

**Vestavia Hills
City Council Agenda
March 22, 2018
6:00 PM**

1. Call to Order
2. Roll Call
3. Invocation – David Phillips, Deacon, Shades Mountain Baptist Church and Chaplain For The City Of Vestavia Hills
4. Pledge Of Allegiance
5. Candidates, Announcements and Guest Recognition
 - a. Announcement Of Upcoming Vacancy On Vestavia Hills Board Of Education – Kimberly Cook
6. Proclamation – Autism Awareness Month – April 2018
7. Proclamation – Day of Prayer and Thanksgiving – April 24, 2018
8. City Manager’s Report
9. Councilors’ Reports
10. Financial Reports – Melvin Turner, III, Finance Director
11. Approval of Minutes – None

Old Business

12. Resolution Number 5030 – A Resolution Authorizing The City Manager To Execute And Deliver And Agreement With Regional Jefferson County And Appropriating \$3,600 For Maintenance Of Outdoor Warning Sirens In The City Of Vestavia Hills (*public hearing*)

New Business

13. Resolution Number 5028 – Alcohol License - Walgreen Co. D/B/A Rite Aid 07379, Located At 708 Montgomery Hwy, Vestavia Hills, Alabama, For The Sale Of 050 - Retail Beer (Off-Premises Only) And 070 - Retail Table Wine (Off-Premises Only); Amelia D. Legutki, Richard M. Ashworth And Collin G. Smyser, Executives (*public hearing*)
14. Resolution Number 5029 – Alcohol License - Walgreen Co. D/B/A Rite Aid 07024, Located At 3965 Crosshaven Drive, Vestavia Hills, Alabama, For The Sale Of 050 - Retail Beer (Off-Premises Only) And 070 - Retail Table Wine (Off-Premises Only); Amelia D. Legutki, Richard M. Ashworth And Collin G. Smyser, Executives (*public hearing*)

15. Resolution Number 5032 - Alcohol License – Menu Box 2 LLC D/B/A Blackwells Neighborhood Pub; For The Sale Of 020 – Restaurant Retail Liquor; Patrick Decker, Executive (*public hearing*)
16. Resolution Number 5033 – A Resolution (1) Approving The Legislative Determinations Of The City Council Of The City Of Vestavia Hills, Alabama, Of The Present And Future Needs For Capital Facilities Of The City And The Appropriate Revenue Base Of The City Therefor And (2) Proposing Ordinance No. 2747 To Provide Therefor

New Business (Unanimous Consent Requested)

First Reading (No Action Taken At This Meeting)

17. Resolution Number 5023 – A Resolution Ascertaining, Fixing And Determining The Amount Of Assessment To Be Charged As A Lien On The Property Known As 2535 Ivy Glenn Drive, Vestavia Hills, Alabama 35243; Parcel Id# 28-00-32-4-001-96.000, In The City Of Vestavia Hills As A Result Of The City Of Vestavia Hills Ordering The Abatement Of A Nuisance Pursuant To Ordinance Number 2567 (*public hearing rescheduled to April 9, 2018*) (*public hearing*)
18. Ordinance Number 2748 - Conditional Use Approval To Allow Five Unrelated Adults To Reside In A Single Family Home Located At 220 Erwin Circle; Mikel Swack, Owner, Nick Goudreau, Golden Key LLC, Representing (*public hearing*)
19. Ordinance Number 2747 - An Ordinance Providing For The Rate, Levy And Collection Of Certain Privilege, License And Excise Taxes Within The Corporate Limits Of The City Of Vestavia Hills, Alabama, And Making Further Provision Therefor Amending Ordinance 2315 And Repealing Ordinance Numbers 2316 and 2317 (*public hearing*)
20. Resolution Number 4951-A – A Resolution Amending Resolution Number 4951 – Authorizing The Implementation Of Phase Two And Phase Three Of The Community Spaces Plan Pursuant To A Contract With The Program Manager (*public hearing*)
21. Citizen Comments
22. Motion For Adjournment

WHEREAS, autism, the fastest growing developmental disability in the United States, affecting more than three million people, is an urgent public health crisis that demands a national response; and

WHEREAS, autism is the result of a neurological disorder that affects the normal functioning of the human brain, and can affect anyone regardless of race, ethnicity, gender, or socioeconomic background; and

WHEREAS, the symptoms and characteristics of autism may present themselves in a variety of combinations and can result in significant lifelong impairment of an individual's ability to learn; and

WHEREAS, accurate and early diagnosis and the resulting appropriate education and intervention are vital to the future growth and development of the individual; and

WHEREAS, ensuring that persons living with autism have access to the lifelong care and services needed to pursue the full measure of personal happiness and achieve their greatest potential; and

WHEREAS hope lies in an informed public and a community committed to providing support and services to individuals diagnosed with Autism.

NOW, THEREFORE, I, Ashley C. Curry, by virtue of the authority vested in me as Mayor of the City of Vestavia Hills in the State of Alabama, do hereby proclaim April 2, 2018 as World Autism Day and April 2018 as

WORLD AUTISM MONTH

and encourage all residents to support individuals with autism and their families and do hereby recognize Alpha Xi Delta for their commitment to educating the general public and increasing awareness of autism in our City and State.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the City of Vestavia Hills to be affixed this the 5th day of March 2018.

Ashley C. Curry, Mayor

WHEREAS, prayer is our communication with the Heavenly Father;
and

WHEREAS, it enables mankind to give thanks for the life we
sometimes take for granted; and

WHEREAS, prayer seems to soften our sorrow and make our griefs
and hardships bearable; and

WHEREAS, through prayer we can be prepared to become the
instruments of His peace; and

WHEREAS, prayer is a candle that can rekindle the light that
will repel the darkness in our midst; and

WHEREAS, by our unity others may know that we are one with the
Father and His peace; and

WHEREAS, only as we are filled with the power of God can we do
the things the Lord wants of us in any area of our
lives; and

WHEREAS, the annual Mayor's Prayer Breakfast will be held
Tuesday, April 24 at the Vestavia Country Club;

NOW, THEREFORE, I, Ashley C. Curry, by virtue of the authority
vested in me as Mayor of the City of Vestavia Hills in
the State of Alabama, do hereby proclaim April 24,
2018 as a special

DAY OF PRAYER AND THANKSGIVING

in Vestavia Hills and earnestly call upon all men of
faith and goodwill to support this spiritual effort so
that together we may offer prayer, praise and
thanksgiving.

IN WITNESS WHEREOF, I have
hereunto set my hand and
caused the Seal of the City
of Vestavia Hills to be
affixed this the 19th day of
March 2018.

Ashley C. Curry
Mayor

RESOLUTION NUMBER 5030

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AND DELIVER AND AGREEMENT WITH REGIONAL JEFFERSON COUNTY AND APPROPRIATING \$3,600 FOR MAINTENANCE OF OUTDOOR WARNING SIRENS IN THE CITY OF VESTAVIA HILLS

WHEREAS, Jefferson County had activated a bid for repair and maintenance of the outdoor siren system located within the County; and

WHEREAS, Jefferson County has committed \$100,000 to repair broken sirens with the remainder allocated to municipalities based upon the number of sirens within that jurisdiction; and

WHEREAS, Vestavia Hills has nine (9) sirens located within the City limits totaling \$3,600 in repair/maintenance costs; and

WHEREAS, the City Manager has recommended the costs be expensed in the 2018 fiscal year budget; and

WHEREAS, the Mayor and City Council find it is in the best public interest to accept the City Manager's recommendation and appropriate \$3,600 for maintenance/repair of siren costs within the FY 2018 budget.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL AS FOLLOWS:

1. The City Manager is hereby authorized to expense \$3,600 for maintenance/repair of siren costs; and
2. The City Manager is hereby authorized to execute and deliver any and all documents necessary in order to accomplish said repair/maintenance of outdoor sirens located within the City limits; and
3. This Resolution Number 5030 shall become effective immediately upon adoption and approval.

DONE, ORDERED, ADOPTED and APPROVED this the 26th day of March, 2016.

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

**INTER-LOCAL AGREEMENT
REGIONAL JEFFERSON COUNTY
OUTDOOR WARNING SIREN SYSTEM MAINTENANCE**

This Inter-Local Agreement (“Agreement”) is hereby made and entered into on this the ____ day of _____, 2018, by and between Jefferson County Emergency Management Agency (“EMA”) and the City/Town of _____.

WHEREAS, EMA seeks to establish a collaborative regional effort for the Jefferson County Outdoor Warning Siren System Maintenance and responsibility within Jefferson County, Alabama, by coordinating and overseeing all of the (254) outdoor warning sirens located within both the incorporated and unincorporated jurisdictions of Jefferson County; and

WHEREAS, EMA has proposed to take responsibility for overseeing the maintenance, repair, update and replacement of all the outdoor warning sirens located within both the incorporated and unincorporated jurisdictions of Jefferson County; and

WHEREAS, EMA has proposed that in order to effectively maintain the outdoor warning sirens located within both the incorporated and unincorporated jurisdictions of Jefferson County it will need approximately \$400.00 per siren; and

WHEREAS, EMA has additionally proposed that the County provide an additional \$100,000 per year for the repair and replacement of nonfunctioning outdoor warning sirens located within Jefferson County, regardless of jurisdiction; and

WHEREAS, the County is in agreement with EMA’s efforts to establish centralized maintenance responsibility for the outdoor warning sirens located within Jefferson County and desires to assist EMA financially by providing the necessary funding to properly maintain the outdoor warning sirens located in Jefferson County.

NOW THEREFORE, in consideration of the above recitals contained herein, the parties agree as follows:

1. EMA agrees to take responsibility for the maintenance, repair, update, and replacement of all of the outdoor warning sirens located within both the incorporated and unincorporated Jefferson County which are identified in the attached Exhibit A.
2. The City/Town of _____ agrees to pay to EMA its proportionate share for the maintenance, repair, and replacement of the outdoor warning sirens located within its jurisdiction at a cost of \$400.00 per siren per year.
3. The City/Town of _____ agrees to provide payment for these services to EMA within 30 days of receipt of invoice from EMA.

Notices:

City/Town of: _____

Attention: _____

Address: _____

City, St, Zip: _____

Phone: _____

Jefferson County EMA
709 North 19th Street
Birmingham, Alabama 35203
(205) 254-2039

Termination of Agreement:

This agreement will remain in full force and effect and will not be amended and/or terminated except by the mutual written consent of the parties referenced herein.

City/Town of: _____

By: _____

Its: _____

Jefferson County Emergency Management Agency

By: _____

James A. Coker, Director

Rebecca Leavings

From: White, Gay Nell <whitegn@jccal.org>
Sent: Monday, March 05, 2018 1:01 PM
To: Adamsville; Adamsville; Adamsville Assistant; Bessemer; Bessemer (City Clerk); Birmingham; Birmingham (Mayor's Assistant); Brighton; Brookside; Brookside (Town Clerk); Center Point; Center Point (Mayor's Assistant); Clay; Clay; County Line; County Line (Town Clerk); Fairfield; Fairfield (Mayor's Assistant); Fultondale; jhfcity@bellsouth.net; Fultondale (Mayor's Assistant); Gardendale; Gardendale (City Clerk); Gardendale (Mayor's Assistant); Graysville; Graysville (Mayor's Assistant); Homewood; Homewood; Homewood (Chief of Staff); Hoover; Hoover; Hoover (Mayor's Assistant); Hueytown; Hueytown; Hueytown (Mayor's Assistant); Irondale; Knight, Joe; Brooks, Zachary; Kimberly; Kimberly; Kimberly (City Clerk); Leeds; Leeds; Leeds; Leeds (Mayor's Assistant); Lipscomb; Lipscomb (City Clerk); Lipscombs; Maytown; Midfield; Midfield; Midfield (Mayor's Assistant); Morris; Morris (Town Clerk); Mountain Brook; Mountain Brook; Mountain Brook; Mulga; Mulga (Town Clerk); North Johns; Pinson; Pinson; Pinson (City Clerk); Pleasant Grove; Pleasant Grove; Pleasant Grove (City Clerk); Sylvan Springs (Town Clerk); Sylvian Springs; Tarrant; Tarrant (Mayor's Assistant); Trafford; Trafford (Assistant); Trussville; Trussville; Ashley Curry; Dennis Weaver; Rebecca Leavings; Warrior; Warrior; Warrior (City Clerk); West Jefferson; West Jefferson (Town Clerk)
Subject: Jefferson County Outdoor Warning Siren System Maintenance Agreement
Attachments: Inter-Local Agreement Outdoor Warning Siren System - Cities-Towns.pdf
Importance: High

Good afternoon,

The bid for siren repair and siren maintenance is currently active; we will provide each of you an update when we receive the bid information back.

The siren program is in two parts;

First – siren repairs (Jefferson County has committed funding in the amount of \$100,000 to repair broken sirens);

Second – annual siren maintenance (paid for by each jurisdiction, and based on the number of sirens within that jurisdiction).

Annual maintenance should lower the costs on repairing broken sirens. The ability to activate sirens in a warning polygon instead of county-wide is included in the active bid.

I have attached a resolution for you to complete and present to your city/town council for approval. We will need a copy of the approved resolution returned to us once it has been approved (scanned copy will be fine).

We welcome any questions you may have and will continue to give updates at the Jefferson County Mayors Association meetings each month.

Thank you.

James Coker
Director

RESOLUTION NUMBER 5028

**A RESOLUTION APPROVING ALCOHOL LICENSE
FOR WALGREEN CO. D/B/A RITE AID 07379;
AMELIA D. LEGUTKI, RICHARD M. ASHWORTH
AND COLLIN G. SMYSER, EXECUTIVES**

WHEREAS, the City Council of the City of Vestavia Hills, Alabama, approves the alcohol license for Walgreen Co. d/b/a Rite Aid 07379, located at 708 Montgomery Hwy, Vestavia Hills, Alabama, for the sale of 050 - Retail Beer (off-premises only) and 070 - Retail Table Wine (off-premises only); Amelia D. Legutki, Richard M. Ashworth and Collin G. Smyser, executives.

APPROVED and ADOPTED this the 22nd day of March, 2018.

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

INTEROFFICE MEMORANDUM

DATE: March 8, 2018

TO: Dan Rary, Police Chief

FROM: Rebecca Leavings, City Clerk

RE: Alcohol License Request –


Please find attached information submitted by Amelia D. Legutki, Richard M. Ashworth and Collin G. Smyser who request an alcohol license to sell at the Walgreen Co. d/b/a Rite Aid 07379, 708 Montgomery Hwy, Vestavia Hills, Alabama.

I am scheduling this case to be heard by the City Council on 12th day of March, 2018 at 6:00 PM (Monday). Please advise me of your recommendation for this license. If you have any questions, please contact me.

Reply

I have reviewed the available background information on the above referenced applicant and submit the following to the City Council:

✓	<i>Application cleared by P.D. This indicates that there are NO convictions for drug trafficking, convictions regarding arrest involving danger to children, weapon charges, violent felony crimes against persons, felony sexual offenses or habitual alcohol related arrests</i>
	<i>Needs further review. This indicates that the Police Chief has found records of some convictions of alcohol related arrests</i>
	<i>Does not recommend. This indicates that the Police Chief has found records of convictions for drug trafficking, convictions regarding arrest involving danger to children, weapon charges, violent felony crimes against persons, felony sexual offenses or habitual alcohol related arrests</i>

Reviewed 



STATE OF ALABAMA
ALCOHOLIC BEVERAGE CONTROL BOARD
ALCOHOL LICENSE APPLICATION

Confirmation Number: 20180104143259040

Type License: 050 - RETAIL BEER (OFF PREMISES ONLY) State: County:

Type License: 070 - RETAIL TABLE WINE (OFF PREMISES ONLY) State: County:

Trade Name: RITE AID 07379 Filing Fee:

Applicant: WALGREEN CO Transfer Fee: \$100.00

Location Address: 708 MONTGOMERY HWY VESTAVIA HILLS, AL 35216

Mailing Address: 302 WILMOT ROAD; 3RD FLOOR MS 3353 DEERFIELD, IL 60015

County: JEFFERSON Tobacco sales: YES Tobacco Vending Machines: 0

Type Ownership: CORPORATION

Book, Page, or Document info: ILLINOIS

Date Incorporated: 02/15/1909 State incorporated: IL County Incorporated:

Date of Authority: 06/08/1998 Alabama State Sales Tax ID: 6800 10544

Federal Tax ID: 36 1924025

Table with 4 columns: Name, Title, Date and Place of Birth, Residence Address. Rows include Amelia Dorothy Legutki, Richard Mark Ashworth, and Collin Gregory Smyser.

Has applicant complied with financial responsibility ABC RR 20-X-5-.14? YES

Does ABC have any actions pending against the current licensee? NO

Has anyone, including manager or applicant, had a Federal/State permit or license suspended or revoked? NO

Has a liquor, wine, malt or brewed license for these premises ever been denied, suspended, or revoked? NO

Are the applicant(s) named above, the only person(s), in any manner interested in the business sought to be licensed? YES

Are any of the applicants, whether individual, member of a partnership or association, or officers and directors of a corporation itself, in any manner monetarily interested, either directly or indirectly, in the profits of any other class of business regulated under authority of this act? NO

Does applicant own or control, directly or indirectly, hold lien against any real or personal property which is rented, leased or used in the conduct of business by the holder of any vinous, malt or brewed beverage, or distilled liquors permit or license issued under authority of this act? NO

Is applicant receiving, either directly or indirectly, any loan, credit, money, or the equivalent thereof from or through a subsidiary or affiliate or other licensee, or from any firm, association or corporation operating under or regulated by the authority of this act? NO

Contact Person: JAMES PITTMAN OR JON ARCHER Home Phone: 251-626-7704

Business Phone: 251-626-7704 Cell Phone:

Fax: E-mail: james@jbplaw.com

PREVIOUS LICENSE INFORMATION:

Trade Name: RITE AID 7379

Applicant: HARCO INC

Previous License Number(s)

License 1: 050 000989937

License 2: 070 000989937



**STATE OF ALABAMA
ALCOHOLIC BEVERAGE CONTROL BOARD
ALCOHOL LICENSE APPLICATION**



Confirmation Number: 20180104143259040

If applicant is leasing the property, is a copy of the lease agreement attached? **YES**
 Name of Property owner/lessor and phone number: **WALGREEN CO 251-626-7704**
 What is lessors primary business? **REAL ESTATE**
 Is lessor involved in any way with the alcoholic beverage business? **NO**
 Is there any further interest, or connection with, the licensee's business by the lessor? **NO**

Does the premise have a fully equipped kitchen? **NO**
 Is the business used to habitually and principally provide food to the public? **NO**
 Does the establishment have restroom facilities? **YES**
 Is the premise equipped with services and facilities for on premises consumption of alcoholic beverages? **NO**

Will the business be operated primarily as a package store? **NO**
 Building Dimensions Square Footage: **10645** Display Square Footage:
 Building seating capacity: **0** Does Licensed premises include a patio area? **NO**
 License Structure: **ONE STORY** License covers: **ENTIRE STRUCTURE**
 Location is within: **CITY LIMITS** Police protection: **CITY**

Has any person(s) with any interest, including manager, whether as sole applicant, officer, member, or partner been charged (whether convicted or not) of any law violation(s)?

Name:	Violation & Date:	Arresting Agency:	Disposition:

RESOLUTION NUMBER 5029

**A RESOLUTION APPROVING ALCOHOL LICENSE
FOR WALGREEN CO., D/B/A RITE AID 07024;
COLLIN G. SMYSER, RICHARD M. ASHWORTH
AND AMELIA D. LEGUTKI, EXECUTIVES**

WHEREAS, the City Council of the City of Vestavia Hills, Alabama, approves the alcohol license for Walgreen Co., d/b/a Rite Aid 07024, located at 3965 Crosshaven Drive, Vestavia Hills, Alabama, for the sale of 050 - Retail Beer (off-premises only) and 070 - Retail Table Wine (off-premises only); Collin G. Smyser, Richard M. Ashworth and Amelia D. Legutki, executives.

APPROVED and ADOPTED this the 22nd day of March, 2018.

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

INTEROFFICE MEMORANDUM

DATE: March 8, 2018

TO: Dan Rary, Police Chief

FROM: Rebecca Leavings, City Clerk

RE: Alcohol License Request – 050 - Retail Beer (off-premises only) and 070 - Retail Table Wine (off premises only)

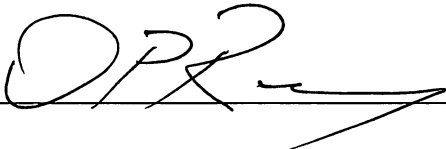
Please find attached information submitted by Collin G. Smyser, Richard M. Ashworth and Amelia D. Legutki who request an alcohol license to sell 050 - Retail Beer (off-premises only) and 070 - Retail Table Wine (off premises only) at the Walgreen Co., d/b/a Rite Aid 07024, 3965 Crosshaven Drive, Vestavia Hills, Alabama.

I am scheduling this case to be heard by the City Council on 12th day of March, 2018 at 6:00 PM (Monday). Please advise me of your recommendation for this license. If you have any questions, please contact me.

Reply

I have reviewed the available background information on the above referenced applicant and submit the following to the City Council:

	<i>Application cleared by P.D. This indicates that there are NO convictions for drug trafficking, convictions regarding arrest involving danger to children, weapon charges, violent felony crimes against persons, felony sexual offenses or habitual alcohol related arrests</i>
	<i>Needs further review. This indicates that the Police Chief has found records of some convictions of alcohol related arrests</i>
	<i>Does not recommend. This indicates that the Police Chief has found records of convictions for drug trafficking, convictions regarding arrest involving danger to children, weapon charges, violent felony crimes against persons, felony sexual offenses or habitual alcohol related arrests</i>

Reviewed: 



STATE OF ALABAMA ALCOHOLIC BEVERAGE CONTROL BOARD ALCOHOL LICENSE APPLICATION

Confirmation Number: 20180226090037440

Type License: 050 - RETAIL BEER (OFF PREMISES ONLY) **State:** **County:**

Type License: 070 - RETAIL TABLE WINE (OFF PREMISES ONLY) **State:** **County:**

Trade Name: RITE AID 07024 **Filing Fee:**

Applicant: WALGREEN CO **Transfer Fee:** \$100.00

Location Address: 3965 CROSSHAVEN DRIVE BIRMINGHAM, AL 35243

Mailing Address: 302 WILMOT ROAD; 3RD FLOOR MS 3353 DEERFIELD, IL 60015

County: JEFFERSON **Tobacco sales:** YES **Tobacco Vending Machines:** 0

Type Ownership: CORPORATION

Book, Page, or Document info: ILLINOIS

Date Incorporated: 02/15/1909 **State incorporated:** IL **County Incorporated:**

Date of Authority: 06/08/1998 **Alabama State Sales Tax ID:** 6800 10544

Federal Tax ID: 36 1924025

Name:	Title:	Date and Place of Birth:	Residence Address:
COLLIN GREGORY SMYSER S526 1077 8211 - IL	DIRECTOR	07/25/1978 INDIANAPOLIS INDIANA	1949 NORTH BURLING STREET CHICAGO, IL 60014
RICHARD MARK ASHWORTH A263 7537 5011 - IL	DIRECTOR	01/11/1975 TAMPA FLORIDA	70 TOURNAMENT DRIVE NORTH HAWTHORN WOODS, IL 60047
AMELIA DOROTHY LEGUTKI L232 0046 6888 - IL	DIRECTOR	10/09/1966 HAMMOND INDIANA	130 HOMEWOOD AVENUE LIBERTYVILLE, IL 60048

Has applicant complied with financial responsibility ABC RR 20-X-5-.14? YES

Does ABC have any actions pending against the current licensee? NO

Has anyone, including manager or applicant, had a Federal/State permit or license suspended or revoked? NO

Has a liquor, wine, malt or brewed license for these premises ever been denied, suspended, or revoked? NO

Are the applicant(s) named above, the only person(s), in any manner interested in the business sought to be licensed? YES

Are any of the applicants, whether individual, member of a partnership or association, or officers and directors of a corporation itself, in any manner monetarily interested, either directly or indirectly, in the profits of any other class of business regulated under authority of this act? NO

Does applicant own or control, directly or indirectly, hold lien against any real or personal property which is rented, leased or used in the conduct of business by the holder of any vinous, malt or brewed beverage, or distilled liquors permit or license issued under authority of this act? NO

Is applicant receiving, either directly or indirectly, any loan, credit, money, or the equivalent thereof from or through a subsidiary or affiliate or other licensee, or from any firm, association or corporation operating under or regulated by the authority of this act? NO

Contact Person: JAMES PITTMAN OR JON ARCHER **Home Phone:** 251-626-7704

Business Phone: 251-626-7704 **Cell Phone:**

Fax: **E-mail:** james@jbplaw.com

PREVIOUS LICENSE INFORMATION:

Trade Name: RITE AID 7024

Applicant: HARCO INC

Previous License Number(s)

License 1: 050 000715637

License 2: 070 000715637



**STATE OF ALABAMA
ALCOHOLIC BEVERAGE CONTROL BOARD
ALCOHOL LICENSE APPLICATION**



Confirmation Number: 20180226090037440

If applicant is leasing the property, is a copy of the lease agreement attached? **YES**
 Name of Property owner/lessor and phone number: **WALGREEN CO 251-626-7704**
 What is lessors primary business? **REAL ESTATE**
 Is lessor involved in any way with the alcoholic beverage business? **NO**
 Is there any further interest, or connection with, the licensee's business by the lessor? **NO**

Does the premise have a fully equipped kitchen? **NO**
 Is the business used to habitually and principally provide food to the public? **NO**
 Does the establishment have restroom facilities? **YES**
 Is the premise equipped with services and facilities for on premises consumption of alcoholic beverages? **NO**

Will the business be operated primarily as a package store? **NO**
 Building Dimensions Square Footage: **10663** Display Square Footage:
 Building seating capacity: **0** Does Licensed premises include a patio area? **NO**
 License Structure: **ONE STORY** License covers: **ENTIRE STRUCTURE**
 Location is within: **CITY LIMITS** Police protection: **CITY**

Has any person(s) with any interest, including manager, whether as sole applicant, officer, member, or partner been charged (whether convicted or not) of any law violation(s)?

Name:	Violation & Date:	Arresting Agency:	Disposition:

RESOLUTION NUMBER 5032

**A RESOLUTION APPROVING ALCOHOL LICENSE
FOR MENU BOX 2 LLC D/B/A BLACKWELLS
NEIGHBORHOOD PUB; PATRICK DECKER,
EXECUTIVE**

WHEREAS, the City Council of the City of Vestavia Hills, Alabama, approves the alcohol license for Menu Box 2 LLC d/b/a Blackwells Neighborhood Pub, located at 3151 Green Valley Road, Vestavia Hills, Alabama, for the On-Premise sale of 020- Restaurant Retail Liquor; Patrick Decker, executive.

APPROVED and ADOPTED this the 22nd day of March, 2018.

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

INTEROFFICE MEMORANDUM

DATE: March 15, 2018

TO: Dan Rary, Police Chief

FROM: Rebecca Leavings, City Clerk

RE: Alcohol License Request – 020- Restaurant Retail Liquor

Please find attached information submitted by Patrcik Decker who request an alcohol license to sell 020- Restaurant Retail Liquor at the Menu Box 2 LLC d/b/a Blackwells Neighborhood Pum,3151 Green Valley Road , Vestavia Hills, Alabama.

I am scheduling this case to be heard by the City Council on 22nd day of March, 2018 at 6:00 PM (Monday). Please advise me of your recommendation for this license. If you have any questions, please contact me.

Reply

I have reviewed the available background information on the above referenced applicant and submit the following to the City Council:

	<i>Application cleared by P.D. This indicates that there are NO convictions for drug trafficking, convictions regarding arrest involving danger to children, weapon charges, violent felony crimes against persons, felony sexual offenses or habitual alcohol related arrests</i>
	<i>Needs further review. This indicates that the Police Chief has found records of some convictions of alcohol related arrests</i>
	<i>Does not recommend. This indicates that the Police Chief has found records of convictions for drug trafficking, convictions regarding arrest involving danger to children, weapon charges, violent felony crimes against persons, felony sexual offenses or habitual alcohol related arrests</i>

Reviewed:  _____

TRANSFER



**STATE OF ALABAMA
ALCOHOLIC BEVERAGE CONTROL BOARD
ALCOHOL LICENSE APPLICATION
Confirmation Number: 20171120103236042**

Type License: 020 - RESTAURANT RETAIL LIQUOR State: County:
Type License: State: County:
Trade Name: BLACKWELLS NEIGHBORHOOD PUB Filing Fee:
Applicant: MENU BOX 2 LLC Transfer Fee: \$50.00

Location Address: 3151 GREEN VALLEY RD VESTAVIA HILLS, AL 35243
Mailing Address: 3009 3RD AVENUE S BIRMINGHAM, AL 35233
County: JEFFERSON Tobacco sales: NO Tobacco Vending Machines:
Type Ownership: LLC

Book, Page, or Document info: 2017090405 PGS 1-3
Date Incorporated: 08/30/2017 State incorporated: AL County Incorporated: JEFFERSON
Date of Authority: 08/30/2017 Alabama State Sales Tax ID: R009930318
Federal Tax ID: 822650226

Name:	Title:	Date and Place of Birth:	Residence Address:
PATRICK DECKER 8320030 - AL	OWNER	06/29/1982 MEMPHIS TN	4309 CORINTH DR MOUNTAIN BROOK, AL 35213

Has applicant complied with financial responsibility ABC RR 20-X-5-.14? YES
Does ABC have any actions pending against the current licensee? NO
Has anyone, including manager or applicant, had a Federal/State permit or license suspended or revoked? NO
Has a liquor, wine, malt or brewed license for these premises ever been denied, suspended, or revoked? NO
Are the applicant(s) named above, the only person(s), in any manner interested in the business sought to be licensed? YES
Are any of the applicants, whether individual, member of a partnership or association, or officers and directors of a corporation itself, in any manner monetarily interested, either directly or indirectly, in the profits of any other class of business regulated under authority of this act? NO
Does applicant own or control, directly or indirectly, hold lien against any real or personal property which is rented, leased or used in the conduct of business by the holder of any vinous, malt or brewed beverage, or distilled liquors permit or license issued under authority of this act? NO
Is applicant receiving, either directly or indirectly, any loan, credit, money, or the equivalent thereof from or through a subsidiary or affiliate or other licensee, or from any firm, association or corporation operating under or regulated by the authority of this act? NO

Contact Person: PATRICK DECKER Home Phone: 205-516-5325
Business Phone: 205-967-3798 Cell Phone: 205-516-5325
Fax: E-mail: PATRICKLDECKER@YAHOO.COM

PREVIOUS LICENSE INFORMATION: Previous License Number(s)
Trade Name: BLACKWELLS NEIGHBORHOOD PUB License 1: 011594337
Applicant: R AND D RESTAURANT GROUP LLC License 2:



**STATE OF ALABAMA
ALCOHOLIC BEVERAGE CONTROL BOARD
ALCOHOL LICENSE APPLICATION**



Confirmation Number: 20171120103236042

If applicant is leasing the property, is a copy of the lease agreement attached? **YES**
 Name of Property owner/lessor and phone number: **CROSSHAVEN VENTURE 205-795-4106**
 What is lessors primary business? **PROPERTY MANAGEMENT**
 Is lessor involved in any way with the alcoholic beverage business? **N/A**
 Is there any further interest, or connection with, the licensee's business by the lessor? **N/A**

Does the premise have a fully equipped kitchen? **YES**
 Is the business used to habitually and principally provide food to the public? **YES**
 Does the establishment have restroom facilities? **YES**
 Is the premise equipped with services and facilities for on premises consumption of alcoholic beverages? **YES**

Will the business be operated primarily as a package store? **NO**
 Building Dimensions Square Footage: **4120** Display Square Footage:
 Building seating capacity: **99** Does Licensed premises include a patio area? **NO**
 License Structure: **SHOPPING CENTER** License covers: **PORTION OF**
 Location is within: **CITY LIMITS** Police protection: **CITY**

Has any person(s) with any interest, including manager, whether as sole applicant, officer, member, or partner been charged (whether convicted or not) of any law violation(s)?

Name:	Violation & Date:	Arresting Agency:	Disposition:

RESOLUTION NO. 5033

A RESOLUTION (1) APPROVING THE LEGISLATIVE DETERMINATIONS OF THE CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA, OF THE PRESENT AND FUTURE NEEDS FOR CAPITAL FACILITIES OF THE CITY AND THE APPROPRIATE REVENUE BASE OF THE CITY THEREFOR AND (2) PROPOSING ORDINANCE NO. 2747 TO PROVIDE THEREFOR.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA, as follows:

Section 1. Definition of Capitalized Terms

The following terms shall have the following meanings herein:

City means the City of Vestavia Hills, Alabama.

City Advancement Program means a comprehensive program of application of revenues of the City, pursuant to fiscal policy of the Council, for:

- (a) capital improvement of the facilities of the City, in advance and as needed, to sustain and continuously improve such facilities (i) for community charitable, educational and social activities, athletic events, and recreation and (ii) for the enhancement of public safety; and
- (b) maintenance of a reserve for capital repair and replacement of municipal facilities (including in event of damage);
- (c) financial support of the public school system of the City; and
- (d) other lawful purposes, as directed by the Council, consonant with the foregoing.

City Privilege, License Excise Taxes means the privilege license and excise taxes levied by the City upon the retail price of the sale, use or lease of tangible personal property, or the furnishing of lodging to transients, and collected from the consumer or lessee by the merchant or lessor.

Council means the governing body of the City.

Ordinance No. 2747 means the proposed Ordinance by that number entitled "AN ORDINANCE PROVIDING FOR THE LEVY AND COLLECTION OF CERTAIN PRIVILEGE, LICENSE AND EXCISE TAXES WITHIN THE CORPORATE LIMITS OF THE CITY OF VESTAVIA HILLS, ALABAMA."

Section 2. Legislative Determinations

The Council, upon evidence duly presented to and considered by it, has found and determined, and does hereby find, determine and declare, as follows:

- (a) (i) The City has experienced, and expects to continue to experience, significant growth in residential population and establishment of commercial businesses.
 - (ii) The City provides services and capital facilities which serve and support both the residents and commercial businesses of the City and the nonresident patrons of the commercial businesses in the City.
 - (iii) The City requires present and future capital improvements to the facilities of the City to accommodate and sustain the growth of residential population and commercial activity in the City and to maintain a quality of life in the City consistent with the needs and expectations of the taxpayers and citizens thereof.
 - (iv) The Council has developed the City Advancement Program and pursuant thereto has identified certain capital improvements which are of immediate need and are set forth on Exhibit A hereto and the Council hereby states its present intention that it will use such increased tax revenue for such purposes.
- (b) (i) The revenue base of the City is dependent primarily upon the City Privilege, License Excise Taxes.
 - (ii) The City Privilege, License Excise Taxes are commonly called sales and use taxes, leasing taxes, and lodging taxes.
 - (iii) A significant portion of the City Privilege, License Excise Taxes are collected from nonresident patrons of the commercial businesses and establishments in the City.
 - (iv) The respective rates of the City Privilege, License Excise Taxes are currently lower than the respective rates at which the same taxes are levied upon the same subjects of taxation by most municipalities in Jefferson County, Alabama, and in the surrounding trade area.

- (c) The implementation and continuation of the City Advancement Program will enable the City to provide the required present and future capital improvement, maintenance and repair of City facilities, and ongoing financial support of the public school system of the City, which in turn provides for the benefit of the taxpayers and citizens of the City:
 - (i) improved facilities for athletic events, public recreation, and community charitable, educational and social events, in the City;
 - (ii) increases in residential and commercial property values in the City;
 - (iii) increased public safety with respect to transportation in the City;
 - (iv) maintenance of the credit rating of the City and related ability to finance capital assets at most favorable interest rates; and
 - (v) capital for emergency repair and replacement of City facilities in event of natural disaster such as (but not limited to) damage from flooding and windstorm.
- (d)
 - (i) The City will require additional revenue to continue and maintain the City Advancement Program over time.
 - (ii) The Council has accordingly authorized the preparation of Ordinance No. 2747 to provide the City may produce revenue necessary for the City Advancement Program and all governmental and public purposes of the City:
 - (A) by means consistent with the procedures, and considerations of public policy, by which the State of Alabama produces revenue for governmental and public purposes; and
 - (B) in accordance with the Local Tax Simplification Act of 1998, as amended; and
 - (C) at respective rates of taxation commensurate with the rates at which the same taxes are levied upon the same subjects of taxation by most municipalities in Jefferson County, Alabama, and the surrounding trade area.
 - (iii) A copy of proposed Ordinance No. 2747 is attached hereto as Exhibit B.
- (e) Now Therefore, it is necessary and desirable that the Council submit Ordinance No. 2747 to the taxpayers and citizens of the City for review and comment prior to final consideration thereof by the Council.

Section 3. Approval of City Advancement Program and Proposal of Ordinance No. 2747

For the purposes set forth in Section 2, the Council does hereby:

- (a) approve, authorize, confirm, direct, and ratify the City Advancement Program; and
- (b) propose Ordinance No. 2747 to the taxpayers and citizens of the City for review and comment.

Section 4. Authorization of Officers

The Mayor, Finance Director, City Manager and City Clerk of the City are hereby authorized and directed to take all such actions as shall be necessary or desirable to carry out and effect the provisions of this Resolution.

Section 5. Effective Date

This Resolution shall take effect immediately upon adoption.

Duly Passed and Adopted this 22nd day of March, 2018.

Mayor

SEAL

City Clerk

Exhibit A

2018 Capital Improvement Plan

Road Capacity and Sidewalk Improvement Project - Crosshaven Drive	\$4,611,000
Sidewalk Installation	\$2,500,000
East Street	
Cahaba Heights – Commercial Area Connectivity	
Rocky Ridge Road – Commercial Area Connectivity	
Road Paving – 20 miles of poorly rated streets	\$2,200,000
Stormwater Infrastructure Improvements	\$550,000
Refinance Gold’s Gym Property	\$8,900,000
Community Spaces Plan Implementation	
Wald Park	\$15,429,766
Cahaba Heights	\$7,398,815
Community Building	\$15,270,390
New Merkel House	<u>\$ 500,000</u>
TOTAL	\$57,359,971

Exhibit B

Ordinance No. 2747

ORDINANCE NUMBER 2747

AN ORDINANCE PROVIDING FOR THE LEVY AND COLLECTION OF CERTAIN PRIVILEGE, LICENSE AND EXCISE TAXES WITHIN THE CORPORATE LIMITS OF THE CITY OF VESTAVIA HILLS, ALABAMA

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA, AS FOLLOWS:

ARTICLE 1

Authority

The City does hereby adopt this Ordinance, and provide for the levy and collection of the within-referenced Privilege, License and Excise Taxes, pursuant to the authority, and in conformity with the purposes, of the "Local Tax Simplification Act of 1998," as amended (codified as Article 3 of Chapter 51 of Title 11 of the Code of Alabama 1975.)

ARTICLE 2

Definitions

Section 2.01 Definitions of Certain Terms

The following terms shall have the following meanings herein:

City shall mean the City of Vestavia Hills, Alabama.

City Clerk shall mean the City Clerk of the City, and any successor to the duties and functions thereof.

City Council shall mean the governing body of the City.

Code of Ordinances shall mean the Vestavia Hills Code of Ordinances, Republished 2013, as at any time amended, restated, or supplemented.

Effective Date shall mean June 1, 2018.

Fiscal Year shall mean the fiscal year of the City as established from time to time.

Leasing Tax shall mean the leasing and rental tax levied pursuant to Section 5.01.

Lodging Tax shall mean the transient occupancy tax levied pursuant to Section 6.01.

Obligations shall mean any direct, indirect, or contingent pecuniary obligation of the City as evidenced by any agreement, bond, contract, document, note, warrant or other instrument.

Prior Taxes and Fees shall mean collectively the following:

- (a) the privilege, license and excise taxes levied pursuant to Ordinance No. 2317, as codified in Article III of Chapter 16 of the Code of Ordinances;
- (b) the privilege license taxes levied pursuant to Ordinance No. 2316, as codified in Article IV of Chapter 16 of the Code of Ordinances;
- (c) the business license fee and privilege license tax levied pursuant to Section 8-38(7)(d) of Article II of Chapter 8 of the Code of Ordinances (as enacted by Section 23 of Ordinance No. 2315).

Privilege, License and Excise Taxes shall mean, collectively, the following taxes levied by this Ordinance within the corporate limits of the City:

- (a) Sales Taxes;
- (b) Use Taxes;
- (c) Leasing Tax; and
- (d) Lodging Tax.

Sales and Use Taxes shall mean, collectively, the Sales Taxes and the Use Taxes.

Sales Taxes shall mean the sales taxes levied pursuant to Section 4.01.

State Leasing Tax Laws shall mean and include Section 40-2A-7, and Article 4 of Chapter 12 of Title 40, of the Code of Alabama 1975, as any time in force and effect, and all regulations of the Alabama Department of Revenue at any time promulgated and effective thereunder, and all laws of the State of Alabama directly relating thereto.

State Lodging Tax Laws shall mean and include Section 40-2A-7, and Chapter 26 of Title 40, of the Code of Alabama 1975, as any time in force and effect, and all regulations of the Alabama Department of Revenue at any time promulgated and effective thereunder, and all laws of the State of Alabama directly relating thereto.

State Sales Tax Laws shall mean and include Section 40-2A-7, and Article 1 of Chapter 23 of Title 40, of the Code of Alabama 1975, as any time in force and effect, and all regulations of the Alabama Department of Revenue at any time promulgated and effective thereunder, and all laws of the State of Alabama directly relating thereto.

State Use Tax Laws shall mean and include Section 40-2A-7, and Article 2 of Chapter 23 of Title 40, of the Code of Alabama 1975, as any time in force and effect, and all regulations of the Alabama Department of Revenue at any time promulgated and effective thereunder, and all laws of the State of Alabama directly relating thereto.

Use Taxes shall mean the use taxes levied pursuant to Section 4.02.

Section 2.02 Incorporation of Phrases, Terms and Words

All phrases, terms and words used in this Ordinance which are defined or used in any of the following statutes shall have the respective meanings, effect and scope in this Ordinance as in such statutes:

- (1) the State Sales Tax Laws; and
- (2) the State Use Tax Laws; and
- (3) the State Leasing Tax Laws; and
- (4) the State Lodging Tax Laws.

ARTICLE 3

Effect of Ordinance

Section 3.01 Effective Date of Privilege, License and Excise Taxes

The levy and collection of the Privilege, License and Excise Taxes shall become effective and commence on the Effective Date and shall continue thereafter as provided in this Ordinance.

Section 3.02 Repeal of Prior Taxes and Fees; Continuation of Accrued Liability Therefor and Pledges Thereof

(a) The Prior Taxes and Fees, and the following ordinances and provisions of the Code of Ordinances, shall terminate and become void and of no further force and effect from and after midnight on May 31, 2018:

- (1) Ordinance No. 2317, as codified in Article III of Chapter 16 of the Code of Ordinances; and
- (2) Ordinance No. 2316, as codified in Article IV of Chapter 16 of the Code of Ordinances; and
- (3) Section 8-38(7)(d) of Article II of Chapter 8 of the Code of Ordinances.

(b) Anything in this Ordinance to the contrary notwithstanding, the liability or obligation of any person for the payment of any amount of any of the Prior Taxes and Fees, or for the payment of any amount of any forfeiture, interest, or penalty with respect thereto, which shall be outstanding and unpaid on the Effective Date (including without limitation taxes becoming due and payable on June 20, 2018) shall survive termination of the ordinances and provisions of the Code of Ordinances pursuant to Section 3.02(a) and shall remain in full force and effect under all provisions thereof and the City shall have and may exercise for the enforcement thereof all rights and remedies thereunder and available at law or in equity (including without limitation the applicable laws of the State of Alabama providing for the enforcement of the corresponding state taxes).

(c) Anything in this Ordinance to the contrary notwithstanding, all commitments and pledges of all or any portion of the Prior Taxes and Fees which shall be subject to an agreement made by the City prior to the Effective Date to or for the benefit of any governmental person or nongovernmental person shall be and remain in full force and effect from and after the Effective Date, in accordance with all terms and provisions thereof, solely with respect to the proceeds of the Privilege, License and Excise Taxes described in Section 4.03(b)(3), Section 5.02(b) and Section 6.02(b) of this Ordinance.

Section 3.03 Amendment of Code of Ordinances

(a) Article III of Chapter 16 of the Code of Ordinances is hereby amended by deletion of said Article III in the entirety thereof and substitution therefor of Article 4, Section 7.02 and Section 7.03 of this Ordinance.

(b) Article IV of Chapter 16 of the Code of Ordinances is hereby amended by deletion of said Article IV in the entirety thereof and substitution therefor of Article 5 and Section 7.04 of this Ordinance.

(c) From and after May 31, 2018 the business license fee levied by Section 8-38(7)(d) of Article II of Chapter 8 of the Code of Ordinances shall be \$150.00 and in consequence thereof the provisions of said Section 8-38(7)(d) are hereby amended by deletion of said provisions in the entirety thereof and substitution therefor of the amount of "\$150.00."

ARTICLE 4

Sales and Use Taxes

Section 4.01 Levy of Sales Taxes

There is levied, in addition to all other taxes of every kind now imposed by law, and shall be collected as herein provided, a privilege or license tax against the person on account of the business activities and in the amount to be determined by the application of rates against gross sales, or gross receipts, as the case may be, as follows:

(a) (1) Upon every person, firm or corporation (including the State of Alabama, the University of Alabama, Auburn University, and all other institutions of higher learning in the state, whether the institution be denominational, state, county, or municipal institutions, any association or other agency or instrumentality of the institutions), engaged or continuing within the City, in the business of selling at retail any tangible personal property whatsoever, including merchandise and commodities of every kind and character (not including, however, bonds or other evidence of debt or stocks, nor sales of materials and supplies to any person for use in fulfilling a contract for the painting, repair or reconditioning of vessels, barges, ships, other watercraft, and commercial fishing vessels of over five tons load displacement as registered with the U. S. Coast Guard and licensed by the State of Alabama Department of Conservation and Natural Resources), an amount equal to four percent (4%) of the gross proceeds of sales of the business except where a different amount is expressly provided herein. Provided, however, that any person engaging or continuing in business as a retailer and wholesaler or jobber shall pay the tax required on the gross proceeds of retail sales of the business at the rates specified, when his or her books are kept so as to show separately the gross proceeds of sales of each business, and when his or her books are not kept he or she shall pay the tax as a retailer, on the gross sales of the business.

(2) Where any used part including tires of an automotive vehicle or a truck trailer, semitrailer, or house trailer is taken in trade, or in a series of trades, as a credit or part payment on the sale of a new or rebuilt part or tire, the tax levied herein shall be paid on the net difference, that is, the price of the new or used part or tire sold less the credit for the used part or tire taken in trade, provided, however, this provision shall not be construed to include batteries.

(b) Upon every person, firm or corporation engaged or continuing within the City in the business of conducting or operating places of amusement or entertainment, billiard and pool rooms, bowling alleys, amusement devices, musical devices, theaters, opera houses, moving picture shows, vaudevilles, amusement parks, athletic contests, including wrestling matches, prize fights, boxing and wrestling exhibitions, football and baseball games (excluding, however, athletic contests conducted by or under the auspices of the City Board of Education of the City of Vestavia Hills, but specifically including athletic contests conducted by or under the auspices of any educational institution within this state, or any athletic association thereof, or any other association whether the institution or association be a denominational, a state, or county, or a municipal institution, or association or a state, county or city school, or other institution, association or school), skating rinks, race tracks, golf courses or any other place at which any exhibition, display, amusement or entertainment is offered to the public or place or places where an admission fee is charged, including public bathing places, public dance halls of every kind and description within the City, an amount equal to four percent (4%) of the gross receipts of any such business. Provided, however, notwithstanding any language to the contrary in the prior portion of this subsection, the tax provisions so specified shall not apply to any athletic event conducted by a public or nonpublic primary or secondary school or any athletic event conducted by or under the auspices of the Alabama High School Athletic Association. The tax amount which would have been collected pursuant to this subsection shall continue to be collected by the public or nonpublic primary or secondary school, but shall be retained by the school which collected it and shall be used by the school for school purposes.

(c) Upon every person, firm or corporation engaged or continuing within the City in the business of selling at retail machines used in mining, quarrying, compounding, processing, and manufacturing of tangible personal property an amount equal to one percent (1%) of the gross proceeds of the sale of the machines. The term "machine", as herein used, shall include machinery which is used for mining, quarrying, compounding, processing, or manufacturing tangible personal property, and the parts of the machines, attachments and replacements therefor, which are made or manufactured for use on or in the operation of the machines and which are necessary to the operation of such machines and are customarily so used.

(d) (1) Upon every person, firm or corporation engaged or continuing within the City in the business of selling at retail any automotive vehicle or truck trailer, semitrailer or house trailer, or mobile home set-up materials and supplies including but not limited to steps, blocks, anchoring, cable pipes, and any other materials pertaining thereto an amount equal to one percent (1%) of the gross proceeds of the sale of the automotive vehicle or truck trailer, semitrailer or house trailer, or mobile home set-up materials and supplies; provided, however, where a person subject to the tax provided for in this subsection withdraws from his or her stock in trade any automotive vehicle or truck trailer, semitrailer, or house trailer for use by him or her or by his or her employee or agent in the operation of the business, there shall be paid, in lieu of the tax levied herein, a fee of five dollars (\$5.00) per year or part thereof during which the automotive vehicle, truck trailer, semitrailer or house trailer shall remain the property of the person. Each year or part thereof shall begin with the day or anniversary date, as the case may be, of such withdrawal and shall run for the 12 succeeding months or part thereof during which the automotive vehicle, truck trailer, semitrailer, or house trailer shall remain the property of the person.

(2) Where any used automotive vehicle or truck trailer, semitrailer, or house trailer is taken in trade or in a series of trades, as a credit or part payment on the sale of a new or used vehicle, the tax levied herein shall be paid on the net difference, that is, the price of the new or used vehicle sold less the credit for the used vehicle taken in trade.

