

#2

11-R-1121

(Do Not Write Above This Line)

A RESOLUTION

BY COUNCILMEMBER C.T. MARTIN

A RESOLUTION AUTHORIZING THE MAYOR, ON BEHALF OF THE CITY OF ATLANTA, TO ENTER INTO AN OPERATING AGREEMENT WITH THE METRO ATLANTA YMCA TO MAINTAIN, OPERATE, AND PROVIDE PROGRAMMING AT THE ADAMSVILLE RECREATION CENTER; AND FOR OTHER PURPOSES.

Substitute

ADOPTED BY

AUG 15 2011

COUNCIL

- CONSENT REFER
- REGULAR REPORT REFER
- ADVERTISE & REFER
- 1st ADOPT 2nd READ & REFER
- PERSONAL PAPER REFER

Date Referred *07/18/2011*

Referred To: *CD/HR*

Date Referred

Referred To:

Date Referred

Referred To:

First Reading

Committee _____
 Date _____
 Chair _____
 Referred To _____

Committee *CD/HR*

Date *7/26/11*

Chair *James R. Shepley*

Action

Fav, Adv, Hold (see rev. side)

Subst Other

Members

Walter Archibald
[Signature]
[Signature]

Refer To

Committee

Date

Chair

Action

Fav, Adv, Hold (see rev. side)

Other

Members

Refer To

Committee

Date

Chair

Action

Fav, Adv, Hold (see rev. side)

Other

Members

Refer To

Committee

Date

Chair

Action

Fav, Adv, Hold (see rev. side)

Other

Members

Refer To

FINAL COUNCIL ACTION

- 2nd 1st & 2nd 3rd
 Readings
 Consent V Vote RC Vote

CERTIFIED

CERTIFIED
 AUG 15 2011
 ATLANTA CITY COUNCIL PRESIDENT
[Signature]

CERTIFIED
 AUG 15 2011

Rhonda Daughlin Johnson
 MUNICIPAL CLERK

MAYOR'S ACTION

APPROVED

AUG 24 2011

WITHOUT SIGNATURE
BY OPERATION OF LAW



RESOLUTION BY **11-R-1121**
COUNCIL MEMBER C.T. MARTIN
AS SUBSTITUTED BY COMMUNITY DEVELOPMENT/ HUMAN RESOURCES
COMMITTEE

A RESOLUTION AUTHORIZING THE MAYOR, ON BEHALF OF THE CITY OF ATLANTA, TO ENTER INTO A MEMORANDUM OF UNDERSTANDING WITH THE YOUNG MEN'S CHRISTIAN ASSOCIATION OF METROPOLITAN ATLANTA TO PROVIDE PROGRAMMING AT THE ADAMSVILLE RECREATION CENTER; AND FOR OTHER PURPOSES.

WHEREAS, the City of Atlanta ("City") owns and operates the Adamsville Recreation Center ("Center") located at 3201 Martin Luther King Jr. Drive, SW Atlanta, Georgia 30331; and

WHEREAS, the Young Men's Christian Association of Metropolitan Atlanta ("YMCA") is a Georgia non-profit corporation dedicated to providing quality community programs to metro Atlanta citizens; and

WHEREAS, YMCA and the City desire to partner in order to provide after-school and weekend programs of recreational, educational, and cultural activities for children and senior citizens at the Center, with YMCA serving as a vendor of the City's programs at no cost to the City; and

WHEREAS, the Department of Parks, Recreation and Cultural Affairs ("DPRCA") recommends that the City allow YMCA to perform this role.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA, that the Mayor or his designee, on behalf of the City, is hereby authorized to enter into a Memorandum of Understanding ("MOU") between the City and YMCA under which YMCA shall provide operation, maintenance, and programming at the Center at no cost to the City; and

BE IT FURTHER RESOLVED, that to the extent YMCA is donating time and resources to the City, the City hereby accepts such donation; and

BE IT FURTHER RESOLVED, that the City Attorney, or his designee is hereby authorized to prepare the MOU for execution by the Mayor; and

BE IT FINALLY RESOLVED, that the MOU shall not become binding on the City, and the City shall incur no obligation or liability under it until it has been executed by the Mayor, attested to by the Municipal Clerk, approved as to form by the City Attorney, and delivered to YMCA.

