

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number: _____

Meeting Type: Regular

Meeting Date: May 22, 2014

Action Requested By: General Services

Agenda Type: Resolution

Subject Matter:

City of Huntsville and the Young Men's Christian Association of Metropolitan Huntsville, Inc. d/b/a Heart of the Valley YMCA.

Exact Wording for the Agenda:

Resolution authorizing the Mayor to enter into a Lease Agreement between the City of Huntsville and the Young Men's Christian Association of Metropolitan Huntsville, Inc. d/b/a Heart of the Valley YMCA.

Note: If amendment, Please state title and number of the original

Item to be considered for: Action

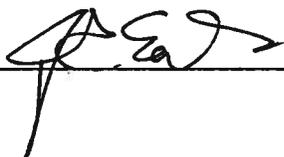
Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what council action will provide, allow and accomplish and; any other information that might be helpful.

Associated Cost: _____

Budgeted Item: Not Applicable

MAYOR RECOMMENDS OR CONCURS: _____

Department Head: 

Date: 5/20/14

RESOLUTION NO. 14-_____

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and he is hereby authorized to enter into a Lease Agreement between the City of Huntsville and the Young Men's Christian Association of Metropolitan Huntsville, Inc. d/b/a Heart of the Valley YMCA, on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to that certain document attached hereto and identified as "Lease Agreement between the City of Huntsville and the Young Men's Christian Association of Metropolitan Huntsville, Inc. d/b/a Heart of the Valley YMCA," consisting of Twelve (10) pages, including Exhibits A & B, and the date of May 22, 2014, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this the 22th day of May, 2014.

President of the City Council of
the City of Huntsville, Alabama

APPROVED this the 22th day of May, 2014.

Mayor of the City of
Huntsville, Alabama

ROUTING SLIP
CONTRACTS AND AGREEMENTS

Originating Department: General Services

Council Meeting Date: 5/22/2014

Department Contact: Jeff Easter

Phone # 256-427-5660

Contract or Agreement: Agreement

Document Name: Agreement between the City of Huntsville and the Young Men's Christian Association

City Obligation Amount:

Total Project Budget:

Uncommitted Account Balance:

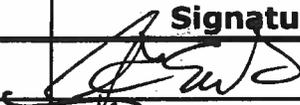
Account Number:

Procurement Agreements

<u>Not Applicable</u>	<u>Not Applicable</u>
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Grant-Funded Agreements

<u>Not Applicable</u>	Grant Name:
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Department	Signature	Date
1) Originating		5/20/14
2) Legal		5/21/14
3) Finance		5/21
4) Originating		
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		

**Lease Agreement Between the
City of Huntsville, Alabama and
the Young Men's Christian Association
of Metropolitan Huntsville, Inc. d/b/a
Heart of the Valley YMCA**

LEASE AGREEMENT

This Lease Agreement (this "Lease") is made and entered into on the _____ day of May, 2014, by and between the **City of Huntsville**, a municipal corporation in the State of Alabama, hereinafter referred to as the "City," and **the Young Men's Christian Association of Metropolitan Huntsville, Inc. d/b/a Heart of the Valley YMCA**, an Alabama non-profit corporation, hereinafter referred to as "YMCA".

WITNESSETH:

WHEREAS, City is the owner of a certain premises consisting of a building and adjacent parking area located at 4600-A Blue Spring Road, Huntsville, Alabama, which is shown in the drawing attached hereto and made a part hereof as Attachment "A"; and

WHEREAS, YMCA desires to lease from the City the building located at 4600-A Blue Spring Road and the parking area immediately surrounding said building (hereinafter referred to as the Leased Premises); and

WHEREAS, YMCA desires to operate a licensed day care center in the Leased Premises; and

WHEREAS, the City desires to lease to YMCA the Leased Premises on the terms and conditions set forth in this Lease;

NOW, THEREFORE, FOR AND IN CONSIDERATION of the mutual covenants and agreements contained hereinbelow, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1.0 **LEASED PREMISES**, City, in consideration of the rents, covenants, and agreements contained herein, to be paid and performed by YMCA, hereby leases unto YMCA the Leased Premises. The City retains the right to utilize the parking area of the Leased Premises from 5:00 a.m. through 11:00 p.m. Monday through Friday and twenty-four hours on Saturdays and Sundays during the Term of this Lease.