(3) Sales of automobiles, motorcycles, trucks, truck trailers, or semitrailers, excluding travel trailers or housecars as defined in Section 40-12-240, that will be registered or titled outside Alabama, that are exported or removed from Alabama within 72 hours by the purchaser or his or her agent for first use outside of the State of Alabama are subject to City sales tax in an amount equal to only the City automotive sales tax rate, unless the sales tax laws of the state in which the purchaser will title or register the vehicle allows an Alabama resident to purchase a motor vehicle for first titling and registering in Alabama without the payment of tax to that state. However, in no case shall the amount of Alabama state sales tax due on a motor vehicle that will be registered or titled for use in another state exceed the amount of sales tax that would otherwise have been due in the state where the vehicle will be registered or titled for first use. The tax collected under this export provision shall be City sales tax. Sales of all other vehicles such as mobile homes, motor bikes, all terrain vehicles, and boats do not qualify for the export exemption provision and are taxable unless the dealer can provide factual evidence that the vehicle was delivered outside of Alabama or to a common carrier for transportation outside of Alabama. In order for the sale to be exempt from City tax, the information relative to the exempt sale shall be documented on forms approved by the Revenue Department of the State of Alabama.

(4) Anything in this section to the contrary notwithstanding, the tax provided in Section 4.01(d)(1) on any automotive vehicle, truck trailer, trailer, semitrailer or travel trailer required to be registered or licensed with the Judge of Probate of Jefferson County, Alabama, which is not sold through a licensed Alabama dealer, shall be collected and fees paid in accordance with the provisions of Sections 40-23-104 and 40-23-107, respectively (or any successor provisions of law).

(e) Upon every person, firm or corporation engaged or continuing within the City in the business of selling through coin-operated dispensing machines, food and food products for human consumption, not including beverages other than coffee, milk, milk products, and substitutes therefor, there is levied a tax equal to one percent (1%) of the cost of the food, food products and beverages sold through the machines, which cost for the purposes of this subsection shall be the gross proceeds of sales of the business.

(f) (1) Upon every person, firm or corporation engaged or continuing within the City in the business of selling at retail any machine, machinery or equipment which is used in planting, cultivating and harvesting farm products, or used in connection with the production of agricultural produce or products, livestock or poultry on farms, and the parts of such machines, machinery or equipment, attachments and replacements therefor which are made or manufactured for use on or in the operation of such machine, machinery or equipment, and which are necessary to and customarily used in the operation of such machine, machinery or equipment, an amount equal to one percent (1%) of the gross proceeds of the sale thereof; provided, the one percent rate herein prescribed with respect to parts, attachments and replacements shall not apply to any automotive vehicle or trailer designed primarily for public highway use, except farm trailers used primarily in the production and harvesting of agricultural commodities.

(2) Where any used machine, machinery or equipment which is used in planting, cultivating and harvesting farm products, or used in connection with the production of agricultural produce or products, livestock and poultry on farms is taken in trade or in a series of trades as a credit or part payment on a sale of a new or used, machine, machinery or equipment, the tax levied herein shall be paid on the net difference, that is, the price of the new or used machine, machinery or equipment sold, less the credit for the used machine, machinery or equipment taken in trade.

Section 4.02 Levy of Use Taxes

(a) An excise tax is hereby imposed on the storage, use or other consumption in the City of tangible personal property, not including, however, materials and supplies bought for use in fulfilling a contract for the painting, repairing, or reconditioning of vessels, barges, ships, other watercraft and commercial fishing vessels of over five tons load displacement as registered with the U. S. Coast Guard and licensed by the State of Alabama Department of Conservation and Natural Resources, purchased at retail on or after the effective date of this Ordinance for storage, use or other consumption in the City at the rate of four percent (4%) of the sales price of such property or the amount of tax collected by the seller, whichever is greater; provided, however, when the seller follows the Alabama Department of Revenue's suggested use tax brackets and his or her records prove that his or her following said brackets resulted in a net undercollection of tax for the month, he or she may report the tax due or tax collected, whichever is less, except as provided in this Section 4.02.

(b) An excise tax is hereby imposed on the storage, use or other consumption in the City of any machines used in mining, quarrying, compounding, processing and manufacturing of tangible property, purchased at retail on or after the effective date of this Ordinance at the rate equal to one percent (1%) of the sales price of any such machine or the amount of tax collected by the seller, whichever is greater; provided, however, when the seller follows the Alabama Department of Revenue's suggested use tax brackets and his or her records prove that his or her following said brackets resulted in a net undercollection of tax for the month, he or she may report the tax due or tax collected, whichever is less; except as provided in this Section 4.02; provided that the term "machine," as herein used, shall include machinery which is used for mining, quarrying, compounding, processing or manufacturing tangible personal property, and the parts of such machines, attachments and replacements therefor, which are made or manufactured for use on or in the operation of such machines and which are necessary to the operation of such machines and are customarily so used.

(c) (1) An excise tax is hereby imposed on the storage, use or other consumption in the City of any automotive vehicle or truck trailer, semitrailer or house trailer, and mobile home set-up materials and supplies including but not limited to steps, blocks, anchoring, cable pipes and any other materials pertaining thereto, purchased at retail on or after the effective date of this Ordinance for storage, use or other consumption in the City at the rate of one percent (1%) of the sales price of such automotive vehicle, truck trailer, semitrailer or house trailer, or mobile home set-up materials and supplies as specified above, or the amount of tax collected by the seller, whichever is greater; provided, however, when the seller follows the Alabama Department of Revenue's suggested use tax brackets and his or her records prove that his or her following said brackets resulted in a net undercollection of tax for the month, he or she may report the tax due or tax collected, whichever is less, except as provided in this Section 4.02. Where any used automotive vehicle, truck trailer, semitrailer or house trailer is taken in trade, or in a series of trades, as a credit or part payment on the sale of a new or used vehicle, the tax levied herein shall be paid on the net difference, that is, the price of the new or used vehicle sold less the credit for the used vehicle taken in trade.

(2) Anything in this section to the contrary notwithstanding, the tax provided in Section 4.02(c)(1) on any automotive vehicle, truck trailer, semi-trailer or travel trailer required to be registered or licensed with the Judge of Probate of Jefferson County, Alabama, which were sold by dealers that are not licensed in Alabama, or were sold by licensed Alabama dealers who failed to collect municipal sales taxes at the point of sale, shall be collected and fees paid in accordance with the provisions of Sections 40-23-104 and 40-23-107, respectively (or any successor provisions of law).

(d) Every person storing, using or otherwise consuming in the City tangible personal property purchased at retail shall be liable for the tax imposed by this Section, and the liability shall not be extinguished until the tax shall have been paid to the City; provided, that receipt from a retailer maintaining a place of business in the City or a retailer authorized by the Alabama Department of Revenue, under such rules and regulations as it may prescribe, to collect the tax imposed hereby and who shall for the purpose of this Section be regarded as a retailer maintaining a place of business in the City, given to the purchaser in accordance with the provisions of the State Use Tax Statutes, shall be sufficient to relieve the purchaser from further liability for the tax to which such receipt may refer.

(e) An excise tax is hereby imposed on the classes of tangible personal property, and at the rates imposed on such classes, specified in subsections (a), (b), and (c) of this Section, on the storage, use or other consumption in the performance of a contract in the City of any such tangible personal property, new or used, the tax to be measured by the sales price or the fair and reasonable market value of such tangible personal property when put into use in the City, whichever is less; provided, that the tax imposed by this subsection shall not apply where the taxes imposed by subsection (a), (b), or (c) of this Section apply.

(f) An excise tax is hereby imposed on the storage, use or other consumption in the City of any machine, machinery or equipment which is used in planting, cultivating and harvesting farm products, or used in connection with the production of agricultural produce or products, livestock or poultry, or farms, and the parts of such machines, machinery or equipment, attachments and replacements therefor which are made or manufactured for use on or in the operation of such machine, machinery or equipment, and which are necessary to and customarily used in the operation of such machine, machinery or equipment, which is purchased at retail after June 1, 2018, for storage, use or other consumption in the City, at the rate of one percent (1%) of the sales price of such property or the amount of tax collected by the seller, whichever is greater; provided, however, when the seller follows the Alabama Department of Revenue's suggested use tax brackets and his records prove that his following said brackets resulted in a net undercollection of tax for the month, he may report the tax due or tax collected whichever is less, regardless of whether the retailer is or is not engaged in business in the City; provided, that the one percent rate herein prescribed with respect to parts, attachments and replacements shall not apply to any automotive vehicle or trailer designed primarily for public highway use except farm trailers used primarily in the production and harvesting of agricultural commodities.

Section 4.03 Use of Proceeds of Sales and Use Taxes

(a) Definitions. For purposes of this Section the following terms shall have the following meanings:

Available Sales and Use Tax Proceeds means and includes, collectively, (i) the Capital Project and School Allocation and (ii) the General Purpose Allocation.

Capital Project means any property (real, personal or mixed) the cost of which is properly chargeable to capital account under federal income tax principles.

Capital Project and School Allocation shall have the meaning in Section 4.03(b)(2).

General Purpose Allocation shall have the meaning in Section 4.03(b)(3).

Net Sales and Use Tax Proceeds means the proceeds of the Sales and Use Taxes received by the City in each Fiscal Year after deduction or payment therefrom of all costs of collection thereof.

Reserve Allocation shall have the meaning in Section 4.03(b)(1).

Surplus Available Sales and Use Tax Proceeds means the aggregate amount of the Available Sales and Use Tax Proceeds remaining in each Fiscal Year after payment, or provision for payment, shall have been made from any funds or revenues of the City (including without limitation the Available Sales and Use Tax Proceeds) lawfully available therefor of all amounts of principal of, premium (if any) and interest on all of the following Obligations becoming due and payable in such Fiscal Year:

(1) all Obligations which are general obligations of the City payable from and secured by a pledge of the full faith, credit and taxing power of the City, without regard to whether any of such Obligations are, in whole or in part, also payable from, or secured by a pledge of, any other source of funds or revenues of the City; and

(2) all Obligations which are, in whole or in part, payable from and secured by a pledge of the Available Sales and Use Tax Proceeds, without regard to whether any of such Obligations are, in whole or in part, general obligations of the City or also payable from, or secured by a pledge of, any other source of funds or revenues of the City.

(b) Allocations and Uses. The City shall apply the Net Sales and Use Tax Proceeds, when and as received, for the following purposes and in the following order:

(1) 6.250% of the Net Sales and Use Tax Proceeds (the “Reserve Allocation”)^[1] shall be allocated and applied by the City as follows:

(i) 1.875% shall be held in reserve for the sole benefit of the City Board of Education of the City of Vestavia Hills, Alabama; and

(ii) 4.375% shall be held in reserve by the City for Capital Projects.

(2) 25.000% of the Net Sales and Use Tax Proceeds (the “Capital Project and School Allocation”) shall be allocated and applied as follows:

(i) first, for the payment, or the provision for payment, in each Fiscal Year of all amounts of principal of, premium (if any) and interest on Obligations incurred to finance or refinance Capital Projects becoming due and payable in such Fiscal Year;

(ii) second, for the payment of the costs of Capital Projects in such Fiscal Year; and

(iii) third, for public school purposes or such other lawful purposes as needed, as directed by the City Council, to the extent of the amount, if any, of the Capital Project and School Allocation remaining in such Fiscal Year after application for the foregoing purposes thereof.

(3) 68.750% of the Net Sales and Use Tax Proceeds (the “General Purposes Allocation”) shall be allocated and applied for any lawful purpose as directed by the City Council, including without limitation the payment, or the provision for payment, in each Fiscal Year of the principal of, premium (if any) and interest on any Obligations becoming due and payable in such Fiscal Year.

^[1] The Reserve Allocation of 6.250% of Net Sales and Use Tax Proceeds equals 1/12th of 3/4ths of the Net Sales and Use Tax Proceeds, being in effect 1/12th of three cents (\$0.03) (the previous sales and use tax rate in effect under Ordinance No. 2317), and is used in the following percentages:

(i) 30% of the Reserve Allocation (being 1.875% of Net Sales and Use Tax Proceeds) for the City Board of Education of the City of Vestavia Hills, Alabama; and

(ii) 70% of the Reserve Allocation (being 4.375% of Net Sales and Use Tax Proceeds) for Capital Projects of the City.

(c) Pledge. The City may, pursuant to the applicable laws of the State of Alabama, pledge all, or any portion, of the Available Sales and Use Tax Proceeds for the benefit of any Obligations, subject to and in accordance with the following:

(1) the City shall not pledge any amount of the Available Sales and Use Tax Proceeds that is allocable to the levy and collection of the Sales and Use Taxes outside the corporate limits of the City; and

(2) the City reserves the right to apply, dedicate and use for any lawful purpose, as directed by the City Council, all Surplus Available Sales and Use Tax Proceeds in any Fiscal Year without regard to any pledge of the Available Sales and Use Tax Proceeds that shall then be in force and effect with respect to any Obligations.

(d) Amendment. The City reserves the right to make such amendments to this Section to provide for (1) a change in the then effective percentage allocation of the use of any of the Net Sales and Use Tax Proceeds or (2) the use of any portion of the Available Sales and Use Tax Proceeds for any particular purpose for which provision is not then made in this Section or in any amendment hereof, provided that prior thereto the City shall obtain an opinion of counsel with experience in the matters to be covered by such opinion that the use of Available Sales and Use Tax Proceeds for such purpose (i) is authorized by the applicable laws of the State of Alabama, (ii) is subject to, and will not adversely affect or impair, any pledge thereof for the benefit of any Obligations, and (iii) will not cause interest on any Obligations to be or become includable in (if then excludable from) the gross income of the owners of such Obligations for purposes of federal income taxation.

ARTICLE 5

Leasing Taxes

Section 5.01 Levy of Leasing Taxes

In addition to all other taxes now imposed by law, there is hereby levied and shall be collected as herein provided a privilege or license tax on each person engaging or continuing within the City in the business of leasing or renting tangible personal property at the rate of four percent (4%) of the gross proceeds derived by the lessor from the lease or rental of tangible personal property; provided, that the said privilege or license tax on each person engaging or continuing within the City in the business of leasing or renting any automotive vehicle or truck trailer, semitrailer or house trailer shall be at the rate of one percent (1%) of the gross proceeds derived by the lessor from the lease or rental of such automotive vehicle or truck trailer, semi-trailer or house trailer; provided, further, that the tax levied by this section shall not apply to any leasing or rental, as lessor, by the state, or any municipality or county in the state, or any public corporation organized under the laws of the state; provided further, that the privilege or license tax on each person or firm engaging or continuing within this state in the business of the leasing and rental of linens and garments shall be at the rate of two percent (2%) of the gross proceeds derived by the lessor from the lease or rental of such linens and garments.

Section 5.02 Use of Proceeds of Leasing Tax

(a) Definitions. For purposes of this Section the following terms shall have the following meanings:

Net Leasing Tax Proceeds means the proceeds of the Leasing Tax received by the City in each Fiscal Year after deduction or payment therefrom of all costs of collection thereof.

Surplus Net Leasing Tax Proceeds means the aggregate amount of the Net Leasing Tax Proceeds remaining in each Fiscal Year after payment, or provision for payment, shall have been made from any funds or revenues of the City (including without limitation the Net Leasing Tax Proceeds) lawfully available therefor of all amounts of principal of, premium (if any) and interest on all of the following Obligations becoming due and payable in such Fiscal Year:

(1) all Obligations which are general obligations of the City payable from and secured by a pledge of the full faith, credit and taxing power of the City, without regard to whether any of such Obligations are, in whole or in part, also payable from, or secured by a pledge of, any other source of funds or revenues of the City; and

(2) all Obligations which are, in whole or in part, payable from and secured by a pledge of the Net Leasing Tax Proceeds, without regard to whether any of such Obligations are, in whole or in part, general obligations of the City or also payable from, or secured by a pledge of, any other source of funds or revenues of the City.

(b) Uses. The Net Leasing Tax Proceeds shall be allocated and applied for any lawful purpose as directed by the City Council, including without limitation the payment, or the provision for payment, in each Fiscal Year of the principal of, premium (if any) and interest on any Obligations becoming due and payable in such Fiscal Year.

(c) Pledge. The City may, pursuant to the applicable laws of the State of Alabama, pledge all, or any portion, of the Net Leasing Tax Proceeds for the benefit of any Obligations, subject to and in accordance with the following:

(1) the City shall not pledge any amount of the Net Leasing Tax Proceeds that is allocable to the levy and collection of the Leasing Tax outside the corporate limits of the City; and

(2) the City reserves the right to apply, dedicate and use for any lawful purpose, as directed by the City Council, all Surplus Net Leasing Tax Proceeds in any Fiscal Year without regard to any pledge of the Net Leasing Tax Proceeds that shall then be in force and effect with respect to any Obligations.

(d) Amendment. The City reserves the right to make such amendments to this Section to provide for the use of any portion of the Net Leasing Tax Proceeds for any particular purpose for which provision is not then made in this Section or in any amendment hereof, provided that prior thereto the City shall obtain an opinion of counsel with experience in the matters to be covered by such opinion that the use of Net Leasing Tax Proceeds for such purpose (i) is authorized by the applicable laws of the State of Alabama, (ii) is subject to, and will not adversely affect or impair, any pledge thereof for the benefit of any Obligations, and (iii) will not cause interest on any Obligations to be or become includable in (if then excludable from) the gross income of the owners of such Obligations for purposes of federal income taxation.

ARTICLE 6

Lodging Taxes

Section 6.01 Levy of Lodging Taxes

(a) There is hereby levied and imposed, in addition to all other taxes of every kind now imposed by law, a privilege or license tax upon every person, firm, or corporation engaging within the City in the business of renting or furnishing any room or rooms, lodgings or accommodations to transients in any hotel, motel, inn, tourist camp, tourist cabin, or any other place in which rooms, lodgings, or accommodations are regularly furnished to transients for a consideration, in an amount to be determined by the application of the rate of six percent (6%) of the charge for such room, rooms, lodgings, or accommodations, including the charge for use or rental of personal property and services furnished in such room. There is exempted from the tax levied under this section any rentals or services taxed under Section 4.01 of this Ordinance.

(b) The tax levied in Section 6.01(a) shall not apply to rooms, lodgings, or accommodations supplied: (i) for a period of 180 continuous days or more in any place; (ii) by camps, conference centers, or similar facilities operated by nonprofit organizations primarily for the benefit of, and in connection with, recreational or educational programs for children, students, or members or guests of other nonprofit organizations during any calendar year; or (iii) by privately operated camps, conference centers, or similar facilities that provide lodging and recreational or educational programs exclusively for the benefit of children, students or members or guests of nonprofit organizations during any calendar year.

Section 6.02 Use of Proceeds of Lodging Tax

(a) Definitions. For purposes of this Section the following terms shall have the following meanings:

Net Lodging Tax Proceeds means the proceeds of the Lodging Tax received by the City in each Fiscal Year after deduction or payment therefrom of all costs of collection thereof.

Surplus Net Lodging Tax Proceeds means the aggregate amount of the Net Lodging Tax Proceeds remaining in each Fiscal Year after payment, or provision for payment, shall have been made from any funds or revenues of the City (including without limitation the Net Lodging Tax Proceeds) lawfully available therefor of all amounts of principal of, premium (if any) and interest on all of the following Obligations becoming due and payable in such Fiscal Year:

(1) all Obligations which are general obligations of the City payable from and secured by a pledge of the full faith, credit and taxing power of the City, without regard to whether any of such Obligations are, in whole or in part, also payable from, or secured by a pledge of, any other source of funds or revenues of the City; and

(2) all Obligations which are, in whole or in part, payable from and secured by a pledge of the Net Lodging Tax Proceeds, without regard to whether any of such Obligations are, in whole or in part, general obligations of the City or also payable from, or secured by a pledge of, any other source of funds or revenues of the City.

(b) Uses. The Net Lodging Tax Proceeds shall be allocated and applied for any lawful purpose as directed by the City Council, including without limitation the payment, or the provision for payment, in each Fiscal Year of the principal of, premium (if any) and interest on any Obligations becoming due and payable in such Fiscal Year.

(c) Pledge. The City may, pursuant to the applicable laws of the State of Alabama, pledge all, or any portion, of the Net Lodging Tax Proceeds for the benefit of any Obligations, subject to and in accordance with the following:

(1) the City shall not pledge any amount of the Net Lodging Tax Proceeds that is allocable to the levy and collection of the Lodging Tax outside the corporate limits of the City; and

(2) the City reserves the right to apply, dedicate and use for any lawful purpose, as directed by the City Council, all Surplus Net Lodging Tax Proceeds in any Fiscal Year without regard to any pledge of the Net Lodging Tax Proceeds that shall then be in force and effect with respect to any Obligations.

(d) Amendment. The City reserves the right to make such amendments to this Section to provide for the use of any portion of the Net Lodging Tax Proceeds for any particular purpose for which provision is not then made in this Section or in any amendment hereof, provided that prior thereto the City shall obtain an opinion of counsel with experience in the matters to be covered by such opinion that the use of Net Lodging Tax Proceeds for such purpose (i) is authorized by the applicable laws of the State of Alabama, (ii) is subject to, and will not adversely affect or impair, any pledge thereof for the benefit of any Obligations, and (iii) will not cause interest on any Obligations to be or become includable in (if then excludable from) the gross income of the owners of such Obligations for purposes of federal income taxation.

ARTICLE 7

Operation of Ordinance

Section 7.01 Collection of Privilege, License and Excise Taxes

The City may provide, from time to time, by ordinance or resolution, for the collection of the Privilege, License and Excise Taxes, or any one or more thereof, by the City, or by the Alabama Department of Revenue, or by a private auditing and collecting firm (as defined in Section 40-23-3(17) of the Code of Alabama 1975 or any successor provision of law).

Section 7.02 Applicability and Incorporation of State Sales Tax Laws

(a) (1) The City shall administer and enforce the levy and collection of the Sales Taxes in accordance with the applicable provisions of the State Sales Tax Laws for the administration and enforcement of the corresponding state tax levied thereunder, including without limitation all such provisions providing for the assessment, administration, collection, payment, imposition of penalties, record-keeping, reporting and making returns, and enforcement of said corresponding state tax.

(2) Therefore, the Sales Taxes shall be subject to all definitions, exceptions, exemptions, proceedings, requirements, provisions, rules and regulations promulgated under the Alabama Administrative Procedure Act, direct-pay permit and drive-out certificate procedures, statutes of limitation, penalties, fines, punishments, and deductions as are provided by the State Sales Tax Laws for the corresponding state tax levied thereunder.

(b) In furtherance thereof, the City does hereby incorporate herein and make a part hereof all provisions of the State Sales Tax Laws that are hereby made applicable to the Sales Taxes by this reference thereto as if set out in full herein.

Section 7.03 Applicability and Incorporation of State Use Tax Laws

(a) (1) The City shall administer and enforce the levy and collection of the Use Taxes in accordance with the applicable provisions of the State Use Tax Laws for the administration and enforcement of the corresponding state tax levied thereunder, including without limitation all such provisions providing for the assessment, administration, collection, payment, imposition of penalties, record-keeping, reporting and making returns, and enforcement of said corresponding state tax.

(2) Therefore, the Use Taxes shall be subject to all definitions, exceptions, exemptions, proceedings, requirements, provisions, rules and regulations promulgated under the Alabama Administrative Procedure Act, direct-pay permit and drive-out certificate procedures, statutes of limitation, penalties, fines, punishments, and deductions as are provided by the State Use Tax Laws for the corresponding state tax levied thereunder.

(b) In furtherance thereof, the City does hereby incorporate herein and make a part hereof all provisions of the State Use Tax Laws that are hereby made applicable to the Use Taxes by this reference thereto as if set out in full herein.

Section 7.04 Applicability and Incorporation of State Leasing Tax Laws

(a) (1) The City shall administer and enforce the levy and collection of the Leasing Tax in accordance with the applicable provisions of the State Leasing Tax Laws for the administration and enforcement of the corresponding state tax levied thereunder, including without limitation all such provisions providing for the assessment, administration, collection, payment, imposition of penalties, record-keeping, reporting and making returns, and enforcement of said corresponding state tax.

(2) Therefore, the Leasing Tax shall be subject to all definitions, exceptions, exemptions, proceedings, requirements, provisions, rules and regulations promulgated under the Alabama Administrative Procedure Act, direct-pay permit and drive-out certificate procedures, statutes of limitation, penalties, fines, punishments, and deductions as are provided by the State Leasing Tax Laws for the corresponding state tax levied thereunder.

(b) In furtherance thereof, the City does hereby incorporate herein and make a part hereof all provisions of the State Leasing Tax Laws that are hereby made applicable to the Leasing Tax by this reference thereto as if set out in full herein.

Section 7.05 Applicability and Incorporation of State Lodging Tax Laws

(a) (1) The City shall administer and enforce the levy and collection of the Lodging Tax in accordance with the applicable provisions of the State Lodging Tax Laws for the administration and enforcement of the corresponding state tax levied thereunder, including without limitation all such provisions providing for the assessment, administration, collection, payment, imposition of penalties, record-keeping, reporting and making returns, and enforcement of said corresponding state tax.

(2) Therefore, the Lodging Tax shall be subject to all definitions, exceptions, exemptions, proceedings, requirements, provisions, rules and regulations promulgated under the Alabama Administrative Procedure Act, direct-pay permit and drive-out certificate procedures, statutes of limitation, penalties, fines, punishments, and deductions as are provided by the State Lodging Tax Laws for the corresponding state tax levied thereunder.

(b) In furtherance thereof, the City does hereby incorporate herein and make a part hereof all provisions of the State Lodging Tax Laws that are hereby made applicable to the Lodging Tax by this reference thereto as if set out in full herein.

Section 7.06 Interest on Tax Delinquency; Refund

To the extent permitted by law (including without limitation Section 11-51-208(f) of the Code of Alabama 1975), the City shall:

- (a) assess interest on any amount of the Privilege, License and Excise Taxes which shall not be paid when due at the applicable interest rate determined and adjusted from time to time by the Alabama Department of Revenue in accordance with Section 40-1-44 of the Code of Alabama 1975 (or any successor provision of law) from the date such amount became due until paid in full, which assessment of interest shall be made by the City in accordance with Section 40-23-2.1 of the Code of Alabama 1975 (or any successor provision of law) and shall be due and payable in arrears on such dates as shall be determined by the City; and
- (b) pay interest, at the same rate charged by the City on tax delinquencies, on any refund of taxes erroneously paid (within the meaning of Section 11-51-208(f) of the Code of Alabama 1975).

Section 7.07 Discount for Prompt Payment

A discount equal to five percent (5%) of the first one hundred dollars (\$100) of each monthly installment of the taxes herein levied and two percent (2%) of that portion of each monthly installment of the said taxes in excess of one hundred dollars (\$100), but not to exceed a maximum discount of four hundred dollars (\$400.00) per month to each taxpayer, shall be allowed to each taxpayer on the filing of the monthly report with respect to such taxes, upon payment of the amount of such monthly installment (minus said discount) at or prior to the time when such installment is required herein to be paid. If the report is not filed and payment is not made within the time provided with respect to any monthly installment of the tax herein levied, the taxpayer shall not be entitled to the said discount with respect to that monthly installment but shall pay the full amount of the tax then due, together with the applicable interest provided in Section 7.06 hereof.

ARTICLE 8

Privilege, License and Excise Taxes Cumulative

The Privilege, License and Excise Taxes are cumulative with, and in addition to, any and all licenses and taxes now or hereafter authorized to be levied and collected, or levied and collected, by the City.

ARTICLE 9

Provisions of General Application

Section 9.01 Authorization of Officers

The Mayor, City Manager, Finance Director, and City Clerk of the City are hereby authorized and directed to take all such actions, and execute, deliver, file and record such documents, instruments, notices, and proceedings, as shall be necessary, desirable, or required by applicable law or governmental authority, to carry out and effect the provisions of this Ordinance and provide for the levy and collection of the Privilege, License and Excise Taxes as provided in this Ordinance.

Section 9.02 Severability

If any provision or term of this Ordinance shall be inoperative or unenforceable, in general or as applied in any particular case, such provision or term shall thereupon be ineffective therefor and all other provisions and terms of this Ordinance shall be and remain valid, enforceable, and in full force and effect without regard to such inoperative or unenforceable provision or term.

Section 9.03 Construction with Other Proceedings

In addition to the provisions of Section 3.02(a) hereof, any order, ordinance, resolution, or other proceeding of the City in conflict or inconsistent with any provision of this Ordinance, is hereby, to the extent of such conflict or inconsistency, repealed.

Section 9.04 Effectiveness of Ordinance

This Ordinance shall take effect upon adoption hereof and publication as required by law.

* * * * *

Duly Passed and Adopted this ____ day of _____, 2018.

Mayor

S E A L

City Clerk

CERTIFICATE OF PUBLICATION

The undersigned City Clerk of the City of Vestavia Hills, Alabama, hereby certifies that the above and foregoing Ordinance No. 2747 was published by me in *The Birmingham News*, a newspaper published in Jefferson County, Alabama, and of general circulation in the City of Vestavia Hills, Alabama, in the issue thereof published on _____, 2018.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the City of Vestavia Hills, Alabama, on this _____ day of _____, 2018.

City Clerk

S E A L

RESOLUTION NO. 5023

A RESOLUTION ASCERTAINING, FIXING AND DETERMINING THE AMOUNT OF ASSESSMENT TO BE CHARGED AS A LIEN ON THE PROPERTY KNOWN AS 2535 IVY GLENN DRIVE, VESTAVIA HILLS, ALABAMA 35243; PARCEL ID# 28-00-32-4-001-96.000, IN THE CITY OF VESTAVIA HILLS AS A RESULT OF THE CITY OF VESTAVIA HILLS ORDERING THE ABATEMENT OF A NUISANCE PURSUANT TO ORDINANCE NUMBER 2567

WHEREAS, heretofore the City Council of the City of Vestavia Hills, after due and lawful notice was given and a public hearing held in accordance with Ordinance No. 2567, declared that a property located within the City of Vestavia Hills was found to constitute a weed nuisance, to wit:

STREET ADDRESS:

2535 Ivy Glenn Drive, Vestavia Hills, AL 35243

LEGAL DESCRIPTION:

Lot 6, according to the Survey of Ivy Glenn, as recorded in Map Book 174, page 9, in the Office of the Judge of Probate of Jefferson County, Alabama

PARCEL IDENTIFICATION NUMBER:

28-00-32-4-001-96.000

INTERESTED PERSONS:

- Sonja Rene Haney
- William George Haney

WHEREAS, the City has completed abatement of the nuisance at the City's expense; and

WHEREAS, the appropriate municipal official has made a report to the City Council of said costs, including the cost of complying with Ordinance No. 2567, the sum of which was **\$650.00**; and

WHEREAS, the City Clerk set the report of costs for a public hearing at a meeting of the City Council on Monday, March 26, 2018 at 6:00 p.m. and gave no less than ten (10) days notice of the public hearing by first-class mail to all persons or entities listed in Section 4-114(b)(1) of Ordinance No. 2567; and

WHEREAS, said public hearing was held by the City Council; and

WHEREAS, it is now the desire of the City Council of the City of Vestavia Hills to fix the costs which it finds were reasonably incurred in connection with the demolition and assess the costs against the previously described land upon which said building was located.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Vestavia Hills, Alabama while in regular session on Monday, March 26, 2018 at 6:00 p.m. as follows:

Section 1. That the City Council hereby assesses the sum of **\$600.00** to be the costs reasonably incurred by the City of Vestavia Hills in connection with the demolition of the building located on the following described property, to wit:

STREET ADDRESS:

2535 Ivy Glenn Drive, Vestavia Hills, AL 35243

LEGAL DESCRIPTION:

Lot 6, according to the Survey of Ivy Glenn, as recorded in Map Book 174, page 9, in the Office of the Judge of Probate of Jefferson County, Alabama

PARCEL IDENTIFICATION NUMBER:

28-00-32-4-001-96.000

INTERESTED PERSONS:

- Sonja Rene Haney
- William George Haney

Section 2. That the City Clerk be authorized and directed to file a certified copy of this Resolution in the offices of the Judge of Probate of Jefferson County, Alabama, Birmingham Division, and the Jefferson County Tax Collector. Upon filing, the Jefferson County Tax Collector shall add the amount of the lien to the ad valorem tax bill on the property and shall collect the amount as if it were a tax and remit the amount to the City.

ADOPTED this the 9th day of April, 2018.

APPROVED: _____
Ashley C. Curry, Mayor

ATTEST: _____
Rebecca Leavings, City Clerk

CERTIFICATION OF CITY CLERK

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, Rebecca Leavings, City Clerk of the City of Vestavia Hills, Alabama, do hereby certify that the above and foregoing is a true and correct copy of a Resolution duly and legally adopted by the City Council of the City of Vestavia Hills, Alabama, on the 9th day of April while in regular session on Monday, April 9, 2018, and the same appears of record in the minute book of said date of said City.

Witness my hand and seal of office this _____ day of _____, 2018.

Rebecca Leavings, City Clerk



Weed Abatement Report:

Property Address: 2535 Ivy Glenn Drive

Cost of Abatement: \$ 450.00

Administrative Costs: \$ 150.00

Total Proposed Lien: \$ 600.00

Owens Landscape Group, LLC

PO Box 100006
 Birmingham, AL 35210
 United States

INVOICE

Invoice Number: 22051
 Invoice Date: Dec 21, 2017
 Page: 1

Voice: 205-991-3981
 Fax: 205-951-6625

Bill To:
City of Vestavia Hills Attention: Jimmy Coleman 1032 Montgomery Hwy Vestavia Hills, AL 35216

Ship to:
City of Vestavia Hills Attention: Jimmy Coleman 1032 Montgomery Hwy Vestavia Hills, AL 35216

Customer ID	Customer PO	Payment Terms	
5-4012		Net Due	
Sales Rep ID	Shipping Method	Ship Date	Due Date
	Best Way		12/21/17

Quantity	Item	Description	Unit Price	Amount
		One service to prune all existing shrubs on the front & side of house at 2535 Ivy Glenn Dr Vestavia Hills		450.00

Subtotal	450.00
Sales Tax	
Total Invoice Amount	450.00
Payment/Credit Applied	
TOTAL	450.00

Check/Credit Memo No:

PARCEL #: 28 00 32 4 001 096.000 [111-A-] Baths: 2.5 H/C Sqft: 2,816
OWNER: HANEY SONJA RENE & *Wm George Haney* 18-034.0 Bed Rooms: 4 Land Sch: G2
ADDRESS: 2535 IVY GLENN DR VESTAVIA AL 35243-4636 Land: 112,000 Imp: 324,800 Total: 436,800
LOCATION: 2535 IVY GLENN DR BHAM AL 35243 Acres: 0.000 Sales Info: 12/19/2016 \$10

<< Prev Next >> [1 / 0 Records] Processing...

Tax Year : 2017 ▼

[SUMMARY](#) [LAND](#) [BUILDINGS](#) [SALES](#) [PHOTOGRAPHS](#) [MAPS](#)

LAND COMPUTATION

	Code	Acerage	Square Foot	Market Value	CU. Value
SITE VALUE	3 111 HOUSEHOLD UNITS	0	6688	\$112,000.00	

ROLLBACK/HOMESITE/MISCELLANEOUS

LEGAL DESCRIPTION

SUB DIVISON1: IVY GLENN AMENDED 28-32-4 MAP BOOK: 174 PAGE: 9
 SUB DIVISON2: MAP BOOK: 0 PAGE: 0

PRIMARY BLOCK: SECONDARY BLOCK: 0
 PRIMARY LOT: 6 SECONDARY LOT: 0

METES AND BOUNDS: LOT 6 IVY GLENN PB 170 PG 5 & AMENDED MAP 174 PG 9

SALES INFORMATION

12/19/2016	\$10.00	2	BOOK: 2017 PAGE: 091621	Land & Building	HANEY WILLIAM GEORGE
9/1/1996	\$243,000.00	1	BOOK: 9611 PAGE: 007759	Land & Building	
7/1/1993	\$240,000.00	1	BOOK: 9310 PAGE: 003119	Land & Building	

ORDINANCE NUMBER 2748

AN ORDINANCE GRANTING A CONDITIONAL USE APPROVAL TO ALLOW FIVE UNRELATED ADULTS TO RESIDE IN A SINGLE-FAMILY RESIDENCE UNTIL JULY 31, 2018

WHEREAS, on December 13, 2010 the City Council of the City of Vestavia Hills, Alabama approved and adopted Ordinance Number 2331 entitled the Vestavia Hills Zoning Code and establishing a conditional use approval for certain uses not permissible by right in zoning classifications; and

WHEREAS, on January 12, 2018, Nick Goudreau, Golden Key, LLC on behalf of owner, Mikel Swack submitted an application for conditional use approval to allow five unrelated adults to reside in the single-family residence located at 220 Erwin Circle, Vestavia Hills, Alabama, Lot 7, Erwin Circle MB 44/MP 59); and

WHEREAS, the property located at 220 Erwin Circle is presently zoned Vestavia Hills R-2 (residential district); and

WHEREAS, Table 5 of the Vestavia Hills Zoning Code sets forth the permissible uses within a R-2 classification; and

WHEREAS, a copy of said application dated January 12, 2018 is attached and hereby incorporated into this Ordinance Number 2748.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA, AS FOLLOWS:

1. Conditional Use Approval is hereby approved for Mikel Swacki, for use of the property located at 220 Erwin Circle to allow five (5) unrelated adults to reside in the home with the following conditions:
 - (1) The five (5) unrelated adults shall be the five that are currently residing on the property;
 - (2) Parking for said adults shall be limited to private property on improved parking surfaces with no more than two (2) vehicles parking safely in the cul-de-sac at any given time;

- (3) Said five (5) individuals may reside in said home until July 31, 2018 at which time this conditional use approval shall expire and the use of said home shall once again be limited to single-family residential;
- (4) This conditional use approval is location and owner specific and if the current five (5) individuals vacate the premises, said conditional use shall be considered null and void;

ADOPTED and APPROVED this the 9th day of April, 2018.

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

CERTIFICATION:

I, Rebecca Leavings, as Acting City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance # 2748 is a true and correct copy of such Ordinance that was duly adopted by the City Council of the City of Vestavia Hills on the 9th day of April, 2018 as same appears in the official records of said City.

Posted at Vestavia Hills Municipal Center, Vestavia Hills Library in the Forest, New Merkle House and Vestavia Hills Recreational Center this the _____ day of _____, 2018.

Rebecca Leavings
City Clerk

CITY OF VESTAVIA HILLS
SYNOPSIS AND STAFF RECOMMENDATION CONCERNING
APPLICATION BEFORE THE PLANNING AND ZONING COMMISSION

Date: **FEBRUARY 8, 2018**

- **CASE: P-0218-03**
- **REQUESTED ACTION:** Conditional Use Approval for Unrelated Adults Residing In a Single Family Dwelling
- **ADDRESS/LOCATION:** 220 Erwin Circle
- **APPLICANT/OWNER:** Mike Swack
- **REPRESENTING AGENT:** Nick Goudreau
- **GENERAL DISCUSSION:** The applicant is currently renting a 3/2 house to five unrelated Samford Students. Code enforcement became aware of the situation due to complaints over parking at the residence. R-2 is single family zoning that establishes that all inhabitants of the house are either related by blood or marriage. The applicant is asking for conditional use approval until the end of the rental term on 7/31/18.
- **VESTAVIA HILLS COMPREHENSIVE PLAN:** This request is not consistent with the plan for single family residential.
- **STAFF REVIEW AND RECOMMENDATION:**
 1. **City Planner Review:** I have looked at all of the relevant zoning / subdivision requirements related to this proposal, including application, notification, setbacks, area of lot development, etc. Notification has been sent to property owners pursuant to Alabama law. I have reviewed this request and find it does meet the minimum requirements of the proposed zoning.

City Planner Recommendation: No problems noted.
 2. **City Engineer Review:** I have reviewed the application and I have no issues with this request.
 3. **City Fire Marshal Review:** Violates fire code
 4. **Building Safety Review:** Violates building code.

P-0218-03

Mike Swack Is Requesting **Conditional Use Approval** for Five Unrelated Adults Residing In a Single Family Dwelling Located At **220 Erwin Circle**. The Property Is Owned By Mike Swack And Is Zoned Vestavia Hills R-2.

Mr. Garrison explained the background and location of the request.

Nick Goudreau of GK Homes (leasing agent) was present to answer any questions the Commission had. He stated he was unaware of the single family requirement for the home and is asking that the approval only last until the end of the lease term, July 31st.

Mr. Burrell stated he was concerned about setting precedent for this kind of request.

Mr. Goodwin sought particulars about the lease term and Mrs. Barnes asked if all residents are on the lease. Mr. Goudreau provided the information.

Mr. Larson opened the floor for a public hearing.

Sam Romano, a next door neighbor, spoke in support for the request.

Mr. Larson closed the public hearing and opened the floor for a motion.

MOTION Mr. Goodwin made a motion to recommend Conditional Use Approval for Five Unrelated Adults Residing In a Single Family Dwelling Located At 220 Erwin Circle. Second was by Mr. Burrell. Motion was carried on a roll call; vote as follows:

Mrs. Barnes – no

Mr. Burrell – no

Mrs. Cobb – no

Mr. Brooks – no

Mr. Goodwin – no

Mr. Larson – no

Motion Failed. Commission determined the applicants did not meet the burden of the Conditional Use.

CITY OF VESTAVIA HILLS

APPLICATION

PLANNING AND ZONING COMMISSION

I. INSTRUCTIONS AND INFORMATION:

- (1) The Vestavia Hills Planning and Zoning Commission meets regularly on the second Thursday of each month at 6:00 PM in Council Chambers at the Municipal Center.
- (2) All materials and information relating to a zoning/rezoning request or conditional use approval before the Planning and Zoning Commission must be submitted to the Office of the City Clerk no later than **25 working days prior to the scheduled meeting at which it shall be considered**. All information relating to Preliminary Map approvals must be submitted to the Office of the City Clerk no later than 20 days prior to the scheduled meeting at which is shall be considered. All information relating to Final Map approvals must be submitted to the Office of the City Clerk no later than 15 days prior to the scheduled meeting at which it is to be considered.
- (3) This application must be filled out in its entirety complete with zip codes.
- (4) All applicable fees shall accompany this application prior to its being considered complete. Fees include an application fee of \$100.00 along with applicable postage per property owner to be notified for Commission meeting. Fees may also include notification fees for City Council meeting and publication fees which will be billed to applicant at a later date. ***No permits will be issued until all fees have been paid.*
- (5) Appropriate plats and maps with proper legal description shall accompany this application. **Please refer to attached checklist.**

II. APPLICANT INFORMATION: (owner of property)

NAME: Mikel Swack

ADDRESS: 220 Erwin Cir.
Vestavia Hills, AL 35216

MAILING ADDRESS (if different from above) 1701 Oxmoor Rd
Birmingham, AL 35209

PHONE NUMBER: Home _____ Office 205-440-9702

NAME OF REPRESENTING ATTORNEY OR OTHER AGENT: _____
Nick Goudreau with gkhouses

220 Erwin Circle
Conditional Use
Mikel Swack

R-2

III. ACTION REQUESTED

Request that the above described property be approved conditional use approval pursuant to Section 5.3 of the Vestavia Hills Zoning Code.

Current Zoning of Property: R-2

Requested Conditional use For the intended purpose of: 5 unrelated adults to reside in dwelling through end of current lease agreement (7/31/18) see attached.
~~R-2 to R-5~~
(Example: From "VH R-1" to "VH O-1" for office building)

if additional information is needed, please attached full description of request

IV. PROPERTY DESCRIPTION: (address, legal, etc.)

220 Erwin Circle; Lot 7, Erwin Circle (MB 44 MP 59):
Vestavia Hills, 35216

Property size: _____ feet X _____ feet. Acres: _____

V. INFORMATION ATTACHED:

Attached Checklist complete with all required information.

Application fees submitted.

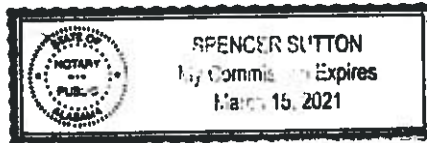
VI I do hereby declare the above statements are true and that I, the owner, and/or my duly appointed representative will be at the scheduled hearing.

Mikel Swack 12/18/2017
Owner Signature/Date

[Signature]
Representing Agent (if any)/date

Given under my hand and seal
this 18 day of December, 2017.

[Signature]
Notary Public
My commission expires 15th
day of March, 2021.



P0218-03//29-25-2-9-15
220 Erwin Circle
Conditional Use
Mikel Swack

R-2



1/12/18

To whom it may concern,

Golden Key, LLC dba gkhouses, is requesting, on behalf of the owner Mikel & Liz Swack, a conditional use request to allow the current tenants at 220 Erwin Circle to remain in the home through the end of their lease period. At this time, there are 5 unrelated residents living in the home and would like to remain through the end of their lease, which is 7/31/2018.

The residents are utilizing all of the parking the home has by parking 3 cars in the driveway at all times and parking 2 cars in the cul-de-sac. One of the cars in the cul-de-sac is parked in front of 220 Erwin Circle and the other car is parked in front of the neighbors house. The neighbor has given the residents permission to park the car in front of their home as the home is currently vacant.

If permitted to stay, the tenants will vacate upon lease completion and the house will go back on the rental market. At this point, gkhouses will put restrictions on who can rent the home to prevent this in the future.

We appreciate your consideration and look forward to working with you.

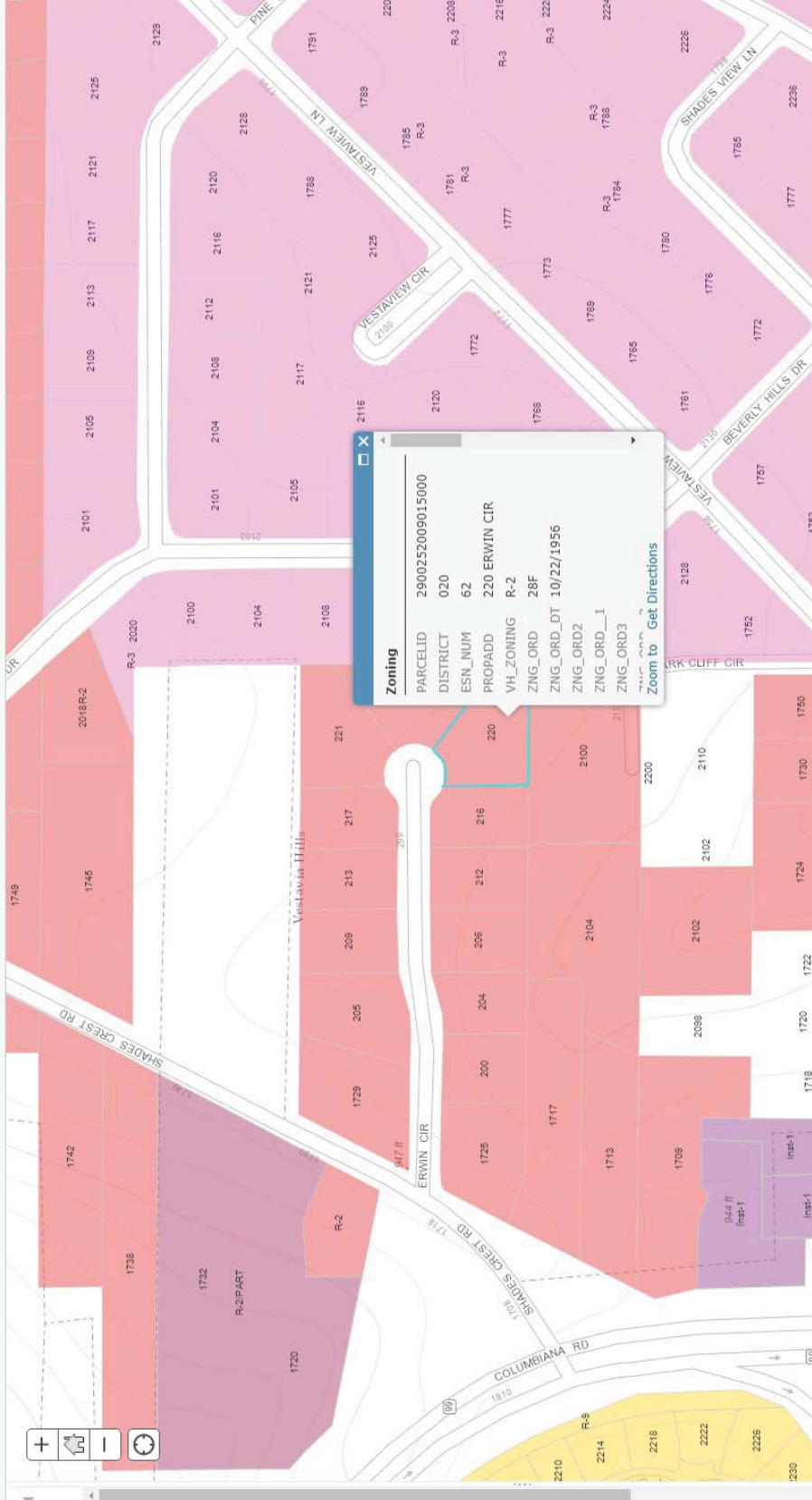
Thank you,

A handwritten signature in black ink, appearing to read "Nick Goudreau", is written over the typed name.

