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RESOLUTION NO.: R-2015-068

Authorizing the City Manager to execute an Inclement Weather Center Service Agreement between the City of Columbia and the United Way of the Midlands for operation of the Inclement Weather Center

BE IT RESOLVED by the Mayor and City Council this 21st day of July, 2015, that the City Manager is hereby authorized to execute the attached Inclement Weather Center Service Agreement with the United Way of the Midlands, or on a form to be approved by the City Attorney, for the operation of the Inclement Weather Center from July 1, 2015 through June 30, 2016, the total compensation for such services shall not exceed Three Hundred Sixty Four Thousand Five Hundred Thirty One Dollars ($364,531.62) Dollars.

(Funding Source: 1018410 638302)

Requested by:

City Manager

Approved by:

City Manager

Approved as to form:

City Attorney

Mayor

ATTEST:

City Clerk

Introduced: 7/21/2015
Final Reading: 7/21/2015

Last revised: 7/17/2015
150716812

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INCLEMENT WEATHER CENTER SERVICE AGREEMENT
(Resolution No.: R-2015-068)

THIS INCLEMENT WEATHER CENTER SERVICE AGREEMENT (this "Agreement") is entered into effective as of the 21st day of July, 2015 (the "Effective Date"), by and between the City of Columbia, South Carolina, a political subdivision of the State of South Carolina (the "City") and United Way of the Midlands, a South Carolina nonprofit corporation ("UWM").

NOW, THEREFORE, in consideration of the premises, the mutual commitments made in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties mutually agree as follows:

1. Engagement of UWM; Consent to Subcontracting.

(a) The City hereby engages UWM to assist the City with the operation of the 2015-2016 Inclement Weather Center (the "Center"). UWM agrees to provide in a commercially reasonable manner (either directly or through subcontractors) the services set forth in **Exhibit A**. The City acknowledges that it participated in the development of the budget for the operation of the Center attached hereto as **Exhibit C** (the "Center Budget"), which budget was prepared assuming 100 days of Center operations, and UWM acknowledges that UWM and its subcontractors will make reasonable efforts to stay within the Center Budget. The City agrees to pay UWM for the costs attributable the operation of the Center up to Three Hundred Sixty Four Thousand Five Hundred Thirty One Dollars ($364,531.62) (the "Contract Fee"). In the event that UWM's costs to operate the Center exceed the Contract Fee due to unforeseeable and/or unanticipated events, such as but not limited to unexpected periods of extreme weather, City staff will work in good faith with UWM, in accordance with section 4(a) to request from Council those additional costs above the Contract Fee. UWM's duties with respect to the Center shall be strictly limited to those duties expressly set out in this Agreement.

(b) The City has requested UWM to assist the City by operating the Center according to the terms of this Agreement. The City recognizes and acknowledges that UWM is a nonprofit organization. UWM recognizes that the City is a municipal corporation and is required by law to comply with constitutional guidelines concerning the separation of church and state matters, including the First Amendment's prohibition against establishing religion. Accordingly, in operating the Center, UWM and its subcontractors will comply with all applicable laws regarding the separation of church and state and the establishment of religion.

(c) The City acknowledges that UWM may not have the staffing or infrastructure necessary for providing all of the services set forth in **Exhibit A**. The City accordingly consents to UWM's subcontracting of any of those services to other providers approved by the City.

2. Term. The term of this Agreement will commence on the Effective Date, and will end on June 30, 2016 (the "Term").

3. Understandings of UWM and the City. In entering into this Agreement, agreeing to the funding limit established by City council for the performance of such duties, and agreeing to the scope of services set out in **Exhibit A**, UWM has made and relied upon the following understandings:

(a) The number of persons staying at the Center will not exceed two hundred forty (240) per night (and in no event will exceed the capacity established by the fire marshal (or otherwise by law) for the physical structure of the Center.

(b) The Center will be operated from November 1, 2015 through April 1, 2016 from 6:00 p.m. until 7:15 a.m. only on those days when the Center Leader determines that weather conditions indicate the Center should be opened to guests for the night, as required by the standards set forth in **Exhibit A**. Any extension of the Center's operations beyond April 1, 2016 must be mutually agreed to in writing by the City Manager, as authorized by City Council, and the CEO of UWM. Any costs attributable to the operation of the Center after April 1, 2016 are not included in the Contract Fee.

