



HISTORIC
FRANKLIN
TENNESSEE

ITEM #5
WRKS 04/10/2012

MEMORANDUM

March 27, 2012

TO: Board of Mayor and Alderman

FROM: Lisa R. Clayton, Parks Director
Kristen Corn, Staff Attorney
Vernon Gerth, ACA Community & Economic Development
Eric Stuckey, City Administrator

SUBJECT: Renewal of Lease Agreement with TN Recreation and Parks Association

Purpose

The purpose of this memorandum is to recommend entering into a multi-year lease agreement with the Tennessee Recreation and Parks Association (TRPA) for office space.

Background

On April 4, 2007, the City of Franklin leased the old DMV trailer located at 718 Boyd Mill Ave to the Tennessee Recreation and Parks Association for initially three years with an additional two years upon ninety days of the expiration date of the original three year lease. TRPA is a non-profit professional society of approximately 1200+ individual and agency members organized in 1952 as The Leader in supporting highly effective professionals to achieve healthy, livable communities. TRPA exists to strengthen and unite those committed to the benefits of parks and recreation. The City of Franklin Parks Department has been a member of the TRPA since 2002 with Lisa Clayton, Parks Director serving as President of the Association in 2006-07. Many members of the Franklin Parks personnel are members and also serve in leadership roles or take advantage of in-state training opportunities.

TRPA is the leading organization within the state of Tennessee to provide continuing education in the most current and up-to-date methods and programs available while advocating for parks and recreation funding and positive legislation at the federal, state and local levels. They also communicate through list serves, face-to-face events, print publications, on-line publications and on-line meetings.

By having TRPA within the City of Franklin, travel expenses decrease and educations opportunities for the Parks Department personnel greatly increases because of being a host site for many one to three day trainings. TRPA is a great resource between the national parks and recreation organization.

Financial Impact

Over the past five years, TRPA has paid the City \$23,695 within the existing lease agreement. The new proposal involves increasing the lease term to five (5) year lease term with an option of renewal for an additional three (3) year lease term. The rent terms are as follow:

- Lessee agrees to pay and shall be required to pay to the City during this Agreement payment in the amount of four hundred fifty dollars (\$450.00) per month for the first year of the Initial Period due and payable on the fifteenth (15th) day of each month commencing on May 15, 2012.
- Commencing on May 15, 2013 the rent payment shall increase three percent (3%) to four hundred and sixty-three dollars and fifty cents (\$463.50) per month due and payable on the fifteenth (15th) day of each month commencing on May 15, 2013.



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- Commencing on May 15, 2014 the rent payment shall increase three percent (3%) to four hundred seventy-seven dollars and forty cents (\$477.40) per month due and payable on the fifteenth (15th) day of each month commencing on May 15, 2014.
- Commencing on May 15, 2015 the rent payment shall increase three percent (3%) to four hundred Ninety-one dollars and seventy-two cents (\$491.72) per month due and payable on the fifteenth (15th) day of each month commencing on May 15, 2015.
- Commencing on May 15, 2016 the rent payment shall increase three percent (3%) to five hundred six dollars and forty-seven cents (\$506.47) per month due and payable on the fifteenth (15th) day of each month commencing on May 15, 2016.

Recommendation

The Parks Department recommends entering into a new lease agreement with the Tennessee Recreation and Parks Association.

LEASE AGREEMENT

COF Contract #2012-0021

This Lease Agreement ("Agreement") is made this 27th day of March, 2012 by and between The City of Franklin, Tennessee ("City") and Tennessee Recreation and Parks Association ("Lessee").

RECITALS

WHEREAS, the City owns, operates and maintains certain facilities for athletic contest and other public uses, which facilities are generally known as Jim Warren Park, 718 Boyd Mill, Franklin, Tennessee which is located within the City's corporate limits.

WHEREAS, the City desires to make available to Lessee, and Lessee desires to use, the Department of Parks Trailer and adjacent parking lot as described in the Exhibit A, which is attached hereto and incorporated as if fully stated herein.