Nick Goudreau

Zoning Legend

- R-2
- PUD-PR-1
- R-1
- R-4
- R-6
- R-9
- R-3
- R-8
- R-5
- R-9*
- B-3
- RC-1
- A
- E-2
- B-2
- Inst-1
- R-1*
- O-1
- PUD-PB
- R-8*
- R-6*



Zoning

PARCELID	2900252009015000
DISTRICT	020
ESN_NUM	62
PROPADD	220 ERWIN CIR
VH_ZONING	R-2
ZNG_ORD	28F
ZNG_ORD_DT	10/22/1956
ZNG_ORD2	
ZNG_ORD_1	
ZNG_ORD3	

[Zoom to](#) [Get Directions](#)

Subject Parcel

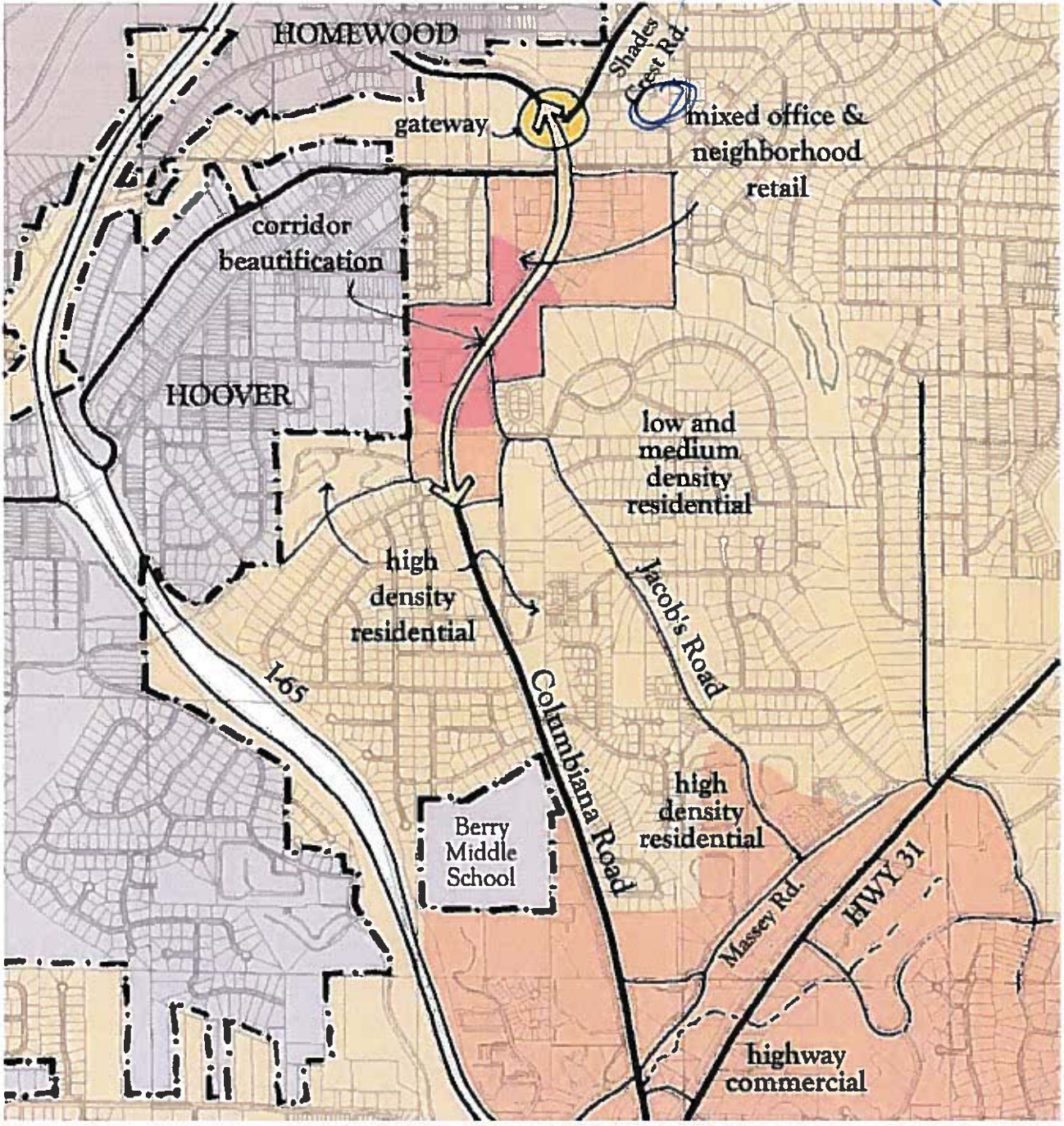


Figure 20: Columbiana Road
Land Use Analysis

- Neighborhood** - primarily low / medium density single-family residential areas with higher densities near village centers. Other uses may include schools, places of worship, recreational areas, and open space.
- Village Center** - mixed use centers with highest densities in core areas. Mix of uses should include retail and service businesses, professional offices, high density residential areas, institutions, recreation areas, and public spaces.
- Commercial Core** - primarily high density, retail and service business areas with professional offices and multi-family residences on upper floors or on periphery. Other uses may include institutions and public space.
- Schools** - School facilities administered by the Vestavia Hills School System.
- Professional Offices** - primarily professional office uses. Density should vary according to surroundings. Other uses may include retail and services (supporting offices and employees), places of worship, public spaces, and open space.
- Recreation and Open Space** - public and private recreation facilities and preserved natural spaces. Recreation facilities may be active, passive or combined. Open spaces are areas preserved in a natural state and they include passive recreational uses.
- Trailheads** - Trailheads are public sites along a trail, where bike racks, seating, parking, and public amenities are provided for trail users.
- Gateways and Nodes** - Gateways are entryways into the community or village enhanced with consistent signage, landscaping, and other elements. Nodes are sites, such as transit stops, where public spaces, signage, and other public design elements should be considered.



ORDINANCE NUMBER 2747

**AN ORDINANCE PROVIDING FOR THE LEVY AND COLLECTION OF
CERTAIN PRIVILEGE, LICENSE AND EXCISE TAXES WITHIN THE
CORPORATE LIMITS OF THE CITY OF VESTAVIA HILLS, ALABAMA**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA, AS
FOLLOWS:**

ARTICLE 1

Authority

The City does hereby adopt this Ordinance, and provide for the levy and collection of the within-referenced Privilege, License and Excise Taxes, pursuant to the authority, and in conformity with the purposes, of the "Local Tax Simplification Act of 1998," as amended (codified as Article 3 of Chapter 51 of Title 11 of the Code of Alabama 1975.)

ARTICLE 2

Definitions

Section 2.01 Definitions of Certain Terms

The following terms shall have the following meanings herein:

City shall mean the City of Vestavia Hills, Alabama.

City Clerk shall mean the City Clerk of the City, and any successor to the duties and functions thereof.

City Council shall mean the governing body of the City.

Code of Ordinances shall mean the Vestavia Hills Code of Ordinances, Republished 2013, as at any time amended, restated, or supplemented.

Effective Date shall mean June 1, 2018.

Fiscal Year shall mean the fiscal year of the City as established from time to time.

Leasing Tax shall mean the leasing and rental tax levied pursuant to Section 5.01.

Lodging Tax shall mean the transient occupancy tax levied pursuant to Section 6.01.

Obligations shall mean any direct, indirect, or contingent pecuniary obligation of the City as evidenced by any agreement, bond, contract, document, note, warrant or other instrument.

Prior Taxes and Fees shall mean collectively the following:

- (a) the privilege, license and excise taxes levied pursuant to Ordinance No. 2317, as codified in Article III of Chapter 16 of the Code of Ordinances;
- (b) the privilege license taxes levied pursuant to Ordinance No. 2316, as codified in Article IV of Chapter 16 of the Code of Ordinances;
- (c) the business license fee and privilege license tax levied pursuant to Section 8-38(7)(d) of Article II of Chapter 8 of the Code of Ordinances (as enacted by Section 23 of Ordinance No. 2315).

Privilege, License and Excise Taxes shall mean, collectively, the following taxes levied by this Ordinance within the corporate limits of the City:

- (a) Sales Taxes;
- (b) Use Taxes;
- (c) Leasing Tax; and
- (d) Lodging Tax.

Sales and Use Taxes shall mean, collectively, the Sales Taxes and the Use Taxes.

Sales Taxes shall mean the sales taxes levied pursuant to Section 4.01.

State Leasing Tax Laws shall mean and include Section 40-2A-7, and Article 4 of Chapter 12 of Title 40, of the Code of Alabama 1975, as any time in force and effect, and all regulations of the Alabama Department of Revenue at any time promulgated and effective thereunder, and all laws of the State of Alabama directly relating thereto.

State Lodging Tax Laws shall mean and include Section 40-2A-7, and Chapter 26 of Title 40, of the Code of Alabama 1975, as any time in force and effect, and all regulations of the Alabama Department of Revenue at any time promulgated and effective thereunder, and all laws of the State of Alabama directly relating thereto.

State Sales Tax Laws shall mean and include Section 40-2A-7, and Article 1 of Chapter 23 of Title 40, of the Code of Alabama 1975, as any time in force and effect, and all regulations of the Alabama Department of Revenue at any time promulgated and effective thereunder, and all laws of the State of Alabama directly relating thereto.

State Use Tax Laws shall mean and include Section 40-2A-7, and Article 2 of Chapter 23 of Title 40, of the Code of Alabama 1975, as any time in force and effect, and all regulations of the Alabama Department of Revenue at any time promulgated and effective thereunder, and all laws of the State of Alabama directly relating thereto.

Use Taxes shall mean the use taxes levied pursuant to Section 4.02.

Section 2.02 Incorporation of Phrases, Terms and Words

All phrases, terms and words used in this Ordinance which are defined or used in any of the following statutes shall have the respective meanings, effect and scope in this Ordinance as in such statutes:

- (1) the State Sales Tax Laws; and
- (2) the State Use Tax Laws; and
- (3) the State Leasing Tax Laws; and
- (4) the State Lodging Tax Laws.

ARTICLE 3

Effect of Ordinance

Section 3.01 Effective Date of Privilege, License and Excise Taxes

The levy and collection of the Privilege, License and Excise Taxes shall become effective and commence on the Effective Date and shall continue thereafter as provided in this Ordinance.

Section 3.02 Repeal of Prior Taxes and Fees; Continuation of Accrued Liability Therefor and Pledges Thereof

(a) The Prior Taxes and Fees, and the following ordinances and provisions of the Code of Ordinances, shall terminate and become void and of no further force and effect from and after midnight on May 31, 2018:

- (1) Ordinance No. 2317, as codified in Article III of Chapter 16 of the Code of Ordinances; and
- (2) Ordinance No. 2316, as codified in Article IV of Chapter 16 of the Code of Ordinances; and
- (3) Section 8-38(7)(d) of Article II of Chapter 8 of the Code of Ordinances.

(b) Anything in this Ordinance to the contrary notwithstanding, the liability or obligation of any person for the payment of any amount of any of the Prior Taxes and Fees, or for the payment of any amount of any forfeiture, interest, or penalty with respect thereto, which shall be outstanding and unpaid on the Effective Date (including without limitation taxes becoming due and payable on June 20, 2018) shall survive termination of the ordinances and provisions of the Code of Ordinances pursuant to Section 3.02(a) and shall remain in full force and effect under all provisions thereof and the City shall have and may exercise for the enforcement thereof all rights and remedies thereunder and available at law or in equity (including without limitation the applicable laws of the State of Alabama providing for the enforcement of the corresponding state taxes).

(c) Anything in this Ordinance to the contrary notwithstanding, all commitments and pledges of all or any portion of the Prior Taxes and Fees which shall be subject to an agreement made by the City prior to the Effective Date to or for the benefit of any governmental person or nongovernmental person shall be and remain in full force and effect from and after the Effective Date, in accordance with all terms and provisions thereof, solely with respect to the proceeds of the Privilege, License and Excise Taxes described in Section 4.03(b)(3), Section 5.02(b) and Section 6.02(b) of this Ordinance.

Section 3.03 Amendment of Code of Ordinances

(a) Article III of Chapter 16 of the Code of Ordinances is hereby amended by deletion of said Article III in the entirety thereof and substitution therefor of Article 4, Section 7.02 and Section 7.03 of this Ordinance.

(b) Article IV of Chapter 16 of the Code of Ordinances is hereby amended by deletion of said Article IV in the entirety thereof and substitution therefor of Article 5 and Section 7.04 of this Ordinance.

(c) From and after May 31, 2018 the business license fee levied by Section 8-38(7)(d) of Article II of Chapter 8 of the Code of Ordinances shall be \$150.00 and in consequence thereof the provisions of said Section 8-38(7)(d) are hereby amended by deletion of said provisions in the entirety thereof and substitution therefor of the amount of "\$150.00."

ARTICLE 4

Sales and Use Taxes

Section 4.01 Levy of Sales Taxes

There is levied, in addition to all other taxes of every kind now imposed by law, and shall be collected as herein provided, a privilege or license tax against the person on account of the business activities and in the amount to be determined by the application of rates against gross sales, or gross receipts, as the case may be, as follows:

(a) (1) Upon every person, firm or corporation (including the State of Alabama, the University of Alabama, Auburn University, and all other institutions of higher learning in the state, whether the institution be denominational, state, county, or municipal institutions, any association or other agency or instrumentality of the institutions), engaged or continuing within the City, in the business of selling at retail any tangible personal property whatsoever, including merchandise and commodities of every kind and character (not including, however, bonds or other evidence of debt or stocks, nor sales of materials and supplies to any person for use in fulfilling a contract for the painting, repair or reconditioning of vessels, barges, ships, other watercraft, and commercial fishing vessels of over five tons load displacement as registered with the U. S. Coast Guard and licensed by the State of Alabama Department of Conservation and Natural Resources), an amount equal to four percent (4%) of the gross proceeds of sales of the business except where a different amount is expressly provided herein. Provided, however, that any person engaging or continuing in business as a retailer and wholesaler or jobber shall pay the tax required on the gross proceeds of retail sales of the business at the rates specified, when his or her books are kept so as to show separately the gross proceeds of sales of each business, and when his or her books are not kept he or she shall pay the tax as a retailer, on the gross sales of the business.

(2) Where any used part including tires of an automotive vehicle or a truck trailer, semitrailer, or house trailer is taken in trade, or in a series of trades, as a credit or part payment on the sale of a new or rebuilt part or tire, the tax levied herein shall be paid on the net difference, that is, the price of the new or used part or tire sold less the credit for the used part or tire taken in trade, provided, however, this provision shall not be construed to include batteries.

(b) Upon every person, firm or corporation engaged or continuing within the City in the business of conducting or operating places of amusement or entertainment, billiard and pool rooms, bowling alleys, amusement devices, musical devices, theaters, opera houses, moving picture shows, vaudevilles, amusement parks, athletic contests, including wrestling matches, prize fights, boxing and wrestling exhibitions, football and baseball games (excluding, however, athletic contests conducted by or under the auspices of the City Board of Education of the City of Vestavia Hills, but specifically including athletic contests conducted by or under the auspices of any educational institution within this state, or any athletic association thereof, or any other association whether the institution or association be a denominational, a state, or county, or a municipal institution, or association or a state, county or city school, or other institution, association or school), skating rinks, race tracks, golf courses or any other place at which any exhibition, display, amusement or entertainment is offered to the public or place or places where an admission fee is charged, including public bathing places, public dance halls of every kind and description within the City, an amount equal to four percent (4%) of the gross receipts of any such business. Provided, however, notwithstanding any language to the contrary in the prior portion of this subsection, the tax provisions so specified shall not apply to any athletic event conducted by a public or nonpublic primary or secondary school or any athletic event conducted by or under the auspices of the Alabama High School Athletic Association. The tax amount which would have been collected pursuant to this subsection shall continue to be collected by the public or nonpublic primary or secondary school, but shall be retained by the school which collected it and shall be used by the school for school purposes.

(c) Upon every person, firm or corporation engaged or continuing within the City in the business of selling at retail machines used in mining, quarrying, compounding, processing, and manufacturing of tangible personal property an amount equal to one percent (1%) of the gross proceeds of the sale of the machines. The term "machine", as herein used, shall include machinery which is used for mining, quarrying, compounding, processing, or manufacturing tangible personal property, and the parts of the machines, attachments and replacements therefor, which are made or manufactured for use on or in the operation of the machines and which are necessary to the operation of such machines and are customarily so used.

(d) (1) Upon every person, firm or corporation engaged or continuing within the City in the business of selling at retail any automotive vehicle or truck trailer, semitrailer or house trailer, or mobile home set-up materials and supplies including but not limited to steps, blocks, anchoring, cable pipes, and any other materials pertaining thereto an amount equal to one percent (1%) of the gross proceeds of the sale of the automotive vehicle or truck trailer, semitrailer or house trailer, or mobile home set-up materials and supplies; provided, however, where a person subject to the tax provided for in this subsection withdraws from his or her stock in trade any automotive vehicle or truck trailer, semitrailer, or house trailer for use by him or her or by his or her employee or agent in the operation of the business, there shall be paid, in lieu of the tax levied herein, a fee of five dollars (\$5.00) per year or part thereof during which the automotive vehicle, truck trailer, semitrailer or house trailer shall remain the property of the person. Each year or part thereof shall begin with the day or anniversary date, as the case may be, of such withdrawal and shall run for the 12 succeeding months or part thereof during which the automotive vehicle, truck trailer, semitrailer, or house trailer shall remain the property of the person.

(2) Where any used automotive vehicle or truck trailer, semitrailer, or house trailer is taken in trade or in a series of trades, as a credit or part payment on the sale of a new or used vehicle, the tax levied herein shall be paid on the net difference, that is, the price of the new or used vehicle sold less the credit for the used vehicle taken in trade.

(3) Sales of automobiles, motorcycles, trucks, truck trailers, or semitrailers, excluding travel trailers or housecars as defined in Section 40-12-240, that will be registered or titled outside Alabama, that are exported or removed from Alabama within 72 hours by the purchaser or his or her agent for first use outside of the State of Alabama are subject to City sales tax in an amount equal to only the City automotive sales tax rate, unless the sales tax laws of the state in which the purchaser will title or register the vehicle allows an Alabama resident to purchase a motor vehicle for first titling and registering in Alabama without the payment of tax to that state. However, in no case shall the amount of Alabama state sales tax due on a motor vehicle that will be registered or titled for use in another state exceed the amount of sales tax that would otherwise have been due in the state where the vehicle will be registered or titled for first use. The tax collected under this export provision shall be City sales tax. Sales of all other vehicles such as mobile homes, motor bikes, all terrain vehicles, and boats do not qualify for the export exemption provision and are taxable unless the dealer can provide factual evidence that the vehicle was delivered outside of Alabama or to a common carrier for transportation outside of Alabama. In order for the sale to be exempt from City tax, the information relative to the exempt sale shall be documented on forms approved by the Revenue Department of the State of Alabama.

(4) Anything in this section to the contrary notwithstanding, the tax provided in Section 4.01(d)(1) on any automotive vehicle, truck trailer, trailer, semitrailer or travel trailer required to be registered or licensed with the Judge of Probate of Jefferson County, Alabama, which is not sold through a licensed Alabama dealer, shall be collected and fees paid in accordance with the provisions of Sections 40-23-104 and 40-23-107, respectively (or any successor provisions of law).

(e) Upon every person, firm or corporation engaged or continuing within the City in the business of selling through coin-operated dispensing machines, food and food products for human consumption, not including beverages other than coffee, milk, milk products, and substitutes therefor, there is levied a tax equal to one percent (1%) of the cost of the food, food products and beverages sold through the machines, which cost for the purposes of this subsection shall be the gross proceeds of sales of the business.

(f) (1) Upon every person, firm or corporation engaged or continuing within the City in the business of selling at retail any machine, machinery or equipment which is used in planting, cultivating and harvesting farm products, or used in connection with the production of agricultural produce or products, livestock or poultry on farms, and the parts of such machines, machinery or equipment, attachments and replacements therefor which are made or manufactured for use on or in the operation of such machine, machinery or equipment, and which are necessary to and customarily used in the operation of such machine, machinery or equipment, an amount equal to one percent (1%) of the gross proceeds of the sale thereof; provided, the one percent rate herein prescribed with respect to parts, attachments and replacements shall not apply to any automotive vehicle or trailer designed primarily for public highway use, except farm trailers used primarily in the production and harvesting of agricultural commodities.

(2) Where any used machine, machinery or equipment which is used in planting, cultivating and harvesting farm products, or used in connection with the production of agricultural produce or products, livestock and poultry on farms is taken in trade or in a series of trades as a credit or part payment on a sale of a new or used, machine, machinery or equipment, the tax levied herein shall be paid on the net difference, that is, the price of the new or used machine, machinery or equipment sold, less the credit for the used machine, machinery or equipment taken in trade.

Section 4.02 Levy of Use Taxes

(a) An excise tax is hereby imposed on the storage, use or other consumption in the City of tangible personal property, not including, however, materials and supplies bought for use in fulfilling a contract for the painting, repairing, or reconditioning of vessels, barges, ships, other watercraft and commercial fishing vessels of over five tons load displacement as registered with the U. S. Coast Guard and licensed by the State of Alabama Department of Conservation and Natural Resources, purchased at retail on or after the effective date of this Ordinance for storage, use or other consumption in the City at the rate of four percent (4%) of the sales price of such property or the amount of tax collected by the seller, whichever is greater; provided, however, when the seller follows the Alabama Department of Revenue's suggested use tax brackets and his or her records prove that his or her following said brackets resulted in a net undercollection of tax for the month, he or she may report the tax due or tax collected, whichever is less, except as provided in this Section 4.02.

(b) An excise tax is hereby imposed on the storage, use or other consumption in the City of any machines used in mining, quarrying, compounding, processing and manufacturing of tangible property, purchased at retail on or after the effective date of this Ordinance at the rate equal to one percent (1%) of the sales price of any such machine or the amount of tax collected by the seller, whichever is greater; provided, however, when the seller follows the Alabama Department of Revenue's suggested use tax brackets and his or her records prove that his or her following said brackets resulted in a net undercollection of tax for the month, he or she may report the tax due or tax collected, whichever is less; except as provided in this Section 4.02; provided that the term "machine," as herein used, shall include machinery which is used for mining, quarrying, compounding, processing or manufacturing tangible personal property, and the parts of such machines, attachments and replacements therefor, which are made or manufactured for use on or in the operation of such machines and which are necessary to the operation of such machines and are customarily so used.

(c) (1) An excise tax is hereby imposed on the storage, use or other consumption in the City of any automotive vehicle or truck trailer, semitrailer or house trailer, and mobile home set-up materials and supplies including but not limited to steps, blocks, anchoring, cable pipes and any other materials pertaining thereto, purchased at retail on or after the effective date of this Ordinance for storage, use or other consumption in the City at the rate of one percent (1%) of the sales price of such automotive vehicle, truck trailer, semitrailer or house trailer, or mobile home set-up materials and supplies as specified above, or the amount of tax collected by the seller, whichever is greater; provided, however, when the seller follows the Alabama Department of Revenue's suggested use tax brackets and his or her records prove that his or her following said brackets resulted in a net undercollection of tax for the month, he or she may report the tax due or tax collected, whichever is less, except as provided in this Section 4.02. Where any used automotive vehicle, truck trailer, semitrailer or house trailer is taken in trade, or in a series of trades, as a credit or part payment on the sale of a new or used vehicle, the tax levied herein shall be paid on the net difference, that is, the price of the new or used vehicle sold less the credit for the used vehicle taken in trade.

(2) Anything in this section to the contrary notwithstanding, the tax provided in Section 4.02(c)(1) on any automotive vehicle, truck trailer, semi-trailer or travel trailer required to be registered or licensed with the Judge of Probate of Jefferson County, Alabama, which were sold by dealers that are not licensed in Alabama, or were sold by licensed Alabama dealers who failed to collect municipal sales taxes at the point of sale, shall be collected and fees paid in accordance with the provisions of Sections 40-23-104 and 40-23-107, respectively (or any successor provisions of law).

(d) Every person storing, using or otherwise consuming in the City tangible personal property purchased at retail shall be liable for the tax imposed by this Section, and the liability shall not be extinguished until the tax shall have been paid to the City; provided, that receipt from a retailer maintaining a place of business in the City or a retailer authorized by the Alabama Department of Revenue, under such rules and regulations as it may prescribe, to collect the tax imposed hereby and who shall for the purpose of this Section be regarded as a retailer maintaining a place of business in the City, given to the purchaser in accordance with the provisions of the State Use Tax Statutes, shall be sufficient to relieve the purchaser from further liability for the tax to which such receipt may refer.

(e) An excise tax is hereby imposed on the classes of tangible personal property, and at the rates imposed on such classes, specified in subsections (a), (b), and (c) of this Section, on the storage, use or other consumption in the performance of a contract in the City of any such tangible personal property, new or used, the tax to be measured by the sales price or the fair and reasonable market value of such tangible personal property when put into use in the City, whichever is less; provided, that the tax imposed by this subsection shall not apply where the taxes imposed by subsection (a), (b), or (c) of this Section apply.

(f) An excise tax is hereby imposed on the storage, use or other consumption in the City of any machine, machinery or equipment which is used in planting, cultivating and harvesting farm products, or used in connection with the production of agricultural produce or products, livestock or poultry, or farms, and the parts of such machines, machinery or equipment, attachments and replacements therefor which are made or manufactured for use on or in the operation of such machine, machinery or equipment, and which are necessary to and customarily used in the operation of such machine, machinery or equipment, which is purchased at retail after June 1, 2018, for storage, use or other consumption in the City, at the rate of one percent (1%) of the sales price of such property or the amount of tax collected by the seller, whichever is greater; provided, however, when the seller follows the Alabama Department of Revenue's suggested use tax brackets and his records prove that his following said brackets resulted in a net undercollection of tax for the month, he may report the tax due or tax collected whichever is less, regardless of whether the retailer is or is not engaged in business in the City; provided, that the one percent rate herein prescribed with respect to parts, attachments and replacements shall not apply to any automotive vehicle or trailer designed primarily for public highway use except farm trailers used primarily in the production and harvesting of agricultural commodities.

Section 4.03 Use of Proceeds of Sales and Use Taxes

(a) Definitions. For purposes of this Section the following terms shall have the following meanings:

Available Sales and Use Tax Proceeds means and includes, collectively, (i) the Capital Project and School Allocation and (ii) the General Purpose Allocation.

Capital Project means any property (real, personal or mixed) the cost of which is properly chargeable to capital account under federal income tax principles.

Capital Project and School Allocation shall have the meaning in Section 4.03(b)(2).

General Purpose Allocation shall have the meaning in Section 4.03(b)(3).

Net Sales and Use Tax Proceeds means the proceeds of the Sales and Use Taxes received by the City in each Fiscal Year after deduction or payment therefrom of all costs of collection thereof.

Reserve Allocation shall have the meaning in Section 4.03(b)(1).

Surplus Available Sales and Use Tax Proceeds means the aggregate amount of the Available Sales and Use Tax Proceeds remaining in each Fiscal Year after payment, or provision for payment, shall have been made from any funds or revenues of the City (including without limitation the Available Sales and Use Tax Proceeds) lawfully available therefor of all amounts of principal of, premium (if any) and interest on all of the following Obligations becoming due and payable in such Fiscal Year:

(1) all Obligations which are general obligations of the City payable from and secured by a pledge of the full faith, credit and taxing power of the City, without regard to whether any of such Obligations are, in whole or in part, also payable from, or secured by a pledge of, any other source of funds or revenues of the City; and

(2) all Obligations which are, in whole or in part, payable from and secured by a pledge of the Available Sales and Use Tax Proceeds, without regard to whether any of such Obligations are, in whole or in part, general obligations of the City or also payable from, or secured by a pledge of, any other source of funds or revenues of the City.

(b) Allocations and Uses. The City shall apply the Net Sales and Use Tax Proceeds, when and as received, for the following purposes and in the following order:

(1) 6.250% of the Net Sales and Use Tax Proceeds (the “Reserve Allocation”)^[1] shall be allocated and applied by the City as follows:

(i) 1.875% shall be held in reserve for the sole benefit of the City Board of Education of the City of Vestavia Hills, Alabama; and

(ii) 4.375% shall be held in reserve by the City for Capital Projects.

(2) 25.000% of the Net Sales and Use Tax Proceeds (the “Capital Project and School Allocation”) shall be allocated and applied as follows:

(i) first, for the payment, or the provision for payment, in each Fiscal Year of all amounts of principal of, premium (if any) and interest on Obligations incurred to finance or refinance Capital Projects becoming due and payable in such Fiscal Year;

(ii) second, for the payment of the costs of Capital Projects in such Fiscal Year; and

(iii) third, for public school purposes or such other lawful purposes as needed, as directed by the City Council, to the extent of the amount, if any, of the Capital Project and School Allocation remaining in such Fiscal Year after application for the foregoing purposes thereof.

(3) 68.750% of the Net Sales and Use Tax Proceeds (the “General Purposes Allocation”) shall be allocated and applied for any lawful purpose as directed by the City Council, including without limitation the payment, or the provision for payment, in each Fiscal Year of the principal of, premium (if any) and interest on any Obligations becoming due and payable in such Fiscal Year.

^[1] The Reserve Allocation of 6.250% of Net Sales and Use Tax Proceeds equals 1/12th of 3/4ths of the Net Sales and Use Tax Proceeds, being in effect 1/12th of three cents (\$0.03) (the previous sales and use tax rate in effect under Ordinance No. 2317), and is used in the following percentages:

(i) 30% of the Reserve Allocation (being 1.875% of Net Sales and Use Tax Proceeds) for the City Board of Education of the City of Vestavia Hills, Alabama; and

(ii) 70% of the Reserve Allocation (being 4.375% of Net Sales and Use Tax Proceeds) for Capital Projects of the City.

(c) Pledge. The City may, pursuant to the applicable laws of the State of Alabama, pledge all, or any portion, of the Available Sales and Use Tax Proceeds for the benefit of any Obligations, subject to and in accordance with the following:

(1) the City shall not pledge any amount of the Available Sales and Use Tax Proceeds that is allocable to the levy and collection of the Sales and Use Taxes outside the corporate limits of the City; and

(2) the City reserves the right to apply, dedicate and use for any lawful purpose, as directed by the City Council, all Surplus Available Sales and Use Tax Proceeds in any Fiscal Year without regard to any pledge of the Available Sales and Use Tax Proceeds that shall then be in force and effect with respect to any Obligations.

(d) Amendment. The City reserves the right to make such amendments to this Section to provide for (1) a change in the then effective percentage allocation of the use of any of the Net Sales and Use Tax Proceeds or (2) the use of any portion of the Available Sales and Use Tax Proceeds for any particular purpose for which provision is not then made in this Section or in any amendment hereof, provided that prior thereto the City shall obtain an opinion of counsel with experience in the matters to be covered by such opinion that the use of Available Sales and Use Tax Proceeds for such purpose (i) is authorized by the applicable laws of the State of Alabama, (ii) is subject to, and will not adversely affect or impair, any pledge thereof for the benefit of any Obligations, and (iii) will not cause interest on any Obligations to be or become includable in (if then excludable from) the gross income of the owners of such Obligations for purposes of federal income taxation.

ARTICLE 5

Leasing Taxes

Section 5.01 Levy of Leasing Taxes

In addition to all other taxes now imposed by law, there is hereby levied and shall be collected as herein provided a privilege or license tax on each person engaging or continuing within the City in the business of leasing or renting tangible personal property at the rate of four percent (4%) of the gross proceeds derived by the lessor from the lease or rental of tangible personal property; provided, that the said privilege or license tax on each person engaging or continuing within the City in the business of leasing or renting any automotive vehicle or truck trailer, semitrailer or house trailer shall be at the rate of one percent (1%) of the gross proceeds derived by the lessor from the lease or rental of such automotive vehicle or truck trailer, semitrailer or house trailer; provided, further, that the tax levied by this section shall not apply to any leasing or rental, as lessor, by the state, or any municipality or county in the state, or any public corporation organized under the laws of the state; provided further, that the privilege or license tax on each person or firm engaging or continuing within this state in the business of the leasing and rental of linens and garments shall be at the rate of two percent (2%) of the gross proceeds derived by the lessor from the lease or rental of such linens and garments.

Section 5.02 Use of Proceeds of Leasing Tax

(a) Definitions. For purposes of this Section the following terms shall have the following meanings:

Net Leasing Tax Proceeds means the proceeds of the Leasing Tax received by the City in each Fiscal Year after deduction or payment therefrom of all costs of collection thereof.

Surplus Net Leasing Tax Proceeds means the aggregate amount of the Net Leasing Tax Proceeds remaining in each Fiscal Year after payment, or provision for payment, shall have been made from any funds or revenues of the City (including without limitation the Net Leasing Tax Proceeds) lawfully available therefor of all amounts of principal of, premium (if any) and interest on all of the following Obligations becoming due and payable in such Fiscal Year:

(1) all Obligations which are general obligations of the City payable from and secured by a pledge of the full faith, credit and taxing power of the City, without regard to whether any of such Obligations are, in whole or in part, also payable from, or secured by a pledge of, any other source of funds or revenues of the City; and

(2) all Obligations which are, in whole or in part, payable from and secured by a pledge of the Net Leasing Tax Proceeds, without regard to whether any of such Obligations are, in whole or in part, general obligations of the City or also payable from, or secured by a pledge of, any other source of funds or revenues of the City.

(b) Uses. The Net Leasing Tax Proceeds shall be allocated and applied for any lawful purpose as directed by the City Council, including without limitation the payment, or the provision for payment, in each Fiscal Year of the principal of, premium (if any) and interest on any Obligations becoming due and payable in such Fiscal Year.

(c) Pledge. The City may, pursuant to the applicable laws of the State of Alabama, pledge all, or any portion, of the Net Leasing Tax Proceeds for the benefit of any Obligations, subject to and in accordance with the following:

(1) the City shall not pledge any amount of the Net Leasing Tax Proceeds that is allocable to the levy and collection of the Leasing Tax outside the corporate limits of the City; and

(2) the City reserves the right to apply, dedicate and use for any lawful purpose, as directed by the City Council, all Surplus Net Leasing Tax Proceeds in any Fiscal Year without regard to any pledge of the Net Leasing Tax Proceeds that shall then be in force and effect with respect to any Obligations.

(d) Amendment. The City reserves the right to make such amendments to this Section to provide for the use of any portion of the Net Leasing Tax Proceeds for any particular purpose for which provision is not then made in this Section or in any amendment hereof, provided that prior thereto the City shall obtain an opinion of counsel with experience in the matters to be covered by such opinion that the use of Net Leasing Tax Proceeds for such purpose (i) is authorized by the applicable laws of the State of Alabama, (ii) is subject to, and will not adversely affect or impair, any pledge thereof for the benefit of any Obligations, and (iii) will not cause interest on any Obligations to be or become includable in (if then excludable from) the gross income of the owners of such Obligations for purposes of federal income taxation.

ARTICLE 6

Lodging Taxes

Section 6.01 Levy of Lodging Taxes

(a) There is hereby levied and imposed, in addition to all other taxes of every kind now imposed by law, a privilege or license tax upon every person, firm, or corporation engaging within the City in the business of renting or furnishing any room or rooms, lodgings or accommodations to transients in any hotel, motel, inn, tourist camp, tourist cabin, or any other place in which rooms, lodgings, or accommodations are regularly furnished to transients for a consideration, in an amount to be determined by the application of the rate of six percent (6%) of the charge for such room, rooms, lodgings, or accommodations, including the charge for use or rental of personal property and services furnished in such room. There is exempted from the tax levied under this section any rentals or services taxed under Section 4.01 of this Ordinance.

(b) The tax levied in Section 6.01(a) shall not apply to rooms, lodgings, or accommodations supplied: (i) for a period of 180 continuous days or more in any place; (ii) by camps, conference centers, or similar facilities operated by nonprofit organizations primarily for the benefit of, and in connection with, recreational or educational programs for children, students, or members or guests of other nonprofit organizations during any calendar year; or (iii) by privately operated camps, conference centers, or similar facilities that provide lodging and recreational or educational programs exclusively for the benefit of children, students or members or guests of nonprofit organizations during any calendar year.

Section 6.02 Use of Proceeds of Lodging Tax

(a) Definitions. For purposes of this Section the following terms shall have the following meanings:

Net Lodging Tax Proceeds means the proceeds of the Lodging Tax received by the City in each Fiscal Year after deduction or payment therefrom of all costs of collection thereof.

Surplus Net Lodging Tax Proceeds means the aggregate amount of the Net Lodging Tax Proceeds remaining in each Fiscal Year after payment, or provision for payment, shall have been made from any funds or revenues of the City (including without limitation the Net Lodging Tax Proceeds) lawfully available therefor of all amounts of principal of, premium (if any) and interest on all of the following Obligations becoming due and payable in such Fiscal Year:

(1) all Obligations which are general obligations of the City payable from and secured by a pledge of the full faith, credit and taxing power of the City, without regard to whether any of such Obligations are, in whole or in part, also payable from, or secured by a pledge of, any other source of funds or revenues of the City; and

(2) all Obligations which are, in whole or in part, payable from and secured by a pledge of the Net Lodging Tax Proceeds, without regard to whether any of such Obligations are, in whole or in part, general obligations of the City or also payable from, or secured by a pledge of, any other source of funds or revenues of the City.

(b) Uses. The Net Lodging Tax Proceeds shall be allocated and applied for any lawful purpose as directed by the City Council, including without limitation the payment, or the provision for payment, in each Fiscal Year of the principal of, premium (if any) and interest on any Obligations becoming due and payable in such Fiscal Year.

(c) Pledge. The City may, pursuant to the applicable laws of the State of Alabama, pledge all, or any portion, of the Net Lodging Tax Proceeds for the benefit of any Obligations, subject to and in accordance with the following:

(1) the City shall not pledge any amount of the Net Lodging Tax Proceeds that is allocable to the levy and collection of the Lodging Tax outside the corporate limits of the City; and

(2) the City reserves the right to apply, dedicate and use for any lawful purpose, as directed by the City Council, all Surplus Net Lodging Tax Proceeds in any Fiscal Year without regard to any pledge of the Net Lodging Tax Proceeds that shall then be in force and effect with respect to any Obligations.

(d) Amendment. The City reserves the right to make such amendments to this Section to provide for the use of any portion of the Net Lodging Tax Proceeds for any particular purpose for which provision is not then made in this Section or in any amendment hereof, provided that prior thereto the City shall obtain an opinion of counsel with experience in the matters to be covered by such opinion that the use of Net Lodging Tax Proceeds for such purpose (i) is authorized by the applicable laws of the State of Alabama, (ii) is subject to, and will not adversely affect or impair, any pledge thereof for the benefit of any Obligations, and (iii) will not cause interest on any Obligations to be or become includable in (if then excludable from) the gross income of the owners of such Obligations for purposes of federal income taxation.

ARTICLE 7

Operation of Ordinance

Section 7.01 Collection of Privilege, License and Excise Taxes

The City may provide, from time to time, by ordinance or resolution, for the collection of the Privilege, License and Excise Taxes, or any one or more thereof, by the City, or by the Alabama Department of Revenue, or by a private auditing and collecting firm (as defined in Section 40-23-3(17) of the Code of Alabama 1975 or any successor provision of law).

Section 7.02 Applicability and Incorporation of State Sales Tax Laws

(a) (1) The City shall administer and enforce the levy and collection of the Sales Taxes in accordance with the applicable provisions of the State Sales Tax Laws for the administration and enforcement of the corresponding state tax levied thereunder, including without limitation all such provisions providing for the assessment, administration, collection, payment, imposition of penalties, record-keeping, reporting and making returns, and enforcement of said corresponding state tax.

(2) Therefore, the Sales Taxes shall be subject to all definitions, exceptions, exemptions, proceedings, requirements, provisions, rules and regulations promulgated under the Alabama Administrative Procedure Act, direct-pay permit and drive-out certificate procedures, statutes of limitation, penalties, fines, punishments, and deductions as are provided by the State Sales Tax Laws for the corresponding state tax levied thereunder.

(b) In furtherance thereof, the City does hereby incorporate herein and make a part hereof all provisions of the State Sales Tax Laws that are hereby made applicable to the Sales Taxes by this reference thereto as if set out in full herein.

Section 7.03 Applicability and Incorporation of State Use Tax Laws

(a) (1) The City shall administer and enforce the levy and collection of the Use Taxes in accordance with the applicable provisions of the State Use Tax Laws for the administration and enforcement of the corresponding state tax levied thereunder, including without limitation all such provisions providing for the assessment, administration, collection, payment, imposition of penalties, record-keeping, reporting and making returns, and enforcement of said corresponding state tax.

(2) Therefore, the Use Taxes shall be subject to all definitions, exceptions, exemptions, proceedings, requirements, provisions, rules and regulations promulgated under the Alabama Administrative Procedure Act, direct-pay permit and drive-out certificate procedures, statutes of limitation, penalties, fines, punishments, and deductions as are provided by the State Use Tax Laws for the corresponding state tax levied thereunder.

(b) In furtherance thereof, the City does hereby incorporate herein and make a part hereof all provisions of the State Use Tax Laws that are hereby made applicable to the Use Taxes by this reference thereto as if set out in full herein.

Section 7.04 Applicability and Incorporation of State Leasing Tax Laws

(a) (1) The City shall administer and enforce the levy and collection of the Leasing Tax in accordance with the applicable provisions of the State Leasing Tax Laws for the administration and enforcement of the corresponding state tax levied thereunder, including without limitation all such provisions providing for the assessment, administration, collection, payment, imposition of penalties, record-keeping, reporting and making returns, and enforcement of said corresponding state tax.

(2) Therefore, the Leasing Tax shall be subject to all definitions, exceptions, exemptions, proceedings, requirements, provisions, rules and regulations promulgated under the Alabama Administrative Procedure Act, direct-pay permit and drive-out certificate procedures, statutes of limitation, penalties, fines, punishments, and deductions as are provided by the State Leasing Tax Laws for the corresponding state tax levied thereunder.

(b) In furtherance thereof, the City does hereby incorporate herein and make a part hereof all provisions of the State Leasing Tax Laws that are hereby made applicable to the Leasing Tax by this reference thereto as if set out in full herein.

Section 7.05 Applicability and Incorporation of State Lodging Tax Laws

(a) (1) The City shall administer and enforce the levy and collection of the Lodging Tax in accordance with the applicable provisions of the State Lodging Tax Laws for the administration and enforcement of the corresponding state tax levied thereunder, including without limitation all such provisions providing for the assessment, administration, collection, payment, imposition of penalties, record-keeping, reporting and making returns, and enforcement of said corresponding state tax.

(2) Therefore, the Lodging Tax shall be subject to all definitions, exceptions, exemptions, proceedings, requirements, provisions, rules and regulations promulgated under the Alabama Administrative Procedure Act, direct-pay permit and drive-out certificate procedures, statutes of limitation, penalties, fines, punishments, and deductions as are provided by the State Lodging Tax Laws for the corresponding state tax levied thereunder.

(b) In furtherance thereof, the City does hereby incorporate herein and make a part hereof all provisions of the State Lodging Tax Laws that are hereby made applicable to the Lodging Tax by this reference thereto as if set out in full herein.

Section 7.06 Interest on Tax Delinquency; Refund

To the extent permitted by law (including without limitation Section 11-51-208(f) of the Code of Alabama 1975), the City shall:

(a) assess interest on any amount of the Privilege, License and Excise Taxes which shall not be paid when due at the applicable interest rate determined and adjusted from time to time by the Alabama Department of Revenue in accordance with Section 40-1-44 of the Code of Alabama 1975 (or any successor provision of law) from the date such amount became due until paid in full, which assessment of interest shall be made by the City in accordance with Section 40-23-2.1 of the Code of Alabama 1975 (or any successor provision of law) and shall be due and payable in arrears on such dates as shall be determined by the City; and

(b) pay interest, at the same rate charged by the City on tax delinquencies, on any refund of taxes erroneously paid (within the meaning of Section 11-51-208(f) of the Code of Alabama 1975.

Section 7.07 Discount for Prompt Payment

A discount equal to five percent (5%) of the first one hundred dollars (\$100) of each monthly installment of the taxes herein levied and two percent (2%) of that portion of each monthly installment of the said taxes in excess of one hundred dollars (\$100), but not to exceed a maximum discount of four hundred dollars (\$400.00) per month to each taxpayer, shall be allowed to each taxpayer on the filing of the monthly report with respect to such taxes, upon payment of the amount of such monthly installment (minus said discount) at or prior to the time when such installment is required herein to be paid. If the report is not filed and payment is not made within the time provided with respect to any monthly installment of the tax herein levied, the taxpayer shall not be entitled to the said discount with respect to that monthly installment but shall pay the full amount of the tax then due, together with the applicable interest provided in Section 7.06 hereof.

ARTICLE 8

Privilege, License and Excise Taxes Cumulative

The Privilege, License and Excise Taxes are cumulative with, and in addition to, any and all licenses and taxes now or hereafter authorized to be levied and collected, or levied and collected, by the City.

ARTICLE 9

Provisions of General Application

Section 9.01 Authorization of Officers

The Mayor, City Manager, Finance Director, and City Clerk of the City are hereby authorized and directed to take all such actions, and execute, deliver, file and record such documents, instruments, notices, and proceedings, as shall be necessary, desirable, or required by applicable law or governmental authority, to carry out and effect the provisions of this Ordinance and provide for the levy and collection of the Privilege, License and Excise Taxes as provided in this Ordinance.

Section 9.02 Severability

If any provision or term of this Ordinance shall be inoperative or unenforceable, in general or as applied in any particular case, such provision or term shall thereupon be ineffective therefor and all other provisions and terms of this Ordinance shall be and remain valid, enforceable, and in full force and effect without regard to such inoperative or unenforceable provision or term.

Section 9.03 Construction with Other Proceedings

In addition to the provisions of Section 3.02(a) hereof, any order, ordinance, resolution, or other proceeding of the City in conflict or inconsistent with any provision of this Ordinance, is hereby, to the extent of such conflict or inconsistency, repealed.

Section 9.04 Effectiveness of Ordinance

This Ordinance shall take effect upon adoption hereof and publication as required by law.

* * * * *

Duly Passed and Adopted this ____ day of _____, 2018.

Mayor

S E A L

City Clerk

CERTIFICATE OF PUBLICATION

The undersigned City Clerk of the City of Vestavia Hills, Alabama, hereby certifies that the above and foregoing Ordinance No. 2747 was published by me in *The Birmingham News*, a newspaper published in Jefferson County, Alabama, and of general circulation in the City of Vestavia Hills, Alabama, in the issue thereof published on _____, 2018.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the City of Vestavia Hills, Alabama, on this _____ day of _____, 2018.

City Clerk

S E A L

RESOLUTION NUMBER 4951-A

**A RESOLUTION AMENDING RESOLUTION NUMBER 4951 -
AUTHORIZING THE MAYOR AND CITY MANAGER TO CONTINUE
WITH THE IMPLEMENTATION OF PHASE TWO AND PHASE THREE
OF THE COMMUNITY SPACES PLAN PURSUANT TO A CONTRACT
WITH THE PROGRAM MANAGER**

WHEREAS, the City Council of Vestavia Hills adopted and approved Resolution Number 4951 to begin the implementation stage of its Community Spaces Plan and acknowledged a need for a program manager to lead the program validation/prioritization, pre-construction and construction phases of this effort; and

WHEREAS, the City held a competitive selection process to select said program manager; and

WHEREAS, the request for proposals included a defined scope of work that is attached as exhibit A; and

WHEREAS, the City Council selected TCU Consulting Services, LLC as the Community Spaces Plan Program Manager whose contract is attached as exhibit B; and

WHEREAS, said contract was divided into three phases of work, each requiring successful completion of the previous stage to include City Council approved funding for the next phase of work to proceed; and

WHEREAS, the City Council examined said budget and allocated funding from the Capital Project Fund and General Obligations Warrants Fund to cover the expense of Phase One with the adoption of Resolution Number 4951, along with additional funding and services during Phase One for Architectural, Civil Engineering, and Operational Planning; and

WHEREAS, the City Manager and Finance Director have examined said budget and recommended the allocation of funding from the Capital Project Fund and General Obligations Warrants Fund to cover the expense of Phase Two Services, and Phase Three Services; and

WHEREAS, the Mayor and City Council have reviewed the recommendation and find it is in the best public interest to approve that the City Manager allocate funding within the budget in order to cover the expense of Phase Two Services and Phase Three Services.

**NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL
OF THE CITY OF VESTAVIA HILLS, ALABAMA, AS FOLLOWS:**

1. Pursuant to the existing contract with TCU Consulting Services, LLC, the City Manager is hereby authorized to expend the following amounts from the Capital Project Fund and General Obligations Warrants Fund:
 - a. Phase Two Services \$373,650
 - b. Phase Three Services \$1,002,000
2. This Resolution Number 4951-A shall become effective immediately upon adoption and approval.

ADOPTED and APPROVED this the 9th day of April, 2018.

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

PATRICK H. BOONE
ATTORNEY AND COUNSELOR AT LAW
NEW SOUTH FEDERAL SAVINGS BUILDING, SUITE 705
215 RICHARD ARRINGTON, JR. BOULEVARD NORTH
BIRMINGHAM, ALABAMA 35203-3720

TELEPHONE (205) 324-2018

FACSIMILE (205) 324-2295

May 5, 2017

By Hand Delivery

City Manager Jeffrey D. Downes
Vestavia Hills Municipal Center
1032 Montgomery Highway
Vestavia Hills, Alabama 35216

In Re: Proposed Agreement By and Between the City of Vestavia Hills and TCU Consulting Services, LLC for Program Management Services

Dear Mr. Downes:

On May 4, 2017, you furnished to me copies of a proposed Agreement by and between the City of Vestavia Hills ("City") and TCU Consulting Services, LLC ("TCU"), together with Exhibits A, B and C, with a request that I review the same and provide you with my written legal opinion. The purpose of this letter is to respond to your request.

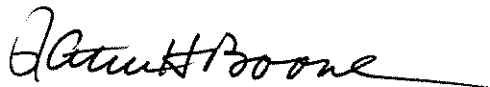
I reviewed the proposed Agreement and exhibits and am of the opinion that the documents meet the requirements of Alabama law. I have no recommendations for deletions or modifications. However, I do recommend that TCU add the following required language to the contract:

1. Immigration language as required by Title 31-13-9(k), *Code of Alabama, 1975*.
2. Boycott limitation language as required by Title 41-16-5(b), *Code of Alabama, 1975*.

