursuant to a schedule determined by the Association and approved by the City .

(F) Operate food and beverage concessions.

(G) 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 this Agreement, and/or other City event about which the Association 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. .

(H) Sell aquatic sport and safety related materials/ goods at the Pool.

(I) Receive and expend all proceeds derived from all fees and sales as contemplated herein.

ii. The fees established pursuant to subsection (b)(i) above shall not be exceptional or exclusionary so as to discourage public use and accessibility. The fee structure established pursuant to subsections

(b)(i)(A) and (B) above shall be subject to review and approval by the City at such times as Association proposes to make material alterations or changes to any of the categories therein.

iii. Association shall honor all current and future City-issued season swim passes during the Pool's standard hours of public operation, as set forth on Exhibit A hereto. Season swim passes sold by the Association shall be valid at the Pool at all times or as determined by the Association.

iv. Association shall, upon receipt of at least seven (7) calendar 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 the Pool's standard hours of operation, as set forth on Exhibit A hereto.

v. Association shall use the revenue earned from operating and managing the Pool as follows:

(A) Association shall utilize earned revenues for the operation of the Pool, Community Center and Play Field. In the event there are excess funds that are not required for the operation of the Pool, Community Center or Play Field, Association shall use such excess funds for capital improvements to the Pool, Community Center or Play Field (which shall be subject to City's approval), Pool, Community Center or Play Field maintenance costs, or for the establishment of a sufficient reserve fund.

(B) In the event that Association determines that such excess funds are not required for Pool, Community Center or Play operations, capital improvements or maintenance, said funds may be used by Association for Community Center, Pool-related and Play Field-related functions and/or programs beneficial to the Garden Hills community as deemed appropriate by the Association and as approved by the City, the latter of which shall not be unreasonably withheld.

vi. Association shall post all public hour fees in prominent public view and on the Association website made available to the public. The Association shall reference the City website to purchase annual swim passes.

c. Days and Hours of Pool Operation

i. Association shall operate the Pool for public access beginning no later than the Saturday preceding Memorial Day, and ending no earlier than Labor Day (hereinafter referred to as the "Pool Season"). Association

shall have the right to operate the Pool for private use prior to the first day that it opens and operates the Pool for public use.

ii. On the date of execution of this Agreement, the "standard" hours of operation for times when the Atlanta Public Schools are not in session, shall be as described in Exhibit A. The Association may change the standard hours of operation for times when the Atlanta Public Schools are not in session, with prior written consent of the Commissioner.

iii. Association shall have full discretion in determining the Pool's extended hours of operation beyond those described in Exhibit A.

iv. Association shall have the right to allow only Association members at the Pool after "standard" hours of operation, and shall have full discretion in determining the days on which the Pool shall be open after "standard" hours of operation to Association members only. When the Association chooses to allow only Association members at the Pool, the Association shall close the Pool no earlier than 5:00 PM

v. Association shall have the right to designate "free swim" periods at its discretion, but in no event shall the free swim period start prior to 10:00am, and in no event shall the Association designate less than 2.75 uninterrupted hours of free swim per each week day during the time when the Atlanta Public Schools (hereinafter "APS") are not in session.

vi. Association shall not open the Pool to the general public during school hours prior to the end of the APS Spring Semester nor after the APS Fall Semester begins. At its discretion, Association shall have the option to open the Pool to adults, ages twenty-one (21) years and older, and accompanied Pre-Schoolers during school hours.

vii. Association shall post all hours of operation in prominent public view.

viii. The Association may close the Pool as needed for maintenance, safety instruction, special events and community swim meets.

d. Staffing.

i. Association 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. Association 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.

iii. The Association 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's 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. The Association shall maintain written proof of the required staff certifications and course attendance of each member of the Pool's staff and make these available to the Department of Parks, Recreation and Cultural Affairs' Aquatics Program Manager (hereinafter referred to as the "Aquatics Manager") upon request.

