

RESOLUTION NO. 30714

A RESOLUTION ADOPTING A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF CHATTANOOGA AND THE YOUNG MEN'S CHRISTIAN ASSOCIATION OF METROPOLITAN CHATTANOOGA (YMCA), IN SUBSTANTIALLY THE FORM ATTACHED, TO ESTABLISH A BASIS FOR REIMBURSEMENT OF UTILITIES AND PERSONNEL EXPENSES INCURRED BY THE YMCA IN SUPPORT OF THE CITY'S VOLUNTEER EMERGENCY RESPONSE AND DEBRIS REMOVAL WORK IN CONNECTION WITH THE APRIL 2020 TORNADO EVENT (DR-4541).

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BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, it is hereby adopting a Memorandum of Understanding between the City of Chattanooga and the Young Men's Christian Association of Metropolitan Chattanooga (YMCA), in substantially the form attached, to establish a basis for reimbursement of utilities and personnel expenses incurred by the YMCA in support of the City's volunteer emergency response and debris removal work in connection with the April 2020 tornado event (DR-4541).

ADOPTED: March 30, 2021

/mem

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“Agreement”) is made by and between the City of Chattanooga, a Tennessee municipal corporation (the “City”) and the Young Men’s Christian Association of Metropolitan Chattanooga (the “YMCA”) (collectively, the “Parties”) with an effective date of April 12, 2020 (the “Effective Date”).

**WHEREAS**, on April 12 and 13, 2020, the City of Chattanooga experienced multiple tornadoes, flash flooding and high waters causing major destruction in a large area of the City in East Brainerd near Hamilton Place and surrounding properties (the “Weather Events”)

**WHEREAS**, in response to Weather Events occurring on April 12 and 13, 2020, the YMCA agrees to allow the City to use its facility located at 7430 Shallowford Road, Chattanooga, Tennessee (the “Hamilton YMCA Facility”) for volunteer emergency response and debris removal.

**WHEREAS**, the Parties desire to enter into this Agreement for the purpose of reimbursing the YMCA for costs incurred for utilities and personnel expenses that would not have otherwise been incurred because the Hamilton YMCA Facility was closed during this period of time to the general public due to COVID-19.

**WHEREAS**, to further the purpose of this Agreement, the City has agreed to reimburse the YMCA for all costs it incurred for the City’s use of the Hamilton County YMCA Facility during the Weather Events.

**NOW THEREFORE**, in consideration of the promises, covenants, and releases set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to the following:

- I. Purpose. The purpose of this MOU is to establish a basis for reimbursement of utilities and personnel expenses incurred by the YMCA in support of the City’s volunteer emergency response and debris removal work in connection with the Weather Events.
- II. Hamilton YMCA Facility. The YMCA agrees to allow the City use of the Hamilton YMCA Facility in order to provide volunteer emergency response and debris removal work in response to the Weather Events (the “Weather Events Program”).

III. Reimbursement. The City agrees to reimburse the YMCA for all costs incurred by the YMCA for the City's use of the Hamilton County YMCA Facility during the Weather Events as follows:

YMCA Personnel Staff:	\$25,427.82
Utilities:	<u>2,877.15</u>
Total Reimbursement:	\$28,304.97

IV. Insurance.

City: The Parties acknowledge that the City is self-insured in accordance with the Tennessee Governmental Tort Liability Act, which establishes the limits of liability for governmental entities in the State of Tennessee, and will, therefore, not be required to maintain general liability insurance.

YMCA: YMCA will provide insurance as set forth in **Exhibit A**.

V. Indemnification.

A. YMCA. YMCA agrees to indemnify, defend and hold harmless City, its officials, agents, representatives and employees and their officials, agents, representatives and employees (the "Indemnified Parties") from and against any and all claims, losses, demands, liabilities, costs and expenses (including reasonable attorneys' fees and costs related thereto) suffered or incurred by the Indemnified Parties, as a result of, or in connection with, any third party claims to the extent caused in whole or in part by the negligence, gross negligence, willful misconduct or fault of YMCA, its officers, representatives, agents or employees in the performance or nonperformance of the obligations set forth in this Agreement, excepting any such injury, damage or loss caused, in whole or part, by the negligence or fault of City. This indemnification provision shall survive the expiration or sooner termination of this Agreement.

B. City. Subject to the provisions of T.C.A. §§ 29-20-101 *et seq.*, the City shall defend and, if found liable, be responsible for paying damages arising from third party claims, suits, liabilities, and judgments for personal injuries or damage to property caused, in whole or in part, by the negligence or fault of the City in the performance or nonperformance of the obligations set forth in this Agreement, excepting any such injury, damage or loss caused, in whole or part, by the negligence or fault of YMCA. This provision shall survive the expiration or sooner termination of this Agreement.

VI. Volunteers. The Parties agree to require all volunteers working in furtherance of the Weather Events Program to execute the City's "Waiver and Release of Liability Standard Form in substantially the form attached hereto as **Exhibit B**.

