

RESOLUTION NO.: R-2018-066

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 19th day of June, 2018, 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 for the fiscal year 2018-2019, the total compensation for such services shall not exceed Three Hundred Fifty-six Thousand Nine Hundred Forty-three and 41/100 (\$356,943.41) Dollars.

(Funding Source: 1018410 638302)

Requested by:

City Manager _____


Mayor

Approved by:


City Manager

Approved as to form:


City Attorney

ATTEST:


City Clerk

Introduced: 6/19/2018
Final Reading: 6/19/2018

ORIGINAL
STAMPED IN RED

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND) **INCLEMENT WEATHER CENTER SERVICE AGREEMENT**

THIS INCLEMENT WEATHER CENTER SERVICE AGREEMENT (this "Agreement") is entered into 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 2018-2019 Inclement Weather Center (the "Center"). UWM agrees to provide in a commercially reasonable manner (either directly or through subcontractors) the services set forth in Appendix A. 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 Fifty-Six Thousand Nine Hundred Forty-Three and 41/100 Dollars (\$356,943.41) (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 Appendix 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, 2019 (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 Appendix 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, 2018 through March 31, 2019 from 5:45 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 **Appendix A**. Any extension of the Center's operations beyond March 31, 2019 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 March 31, 2019 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, 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 March 31, 2019, UWM will immediately notify the City of such projected shortfall. After the Center has operated for sixty-five (65) 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 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
1818 Blanding 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 from 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 or 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 date of the last signature hereinbelow.

WITNESSES:

Gilda D. Neaw
A. M. Davis

CITY OF COLUMBIA

BY: *Teresa B. Wilson*
 Teresa B. Wilson
 Title: City Manager
 Date: 4/29/2018

UNITED WAY OF THE MIDLANDS

BY: _____
 Sara Fawcett
 Chief Executive Officer
 Title: _____
 Date: _____

APPROVED AS TO FORM
[Signature]
 Legal Department City of Columbia, SC

APPENDIX A

Overall Budget Request

Vendor	Requested funding for maximum of 80 days of operations	Notes
Midlands Housing Alliance	\$223,604.56	To provide staff and services at IWC in season and outreach 12 months/year. Budget slightly increased due to increased fringe costs, modest staff salary increases, and the addition of two (two hour) staff trainings on de-escalation techniques and trauma informed care. Also, during FY 2016-17 non-perishable supplies were pre-purchased for FY 2017-18 with City staff approval with unused funds, reducing the FY 2017-18 request. Carryover funds are not expected in current year to utilize for non-perishable supplies. See detailed budget attached.
Salvation Army	\$43,057.85	To provide a hot dinner meal and light breakfast at IWC. Budget slightly increased to accommodate increased meal head count during severe cold weather nights in current season. See detailed budget attached.
Transportation	\$40,000.00	Transportation to and from the IWC including transportation for people with disabilities.
Security	\$46,781.00	For security at the IWC. See attached for rates. Rates increased by vendor. Service levels remained the same. See detailed budget attached.
Contingency for opening/expanding sheltering out of season	\$3,500.00	Budgeting for up to five nights of expanded operations out of season due to severe weather (ex - hurricanes) or if 80 budgeted days is exceeded. Note - does not include transportation or security.
United Way of the Midlands	\$0.00	Oversight, vendor management, and reporting.
Total	\$356,943.41	

APPENDIX A

Vendor Budget – Midlands Housing Alliance (Transitions)

SHIFT 1 (5:00 PM- 12:30 AM)

EMERGENCY SHELTER LEADER	\$ 46,000.00	\$ 10,120.00	\$ 56,120.00
ASSITANT MANAGER	\$ 37,000.00	\$ 6,660.00	\$ 43,660.00
HOUSE MANAGER	\$7,500.00	\$701.25	\$8,201.25
HOUSE ASSISTANT	\$ 6,600.00	\$ 617.10	\$ 7,217.10
HOUSE ASSISTANT	\$ 6,600.00	\$ 617.10	\$ 7,217.10

SHIFT 2 (12:15 AM - 7:45 AM)

HOUSE MANAGER	\$7,500.00	\$701.25	\$8,201.25
HOUSE ASSISTANT	\$ 6,600.00	\$ 617.10	\$ 7,217.10

OUTREACH (IWC NOT OPEN)

OUTREACH STAFF	\$ 500.00	\$ 46.75	\$ 546.75
TRAINING FOR STAFF	\$ 552.00	\$ 58.79	\$ 610.79
OUTREACH STAFF	\$ 500.00	\$ 46.75	\$ 546.75
HOUSEKEEPING/JANITORIAL	\$ 3,570.00	\$ 333.80	\$ 3,903.80
ADDITIONAL STAFF SUPPORT	\$ 10,000.00		\$ 10,000.00
HOLIDAY PAY	\$ 1,500.00		\$ 1,500.00
LOT CLEAN-UP	\$ 850.00		\$ 850.00
TOTAL SALARIES/FRINGES			\$ 155,791.88
STAFF SUPERVISION COST	\$ 37,082.34	\$ 6,735.34	\$ 43,817.68
HR EXPENSES			\$ 2,800.00
WORKMEN'S COMP INSUR.			\$ 3,241.00
TOTAL OVERHEAD - Transitions			\$ 49,858.68
TOTAL ESTIMATE STAFF/SUPPORT			\$ 205,650.56
TOTAL ESTIMATE SUPPLIES			\$ 7,670.00
LAUNDRY SERVICE			\$ 9,054.00
INTERNET SERVICE			\$ 1,230.00
GRAND TOTAL ESTIMATE			\$ 223,604.56

Vendor Budget – Salvation Army of the Midlands

BUDGET LINE ITEM	Proposed Budget 2018-2019
Staff	6,320.62
Paper Products	2,102.75
Food	28,874.48
Transportation	5,760.00
Total	43,057.85

APPENDIX A

Vendor Budget – G4S Security

1, unarmed guard in place when the shelter opens at 5:45 p.m. through 7:30 a.m. = 13.50 hours/night

1, unarmed guard in place when shelter opens at 5:45 p.m. through 11:45 p.m. = 6 hours/night

19.50 hours @ \$28.00 for 77 nights = \$42,042

19.50 hours @ \$42 for 3 potential holidays = \$2,457

Total for 80 days between November 1st, 2018 and April 1st, 2019 = \$44,499

Additional security between 4:45 p.m. and 5:45 p.m. at pick up site on Laurel Street:

1.00 hours @ \$28 for 77 nights = \$2,156

1.00 hours @ \$42 for 3 potential holidays = \$126

Total for additional security at pick up site= \$2,282

Total \$46,781