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. Association shall not open or otherwise allow the Pool to be operated until proof of the certifications and coursework of each of the Pool's staff has been made to the full and complete satisfaction of City.

vi. Association, 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. Association 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". The Association acknowledges that it has received and is in possession of the City's Aquatics Manual.

e. Standards.

i. Association shall schedule the Pool's required Operational Certification Inspection by the appropriate County Health Department.

ii. The Association shall keep and maintain the Pool, including but not limited to the pool house 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 the highest forms of business practices. This responsibility shall include but not be limited to collecting trash located within ten feet of the outside of the Pool fence, and placing the collected trash in a City-provided trash receptacle. Though the City shall have the maintenance responsibilities set forth in section B(1) below, the Association shall be responsible for making requests, either by phone or in writing, to the Department of Parks, Recreation and Cultural Affairs

Work Order Desk (404.817.6813) , requesting repair and/or maintenance work as needed. In the event that the Association has more than three repair and/or maintenance requests at one time, the Association must submit those requests in writing to the Work Order Desk.

iii. Association agrees it shall have the responsibility to maintain the swimming pool in a clean, sanitary condition 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 during the Pool Season.

iv. Association shall comply with City's sanitation procedures as contained in the Aquatics Manual, including but not limited to sanitizing the pool deck, pool house and restroom facilities on a daily basis.

v. Association shall be responsible for supplying and shall maintain a full complement of life-saving equipment near the swimming 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. Association shall be responsible for supplying and maintaining lifeguard chairs and umbrellas.

vi. Association shall grant to City unrestricted access to the Pool for operational inspections, repair, maintenance and any other purposes that the City deems proper.

vii. Association shall maintain the Play Fields including providing lawn and plant maintenance.

f. Security.

i. Association shall staff and maintain security at the Pool as deemed necessary by the Association and the Commissioner.

ii. Association shall keep the Pool fence, pool house, restrooms and utility room locked and secured at all times when the Pool is closed or otherwise not open to the public.

iii. If conditions and situations dictate, as shall be determined by the Association after consultation with the City, the Association shall utilize the services of a security guard for the purpose of protecting against trespass during times that the Pool is closed.

i. Association shall not change or re-key any locks to the swimming pool, pool house, restrooms, utility room or fence without the prior authorization of the Commissioner. In the event that locks are lost, stolen or vandalized, Association shall notify the City of Atlanta Aquatics Manager who shall promptly provide replacements or arrange emergency repairs, as appropriate.

g. **Consumable Supplies.**
Association 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.** Association shall pay the full and complete cost and expense of managing and operating the Pool, except where otherwise indicated in this Agreement. These costs and expenses shall include but not be limited to internet access costs, staff salaries and benefits, the cost of any and all Subcontractors or service providers as Association 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 Agreement.

3. **Accounting**
   a. Association 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 the Association, upon the City's request.

   b. Association shall provide an Annual Financial Report (consisting of an Income Statement and Balance Sheet) to the Commissioner for each calendar year of the Agreement not later than March 1 of each year, or the date of the expiration of the Term of the Agreement, whichever is later. The Annual Financial Report shall present the Association'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 Association's Board of Directors.

   c. Association shall provide an Annual Performance Report to the Commissioner for each calendar year of the Agreement 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 Association.

4. **Emergencies**
   a. Association shall use the Emergency 911 number to summon Police, Fire or Emergency Medical personnel should events or situations dictate. After summoning emergency personnel, Association shall immediately notify the Aquatics Manager.

   b. In the event that the Association requires the assistance of the City of Atlanta to conduct repairs, the Association shall contact the City's Work Order Desk (404.546.6813, parkscustomerservice@atlantaga.gov) to report system malfunctions, break-ins and any other damage to the any part of the Pool that requires emergency repair service by the City. 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. City's procedure shall be to respond to emergency calls in the order by which the emergency requests are received.

c. Association shall provide the Commissioner and the Aquatics Program Manager with the names and telephone numbers of no less than three (3) Association officials who can be contacted by City at night and on weekends and holidays in the event that emergencies arise at the Pool.

d. Association shall comply with City's emergency procedures as contained in the Aquatics Manual.