4. **Payment to UWM.**

(a) On the Effective Date, the City shall provide advanced funding for the operations of the Center during the months of November and December, based upon the Center Budget. Thereafter, the City shall fund the operations of the Center on a monthly basis by a payment made thirty (30) days in advance of the beginning of the operational month, based upon the Center Budget. UWM shall submit a monthly reconciliation of costs to the City no later than twenty (20) days after the end of each month of the Term, and subsequent advances from the City shall be adjusted accordingly. In the event that UWM projects that the Contract Fee will be insufficient to cover the costs of operating the Center through April 1, 2016, UWM will immediately notify the City of such projected shortfall. After the Center has operated for seventy-five (75) days, UWM and the City shall assess the budget and operations of the center to evaluate funding levels for the remainder of the Center operations period.

(b) The services and facilities to be provided by the City as set forth on **Exhibit B** will be provided at the sole expense of the City and shall be in addition to any amounts paid to UWM by the City pursuant this Agreement.

5. **Confidentiality.** All of the reports, information, data, records or documents of any kind containing medical or health care-related information about Center residents, prepared or assembled by UWM (or any subcontractor) under this Agreement shall be maintained as required to comply with the Health Insurance Portability and Accountability Act (HIPAA). UWM and any subcontractors will maintain such records for a period of not less than three (3) years after receipt of final payment under this Agreement. In the event that UWM or its subcontractors providing services to the Center receive media and/or public inquiries regarding the Center or operations under this Agreement, UWM shall immediately notify the City and shall coordinate any response to such inquiries with the City.

6. **Amendments.** The parties may amend this Agreement at any time provided that such amendment is executed in writing, signed by a duly authorized and empowered representative of both organizations and approved (i) in the case of the City, by the City Manager, as authorized by City Council or (ii) in the case of UWM, by UWM's CEO or the executive committee of UWM's board of directors.

7. **Assignment.** Although UWM may subcontract certain services to other contractors, UWM may not assign the entire Agreement without the prior written consent of the City.

8. **Termination of Agreement.**

(a) Termination by the City. The City may terminate this Agreement in the event of (i) the failure by the City Council to appropriate funds in its budget to pay UWM for operation of the Center; or (ii) the failure by UWM to perform any of its obligations required by this Agreement, which failure is not corrected within fifteen (15) days after having been notified of such deficiency by the City.

(b) Termination by UWM. UWM may terminate this Agreement in the event of (i) the failure by the City to timely pay any portion of the Contract Fee, Excess Costs, or Additional Opening Costs; or (ii) the failure by the City to perform any other obligations required by this Agreement, which failure is not corrected within fifteen (15) days after having been notified of such deficiency by UWM.

(c) Termination by Either Party. Either party has the right to terminate this Agreement, with or without cause, at any time, upon fifteen (15) calendar days' prior written notice to the other party.

In the event this Agreement is terminated for any reason prior to the end of the Term, UWM shall be entitled to actual costs incurred in the operation of the Center through the date of termination, plus the costs of any prepaid expenses related to operation of the Center.

9. **Interest of UWM.** UWM covenants that UWM presently has no interest, direct or indirect, which would conflict with the performance of services required to be performed under this Agreement.

10. **Equal Employment Opportunity and Nondiscrimination in Services.** In carrying out its obligations under this Agreement, UWM will not discriminate against any guest or prospective guest of the Center because of race, creed, color, religion, ancestry, sex, national origin, sexual orientation, disability or other handicap, age, or marital status. UWM will post in conspicuous places, available to employees and applicants for employment, any notices required to be provided by the federal or state government setting forth the provisions related to nondiscrimination. UWM will state that it is an Equal Opportunity or Affirmative Action employer and all qualified applicants will receive consideration for employment without regard to race, color, creed, religion, ancestry, sex, sexual orientation, national origin, disability or other handicap, age, marital status, or status with regard to public assistance. UWM will incorporate these requirements into all subcontracts for work in fulfillment of this Agreement.