- VII. Term. The term of this Agreement shall begin on the Effective Date and end May 15, 2020. City agrees to ensure that the Hamilton YMCA Facility is surrendered in good order and condition.
- VIII. Audit Clause. The term "Contractor" is used interchangeably to describe signatories to contracts, grants, and agreements with the City and applies to reflect the relationship with either Parties' officials, staff, contractors, and/or vendors, etc.
- a. All records relating in any manner whatsoever to the Weather Events, or any designated portion thereof, which are in the possession of the Contractor, or any of the Contractor's independent contractors, associates, and/or subcontractors, shall be made available for inspection and copying upon written request to the respective Party(ies). Additionally, said records shall be made available upon request by either Party to any state, federal or other regulatory authorities and any such authority may review, inspect and copy such records. Said records include, but are not limited to, all plans, specifications, submittals, correspondence, minutes, memoranda, tape recordings, videos, or other writings or things which document the Weather Events. Said records expressly include those documents reflecting the time expended by the Contractor and its personnel to perform the obligations of this Agreement, and the records of expenses incurred by the Contractor in its performance under said Agreement. The Contractor shall maintain and protect these records for no less than **seven (7) years** after the completion of the Weather Events or for any longer period of time as may be required by applicable law, good professional practice, and upon notice during the pendency of any claims or litigation arising from the Weather Events.
  - b. The City or their assigns may audit all financial and related records (including digital) associated with the terms of the contract or agreement, including timesheets, reimbursable out of pocket expenses, materials, goods and equipment claimed by the Contractor. The City may further audit any of the Contractor's records to conduct performance audits (to identify waste and abuse or to determine efficiency and effectiveness of the contract or agreement), or to identify conflicts of interest.
  - c. The Contractor shall at all times during the term of the contract or agreement, and for a period of seven (7) years after the end of the contract, keep and maintain records of the work performed pursuant to this contract or agreement. This shall include proper records of quotations, contracts, correspondence, invoices, vouchers, timesheets, and other documents that support actions taken by the Contractor. Documents shall be maintained by the Contractor, which are necessary to clearly reflect all work and actions taken. All such records shall be maintained in accordance with general accepted accounting principles. The Contractor shall, at its own expense,

make such records available for inspection and audit (including copies and extracts of records as required) by the City at all reasonable times and without prior notice.

- d. The obligations of this Section shall be explicitly included in any subcontracts or agreements formed between the Contractor and any subcontractors or suppliers of goods or non-professional services to the extent that those subcontracts or agreements relate to fulfillment of the Contractor's obligations to the City.
- e. Costs of any audits conducted under the authority of this section and not addressed elsewhere will be borne by the City unless the audit identifies significant findings that would benefit the City. The Contractor will reimburse the City for the total costs of an audit that identifies significant findings that would benefit the City.
- f. This Section shall not be construed to limit, revoke, or abridge any other rights, powers, or obligations relating to audit which the City may have by federal, state, or municipal law, whether those rights, powers, or obligations are express or implied.

IX. Contractors/Subcontractors. Each party shall bind its contractors/subcontractors to the terms of this Agreement as to that portion of the Weather Events Program that will be provided by the contractors/subcontractors. This provision shall survive the expiration or sooner termination of this Agreement.

X. General Provisions.

- 1. The Parties shall comply with all applicable laws, including common law, ordinances or regulations issued by any local, state or federal authority.
- 2. All costs associated with each party's obligations under this Agreement shall be the sole responsibility of the party providing the services set forth in herein.
- 3. This Agreement and all services to be rendered hereunder may be terminated at any time by any party with or without cause, by giving the other party fifteen (15) days written notice of such termination. In the event such termination is made for cause, compensation, if any, shall be adjusted in light of the particular facts and circumstances involved in such termination. "Cause" is defined as the willful or grossly negligent failure of either party to comply substantially with the terms of this Agreement. The written notice of cancellation shall be addressed to the following:

- YMCA  
7430 Shallowford Road  
Chattanooga, Tennessee 37421  
Attn: \_\_\_\_\_

- City of Chattanooga  
Office of the Mayor  
c/o Justin Steinmann  
101 E. 11<sup>th</sup> Street  
Chattanooga, TN 37402

Copy to:

Office of the City Attorney  
100 E. 11<sup>th</sup> Street  
Suite 200  
Chattanooga, TN 37402

4. This Agreement shall be governed by the laws of the State of Tennessee and the Codes of the City of Chattanooga.
5. A waiver by any party of any breach of this Agreement shall be in writing. Either party's failure to insist on performance of any of the terms or conditions of this Agreement or to exercise any right hereunder, or either party's waiver of any breach does not waive any other terms, conditions, or rights, whether of the same or similar type.
6. The invalidity, illegality, or unenforceability of any provision of this Agreement, or the occurrence of any event rendering any portion or provision of this Agreement void, shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision held to be void. The Parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this paragraph shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.
7. The Parties shall not assign any rights or duties under this Agreement without the prior written consent of the other party. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligations under this Agreement.
8. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the Parties to this Agreement.