C. City Responsibilities

1. Capital Improvements

a. Subject to Section E(1)(d) of this Agreement, the City's responsibilities shall include capital improvements as defined herein to the swimming pool, pool house, restrooms, utility spaces, fence, gates, interior and exterior lights, doors, windows, plumbing, electrical system, filtration and chemical purification systems, pumps, motors, fans and blowers.

b. The City shall charge, and the Association shall pay the City, the full cost of labor, parts and materials for repairs or replacement of plumbing, filtration and purification components incurred by the City, in the event that the City determines that damages resulted from the improper operation of said systems by Association, Association's employees or Association's Subcontractor.

c. The City shall charge, and the Association shall pay the City, the full cost of labor, parts and materials for repairs or replacement of other items located at the Pool incurred by the City, if the City determines that the damage necessitating the repair or replacement resulted from mismanagement, negligence, gross negligence, or intentional bad acts by the Association, Association's employees, or Association's Subcontractor.

d. The Association shall be responsible for making requests for Capital Improvements to the Pool to the Department of Parks, Recreation and Cultural Affairs' Work Order Desk, pursuant to section A(1)(e)(ii) above. The City will respond to such requests in a reasonable manner through its work order system subject to Section E(1)(d) of this Agreement.

e. The City shall undertake emergency repairs as is set forth herein.

2. Seasonal Preparation

a. The responsibility for scheduling the appropriate County Health Department's inspection for the Pool's Operational Certification shall rest with Association.

b. City shall, at its sole cost and expense, provide the following equipment for Association's use:

i. Trash receptacles.

ii. Recycling receptacles

iii. ADA Required Auxiliary Pool Entry Equipment

3. **Utilities.** The City shall, at its sole cost and expense, provide the following utilities at the Pool, Community Center and Play Field: (1) Electricity; (2) Water; (3) Sewer; and (4) Trash & Recycling pickup from City provided trash & recycling receptacles during the regular Pool operating hours of the Pool Season.

4. **Regulatory Signage.** City shall, at its sole cost and expense, install standard regulatory signage at the Pool regarding rules and regulations. Association shall be responsible for installing and paying for all other signage, including but not limited to signs regarding fees and hours of operation.

5. **City's Use of Pool**

a. The City shall give a minimum 7-days prior notice to Association of City's intended use of Pool involving ten (10) or more Camp Best Friends Summer Program participants. City shall have the option of satisfying this requirement by providing Association 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.

b. City shall ensure that Camp Best Friends Summer Program participants visiting the Pool shall be accompanied by a sufficient number of Summer Camp Counselors in accordance with Camp Best Friends Summer Program rules and regulations. If at any time Camp Best Friends Summer Program participants are not accompanied by a sufficient number of counselors the Association shall contact the Commissioner. .

D. Term

The City hereby leases the Pool to the Association for a term of five (5) years from the date of this Agreement, as written on the first page hereof. This Agreement may be renewed for one additional five (5) year term upon mutual agreement between the parties hereto, and upon adoption of appropriate legislation by the Atlanta City Council and approval by the Mayor. Association shall submit written notice to the Commissioner of such intent to renew no less than ninety (90) calendar days prior to the expiration of the term.

E. Improvements

1. **Capital Improvements**

a. Capital Improvements are defined as facility improvements or new system installations having a minimum value of $20,000.00 and a useful lifetime of no less than ten (10) years.

b. The Association has the authority to make capital improvements to the Community Center, the Pool and the Play Field at its own expense upon approval of those improvements by the Commissioner. This agreement anticipates that the Association will engage in construction of a new pool house, ensuring compliance with the Americans with Disabilities Act. All such improvements shall become the property of the City upon their installation and/or completion.

