

RESOLUTION NO. 30281

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A MEMORANDUM OF UNDERSTANDING WITH CROMWELL DEVELOPMENT I, LLC, IN SUBSTANTIALLY THE FORM ATTACHED, FOR A TERM OF ONE (1) YEAR WITH THE OPTION TO RENEW FOR THREE (3) ADDITIONAL TERMS OF ONE (1) YEAR EACH, FOR THE USE OF THE GYMNASIUM AT CROMWELL HILLS APARTMENTS TO OPERATE PROGRAMS FOR YOUTH, YOUNG ADULTS, AND FAMILIES ON THE PROPERTY LOCATED AT 3940 CAMELLIA DRIVE.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, that it is hereby authorizing the Mayor to enter into a Memorandum of Understanding with Cromwell Development I, LLC, in substantially the form attached, for a term of one (1) year with the option to renew for three (3) additional terms of one (1) year each, for the use of the gymnasium at Cromwell Hills Apartments to operate programs for youth, young adults, and families on the property located at 3940 Camellia Drive.

ADOPTED: March 31, 2020

/mem

MEMORANDUM OF UNDERSTANDING

BETWEEN

**CROMWELL DEVELOPMENT I, LLC AND
THE CITY OF CHATTANOOGA
DEPARTMENT OF YOUTH AND FAMILY DEVELOPMENT**

This Memorandum of Understanding (“Agreement”) is made between Cromwell Development I, LLC (“Owner”) and the City of Chattanooga (“the City”) on this ___ day of _____, 2020.

WHEREAS, the Owner is the sole owner of the gymnasium (“the Site”) located at 3940 Camelia Drive, in the City of Chattanooga on the grounds of the Cromwell Hills Apartments (“Cromwell”); and

WHEREAS, the parties acknowledge that the City has been running programs for youth, young adults and families at the Site for the benefit of youth, young adults and families residing at Cromwell, as well as other residents who reside in Chattanooga Housing Authority affordable housing communities and the City desires to continue running such programs at the Site; and

WHEREAS, the parties are desirous of entering into an agreement setting forth in writing the obligations and responsibilities of each party relating to the facility and operations.

NOW THEREFORE, in consideration of the promises, covenants, and releases set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to the following:

1. Owner Premises. Owner agrees to provide use of the Site to the City, subject to the following:
 - a. The Site will be made available during the following days and times:
 - i. During the school year (as recognized by the Hamilton County Department of Education (“HCDE”), between the hours of 11:30 a.m. and 8:00 p.m.; and
 - ii. During the summer (as recognized by the HCDE), between the hours of 7:00 a.m. and 7:00 p.m.
 - iii. On Saturdays throughout the year between the hours of 10:00 a.m. and 6:30 p.m.
 - b. The Site will be closed on all holidays recognized by the City of Chattanooga.
 - c. The Site will be closed when Hamilton County Schools are closed due to inclement weather.
 - d. The cost of using the Site will be \$0.00.

2. City Services. The City agrees to provide the following services at the Site:
 - a. Support services for youth development programs, including one direct support staff for the summer day camp and for the afterschool enrichment program.
 - b. Direct lead and support staff for sports and recreation.
 - c. Transportation for field trips and special events for the summer day camp.

3. Care of the Site and Site Property. The parties agree to care for the Site and Site Property as follows:
 - a. The Owner will:
 - i. Provide all internal and external maintenance and upkeep of the facility, including adequate supplies related to the facility (e.g. toilet paper, paper towels, hand soap, etc.) The Owner will make any repairs to the facility as required by reasonable wear and tear.
 - ii. Provide lawn care of the Site Property.

 - b. The City will:
 - i. Provide a roving crew to perform daily cleaning services at the Site.
 - ii. Maintain all areas and equipment in a sanitary and safe manner.
 - iii. Assume responsibility for cleaning and buffing floors.
 - iv. Not damage any part of the Site or Site Property and pay the actual costs for damage done to the Site or Site Property (beyond normal wear and tear) by any person under the City's control or supervision.
 - v. Not place any sign on the Site or Site Property except that which the Owner has first approved in writing.

In the event that the City fails to comply with its obligations under this Section 3b after written notice to the City and a reasonable opportunity to cure, the Owner may perform such obligations on the City's behalf, and the City shall reimburse Owner for the reasonable costs of such performance.

4. Owner's Obligations.
 - a. The Owner will maintain all utilities for the facility including electricity, water, sewer, and gas.
 - b. The Owner will work with the City through its Public Safety Department and the Chattanooga Police Department to address any crime-related issues that may arise during the term of this Agreement.

5. The City's Obligations.
 - a. The City agrees to use the Site only for the purposes outlined in this Agreement. The City is responsible for oversight of the facility during the hours of operation.