2.0 **TERM**.

The term of this Lease shall be ten (10) years and six months, commencing on the date the Leased Premises are occupied by the YMCA. YMCA shall commence occupancy of the Leased Premises within sixty (60) days of the City completing the repairs and alterations set

**_____
President of the City Council of the
City of Huntsville, Alabama
Date: _____**

forth in section 5.0 herein and giving notice of said completion to YMCA. Upon ninety (90) days-notice YMCA may terminate this lease and surrender the Leased Premises pursuant to the requirements of §7(a); however, if YMCA exercises this right of termination, it shall remain liable for a total of \$75,000.00 for the Term of this Lease less a credit of \$7,500.00 for each year YMCA occupies and pays rental on the Leased Premises.

3.0 RENTAL. For the first six months of the Term, YMCA shall pay no rental. Thereafter, YMCA shall pay City an annual rental of Nine Thousand Dollars (\$9,000.00), which shall be paid in twelve (12) consecutive monthly payments of Seven Hundred Fifty Dollars (\$750.00) each on the first (1st) day of each month throughout the term of this Lease. (If YMCA shall take possession on a day other than the first day of the month, the first month's rent shall be prorated by dividing the sum of \$750.00 by the number of days of the month during which YMCA takes possession to obtain a daily rate and then multiplying said daily rate by the number of days YMCA shall be in possession during said first month.) Demand on the Leased Premises on the due date by City is not required. Unless otherwise provided in the Lease Agreement, in the event rent is not paid within ten (10) days after the due date thereof, YMCA agrees to pay a late charge of 2% of the rental amount due.

4.0 USE OF LEASED PREMISES. The parties agree that YMCA will use and occupy the Leased Premises for the operation of a day care center which shall remain in full compliance with all applicable state, federal and local laws, regulations and ordinances. YMCA shall not use the Leased Premises for any other purposes without City's prior written consent.

5.0 REPAIRS AND ALTERATIONS TO BE COMPLETED BY CITY. City shall complete the repairs and alterations set forth in Exhibit "B" attached hereto within ninety (90) days of the date of this Lease

6.0 QUIET ENJOYMENT. City covenants that YMCA, upon paying rent, herein specified and observing the covenants hereof, shall peaceably and quietly have, hold and enjoy the Leased Premises during the term hereof and any extensions thereto.

7.0 MAINTENANCE OF LEASED PREMISES BY YMCA. The City shall be responsible for the maintenance of the roof, parking area, sidewalks and structural systems of the Leased Premises. YMCA shall be responsible for all other maintenance of the Leased Premises including, but not limited to, the HVAC system, plumbing, wiring and alarm systems.

(a) YMCA shall not in any manner deface or injure the Leased Premises and will pay the cost of repairing any damage or injury done to the Leased Premises or any part thereof by YMCA or YMCA's employees, agents, contractors or invitees, ordinary wear and tear excepted. YMCA agrees that it will keep the Leased Premises and the fixtures therein in clean, safe, sanitary and good order and condition and will, at the expiration or other termination of the Lease term hereof, remove all goods and effects not the property of City and at YMCA's expense shall (i) promptly surrender to City possession of the Leased Premises (including keys, locks and any fixtures or other improvements which YMCA hereby acknowledges are owned by the City) in good order and repair (ordinary wear and tear and damage due to casualty or condemnation excepted) and broom clean, (ii) remove therefrom all signs, goods, effects,

machinery, furniture, fixtures computer/telephone cabling and equipment used in conducting YMCA's trade or business which is not owned by the City, and (iii) repair any damage caused by such removal.

