

ROUTING SLIP CONTRACTS AND AGREEMENTS

Originating Department: Recreation Services

Council Meeting Date: 7/23/2015

Department Contact: Steve Ivey

Phone # 564-8022

Contract or Agreement: Agreement between the City of Huntsville and the Boys and Girls Club of Nort...

Document Name: Agreement between the City of Huntsville and the Boys and Girls Club of North Alaba...

City Obligation Amount:

Total Project Budget:

Uncommitted Account Balance:

Account Number:

Procurement Agreements

Not Applicable	Not Applicable
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Grant-Funded Agreements

Not Applicable	Grant Name: <input type="text"/>
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Department	Signature	Date
1) Originating		7/21/15
2) Legal	Mary Clates	7/21/15
3) Finance		7/21
4) Originating		
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number _____

Meeting Type: Regular

Meeting Date: 7/23/2015

Action Requested By:
Recreation Services

Agenda Item Type
Resolution

Subject Matter:

Boys and Girls Club of North Alabama, Inc.

Exact Wording for the Agenda:

Resolution authorizing the Mayor to enter into an Agreement between the City of Huntsville and the Boys and Girls Club of North Alabama, Inc. for the operation of Westside Center.

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

Item to be considered for: Action

Unanimous Consent Required: Select...

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: Select...

Department Head: _____

Date: 7/21/15

RESOLUTION NO. 15-_____

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, does hereby declare in accordance with Code of Alabama (1975) that the Mayor be, and is hereby authorized to enter into an Agreement by and between the City of Huntsville and the Boys and Girls Clubs of North Alabama, Inc., 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 a "Resolution authorizing the Mayor to enter into an Agreement between the City of Huntsville and the Boys and Girls Clubs of North Alabama, Inc. for the operation of Westside Center," consisting of ten (10) pages including Attachment "A", and the date of July 23, 2015 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 23rd day of July, 2015.

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

APPROVED this the 23rd day of July, 2015.

Mayor of the City of
Huntsville, Alabama

Facility Use and Operation Agreement
Between the City of Huntsville, Alabama
and the Boys and Girls Club
of North Alabama, Inc.

FACILITY USE AND OPERATION AGREEMENT

This Agreement is made and entered into on the _____ day of _____, 2015, by and between the **City of Huntsville**, a municipal corporation in the State of Alabama, hereinafter referred to as the “City,” and **the Boys and Girls Club of North Alabama, Inc.**, an Alabama non-profit corporation, hereinafter referred to as the “Agency”.

WITNESSETH:

WHEREAS, City is the owner of a certain premises known as the Westside Community Center and Gym (the “Center”), consisting of the main building, a gymnasium and an adjacent parking area located at 125 Earl Street, Huntsville, Alabama, which is shown in the drawing attached hereto and made a part hereof as Attachment “A”; and

WHEREAS, the City utilizes the Center for the provision of services to the surrounding community and especially to the youth of the community; and

WHEREAS, the Agency also provides youth services to the Huntsville community; and

WHEREAS, the parties desire to enter into this Agreement for the Agency to operate the Center and to provide community and youth services;

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 Agency’s Occupation and Operation of the Center. The Agency shall assume occupancy and control of the Center and utilize it to provide community and youth services. The youth services will include, but not be limited to, the following programs that the Agency currently offers at its current location in Huntsville: Programs encouraging and aiding academic success (Power Hour, Project Learn, and Club Tech), programs to improve character and leadership abilities (Youth of the Year, Youth for Unity, Torch Club, and Keystone Club), and programs to promote healthy lifestyles (Triple Play, Smart Moves, Smart Girls, MLB Wanna Play, and Passport to Manhood). In addition to the above-described youth services, the Agency will offer the following programs to the adult population of the community surrounding the Center during the hours of 10:00 a.m. to 2:00 p.m. weekdays when the Huntsville City Schools are not in session: use of the computer room, use of the game room, and use of the community rooms of the Center for community meetings and events.

2.0 TERM.

The term of this Agreement shall be five (5) years, commencing on July 24, 2015. The parties may mutually consent to renew this Agreement for two additional five-year terms; however, any such renewal(s) must be approved by the Huntsville City Council. If the Council fails to approve any such extension, then this Agreement ends, and the Agency must vacate the Center no later than the end of the then-current term.

3.0 CONSIDERATION. As consideration for the use and occupancy of the Center to complete its mission of enriching the lives of young people, the Agency will perform the activities described in Section One of this Agreement and will operate and maintain the Center in a manner satisfactory to the City of Huntsville.

4.0 MAINTENANCE OF THE CENTER BY THE AGENCY. The City shall be responsible for the maintenance of the roof, parking area, sidewalks, HVAC, plumbing, wiring and alarm and structural systems of the Center. The Agency shall be responsible for all other maintenance of the Center including, but not limited to, janitorial service and routine maintenance.