c. The Association may request that the City make and pay for Capital Improvements to the Pool. In a non-Emergency situation, Association's requested Capital Improvements shall first be incorporated into the City's Comprehensive Development Plan (CDP). Following the CDP's adoption by the Atlanta City Council and approval by the Mayor, said improvements shall be incorporated into the City's Capital Improvement Plan (CIP).

d. Capital improvement projects that are incorporated into the CIP 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 to the Community Center, Pool and Play Field that do not qualify as Capital Improvements.

b. The Association shall have the authority to make Facility Improvements to the Pool at its own expense without the prior approval of the Commissioner. However, any Capital or Facility Improvements structural in nature shall be approved in advance by the Commissioner. All improvements shall become the property of the City upon their installation and/or completion.

c. The Association 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 the Association shall be subject to City's final approval or disapproval based on the City's policies and the availability of funding.

F. Insurance and Bonding Requirements

The following general requirements apply to any and all work under this contract. Compliance is required of Association and Subcontractors of any tier.

1. Evidence of Insurance Required Before Work Begins - Neither Association nor Subcontractor shall commence any work of any kind under this contract until all Insurance and Bond requirements contained in this contract 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.

2. Minimum Financial Security Requirements - Any and all companies providing insurance required by this contract 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 Accord Certificate of Insurance form.

3. For all Contracts, regardless of size, companies providing Insurance of Bonds under this Contract must have a current:

   a. Best's Rating not less than A-VII 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 the Association 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 the Association to furnish, deliver and maintain such insurance or bonds as herein provided, this contract, at the election of the City, may be declared forthwith suspended, discontinued or terminated. Failure of the Association to take out and / or to maintain any required insurance or bonds shall not relieve the Association from any liability under the contract, nor shall these requirements be construed to conflict with the obligation of the Association concerning indemnification.

5. Insurance Required For Duration of Contract - Any and all Insurance and Bonds required by this contract shall be maintained during the entire length of this contract, including any extensions thereto.

6. Mandatory 30-Day Notice of Cancellation or Material Change - The City of Atlanta shall, without exception, be given not less than thirty (30) days notice prior to cancellation for other than non-payment of premium or for material change of any Insurance or Bond required by this contract. Non-payment of premium shall require ten (10) days notice of cancellation. Confirmation of this mandatory 30-day notice of cancellation shall appear on the Accord Certificate of Insurance and on any and all Bonds and Insurance policies required by this contract.

7. City of Atlanta As Additional Insured - The City of Atlanta shall be covered as an Additional Insured under any and all Insurance and Bonds required by this contract, 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 Bonds and Insurance policies. However, this requirement does not apply to Workers' Compensation.

8. Mandatory Subcontractor Compliance - Association shall incorporate a copy of these Insurance, Bond requirements in each and every contract with each and every Sub-Contractor of any tier, and shall require each and every Sub-Contractor of any tier to comply with all such requirements. Association agrees that if for any reason Sub-Contractors 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 Association at Association'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 contract shall warrant when signing the Accord Certificate of Insurance that specific authorization has been granted by the Companies for the agent to bind coverage as required and to execute the Accord Certificate of Insurance as evidence of such coverage. 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 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.

10. Workers' Compensation and Employer's Liability Insurance - The Association 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 contract:

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

11. General Liability Insurance - The Association shall procure and maintain General Liability Insurance in an amount not less than $ 1,000,000 per occurrence. The following specific extensions of coverage shall be provided and shall be indicated on the Accord Certificate of Insurance:

    a. Comprehensive Form

    b. Personal Injury

    c. Broad Form Property Damage

    d. Premises – Operations

12. Automobile Liability Insurance - The Association 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 the Association does not own any automobiles in the corporate name, non-owned vehicle coverage shall apply and must be endorsed on either the Association's personal automobile policy or the General Liability coverage required under this Agreement.

13. Property Insurance - The Association shall procure and maintain for the life of this Agreement an All Risk Property Insurance, including Flood and Earthquake coverage. The policy must name the City of Atlanta as a Named Insured . The policy will provide for full replacement cost of the physical structures and other real or personal property comprising the facility.