(b) YMCA shall not attach any sign to the exterior of the Leased Premises unless the design, nature, and content thereof have been approved by City, which approval shall not be unreasonably withheld. The Tenant shall at its expense maintain and repair any such sign and may upon the expiration of the term of this Lease or any renewal thereof, remove said signs. All signs shall comply with all applicable laws and ordinances.

(c) All injury to the Leased Premises caused by moving the property of YMCA into, on, or out of, the Leased Premises and all breakage done by YMCA, or the agents, servants, employees and visitors of YMCA, shall be repaired by YMCA, at the expense of YMCA. In the event that YMCA shall fail to do so, then City shall have the right to make such necessary repairs, alterations and replacements (structural, nonstructural or otherwise) and any charge or cost so incurred by City shall be paid by YMCA as additional rent, with the monthly installment of rent next becoming due or thereafter falling due under the terms of this Lease. This provision shall be construed as an additional remedy granted to City and not in limitation of any other rights and remedies which City has or may have in said circumstances.

(d) All personal property of YMCA in the Leased Premises shall be at the sole risk of YMCA. City shall not be liable for any accident to or damage to the personal property of YMCA resulting from the use or operation of elevators or of the heating, cooling, electrical or plumbing apparatus unless caused by the negligence of City, its employees, agents or contractors. City shall not, in any event, be liable for damages to the personal property resulting from water, steam or other causes unless caused by the negligence of City, its employees, agents or contractors. YMCA hereby expressly releases City from any liability incurred or claim by reason of damage to YMCA's personal property, other than any liability incurred or claim by reason of the negligence of City, its employees, agents or contractors.

8.0 UTILITIES. YMCA, at YMCA's expense, shall pay all utility meter deposit fees and such sewer service and such utilities (including but not limiting same to water, electric current, and natural gas) throughout the term hereof as YMCA requires for operation and occupancy of the Leased Premises.

9.0 ALTERATIONS AND IMPROVEMENTS BY YMCA. No alterations, additions or Improvements to the Leased Premises, except such as may be otherwise provided for in this Lease, shall be made without first obtaining City's written consent, and any improvements, additions or alterations requested by YMCA after such consent shall have been given, shall be installed by and under the sole control and supervision of City. All requests for alterations, additions, or improvements shall be accompanied by architectural drawings depicting both the existing and proposed layout or depicting the existing and proposed condition of the alteration, addition, or improvement in question. City agrees to give YMCA a contract price for all approved alterations, additions, or improvements and will endeavor to complete all work in a timely and workmanlike manner. Any and all fixtures installed, excepting trade fixtures, shall, at

City's option, remain on the Leased Premises as the property of the City, without compensation to YMCA, or, shall be removed therefrom and the Leased Premises restored to its original condition at cost of YMCA at the expiration or sooner termination of this lease. YMCA shall, at its own cost, repair any damage caused by the removal of trade fixtures restoring the Leased Premises to its original condition.

YMCA shall carry insurance of the following kinds and amounts in addition to any other forms of insurance or bonds required under the terms of the contract specifications. YMCA shall procure and maintain for the duration of the job until final acceptance by the City, or as later indicated, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by YMCA, its agents, representatives, employees or subcontractors.

10.0 INSURANCE REQUIREMENTS. During the term of this Lease, YMCA shall satisfy the following insurance requirements:

A. MINIMUM SCOPE OF INSURANCE:

1. General Liability:

Insurance will be written on an occurrence basis. Claims-made coverage will be accepted only on an exception basis after the City's approval.