11. **Severability.** In the event any provision of this Agreement is held to be invalid, illegal, or unenforceable for any reason and in any respect, if the extent of such invalidity, illegality or unenforceability does not destroy the basis of the bargain herein, then such invalidity, illegality, or unenforceability will in no event affect, prejudice, or disturb the validity of the remainder of this Agreement, which will be in full force and effect, enforceable in accordance with its terms as if such provisions had not been included, or had been modified as provided below, as the case may be. To carry out the intent of the parties hereto as fully as possible, the invalid, illegal or unenforceable provision(s), if possible, will be deemed modified to the extent necessary and possible to render such provision(s) valid and enforceable.

12. **Compliance with Laws.** In performing its obligations hereunder, UWM and its subcontractors will comply with all applicable federal, state and local laws and ordinances.

13. Personnel. UWM has secured, or will secure, directly or indirectly, all trained and qualified personnel needed for performance of the services required of UWM under this Agreement.

14. Representations by City. The City makes the following affirmative representations as the basis for the undertakings on UWM's part herein contained:

(a) The City is a political subdivision of the State of South Carolina and a body politic and corporate, duly organized and validly existing under the constitution and laws of the State of South Carolina, with full legal right, power and authority to enter into and perform its obligations under this Agreement.

(b) The City has duly authorized the execution, delivery and performance of this Agreement and this Agreement has been duly executed and delivered by the City.

15. Representations by UWM. UWM makes the following affirmative representations as the basis for the undertakings on the City's part herein contained:

(a) UWM is a nonprofit corporation duly formed under the laws of the State of South Carolina and exempt from tax as an entity described in Section 501(c)(3) of the Internal Revenue Code, with full legal right, power, authority, adequate funding and financial ability to enter into and perform its obligations under this Agreement.

(b) UWM has duly authorized the execution, delivery and performance of this Agreement and this Agreement has been duly executed and delivered by UWM.

16. Third Party Beneficiary. Nothing contained in this Agreement will be construed to confer upon any other party, the rights of a third party beneficiary, except as may be otherwise specifically provided for herein.

17. Giving of Notice. All notices and other communications required or permitted under this Agreement shall be deemed given and received if delivered in person, by overnight delivery service, or by first-class United States mail, postage prepaid and certified. Any notice shall be delivered to the parties as follows:

The City:
City Manager
City of Columbia
P.O. Box 147
Columbia, SC 29217

With a copy to:
City Attorney
City of Columbia
P.O. Box 667
Columbia, SC 29202

And to:
Community Development
UWM Contract Administrator
City of Columbia
1225 Lady Street, Ste. 102
Columbia, SC 29201

UWM:
United Way of the Midlands
1800 Main Street
Columbia, SC 29201
Attn: CEO

The City and UWM, by notice given hereunder, may designate any further or different persons or addresses to which subsequent notices will be sent.

18. Governing Law. This Agreement shall be interpreted, construed, and enforced in accordance with the laws of South Carolina. Any dispute arising between any of the parties hereto regarding the subject matter of this Agreement shall be subject to the exclusive jurisdiction of the federal and state courts within the State of South Carolina.

19. Status of UWM. UWM and its subcontractors will perform its/their duties and obligations hereunder for the City in the capacity of an independent contractor. The performance by UWM or any subcontractor of any function, duty or responsibility as an agent of the City will not in any manner affect the status of UWM or subcontractor as an independent contractor under this Agreement.

20. No Partnership. Nothing contained in this Agreement is intended or will be construed to create a partnership or joint venture between the City, including any successors or assigns of the City, and UWM, including any subcontractors, successors or assigns of UWM.

21. Approvals of City. Any approvals required from the City will be deemed given if provided by the City Manager or her designated representative.

22. Insurance. UWM shall procure and shall maintain during the Term, whether such operation be by itself or by a subcontractor or anyone directly or indirectly employed by either of them, such insurance as required by statute, ordinance, or this Agreement, to adequately protect UWM or the subcontractor, as the case may be, from any claims or damages including bodily injury or death, which may arise from them during operations under this Agreement.

Each insurance policy required by these instructions shall be endorsed to state that coverage shall not be suspended, voided, or cancelled by either party, reduced in coverage or in limits, unless thirty (30) days prior written notice, by certified mail, return receipt requested, has been given to the City.