(a) the Agency shall not in any manner deface or injure the Center and will pay the cost of repairing any damage or injury done to the Center or any part thereof by the Agency or the Agency's employees, agents, contractors or invitees, ordinary wear and tear excepted. The Agency agrees that it will keep the Center and the fixtures therein in clean, safe, sanitary and good order and condition and will, at the expiration or other termination of the term of this Agreement, remove all goods and effects not the property of City and at the Agency's expense and shall (i) promptly surrender to City possession of the Center (including keys, locks and any fixtures or other improvements which the Agency 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 the Agency's trade or business which is not owned by the City, and (iii) repair any damage caused by such removal.

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

(c) All injury to the Center caused by moving the property of the Agency into, on, or out of, the Center and all breakage done by the Agency, or the agents, servants, employees and visitors of the Agency, shall be repaired by the Agency, at the expense of the Agency. In the event that the Agency 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 the Agency. 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 the Agency in the Center shall be at the sole risk of the Agency. City shall not be liable for any accident to or damage to the personal property of the Agency 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. The Agency hereby expressly releases the City from any liability incurred or claim by reason of damage to the Agency's personal property, other than any liability incurred or claim by reason of the negligence of City, its employees, agents or contractors.

5.0 UTILITIES. The City will provide utilities to the Center throughout the term of this Agreement.

6.0 ALTERATIONS AND IMPROVEMENTS BY THE AGENCY. No alterations, additions or Improvements to the Center, except such as may be otherwise provided for in this Agreement, shall be made without first obtaining City's written consent, and any improvements, additions or alterations requested by the Agency 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 the Agency 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 Center as the property of the City, without compensation to the Agency, or, shall be removed therefrom and the Center restored to its original condition at cost of the Agency at the expiration or sooner termination of this Agreement. The Agency shall, at its own cost, repair any damage caused by the removal of trade fixtures restoring the Center to its original condition.

7.0 COMMUNITY ACTION PARTNERSHIP SPACE IN THE CENTER. Community Action Partnership Huntsville/Madison and Limestone Counties, Inc. (CAP) currently utilizes a portion of the Center for its operations. CAP shall continue to utilize its current space in the Center until such time as it secures an appropriate site to relocate its operations. The Agency shall continue to provide CAP access to the Center and take no actions which would interfere with CAP's use of the Center.

8.0 INSURANCE REQUIREMENTS. During the term of this Agreement, the Agency 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. 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 the Agency for products used by and completed operations of the Agency or automobiles owned, d, hired or borrowed by the Agency. Additional insured status shall be through ISO Additional Endorsement CG 2011 01 96 or equivalent that is sufficient to provide the coverage required by this Agreement.

b. The Agency'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 the Agency for products used by and completed operations of the Agency; or automobiles owned, d, hired or

borrowed by the Agency. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents or specified volunteers shall be excess of the Agency's insurance and shall not contribute to it.

c. The Agency'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. The Agency 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 the Agency 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:

The Agency, 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 Agency's occupancy and use of the Center, 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 the Agency or any of its consultants, invitees or anyone directly or indirectly employed by it or anyone for whose acts it is 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.

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

10.0 ASSIGNMENT BY AGENCY. The Agency covenants and agrees not to assign its rights or obligations under this Agreement, without the express written consent of the City.

11.0 DEFAULT. In the event the Agency defaults on any of its obligations under this Agreement, the City shall give the Agency a 30-day period to correct said defaults. If the Agency, in the City's sole discretion, fails to correct the said defaults, then the City may take any or all of the following actions:

(i) Terminate this Agreement, in which event the Agency shall immediately surrender the Center to the City.

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

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

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

12.0 SURRENDER. Upon the termination of this Agreement, the Agency shall deliver up the Center in the same condition as the same was in at the commencement of the term of this Agreement (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 Center by the Agency, nor the delivery of possession to City, shall be deemed a surrender or an acceptance of surrender of the Center unless so stipulated in writing by City.

13.0 FIRE, OTHER CASUALTY. If a fire, casualty, or taking renders the Center or any part thereof unfit for use and occupancy as intended in this Agreement, the Agency's obligations under this Agreement shall be reduced to only those that can safely be performed in the Center in its then-existing condition. If a substantial portion of the Center is damaged by fire, casualty or

taking, City and the Agency shall each have the right to terminate this Agreement by notice given to the other party at any time within sixty (60) days after the date of such damage, casualty or taking.

14.0 MISCELLANEOUS. The parties hereto further agree as follows:

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

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

14.3 The words “City” and “the Agency”, when used in this Agreement, shall be construed as plural whenever the number of the parties to this Agreement shall require.