Commercial General Liability

Contractual
Personal Injury
Broad Form Property Damage
No Exclusion for Sexual Misconduct or Molestation

2. Property Insurance:

YMCA shall keep the Leased Premises insured against damage or destruction by fire and the perils commonly covered under the extended coverage endorsement in the amount of the replacement cost of the building, not to exceed Two Hundred Fifty Thousand Dollars (\$250,000.00); the proceeds of such policy or policies shall be used for the repair of the Leased Premises. The policy shall be written on a "Special Form" basis with the City named as beneficiary and a deductible not greater than Ten Thousand Dollars (\$10,000.00).

3. Workers' Compensation Insurance:

Statutory protection against bodily injury, sickness or disease or death sustained by employee in the scope of employment. Protection shall be provided by a commercial insurance company or a recognized self-insurance fund authorized before the State of Alabama Industrial Board of

Relations. Waivers of subrogation in favor of the City shall be endorsed to Worker's Compensation coverage.

B. MINIMUM LIMITS OF INSURANCE:

1. General Liability:

Commercial General Liability on an "occurrence form" for bodily injury and property damage:

\$ 2,000,000 General Aggregate Limit

\$ 1,000,000 Each Occurrence

2. Workers' Compensation:

As Required by the State of Alabama Statute

C. OTHER INSURANCE PROVISIONS:

The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability Coverage's Only:

a. The City, its elected and appointed officials, employees, agents and specified volunteers are to be covered as Additional Insureds, as their interests may appear, as respects: liability arising out of activities performed by or on behalf of YMCA for products used by and completed operations of YMCA.; or automobiles owned, leased, hired or borrowed by YMCA. Additional insured status shall be through ISO Additional Endorsement CG 20 10 11 85 or equivalent that is sufficient to provide the coverage required by this Agreement.

b. YMCA's insurance coverage shall be primary insurance as respects the City, its elected and appointed officials, employees, agents and specified volunteers, as their interests may appear as respects: liability arising out of activities performed by or on behalf of YMCA for products used by and completed operations of YMCA; or automobiles owned, leased, hired or borrowed by YMCA . Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents or specified volunteers shall be excess of YMCA's insurance and shall not contribute to it.

c. YMCA's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. All Coverages:

a. YMCA is responsible to pay all deductibles. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by

certified mail, return receipt requested, has been given to the City. Cancellation of coverage for non-payment of premium will require ten (10) days written notice to the City.

b. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officers, employees, agents or specified volunteers.

D. ACCEPTABILITY OF INSURERS:

Insurance is to be placed with insurers with an A. M. Best's rating of no less than **B+ V**.

E. VERIFICATION OF COVERAGE:

The City shall be indicated as a Certificate Holder and YMCA shall furnish the City with Certificates of Insurance reflecting the coverage required by this document. The A. M. Best Rating and deductibles, if applicable, shall be indicated on the Certificate of Insurance for each insurance policy. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

F. HOLD HARMLESS AGREEMENT:

1. Other Than Professional Liability Exposures:

YMCA, to the fullest extent permitted by law, shall indemnify and hold harmless the City, its elected and appointed officials, employees, agents and specified volunteers against all claims, damages, losses and expenses, including, but not limited to, attorney's fees, arising out of or resulting from the performance of the work, provided that any such claim, damage, loss or expense (1) is attributable to personal injury, including bodily injury sickness, disease or death, or injury to or destruction of tangible property, including loss of use resulting therefrom, and (2) is caused by any negligent act or omission of YMCA or any of their consultants, or anyone directly or indirectly employed by them or anyone for whose acts they are legally liable. Such obligation should not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this paragraph.

11.0 INSPECTIONS OF THE LEASED PREMISES. City shall have the right to enter the Leased Premises at all reasonable times (but no less than once per year) for purposes of examining the Leased Premises for the purpose of discovering any defect or injury to the Leased Premises. YMCA shall, upon the discovery of any defect in or injury to the Leased Premises or any appurtenance or apparatus connected therewith, or any need of repairs, promptly make the said repair.