I have enclosed copies of both statutes.

Please call me if you have any questions regarding this legal opinion.

Very truly yours,



Patrick H. Boone
Vestavia Hills City Attorney

PHB:gp
Enclosures

(g) The Secretary of State may adopt rules to administer this section and shall report any rules adopted to the Legislature.

(h) Compliance with this section may be verified by the contracting authority or any state or local law enforcement agency at any time to ensure a contractual agreement as provided for in this section is being met.

(i) Anything to the contrary notwithstanding, this section shall not apply to agreements by the state, any political subdivision thereof, or any state-funded entity relating to debt obligations by such entities.

(j) Any business entity or employer found in violation of this section that has had their business license or permit suspended shall not, for the duration of the suspension, be allowed, directly or indirectly, to procure or execute a license or permit similar to those that have been suspended.

(k) All contracts or agreements to which the state, a political subdivision, or state-funded entity are a party shall include the following clause: "By signing this contract, the contracting parties affirm, for the duration of the agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the state of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom."

(l) For purposes of this section, "contract" shall mean a contract awarded by the state, any political subdivision thereof, or any state-funded entity that was competitively bid or would, if entered into by the state or an agency thereof, be required to be submitted to the Contract Review Permanent Legislative Oversight Committee.

(m) All actions brought under this section shall be brought in circuit court.

HISTORY:

Acts 2011, No. 11-535, § 9, Jan. 1, 2012; Acts 2012, No. 12-491, § 1, May 18, 2012.

Editor's notes.

The Secretary of State has promulgated rules to provide an acceptable form for affidavits for business entities, employers, contractors, and subcontractors. You may view these rules and forms in Chapter 820-4-1ER of the Administrative Code (Ala. Admin. Code r. 820-4-1ER) or as a Microsoft Word document at this website: <http://www.sos.state.al.us/downloads/procedures/ImmigrationAct-ER.doc>.

The Code Commissioner substituted "that has been suspended" for "has been suspended" in (e)(1)c.2. and (e)(2)c.2., and substituted "Department of Labor" for "Department of Industrial Relations" throughout (e) as amended by Acts 2012, No. 12-491, to implement the name changes provided by Acts 2012, No. 12-496 and Ala. Code §§ 25-2-1 and 25-2-2.

Effective dates.

Acts 2011, No. 11-535, effective January 1, 2012.

2012 amendments.

The 2012 amendment rewrote the section.

RESEARCH REFERENCES AND PRACTICE AIDS

Related statutes.

Acts 2011, No. 11-535, § 34: "Sections 22 and 23 of this act shall become effective immediately following the passage and approval of this act by the Governor, or its otherwise becoming law. Section 9 shall become effective on January 1, 2012, following the passage and approval of this act by the Governor, or its otherwise

becoming law. Section 15 shall become effective on April 1, 2012, following the passage and approval of this act by the Governor, or its otherwise becoming law. The remainder of this act shall become effective on the first day of the third month following the passage and approval of this act by the Governor, or its otherwise becoming law."

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HISTORY
Acts 201

Effective
Acts 201
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HISTORY:

Acts 1999, No. 99-592; Acts 2014, No. 14-314, § 1, Oct. 1, 2014.

2014 amendments.

The 2014 amendment, effective October 1, 2014, added "and the following representatives" in the introductory language of (a)(1); added (a)(1)f. and (a)(1)g.; rewrote (a)(2), which formerly read: "SCHOOL SYSTEM. Any county or city public school system; the Alabama School

for Deaf and Blind; the Alabama School of Fine Arts; and the Alabama School of Mathematics and Science"; deleted former (b)(2), which read: "Accept applications from any school system choosing to apply for grants from the Penny Trust Fund for use in disease prevention programs in the public schools"; rewrote (b)(3) and (b)(4); deleted former (b)(5) and (b)(6); redesignated former (b)(7) as (b)(2); and in (b)(2), added "and approve" and "and the State Superintendent of Education."

**CHAPTER 16
PUBLIC CONTRACTS**

Article 1. General Provisions.

Section

41-16-5. Definitions; boycott limitations.

Article 2. Competitive Bidding on Public Contracts Generally.

41-16-21. Exemptions from requirement — Void contracts.

41-16-24. Advertisement for bids — Opening of bids — Splitting of contracts.

41-16-27. Award of contract — Record of bids — Preference to Alabama commodities, firms, etc.

Article 3. Competitive Bidding on Contracts of Certain State and Local Agencies, etc.

41-16-50. When required — Joint purchasing agreements — Bid bonds.

41-16-51. Exemptions — Void contracts — Criminal penalties.

41-16-54. Advertising for bids — Opening of bids — Splitting of contracts.

41-16-57. Award of contract — Preference to Alabama commodities, firms, etc. — Duration of contracts.

Article 3A. Competitive Bidding on Contracts for Goods and Services.

41-16-72. Professional services contracts.

**ARTICLE 1
GENERAL PROVISIONS**

§ 41-16-5. Definitions; boycott limitations.

(a) For the purposes of this section, the following terms shall have the following meanings:

(1) **BOYCOTT.** To blacklist, divest from, or otherwise refuse to deal with a person or business entity when the action is based on race, color, religion, gender, or national origin of the targeted person or entity or is based on the fact that the boycotted person or entity is doing business in a jurisdiction with which this state can enjoy open trade and with which the targeted person or entity is doing business.

(2) **BUSINESS ENTITY.** A corporation, partnership, limited liability company, organization, or other legal entity conducting or operating any trade or business in Alabama or a corporation, organization, or other legal entity

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HISTORY:

Acts 2016, No

Effective dates Acts 2016, No 2016.

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§ 41-16-21. I

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operating in Alabama that is exempt from taxation under Section 501(C)(3) or (4) of the Internal Revenue Code.

(3) **GOVERNMENTAL ENTITY.** The state or any political subdivision thereof, or any department, agency, board, commission, or authority of the state, or any political subdivision, or any public corporation, authority, agency, board, commission, state college, or university, municipality, or other governmental entity controlled by the state or any political subdivision.

(4) **JURISDICTION WITH WHICH THIS STATE CAN ENJOY OPEN TRADE.** Includes World Trade Organization members and those with which the United States has free trade or other agreements aimed at ensuring open and nondiscriminatory trade relations.

(b) Subject to subsection (c), a governmental entity may not enter into a contract governed by Title 39 or Chapter 16, Title 41, Code of Alabama 1975, with a business entity unless the contract includes a representation that the business entity is not currently engaged in, and an agreement that the business entity will not engage in, the boycott of a person or an entity based in or doing business with a jurisdiction with which this state can enjoy open trade.

(c)(1) This section does not apply if a business fails to meet the requirements of subsection (b) but offers to provide the goods or services for at least 20 percent less than the lowest certifying business entity.

(2) This section does not apply to contracts with a total potential value of less than fifteen thousand dollars (\$15,000).

(d) Nothing in this section requires a business entity or individual to do business with any other particular business entity or individual in order to enter into a contract with a governmental entity.

HISTORY:

Acts 2016, No. 16-312, § 1, Aug. 1, 2016.

Effective dates.

Acts 2016, No. 16-312, effective August 1, 2016.

ARTICLE 2

**COMPETITIVE BIDDING ON PUBLIC CONTRACTS
GENERALLY**

§ 41-16-21. Exemptions from requirement — Void contracts.

(a) Competitive bids shall not be required for utility services where no competition exists or where rates are fixed by law or ordinance, and the competitive bidding requirements of this article shall not apply to: The purchase of insurance by the state; contracts for the securing of services of attorneys, physicians, architects, teachers, artists, appraisers, engineers, or other individuals possessing a high degree of professional skill where the personality of the individual plays a decisive part; contracts of employment in



VESTAVIA HILLS

A LIFE ABOVE

Community Spaces Plan Implementation

Request for Proposals for Capital Projects Program Management Services Associated with the Community Spaces Plan

Key Dates

- RFP RELEASE DATE: March 1, 2017
- INTENT TO RESPOND DEADLINE: March 10, 2017
- PRE-PROPOSAL BRIEFING AND MEETING: March 17, 2017
 - Vestavia Hills City Council Chambers, 10am (1032 Montgomery Hwy)
- INQUIRIES RELATED TO THE RFP: March 24, 2017
- PROPOSALS DUE: March 31, 2017

Purpose

The City of Vestavia Hills is requesting proposals from capital project program management firms willing to provide program management services associated with its Community Spaces Master Plan. Information on the master plan and budget can be found at <http://bit.ly/CommunitySpacesPlan>. The new capital projects will be funded by the City through a yet to be determined capital finance plan that might include a bond issuance or bank placement of approximately \$50mm.

Restriction of Communication

From the issue date of this RFP until respondents are selected and notified by the City, respondents to this RFP are not allowed to communicate their proposal or discuss the RFP with any member of the City Council or City staff, except for submission of questions as instructed herein. If a respondent is found in violation of this provision, the City reserves the right to reject the respondent's submission.

Intent to Respond

All recipients of this RFP who intend on submitting a response must provide a notification of intent in writing by March 10, 2017, to Jeff Downes at 1032 Montgomery Highway, Vestavia Hills, Alabama 35216 or electronically to jdownes@vhal.org. Affirmative response will be made to respondents upon receipt of notice of intent to respond.

Respondents providing notification they intend to respond will be provided with any addendum, answers to inquiries, etc. pertaining to this RFP. Those respondents who do not provide a notification that they intend to respond to the RFP will not be allowed to present a proposal for services.

Schedule and Delivery of Proposals

Responses must be delivered to the Office of the City Manager, 2nd Floor, Vestavia Hills City Hall, 1032 Montgomery Highway, Vestavia Hills, AL 35216 no later than March 31, 2017, at 4:00PM Central Time. Late submissions will not be accepted.

Please send one (1) printed copy and one (1) electronic copy (in PDF) via email to jdownes@vhal.org

Inquiries Related to RFP

Telephone inquiries with questions regarding clarification of any aspect of the RFP will not be accepted. All questions must be written and emailed to the City Manager at jdownes@vhal.org no later than 5PM Central Time on March 24, 2017.

General Requirements

1. Applicable Law. Any contract entered into as a result of this RFP shall be governed and interpreted under the laws of the State of Alabama.
2. Duration of Response. Compensation fee quotes from all respondents must be valid up to sixty (60) days from the date of the RFP due date. The respondent's fee quote selected under this RFP must be valid until successful completion of all capital projects.
3. Contract Review. Any professional services contract resulting from this RFP will be subject to review by the City and its attorney. Draft contracts are encouraged as a part of submitted proposals
4. Diversity/Equal Opportunity. The City considers all proposals without reference to race, gender, cultural, ethnic, or other characteristics of the respondent or employees of the respondent.
5. Additional. The selected firm must be qualified to do business in the State of Alabama and any local jurisdiction within which the contract will be performed.

Scope of Services

The selected firm will be expected to perform all normal and customary services associated with capital project program management. These services will include but not be limited to the scope of work established below:

Phase One Scope (Anticipated time frame: Three Months)

Program Budget Validation and Execution Strategy

Goal: The City’s “Community Spaces Master Plan” effort has effectively identified the needs and ideas for public spaces throughout the City based upon master plan input. The specific packaging/bundling of the various components from the Master Plan may or may not be in the most ideal grouping for effective execution based upon several factors such as location, timing restrictions, phasing needs, budget availability, funding mechanisms, community needs, etc. The goal of this phase is for the program manager to work with the City to develop the most effective and beneficial strategy for executing this group of projects over a multi-year period. This phase is meant to be a collaborative effort with various City representatives to develop the most ideal strategy given all factors.

Potential Project Components: (This list is not all inclusive. Other small components not listed are included in the master plan document)

1. Multi-Purpose Recreational Facility at Wald Park
2. Premier Green Space at Wald Park
3. Acquisition and Renovation of Gold’s Gym Facility
4. Rehabilitation of Cahaba Heights Ballfield Complex
5. Development of the Old Altadena Valley Country Club Property
6. Redevelopment of the City’s Swimming Facility at Wald Park
7. Wald Park Ballfield Improvements

Overall Program Budget Validation:

- Develop a master program budget inclusive of all projects.
- Provide detailed conceptual estimates for each project.

Phasing Plan:

- Develop a preliminary comprehensive phasing and priority plan for each project.

Overall Master Schedule:

- Develop an overall master schedule for overall program
- Develop individual project schedules, based on priority

Recommendation Regarding Phase One Design Services Scope and Budget

- Recommend the appropriate level of design services to assist in program validation and study as a part of the Phase One activities.

Cash Flow:

- Develop a funding distribution analysis to support funding and investment strategies

Public Meetings:

- Represent and support the City of Vestavia Hills in all public work sessions and City Council meetings, as it relates to The Community Spaces Plan.

Refinement of Program Vision and Coordination with Stakeholders

- Meet with stakeholders of the Community Spaces Plan to include the “steering committee” to provide guidance in program refinements.

Phase Two Scope (Anticipated Time Frame: Six to twelve months)

Pre-Construction Phase

Goal: The goal of this phase is to manage the multiple projects throughout the City as identified in phase one through the design and bidding phase as the City’s representative. The timing of this phase is anticipated to be six to twelve months but may take a longer period as determined in the outcome of phase one, and the management effort needed may vary at times based upon the selected strategy. An important task in this phase includes the cost estimating expectations at the schematic design completion, design development completion, and during the construction document phase (50% and 100%). As with all phases, it is the City’s intent that these efforts involve collaboration with all stakeholders- internal and external to the City.

Pre-Design Phase Program Management:

- Develop a Management Plan for the Overall Program.
- Assist City of Vestavia Hills in acquiring any design services needed for the program.
- Assist City of Vestavia Hills in review and preparation of the Agreement between City of Vestavia Hills and Designer.
- Prepare a Master Schedule for the Overall Program.
- Prepare a preliminary budget based on the separate projects required for the Program.
- Prepare a cost analysis of various design and construction alternatives.
- Develop and implement an information system in order to establish communication between City of Vestavia Hills, Program Manager, Designer, Contractors and other parties involved with the Program.

Design Phase Program Management:

- Organize, lead, and document project meetings during the Design Phase of each project.
- Continuous monitoring of Designer’s compliance with the Management Plan, Master Schedule, and Budget.
- Review the design documents and make recommendations as to constructability, scheduling, and time of construction; as to clarity, consistency, and coordination of documentation among Contractors; and as to the separation of the Projects into contracts

for various categories of the Work.

- Coordinate documents with regulatory agencies for review and advise of potential problems and suggested solutions regarding completion of such reviews.
- Prepare general and supplemental conditions for the construction contracts and for materials or equipment procurement contracts for the projects, and provide them to designer for inclusion in the design documents.
- Assist City of Vestavia Hills in preparing documents concerning the budget for use in obtaining or reporting on program funding.
- Overall management of the master schedule during the design phase.
- Prepare a Pre-Bid Construction Schedule for each part of the Program and make the schedule available to the bidders during the Bid and Award Phase of the Projects.
- Develop an estimate of the overall project and construction cost for each portion of the Program that will be submitted for proposals or bids by potential contractor.
- Provide value engineering studies on major construction components.

Bid and Award Phase Program Management:

- Lead effort in developing lists of possible proposers or bidders and in prequalifying proposers or bidders. This service shall include preparation and distribution of questionnaires; receiving and analyzing completed questionnaires; interviewing possible proposers or bidders, bonding agents and financial institutions; and preparing recommendations for City of Vestavia Hills. Program Manager shall prepare a list of proposers or bidders for each bid package.
- Conduct a campaign to increase interest among proposers or qualified bidders.
- Assist architect and City of Vestavia Hills in preparing and placing notices and advertisements to solicit proposals or bids for all projects within the Program.
- Lead and conduct all Pre-Bid Conferences. These conferences shall be forums for City of Vestavia Hills, Program Manager, and Designer to explain the Program requirements to the proposers or bidders, including information concerning schedule requirements, time and cost control requirements, access requirements, City of Vestavia Hills's administrative requirements and technical information.
- Develop and coordinate procedures to provide answers to proposers' or bidders' questions.
- Review Addenda issued by designers for constructability, for effect on the budget, scheduling and time of construction, and for clarity and coordination in documentation.

- In coordination with the City of Vestavia Hills, lead the process of the assembly, delivery and execution of the Contract Documents. Program Manager shall issue to Prime Contractor on behalf of City of Vestavia Hills the Notice of Award and the Notice to Proceed.
- Overall management of the master schedule during the bid and award phase.
- Prepare an estimate of costs for all Addenda
- Provide a thorough evaluation of all the bids for responsiveness and pricing, including alternate bid prices and unit prices, and make a recommendation to City of Vestavia Hills regarding the award of the construction contract.
- Develop Cash Flow Reports during the Bid and Award Phase. The Reports shall be based on actual contract award prices and estimated other construction costs for the duration of the Program.

Phase Three Scope (Anticipated Time Frame: 24 months)

Construction Phase

Goal: The goal of phase three is for the program manager to serve as the City's representative to ensure the various projects get constructed in an efficient and efficient manner (on time and in budget). Particular emphasis and leadership should be given by the program management firm in adhering to the entire program budget for all projects including hard and soft costs of construction.

Construction Phase Program Management:

- Lead a Pre-Construction Conference with each Prime Contractor and review the Program/ Project staffing, scheduling reporting procedures, rules, and all other pertinent issues.
- Verify that the required permits, bonds, and insurance, have been obtained by contractor.
- Establish and implement procedures for reviewing and processing requests for clarifications and interpretations of the Contract Documents; shop drawings, samples and other submittals; schedule adjustments; change order proposals; written proposals for substitutions; payment applications; and the maintenance of logs. As City of Vestavia Hills's representative, Program Manager shall be the party to whom all such information shall be submitted.
- Examine Contractor's requests for information, shop drawings, samples, and other submittals to determine the anticipated effect on the Program requirements, the Budget, and the Master Schedule.
- Program manager is to lead meetings at the appropriate sites with each contractor, and as appropriate shall conduct coordination meetings with contractors, City of Vestavia Hills

and Designers.

- Program manager is to prepare and distribute meeting minutes for all meetings associated with the projects and distributing them to all the appropriate parties.
- Coordinate all technical inspection and testing provided by others and distribute all inspection and testing reports to appropriate parties.
- Establish and implement a change order control system.
- Review the contents of all contractor-requested changes to the Contract Time or Price, endeavor to determine the root cause of the request, and assemble and evaluate information concerning the request. Make recommendations to City of Vestavia Hills regarding all proposed change orders. At City of Vestavia Hills direction, Program Manager is to prepare and issue to Prime Contractor appropriate change order documents.
- Establish and implement a program to monitor the quality of the construction. The purpose of the program shall be to assist in guarding the City of Vestavia Hills against Work by Contractors that does not conform to the requirements of the Contract Documents.
- Require and coordinate with each contractor that will perform work at the sites to prepare and submit a safety program, as required by the Contract Documents.
- Coordinate with contractors to receive operation and maintenance manuals, warranties and guarantees for materials and equipment installed in the Program.
- In consultation with Designer, Program manager will, prior to issuing a Certificate of Substantial Completion, prepare a list of incomplete work or work which does not conform to the requirements of the Contract Documents.
- As appropriate, Program manager, in consultation with Designer, shall review the work and recommend to City of Vestavia Hills when the contractor's work is substantially complete.
- In consultation with Designer, Program Manager shall determine when the Program and contractor's work is finally completed, shall Issue a Certificate of Final Completion and shall provide to City of Vestavia Hills a written recommendation regarding payment to Contractors.
- Provide a thorough review of all contractor's construction schedules and shall verify that the schedule is prepared in accordance with the requirements of the contract documents and that it establishes completion dates that comply with the requirements of the master schedule.
- At a minimum, on a monthly basis, review the progress of construction schedule by each contractor, evaluate the percentage complete of each construction activity and shall review such percentages with each contractor.

- Work with contractors to determine a schedule of values for the construction contract. The schedule of values will serve as the basis for the allocation of the total contract price to the activities shown on contractor's construction schedule.
- Advise City of Vestavia Hills as to the effect on the Budget of all proposed and approved change orders.
- Review the payment applications submitted by the contractors and determine whether the amount requested reflects the progress of contractor's work.

Post-Construction Phase Program Management:

- Coordinate and expedite submittals of information from contractors for preparation of record ("as-built") drawings and specifications. Provide all final copies to the City of Vestavia Hills.
- Prior to the Final Completion of the Program, compile manufacturers' operations and maintenance manuals, warranties and guarantees, and certificates, and index and bind such documents in an organized manner. This information shall then be provided to City of Vestavia Hills.
- Represent the City of Vestavia Hills in obtaining an Occupancy Permit by coordinating final testing, preparing and submitting documentation to governmental agencies, and accompanying governmental officials during inspections of the Program.
- Work with all project partners during the Post-Construction Phase and finalize all program related change orders.
- Work with City of Vestavia Hills to manage warranty issues for a twelve month period post-construction of each project

Overall Program Management

- Provide overall management of the program master schedule and budget throughout all phases.
- Monthly reports inclusive of schedule, program costs, budget updates, cash flow reports, important items of action, and an overall report of general progress on the overall program.
- Provide recommendations on computer project management software system that is utilized by the City of Vestavia Hills, contractors, designers, and program manager to coordinate all program documentation and communication. Include cost of such program in proposal.
- Throughout the program provide accounting support to record and document all program related costs and provide monthly reports to City of Vestavia Hills. At the conclusion of the program, prepare and deliver to the City of Vestavia Hills a final accounting report for the program.

- Provide and maintain a management team for all projects within the Program and provide preconstruction and program management services as an agent of City of Vestavia Hills and establish and implement coordination and communication procedures among all parties. Management team, at a minimum, shall include staffing that will include preconstruction and project management professionals as well as field management during the construction phase to monitor daily field inspections and observation of contractor's progress, quality, and safety.
- Provide personnel that will represent and support the City of Vestavia Hills in all public work session, City Council meetings, and any other meetings required by the city, as it relates to The Community Spaces Plan.

Scope of Services

Please limit your response to ten (10) pages or less; exclusive of transmittal letters or appendices.

Responses should be arranged in the following format:

1. Transmittal letter.
2. Staffing and General Information. Please provide firm information, including the name and address of your firm, address and telephone number for the firm's primary office responding to the RFP. Please provide an overview of staff that will be working with the City to include project leader, staffing approach/reasoning, and amount of staff dedicated to each phase of the project.
3. E-Verify Memorandum of Understanding. To be eligible as a vendor for the City of Vestavia Hills, the E-Verify MOU is required as documentation of compliance with the Beason-Hammon Taxpayer Relief and Citizen Protection Act.
4. Alabama Experience/ Presence. Please provide an overview of your firm's Alabama experience over the last five years, highlighting capital project management experience for Alabama local governments during this period.
5. Project Management. Discuss your firm's approach to managing a \$50mm project that is estimated to take multiple years to finish. Address any savings, scheduling or quality issues that your firm will be able to enhance through the different phases of the project along with how your firm will manage to bring it in on time and at or below budget.
6. Conflicts of Interest. Describe any conflicts of interest or potential conflicts of interest that may arise as a result of your firm being hired.
7. References. Provide three references for the day-to-day contact(s) assigned to the City's projects.
8. Fees/compensation. The City reserves the right to negotiate compensation at or below any amount set forth in the proposal. Enclosed are outlines of the minimum requirements for the scope of services according to project phase. With said scope in mind, please list your firm's proposed fees/compensation by phase according to the following:

- a. **Phase One and Two Scope**, Establish a detailed budget of fees to include an amount of the fee that will not exceed a stated budget figure with any stipulations to said fee.
 - b. **Phase Three Scope**, Establish a fee budget based upon a projected program budget of \$50mm subject to a minimum/maximum range of fees based upon said construction budget subject to adjustment upon final contract construction values.
 - c. The City of Vestavia Hills reserves the right to adjust the Phase Three budget at the completion of Phase One and/or Two.
9. **Selection Criteria**: Proposals will be reviewed by evaluators made up of elected and non-elected officials of the City of Vestavia Hills. The evaluation process may include interviews and will be evaluated based upon (but not be limited to) experience, responsiveness to the RFP, cost, knowledge of the project areas and building climate in Vestavia Hills, and specific personnel assigned to the project. Ultimately, the Vestavia Hills City Council will be the decision maker for any program management contract.



VESTAVIA HILLS A COMPREHENSIVE PLAN FOR COMMUNITY SPACES

November 2016



WILLIAMS BLACKSTOCK ARCHITECTS



VESTAVIA HILLS A COMPREHENSIVE PLAN FOR COMMUNITY SPACES

November 2016

1. Community Spaces – Comprehensive Overview

2. Wald Park – Master Plan Development

A. Site Development Option 1

B. Site Development Option 2

3. Recreation Center Development

A. Multipurpose Center Option 1

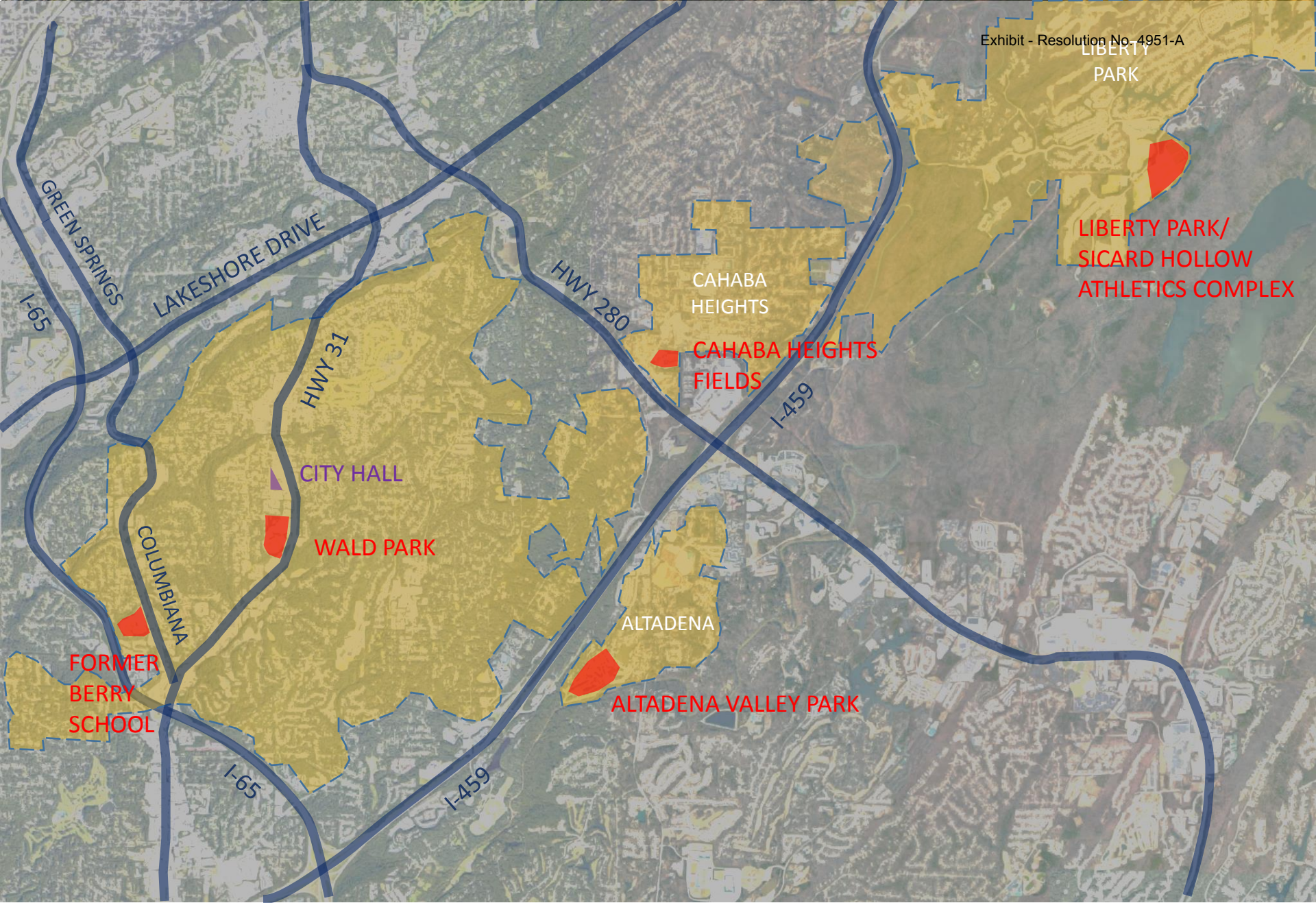
B. Multipurpose Center Option 2

C. Multipurpose Center Option 3

4. Community Center Development

5. Preliminary Budget

6. Appendix



LIBERTY
PARK

LIBERTY PARK/
SICARD HOLLOW
ATHLETICS COMPLEX

CAHABA
HEIGHTS

CAHABA HEIGHTS
FIELDS

CITY HALL

WALD PARK

ALTADENA

ALTADENA VALLEY PARK

GREEN SPRINGS

LAKESHORE DRIVE

HWY 280

HWY 31

COLUMBIANA

I-65

I-459

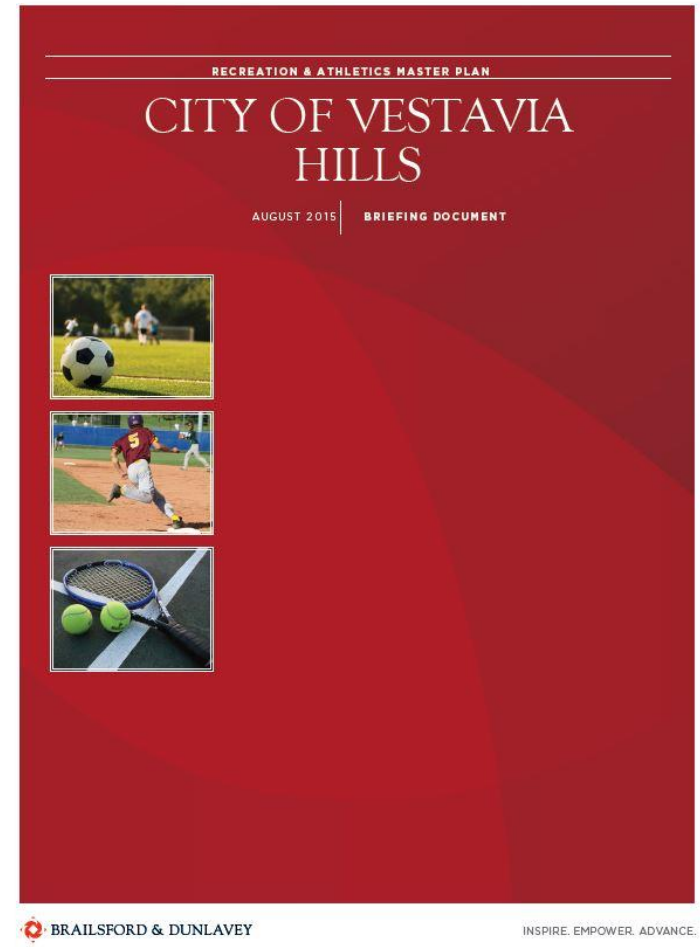
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2015 Recreation & Athletics Master Plan

Exhibit - Resolution No. 4951-A

- Recreation & Athletics Master Plan competed in August of 2015
- Recommendations:
 - Re-position quality of life assets
 - Elevate the quality of existing facilities
 - Increase the capacity of City athletic facilities
- Facilities Master Plan builds on the foundation set by the City-wide Recreation and Athletics Master Plan



2016 Planning Committee Recommendations

Exhibit - Resolution No. 4951-A

at Cahaba Heights Fields

Space / Site Planning and Infrastructure Assessment

- Consultants Retained – Brailsford & Dunlavey, Caprine Engineering, HNP
- Geotechnical Study – in progress
- Conceptual Layout & Design – in progress
 - Rotate/Re-order field for optimal space
 - Drainage improvements
 - Parking needs
 - Building and Restroom upgrades
 - Potential Construction of “Miracle Field” for Special Needs Players.
 - Upgrades/Improvements to New Merkel House
- Construction – To Be Determined



2016 Planning Committee Recommendations

at Altadena Valley Park

- Land for Park previously acquired at No Cost – Complete
- Conceptual Park Design – Initial design under consideration by City
- Additional Land Acquired for Western Entrance – Complete
- Design for Construction of Western Entrance – Complete
- Planning and Design of Park – To Be Determined
- Construction – To Be Determined



2016 Planning Committee Recommendations

Exhibit - Resolution No. 4951-A

at Altadena Valley Park



2016 Planning Committee Recommendations

Exhibit - Resolution No. 4951-A

at Liberty Park

- Add covered hitting area(s) at girls softball fields
- Upgrade/relocate playground at girls softball fields
- Upgrade restrooms at softball/baseball fields
- Potential construction of “Miracle Field” for special needs player games/functions



at Former Berry School

- Potential Athletic Improvements To Be Determined



2016 Planning Committee Recommendations

Exhibit - Resolution No. 4951-A

at Wald Park

- New Multi-purpose Recreation facility
- New Pool facility
- New premier Green space and Play Area improvements
- Rehabilitate tennis facilities
- Youth sports field improvements w/ artificial turf installation
- Upgrades / improvements to Concession Stand and Press boxes
- Construct covered batting areas with lighting
- Preserve walking / jogging track and improve where necessary
- New Walking paths in premier green space and pedestrian connectivity between City Hall and Wald Park



An aerial rendering of a park development project. The central focus is a large green field with several baseball diamonds and a large blue-roofed structure, possibly a stadium or arena. To the right, there are several multi-story buildings and parking lots. The entire area is surrounded by dense green trees and a road on the right side. The text "2. Wald Park Master Plan Development" is overlaid in the center in a large, bold, black font.

2. Wald Park Master Plan Development



EXISTING SITE PLAN
WALD PARK AREA



OPTION **1**

SITE DEVELOPMENT OPTIONS



1 SITE PLAN
OPTION 1





- Resurface all fields with artificial turf
- Expand Field 1 and improve drainage
- Construct 2 new covered batting cages
- Improve press box/concessions building
- Increase parking
- Exchange Field relocated to Altadena, Liberty Park or Former Berry School

1 SITE PLAN
OPTION 1





- Relocate Maintenance Building and staff parking
- Relocate Lodge functions to Multi-Purpose Center
- Create additional parking
- Remove upper tennis courts



- Create premier park with passive green space, open fields, and walking paths
- Improve play areas
- Improve school and park entry as combined road
- Additional parking at VH West Elementary School and near Premier Park



1 SITE PLAN
OPTION 1



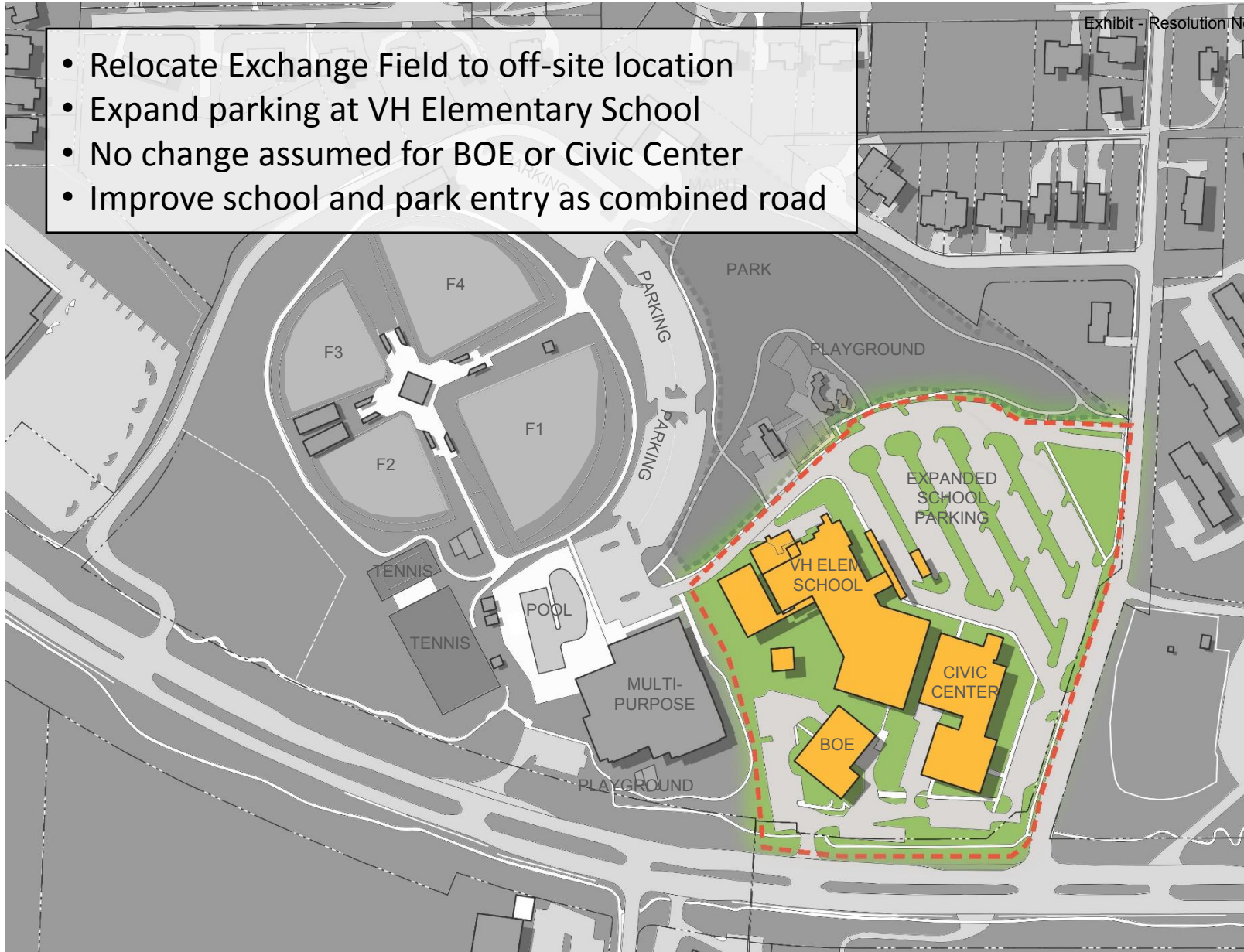


HOMWOOD CENTRAL PARK GREEN SPACE COMPARISON



**HOMEWOOD CENTRAL PARK
GREEN SPACE COMPARISON**

- Relocate Exchange Field to off-site location
- Expand parking at VH Elementary School
- No change assumed for BOE or Civic Center
- Improve school and park entry as combined road



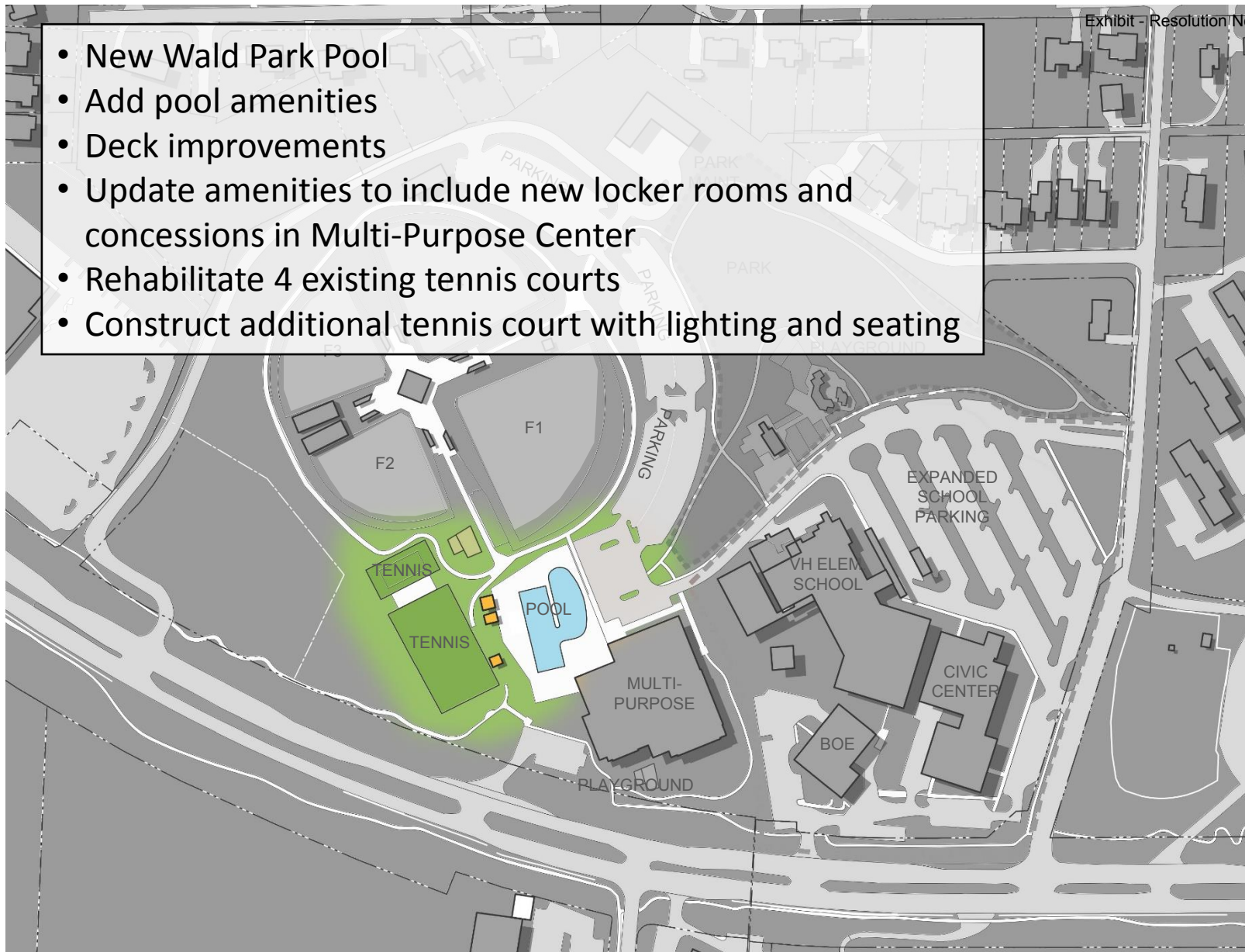
1 SITE PLAN
OPTION 1



- New Multi-Purpose Center
 - 3 basketball/multi-use courts
 - Locker rooms
 - Concessions
 - Multi-purpose rooms
 - Wet zone for aquatic concessions and bathrooms

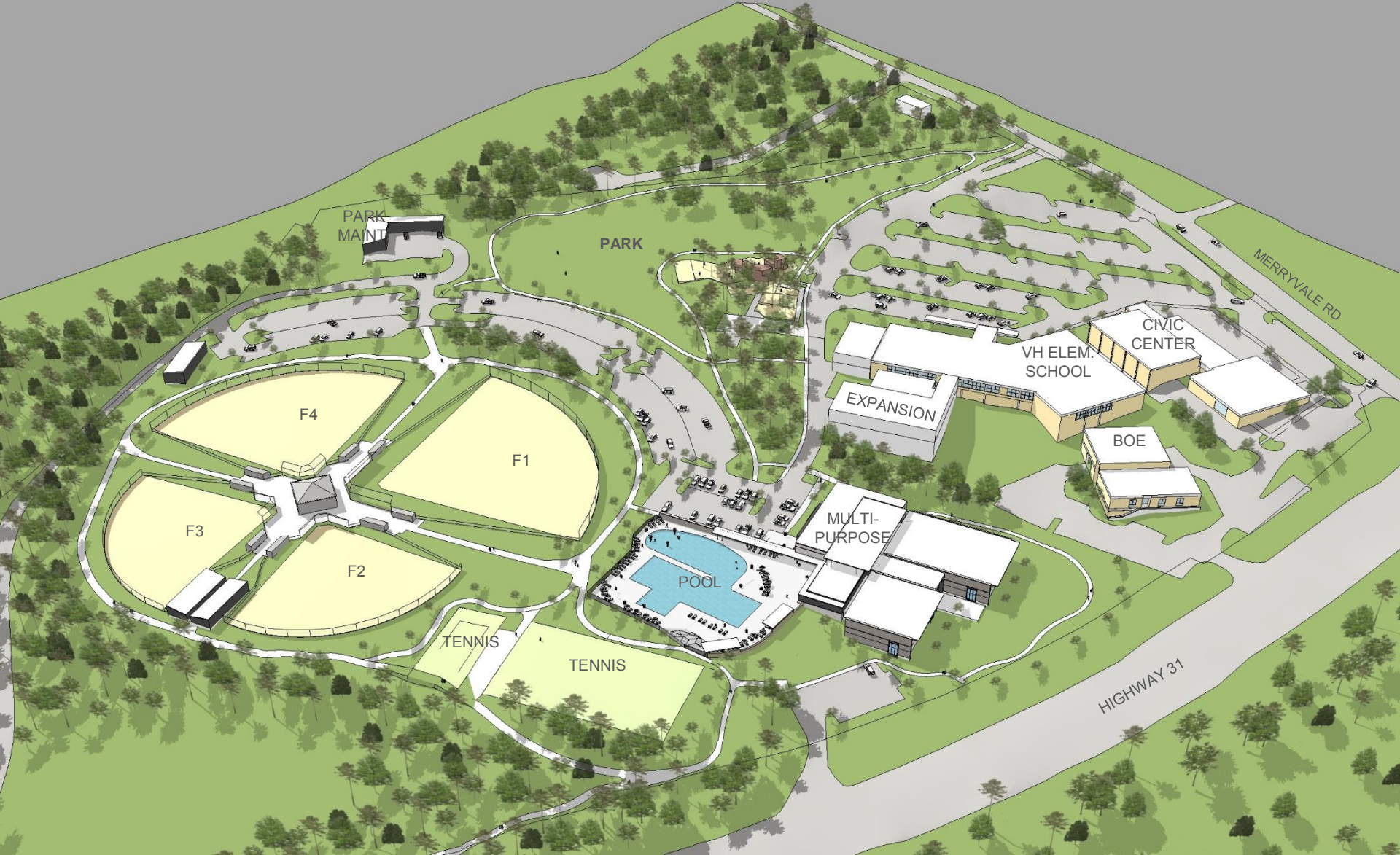


- New Wald Park Pool
- Add pool amenities
- Deck improvements
- Update amenities to include new locker rooms and concessions in Multi-Purpose Center
- Rehabilitate 4 existing tennis courts
- Construct additional tennis court with lighting and seating