A true copy,

Shonda Dauphin Johnson
Municipal Clerk

ADOPTED by the Atlanta City Council
APPROVED as per City Charter Section 2-403

Aug. 15, 2011
Aug. 24, 2011



**MEMORANDUM OF UNDERSTANDING BETWEEN
THE CITY OF ATLANTA AND YOUNG MEN'S CHRISTIAN ASSOCIATION
OF METROPOLITAN ATLANTA**

This Memorandum of Understanding ("MOU"), dated this ____ day of _____, 2011, is between the City of Atlanta ("City") and the Young Men's Christian Association of Metropolitan Atlanta, Inc. ("YMCA") (collectively, "the Parties").

I. Background

YMCA is a Georgia non-profit corporation that cooperates with the City to provide weekday and weekend programs of recreational, educational, and cultural activities for children, adults and seniors, with an emphasis on after-school and children's programming as more particularly described in the Scope of Services attached as Exhibit A (the "Program") at the City-owned Adamsville Recreation Center ("Center"). The purpose of this MOU is to lay the foundation for a cooperative working relationship between the Parties, and to establish the role of each Party in that relationship, as the Parties work together to continue the Program at the Center.

II. General Agreements: Role of Each Party in Working Relationship

The following is a list of agreements regarding the basic roles of the City and YMCA in their working relationship established by this MOU.

- A. The City shall maintain ownership of the Center.
- B. YMCA shall provide or cause to be provided all programming at the Center, the "Program". The City shall maintain its authority to make all final decisions regarding the Center, including programming therein, but shall exercise this authority in the spirit of good faith cooperation with YMCA. The City shall advise YMCA regarding the needs and plans of the Center.
- C. YMCA shall run the Program in a manner that is consistent with this MOU. The Center Facility Manager shall be the YMCA's point of contact for routine questions or issues regarding the Program that require City input. Should YMCA wish to make substantive changes to the Program, it shall submit a written proposal to the Commissioner of the Department of Parks, Recreation and Cultural Affairs (the "Commissioner") or her/his designee. All City decisions regarding such changes to the Program (i) shall be made by the Commissioner or her/his designee, unless the



and/or held harmless by consultants, contractors, their subconsultants and/or subcontractors, the officers, agents or employees of those companies, or any one else performing work at or related to the Center or the Program.

- H. Any personnel employed by or volunteering on behalf of YMCA shall be deemed "employees" or "volunteers" respectively of YMCA, and shall not be deemed employees or volunteers of the City. YMCA shall remain responsible for the supervision, management and control of such employees and volunteers and any payroll, taxation or other employment obligation incident to their work.
- I. YMCA shall maintain general liability insurance in the amount of \$1,000,000 bodily injury and property damage combined single limit, regarding all work and activities performed at the Center by YMCA's employees, volunteers, contractors and subcontractors. The City shall be covered as an additional insured under the general liability insurance policy, and such insurance shall be primary with respect to the additional insured.
- J. YMCA shall procure and maintain Automobile Liability Insurance with not less than \$1,000,000 Bodily Injury and Property Damage combined single limit for any YMCA vehicles utilized to provide the Program. The following extensions of coverage shall be provided and shall be indicated on the Certificate of Insurance: (1) Comprehensive Form; and (2) Owned, Hired, Leased and Non-owned vehicles to be covered. The City shall be covered as an additional insured under the automobile liability insurance policy, and such insurance shall be primary with respect to the additional insured. The YMCA shall not be responsible for providing insurance for vehicles owned or operated by City and its employees.
- K. The City and YMCA shall not discriminate based upon race, creed, color, religion, sex, national origin, marital status, age, physical handicap, sexual orientation, or gender identity in the implementation of this MOU.
- L. YMCA shall not assign nor transfer any of the rights set forth in this MOU without prior written approval from the Commissioner.
- M. YMCA shall maintain records and accounts in connection with the performance of this MOU that will accurately document all funds received by YMCA and all costs incurred by YMCA, both direct and indirect, of whatever nature, for a period of three (3) years from the expiration of this MOU unless otherwise specified by applicable law. The City or its designated representatives shall have the right to examine and copy the records and accounts at all reasonable times, with advance notification. The City reserves the right to audit YMCA's records and accounts. Any



such audit will be commenced within one year of the expiration of this MOU.

- N. YMCA shall not owe fees for use of the Center to the City. In exchange for a waiver of fees, YMCA shall provide programming at the Center. Notwithstanding any other provision of this MOU, the Parties acknowledge that YMCA's performance under this MOU is contingent upon third party funding. In the event funding is not made available to YMCA, either Party may terminate this MOU upon seven (7) days written notice to the other party.