NOW, THEREFORE, in the joint and mutual exercise of their powers, and in consideration of the mutual covenants herein contained, and for the good and valuable consideration, the parties hereto agree as follows:

1. **Premises.** The City hereby leases to Lessee and Lessee hereby leases from the City the Parks Trailer and adjacent parking area located in Jim Warren Park ("Premises").
2. **Lease Term.** The term of the lease shall be five (5) years commencing on May 15, 2012 ("Initial Period") and may be renewed for an additional three (3) year term ("Renewal Period") if agreed to by the parties so long as written notice of renewal is given in writing by Lessee to the City within ninety (90) days of the expiration of the initial five (5) year lease term.
3. **Use of Premises.** Lessee shall have the right to occupy and use the premises for the length of the lease term. Lessee shall use and occupy the premises in a safe and careful manner and in compliance with all applicable municipal, state and federal laws, rules and regulations prescribed by the City Fire and Police Departments and other governmental authorities as may be in force and effect during the term of the Agreement. Lessee shall not do any act or suffer any act during the term of the Agreement, which will in any way deface, alter or injure any part of the Premises, except normal wear and tear.
4. **Equipment.** Lessee shall supply and maintain all of its own equipment, including but not limited to business phone lines and internet access. Installation of any equipment requires written consent by the City of Franklin Parks

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Department in conjunction with the City of Franklin Building and Neighborhood Services Department. Lessee shall be responsible for cleanliness and overall appearance of the Premises. Lessee shall have the right to engage janitorial services at Lessee's sole expense.

5. **Landscape.** The City shall landscape the front of the Premises. The City agrees to hold a space open for Lessee to place a sign in the front of the Premises.

6. **Utilities.** The City shall provide electric and water to the Premises. The City shall also provide weekly trash pick up or dumpster pick up.

7. **Property Maintenance.** The City shall provide all property maintenance required on the Premises to keep the property essentially in the same condition as when Lessee takes possession of the Premises. Should Lessee require additional maintenance Lessee shall request the maintenance in writing to the City.

8. **Tornado Shelter.** The City shall provide Lessee access to the existing tornado shelter located in Jim Warren Park, Phase II Concession Stand Restrooms, which is also used by the City in case of emergency.

9. **Signage.** Lessee shall have the right to erect a sign in the landscaped area so long as the sign conforms with the City of Franklin Municipal Code and Franklin Parks sign policy. Lessee shall remove the sign at termination or expiration of this Lease.

10. **Assignment.** This Agreement may not be assigned by either party without the prior written consent of the non-signing party. The Premises cannot be converted or subleased.

11. **Rent.**

(a) Lessee agrees to pay and shall be required to pay to the City during this Agreement payment in the amount of four hundred fifty dollars (\$450.00) per month for the first year of the Initial Period due and payable on the fifteenth (15th) day of each month commencing on May 15, 2012.

(b) Commencing on May 15, 2013 the rent payment shall increase three percent (3%) to four hundred and sixty-three dollars and fifty cents (\$463.50) per month due and payable on the fifteenth (15th) day of each month commencing on May 15, 2013.

(c) Commencing on May 15, 2014 the rent payment shall increase three percent (3%) to four hundred seventy-seven dollars and forty cents (\$477.40) per month due and payable on the fifteenth (15th) day of each month commencing on May 15, 2014.

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(d) Commencing on May 15, 2015 the rent payment shall increase three percent (3%) to four hundred ninety-one dollars and seventy-two cents (\$491.72) per month due and payable on the fifteenth (15th) day of each month commencing on May 15, 2015.

(e) Commencing on May 15, 2016 the rent payment shall increase three percent (3%) to five hundred six dollars and forty-seven cents (\$506.47) per month due and payable on the fifteenth (15th) day of each month commencing on May 15, 2016.

(f) Lease Payments shall be payable to the City of Franklin Parks Department, Attention Lisa Clayton, Parks Director at P.O. Box 305 Franklin, Tennessee or at such other place as the City may from time to time designate in writing. Lease payments may be hand delivered to the Franklin Parks Administrative Office, 705 Boyd Mill Road, Franklin, Tennessee, between the hours of 7am -4pm, Monday-Friday.