- Workers Compensation Insurance - UWM shall procure and shall maintain during the Term, Workers Compensation Insurance for all employees to be engaged in work at the Center under this Agreement, and in case any work is sublet, UWM shall require the subcontractor to similarly provide Worker Compensation Insurance for all of the subcontractor's employees to be engaged in such work unless such employees are covered by the protection afforded by UWM's Worker Compensation Insurance. UWM shall not permit any person who is not protected by Workers Compensation Insurance or a properly approved Self-Insured Workers Compensation Program to perform any activity related to this Agreement.

- Liability Insurance - UWM shall procure and maintain during the Term insurance against claims for any injuries to persons or damages to property that may arise form or in connection with the performance of the work by UWM, its agents, or representatives, employees or subcontractors. The City shall be named as additional insured on all liability insurance policies carried by UWM. A copy of the policy shall be submitted to the City prior to opening the Center.

    - Commercial General Liability Insurance - Coverage in an amount not less than $1,000,000.00 per occurrence, and $2,000,000.00 in the aggregate for bodily injury, personal injury, and property damage, naming the City as an additional insured.

- Automobile Liability Insurance - $1,000,000.00 combined single limit per accident for bodily injury and property damage.

- Abuse and Molestation Insurance - Coverage either through a separate policy on included with the Commercial General Liability policy, in an amount of coverage not less than $1,000,000.00.

- Professional Liability Insurance - If UWM will be providing case management and/or counseling services, coverage in an amount not less than $1,000,000.00.

23. Force Majeure. Notwithstanding any provision to the contrary, neither party will be deemed to be in default for failing to perform any of its duties hereunder, if such failure is the result of any labor dispute, act of God, natural disaster, act of terrorism, armed conflict, inability to obtain labor or materials, governmental restrictions or any other event that is beyond the party's reasonable control. The party shall not be liable for any injury or damage suffered by the other party as a result of such failure or interruption. Each party shall in good faith continue providing services after a failure or interruption as soon as possible or renegotiate the terms of this Agreement.

24. Entire Agreement. This Agreement is the entire agreement among the parties with respect to the matters contemplated hereby and supersedes all other prior or contemporaneous agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof.

25. Counterparts. This Agreement may be executed in counterparts, each of which shall for all purposes be deemed an original, and all of such counterparts shall together constitute one and the same agreement. Such executions may be transmitted to the parties by facsimile and such facsimile execution shall have the full force and effect of an original signature.

26. Final Acceptance of Terms. This agreement is subject to and contingent upon final approval by City Council.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement effective as of the Effective Date.

APPROVED AS TO FORM

Legal Department City of Columbia, SC

CITY OF COLUMBIA:

By: Teresa Wilson
Name: Teresa B. Wilson
Title: City Manager

UNITED WAY OF THE MIDLANDS:

By:
Name: Mac Bennett
Title: CEO

Exhibit A
Services to be performed by UWM

A. UWM will provide the following services to assist the City with the operation of the Center, including the following services:

(1) Overall management of the Center and coordination of daily operations and services.

(2) Provide one (1) hot dinner, plus a light breakfast for guests on-site.

(3) Provide laundry services for guest's bedding and towels.

(4) Collect and provide data on Center guests for HMIS registration and Homeless Point in Time Census documentation.

(5) Establish policies and procedures for the operation of the Center.

(6) Provide transportation for guests to and from the pick-up/drop-off site.

(7) Complete monthly and annual reports on number of guests served and Center activities and provide to the City within five (5) business days of the end of the reporting period.

(8) Notify the City of the need for an overflow Center facility as soon as reasonably practicable and consistent with procedures developed by the City and UWM.

(9) Provide all necessary goods, services, and capital equipment necessary to perform this Agreement, except as otherwise stated herein or mutually agreed by the parties. All such capital equipment and other goods provided by UWM in fulfillment of this Agreement will remain the sole property of the City.

(10) Provide outreach on nights when the Center is closed and during the off-season to identify and engage clients to attempt to bring them into services and housing to address their homelessness.

Inclement Weather Center Procedures for Homeless Sheltering
2015-2015

- The Center is located at 191 Calhoun Street.
- The Center will be ready for operations November 1st, provided that the conditions below are met. The Center will close the morning of April 1, 2016 unless mutually agreed by the City and UWM for additional days.