III. City Responsibilities

In addition to the responsibilities listed above, the City shall have the following responsibilities:

- A. Manage and maintain the Center.
- B. Allow YMCA to use the Center as the primary site for the Program activities.
- C. Provide adequate space for the Program, including providing YMCA with non-exclusive use of office space, the craft room, kitchen, computer lab space, gymnasium and natatorium free of charge.
- D. Provide, or arrange and pay for provision of all utilities at the Center.
- E. One of the City's objectives at the Center is to provide recreational, educational, and cultural activities for children. A large portion of this objective will be met through the Program. Therefore and as reasonably requested by YMCA, assisting YMCA with its Program activities is a responsibility of City employees working at the Center. The Director of the Office of Recreation, or her/his designee, shall evaluate the full range of responsibilities of the City employees working at the Center, and shall determine, and document in writing, the approximate portion of time that each employee should spend in assisting with Program activities versus performing other responsibilities. The Director or her/his designee shall also document the type of Program-related responsibilities to be performed by each Center employee. This subsection notwithstanding, YMCA shall have the ultimate responsibility for organizing and implementing the Program, including without limitation its activities, and nothing in this subsection shall obligate the City to assist with the Program, including its activities.



- P. Receive written authorization from the Commissioner prior to utilizing as a YMCA employee or volunteer any City employee. As set forth in subsection III E and III F above, City employees at the Center may be assigned by the City to assist with certain YMCA programming activities, including without limitation transporting Program participants, but said responsibilities shall be assigned and supervised by the City, not YMCA. Should YMCA wish to utilize a City employee as a YMCA employee or volunteer, whereby the City employee is working at the direction of and being supervised by YMCA, YMCA shall not allow the City employee to work or volunteer for YMCA during hours for which the City employee is being paid by the City. YMCA shall provide to the Commissioner upon request the YMCA work or volunteer schedule of any City employee.
- Q. Notify the Center Facility Manager within twenty-four hours upon discovering a safety, sanitary, and/or maintenance issue that needs to be addressed at the Center regardless of whether YMCA intends to resolve the issue.
- R. Notify the Commissioner within three hours of learning of any Program-related or Center-related issue that involves the media or the police or fire departments or emergency medical services.
- S. Make certain that all funds committed by or to YMCA for use regarding the Program or the Center are used effectively, efficiently, and as intended.
- T. If City is unable to provide transportation as contemplated in Section III.F. above, then City may make available to YMCA transportation for Program participants upon advanced written notice.

V. **ADDITIONAL UNDERSTANDINGS OF THE PARTIES**

- A. YMCA does not and will not charge any fees to participants in the Program. YMCA will require participants in the Program to enroll in the City's after-school program, and the City will apply its standard fee policy to such participants, including the City's policy regarding fee reductions and waivers.
- B. YMCA will establish policies and procedures for use of the Center computer lab, including without limitation requiring that the lab may not be used unless YMCA or City staff supervise such use and establishing designated hours for use by youth and by adults. YMCA and City staff will cooperate to ensure that all users of the computer lab adhere to these policies and procedures.



- C. The YMCA acknowledges that all of the computer equipment in the Center computer lab is the property of City. YMCA acknowledges that confidential and proprietary company and program data of the City is stored in electronic and paper storage devices in the computer lab and the YMCA will not have any access to that data.
- D. YMCA shall maintain Program records and accounts documenting all funds received by YMCA arising from this MOU, both direct and indirect, of whatever nature, for a period of three (3) years from the expiration of this MOU, unless otherwise specified by applicable law. The City or its designated representatives shall have the right to examine and copy the records and accounts at all reasonable times, with advance notification. The City reserves the right to audit YMCA's records and accounts. Any such audit will be commenced within one year of the expiration of this Agreement.

VI. Term and Termination

- A. The term of this MOU shall commence on August 8, 2011, and shall continue for one (1) year ("Term"). At the end of the Term and upon mutual consent of the Parties, this MOU may be renewed for an additional one (1) year term.
- B. Either Party shall have the right to terminate this MOU without cause at any time prior to the MOU's expiration by giving written notice to the other Party at least thirty (30) days prior to the date such termination is to be effective, and such termination shall be at no cost to either of the Parties. In the event of such termination, YMCA shall remain obligated to utilize or cause to be utilized all donated and/or committed funds as intended by the donor, pursuant to this MOU.
- C. Upon termination or expiration of this MOU, YMCA may remove all of its property the Center.