13. **The City Shall Have No Liability.** The City shall not be liable to Lessee or Lessee's employees, agents, guests, licensees or invitees or to any other person whomsoever for any injury, including death, to persons or damage to property on or about the Premises or Jim Warren Park, which is caused by the negligence or misconduct of Lessee, its employees, licensees, agents, guests, licensees or invitees entering the Premises or Jim Warren Park under expressed or implied invitation of Lessee arising out of or relating to the use of the Premises by Lessee in the conduct of its business herein or arising out of or relating to any breach or default by Lessee in the performance of its obligations hereunder and Lessee hereby agrees to indemnify the City and hold the City harmless from any loss, expense, or claims arising out of or relating to such damage, injury or death. Lessee further agrees to be responsible for and indemnify and hold the City harmless from any damages or expenses to Lessee, arising out of or caused by burglary, theft, or other illegal acts performed on the Premises and to notify the City of such an event within twenty-four (24) hours of Lessee's notification of such an event.

14. **Alterations.** Lessee will not make any alterations, additions, substitutions, subtractions or replacements to the Premises which would have an adverse effect on either the nature of the Premises or the function or value of the Premises, unless such alterations, additions, substitutions, subtractions, replacements or improvements may be readily removed or re-added without damage to the Premises. Any alterations, additions or improvements to the Premises which may not be readily removed without damage to the Premises, and any substitutions or replacements, shall be considered to constitute a part of the Premises and shall be approved by the City in writing prior to commencement of any work on the Premises.

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15. Liens and Encumbrances. Lessee shall keep the Premises free and clear of all liens and encumbrances except those created or permitted under this Agreement.

16. Accident Report Form. Lessee shall submit within a twenty-four (24) hour period all accident reports to the City of Franklin Parks Department.

17. Repair of Damage. The City is responsible for construction and repair of general wear and tear of the Premises. Lessee agrees to notify the City of any damages to the Premises that occur during the term of this Agreement. Before taking possession of the Premises, Lessee shall notify the City in writing of any previously existing damage. Lessee shall remain responsible for all damage apart from normal wear and tear occurring during the term of the lease.

18. Insurance. Lessee during the term of this Agreement shall procure and maintain at its sole cost and expense, insuring Lessee and the City against any and all liability from injury or death to a person or persons, and for damage or destruction of property occasioned by or arising out of or in connection of the Premises. Lessee shall maintain minimum insurance as provided by the Governmental Tort Liability Act as may be in effect at time of performance, currently as follows:

18.1 General Liability Insurance with minimum limits of not less than \$250,000.00 for bodily injury or death of any one (1) person in any one (1) accident, occurrence or act, and not less than \$600,000.00 for bodily injury or death of all persons in any one (1) accident, occurrence or act, and \$85,000.00 for injury or destruction of property of others in any one (1) accident, occurrence or act. The provisions of this paragraph shall increase on July 1, 2007 by law (T.C.A. 29-20-403).

18.1 General Liability Insurance with minimum limits of not less than \$1,000,000 for bodily injury or death of any one (1) person in any one (1) accident, occurrence or act, and \$100,000 for destruction of property of others in any one (1) accident, occurrence or act.

18.2 Workers' Compensation Insurance in accordance with statutory requirements and Employer's Liability Insurance with a limit of \$500,000 for each occurrence.

18.3 Property damage coverage shall cover the Premises against all equipment and contents. The Lessee shall name the City of Franklin as an "Additional Insured." The insurance policy or policies must be submitted annually and must show the City as the certificate holder for the duration of this Agreement. All insurance policies must be submitted to the City of Franklin Risk Management prior to the beginning of intended use and will remain on file on an annual basis. The Lessee will mail a Certificate of Insurance to the City of Franklin, 109 3rd Avenue South Franklin, Tennessee 37064; Attention Risk Management.

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19. No Agency/Partnership/Joint Venture. Nothing herein shall in any way be construed or intended to create a partnership or joint venture between the parties or to create the relationship of principal and agent between or among any of the parties. None of the parties hereto shall hold itself out in any manner contrary to the terms of this paragraph. No party shall become liable for any representation, act or omission of any other party contrary to the terms of this paragraph.