- The decision to open the Center will be based on when the National Weather Service forecast is predicted to be 40 degrees Fahrenheit and below at 12:00 p.m. or in the event of winter weather conditions such as ice, sleet or snow.
    - National Weather Service (NWS) online forecast - www.erh.noaa.gov
    - The Center will operate with the assumption that all available beds in the community are filled. The IWC will not be an alternative to other programs.
    - UMW will retain the flexibility to open the center to meet other needs such as nights when the precipitation exacerbates the cold or holidays.

- The Center leader will make the decision to open the Center by 12:00 p.m. and will notify MACH agencies, lunch programs, outreach workers, United Way 211 Call Center (www.sc211.org), City Website (www.columbiasc.net) and local media markets of the Center opening.

- The Center will open for staff at 5:00 p.m. in preparation of the Center receiving guests at 6:00 PM. Guests will depart by 7:15 a.m.

- The Center will NOT accept walk-up guests. ALL guests must be transported from the designated pick-up site.

- The Pick up/Drop off site will be the Clean of Heart laundry facility in the UWM parking lot on Laurel Street across from the Bus Transfer Station located at the corner of Sumter and Laurel Street. The buses/vans will operate for pick-up between 5:45 p.m. to 7:15 p.m. Departure from the Center to the Pick up/Drop Off site will be between 5:00 a.m. to 7:00 a.m. The Center closes to guests at 7:15 a.m.

- Center staffing will be provided through UWM and will consist of 2 shifts, 3 staff at each shift:
    - Shift 1 (Monday-Friday): (1) Inclement Weather Center Leader; (1) Assistant Manager (1) House Manager and (1) House Assistant;
    - Shift 2 (1): House Manager and (2) House Assistants; and
    - Shifts 1 & 2 (Saturday & Sunday): (1) House Manager and (2) House Assistants.

- MACH's HMIS client data system will be used on site. UWM will help set up a system to register guests.

- On-site Center security will be provided through UWM under this Agreement. Security will be on-site the entire time the Center is open. At least two (2) guards will be on site from 6:00 p.m. to 12:00 a.m. and at least one (1) guard until the Center closes.

Exhibit B

Services and Funding to be provided by City of Columbia

The City agrees to provide the following services for the operations of the Center:

1. Provide the City's current facility located at 191 Calhoun Street, Columbia, South Carolina as an Inclement Weather Center facility for homeless persons (and related services as provided in Exhibit A) from November 1, 2015 through April 1, 2016 and provide necessary maintenance and repairs to ensure that such facility meets all of the following requirements throughout the Term:

(a) Have sufficient space for beds for 240 guests.

(b) Prior to opening, the City will provide shower curtains, necessary office equipment, folding tables and chairs, two-way radios, trash containers for refuse and disposal of such refuse.

Upon written request of UWM, provide all necessary maintenance and repairs to the Center in order to ensure that such facility at all times satisfies the above requirements and all necessary repairs to beds within the Center.

2. Pay water, sewer, electric, telephone (excluding long distance charges), and Internet connection utilities incurred in the designated Center.

3. Provide casualty insurance for the Center insuring the structure against fire, storm, vandalism and other casualty.

4. Columbia Police will provide regular patrols during operating hours and at other times when called.

Exhibit C
Center Budget

BUDGET FOR INCLEMENT WEATHER CENTER NOV 1- APRIL 1

FY 15-16 IWC Operating Budget

MHA/Transitions

PERSONNEL	Full time - year around staff: 1 Leader; 1 Assist. Manager	$91,500.00
	2 Seasonal Staff 2 House Managers, 3 Staff Assistants, Supervisors, Support Staff - shifts each	$61,062.06
	Management, janitorial and overhead	$59,790.40
SUPPLIES	5 months of operations - Toiletries, utilities, office supplies maintenance/ repairs, laundry services, janitorial supplies, blankets	$17,985.80
TOTAL MHA BUDGET		**$230,338.26**

SUBCONTRACT BUDGETS

FOOD/PAPER PRODUCTS	SALVATION ARMY	$43,686.89
SECURITY	G4S	$40,506.50
TRANSPORTATION	Community Pastor Care	$50,000.00
TOTAL BUDGET OTHER CONTRACTS		**$134,193.39**
TOTAL INCLEMENT WEATHER CENTER BUDGET		**$364,531.65**