12.0 ASSIGNMENT AND SUBLETTING. YMCA covenants and agrees not to assign this Lease or sublet said Leased Premises or any part of same, or in any other manner transfer the

Lease or YMCA's leasehold interest in the Leased Premises, without the written consent of City which shall not be unreasonably withheld. In the event of such subletting or assignment, YMCA nevertheless shall remain liable for all payments to City under, and compliance with, all of the terms and conditions of this Lease. Any consent to a subletting or assignment shall not be deemed a consent to any subsequent subletting or assignment. YMCA shall submit to City in writing the name of the proposed sub-tenant or assignee, and the intended use and terms of occupancy.

13.0 **DEFAULT.** In the event: (a) rent in this Lease or any other payment required hereunder to be paid by YMCA is not paid at the time and place when and where due; (b) the Leased Premises shall be deserted or vacated for a period lasting more than thirty (30) consecutive days; (c) YMCA shall fail to comply with any term, provision, condition, or covenant of this Lease, other than the payment of rent, and shall not cure such failure within thirty (30) days after written notice to YMCA of such failure to comply; (d) any petition is filed by or against YMCA under any section or chapter of the National Bankruptcy Act as amended, (e) YMCA shall become insolvent or make a transfer in fraud of creditors; (f) YMCA shall make an assignment for benefit of creditors; (g) a receiver is appointed for a substantial part of the assets of YMCA in any of such events, City shall have the option to do any one of the following, in addition to and not in limitation of any other remedy permitted by law or by this Lease:

(i) Terminate this Lease, in which event YMCA shall immediately surrender the Leased Premises to City.

(ii) Enter the Leased Premises without being liable to prosecution or any claim for damages therefor, and relet the Leased Premises, and receive the rent therefor, and YMCA shall, subject to the limitations of paragraph 2.0 above, pay City any deficiency that may arise by reason of such reletting (plus all expenses incurred by such reletting), on demand at the office of the City.

(iii) City may do whatever YMCA is obligated to do by the provisions of this Lease and may enter the Leased Premises without being liable to prosecution or any claim for damages therefor, in order to accomplish this purpose. YMCA agrees to reimburse City immediately upon demand for any expenses which City may incur in thus effecting compliance with this Lease on behalf of YMCA.

(iv) Pursue any and all other remedies available to City at law or in equity.

In the event City employs an attorney on account of the nonpayment of rent or other violation of any of the terms or conditions of this Lease by YMCA, YMCA shall pay all expenses incurred including a reasonable attorney's fee.

14.0 **SURRENDER.** Upon the termination of this Lease, YMCA shall deliver up the Leased Premises in the same condition as the same were in at the commencement of the term of this Lease (with the exception of any remodeling or structural changes previously approved by City), reasonable and ordinary wear and tear and damage by fire and other casualty or condemnation

excepted. Neither vacating the Leased Premises by YMCA, nor the delivery of possession to City, shall be deemed a surrender or an acceptance of surrender of the Leased Premises unless so stipulated in writing by City.

15.0 FIRE, OTHER CASUALTY. If a fire, casualty, or taking renders the Leased Premises or any part thereof unfit for use and occupancy as intended in this Agreement, a just and proportionate abatement of rent shall be made as of the date of such fire, casualty, or taking. If a substantial portion of the Leased Premises is damaged by fire, casualty or taking, City and YMCA shall each have the right to terminate this Lease by notice given to the other party at any time within sixty (60) days after the date of such damage, casualty or taking. If City fails to restore the Leased Premises to a condition substantially suitable for use and occupancy within one hundred eighty (180) days after said fire, casualty or taking, then YMCA shall have a further right to terminate this Lease by notice given to City at any time after the expiration of said one hundred eighty (180) day period, but before the completion of said repair and restoration.

16.0 MISCELLANEOUS. The parties hereto further agree as follows:

16.1 The non-enforceability or illegality of any provision of this Lease shall not render the other provisions unenforceable, invalid or illegal.