20. Terminations/Notices. This Agreement may be terminated by either party, with or without cause, upon ninety (90) days' written notice. Any notice provided pursuant to the Agreement, if specified to be in writing, shall be in writing and shall be deemed given: (a) if by hand delivery, then upon receipt thereof; (b) if mailed, then three (3) days after deposit in the mail where sender is located, postage prepaid, certified mail return receipt requested; (c) if by next day delivery service, then upon such delivery; or (d) if by facsimile transmission or electronic mail, then upon confirmation of receipt. All notices will be addressed to the parties at the addresses set forth below (or set forth in such other document which the Agreement may accompany, or such other address as either party may in the future specify in writing to the other):

In the case of the City:

City of Franklin Parks Department
Assoc.
Attn: Lisa Clayton, Director
Director
109 Third Ave. South
P.O. Box 305
Franklin, TN 37065-0305
FAX: 615/794-2103
E-mail: Lisac@franklintn.gov

In the case of Lessee:

Tennessee Recreation & Parks
Attn: Candi Rawlins/Exec.
718 Boyd Mill Ave
Franklin, TN 37064
E-mail: info@trpa.net
E-mail: candi@trpa.net
Fax: 615-790-1008

21. Events of Default. The occurrence of any one or more of the following events constitutes an "Event of Default" under this Agreement:

(a) Lessee's failure to make during the Agreement any lease payment as described in Paragraph 12 above (or any other payment) as it becomes due in accordance with the terms of this Agreement, and the failure continues for fifteen (15) days after the due date; or

(b) Lessee's failure to perform or observe any other covenant, condition or agreement to be performed or observed by it under this Agreement, and the failure is not cured or steps satisfactory to the City taken to cure the failure, within fifteen (15) days after written notice of the failure to Lessee by the City; or

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(c) The discovery by the City that any material statement, representation or warranty made by Lessee in this Agreement or in any writing delivered by Lessee pursuant to or in connection with this Agreement is false, misleading or erroneous in any material respect; or

(d) The initiation by Lessee of a proceeding under any federal or state bankruptcy or insolvency law seeking relief under such laws concerning the indebtedness of Lessee; or

(e) Lessee shall be or become insolvent, or admit in writing its inability to pay its or his debts as they mature, or make an assignment for the benefit of creditors; or Lessee shall apply for or consent to the appointment of any receiver, trustee or similar officer for it or for all or any substantial part of its property; or such receiver, trustee or similar officer shall be appointed without the application or consent of Lessee; or Lessee shall institute (by petition, application, answer, consent or otherwise) any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, liquidation or similar proceeding relating to it under the laws of any jurisdiction; or any such proceeding shall be instituted (by petition, application or otherwise) against Lessee, or any judgment, writ, warrant of attachment or execution or similar process shall be issued or levied against a substantial part of the property of Lessee.

22. **Remedies.** Upon the occurrence of an Event of Default, and as long as the Event of Default is continuing, the City may, at its option, exercise any one or more of the following remedies as to the Premises:

(a) By written notice to Lessee, declare an amount equal to all amounts then due under the terms of the Agreement and all remaining lease payments due thereon, whereupon that amount shall become immediately due and payable;

(b) Within fifteen (15) days after written demand or notice to Lessee, enter and take immediate possession of the Premises wherever situated, without any court order or process of law and without liability for entering the premises;

(c) Lease or sublease the Premises for the account of Lessee, holding Lessee liable for all lease payments and other payments due to the effective date of such leasing or subleasing and for the difference between the purchase price, rental and other amounts paid by the purchaser, lessee or sublessee pursuant to such lease or sublease and the amounts payable by Lessee; and

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(d) Exercise any other right, remedy or privilege which may be available to it under the applicable laws of the State of Tennessee or any other applicable law or proceed by appropriate court action to enforce the terms of this Agreement or to recover damages for the breach of this Agreement or to rescind this Agreement as to the Premises.

Lessee will remain liable for all covenants and obligations under this Agreement, and for all legal fees and other costs and expenses, including court costs awarded by a court of competent jurisdiction, incurred by the City with respect to the enforcement of any of the remedies under this Agreement, when a court of competent jurisdiction has finally adjudicated that an Event of Default has occurred.