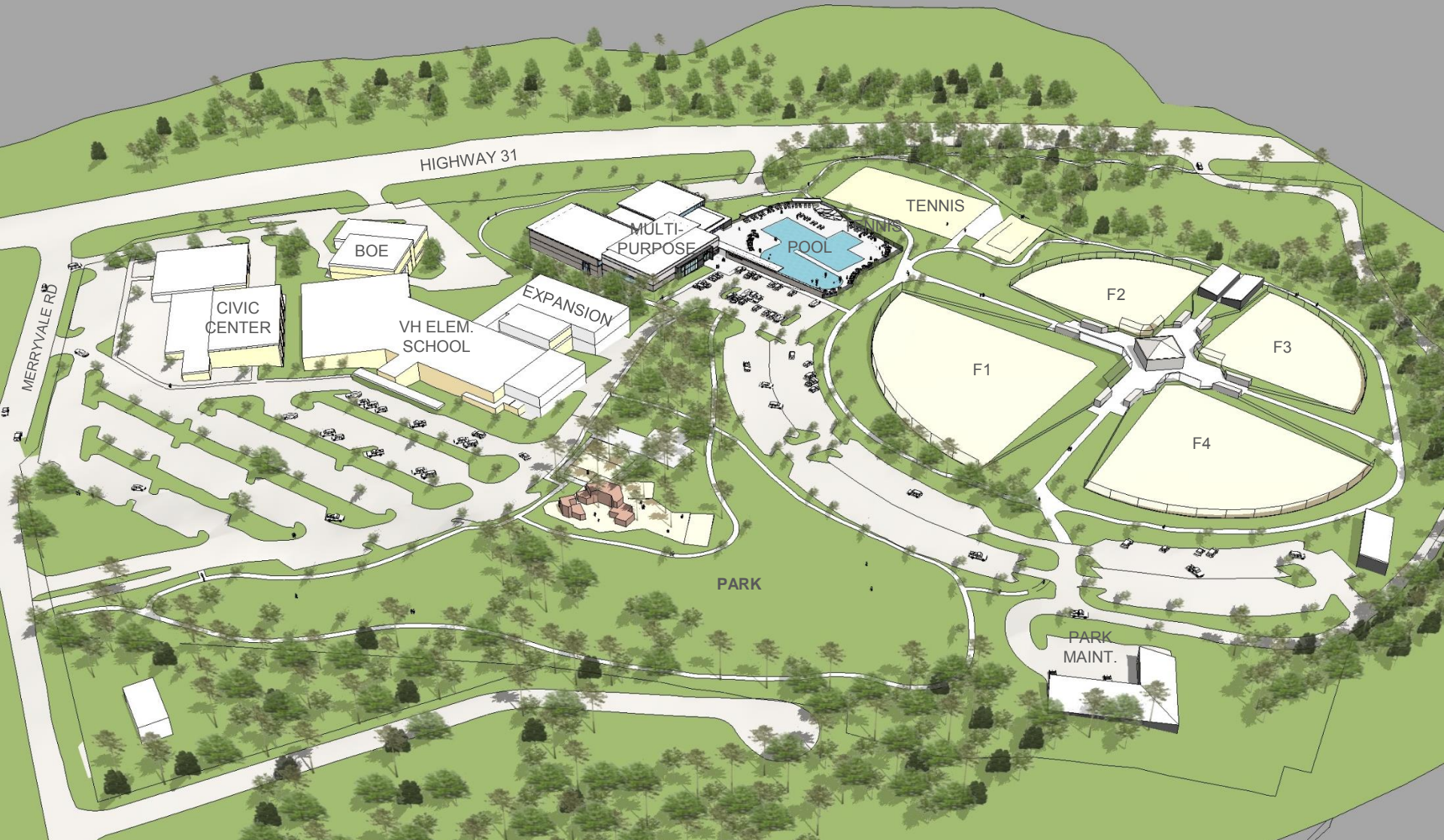


1 SITE PLAN
OPTION 1





1 SITE AERIAL
 OPTION 1 – VIEW LOOKING EAST



1 SITE AERIAL
OPTION 1 – VIEW LOOKING WEST

OPTION **2**

SITE DEVELOPMENT OPTIONS



EXISTING SITE PLAN
WALD PARK AREA

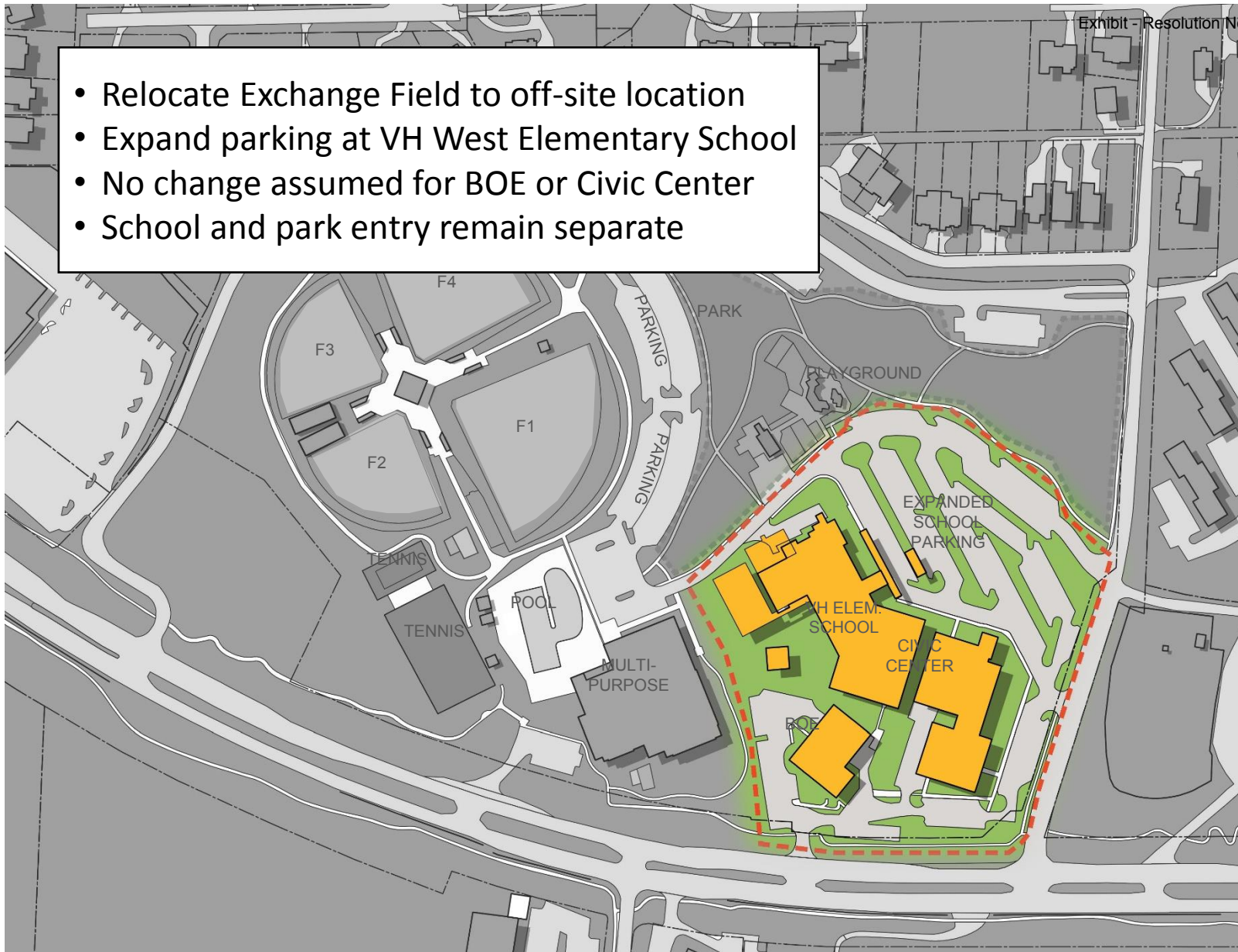




2 SITE PLAN
OPTION 2



- Relocate Exchange Field to off-site location
- Expand parking at VH West Elementary School
- No change assumed for BOE or Civic Center
- School and park entry remain separate

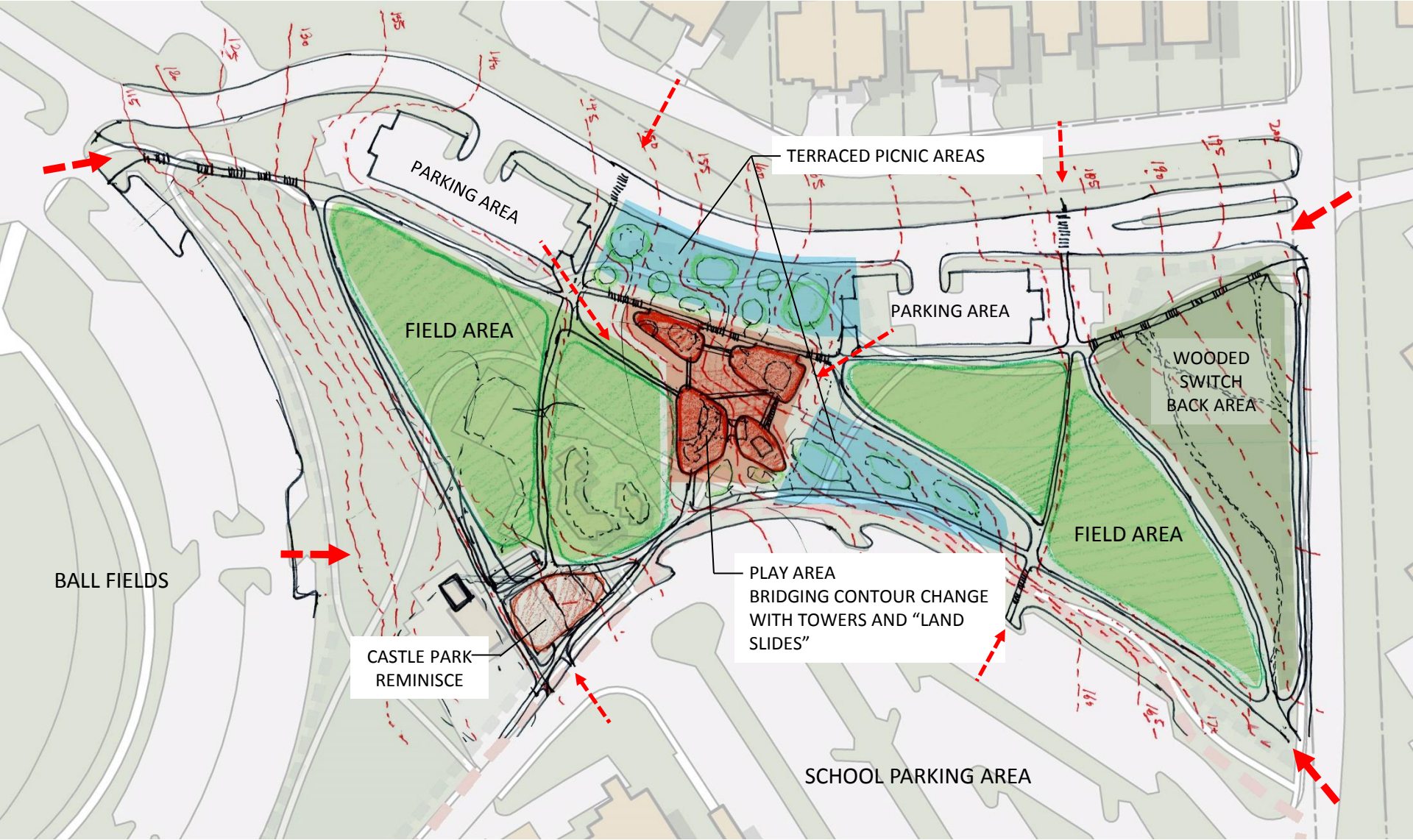


2 SITE PLAN
OPTION 2

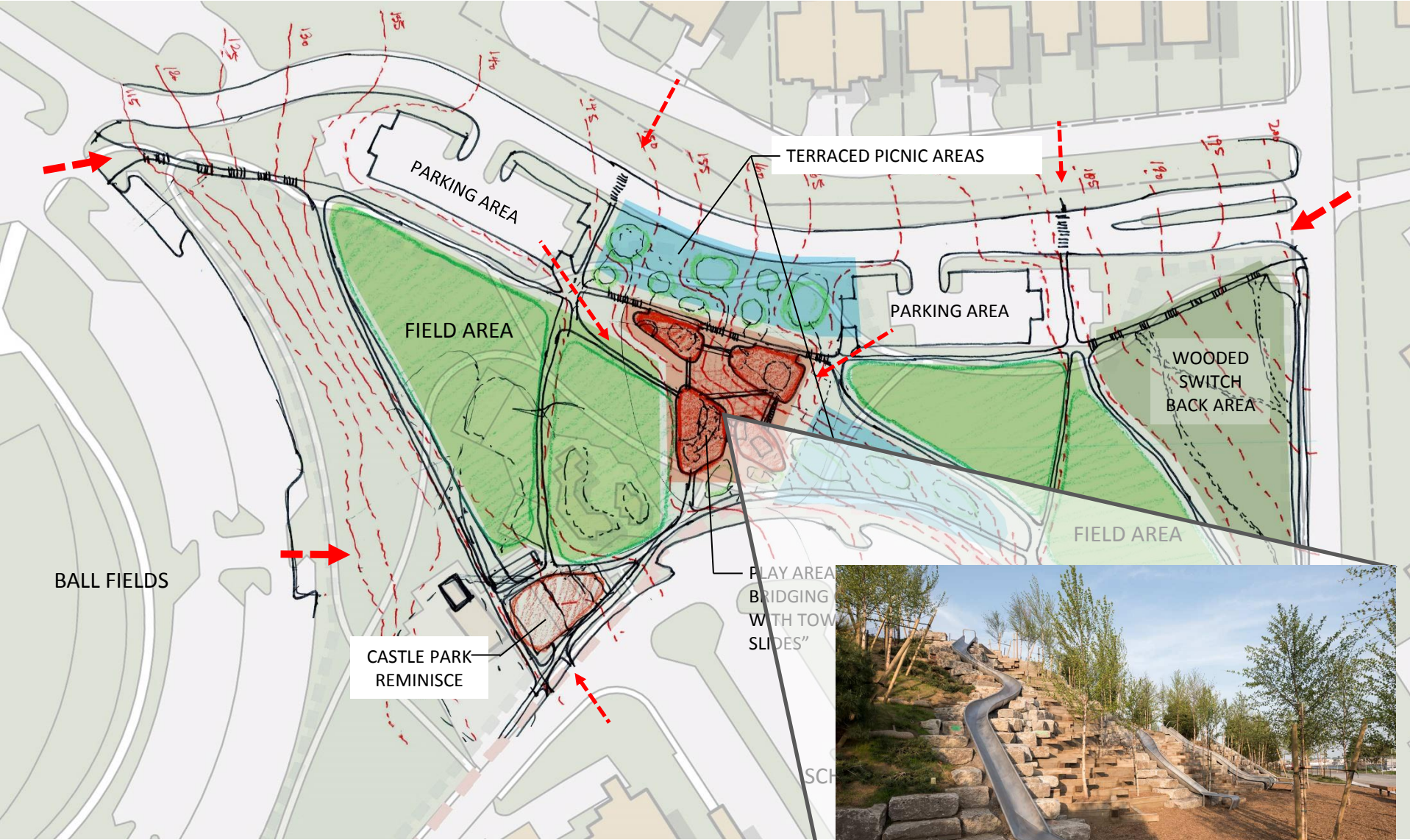


- Create premier park with passive green space, open fields, and walking paths
- Switchback trails for more challenges
- Pedestrian gateway from City Hall and new Community Center to Wald Park
- Improve play areas
- Additional parking at VH West Elementary School and near Premier Park





PREMIER PARK SKETCH
ACCESS AND CONTOUR IDEAS



PREMIER PARK SKETCH
ACCESS AND CONTOUR IDEAS



Exhibit - Resolution No. 4951-A

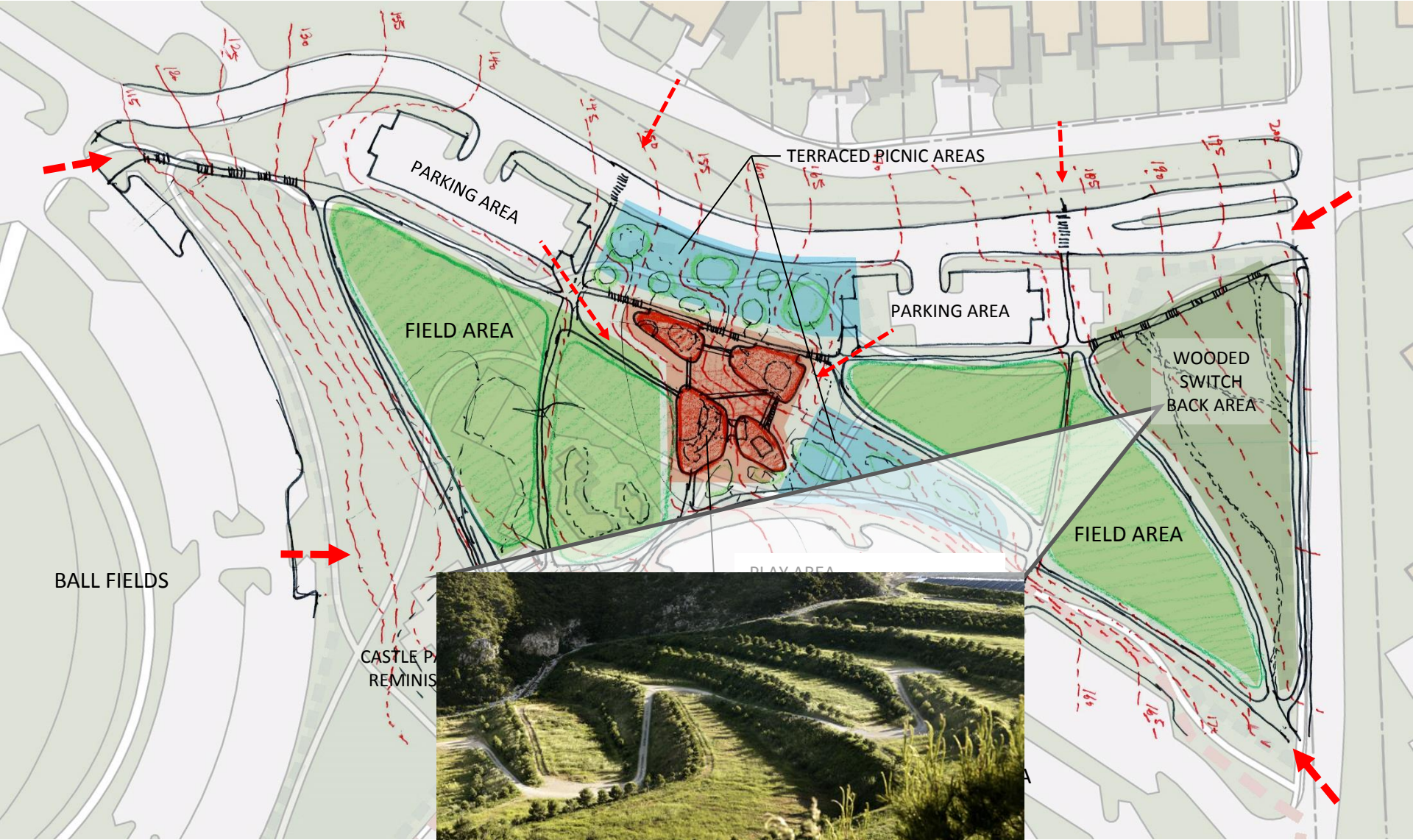
PLAYGROUND INSPIRATION – GROUND ELEMENTS
USE OF GRADE CHANGE AS AN ASSET WITH LONG SLIDES AND BRIDGES TO TOWER ELEMENTS



PLAYGROUND INSPIRATION – GROUND ELEMENTS
USE OF GRADE CHANGE AS AN ASSET WITH LONG SLIDES AND BRIDGES TO TOWER ELEMENTS



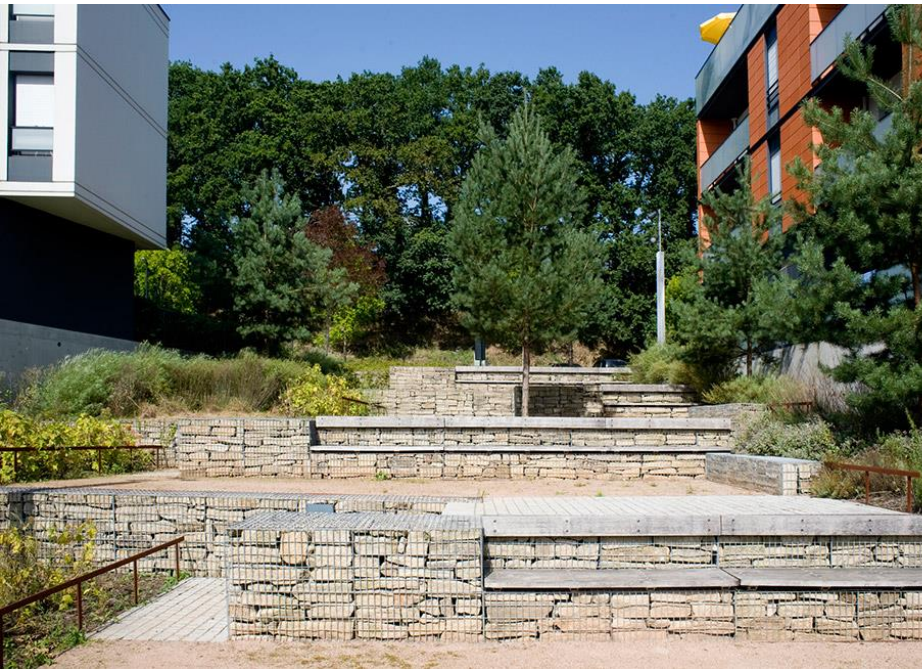
PLAYGROUND INSPIRATION – GROUND ELEMENTS
USE OF GRADE CHANGE AS AN ASSET WITH LONG SLIDES AND BRIDGES TO TOWER ELEMENTS

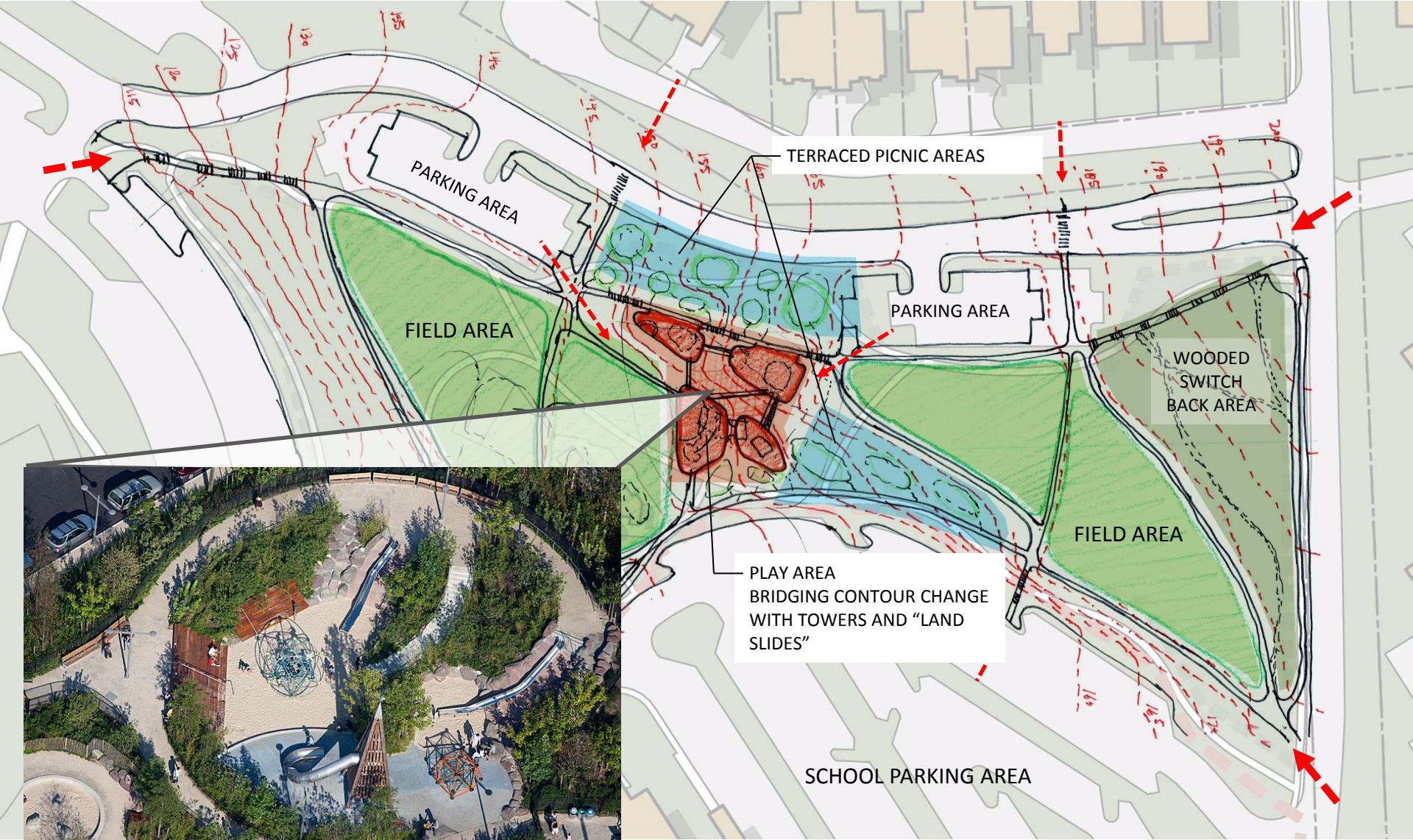


PREMIER PARK SKETCH
ACCESS AND CONTOUR IDEAS



Exhibit - Resolution No. 4951-A





PREMIER PARK SKETCH
ACCESS AND CONTOUR IDEAS



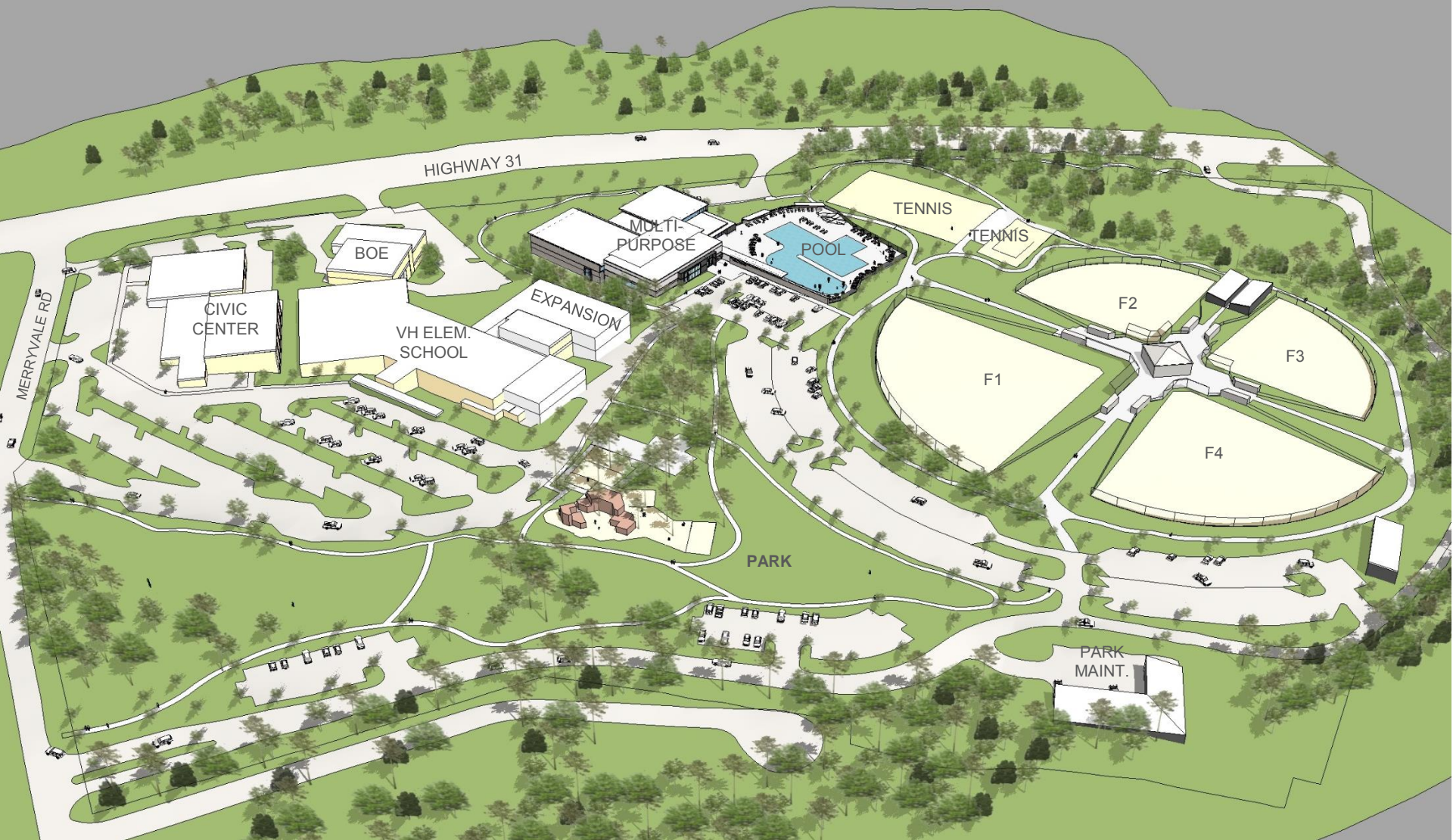
PLAYGROUND INSPIRATION – GROUND ELEMENTS
USE OF GRADE CHANGE AS AN ASSET WITH LONG SLIDES AND BRIDGES TO TOWER ELEMENTS



PLAYGROUND INSPIRATION – GROUND ELEMENTS



2 SITE PLAN
 OPTION 2 – AERIAL VIEW LOOKING EAST



2 SITE PLAN
 OPTION 2 – AERIAL VIEW LOOKING EAST



1 SITE PLAN OPTION 1



2 SITE PLAN OPTION 2

Site Development Options



3. Recreation Center Development

An aerial rendering of a proposed recreation center development. The site is a large, irregularly shaped plot of land, mostly green with some existing buildings and parking areas. The development includes several baseball fields with brown dirt bases and green grass, a large blue-roofed structure that could be a pool or a large pavilion, and several tennis courts with red and green surfaces. There are also several smaller buildings and parking lots scattered throughout the site. The surrounding area includes residential houses, trees, and a major road on the right side.

BUILDING DEVELOPMENT OPTIONS

OPTION **1**

*ALL MULTI-PURPOSE AND/OR CIVIC FUNCTIONS
TO BE LOCATED AT WALD PARK*

NO FUNCTIONS LOCATED OFF-SITE

PROGRAM COMPONENTS

- 3 BASKETBALL/MULTI-USE COURTS
- POOL SUPPORT
- ADMINISTRATIVE SPACE
- CIVIC / COMMUNITY SPACES

TOTAL SF – 60,000 SF +/-

ALL MULTI-PURPOSE AND CIVIC FUNCTIONS TO BE LOCATED AT WALD PARK

NO FUNCTIONS LOCATED OFF-SITE



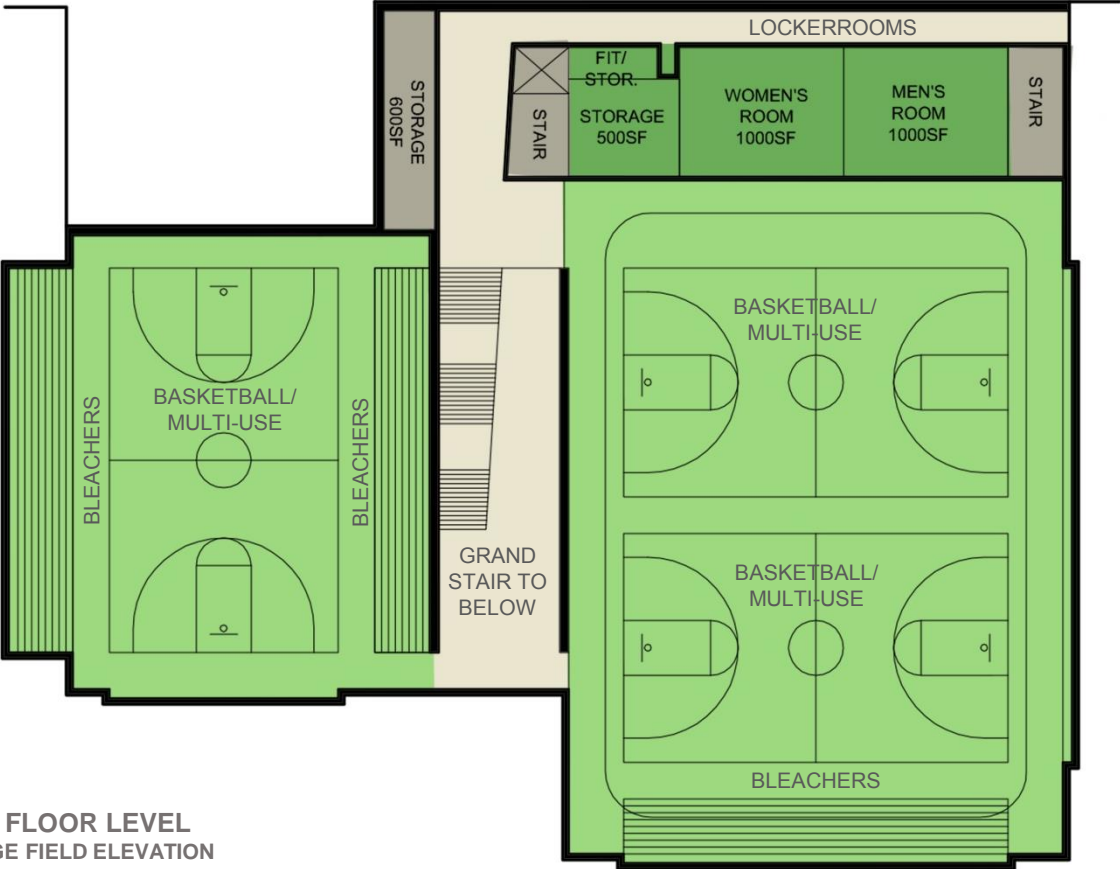
1 MULTI-PURPOSE CENTER SITE PLANS
OPTION 1

MAIN FLOOR LEVEL – POOL ELEVATION



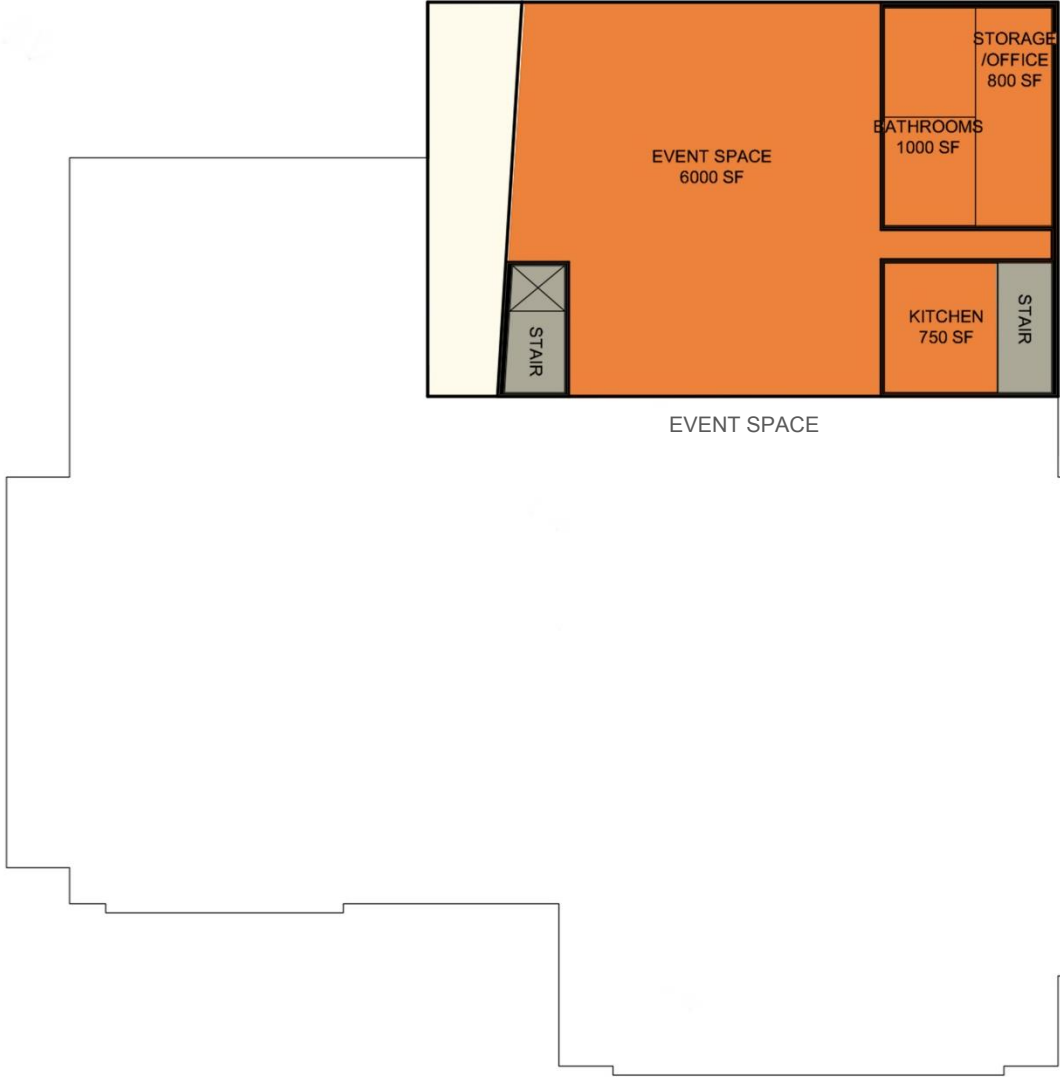
1 MULTI-PURPOSE CENTER PLANS

OPTION 1 - MAIN FLOOR LEVEL - POOL ELEVATION

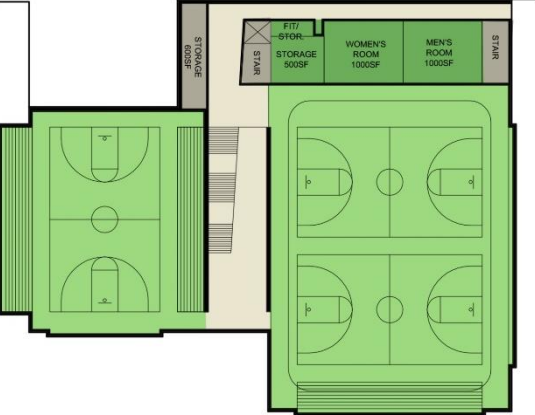


LOWER FLOOR LEVEL
EXCHANGE FIELD ELEVATION

1 MULTI-PURPOSE CENTER PLANS
OPTION 1 - LOWER FLOOR LEVEL - EXCHANGE FIELD ELEVATION



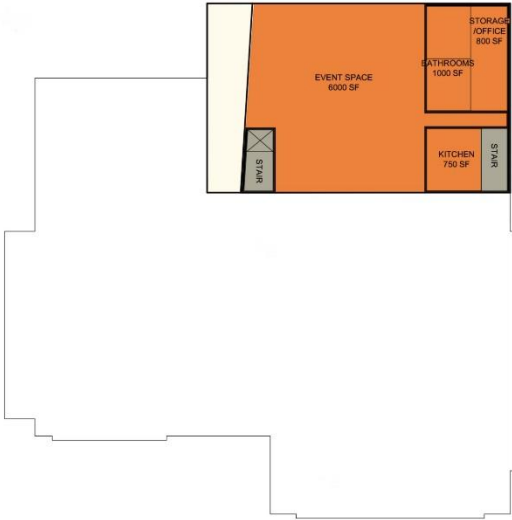
1 MULTI-PURPOSE CENTER PLANS
OPTION 1 - UPPER FLOOR LEVEL



LEVEL **G** - BASKETBALL LEVEL



LEVEL **1** - POOL LEVEL



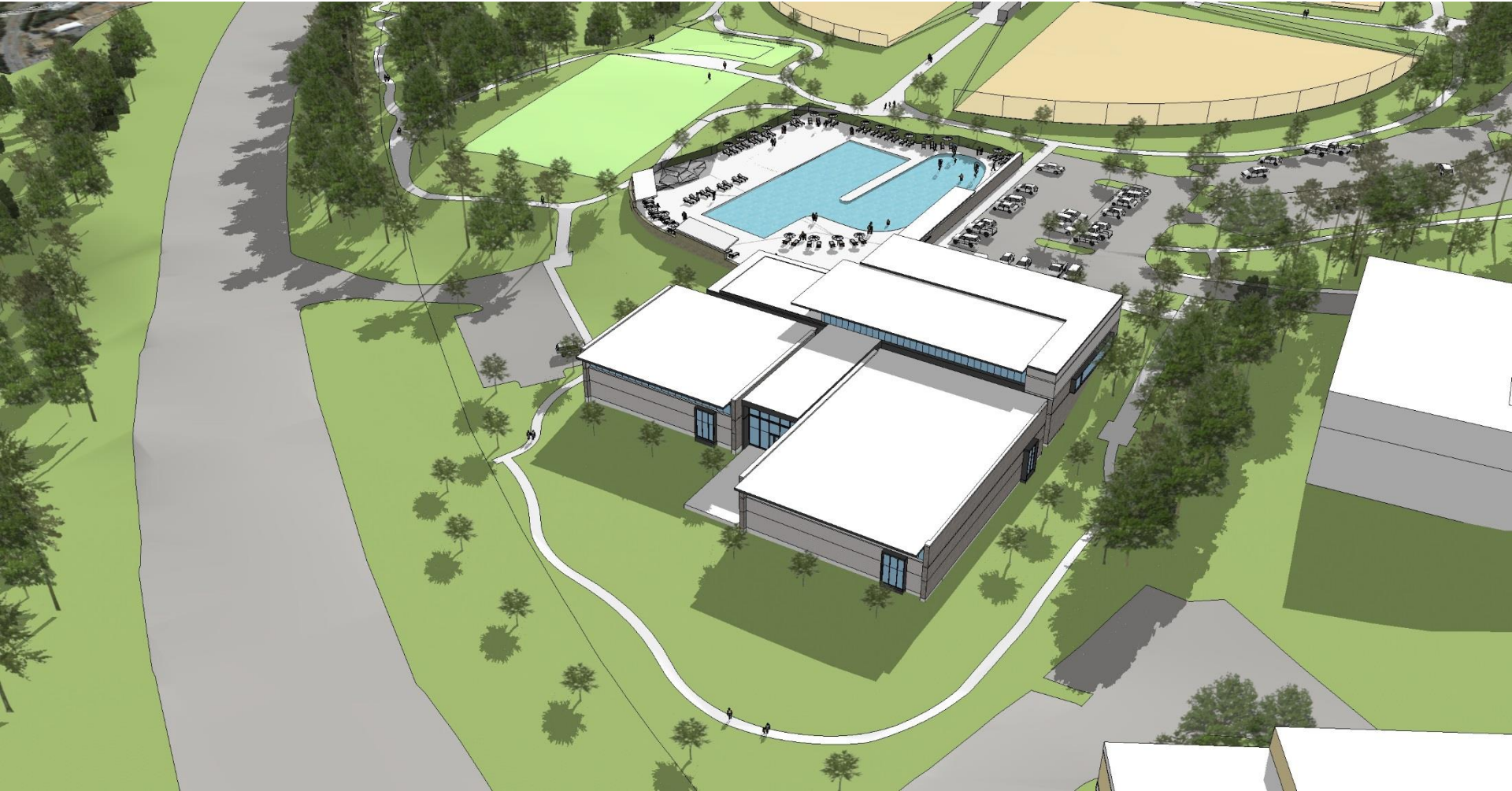
LEVEL **2** - EVENT SPACE

SPACE PROGRAM COMPONENTS

- 3 BASKETBALL/MULTI-USE COURTS
- POOL SUPPORT
- ADMINISTRATIVE SPACE
- CIVIC SPACES

TOTAL SF - 60,000 SF +/-

1 MULTI-PURPOSE CENTER PLANS



1 MULTI-PURPOSE CENTER VIEWS
OPTION 1



EXISTING VIEW – FROM HIGHWAY 31



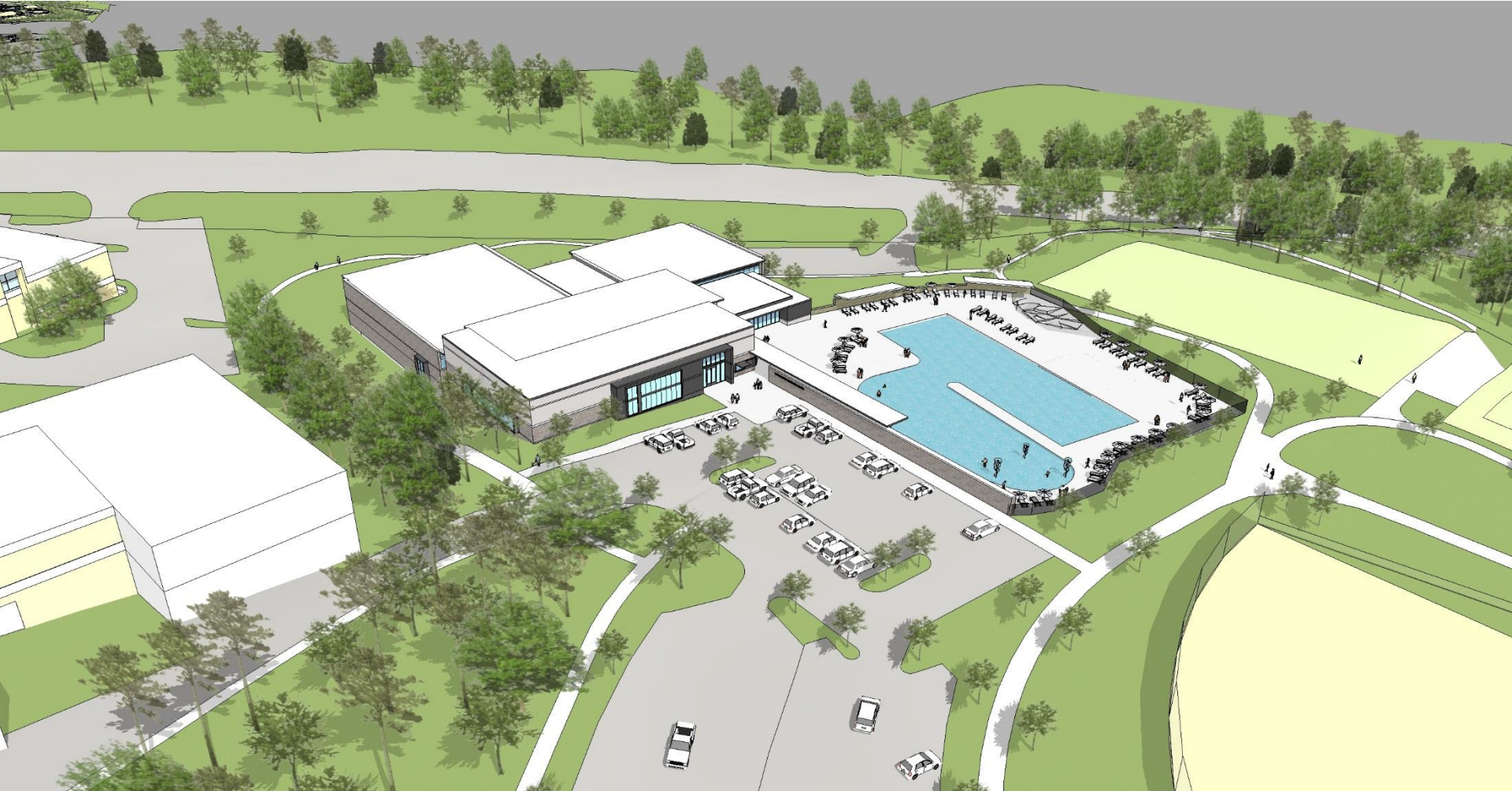
1 MULTI-PURPOSE CENTER VIEWS
OPTION 1



1 MULTI-PURPOSE CENTER VIEWS
OPTION 1



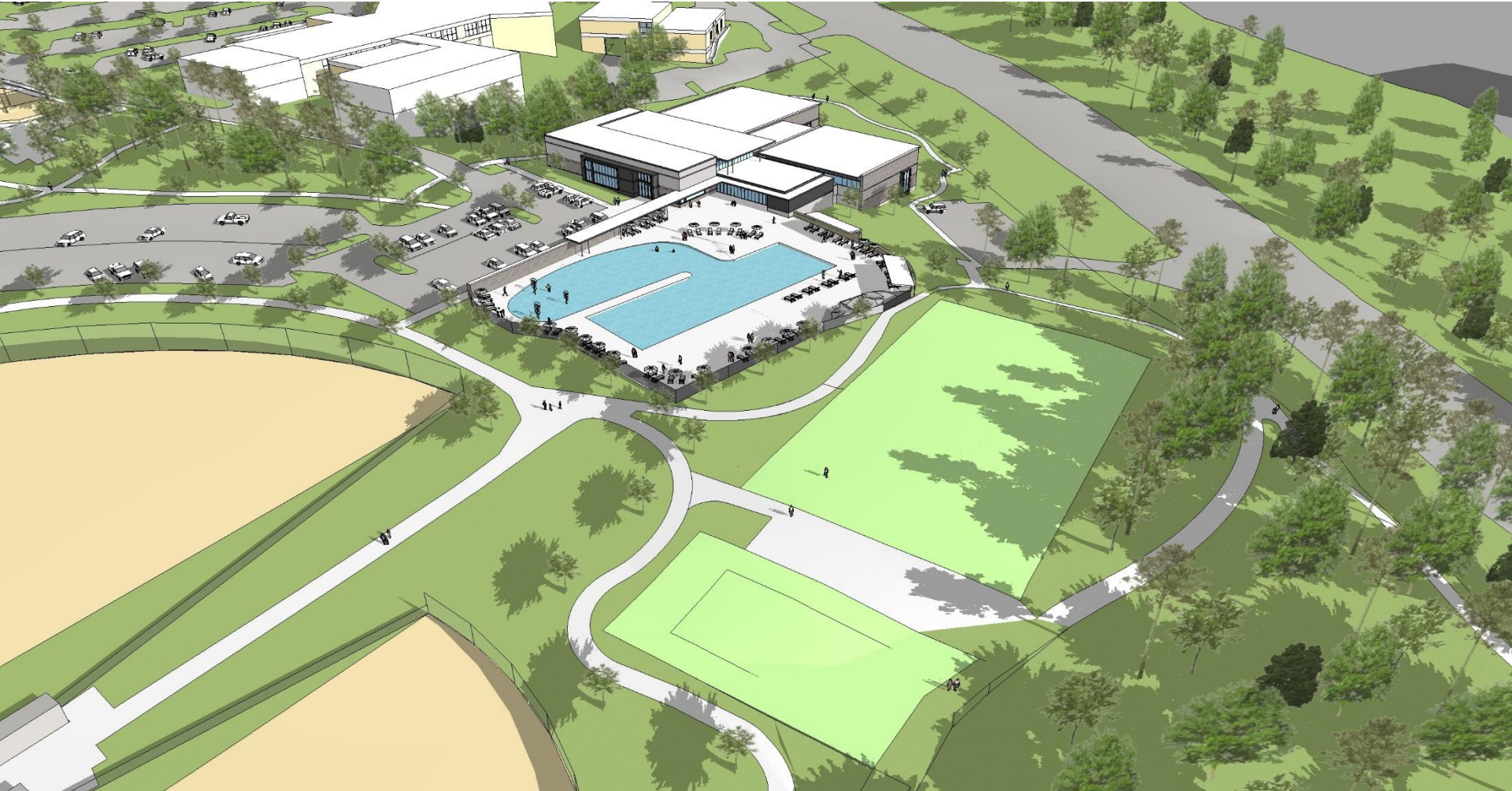
1 MULTI-PURPOSE CENTER VIEWS
OPTION 1



1 MULTI-PURPOSE CENTER VIEWS
OPTION 1



1 MULTI-PURPOSE CENTER VIEWS
OPTION 1



1 MULTI-PURPOSE CENTER VIEWS
OPTION 1



1 MULTI-PURPOSE CENTER VIEWS
OPTION 1



1 MULTI-PURPOSE CENTER VIEWS
OPTION 1

BUILDING DEVELOPMENT OPTIONS

OPTION **2**

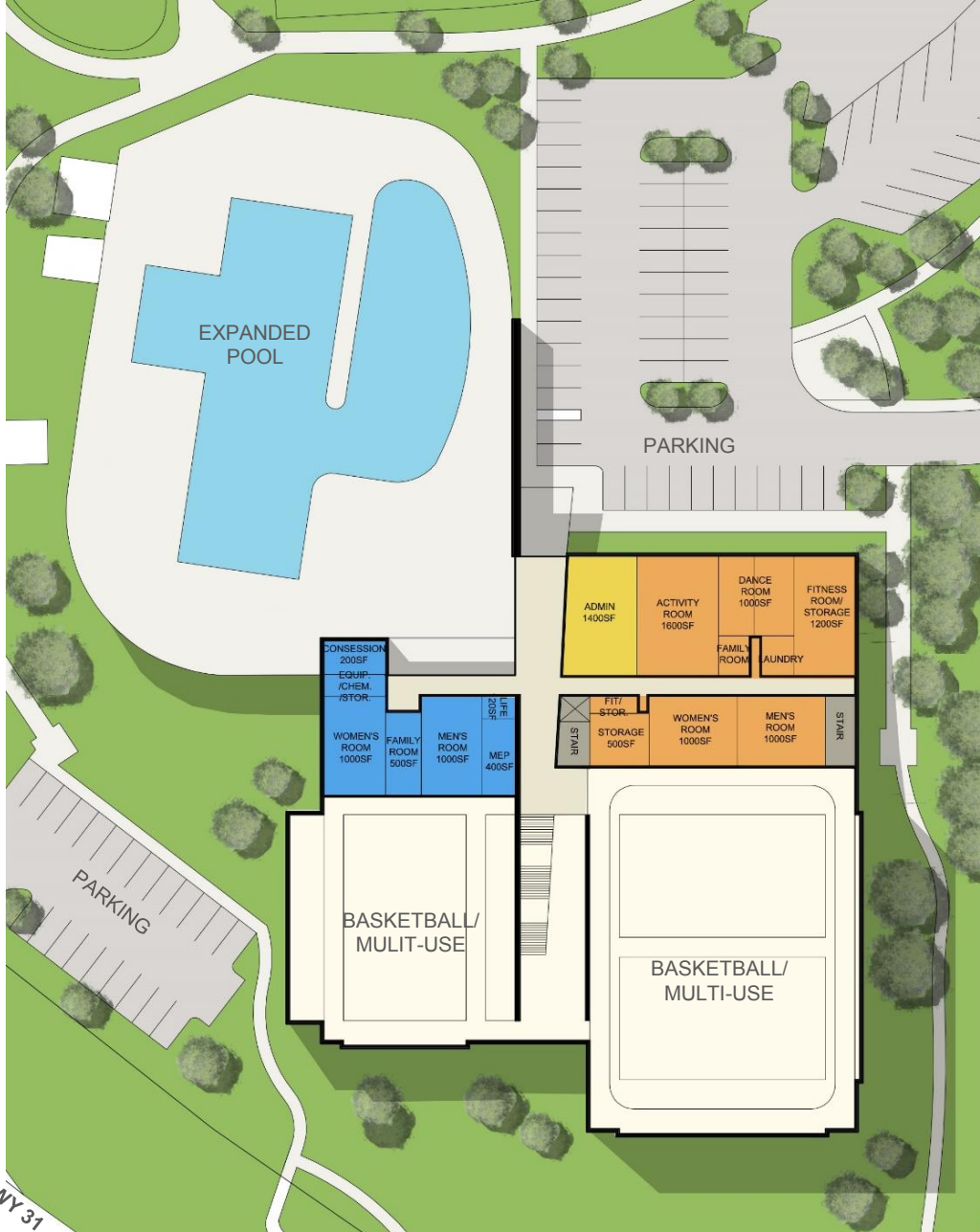
*MULTI-PURPOSE AND/OR CIVIC FUNCTIONS
TO BE LOCATED PARTIALLY AT WALD PARK
AND PARTIALLY OFF-SITE*