14.4 Any and all notices or other communications required or permitted by this or by law to be served on or given to any party hereto, by another party to this Agreement, shall be in writing, and shall be deemed duly served when personally delivered to the party, City or the Agency, 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
Post Office Box 308
Huntsville, Alabama 35804-0308
Attention: Director of Parks and Recreation

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

The Agency: Boys and Girls Club of North Alabama, Inc.
Attention: Patrick Wynn
P.O. Box 73
Huntsville, Alabama 35804

with a copy to: Dan Aldridge, Esq.
400 Franklin St SE
Huntsville, AL 35801

If either party hereto changes its address or other contact information 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.

14.5 The parties further agree that this Agreement 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.

14.6 It is expressly understood that this Agreement 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.

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

14.8 This Agreement shall be binding upon the parties, and their successors in interest.

14.9 Each party to this Agreement 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 Agreement, and all documents required to be delivered pursuant to this Agreement and in otherwise performing the transactions contemplated by this Agreement.

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

WITNESS:

**THE BOYS AND GIRLS CLUB OF
NORTH ALABAMA, INC.**
a non-profit corporation

By: _____

By: _____

Its: _____

Its: _____

THE CITY OF HUNTSVILLE, ALABAMA

Attest: _____

By: _____

Charles E. Hagood

Tommy Battle

Its: City Clerk-Treasurer

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 _____, 2015.

Notary Public

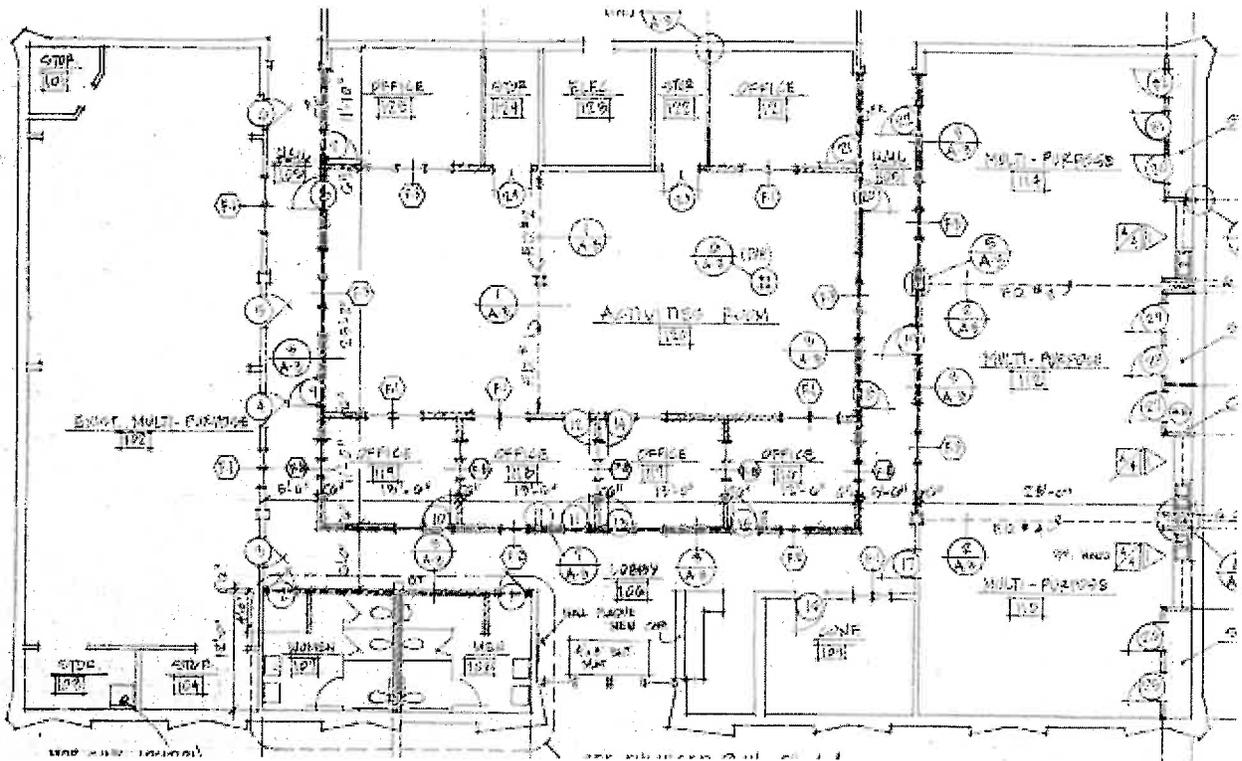
STATE OF ALABAMA)
COUNTY OF MADISON)

I, the undersigned, a notary public in and for said County, in said State, hereby certify that _____, whose name as _____ of the Boys and Girls Club of North Alabama, Inc., 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 ____ day of _____, 2015.

Notary Public

Main Building



Gym