- b. All equipment, fixtures, books or property of any nature kept or used at the Site shall be at the sole risk and responsibility of the City, and the Owner shall in no way be responsible for any loss or damage to same.
 - c. Subject to the provisions of T.C.A. §§ 29-20-101 *et seq.*, City shall defend and, if found liable, be responsible for paying damages arising from third party claims, suits, liabilities, and judgments for personal injuries or damage to property, caused by any activities conducted by City on the Site, excepting any such injury, damage or loss caused, in whole or part, by the negligence or fault of the Owner.
 - d. The City shall provide to the Owner written confirmation that any City personnel or contract employees working at the Site with children under the age of eighteen (18) have passed a criminal history screening check as required by the City's personnel or other policies.
 - e. The City shall be responsible for the training of any City employees, volunteers or contract employees who will provide programming/oversight at the Site.
 - f. The City will comply with all applicable laws, including common law, ordinances or regulations of any governmental body having jurisdiction over the Site or Site Property, and to conform to all reasonable rules and regulations which the Owner may establish.
 - g. The City will provide a written report each month to Owner detailing the programming activities and the number of people served. The reporting format shall be mutually agreed upon by the parties.
 - h. The City will provide internet services needed and computers for various programs while programming is under way. Once an internet carrier is selected, the City will work with Owner to make arrangements for installation and termination of service. All cost associated with this will be the sole responsibility of the City unless, otherwise agreed upon by both parties.
6. Owner's Use of the Site. The City and the Owner acknowledge that from time to time the Site may be needed for other Owner and/or resident activities. The City agrees that upon adequate notification by the Owner of the need for use of the Site during times when it is not being used by the City, the City will move equipment and other items to the maximum extent possible to accommodate the need for the space by other parties.
 7. Insurance. The parties acknowledge that the City is self-insured in accordance with the Tennessee Governmental Tort Liability Act, which establishes the limits of liability for governmental entities in the State of Tennessee, and will, therefore, not be required to maintain general liability insurance. The City will deliver to the Owner a copy of its Certificate of Self Insurance at the time of execution of this Agreement.
 8. Assignment and Subletting; Independent Contractors. The City shall not assign or sublet its interest in the Site without the prior written consent of the Owner. The parties hereto acknowledge that the City and the Owner are independent contractors.
 9. Right to Entry. The Owner shall have the right to enter the Site at all reasonable times and in reasonable manner for the purpose of examining the Site and making repairs or improvements to either the Site or to utility lines or other facilities of the building or to

install such lines or facilities. The City shall, upon the discovery of any defect in or injury to the Site, or any need of repairs, promptly report the same to the Site Property Manager in writing, specifying such defects. There shall be no allowance to City and no liability on the part of the Owner by reason of inconvenience, annoyance or injury to business arising from the reasonable making any repairs, alterations, additions, or improvements in or to any portion of the Site or in or to the fixtures, appurtenances and equipment thereof. The privilege of adequate notice shall be extended.

The Owner shall be allowed to take all material into and upon the Site that may be required for repairs or alterations (but only as or when needed for immediate use) without the same constituting an eviction of the City in whole or in part while such repairs or alterations are being made, to prevent loss or interruption of the operations of the Owner.

10. Notice to Terminate. This Agreement and all services to be rendered hereunder may be terminated at any time by either party with or without cause, by giving the other party thirty (30) days written notice of such termination. In the event such termination is made for cause, compensation, if any, shall be adjusted in light of the particular facts and circumstances involved in such termination. "Cause" is defined as the willful or grossly negligent failure of either party to comply substantially with the terms of this Agreement. The written notice of cancellation shall be addressed to the following:

- Cromwell I Development, LLC, c/o Executive Director, Chattanooga Housing Authority, 801 North Holtzclaw Avenue, Chattanooga, Tennessee 37404, with a copy to Penrose Holdings, LLC, 230 Wyoming Avenue, Kingston, PA 18704, and with a copy to RBC-Cromwell Hills, LLC, c/o RBC Community Investments, LLC, 600 Superior Avenue, Suite 2300, Cleveland, Ohio 44114, Attention: President and General Counsel
- City of Chattanooga Youth and Family Development, 501 West 12th Street, Chattanooga, Tennessee 37404, and a copy to City of Chattanooga, Real Property of ECD, 1001 Lindsay Street, Chattanooga, TN 37402.

11. Term; Effective Date. The City shall surrender the premises at the end of the term of this Agreement in good order and condition except for reasonable wear and tear. The Agreement shall become effective upon April 1, 2020. The term of this Agreement shall be for one (1) year with an option to renew for three (3) additional one (1) year terms based upon written agreement of the parties.

(signatures on following page)

IN WITNESS THEREOF, the Parties have caused this Agreement to be signed and executed by its responsible and duly constituted officers, and this Agreement to be dated the ____ day of _____, 2020.

CROMWELL DEVELOPMENT I, LLC

By: Cromwell I MM, LLC, its managing member

By: Pennrose Holdings, LLC, its manager

By: _____
Mark H. Dambly, *President*

CITY OF CHATTANOOGA

By: _____
Andy Berke, *Mayor*