14. The cancellation of any policy of insurance required by this Agreement shall meet the requirements of notice under the laws of the State of Georgia as presently set forth in the Georgia Code.

G. Hold Harmless Agreement

1. In addition to its agreement to obtain and maintain insurance, as set forth hereinabove, the Association agrees to indemnify and hold harmless the City of Atlanta, its officers, 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 the Association, or of any contractor or subcontractor of the Association, or of any of the Association's officers, agents, or employees; and 2) any and all losses, expenses, demands, damages, and claims which result from any condition created or maintained by the Association, or by any contractor or subcontractor of the Association, or by any of the Association's officers, agents, or employees, which condition was not specified to be created or maintained by this Agreement. The Association further agrees that this agreement 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 Agreement.

2. Lastly, Association shall incorporate a copy of these Hold Harmless requirements in each and every contract with each and every contractor and sub-contractor of any tier, except that the name of the contractor or subcontractor shall be substituted for the word "Association".

H. Non-Discrimination

1. During the performance of this Agreement, the Association agrees to comply with all provisions of Sections 2-1200 and 2-1414 of the Atlanta Code of Ordinances. Furthermore, by execution of this Agreement, the Association certifies that, during the Term of this Agreement, it shall be bound by and comply with the following statement:

"We the supplier of goods, materials, equipment or services covered by this Agreement 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, physical handicap, 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.

The Association 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, section G, of the Agreement.

2. The Association shall in all solicitation or advertisement of employees, placed by or on behalf of the Association, 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, physical handicap, sexual orientation, or gender identity.

3. The Association 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 the Association 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. The Association shall include the provisions of this non-discrimination section, section G, of the Agreement in every contract and subcontract so that such provisions will be binding upon each contractor and subcontractor.

5. A finding that a refusal by the Association or contractor or subcontractor to comply with any portion of this non-discrimination section, section G, of the Agreement, as herein provided and described, may subject the offending party to cancellation. of the Agreement or contract or subcontract as appropriate.

I. Jurisdiction

This Agreement is made and entered into in Fulton County, Georgia. In the event of any dispute, disagreement or action arising under this Agreement, 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.

J. Access

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

K. Notice

1. All notices, demands, requests or replies provided for, permitted or appropriate under this Agreement 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;

    c. By prepaid telegram; or

    d. By deposit with an overnight express delivery service.

2. Notice deposited with the United States Postal Service, telegram 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 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, NE Suite 1600/1700
    Atlanta, Georgia 30303

    The address of the Association shall be:

    Garden Hills Pool & Park Association
    c/o The President
    P.O. Box 52934
    Atlanta, Georgia 30355

L. Termination

Either party to this Agreement shall have the right to terminate the Agreement with or without cause by giving, one unto the other, one hundred eighty (180) days notice of intent to terminate in writing.

M. Default

1. Either Party shall be in default under this Agreement if the Party fails to keep, perform, observe, or comply with any of the terms, conditions, covenants or requirements set forth in this Agreement, and does not cure such failure within thirty (30) days after receipt of written notice of such failure from the Commissioner or the Association 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 M, the other Party may terminate this Agreement upon written notice to the defaulting Party.

2. In the event of default of any of the terms and conditions hereunder, including, but not limited to the obligations placed upon the Association, or upon the termination of this Agreement under any of the other terms hereof, Association agrees to surrender possession of the Pool immediately and hereby grants to City the right of possession thereof, with or without process of law, and the right to expel and to remove Association, 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 Association, and City may repossess itself of the Pool as its estate, but such entry of the Pool by City shall not constitute a trespass or forcible entry or detainer.

N. Entire Agreement

This Agreement represents the entire and integrated Agreement between the Parties and may be amended only by written instrument signed by both Parties, and said instrument must be authorized by appropriate City legislation.