SPACE PROGRAM COMPONENTS

- 3 BASKETBALL/MULTI-USE COURTS
- POOL SUPPORT
- ADMINISTRATIVE SPACE

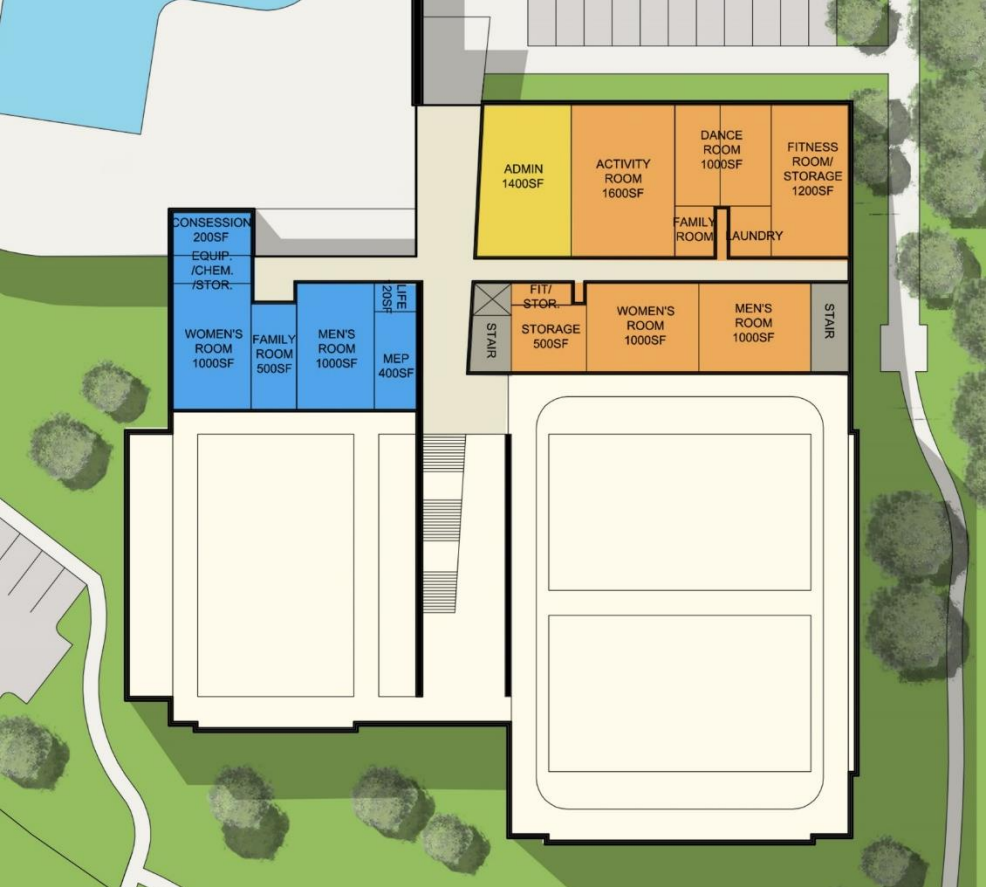
TOTAL SF – 53,000 SF +/-

ALL MULTI-PURPOSE AND CIVIC FUNCTIONS TO BE PARTIALLY LOCATED AT WALD PARK AND PARTIALLY OFF-SITE

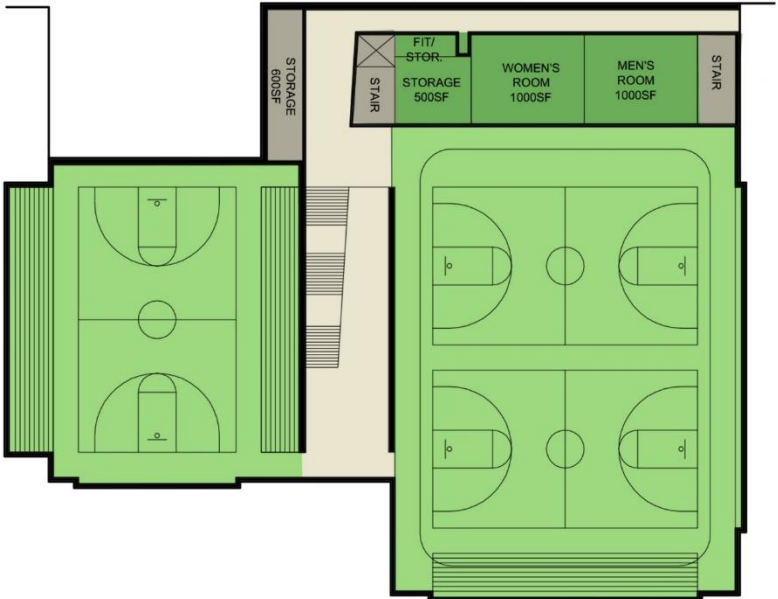


2 MULTI-PURPOSE CENTER SITE PLANS
OPTION 2

MAIN FLOOR LEVEL – POOL ELEVATION



LEVEL 1 - POOL LEVEL



LEVEL G - BASKETBALL LEVEL

SPACE PROGRAM COMPONENTS

- 3 BASKETBALL/MULTI-USE COURTS
- POOL SUPPORT
- ADMINISTRATIVE SPACE

TOTAL SF - 53,000 SF +/-

2 MULTI-PURPOSE CENTER PLANS

BUILDING DEVELOPMENT OPTIONS

OPTION **3**

*ALL MULTI-PURPOSE AND/OR CIVIC FUNCTIONS
TO BE LOCATED OFF-SITE*

NONE LOCATED AT WALD PARK

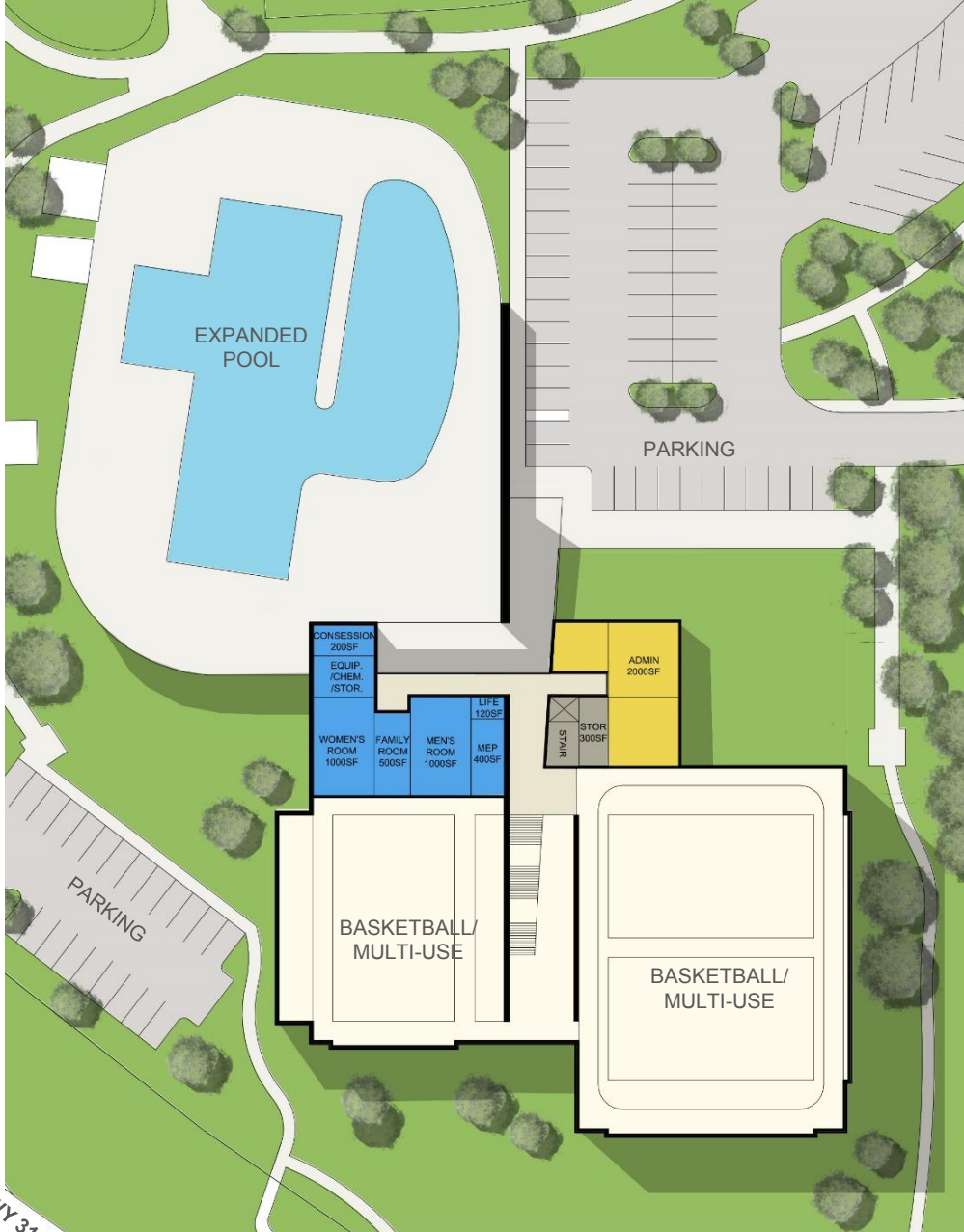
SPACE PROGRAM COMPONENTS

- 3 BASKETBALL/MULTI-USE COURTS
- POOL SUPPORT
- ADMINISTRATIVE SPACE

TOTAL SF – 45,000 SF +/-

ALL MULTI-PURPOSE AND CIVIC FUNCTIONS TO BE LOCATED OFF-SITE

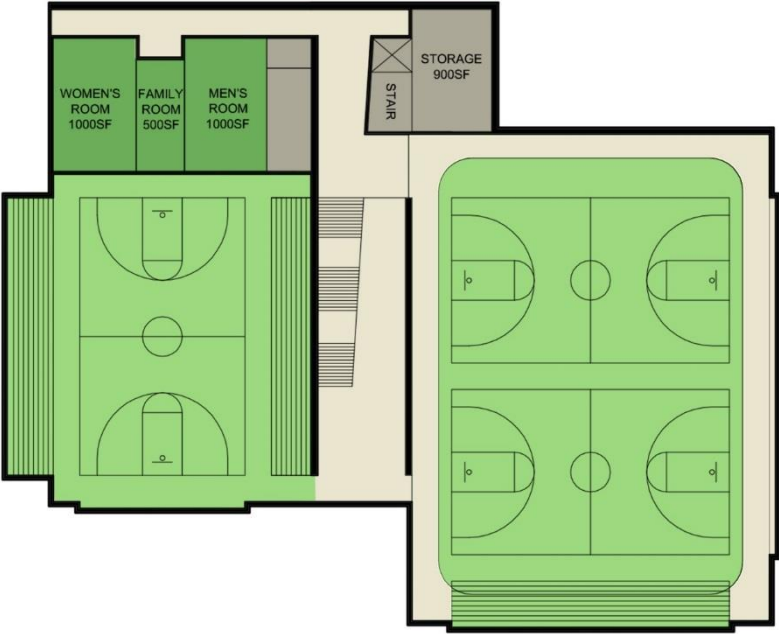
NONE AT WALD PARK



3 MULTI-PURPOSE CENTER
OPTION 3



LEVEL 1 - POOL LEVEL



LEVEL G - BASKETBALL LEVEL

SPACE PROGRAM COMPONENTS

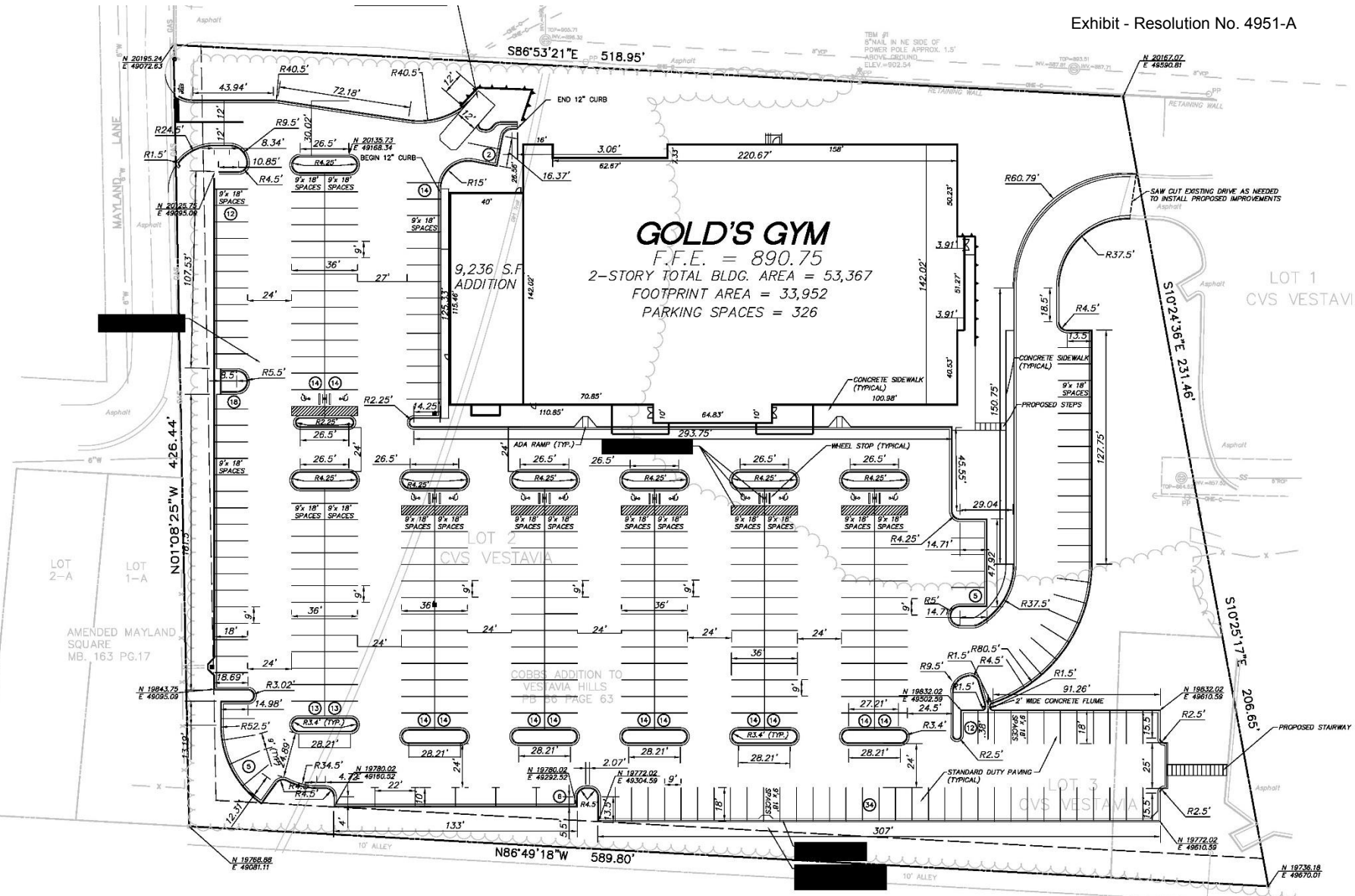
- 3 BASKETBALL/MULTI-USE COURTS
- POOL SUPPORT
- ADMINISTRATIVE SPACE

TOTAL SF - 45,000 SF +/-

3 MULTI-PURPOSE CENTER PLANS

4. Community Center Development





GOLD'S GYM
 F.F.E. = 890.75
 2-STORY TOTAL BLDG. AREA = 53,367
 FOOTPRINT AREA = 33,952
 PARKING SPACES = 326

LOT 2
 CVS VESTAVIA

LOT 1
 CVS VESTAVIA

COBB'S ADDITION TO
 VESTAVIA HILLS
 PB 26 PAGE 63

LOT 3
 CVS VESTAVIA

RESURVEY OF LOT 16 & ALL LOTS
 17-26 BLK. 3 & ALL BLKS 4 & 5 OF
 WALDRIDGE TERRACE

SOUTHMINISTER PRESBYTERIAN CHURCH

E GOLD'S GYM PROPERTY DEVELOPMENT
 EXISTING SITE PLAN



GOLD'S GYM



HEART OF THE CITY – CITY HALL / MUNICIPAL / COMMUNITY CENTER











go **MACROBAR**
100%
Plant Based
Naturally
Clean
Nutrition

100%
PLANT
BASED
NATURALLY
CLEAN
NUTRITION

ENERG
Plant Based
Energy
Support

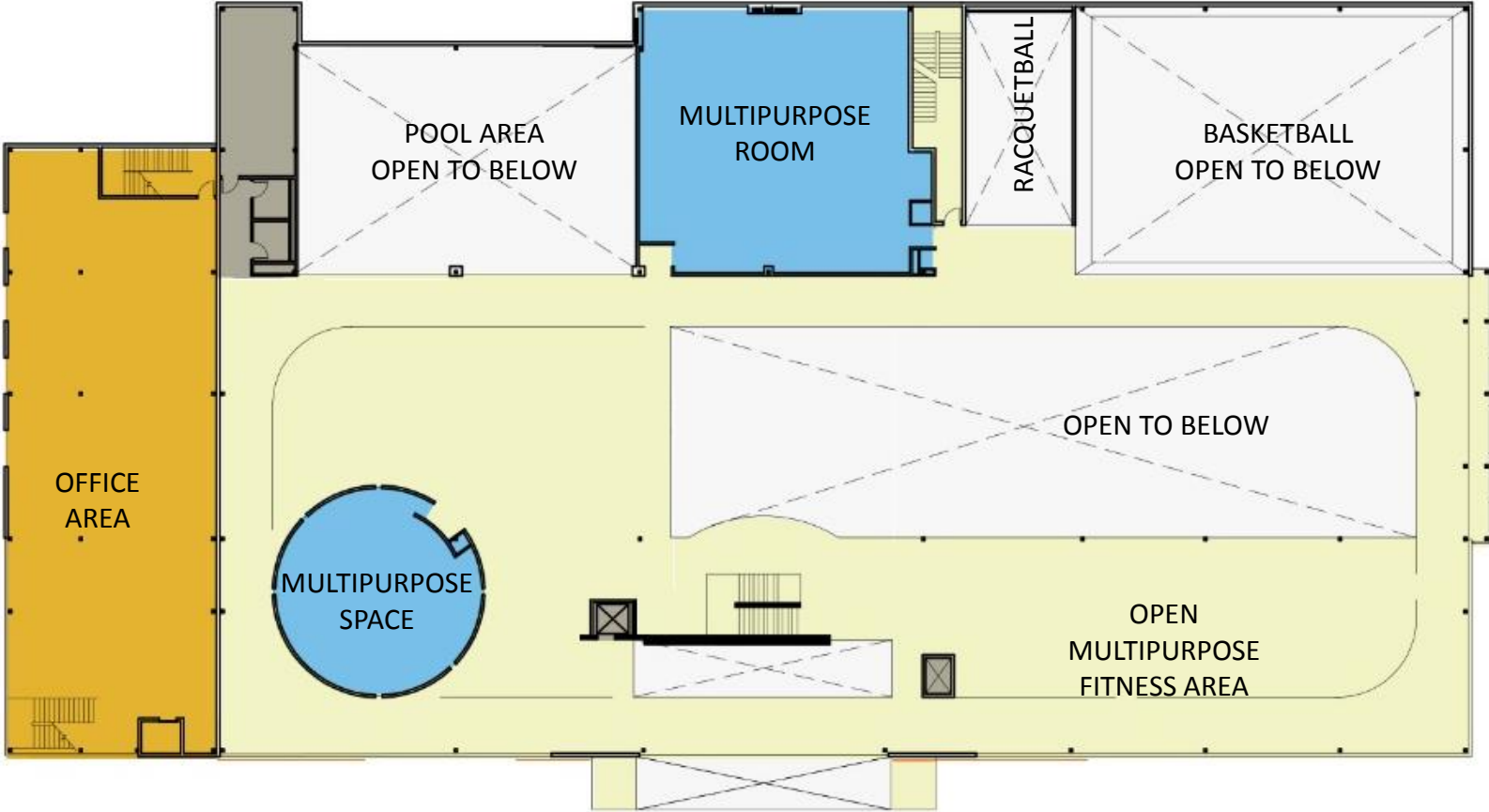
POWER
Plant Based
Energy
Support

Natural
Nutrition





E GOLD'S GYM - EXISTING
1ST FLOOR



E GOLD'S GYM - EXISTING
2ND FLOOR



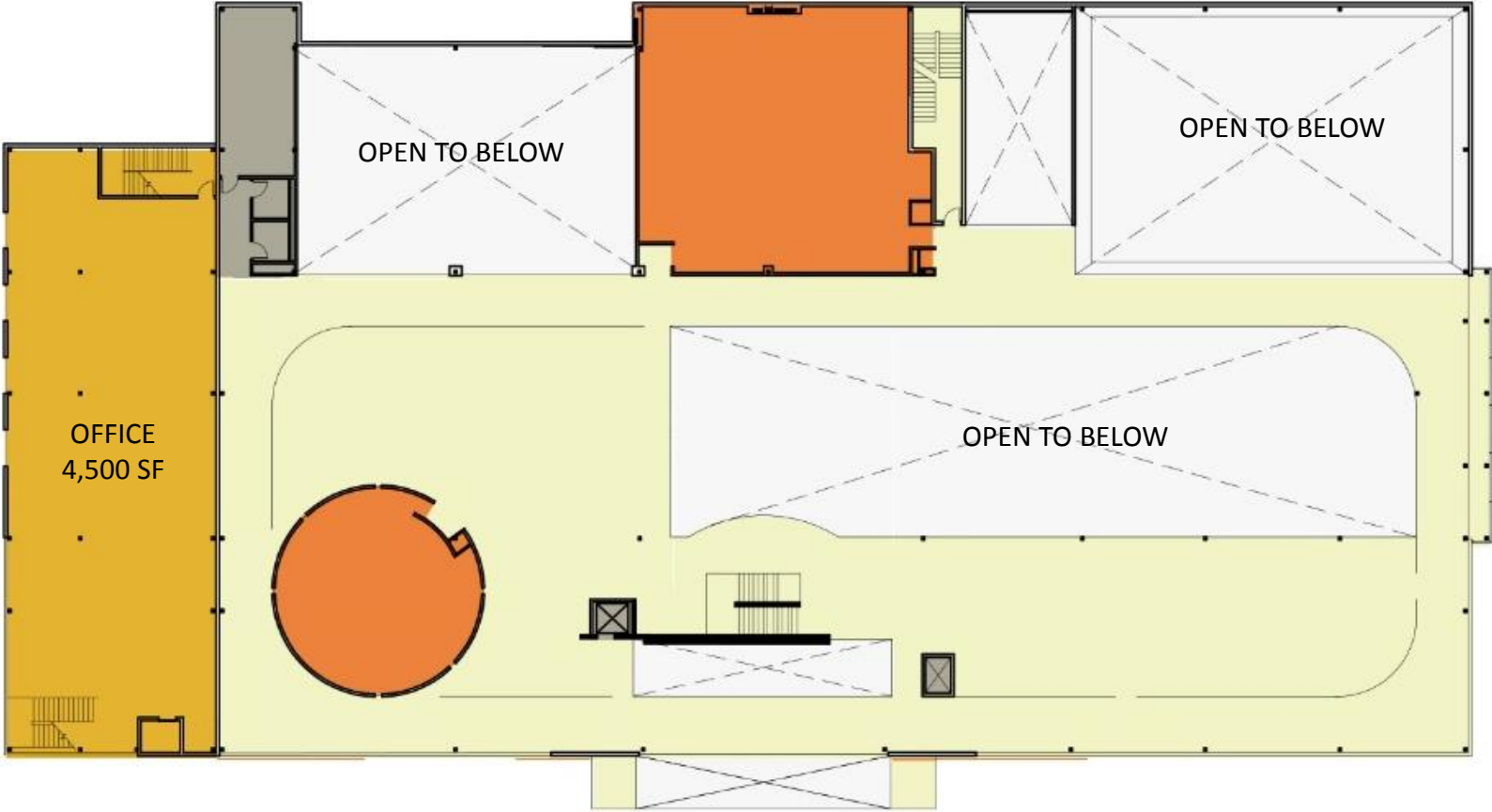
1ST FLOOR

EVENT SPACE, PREFUNCTION AREA,
ADMIN, OFFICES

2ND FLOOR

AVAILABLE

1 GOLD'S GYM – OPTION 1
1ST FLOOR



OFFICE
4,500 SF

OPEN TO BELOW

OPEN TO BELOW

OPEN TO BELOW

1ST FLOOR

EVENT SPACE, PREFUNCTION AREA,
ADMIN, OFFICES

2ND FLOOR

AVAILABLE

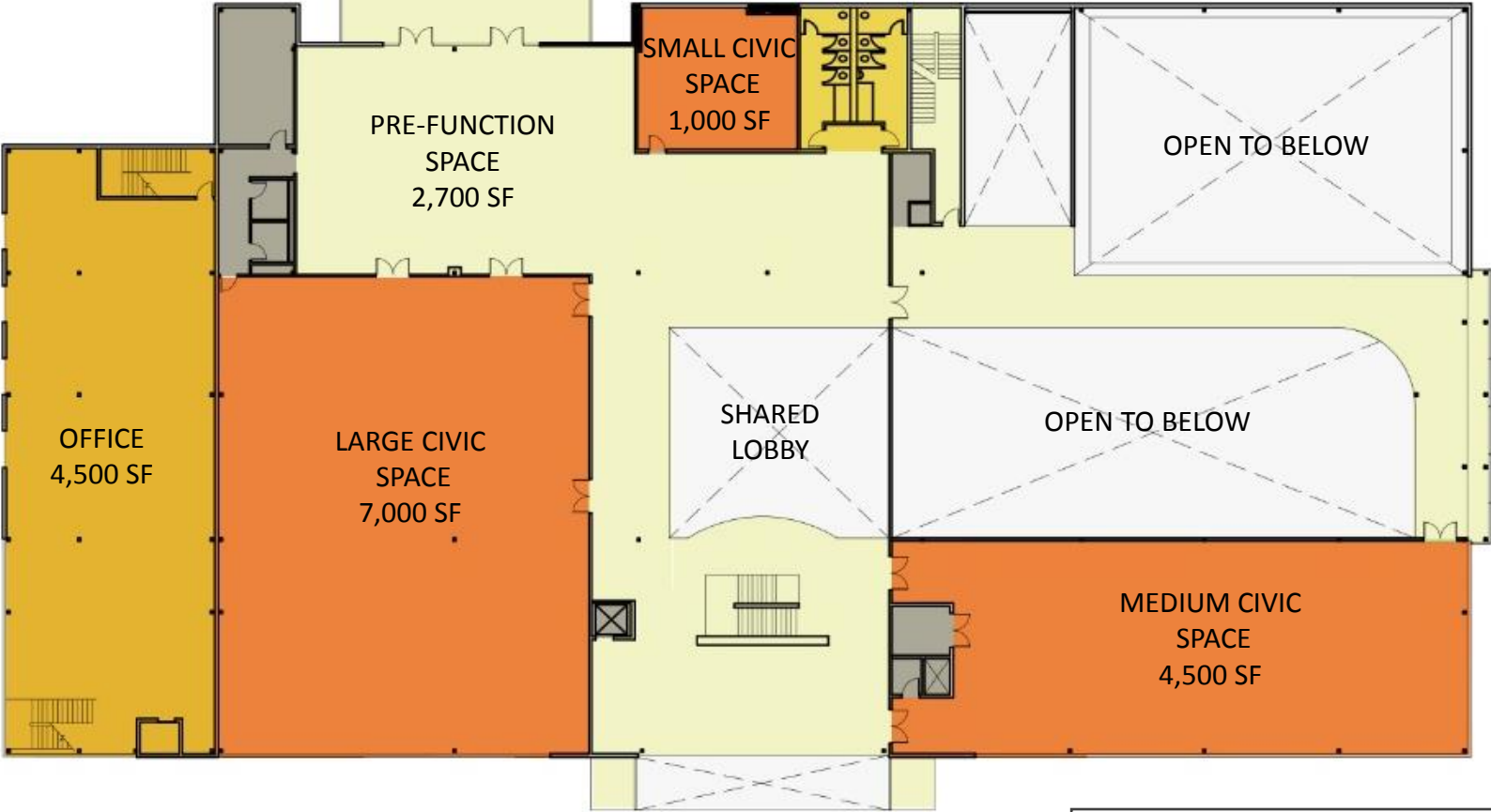
1 GOLD'S GYM – OPTION 1
2ND FLOOR



1ST FLOOR
 FITNESS/WORKOUT, PRACTICE COURT,
 BALLET/DANCE, LOCKER ROOMS, ADMIN

2ND FLOOR
 EVENT SPACES, ACTIVITY ROOMS,
 PREFUNCTION AREAS

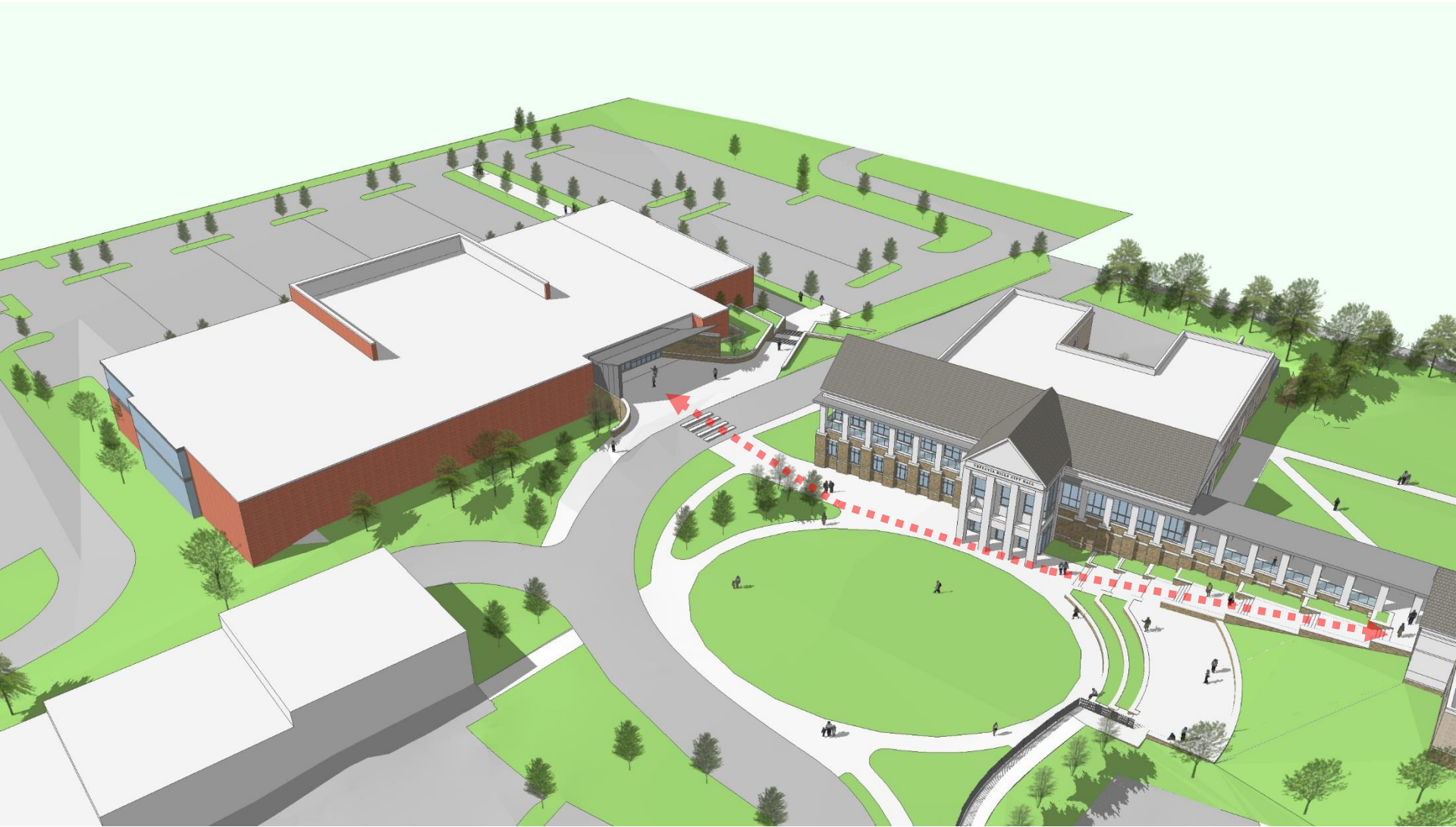
2 GOLD'S GYM – OPTION 2
 1ST FLOOR



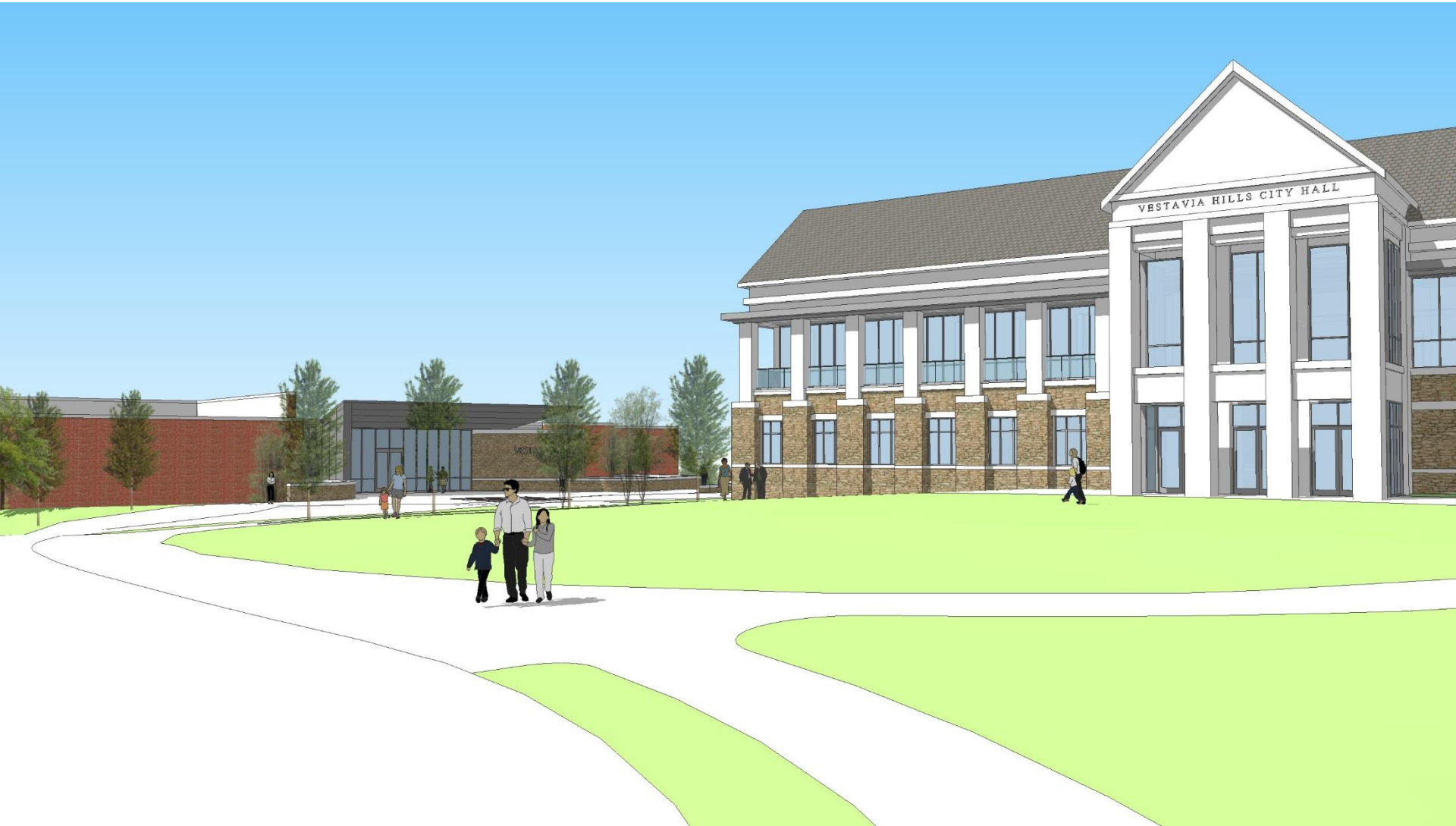
1ST FLOOR
 FITNESS/WORKOUT, PRACTICE COURT,
 BALLET/DANCE, LOCKER ROOMS, ADMIN

2ND FLOOR
 EVENT SPACES, ACTIVITY ROOMS,
 PREFUNCTION AREAS

2 GOLD'S GYM – OPTION 2
 2ND FLOOR



HEART OF THE CITY – CITY HALL / MUNICIPAL / COMMUNITY CENTER



HEART OF THE CITY – CITY HALL / MUNICIPAL / COMMUNITY CENTER



HEART OF THE CITY – CITY HALL / MUNICIPAL / COMMUNITY CENTER

CITY HALL &
COMMUNITY
CENTER

WALD PARK

HWY 31

HEART OF THE CITY – POTENTIAL FUTURE CONNECTION – WALD PARK / COMMUNITY CENTER / CITY HALL

5. Preliminary Budget

An aerial photograph of a school campus. The image shows several large, multi-story school buildings with light-colored roofs. In the foreground, there are several sports fields, including baseball diamonds and tennis courts. A large parking lot is visible in the center. The campus is surrounded by trees and a road on the right side. The text "5. Preliminary Budget" is overlaid in the center of the image.

- Design team developed a rough order of magnitude budget for each City location.
- Budgets are based on experience with similar projects, assumptions regarding the scope of work and industry input.
- Budget includes the hard and soft cost of construction
 - Hard costs were estimated on a per unit basis
 - Soft costs (A/E fees, owner's contingency, project mgmt, insurance, FF&E, etc.) were estimated as a percentage of total hard costs
- All figures are in 2016 dollars and do not account for escalation
- This is **not** a detailed cost estimating exercise as detailed design work has not been completed

PRELIMINARY BUDGET – SUMMARY

Exhibit - Resolution No. 4951-A

Program Element	Preliminary Budget	Proposed Scope
Wald Park Improvements Budget		
New Multipurpose Center	\$15,600,000	New 60,000 SF building with 3 courts, multipurpose rooms, and support space
New Swimming Pool	\$2,096,000	New 50-meter pool w/ zero entry, new water feature, and scored concrete deck
New Youth Sports Fields	\$1,729,000	Drainage, excavation, and artificial turf (mound, infield, outfield, foul territory)
New Covered Batting Cages (6)	\$169,000	40 ft. x 80 ft. & 40 ft. x 100 ft. covered structure with 3 batting cages each
New Tennis Courts / Upgrades	\$285,000	New court with lights and bleacher seating, resurface existing courts with ProClay.
New Park Space & Playgrounds	\$1,683,000	Selected grading, landscaping, clearing and furniture. New/relocated playground equipment. Castle Playground modifications.
General Site Improvements	\$2,832,000	Press box improvements, sidewalk/walking paths, retaining walls, concrete stairs and areas, select grading, parking spaces, and site work.
<hr/>		
Sub-Total Wald Park Improvements Budget	\$24,394,000	
Additional Owner's Contingency @ 7%	\$1,708,000	
Sub-Total Wald Park Budget w/ Contingency	\$26,102,000	
Gold's Gym Purchase Price	\$9,100,000	
Gold's Gym Renovation	\$2,000,000	Allowance
<hr/>		
Total Wald Park Improvements Budget w/ Gold's Gym	\$37,202,000	
<hr/>		
Other Municipal Park Budgets		
Altadena Valley Park Improvements	\$7,500,000	Allowance
Cahaba Heights Ballfield Improvements	\$5,000,000	Allowance
Old Berrv Middle School Improvements	TBD	
<hr/>		
Total Preliminary Budgets	\$49,702,000	

Note 1: Budget in 2016 dollars.

Note 2: Soft costs include A/E fees, owner's contingency, project management, insurance, FF&E, etc.

Note 3: Budget does not include improvements to maintenance facility, purchase of additional properties, or construction of off-site facilities.

Note 4: Budget does not include off-site infrastructure improvements.

Note 5: Budget does not include Gold's Gym tenant income (\$550K +/- per year) through 2021.

Note 6: Budget includes \$500K for premier play features.

Note 7: Any unused portions of multipurpose center budget will go towards Gold's Gym renovation.

SURVEY AND QUESTIONS

Here is the link for you to join:

<http://www.otmeet.com/256>

Thank you for participating!

END

6. Appendix



EXHIBIT A

PARKING ANALYSIS

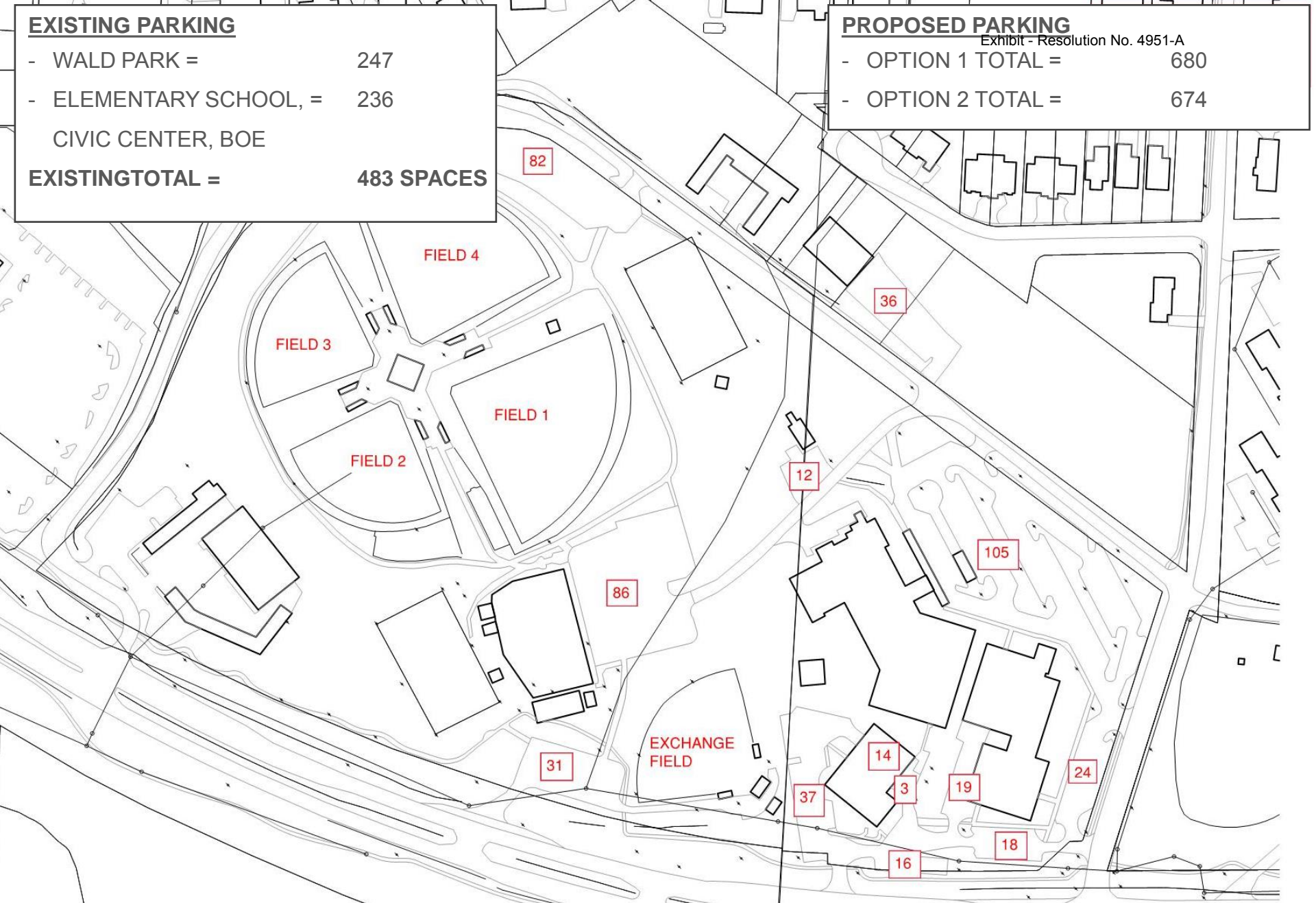
EXISTING PARKING

- WALD PARK =	247
- ELEMENTARY SCHOOL, =	236
CIVIC CENTER, BOE	
EXISTINGTOTAL =	483 SPACES

PROPOSED PARKING

Exhibit - Resolution No. 4951-A

- OPTION 1 TOTAL =	680
- OPTION 2 TOTAL =	674



PARKING SCENARIO

Function	Peak Use	Medium Use	Low Use	Comments
Baseball (Fields 1 - 4)	189	101	88	Assumes 1 car/player. Exhibit - Resolution No. 4951-A <u>Peak Use:</u> 22 players/field 2x for overlap. 2 umpers/field. 5 concessions. 176+8+5=189 cars. <u>Medium Use:</u> 11 players/field. 2 umpers/field. 5 concessions. 88+8+5=101 cars. <u>Low Use:</u> Practice: 11 players/field 2x for overlap. Season w/ all-stars: Feb. - End of June. Peak March and April.
Tennis (Courts 1 - 4, plus 1 add'l)	16	10	4	Assumes 1 car/player. <u>Peak Use:</u> 3 Dbls. matches + 2 snlgs matches. No refs. No spectators. <u>Medium Use:</u> 5 snlgs. Matches. <u>Low Use:</u> 4 people. Year round, mornings.
Swimming Pool	122	72	25	Assumes 1 car/3 people minus drop. 1 car/lifeguard. Last 5 year avg. members=1500+/-. <u>Peak Use:</u> Daily attendance 350 people. 15 kids dropped off. 10 lifeguards. <u>Medium Use:</u> Avg. daily attendance 200 people. 10 kids are dropped off. 8 lifeguards. <u>Low Use:</u> 50 people. no drop offs. 8 lifeguards. June 1st - Sept. 1st
Multi-purpose Facility (indoor athletic c	170	78	20	Assumes 3 courts. <u>Peak Use:</u> Games-22 players/ct.+4 coaches/ct. 2x. 2 official/ct.+3 concessions. <u>Medium Use:</u> Practice-22 players/ct.+4 coaches/ct. 2x, but only half cars for drop-offs. <u>Low Use:</u> 10 adult players on 2 courts. Volleyball is the same metrics. Basketball Rec. Leagues: Nov. - End of June. Volleyball Rec. League: Sept-Nov. AAU League: March-June
Park/Green Space/Playground	45	22	7	Assumes 1 car/2 people. <u>Peak Use:</u> Parties, 50 people. Plus 20 other cars. <u>Medium Use:</u> 12 cars at Castle Park plus 10 other cars. <u>Low Use:</u> 2 cars at Castle Park plus 5 other cars.
Parks Maintenance Shop/Storage	10	10	2	1 car/employee <u>Peak Use:</u> 10 employees. <u>Medium Use:</u> 10 employees. <u>Low Use:</u> 2 employees.
SUBTOTAL	552	293	146	
SUBTOTAL - AVERAGED		330		
Lodge/Banquet Space \ (may or may not be at Wald Park)	100	24	6	<u>Peak Use:</u> Peak occupancy for assembly space at Lodge is 200 seated/295 standing, then divided 200 by half for cars. <u>Medium Use:</u> Per VH Parking Ord. 1 space per 250 sf. <u>Low Use:</u> Half of Medium Use.
School	150	100	92	<u>Peak Use:</u> Assumes 3 cars for every 4 attendees of their events. VH Principal guessed that their maximum attendance at any single event is 200+/- people. <u>Medium Use:</u> 2 cars for every classroom space per VH parking ordinance. <u>Low Use:</u> 1 car for every employee.
TOTAL	802	417	244	
TOTAL - AVERAGED		488		

PARKING SCENARIO - PROPOSED

CITY OF VESTAVIA HILLS
PROGRAM MANAGEMENT

*AGREEMENT AND GENERAL CONDITIONS
BETWEEN OWNER AND OWNER'S REPRESENTATIVE*

TABLE OF ARTICLES

1. AGREEMENT
2. GENERAL PROVISIONS
3. OWNER'S REPRESENTATIVE'S BASIC SCOPE OF SERVICES
4. OWNER'S RESPONSIBILITIES
5. PARTIES' REPRESENTATIVES
6. CONTRACT DURATION
7. COMPENSATION
8. AMENDMENTS TO THE OWNER'S REPRESENTATIVE SERVICES
9. INSURANCE
10. TERMINATION OF THE AGREEMENT AND OWNER'S
RIGHT TO PERFORM OWNER'S REPRESENTATIVES SERVICES
11. DISPUTE RESOLUTION
12. MISCELLANEOUS PROVISIONS
13. OTHER CONDITIONS

**PROGRAM MANAGEMENT OWNER'S REPRESENTATIVE AGREEMENT AND
GENERAL CONDITIONS BETWEEN OWNER AND OWNER'S REPRESENTATIVE**

ARTICLE 1

AGREEMENT

This Agreement is made this day of in the year **2017**, by and between the

OWNER:
(Name and Address)

**CITY OF VESTAVIA HILLS
1032 MONTGOMERY HIGHWAY
VESTAVIA HILLS, ALABAMA 35216**

ATTENTION: City Manager JEFF DOWNES

and the

OWNER'S REPRESENTATIVE:
(Name and Address)

**TCU CONSULTING SERVICES, LLC
P.O. BOX 230487
MONTGOMERY, ALABAMA 36123**

For services in connection with the following

PROGRAM:

VESTAVIA HILLS COMMUNITY SPACES PLAN
(See Exhibit "A", dated November 2016.)