9. This Agreement, including the Exhibits attached hereto, represents the entire and integrated agreement between the Parties hereto. All prior and contemporaneous communications, representations, and agreements by the Parties, whether oral or written, relating to the subject matter of this Agreement are hereby incorporated into and shall become a part of this Agreement.

**[signatures on following page]**

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by and through their respective authorized signatories.

CITY OF CHATTANOOGA, TENNESSEE

By: \_\_\_\_\_

Name: Andy Berke

Title: Mayor

Date: \_\_\_\_\_

YOUTH MEN'S CHRISTIAN ASSOCIATION OF METROPOLITAN CHATTANOOGA

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## EXHIBIT A

**INSURANCE.** YMCA shall purchase and maintain during the life of this Agreement, insurance coverage which will satisfactorily insure Contractor against claims and liabilities which arise because of the execution of this Agreement, with the minimum insurance coverage as follows:

- a. **Commercial General Liability Insurance**, with a limit of \$1,000,000 for each occurrence and \$2,000,000 in the general aggregate.
- b. **Automobile Liability Insurance**, with a limit of \$1,000,000 for each accident, combined single limit for bodily injury and property damage.
- c. **Worker's Compensation Insurance and Employer's Liability Insurance**, in accordance with statutory requirements, with a limit of \$500,000 for each accident.
- d. **Professional Liability Insurance**, with a limit of \$1,000,000 for each claim and aggregate.

If any of the above cited policies expire during the life of this Agreement, it is the Contractor's responsibility to forward renewal Certificates within ten (10) days after the renewal date containing all the aforementioned insurance provisions. Certificates must specifically cite the following provisions:

- i. City of Chattanooga, its agents, representatives, officers, directors, officials and employees must be named an Additional Insured under the following policies:
  - a) Commercial General Liability
  - b) Auto Liability
- ii. YMCA's insurance must be primary insurance as respects performance of subject contract.
- iii. All policies, except Professional Liability Insurance, if applicable, waives rights of recovery (subrogation) against City of Chattanooga, its agents, representatives, officers, directors, officials and employees for any claims arising out of work or services performed by YMCA under this Agreement.

**EXHIBIT B**



**City of Chattanooga Waiver and Release of Liability Standard Form**

<b>Department Name and/or Event Sponsor</b>	<b>Office of the Mayor</b>
<b>Name of Event/Program (the "Event") and Date</b>	<b>Weather Events Program</b>
<b>Participant/Volunteer's Name (First, Last)</b>	
<b>Parent/Guardian's Name (if Participant/Volunteer is a minor)</b>	

The above-named Participant/Volunteer and/or Parent/Guardian on behalf of the above-named Participant/Volunteer by signing this Waiver and Release of Liability ("Release") on behalf of him/herself, his or her executors, administrators, heirs, next of kin, successors and assigns ("Releasees"), hereby WAIVES, RELEASES, DISCHARGES, INDEMNIFIES, DEFENDS and HOLDS HARMLESS the City of Chattanooga and Hamilton County, Tennessee, their departments, administrators, employees, officers, contractors, representatives, and volunteers, from any and all claims, causes of action, lawsuits, judgments, demands, request for costs, and attorneys' fees resulting from bodily injuries, illnesses, disability, death, property damage, and loss of use arising from or attributable to participation in the Event, including: by way of example and no limitation, any risks that may arise from negligence, carelessness on the part of Releasees, from dangerous or defective equipment or property owned, maintained, or controlled by them, or because of their possible liability without fault.

The Participant/Volunteer certifies he or she is physically fit, and if necessary, has sufficiently prepared and/or trained for participation in the Event and has not been advised not to participate by a qualified medical professional. The Participant/Volunteer certifies that there are no health-related reasons which precludes participation. and has the ability to pay for any and all costs related to any medical treatment he or she may need as a result of participation in the Event.

The Participant/Volunteer understands that while participating in the Event he or she may be videotaped, recorded or photographed. The Participant/Volunteer agrees to allow his or her photo, video, or film likeness to be used for any legitimate purpose, including on social media outlets, by the activity holders, producers, sponsors, organizers and assigns.

This Release shall be construed broadly to provide a release and waiver to the maximum extent permissible under applicable law. The Participant/Volunteer is aware that this is a legally binding agreement and certifies he or she has read this document and fully understands its content.

By signing this Release, I understand and accept the terms outlined above.

Participant/Volunteer Signature	
Participant/Volunteer Name and/or Parent/Guardian's Name	
Date	



## DESCRIPTIONS (Continued from Page 1)

ORGANIZATION WHOM YOU ARE REQUIRED TO ADD AS ADDITIONAL INSURED TO THIS POLICY BY WRITTEN CONTRACT OR AGREEMENT, UNLESS SUCH CONTRACT OR AGREEMENT IS EXECUTED AFTER THE DATE OF LOSS.

THE UMBRELLA EXTENDS OVER THE GENERAL LIABILITY, AUTOMOBILE LIABILITY, ABUSE & MOLESTATION, PROFESSIONAL LIABILITY, AND EMPLOYERS LIABILITY