O. Liability

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

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

ATTEST:

_____
Municipal Clerk

CITY OF ATLANTA:

_____
Mayor (Seal)

ATTEST:

_____
Corporate Secretary

GARDEN HILLS POOL AND PARK ASSOCIATION, INC.:

_____
President (Seal)

APPROVED:

_____
Commissioner, Department of Parks, Recreation and Cultural Affairs

APPROVED:

_____
Chief Procurement Officer

APPROVED AS TO FORM:

_____
City Attorney

EXHIBIT A

Day of the Week	Public Access
Monday	10:30am – 5:00pm
Tuesday	10:30am – 5:00pm
Wednesday	10:30am – 5:00pm
Thursday	10:30am – 5:00pm
Friday	10:30am – 5:00pm
Saturday	TBD
Sunday	TBD

A RESOLUTION
BY COMMUNITY DEVELOPMENT/
HUMAN RESOURCES COMMITTEE

12- R -1723

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A LEASE AND SERVICE AGREEMENT WITH THE GARDEN HILLS POOL AND PARK ASSOCIATION, INC., FOR THE PURPOSE OF OPERATING THE GARDEN HILLS SWIMMING POOL, GYMNASIUM AND ATHLETIC FIELDS ON BEHALF OF THE DEPARTMENT OF PARKS, RECREATION, AND CULTURAL AFFAIRS; AND FOR OTHER PURPOSES.

WHEREAS, the City of Atlanta ("City") owns the Garden Hills Swimming Pool, Gymnasium and Athletic Fields (collectively the "Facilities"); and

WHEREAS, pursuant to Resolution 07-R-0581 adopted by the Atlanta City Council on May 7, 2007, and approved by the Mayor on May 14, 2007, the City and the Garden Hills Pool and Park Association, Inc., (the "Association") entered into a service agreement to operate the Facilities on behalf of the Department of Parks, Recreation, and Cultural Affairs ("DPRCA") which has expired; and

WHEREAS, the Association has been operating the Facilities since 2002 pursuant to Resolution 02-R-0567 adopted by the Atlanta City Council on April 1, 2002, and approved by the Mayor on April 5, 2002, and provides valuable services to the City and the community through its operating of the Facilities, including improvements, renovations and donations; and

WHEREAS, the City desires to continue its relationship with the Association by entering into a new Lease and Services Agreement with the Association for operation of the Facilities (the "Agreement") at no cost to the City; and

WHEREAS, the term of the Agreement will be for a period of five (5) years from the date the Agreement is executed, with an option to renew for an additional five (5) years upon mutual consent of the parties; and

WHEREAS, in order to raise funds for its operation of the Facilities the Association desires to temporarily name the Garden Hills Swimming Pool in honor of Dan Martin during the term of the Agreement; and

WHEREAS, the City appreciates the Association's valuable contributions at the Facilities and supports the temporary naming of the Garden Hills Swimming Pool in honor of Dan Martin subject to the conditions set forth in Part II - Chapter 2 - Article I
Section 2-2 Naming of public facilities and streets in honor of persons., of the City of Atlanta Code of Ordinances (the "Code"); and

WHEREAS, it is in the best interest of the City to enter into the Agreement with the Association to define the cooperative relationship between the parties, and to establish the role and obligations of each party in that relationship.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA, that the Mayor or his designee, on behalf of the City, is authorized to enter into the Agreement with the Association in substantially the same form as attached hereto as Exhibit A.

BE IT FURTHER RESOLVED, that the Agreement shall be for an initial term of five (5) years with an option to renew for additional five (5) years upon the mutual consent of the parties.

BE IT FURTHER RESOLVED, that the Association may temporarily name the Garden Hills Swimming Pool in honor of Dan Martin during the term of the Agreement subject to the conditions set forth in the Code.

BE IT FURTHER RESOLVED, that the City Attorney, or her designee, is hereby directed to prepare the Agreement for execution by the Mayor.

BE IT FINALLY RESOLVED, that the Agreement will not become binding upon the City, and the City will incur no obligation or liability under it until it has been approved by the City Attorney as to form, executed by the Mayor, attested to by the Municipal Clerk, and delivered to the Association.