Notice to the parties shall be given at the above addresses.

ARTICLE 2

GENERAL PROVISIONS

2.1 The Owner retains the Owner's Representative to consult with and assist the Owner in developing and implementing the Owner's Program as defined in this Agreement. The Owner's Representative shall be the Owner's agent, shall exercise its skill and judgment in furnishing Owner's Representative services **and shall not in any respect serve as a Construction Manager, General Contractor or Sub-contractor.**

2.2 TEAM RELATIONSHIP The Owner and the Owner's Representative agree to proceed with the Program on the basis of trust, good faith and fair dealing, and shall take all actions reasonably necessary to perform this Agreement in an economical and timely manner.

2.3 EXTENT OF AGREEMENT This Agreement is solely for the benefit of the parties, represents the entire and integrated agreement between the parties, and supersedes all prior negotiations, representations or agreements, either written or oral. In the event of a conflict between this Agreement and any other contract entered into by the Owner in connection with the Program as between the Owner and the Owner's Representative, this Agreement and Exhibits hereto shall govern.

2.4 DEFINITIONS

2.4.1 The Owner's Representative Documents consist of:

- .1 written amendments to this Agreement signed by both the Owner and Owner's Representative;
- .2 this Agreement; and
- .3 the Owner's Program provided in Subparagraph 2.4.4.
- .4 Exhibit "A" City of Vestavia Hills Community Spaces Plan, dated November, 2016
- .5 Exhibit "B" City of Vestavia Hills Community Spaces Plan Implementation Request for Proposal, dated March 1, 2017
- .6 Exhibit "C" TCU Consulting Services Response to City of Vestavia Hills Community Spaces Plan Implementation RFP, dated March 31, 2017

2.4.2 The services to be provided by the Owner's Representative are the Basic Services as set forth in Article 3 of this Agreement.

2.4.3 The term Day shall mean calendar day.

2.4.4 The Owner's Program is a description of the Owner's objectives, including budgetary and time criteria, space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements. The Program description is provided in Article 1, above.

2.4.5 A Hazardous Material is any substance or material identified now or in the future as hazardous under any federal, state or local law or regulation, or any other substance or

material which may be considered hazardous or otherwise subject to statutory or regulatory requirements governing handling, disposal and/or clean-up.

ARTICLE 3

OWNER'S REPRESENTATIVE'S BASIC SCOPE OF SERVICES

The Owner's Representative shall provide the services indicated in Paragraph 3.2 as the Owner's Representative's responsibility in the Basic Scope of Services during the Phases described below. These services may be provided in one or more of the phases of the Owner's program or in one or more phases of a discrete project within the overall program. The duration of the phases will be used as the basis of compensation of the Owner's Representative as described in Article 7. Portions of each of the Phases of Service may commence before the previous phase is completed, in which case both phases may proceed concurrently.

3.1 The three Phases of Service are defined as follows:

3.1.1 PHASE ONE Program Budget Validation and Execution Strategy as required by Exhibit B, dated March 1, 2017. Upon completion of Phase I Services written authorization by the Owner is required before the Owner's Representative can proceed to the next phase of Service.

3.1.2 PHASE TWO Preconstruction Phase as required by Exhibit B, dated March 1, 2017. Upon completion of Phase II Services written authorization by the Owner is required before the Owner's Representative can proceed to the next phase of Service.

3.1.3 PHASE THREE Construction Phase as required by Exhibit B, dated March 1, 2017.

3.2 DESCRIPTION OF SERVICES RENDERED UNDER BASIC SCOPE OF SERVICES

A description of basic services to be rendered by Owner's Representative under this Agreement is contained in Exhibit "B".

3.3 MANAGEMENT INFORMATION SYSTEMS Ownership of management information systems developed by the Owner's Representative in the performance of this agreement remains the property of the Owner's Representative.

3.4 OWNER'S REPRESENTATIVE'S SERVICES The Owner's Representative shall perform its Services in accordance with the standard of care normally practiced by Owner's Representative firms in performing services of a similar nature at the time and place the Services are performed.

ARTICLE 4

OWNER'S RESPONSIBILITIES

4.1 INFORMATION PROVIDED BY OWNER

Resolution 4951

Exhibit B

4.1.1 The Owner shall provide full information in a timely manner regarding requirements for the Project, including the Owner's Program requirements and other relevant information necessary for the Owner's Representative to provide its services.

4.1.2 The Owner shall provide reasonable evidence satisfactory to the Owner's Representative, prior to commencing the Owner's Representative Services and during the progress of the Owner's Representative Services, that sufficient funds are available and committed for Owner's Representative Services as may be approved in the course of this Agreement. Unless such reasonable evidence is provided, the Owner's Representative shall not be required to commence or continue the Owner's Representative Services. The Owner's Representative may stop Owner's Representative Services after thirty (30) days' written notice to the Owner if such evidence is not presented within a reasonable time. The failure of the Owner's Representative to insist upon the providing of this evidence at any one time shall not be a waiver of the Owner's obligation to make payments pursuant to this Agreement, nor shall it be a waiver of the Owner's Representative's right to request or insist that such evidence be provided at a later date.

4.1.3 The Owner's Representative shall be entitled to rely on the completeness and accuracy of the information required by this Paragraph 4.1. After reasonable evidence of financial arrangements has been furnished, the Owner shall not materially vary such financial arrangements without prior notice to the Owner's Representative.

4.2 OWNER'S RESPONSIBILITIES DURING PHASES OF SERVICE

4.2.1 The Owner shall contract directly with other firms for the provision of design, supervision, construction, other related services, and work and goods required to be implemented by the Program as described in Exhibit "B".

4.2.1.1 All contracts let by or on behalf of the Owner in connection with the Program shall contain a provision providing that the other party to the contract agree to defend, indemnify and hold the Owner's Representative harmless from all claims for bodily injury and property damage to the extent of the negligence attributed to such acts or omissions by the other party to the contract or anyone employed directly or indirectly by them or anyone for whose acts they may be liable. In addition, all such contracts shall contain a provision requiring the other party to include the Owner's Representative as an additional named insured party, primary and noncontributory, on their insurance policies for the project. Finally, all such contracts and any subcontracts thereunder shall include the Owner's Representative expressly as a beneficiary of any "No damage for Delay Clause" or other clause limiting the liability of the Owner for economic losses suffered by a contractor or subcontractor.

4.2.1.2 Other than as set forth on Exhibit "B", the Owner's Representative shall not be responsible for, nor liable to the Owner for any damages arising out of, the failure of other persons providing services, work or goods to the Owner to carry out the performance, of their contracts with the Owner.

4.2.1.3 The Owner shall direct that communications with the Owner's direct contractors shall be through the Owner's Representative as Owner's Representative.

4.2.2 If the Owner becomes aware of any error, omission or failure of the Owner's Representative to meet the requirements of this Agreement the Owner shall give prompt written notice to the Owner's Representative.

ARTICLE 5

PARTIES' REPRESENTATIVES

5.1 The Owner and the Owner's Representative agree that the success of their contractual relationship will depend in large part on the individuals designated to represent the Owner and the Owner's Representative for the purposes of this Agreement. In order to further the team relationship contemplated by this Agreement, the Owner and the Owner's Representative agree that their respective individual representatives will be mutually agreeable and that these representatives will not be changed except upon written consent, which will not be unreasonably withheld. The Owner and Owner's Representative shall each designate, in writing, two individuals, one as their primary representative and the second as an alternate to act in the absence of the primary representative. The primary representative and the alternate shall each have the authority to bind the respective parties in all matters requiring the parties' approval, authorization or written notice to the extent permitted by law.

5.2 OWNER'S REPRESENTATIVE'S REPRESENTATIVE The Owner's Representative's representatives shall be fully acquainted with the Owner's Representative's Scope of Services. The individuals identified on Exhibit "C" shall not be changed without the written consent of the Owner, which will not be unreasonably withheld, and each individual will meet or exceed the necessary hours worked as set forth in Exhibit "C" as necessary to complete the terms of this Agreement.

5.3 OWNER'S REPRESENTATIVES The Owner's representatives shall be fully acquainted with the Owner's Program.

5.4 The primary representatives shall communicate with each other as often as needed during the term of this Agreement and, at a minimum, shall confer either personally or by telephone at least weekly.

ARTICLE 6

CONTRACT DURATION

6.1 COMMENCEMENT OF THE OWNER'S REPRESENTATIVE SERVICES The Owner's Representative Services shall commence on or about **(DATE)** upon written directive from Owner to Owner's Representative.

6.2 DEVELOPMENT OF THE PROGRAM SCHEDULE The Owner's Representative, based upon information provided in the Owner's Program, shall submit an initial Program Schedule and Management Plan to the Owner for review on or before **(DATE)**.

6.3 AMENDMENTS TO THE PROGRAM SCHEDULE The Owner's Representative Services shall proceed in general accordance with the approved Program Schedule as such schedule may be amended from time to time, subject to Subparagraph 4.1.2. In the event delays to the implementation of Owner's Program are encountered for any reason, the parties agree to undertake reasonable steps to manage and mitigate the effect of such delays. If causes beyond the Owner's Representative's reasonable control delay, extend or change the time for performance of the Owner's Representative Services, the compensation for Owner's Representative's Service and the Schedule may be equitably adjusted.

ARTICLE 7

COMPENSATION

7.1 COMPENSATION Upon execution of this Agreement, payments will be made as set forth in Article 13.1.

7.2 The Owner's Representative's shall be compensated for the services described in the Exhibit "B" and as set forth in Article 13.1.

7.3 ADJUSTMENT IN THE OWNER'S REPRESENTATIVE'S FEE

In addition to causes for fee adjustment noted, the Owner's Representative's Fee may be adjusted as follows:

- .1** For delays in the Owner's Representative Services not caused by the Owner's Representative, there may be an equitable adjustment in the Owner's Representative's Fee to compensate the Owner's Representative for increased expenses; and
- .2** If the Owner's Representative is placed in charge of managing the replacement of an insured or uninsured loss, the Owner's Representative shall be paid an additional fee in the same proportion that the Owner's Representative's Fee bears to the estimated cost of the Owner's Representative Services.

7.4 PAYMENTS Payments for Owner's Representative Services shall be due and payable within ten (10) days following presentation of the Owner's Representative's monthly invoice to the Owner. If the Owner fails to pay the Owner's Representative as agreed, then the Owner's Representative shall have the right to stop the services. Payments due but unpaid shall bear interest at the rate of 2% per annum.

ARTICLE 8

AMENDMENTS TO THE OWNER'S REPRESENTATIVE SERVICES

8.1 AMENDMENTS Amendments to the Owner's Representative Services which are within the general scope of this Agreement may be accomplished by written amendment between the

parties including adjustments in Compensation, Fee and Cost of Owner's Representative Services as applicable.

8.2 NO OBLIGATION TO PERFORM The Owner's Representative shall not be obligated to perform additional Owner's Representative Services until a written amendment has been executed by the Owner and Owner's Representative.

ARTICLE 9

INDEMNITY AND INSURANCE

9.1 LIABILITY INSURANCE Each party shall be responsible for obtaining and maintaining its own liability insurance for claims arising out of the performance of this agreement. Owners Representative shall obtain and provide proof of general liability and errors and omissions coverage in the amount of \$2,000,000 each on or before **(DATE)**.

ARTICLE 10

TERMINATION OF THE AGREEMENT AND OWNER'S RIGHT TO PERFORM OWNER'S REPRESENTATIVE'S SERVICES

10.1 TERMINATION BY THE OWNER'S REPRESENTATIVE

10.1.1 Upon Thirty (30) days' written notice to the Owner, the Owner's Representative may terminate this Agreement for any of the following reasons:

- .1** If the Services have been stopped for a thirty (30) day period
 - a.** Under court order or order of other governmental authorities having jurisdiction.
 - b.** As a result of the declaration of a national emergency or other governmental act; or
 - c.** Because of the Owner's failure to pay the Owner's Representative in accordance with this Agreement;
- .2** If the Services are suspended by the Owner for sixty (60) days;
- .3** If the Owner materially delays the Owner's Representative in the performance of the Owner's Representative Services;
- .4** If the Owner otherwise materially breaches this Agreement; or
- .5** If the Owner fails to furnish reasonable evidence that sufficient funds are available and committed for the entire cost of the Project in accordance with Subparagraph 4.1.2 of this Agreement.

10.1.2 Upon termination by the Owner's Representative in accordance with Subparagraph 10.1.1, the Owner's Representative shall be entitled to recover from the Owner payment for all Owner's Representative Services performed prior to termination, plus reasonable demobilization costs.

10.2 OWNER'S RIGHT TO PERFORM OWNER'S REPRESENTATIVE'S OBLIGATIONS AND TERMINATION BY THE OWNER FOR CAUSE

10.2.1 If the Owner's Representative fails to perform any of its material obligations under this Agreement, the Owner may, after thirty (30) days' written notice, during which period the Owner's Representative fails to perform such obligation, undertake to perform such obligations.

10.2.2 Upon thirty (30) days' written notice to the Owner's Representative, the Owner may terminate this Agreement for any of the following reasons:

- .1** If in the reasonable opinion of the Owner, the Owner's Representative fails to perform to the satisfaction of the owner;
- .2** If the Owner's Representative has received payment from the Owner but does not make proper payment to its consultants and service providers;
- .3** If the Owner's Representative fails to abide by the orders, regulations, rules, ordinances or laws of governmental authorities having jurisdiction; or
- .4** If the Owner's Representative otherwise materially breaches this Agreement.

10.2.3 If the Owner's Representative files a petition under the Bankruptcy Code, this Agreement shall terminate if the Owner's Representative or the Owner's Representative's trustee rejects the Agreement or, if there has been a default and the Owner's Representative is unable to give adequate assurance that the Owner's Representative will perform as required by this Agreement or otherwise is unable to comply with the requirements for assuming this Agreement under the applicable provisions of the Bankruptcy Code.

10.2.4 In the event the Owner exercises its rights under Subparagraph 10.2.1, 10.2.2, or 10.2.3, upon the request of the Owner's Representative, the Owner shall provide a detailed accounting of the cost incurred by the Owner.

10.3 TERMINATION BY OWNER WITHOUT CAUSE If the Owner terminates this Agreement other than as set forth in Paragraph 10.2, the Owner shall pay the Owner's Representative for all Owner's Representative Services executed to date and reasonable demobilization costs.

10.4 SUSPENSION BY THE OWNER FOR CONVENIENCE

10.4.1 The Owner may order the Owner's Representative in writing to suspend, delay or interrupt all or any part of the Owner's Representative Services without cause for such period of

time, not to exceed thirty (30) days, as the Owner may determine to be appropriate for its convenience.

10.4.2 Adjustments caused by suspension, delay or interruption may be made for increases or decreases in the Owner's Representative's Compensation and schedule adjustments as necessary. No adjustment shall be made if another provision of this Agreement is applied to render an equitable adjustment.

ARTICLE 11

DISPUTE RESOLUTION

11.1 INITIAL DISPUTE RESOLUTION If a dispute arises out of or relates to this Agreement or its breach, the parties shall direct their Representatives to endeavor to settle the dispute first through direct discussions. If the dispute cannot be resolved through direct discussions, the parties shall participate in mediation under the Construction Industry Mediation Rules of the American Arbitration Association then in effect unless the parties mutually agree otherwise before recourse to arbitration. The representatives designated pursuant to Paragraph 5.1 shall attend all mediation sessions. The location of the mediation shall be Vestavia Hills, Alabama. Once one party files a request for mediation with the other contracting party and with the American Arbitration Association, the parties agree to commence such mediation within sixty (60) days of filing of the request. Either party may terminate the mediation at any time after the first session, but the decision to terminate must be delivered in person by the party representative to the other party's representative and the mediator. Engaging in mediation is a condition precedent to arbitration.

11.2 AGREEMENT TO ARBITRATE Any controversy or claim arising out of or relating to this agreement or its breach not resolved by mediation, except for claims which have been waived by the making or acceptance of final payment, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect unless the parties mutually agree otherwise. Notwithstanding Paragraph 13.2, this agreement to arbitrate shall be governed by the Federal Arbitration Act. The Arbitration hearings shall take place in Vestavia Hills, Alabama on consecutive workdays. Unless the parties mutually agree otherwise, the hearings shall conclude within two months of the first hearing date.

11.3 NOTICE OF DEMAND A written demand for arbitration shall be filed with the American Arbitration Association and the other party to this Agreement within a reasonable time after the dispute or claim has arisen, but in no event after the applicable statute of limitations for a legal or equitable proceeding would have run.

11.4 AWARD The arbitration award shall be final. Judgment upon the award may be confirmed in any court having jurisdiction.

11.5 SERVICE CONTINUANCE AND PAYMENT Unless otherwise agreed in writing, the Owner's Representative shall continue the Owner's Representative Services and maintain the

approved schedules during any mediation or arbitration proceedings. If the Owner’s Representative continues to perform, the Owner shall continue to make payments in accordance with this Agreement.

11.6 COST OF DISPUTE RESOLUTION The cost of any mediation proceeding shall be shared equally by the parties participating. The prevailing party in any dispute arising out of or relating to this Agreement or its breach that is resolved by arbitration or litigation shall be entitled to recover from the other party reasonable attorney’s fees, costs and expenses incurred by the prevailing party in connection with such arbitration or litigation.

ARTICLE 12

MISCELLANEOUS PROVISIONS

12.1 ASSIGNMENT Neither the Owner nor the Owner’s Representative shall assign their interest in this Agreement without the written consent of the other except as to the assignment of proceeds.

12.2 GOVERNING LAW This Agreement shall be governed by the law of the State of Alabama.

12.3 SEVERABILITY The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.

12.4 NO WAIVER OF PERFORMANCE The failure of either party to insist, in any one or more instances, on the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right with respect to further performance.

12.5 TITLES The title given to the Articles of this Agreement are for ease of reference only and shall not be relied upon or cited for any other purpose.

ARTICLE 13

OTHER CONDITIONS

13.1 OTHER PROVISIONS

The Compensation for the Owner Representative Basic Scope of Services as listed in Exhibit “B” to this Agreement shall be a fixed, stipulated sum amount of:

Phase I Services	\$ 120,000.00
Phase II Services	\$ 373,650.00
Phase III Services:	\$1,002,000.00
Total	\$1,495,650.00

as listed in Exhibit "C", dated March 31, 2017.

It is anticipated that there may be a period of time between the completion of the Owner's Representative work on a particular Phase of Services and the Owner's written decision on whether to proceed to the next Phase of Service or to terminate the contract. If the Owner terminates the Contract it shall do so in accordance with Article 10.3 of the Agreement.

If the period of time between the completion of the Owner's Representatives work on a particular Phase of Service and the Owner's written decision exceeds thirty (30) days the Owner should act in accordance with Article 10.4 of the Agreement.

For delays in the Owner's Representative Services that exceed thirty (30) days and are not caused by the Owner's Representative, the Owner's representative reserves the right to request an equitable adjustment in the Owner's Representative's Fee to compensate the Owner's Representative for increased expenses.

By signing this contract, the contracting parties affirm, for the duration of the agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom.

By signing this agreement, TCU Consulting Services, LLC represents that it is not currently engaged in, nor will it engage in, the boycott of a person or an entity based in or doing business with a jurisdiction with which Alabama can enjoy open trade.

This Agreement is entered into as of the date entered in Article 1.

OWNER: CITY OF VESTAVIA HILLS ◆

ATTEST: _____

BY: _____ ◆

PRINT NAME: Mayor Ashley Curry ◆

PRINT TITLE: Mayor ◆

Resolution 4951
Exhibit B

ATTEST:

BY: _____ ◆

PRINT NAME: City Manager Jeffrey Downes

PRINT TITLE: City Manager

(Note: In Manager-Council Act, any contract requires Mayor and City Manager signature if the contract in greater than one year in duration)

OWNER'S REPRESENTATIVE: TCU CONSULTING SERVICES, LLC ◆

ATTEST: _____

BY: _____ ◆

PRINT NAME: W. Ken Upchurch, III ◆

PRINT TITLE: Managing Partner ◆

EXHIBIT A

City of Vestavia Hills Community Spaces Plan, dated November 2016

EXHIBIT B

City of Vestavia Hills Community Spaces Plan Implementation Request for Proposal, dated
March 1, 2017

EXHIBIT C

TCU Consulting Services Response to City of Vestavia Hills Community Spaces Plan
Implementation RFP, dated March 31, 2017



VESTAVIA HILLS

COMMUNITY SPACES PLAN
PROGRAM MANAGEMENT
SERVICES

March 31, 2017



T.C.U. Consulting Services, LLC
2895 Eastern Blvd., Suite 150
Montgomery, AL 36116
p: 334-420.1500 f: 334.420.1503
www.tcuconsulting.com





May 31, 2017

City of Vestavia Hills
Mr. Jeff Downes, City Manager
1032 Montgomery Highway
Vestavia Hills, Alabama 35216

**RE: Request for Proposal for Capital Projects Program Management Services
Associated with the Community Spaces Plan**

Dear Mr. Downes:

TCU Consulting Services appreciates the opportunity to provide Program Management services for the Vestavia Hills Community Spaces Plan.

As a proven Program Manager, TCU would serve as an Owner's Representative and advocate for the City of Vestavia Hills to assure the successful design, construction and occupancy of every project. We have managed or are currently managing multi-million dollar building programs for Midfield City Schools, Sylacauga City Schools, Huntsville City Schools, Montgomery Public Schools, the Greene County School System, Alabama State University, the Alabama Housing Finance Authority, the Montgomery County Commission, and the City of Montgomery. Our clients will confirm that the TCU team works diligently and efficiently to maximize both the quality and economic benefits for their projects. Our assertive management has allowed each client to realize meaningful cost savings on their projects. Just Ask Them!

Why TCU?

TCU is committed to optimizing your investment. This is more than just another project for our portfolio, we live in central Alabama and must be accountable not only to you but to your community. As your Program Manager, we will function as an extension of your staff to work with you and the entire project team for a successful project.

Technical Resources – With in-house experts in all areas of design, construction administration, architecture, civil, structural, mechanical, plumbing, fire protection, electrical and industrial engineering, we have direct access to all of the technical resources to respond to any issues raised during the course of any project design and construction. Our staff includes consultants with areas of expertise in constructability reviews, LEED certification, cost estimating, value engineering and scheduling.

E-Builder – TCU utilizes a web-based program communication and administration tool to ensure daily project documentation and quick Owner access to project status, schedule, and budget.

Experience – Our team has an average of over 30 years of experience in strong design, construction and service backgrounds. The team has the ability to effectively administer the design process while assuring the design meets the Owner’s stated needs. The team has on-site experience to assess and verify the installation meets the intent of the contract documents and to manage verification of operability of systems.

Minority Participation Commitment. Our firm has 50% Minority Ownership. We employ 20% women. We maintain an internal Minority Participation policy for all employees to follow on his or her projects. We work diligently with all MBE/DBE/WBE Advocacy Groups state-wide to ensure the projects we manage are advertised to all contractors regardless of company size. We coordinate pre-bid meetings to facilitate understanding of the plans by all sub-contractors and their introduction to large general construction companies.

Knowledge and Access - TCU Consulting Services is the right choice for the following reasons: TCU has the staff, internal controls, software and expertise to manage all of your project phases. TCU’s knowledge, experience and working relationships in the local construction market will bring real value to the construction program. You will be dealing with a firm that you can trust and depend on to always be accessible and to keep your interests first.

We want your work!

Sincerely,



W. Ken Upchurch, III
Principal
TCU Consulting Services, LLC.



Percy Thomas
Principal
TCU Consulting Services, LLC.

PROGRAM MANAGEMENT SERVICES

Submitted to:
 Jeff Downes
 City Manager
 City of Vestavia Hills
 1032 Montgomery Highway
 Vestavia Hills, AL 35216

Submitted by:
 Mr. W. Ken Upchurch, III
 TCU Consulting Services
 2895 Eastern Blvd.
 Suite 150
 Montgomery, Alabama 36116

Submission date:
 March 31, 2017
 4:00 p.m.

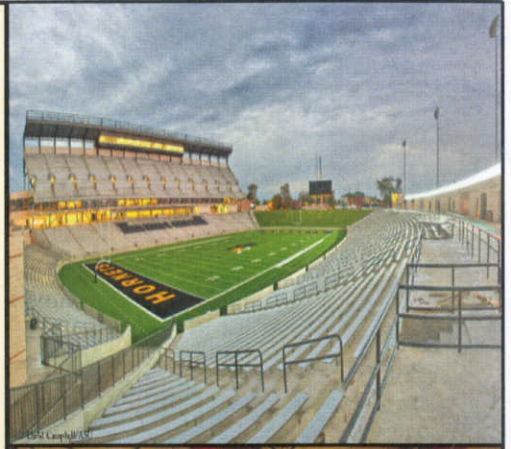
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VESTAVIA HILLS

STAFFING & GENERAL INFORMATION

See Appendix For Additional Staffing & General Information

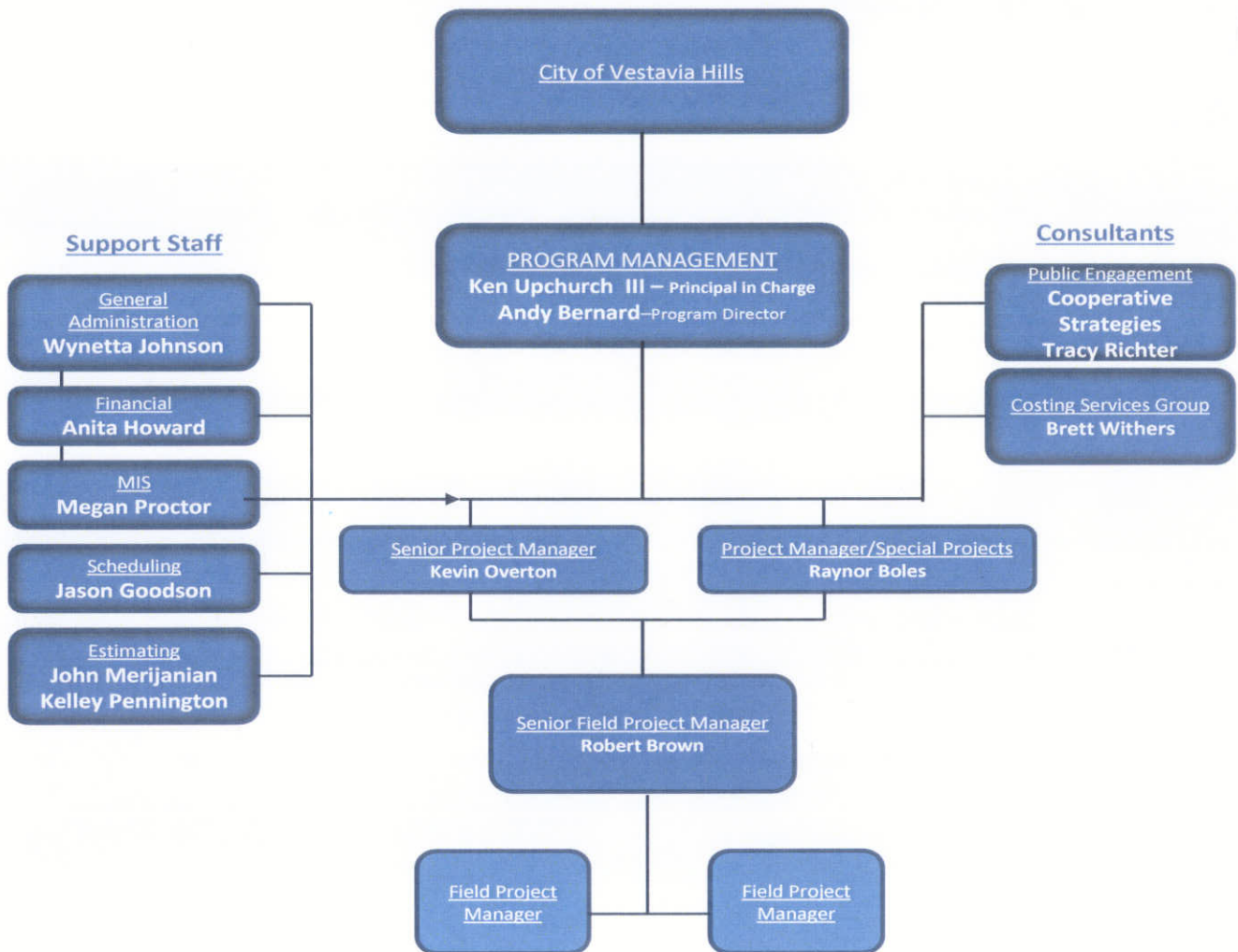


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www.tcuconsulting.com





**TCU Consulting Services, LLC - Program Managers
City of Vestavia Hills
Program Specific Organizational Chart**



Staffing Approach/Reasoning

The TCU staff dedicated to implement the City of Vestavia Hills’ Community Spaces Plan, as shown on the TCU Organizational Chart and the TCU Personnel Staffing Matrix are a proven team that works together for the benefit of their clients. This team is in the final stages of a very successful 5-year, \$291 Million Capital Projects Program engagement for Huntsville City Schools and ideally suited to start immediately for you.

This is our “A” team that will provide the right people to successfully manage the City of Vestavia Hills’ Community Spaces Plan. We want your work!



City of Vestavia Hills
Community Spaces Plan

TCU Personnel Staffing Matrix

March 31, 2017

Task and Activities	Ken Upchurch	Andy Bernard	Kevin Overton	Raynor Boles	Robert Brown	Field Project Managers	Support Services	Total Hours
	Hours	Hours	Hours	Hours	Hours	Hours	Hours	
PHASE ONE								
Budget Validation, Execution Strategy								
June 1, 2017 - August 31, 2017	90	180	180	180	-	-	96	726
PHASE TWO								
Pre-Design								
September 1, 2017-September 30, 2017	20	20	40	40	-	-	20	140
Design								
October 1, 2017 - June 30, 2018	90	180	360	360	100	-	180	1,270
Bid and Award								
July 1, 2018 - August 31, 2018	10	20	60	60	-	-	-	150
PHASE THREE								
Construction								
September 1, 2018 - May 31, 2020	110	220	1,800	1,200	3,360	840	412	7,942
Post Construction								
June 1, 2020 - August 31, 2020	60	60	90	90	360	-	-	660
Warranty Period								
September 1, 2020 - August 31, 2021	24	24	50	50	60	-	20	228
Personnel Totals	404	704	2,580	1,980	3,880	840	728	11,116

NOTE: TCU does not charge a Client for the Principal in Charge direct labor cost or expenses. The Principal in Charge's time is shown to demonstrate the minimum number of hours that the Principal in Charge will commit to the Program

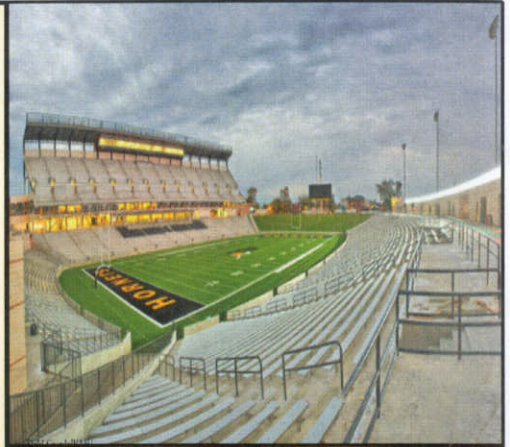




VESTAVIA HILLS

E-VERIFY/MOU

See Appendix 9 for a copy of Actual E-Verify MOU



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TCU CONSULTING SERVICES, LLC
CONSTRUCTION CONSULTANTS

Owner Representation
Program Management
Facilities Planning
Strategic Planning
Construction Claims Consulting
Development Consulting

March 31, 2017

Mr. Jeff Downes
City Manager
City of Vestavia Hills
1032 Montgomery Highway
Vestavia Hills, Alabama 35216

Re: Request for Proposals for Capital Projects Program Management
Services Associated with the Community Spaces Plan

Dear Mr. Downes:

TCU Consulting Services, LLC is jointly owned by W. K. Upchurch Construction Co., Inc. and Thomas Construction & Masonry, Inc.

Everyone working on behalf of TCU Consulting Services, LLC are actually employees of and compensated by W.K. Upchurch Construction Co., Inc. and are assigned to work for TCU Consulting Services, LLC.

The reason for this assigned employee arrangement is that initially most employees that would be assigned to TCU were current W.K. Upchurch Construction Co., Inc. employees and we did not want to penalize them in relation to the benefits package they currently had with WKU. Additionally there are cost benefits by having a larger single group benefits package than two smaller group packages.

Therefore, the E-Verify Memorandum of Understanding, as attached in Appendix 9-2, is in the name of W.K. Upchurch Construction Co., Inc. since that is where the employees are verified and compensated.

If you have any questions or need any additional information, let me know.

Sincerely,

W. Ken Upchurch, III
TCU Consulting Services, LLC





VESTAVIA HILLS

ALABAMA EXPERIENCE/ PRESENCE

See Appendix 9, Tab 3 for additional information on TCU's Experience



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AUBURN

BIRMINGHAM

HUNTSVILLE

MONTGOMERY

CLIENT	TOTAL PROGRAM VALUE	CLIENT CONTACT	SERVICES
Montgomery Public Schools - Phase 1 3 Elementary Schools, 2 Middle Schools Comprehensive High School Advanced Mfg Center, Misc Renovations	165 Million	Margaret Allen, Supt. Ron Glover, CFO Donald Dotson, Operations 334-223-6710	Program Management Facility Assessments
Montgomery Public Schools - Phase 2 1 High School, Career Tech Center Campus Utilities, Misc Renovations Projects	47.5 Million	Margaret Allen, Supt. Ron Glover, CFO 334-223-6710	Program Management Facility Assessments
Huntsville City Schools Stadium Renovations, 2 New High Schools 2 New Elementary Schools, New P-8 School, Misc. Renovations Projects, Facility Assessments, Deferred Maintenance	291 Million	Dr. Matt Akin, Supt Jason Taylor, CFO Dr. Jeff Wilson, Operations 256-428-8346	Program Management Facility Assessments
Auburn City Schools Facility Assessments, Site Evaluations High School Programming Documents, New High School	78 Million	Dr. Karen Delano Dr. Dennis Veronese, CFO 334-887-2100	Program Management Facility Assessments
Greene County Board of Education Comprehensive High School Facility Career Center, Athletic Facilities	20 Million	Dr. James Carter, Supt Leon Dowe, CFO 205-372-3161	Program Management
Sylacauga City Schools High School Renovations	20 Million	Renee Riggins, Supt Johnny Gray, Operations 256-245-5256	Owner Representation Construction Admin
Midfield City Schools Renovations to HS & MS	12 Million	Demise Sanders, Supt Jason Cox, Operations 205-923-2262	Program Management
Alabama State University Dorms, Stadium, Educational Buildings Misc Renovations, Athletic Facilities, Campus Infrastructure, Student Center	260 Million	Scott Standerfer, Facilities Director 334-229-6995	Program Management Facility Assessments
City of Montgomery Questplex, Multipurpose Sports Complex Stadium Renovations, Connector Road City Hall Renovations, Police & Fire Stations Misc Projects	85 Million	Mayor Todd Strange Mac McLeod, Development Director 334-625-2000	Program Management
Montgomery County Commission Detention Facility, Historic Adaptation for County Administrative Offices, Renovations	83 Million	Elton Dean, Commission Chair Donnie Mims, Administrator 334-832-1357	Program Management
Montgomery YMCA YMCA Facility	12.5 Million	Gary Cobb, President 334-269-4362	Program Management
Montgomery Academy School Renovations to Educational Buildings	10 Million	Amy Forrest, CFO 334-272-8210	Program Management
Alabama Housing Finance Authority Multi-Family Affordable Housing Units	Varies	Jeff Little, Administrator 334-244-9200	Owner Representation



VESTAVIA HILLS

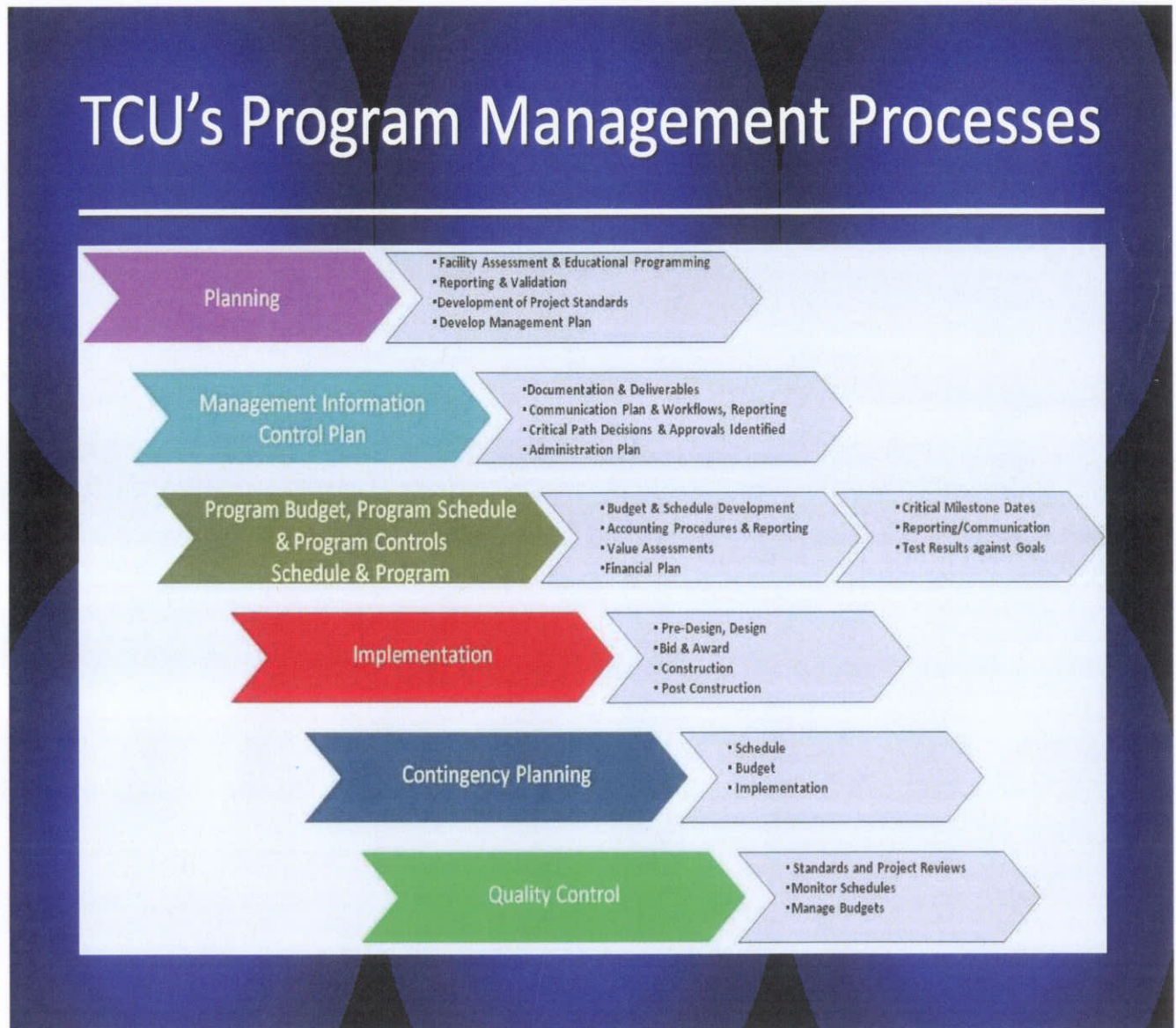
PROJECT MANAGEMENT

See Appendix 9, Tab 4 for additional TCU Project Management Information



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To administer the Vestavia Hills Community Spaces Plans Implementation, TCU will prepare a Management Plan, the Program Budget and a Master Schedule for the Program.

The guiding processes of TCU's approach to Program Management are Planning, MIS, Control, Implementation, Contingency Planning, and Quality Control.

By using the Management Plan, the Program Budget and Master Schedule as the "Absolutes", TCU's Program Director and Project Managers use the management processes in a systematic approach to ensure that all aspects of each phase meets the goals and objectives of the client.



VESTAVIA HILLS

CONFLICTS OF INTEREST



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TCU CONSULTING SERVICES, LLC
CONSTRUCTION CONSULTANTS

Owner Representation
Program Management
Facilities Planning
Strategic Planning
Construction Claims Consulting
Development Consulting

March 31, 2017

Mr. Jeff Downes
City Manager
City of Vestavia Hills
1032 Montgomery Highway
Vestavia Hills, Alabama 35216

Re: Request for Proposals for Capital Projects Program Management
Services Associated with the Community Spaces Plan

Dear Mr. Downes:

TCU Consulting Services, LLC is not aware of any Conflicts of Interest pertaining to any work for the City of Vestavia Hills.

If at any point, TCU perceives even the potential of a possible Conflict of Interest we will notify the City of Vestavia Hills immediately.

If you have any questions or need any additional information, let me know.

Sincerely,

W. Ken Upchurch, III
TCU Consulting Services, LLC





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REFERENCES

See Appendix 9, Tab 5 for additional references for TCU Project Staffing



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Matthew Akin, Ed.D.
Superintendent



BOARD OF EDUCATION

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Pam Hill - District 5

March 29, 2017

Mr. Jeff Downes
 City Manager
 City of Vestavia Hills
 1032 Montgomery Highway
 Vestavia Hills, Alabama 35216

Dear Mr. Downes:

In my letter of reference for Ken Upchurch and TCU Consulting Services, LLC, I focused on the overall impact that the firm has had on the district since its initial engagement in 2012, As Director of Operations for Huntsville City Schools, highlighting their embrace of and partnership in my commitment to creating and maintaining holistically sustainable learning environments which enable all students to maximize their learning opportunities in all their work on capital planning, program management, and other analytic and consulting services related to facilities operations. In this letter, I will address how specific contributions from specific individuals within TCU have combined to contribute to the exemplary end results.

One primary hallmark of an effective leader is the ability to employ the right people for the right tasks. Ken has certainly done that here in Huntsville, and early on demonstrated his commitment to a long term relationship by opening an office in Huntsville and staffing that office with a core of people either already rooted in the community or willing to spend substantial time here during project execution. Because TCU is a multi-faceted organization that provides a plethora of different services, I will highlight in this letter individuals who represent different colors of the TCU spectrum of capabilities: Andy Bernard (strategic and operational level program management and energy management); Raynor Boles (strategic analytics); Kevin Overton (operational level project management); and Robert Brown (tactical level project management).

Andy Bernard was one of the first program managers employed by TCU in Huntsville, and adroitly led the 2013-2014 Huntsville High School Freshman Academy project before being designated by Ken Upchurch as head of the TCU Huntsville office. Andy has consistently and continuously kept a laser-like focus on budget, and promulgates that diligence in funds stewardship in all his interactions with district and school level personnel. Andy is a Certified Energy Manager who, having owned his own energy company at one time, understands in great detail the opportunities and risks associated with all the

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primary transformational energy options. One of the first priorities I had when coming to the district in 2012 was the development of an energy strategy that would include shifting to LED lighting, smart building technology that would enable the buildings to be used as educational tools through a multiplicity of graphic display interfaces, and the potential inclusion of solar power and green roof technology in the new buildings. It is not hyperbole to say that Andy Bernard brought my vision to life. Andy has worked diligently and passionately with my Director of Construction and Renovation to develop a district Energy Master Plan that won the 2016 Project of the Year Award from the Association of Energy Engineers Region 2, featuring the energy savings gained from the decommissioning of old buildings, the energy efficiencies gained by LED lighting and building controls in the new buildings, a district wide LED retrofit strategy (already in execution phase), partnership with Huntsville Utilities in sub-metering our buildings, and partnerships with several firms in development and testing in our schools of energy efficient building materials.

Raynor Boles came to TCU in 2012, straight from the University of Alabama with a degree in building science. Energetic and smart, Raynor quickly distinguished himself as a superb data analyst in our arduous re-zoning planning sessions between 2012 and 2014 that were a precursor to the achievement of a Consent Order with the U.S. Department of Justice that set a course for working toward Unitary Status for the district. As we worked with data provided by our demographer using geographic information systems, Raynor was uniquely able to see the maps as a chess master sees a chess board, looking holistically at the data and making recommendations that by and large were accepted and included in the re-zoning proposal that formed the foundation of the Consent Order. Further, Raynor has a precise spatial sense that makes him invaluable in determining building capacity rubrics that are essential in Consent Order implementation. I cannot overstate Raynor's continued contributions over three years in to the Consent Order implementation on any question that revolves around demographics and building capacity analysis.

Kevin Overton joined the team here in Huntsville in 2016, and has been instrumental in the operational level program management of our capital plan. Working with my Director of Construction and Renovation, Kevin is a primary interface with senior leadership in both the architectural and construction firms who are building our facilities. A former U.S. Navy Surface Warfare Officer, Kevin brings the meticulous attention to detail in all aspects of engineering management for which the Navy is known to every job in Huntsville. I personally appreciated this attention to detail when a water main burst on a Sunday morning in January 2016. Kevin was on site with drawings in hand less than 30 minutes after notification, and was able to precisely identify the point of failure, join the Director of Construction and Renovation to direct crews to dig with minimal disruption of existing concrete, and manage the repair in such a way as to guarantee by noon Sunday that the school would be functional Monday morning.

Robert Brown is truly a master of many disciplines. He has been in the field for about 50 years, owned his own firm, and applies this broad and deep knowledge of building design and construction on site on multiple projects. Of all the many tasks that Robert has performed for the district, I personally appreciate Robert's work on punch lists and warranty claims after the buildings are occupied. I think that the exemplary after-occupation work that TCU does in these areas, which require continual interface with multiple teachers and administrators in the buildings, is one more area that sets TCU apart from other firms.

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As we now near the end of our ambitious capital plan, I reflect with total satisfaction on the end results, to which the aforementioned individuals played key roles. Standing before two new high schools, one new junior high school, two new P-8 schools, one new elementary school, one substantial elementary school renovation (the addition of a new classroom wing), one total building renovation (a new theater and total classroom renovation for our Academy for Academics and Arts P-8), and one high school Freshman Academy building, I state with complete confidence that no other company than TCU could have brought our paper and pencil vision to brick and mortar reality within designated resource parameters and within the designated time frame with the same sense of total commitment to the strategic vision of the district.

Ken Upchurch and TCU Consulting Services, LLC have embodied excellence in everything they have done and are currently doing for Huntsville City Schools. I am sure they will do the same for you, and invite you to contact me at Jeffrey.wilson@hsv-k12.org, or 256-428-8346, for further conversation if you have any questions. Thank you for considering my comments in your decision making process.