Upon an Event of Default or as otherwise required herein or in any Agreement, Lessee shall within ten (10) calendar days after notice from the City, at its own cost and expense: (a) remove all contents of the Premises and, if deinstallation, disassembly or crating is required, cause the equipment to be deinstalled, disassembled and crated; and (b) deliver the keys to the Premises to a location specified by the City. If Lessee refuses to deliver the keys to the Premises in the manner designated, the City may enter upon the Premises and take possession of the Premises and charge to Lessee the costs of such taking. To the extent permitted by applicable law, Lessee hereby expressly waives any damages occasioned by such taking. If Lessee makes modifications to the Premises after build out and such modifications impede the taking of possession of the Premises, the cost of removing the impediments and restoring the site shall be the sole expense of Lessee. All of Lessee's right, title and interest in the Premises, the possession of which is taken by the City upon the occurrence of an Event of Default (including, without limitation, construction contracts, warranties, guaranties or completion assurances applicable to such Equipment), shall pass to the City, and Lessee's rights in such Equipment shall terminate immediately upon such repossession.

23. No Remedy Exclusive. No remedy herein conferred upon or reserved to the City is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. All remedies herein conferred upon or reserved to the City shall survive the termination of this Agreement.

24. Headings. All section headings contained in this Agreement are for convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement.

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25. Governing Law and Venue. The Agreement constitutes the entire agreement and is made under and will be construed in accordance with the laws of the State of Tennessee without giving effect to any state's choice-of-law rules. The choice of forum and venue shall be exclusively in the Courts of Williamson County, Tennessee.

26. Amendments. If seeking any addition or modification to the Contract, the parties agree to reference the specific paragraph number sought to be changed on any future document or purchase order issued in furtherance of the Contract, however, an omission of the reference to same shall not affect its applicability. In no event shall either party be bound by any terms contained in any purchase order, acknowledgement, or other writings unless: (a) such purchase order, acknowledgement, or other writings specifically refer to the Contract or to the specific clause they are intended to modify; (b) clearly indicate the intention of both parties to override and modify the Contract; and (c) such purchase order, acknowledgement, or other writings are signed, with specific material clauses separately initialed, by authorized representatives of both parties.

27. Severability. In any provision of, or any covenant, obligation or agreement contained in this Agreement is determined by a court to be invalid or unenforceable, that determination shall not affect any other provision, covenant, obligation or agreement, each of which shall be construed and enforced as if the invalid or unenforceable portion were not contained in this Agreement. The invalidity or unenforceability shall not affect any valid or enforceable application thereof, and each such provision, covenant, obligation or agreement shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

28. Time of the Essence. The parties agree that TIME IS OF THE ESSENCE with respect to the parties' performance of all provisions of the Agreement.

29. Warranties/Limitation of Liability/Waiver. The City reserves all rights afforded to local governments under law for all general and implied warranties. The City does not waive any rights it may have to all remedies provided by law and therefore any attempt by Vendor to limit its liability shall be void and unenforceable.

30. Arbitration/Mediation. No arbitration shall be required as a condition precedent to filing any legal claim arising out of or relating to the Contract. No arbitration or mediation shall be binding.

31. Waiver. Neither party's failure or delay to exercise any of its rights or powers under the Contract will constitute or be deemed a waiver or forfeiture of those rights or powers. For a waiver of a right or power to be effective, it must be in writing signed by the waiving party. An effective waiver of a right or power shall

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not be construed as either (a) a future or continuing waiver of that same right or power, or (b) the waiver of any other right or power.

IN WITNESS WHEREOF, the parties have executed this Lease Agreement by their authorized officers as of the date set forth above.

The CITY OF FRANKLIN, TENNESSEE

TENNESSEE RECREATION
AND PARKS ASSOCIATION

By: _____
Dr. Ken Moore
Mayor

By: Candi Rawlins 3/27/12
Candi Rawlins
Title: Executive Director

Attest:

Eric Stuckey
City Administrator

Approved as to form:

Kristen L. Corn
Kristen L. Corn
Staff Attorney

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More...

Streets

Bing Aerial

Hybrid

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Building and Parking
Lot at 718 Boyd Mill
Ave. Building is
leased from the City
by TRPA.

705 Boyd Mill Ave. Main
Entrance to Jim Warren
Park.

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