Part II: Legislative White Paper: (This portion of the Legislative Request Form will be shared with City Council members and staff)

A. To be completed by Legislative Counsel:

Committee of Purview: Community Development/Human Resources Committee

Caption:
A RESOLUTION
BY COMMUNITY DEVELOPMENT/
HUMAN RESOURCES COMMITTEE

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A LEASE AND SERVICE AGREEMENT WITH THE GARDEN HILLS POOL AND PARK ASSOCIATION, INC., FOR THE PURPOSE OF OPERATING THE GARDEN HILLS SWIMMING POOL, GYMNASIUM AND ATHLETIC FIELDS ON BEHALF OF THE DEPARTMENT OF PARKS, RECREATION, AND CULTURAL AFFAIRS; AND FOR OTHER PURPOSES.

Council Meeting Date: December 3, 2012

Requesting Dept.: Department of Parks, Recreation and Cultural Affairs

B. To be completed by the department:

1. Please provide a summary of the purpose of this legislation (Justification Statement).
THE PURPOSE OF THIS LEGISLATION IS TO AUTHORIZE THE MAYOR TO ENTER INTO A LEASE AND SERVICE AGREEMENT WITH THE GARDEN HILLS POOL AND PARK ASSOCIATION, INC., FOR THE PURPOSE OF OPERATING THE GARDEN HILLS SWIMMING POOL, GYMNASIUM AND ATHLETIC FIELDS ON BEHALF OF THE DEPARTMENT OF PARKS, RECREATION, AND CULTURAL AFFAIRS.

2. Please provide background information regarding this legislation. The Association has been operating the Facilities since 2002 pursuant to Resolution 02-R-0567 adopted by the Atlanta City Council on April 1, 2002, and approved by the Mayor on April 5, 2002, and provides valuable services to the City and the community through its operating of the Facilities, including improvements, renovations and donations.

3. **<u>If Applicable/Known:</u>**

(a) **Contract Type:**

(b) **Source Selection:**

(c) **Bids/Proposals Due:**

(d) Invitations Issued:

(e) **Number of Bids:**

(f) **Proposals Received:**

(g) **Bidders/Proponents:**

(h) Term of Contract:

4. **Fund Account Center:**

5. Source of Funds:

6. Fiscal Impact: none

7. Method of Cost Recovery:

This Legislative Request Form Was Prepared By: Trina Horton, Departmental Contracting Officer

TRANSMITTAL FORM FOR LEGISLATION

TO: MAYOR'S OFFICE **ATTN: CANDACE L. BYRD**

Dept.'s Legislative Liaison: Trina Horton

Contact Number: (404) 546-6795

Originating Department: Department of Parks, Recreation and Cultural Affairs

Committee(s) of Purview: Community Development/Human Resources Committee

Chief of Staff Deadline: November 9, 2012

Anticipated Committee Meeting Date(s): November 28, 2012

Anticipated Full Council Date: December 3, 2012

Legislative Counsel's Signature: _____

Commissioner's Signature: _____

Chief Information Officer Signature (*for IT Procurements*) _____

Chief Procurement Officer Signature: _____

CAPTION
A RESOLUTION
BY COMMUNITY DEVELOPMENT/
HUMAN RESOURCES COMMITTEE

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A LEASE AND SERVICE AGREEMENT WITH THE GARDEN HILLS POOL AND PARK ASSOCIATION, INC., FOR THE PURPOSE OF OPERATING THE GARDEN HILLS SWIMMING POOL, GYMNASIUM AND ATHLETIC FIELDS ON BEHALF OF THE DEPARTMENT OF PARKS, RECREATION, AND CULTURAL AFFAIRS; AND FOR OTHER PURPOSES.

FINANCIAL IMPACT: (if any)
Mayor's Staff Only

Received by CPO: _____ (date) **Received by LC from CPO:** _____ (date)

Received by Mayor's Office: 11.9.12 (date) **Reviewed by:** _____ (date)

Submitted to Council: _____ (date)