16.2 The paragraph headings contained herein are only for convenience and reference, and are not intended to be part of this Lease or in any manner to define, limit or describe the scope and intent of this Lease for the particular paragraph to which they refer.

16.3 The words "City" and "YMCA", when used in this Lease, shall be construed as plural whenever the number of the parties to this Lease shall require.

16.4 Any and all notices or other communications required or permitted by this Lease or by law to be served on or given to any party hereto, by another party to this Lease, shall be in writing, and shall be deemed duly served when personally delivered to the party, City or YMCA, to whom they are directed, or in lieu of such personal service, when received if sent by United States Mail, Postage Prepaid, Certified Mail, Return Receipt Requested, and addressed as follows:

City: City of Huntsville, Alabama
615 Washington Street
Huntsville, Alabama 35801
Attention: Director of General Services

with copy to: City Attorney's Office
Post Office Box 308
Huntsville, Alabama 35804-0308
Attention: City Attorney

YMCA: Heart of the Valley YMCA

If either party hereto changes its address for purposes of this Agreement, the party so changing shall give the other party appropriate written notice of change of address in the manner specified above.

16.5 The parties further agree that this Lease is to be deemed to have been prepared jointly by the parties hereto, after arm's length negotiations, and that any ambiguity or uncertainty existing herein, if any, shall not be interpreted against the other party.

16.6 It is expressly understood that this Lease sets forth the entire agreement of the parties and supersedes any prior written or oral agreements between them concerning the subject matter contained herein, oral or otherwise, and that there is no other agreement between the parties other than that contained herein.

16.7 The parties further agree to sign any and all instruments or documents necessary to carry out the full purpose and intent of this Lease.

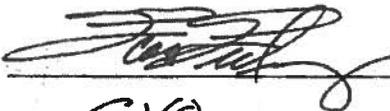
16.8 This Lease shall be binding upon the parties, and their successors in interest.

16.9 Each party to this Lease shall be responsible for the payment of all costs, expenses, legal fees and disbursements incurred or to be incurred by it or any of them in negotiating and preparing this Lease, and all documents required to be delivered pursuant to this Lease and in otherwise performing the transactions contemplated by this Lease.

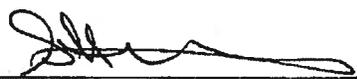
IN WITNESS WHEREOF, the parties hereunto entered into this Lease on the day first written above.

WITNESS:

**YOUNG MEN'S CHRISTIAN ASSOCIATION,
OF METROPOLITAN HUNTSVILLE, INC.
d/b/a/ Heart of the Valley YMCA,
a non-profit corporation**

By:  _____

Its: CVO _____

By:  _____

Its: President/CEO _____

CITY OF HUNTSVILLE, ALABAMA

By: _____

Charles E. Hagood

Its: City Clerk-Treasurer

By: _____

Tommy Battle

Its: Mayor

STATE OF ALABAMA)
COUNTY OF MADISON)

I, the undersigned, a notary public in and for said County, in said State, hereby certify that Tommy Battle and Charles E. Hagood, whose names as Mayor and City-Clerk Treasurer of The City of Huntsville, a municipal corporation are signed to the foregoing instrument, and who are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they, in their capacity as such officers, executed the same voluntarily for and as the act of said corporation on the day the same bears day.

GIVEN under my hand and official seal this the ____ day of _____, 2014.

Notary Public

STATE OF ALABAMA)
COUNTY OF MADISON)

I, the undersigned, a notary public in and for said County, in said State, hereby certify that Scott Mounts, whose name as President/CEO of Young Men's Christian Association of Metropolitan Huntsville, Inc. d/b/a Heart of the Valley YMCA, a non-profit corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, (s)he, in his or her capacity as such officer, executed the same voluntarily for and as the act of said corporation on the day the same bears day.

GIVEN under my hand and official seal this the 19 day of May, 2014.

Jeanette Montague
Notary Public