VII. Suspension of Activities

- A. In the event that the City determines that any work or activity being performed by YMCA, or any failure to perform work or an activity by YMCA, is inconsistent with this MOU, the City shall contact YMCA in writing and shall articulate the corrective action required. The City shall state the number of days that YMCA shall have to implement the corrective action, and shall make such determination based upon the seriousness of the matter, the safety implications of the matter if any, and



the amount of time that it would reasonably take to implement that type of correction. The City shall be reasonable with regard to granting extensions of time if YMCA indicates that it needs additional time and is making a good faith effort to implement the corrective action.

- B. In the event that the City determines that any work or activity being performed by YMCA creates a safety hazard, the City shall suspend the work or activity immediately, and may suspend the Program, and shall bear no cost associated with the suspension. The City shall immediately notify YMCA, in writing and by telephone that the work or activity, or the Program, has been suspended and the corrective action required. The work, activity or Program shall remain suspended until the corrective action is implemented.
- C. In the event that the City determines that any failure to perform work or a particular activity is creating a safety hazard, the City may suspend the Program and shall bear no cost associated with the suspension. The City shall immediately notify YMCA, in writing and by telephone that the Program has been suspended and the corrective action required. The City may keep the Program suspended until the corrective action is implemented.

VIII. Miscellaneous

- A. This MOU sets forth the complete and exclusive understanding of the Parties with respect to the subject matter hereof and supersedes all prior proposals, understandings, and agreements, whether oral or written, between the Parties with respect to the subject matter hereof. With the exception of Exhibits attached hereto, this MOU may not be modified except by a written instrument duly executed by the Parties.
- B. This MOU and the Parties' obligations hereunder shall be governed, construed, and enforced in accordance with the laws of the State of Georgia.
- C. If any provision of this MOU is held invalid, illegal, or unenforceable, the remaining provisions shall be enforced to the maximum extent permitted by applicable law.
- D. The waiver by either Party of any term or condition of this MOU shall not be deemed to constitute a continuing waiver thereof nor a waiver of any other right that such Party may hold under this MOU.
- E. All notices required to be given to YMCA hereunder shall be in writing and given by certified mail, return receipt requested, postage prepaid (with a copy sent via regular mail) addressed as follows:



ATTN: Chief Operating Officer
The Metro Atlanta YMCA
100 Edgewood Ave., NE
Suite 1100
Atlanta, GA 30303

With a copy to:
Chief Financial Officer
The Metro Atlanta YMCA
100 Edgewood Ave., NE
Suite 1100
Atlanta, GA 30303

or such other address as may be designated by YMCA by written notice to City. All notices required to be given to City hereunder shall be in writing and given by certified mail, return receipt requested, postage prepaid (with a copy sent via regular mail) addressed as follows:

ATTN:
Commissioner, Department of Parks, Recreation and Cultural Affairs
Peachtree Center, Harris Tower
233 Peachtree Street, 17th Floor
Atlanta, GA 30303

or such other address as may be designated by City by written notice to YMCA.

No notice shall be effective if purported to be transmitted by telex, fax, or other electronic delivery. All notices shall be deemed received on the date noted on the return receipt; provided, however, as to any notice for which delivery is refused, that notice shall be deemed to have been received on the third (3rd) business day after the same was deposited, postpaid, with the United States Postal Service.



IN WITNESS WHEREOF, the City and YMCA have caused this MOU to be executed by their duly authorized officials, the day and year first above written.

ATTEST:
Sworn to and subscribed
Before me this ____ day
of _____, 2011.

YMCA:

Notary Public

EDWARD MUNSTER, PRESIDENT

ATTEST:

CITY OF ATLANTA:

Municipal Clerk (Seal)

KASIM REED, MAYOR

RECOMMENDED:

APPROVED:

Commissioner,
Department of Parks, Recreation,
and Cultural Affairs

Chief Financial Officer

RECOMMENDED:

APPROVED:

Chief Operating Officer

Chief Procurement Officer

APPROVED AS TO FORM:

Senior Assistant City Attorney



Exhibit A Scope of Services

RCS# 1324
8/15/11
4:59 PM

Atlanta City Council

REGULAR SESSION

11-R-1121

OPERATING AGREEMENT W/ METRO ATLANTA
YMCA AT ADAMSVILLE REC
ADOPT/SUBST

YEAS: 14
NAYS: 0
ABSTENTIONS: 0
NOT VOTING: 1
EXCUSED: 0
ABSENT 1

B Smith	Y Archibong	Y Moore	Y Bond
Y Hall	Y Wan	Y Martin	Y Watson
Y Young	Y Shook	Y Bottoms	Y Willis
Y Winslow	Y Adrean	Y Sheperd	NV Mitchell

11-R-1121