Jeffrey S. Wilson, Ed.D.
Director of Operations
Huntsville City Schools

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FEES /COMPENSATION



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TCU FEE PROPOSAL

The Compensation for Program Management Services, detailed in the Request for Phase I & II, and for Phase III for the Request for Proposals for Capital Projects Program Management Services Associated with the Community Spaces Plan date March 1, 2017, **shall be a fixed, stipulated sum amount of:**

Phase I & Phase II Services	\$ 493,650.00
Phase III Services	<u>\$1,002,000.00</u>
	\$1,495,650.00

The fixed, stipulated sum amount includes all expenses such as staffing, other consultants, travel, lodging, reproductions, printing, overtime expenses, office expenses and all other project related expenses and is based on an initial Program Budget of approximately \$50,000,000.00.

The Program Manager (PM) shall be the Owner's agent, shall exercise its skill, expertise and judgment in furnishing PM services and shall not in any respect serve as a General Contractor, Construction Manager or Subcontractor.

The Owner and the Program Manager shall each designate, in writing, a primary representative and a secondary representative within fifteen days of the execution an agreement.

The PM Services duration for this agreement will be approximately thirty-nine (39) months (estimated to be June 2017 – August 2020) from the date of the Notice to Proceed provided by the Owner.

Payments will be due on the 10th of each month beginning with the initial Invoice to be submitted on the first day of the month following the Notice To Proceed and monthly thereafter. The Owner shall make monthly progress payments based on the PM's completed work in that month. All billings and corresponding payments will be for prior completed services. There will be no billings in advance of services performed.

The PM will not be due any compensation for additional services without the prior written consent of the Owner.

If causes beyond the PM's reasonable control delay, extend or change the time for performance of the Program Manager's Services, past 39 months, the compensation for Program Manager's Service and the Schedule shall be equitably adjusted if mutually agreeable to both parties.

CONTRACT ADJUSTMENTS:

TCU is willing at the start of each Phase of the work to review and negotiate all components of its Fixed Fee amount to allow the City of Vestavia Hills to adjust any component to better serve the City of Vestavia Hills needs.



VESTAVIA HILLS

APPENDIX

9-1	General Information	Tab 1
9-2	E-Verify MOE	Tab 2
9-3	Alabama Experience	Tab 3
9-4	Project Management	Tab 4
9-5	References	Tab 5



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FIRM PROFILE

TCU Consulting Services, LLC.
2895 Eastern Boulevard, Suite 150
Montgomery, AL 36116
334-420-1500 (Phone)
334-420-1503 (Fax)

Established in 2005

TCU Consulting specializes in Program Management, Owner Representation, Facility Assessment, Facility Planning, Strategic Planning, Programming, Development Consulting, Claims Consulting.

HISTORY AND GROWTH OF THE FIRM

TCU consulting Services, LLC was founded in 2005 by Percy Thomas and Ken Upchurch to provide Program Management / Owner Representation Consulting Services for clients faced with the ever changing and complex world of construction project delivery.

Building on a career spent working together as contractors and as friends, TCU Consulting Services was formed as a 50/50 ownership venture between the two men (one black, one white). This unique business model is not only successful for the company but is providing a valuable example of what can be done when individuals with diverse backgrounds come together as one.

The firm has steadily grown since its inception by providing its clients with successful owner representation and program management services, internal controls, management information control software and construction expertise without the layers of bureaucracy that comes with large consulting firms.

As Program Manager, TCU provides pragmatic advice on all phases of a Client's Construction Program – from assessments, programming, planning, budgeting, scheduling, design, bid, award, construction and move-in. Our services are best described as providing the Owner with the experience and expertise that it currently does not have on staff.

Since its initial engagement and the successful experience TCU provided to the Montgomery County Commission, the firm has been hired to serve as the Program Manager for the Montgomery Public School System, Huntsville City School System, Midfield City School System, Auburn City Schools, Greene County School System, the Montgomery Academy, Sylacauga City School System, Alabama State University, the City of Montgomery, the Montgomery YMCA and others.

TCU has managed client programs ranging from \$10,000,000 to over \$290,000,000.00. Regardless of the program size, TCU brings its program management and customer service approach to every project.

To read more about TCU, see the attached Narrative History of the firm as written by the Montgomery Area Chamber of Commerce. Tab 1.

TCU CONSULTING SERVICES, LLC

Narrative History

TCU Consulting Services, LLC was founded by Percy Thomas and W. Ken Upchurch, III in 2005 as a firm that provides consulting services, management services, owner representation services and resources to manage various elements of a construction program for its clients. From just the two men in 2005 to a team of 20 today, TCU Consulting Services has steadily grown into a successful business. The genesis of this unique business, a 50/50 partnership between Thomas, a black man and Upchurch a white man, started over thirty years ago as each man sought to build their own business career in Montgomery.

As Percy Thomas sought to build Thomas Construction & Masonry, Inc., a masonry construction subcontracting business from almost nothing, Ken Upchurch, III sought to find his niche within a long standing family business, W.K. Upchurch Construction Co., Inc. Both men faced unique and very different challenges as they worked to build their names, businesses and reputations not only within the building industry but in their communities.

Both men worked hard to position their business not only for the current times but for the future as they recognized the ever changing construction industry required new ideas and markets for companies to grow and be successful. Thomas grew his business from a labor service provider to a full service masonry contractor and then to a general contractor while Upchurch sought other market niches such as historic renovations, custom residential construction and a repair, remodeling and maintenance division in which to grow his family business. By changing with the times and finding new markets, both men continue to successfully operate their construction businesses, as well as the TCU Consulting Services business.

At the same time they worked to build their respective businesses, both men sought to serve their communities by using their time, talents and resources to focus on their individual passions. For Thomas it was the development of the minority business communities and for Upchurch it was the improvement of the Montgomery public education system. Thomas founded and operated the Minority Contractors Association in an effort to not only improve the opportunities for minorities to participate in the construction industry, he sought to help minority businesses develop and implement sound business plans and practices. He has worked countless hours to build bridges between white contractors and the minority contractors. Upchurch was a founding member and later president of the Montgomery Education Foundation that seeks to improve public education thru collaboration of stakeholders, best practices methodologies and funding improvements. He also led the successful effort to encourage both the City and County governments to raise taxes to provide additional financial support to the Montgomery Public Schools. Both of these efforts continue to be a primary focus for each man but now they work together on both issues.

As they worked together both as contractors and within the community a mutual respect and then a deep friendship developed between the two men. It was that respect and friendship that led to the development of TCU Consulting Services, LLC. Thomas and Upchurch recognized the need, in the complex world of construction, especially in the public sector, for a locally owned construction consulting firm that could provide its clients with the resources and expertise needed to implement their construction programs.



As they discussed the various business models available for the new venture, it became very apparent that the business culture, philosophy and ethics of each man's current companies were so similar that almost any business model would be available to them. Each man also recognized the unique opportunity, on so many levels, the collaboration of a black man and a white man could afford the business. That is exactly why the two settled on a 50/50 partnership as the business model for their new venture. They decided that if they could not work together as equals then it wouldn't really be necessary for them to form the partnership. Today they sit, sharing a partner's desk, facing each other and making all of the decisions together. There is no third party to mitigate the disputes, they have to look at each other in the eye and work out their differences.

Even though both men are working hard, each managing two business entities, they are still very committed to serving the community. They both actively support many of the community's charitable organizations with their time, talents and resources. Some of the organizations that they support are Montgomery YMCA, the ASU Foundation, Resurrection Catholic Missions, March of Dimes, Partners in Education, A+ Education Partnership, Small Business Resource Center, BCIA, Public Safety Insurance Fund, New Beginnings Resource Center, Montgomery Chamber of Commerce and many other worthy causes in the community.

Thomas and Upchurch both recognized that their business model, the 50/50 partnership between black and white men, would be very unique for Montgomery and would be met with some skepticism. They also recognized the opportunity to demonstrate that their business model could work and be a catalyst for others to follow. After six years of successfully working together both men agree that much of the skepticism is behind them and that most of the community respects their efforts. As Thomas says, "This is a 50/50 partnership. We have managed to open doors on both sides of the community, black and white. The community has seen that a black and a white can work together, that making money crosses racial lines and that together we can work for the betterment of the community." In the end, both men are proud of the success of TCU but more importantly of their friendship and what they have been able to accomplish together.





Company ID Number: 454853

**THE E-VERIFY PROGRAM FOR EMPLOYMENT VERIFICATION
MEMORANDUM OF UNDERSTANDING**

ARTICLE I

PURPOSE AND AUTHORITY

This Memorandum of Understanding (MOU) sets forth the points of agreement between the Department of Homeland Security (DHS) and W. K. Upchurch Construction Co., Inc. (Employer) regarding the Employer's participation in the Employment Eligibility Verification Program (E-Verify). This MOU explains certain features of the E-Verify program and enumerates specific responsibilities of DHS, the Social Security Administration (SSA), and the Employer. E-Verify is a program that electronically confirms an employee's eligibility to work in the United States after completion of the Employment Eligibility Verification Form (Form I-9). For covered government contractors, E-Verify is used to verify the employment eligibility of all newly hired employees and all existing employees assigned to Federal contracts or to verify the entire workforce if the contractor so chooses.

Authority for the E-Verify program is found in Title IV, Subtitle A, of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104-208, 110 Stat. 3009, as amended (8 U.S.C. § 1324a note). Authority for use of the E-Verify program by Federal contractors and subcontractors covered by the terms of Subpart 22.18, "Employment Eligibility Verification", of the Federal Acquisition Regulation (FAR) (hereinafter referred to in this MOU as a "Federal contractor with the FAR E-Verify clause") to verify the employment eligibility of certain employees working on Federal contracts is also found in Subpart 22.18 and in Executive Order 12989, as amended.

ARTICLE II

FUNCTIONS TO BE PERFORMED

A. RESPONSIBILITIES OF SSA

1. SSA agrees to provide the Employer with available information that allows the Employer to confirm the accuracy of Social Security Numbers provided by all employees verified under this MOU and the employment authorization of U.S. citizens.
2. SSA agrees to provide to the Employer appropriate assistance with operational problems that may arise during the Employer's participation in the E-Verify program. SSA agrees to provide the Employer with names, titles, addresses, and telephone numbers of SSA representatives to be contacted during the E-Verify process.
3. SSA agrees to safeguard the information provided by the Employer through the E-Verify program procedures, and to limit access to such information, as is appropriate by law, to individuals responsible for the verification of Social Security Numbers and for evaluation of the E-Verify program or such other persons or entities who may be authorized by SSA as governed



Company ID Number: 454853

by the Privacy Act (5 U.S.C. § 552a), the Social Security Act (42 U.S.C. 1306(a)), and SSA regulations (20 CFR Part 401).

4. SSA agrees to provide a means of automated verification that is designed (in conjunction with DHS's automated system if necessary) to provide confirmation or tentative nonconfirmation of U.S. citizens' employment eligibility within 3 Federal Government work days of the initial inquiry.

5. SSA agrees to provide a means of secondary verification (including updating SSA records as may be necessary) for employees who contest SSA tentative nonconfirmations that is designed to provide final confirmation or nonconfirmation of U.S. citizens' employment eligibility and accuracy of SSA records for both citizens and non-citizens within 10 Federal Government work days of the date of referral to SSA, unless SSA determines that more than 10 days may be necessary. In such cases, SSA will provide additional verification instructions.

B. RESPONSIBILITIES OF DHS

1. After SSA verifies the accuracy of SSA records for employees through E-Verify, DHS agrees to provide the Employer access to selected data from DHS's database to enable the Employer to conduct, to the extent authorized by this MOU:

- Automated verification checks on employees by electronic means, and
- Photo verification checks (when available) on employees.

2. DHS agrees to provide to the Employer appropriate assistance with operational problems that may arise during the Employer's participation in the E-Verify program. DHS agrees to provide the Employer names, titles, addresses, and telephone numbers of DHS representatives to be contacted during the E-Verify process.

3. DHS agrees to make available to the Employer at the E-Verify Web site and on the E-Verify Web browser, instructional materials on E-Verify policies, procedures and requirements for both SSA and DHS, including restrictions on the use of E-Verify. DHS agrees to provide training materials on E-Verify.

4. DHS agrees to provide to the Employer a notice, which indicates the Employer's participation in the E-Verify program. DHS also agrees to provide to the Employer anti-discrimination notices issued by the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC), Civil Rights Division, U.S. Department of Justice.

5. DHS agrees to issue the Employer a user identification number and password that permits the Employer to verify information provided by employees with DHS's database.

6. DHS agrees to safeguard the information provided to DHS by the Employer, and to limit access to such information to individuals responsible for the verification of employees' employment eligibility and for evaluation of the E-Verify program, or to such other persons or entities as may be authorized by applicable law. Information will be used only to verify the accuracy of Social Security Numbers and employment eligibility, to enforce the Immigration and



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Nationality Act (INA) and Federal criminal laws, and to administer Federal contracting requirements.

7. DHS agrees to provide a means of automated verification that is designed (in conjunction with SSA verification procedures) to provide confirmation or tentative nonconfirmation of employees' employment eligibility within 3 Federal Government work days of the initial inquiry.

8. DHS agrees to provide a means of secondary verification (including updating DHS records as may be necessary) for employees who contest DHS tentative nonconfirmations and photo non-match tentative nonconfirmations that is designed to provide final confirmation or nonconfirmation of the employees' employment eligibility within 10 Federal Government work days of the date of referral to DHS, unless DHS determines that more than 10 days may be necessary. In such cases, DHS will provide additional verification instructions.

C. RESPONSIBILITIES OF THE EMPLOYER

1. The Employer agrees to display the notices supplied by DHS in a prominent place that is clearly visible to prospective employees and all employees who are to be verified through the system.

2. The Employer agrees to provide to the SSA and DHS the names, titles, addresses, and telephone numbers of the Employer representatives to be contacted regarding E-Verify.

3. The Employer agrees to become familiar with and comply with the most recent version of the E-Verify User Manual.

4. The Employer agrees that any Employer Representative who will perform employment verification queries will complete the E-Verify Tutorial before that individual initiates any queries.

A. The Employer agrees that all Employer representatives will take the refresher tutorials initiated by the E-Verify program as a condition of continued use of E-Verify.

B. Failure to complete a refresher tutorial will prevent the Employer from continued use of the program.

5. The Employer agrees to comply with current Form I-9 procedures, with two exceptions:

- If an employee presents a "List B" identity document, the Employer agrees to only accept "List B" documents that contain a photo. (List B documents identified in 8 C.F.R. § 274a.2(b)(1)(B)) can be presented during the Form I-9 process to establish identity.) If an employee objects to the photo requirement for religious reasons, the Employer should contact E-Verify at 888-464-4218.

- If an employee presents a DHS Form I-551 (Permanent Resident Card) or Form I-766 (Employment Authorization Document) to complete the Form I-9, the Employer agrees to make a photocopy of the document and to retain the photocopy with the employee's Form I-9. The photocopy must be of sufficient quality to allow for verification of the photo



Company ID Number: 454853

and written information. The employer will use the photocopy to verify the photo and to assist DHS with its review of photo non-matches that are contested by employees. Note that employees retain the right to present any List A, or List B and List C, documentation to complete the Form I-9. DHS may in the future designate other documents that activate the photo screening tool.

6. The Employer understands that participation in E-Verify does not exempt the Employer from the responsibility to complete, retain, and make available for inspection Forms I-9 that relate to its employees, or from other requirements of applicable regulations or laws, including the obligation to comply with the antidiscrimination requirements of section 274B of the INA with respect to Form I-9 procedures, except for the following modified requirements applicable by reason of the Employer's participation in E-Verify: (1) identity documents must have photos, as described in paragraph 5 above; (2) a rebuttable presumption is established that the Employer has not violated section 274A(a)(1)(A) of the Immigration and Nationality Act (INA) with respect to the hiring of any individual if it obtains confirmation of the identity and employment eligibility of the individual in good faith compliance with the terms and conditions of E-Verify; (3) the Employer must notify DHS if it continues to employ any employee after receiving a final nonconfirmation, and is subject to a civil money penalty between \$550 and \$1,100 for each failure to notify DHS of continued employment following a final nonconfirmation; (4) the Employer is subject to a rebuttable presumption that it has knowingly employed an unauthorized alien in violation of section 274A(a)(1)(A) if the Employer continues to employ an employee after receiving a final nonconfirmation; and (5) no person or entity participating in E-Verify is civilly or criminally liable under any law for any action taken in good faith based on information provided through the confirmation system. DHS reserves the right to conduct Form I-9 and E-Verify system compliance inspections during the course of E-Verify, as well as to conduct any other enforcement activity authorized by law.

7. The Employer agrees to initiate E-Verify verification procedures for new employees within 3 Employer business days after each employee has been hired (but after the Form I-9 has been completed), and to complete as many (but only as many) steps of the E-Verify process as are necessary according to the E-Verify User Manual, or in the case of Federal contractors with the FAR E-Verify clause, the E-Verify User Manual for Federal Contractors. The Employer is prohibited from initiating verification procedures before the employee has been hired and the Form I-9 completed. If the automated system to be queried is temporarily unavailable, the 3-day time period is extended until it is again operational in order to accommodate the Employer's attempting, in good faith, to make inquiries during the period of unavailability. Employers may initiate verification by notating the Form I-9 in circumstances where the employee has applied for a Social Security Number (SSN) from the SSA and is waiting to receive the SSN, provided that the Employer performs an E-Verify employment verification query using the employee's SSN as soon as the SSN becomes available.

8. The Employer agrees not to use E-Verify procedures for pre-employment screening of job applicants, in support of any unlawful employment practice, or for any other use not authorized by this MOU. Employers must use E-Verify for all new employees, unless an Employer is a Federal contractor that qualifies for the exceptions described in Article II.D.1.c. Except as provided in Article II.D, the Employer will not verify selectively and will not verify employees hired before the effective date of this MOU. The Employer understands that if the Employer



Company ID Number: 454853

uses the E-Verify system for any purpose other than as authorized by this MOU, the Employer may be subject to appropriate legal action and termination of its access to SSA and DHS information pursuant to this MOU.

9. The Employer agrees to follow appropriate procedures (see Article III. below) regarding tentative nonconfirmations, including notifying employees in private of the finding and providing them written notice of the findings, providing written referral instructions to employees, allowing employees to contest the finding, and not taking adverse action against employees if they choose to contest the finding. Further, when employees contest a tentative nonconfirmation based upon a photo non-match, the Employer is required to take affirmative steps (see Article III.B. below) to contact DHS with information necessary to resolve the challenge.

10. The Employer agrees not to take any adverse action against an employee based upon the employee's perceived employment eligibility status while SSA or DHS is processing the verification request unless the Employer obtains knowledge (as defined in 8 C.F.R. § 274a.1(l)) that the employee is not work authorized. The Employer understands that an initial inability of the SSA or DHS automated verification system to verify work authorization, a tentative nonconfirmation, a case in continuance (indicating the need for additional time for the government to resolve a case), or the finding of a photo non-match, does not establish, and should not be interpreted as evidence, that the employee is not work authorized. In any of the cases listed above, the employee must be provided a full and fair opportunity to contest the finding, and if he or she does so, the employee may not be terminated or suffer any adverse employment consequences based upon the employee's perceived employment eligibility status (including denying, reducing, or extending work hours, delaying or preventing training, requiring an employee to work in poorer conditions, refusing to assign the employee to a Federal contract or other assignment, or otherwise subjecting an employee to any assumption that he or she is unauthorized to work) until and unless secondary verification by SSA or DHS has been completed and a final nonconfirmation has been issued. If the employee does not choose to contest a tentative nonconfirmation or a photo non-match or if a secondary verification is completed and a final nonconfirmation is issued, then the Employer can find the employee is not work authorized and terminate the employee's employment. Employers or employees with questions about a final nonconfirmation may call E-Verify at 1-888-464-4218 or OSC at 1-800-255-8155 or 1-800-237-2515 (TDD).

11. The Employer agrees to comply with Title VII of the Civil Rights Act of 1964 and section 274B of the INA, as applicable, by not discriminating unlawfully against any individual in hiring, firing, or recruitment or referral practices because of his or her national origin or, in the case of a protected individual as defined in section 274B(a)(3) of the INA, because of his or her citizenship status. The Employer understands that such illegal practices can include selective verification or use of E-Verify except as provided in part D below, or discharging or refusing to hire employees because they appear or sound "foreign" or have received tentative nonconfirmations. The Employer further understands that any violation of the unfair immigration-related employment practices provisions in section 274B of the INA could subject the Employer to civil penalties, back pay awards, and other sanctions, and violations of Title VII could subject the Employer to back pay awards, compensatory and punitive damages. Violations of either section 274B of the INA or Title VII may also lead to the termination of its participation in E-



Company ID Number: 454853

Verify. If the Employer has any questions relating to the anti-discrimination provision, it should contact OSC at 1-800-255-8155 or 1-800-237-2515 (TDD).

12. The Employer agrees to record the case verification number on the employee's Form I-9 or to print the screen containing the case verification number and attach it to the employee's Form I-9.

13. The Employer agrees that it will use the information it receives from SSA or DHS pursuant to E-Verify and this MOU only to confirm the employment eligibility of employees as authorized by this MOU. The Employer agrees that it will safeguard this information, and means of access to it (such as PINS and passwords) to ensure that it is not used for any other purpose and as necessary to protect its confidentiality, including ensuring that it is not disseminated to any person other than employees of the Employer who are authorized to perform the Employer's responsibilities under this MOU, except for such dissemination as may be authorized in advance by SSA or DHS for legitimate purposes.

14. The Employer acknowledges that the information which it receives from SSA is governed by the Privacy Act (5 U.S.C. § 552a(i)(1) and (3)) and the Social Security Act (42 U.S.C. 1306(a)), and that any person who obtains this information under false pretenses or uses it for any purpose other than as provided for in this MOU may be subject to criminal penalties.

15. The Employer agrees to cooperate with DHS and SSA in their compliance monitoring and evaluation of E-Verify, including by permitting DHS and SSA, upon reasonable notice, to review Forms I-9 and other employment records and to interview it and its employees regarding the Employer's use of E-Verify, and to respond in a timely and accurate manner to DHS requests for information relating to their participation in E-Verify.

D. RESPONSIBILITIES OF FEDERAL CONTRACTORS WITH THE FAR E-VERIFY CLAUSE

1. The Employer understands that if it is a subject to the employment verification terms in Subpart 22.18 of the FAR, it must verify the employment eligibility of any existing employee assigned to the contract and all new hires, as discussed in the Supplemental Guide for Federal Contractors. Once an employee has been verified through E-Verify by the Employer, the Employer may not reverify the employee through E-Verify.

a. Federal contractors with the FAR E-Verify clause agree to become familiar with and comply with the most recent versions of the E-Verify User Manual for Federal Contractors and the E-Verify Supplemental Guide for Federal Contractors.

b. Federal contractors with the FAR E-Verify clause agree to complete a tutorial for Federal contractors with the FAR E-Verify clause.

c. Federal contractors with the FAR E-Verify clause not enrolled at the time of contract award: An Employer that is not enrolled in E-Verify at the time of a contract award must enroll as a Federal contractor with the FAR E-Verify clause in E-Verify within 30 calendar days of contract award and, within 90 days of enrollment, begin to use E-Verify to initiate verification of employment eligibility of new hires of the Employer who are working in the United States,



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whether or not assigned to the contract. Once the Employer begins verifying new hires, such verification of new hires must be initiated within 3 business days after the date of hire. Once enrolled in E-Verify as a Federal contractor with the FAR E-Verify clause, the Employer must initiate verification of employees assigned to the contract within 90 calendar days from the time of enrollment in the system and after the date and selecting which employees will be verified in E-Verify or within 30 days of an employee's assignment to the contract, whichever date is later.

d. Employers that are already enrolled in E-Verify at the time of a contract award but are not enrolled in the system as a Federal contractor with the FAR E-Verify clause: Employers enrolled in E-Verify for 90 days or more at the time of a contract award must use E-Verify to initiate verification of employment eligibility for new hires of the Employer who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire. Employers enrolled in E-Verify as other than a Federal contractor with the FAR E-Verify clause, must update E-Verify to indicate that they are a Federal contractor with the FAR E-Verify clause within 30 days after assignment to the contract. If the Employer is enrolled in E-Verify for 90 calendar days or less at the time of contract award, the Employer must, within 90 days of enrollment, begin to use E-Verify to initiate verification of new hires of the contractor who are working in the United States, whether or not assigned to the contract. Such verification of new hires must be initiated within 3 business days after the date of hire. An Employer enrolled as a Federal contractor with the FAR E-Verify clause in E-Verify must initiate verification of each employee assigned to the contract within 90 calendar days after date of contract award or within 30 days after assignment to the contract, whichever is later.

e. Institutions of higher education, State, local and tribal governments and sureties: Federal contractors with the FAR E-Verify clause that are institutions of higher education (as defined at 20 U.S.C. 1001(a)), State or local governments, governments of Federally recognized Indian tribes, or sureties performing under a takeover agreement entered into with a Federal agency pursuant to a performance bond may choose to only verify new and existing employees assigned to the Federal contract. Such Federal contractors with the FAR E-Verify clause may, however, elect to verify all new hires, and/or all existing employees hired after November 6, 1986. The provisions of Article II.D, paragraphs 1.a and 1.b of this MOU providing timeframes for initiating employment verification of employees assigned to a contract apply to such institutions of higher education, State, local and tribal governments, and sureties.

f. Verification of all employees: Upon enrollment, Employers who are Federal contractors with the FAR E-Verify clause may elect to verify employment eligibility of all existing employees working in the United States who were hired after November 6, 1986, instead of verifying only new employees and those existing employees assigned to a covered Federal contract. After enrollment, Employers must elect to do so only in the manner designated by DHS and initiate E-Verify verification of all existing employees within 180 days after the election.

g. Form I-9 procedures for existing employees of Federal contractors with the FAR E-Verify clause: Federal contractors with the FAR E-Verify clause may choose to complete new Forms I-9 for all existing employees other than those that are completely exempt from this process. Federal contractors with the FAR E-Verify clause may also update previously completed Forms I-9 to initiate E-Verify verification of existing employees who are not completely exempt as long as that Form I-9 is complete (including the SSN), complies with



Company ID Number: 454853

Article II.C.5, the employee's work authorization has not expired, and the Employer has reviewed the information reflected in the Form I-9 either in person or in communications with the employee to ensure that the employee's stated basis in section 1 of the Form I-9 for work authorization has not changed (including, but not limited to, a lawful permanent resident alien having become a naturalized U.S. citizen). If the Employer is unable to determine that the Form I-9 complies with Article II.C.5, if the employee's basis for work authorization as attested in section 1 has expired or changed, or if the Form I-9 contains no SSN or is otherwise incomplete, the Employer shall complete a new I-9 consistent with Article II.C.5, or update the previous I-9 to provide the necessary information. If section 1 of the Form I-9 is otherwise valid and up-to-date and the form otherwise complies with Article II.C.5, but reflects documentation (such as a U.S. passport or Form I-551) that expired subsequent to completion of the Form I-9, the Employer shall not require the production of additional documentation, or use the photo screening tool described in Article II.C.5, subject to any additional or superseding instructions that may be provided on this subject in the Supplemental Guide for Federal Contractors. Nothing in this section shall be construed to require a second verification using E-Verify of any assigned employee who has previously been verified as a newly hired employee under this MOU, or to authorize verification of any existing employee by any Employer that is not a Federal contractor with the FAR E-Verify clause.

2. The Employer understands that if it is a Federal contractor with the FAR E-Verify clause, its compliance with this MOU is a performance requirement under the terms of the Federal contract or subcontract, and the Employer consents to the release of information relating to compliance with its verification responsibilities under this MOU to contracting officers or other officials authorized to review the Employer's compliance with Federal contracting requirements.

ARTICLE III

REFERRAL OF INDIVIDUALS TO SSA AND DHS

A. REFERRAL TO SSA

1. If the Employer receives a tentative nonconfirmation issued by SSA, the Employer must print the notice as directed by the E-Verify system and provide it to the employee so that the employee may determine whether he or she will contest the tentative nonconfirmation. The Employer must review the tentative nonconfirmation with the employee in private.

2. The Employer will refer employees to SSA field offices only as directed by the automated system based on a tentative nonconfirmation, and only after the Employer records the case verification number, reviews the input to detect any transaction errors, and determines that the employee contests the tentative nonconfirmation. The Employer will transmit the Social Security Number to SSA for verification again if this review indicates a need to do so. The Employer will determine whether the employee contests the tentative nonconfirmation as soon as possible after the Employer receives it.

3. If the employee contests an SSA tentative nonconfirmation, the Employer will provide the employee with a system-generated referral letter and instruct the employee to visit an SSA office within 8 Federal Government work days. SSA will electronically transmit the result of the referral to the Employer within 10 Federal Government work days of the referral unless it



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determines that more than 10 days is necessary. The Employer agrees to check the E-Verify system regularly for case updates.

4. The Employer agrees not to ask the employee to obtain a printout from the Social Security Number database (the Numident) or other written verification of the Social Security Number from the SSA.

B. REFERRAL TO DHS

1. If the Employer receives a tentative nonconfirmation issued by DHS, the Employer must print the tentative nonconfirmation notice as directed by the E-Verify system and provide it to the employee so that the employee may determine whether he or she will contest the tentative nonconfirmation. The Employer must review the tentative nonconfirmation with the employee in private.

2. If the Employer finds a photo non-match for an employee who provides a document for which the automated system has transmitted a photo, the employer must print the photo non-match tentative nonconfirmation notice as directed by the automated system and provide it to the employee so that the employee may determine whether he or she will contest the finding. The Employer must review the tentative nonconfirmation with the employee in private.

3. The Employer agrees to refer individuals to DHS only when the employee chooses to contest a tentative nonconfirmation received from DHS automated verification process or when the Employer issues a tentative nonconfirmation based upon a photo non-match. The Employer will determine whether the employee contests the tentative nonconfirmation as soon as possible after the Employer receives it.

4. If the employee contests a tentative nonconfirmation issued by DHS, the Employer will provide the employee with a referral letter and instruct the employee to contact DHS through its toll-free hotline (as found on the referral letter) within 8 Federal Government work days.

5. If the employee contests a tentative nonconfirmation based upon a photo non-match, the Employer will provide the employee with a referral letter to DHS. DHS will electronically transmit the result of the referral to the Employer within 10 Federal Government work days of the referral unless it determines that more than 10 days is necessary. The Employer agrees to check the E-Verify system regularly for case updates.

6. The Employer agrees that if an employee contests a tentative nonconfirmation based upon a photo non-match, the Employer will send a copy of the employee's Form I-551 or Form I-766 to DHS for review by:

- Scanning and uploading the document, or
- Sending a photocopy of the document by an express mail account (paid for at employer expense).

7. If the Employer determines that there is a photo non-match when comparing the photocopied List B document described in Article II.C.5 with the image generated in E-Verify, the Employer must forward the employee's documentation to DHS using one of the means described in the preceding paragraph, and allow DHS to resolve the case.



Company ID Number: 454853

ARTICLE IV

SERVICE PROVISIONS

SSA and DHS will not charge the Employer for verification services performed under this MOU. The Employer is responsible for providing equipment needed to make inquiries. To access E-Verify, an Employer will need a personal computer with Internet access.

ARTICLE V

PARTIES

A. This MOU is effective upon the signature of all parties, and shall continue in effect for as long as the SSA and DHS conduct the E-Verify program unless modified in writing by the mutual consent of all parties, or terminated by any party upon 30 days prior written notice to the others. Any and all system enhancements to the E-Verify program by DHS or SSA, including but not limited to the E-Verify checking against additional data sources and instituting new verification procedures, will be covered under this MOU and will not cause the need for a supplemental MOU that outlines these changes. DHS agrees to train employers on all changes made to E-Verify through the use of mandatory refresher tutorials and updates to the E-Verify User Manual, the E-Verify User Manual for Federal Contractors or the E-Verify Supplemental Guide for Federal Contractors. Even without changes to E-Verify, DHS reserves the right to require employers to take mandatory refresher tutorials. An Employer that is a Federal contractor with the FAR E-Verify clause may terminate this MOU when the Federal contract that requires its participation in E-Verify is terminated or completed. In such a circumstance, the Federal contractor with the FAR E-Verify clause must provide written notice to DHS. If an Employer that is a Federal contractor with the FAR E-Verify clause fails to provide such notice, that Employer will remain a participant in the E-Verify program, will remain bound by the terms of this MOU that apply to participants that are not Federal contractors with the FAR E-Verify clause, and will be required to use the E-Verify procedures to verify the employment eligibility of all newly hired employees.

B. Notwithstanding Article V, part A of this MOU, DHS may terminate this MOU if deemed necessary because of the requirements of law or policy, or upon a determination by SSA or DHS that there has been a breach of system integrity or security by the Employer, or a failure on the part of the Employer to comply with established procedures or legal requirements. The Employer understands that if it is a Federal contractor with the FAR E-Verify clause, termination of this MOU by any party for any reason may negatively affect its performance of its contractual responsibilities.

C. Some or all SSA and DHS responsibilities under this MOU may be performed by contractor(s), and SSA and DHS may adjust verification responsibilities between each other as they may determine necessary. By separate agreement with DHS, SSA has agreed to perform its responsibilities as described in this MOU.



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D. Nothing in this MOU is intended, or should be construed, to create any right or benefit, substantive or procedural, enforceable at law by any third party against the United States, its agencies, officers, or employees, or against the Employer, its agents, officers, or employees.

E. Each party shall be solely responsible for defending any claim or action against it arising out of or related to E-Verify or this MOU, whether civil or criminal, and for any liability wherefrom, including (but not limited to) any dispute between the Employer and any other person or entity regarding the applicability of Section 403(d) of IIRIRA to any action taken or allegedly taken by the Employer.

F. The Employer understands that the fact of its participation in E-Verify is not confidential information and may be disclosed as authorized or required by law and DHS or SSA policy, including but not limited to, Congressional oversight, E-Verify publicity and media inquiries, determinations of compliance with Federal contractual requirements, and responses to inquiries under the Freedom of Information Act (FOIA).

G. The foregoing constitutes the full agreement on this subject between DHS and the Employer.

H. The individuals whose signatures appear below represent that they are authorized to enter into this MOU on behalf of the Employer and DHS respectively.



Company ID Number: 454853

To be accepted as a participant in E-Verify, you should only sign the Employer's Section of the signature page. If you have any questions, contact E-Verify at 888-464-4218.

Employer W. K. Upchurch Construction Co., Inc.	
Andrea Best	
Name (Please Type or Print)	Title
Electronically Signed	10/07/2011
Signature	Date
Department of Homeland Security – Verification Division	
USCIS Verification Division	
Name (Please Type or Print)	Title
Electronically Signed	10/07/2011
Signature	Date

Information Required for the E-Verify Program

Information relating to your Company:

Company Name:	W. K. Upchurch Construction Co., Inc.
Company Facility Address:	1001 Monticello Court
	Montgomery, AL 36117
Company Alternate Address:	P. O. Box 230487
	Montgomery, AL 36123-0487
County or Parish:	MONTGOMERY
Employer Identification Number:	630506136





Company ID Number: 454853

North American Industry Classification Systems Code:	236
Administrator:	
Number of Employees:	20 to 99
Number of Sites Verified for:	1
<p>Are you verifying for more than 1 site? If yes, please provide the number of sites verified for in each State:</p> <ul style="list-style-type: none"> ALABAMA 1 site(s) 	

Information relating to the Program Administrator(s) for your Company on policy questions or operational problems:

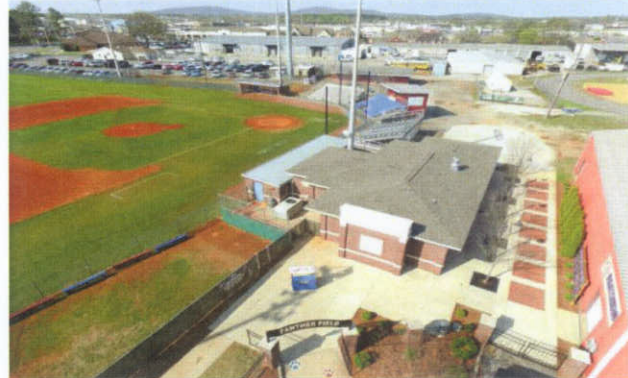
Name:	Andrea W Best	Fax Number:
Telephone Number:	(334) 279 - 8765	
E-mail Address:	andrea@wkupchurch.com	



**ATHLETIC FACILITIES MANAGED
BY
TCU CONSULTING SERVICES, LLC**

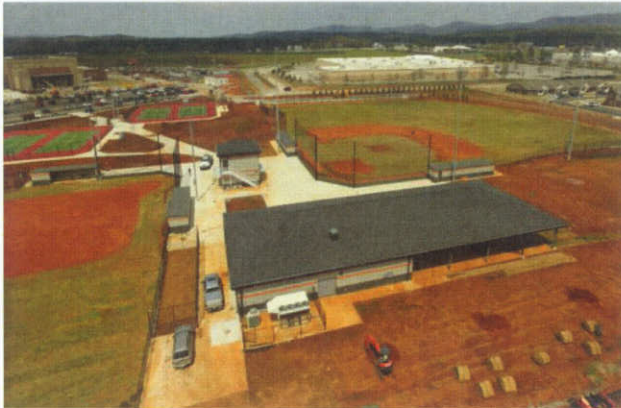
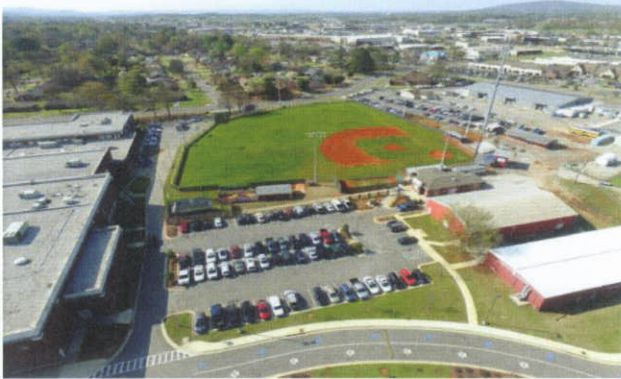


ATHLETIC FACILITIES MANAGED BY TCU CONSULTING SERVICES, LLC





ATHLETIC FACILITIES MANAGED BY TCU CONSULTING SERVICES, LLC



**ATHLETIC FACILITIES MANAGED
BY
TCU CONSULTING SERVICES, LLC**



Huntsville City School System

Project Location: Huntsville, Alabama

Date of Service: March 2012-Ongoing

TCU was selected by the Huntsville City School system to provide Program Management services, to assess the current internal maintenance and construction operations and procedures, to develop the necessary processes that will allow the system to operate and procure their maintenance and construction operations in a more effective and economical manner. TCU is currently managing a high school addition, two new high schools, a stadium renovation, the development of two new elementary schools, four new P-8 schools, the implementation of all the system's summer maintenance programs and the development of the capital projects plan. TCU is also assisting another consultant with a comprehensive facility assessment of every building in the system. HCS Facilities Program amount is \$291,000,000 dollars.

Client Contacts:

Jeffrey Wilson, Facilities & Operations Director, Huntsville City Schools, 256-428-8310



Auburn City School System

Project Location: Auburn, Alabama

Date of Service: 2014-Ongoing

Project Details: TCU was competitively selected to provide Consulting services, to provide a Comprehensive Assessment of student demographics, build out analyses, and enrollment projects for a new high school and a new elementary school.

Subsequently, TCU was engaged to provide Program Management services to the implementation of the Auburn City Schools Capital Projects 2024 Plan. The high school is scheduled to open August 2017. Auburn facilities Program amount is \$78,000,000 dollars.

Client Contact: Montgomery Public Schools, Superintendent Dr. Karen DeLano,
334-887-2100, P.O. Box 3270 Auburn, Alabama 36831-3270



The City of Montgomery

Project Location: Montgomery, Alabama

Dates of Service: 2010-Ongoing

TCU is currently working with the City of Montgomery as the Owner's Representative for their approximately \$85,000,000.00 building program which includes the renovation of Cramton Bowl (City owned football stadium), the construction of a new Multi-use Sports complex building, a new municipal court facility, the Renovation of the historic City Hall facility, a police precinct and fire station in a joint use facility, a police driving training facility, the construction of a major thoroughfare road, the renovation of an existing office building into a City services center, and the conversion of a City owned building into a multi-use facility for the Children's Museum, the City downtown Library, tenant and retail spaces. The program is approximately 67% complete with all projects tracking on both schedule and budget.

Client Contact:

Mayor Todd Strange, City of Montgomery, 334-241-2004



Montgomery Public School System

Project Location: Montgomery, Alabama

Dates of Service: 2007-2014

Project Description: TCU was competitively selected to provide Program Management for the \$165,000,000 Montgomery County Board of Education Facilities Phase 1 Plan. TCU managed the design and construction of 8 schools. The schools were designed with a pod concept, passive and active security measures, state of the art audio-visual technology, performing arts auditoriums, and athletic facilities. Due to our clients trust and our performance on Phase I, TCU was selected to manage Phase 2 of the \$47,500,000 dollar MPS Facilities Plan. TCU is currently in the management of Phase 3, a \$33,000,000 continuation of MPS Capital Projects Plan.

Client Contact: Montgomery Public Schools, Superintendent Margaret Allen, 334-223-6710, P.O. Box 1667 Montgomery, Alabama 36102



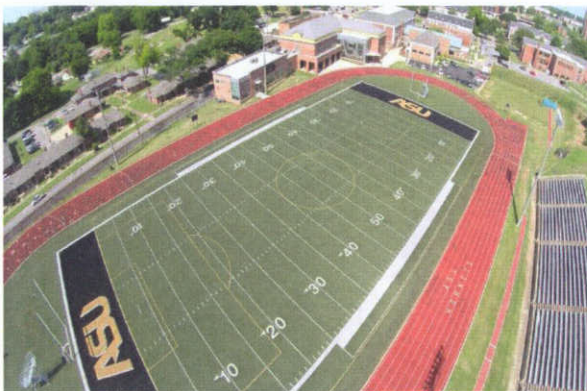


Alabama State University

Project Location: Montgomery, Alabama
 Dates of Service: July 2007-2011

Project Description: TCU was competitively selected to manage ASU's building program with a starting program budget of \$98,616,799 which has grown to \$245,000,000. Construction began on the first project in July 2007 and the Ralph D. Abernathy College of Education building was completed in May 2009. TCU managed the design and construction of two phases of Student Housing Renovation Projects. Most recently, TCU was integrally involved in the process and development of the campus Master Plan for Alabama State University and diligently worked to exceed our Client's goals: Improve Campus Image and Identity, Plan for Enrollment growth, Improve Student Quality of Life, and Develop a Pedestrian-Oriented Campus incorporating Residential Villages. TCU expertly managed the Phase 1 design process of two 250 bed residence halls. Each building is 77,573 SF, 4-story, fully-sprinkled, and of non-combustible, steel frame and concrete construction. Construction was completed in August 2011. We are very proud to share our experience managing the design and construction phases of the New Hornet Football Stadium!

Client Contact: Alabama State University Mr. Scott Standerfer, 334-229-6995, 915 South Jackson Street Montgomery, Alabama 36101



Greene County School System

Project Location: Eutaw, Alabama

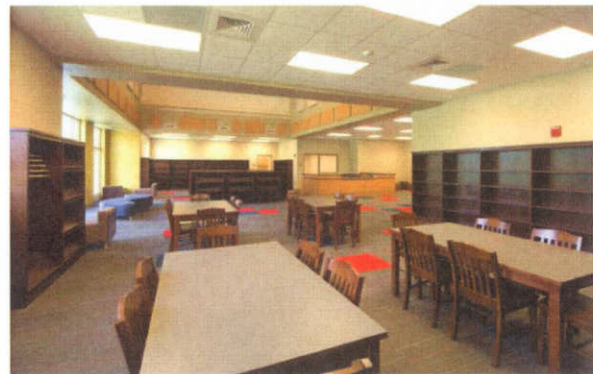
Dates of Service: January 2010 - Ongoing

TCU was competitively selected as the Program Manager for the Greene County Schools Phase 1, 2, and 3 Facility Plans. The initial engagement was for the new High School with a program budget of \$10,000,000. Phase 1 consisted of a new 400 student High School/Gym Addition, Water & Sewer Improvements for the County and Road Improvements to US Highway 11 South, Phase 2 consisted of a new Career Tech Center / Field House / & Athletic Fields, Phase 3 would include a new Auditorium if funds are available. TCU's management of the program and assistance during the Tax Referendum process resulted in a final program cost of approximately \$20,000,000 which allowed the School System to program additional projects to enhance the delivery of education at the High School level.

Client Contact:

Superintendent Dr. James Carter, Greene County Board of Education, 205-372-3161

Mr. Leon Dowe, Chief Finance Officer, 205-372-3161, ldowe@greene.k12.al.us



The Montgomery County Commission

Project Location: Montgomery, Alabama
Dates of Service: 2007-2010

TCU was competitively selected as the Program Manager to manage the Montgomery County Commission building program. The initial engagement was for the new Mac Sim Butler Detention Facility with a program budget of \$52,000,000. Based on TCU's performance, the County Commission subsequently engaged the firm to manage the renovations of its existing facilities, the adaptive reuse and conversion of the historic Montgomery Advertiser building into the new County Administrative facility and an adjoining parking deck facility. The final program budget, for all projects, was \$83,000,000. TCU's management of the program resulted in a final program cost of approximately \$81,700,000 which allowed the County to use the \$2,300,000 for additional projects to enhance the delivery of services to the citizens of Montgomery County.

Client Contact:

Chairman Elton Dean, Montgomery County Commission 334-832-1210

Mr. Donnie Mims, County Administrator, 334-832-1210, donaldmims@mc-ala.org



TCU PROGRAM MANAGEMENT PROCESS

APPROACH

TCU manages its projects based on an organization structure that starts with the Program Director. The Program Director is responsible for all aspects of the program from engagement until completion. The Program Director manages the assigned Project Managers, TCU's internal resources and any external resources as may be required for an Owner's program delivery.

The guiding processes of TCU's approach to Construction Program Management Services are:

1. Planning
2. Management Information Control
3. Program Budget, Program Schedule and Program Control
4. Implementation
5. Contingency Planning
6. Quality Control

Planning

The Planning and Pre-Construction activities are the most integral component of any program. If you start off slow or behind it will only get worse not better. Time spent properly establishing the program objectives, establishing the program schedule and building the team is critical, must be well defined and must be approved by the Owner.

TCU believes first activity for any successful Program is the development of a Management Plan for the Project. The Management Plan development will evaluate the Owner's resources, the Owner's schedule and budget, the capacity of the local design and construction market, site assessments, and other factors that will impact the Program. TCU will develop various alternatives and make recommendations to the Owner. The Plan will include project strategies, procurement recommendations, program implementation activities and requirements and a Provisional Master Schedule for the project.

Upon approval by the Owner, TCU will issue the Program Management Plan which will serve as the overall guide for every project activity and decision.

Immediately upon approval of the Program Management Plan, TCU will develop the Master schedule for the project. The Master Schedule will contain key milestones to be accomplished by the Program participants. TCU will then develop a schedule of Critical Dates for each phase and project of the program. The Critical Dates list will include the various activities which are critical for the overall success of the Master Schedule. The list will include for each phase and each project of the program the last acceptable date for each task to be completed and the party responsible for accomplishing the task. The Master Schedule will be the basis for monitoring and expediting the program.

Management Information Control

TCU uses a web-based Management Information software program as a program communication, administration and documentation tool to ensure that all parties have the necessary information by which to efficiently manage the program. Every activity from start to finish is recorded in "real time" so that anyone with access to the Management Information program for the program can monitor the progress of the activities at any time and immediately be aware of any issues, concerns, status, responsibilities, etc. that may exist on the project.

Program Budget, Project Schedule and Program Control

All program activities, but especially the budget, schedule and individual project scope, require daily monitoring by the CPM to ensure compliance with the Owner's program objectives.

Once the Management Plan which includes the Program Budget and Master Schedule are adopted by the Owner, they become the absolute management tool by which every project decision is tested. The Management Plan and Schedule will not be modified without written approval by the Owner.

Implementation

TCU uses the approved Management Plan, the Program Budget and the Master Schedule as the basis of implementation of all Program and individual project activities.

The Pre-Design, the Design, the Bid and Award, the Construction, the Post Construction phases are all directed by TCU's Program Director and Project Managers in a professional and systematic approach to ensure that all aspects of each phase meets the goals and objectives of the Management Plan.

The activities outlined in Item IV for each phase of the Construction Program Managers services RFP are all typical services provided by TCU and are specifically identified in the Program Management plan.

Contingency Planning

Every project has its share of challenges, unforeseen issues and mistakes that can have significant impact on schedules, budgets and project success. It is how a team reacts to the inherent challenges that determines the actual impact those challenges will have on a project.

TCU's management approach is very assertive and firmly believes that proper planning and preparation are the keys to overcoming the project challenges. That is why TCU commits the time required to properly develop the Management Plan and the Master Schedule, to get all of the appropriate parties to accept the requirements of the planning documents and to develop the "team" approach so that when the changes arise they are faced by the entire team, not just the responsible party.

TCU firmly believes in the "no surprises" management approach. When issues arise, no matter how big or seemingly insignificant, the entire team needs to be made aware so, that as a team, the issue can be addressed in the most effective and efficient manner for the project and the Owner.

Quality Control

TCU believes that Quality control starts day One! The quality of the planning and preparation leads to quality design decisions, quality design decisions lead to quality plans, quality plans lead to competitive contractor pricing and minimum unforeseen construction coordination issues.

Experienced and knowledgeable personnel providing the construction administration and observation services by the Owner's Representative provide an additional level of construction quality assurance.

Again, the most important aspect of Quality control is the team effort from start to finish because no one party has complete control or responsibility for a quality project. It is TCU's responsibility as the Construction Program Manager to develop the "teamwork" performance model among all of the parties to insure that the Owner receives a quality project on time and within budget.

Matthew Akin, Ed.D.
Superintendent



BOARD OF EDUCATION

Elisa Ferrell, President – District 3
Walker McGinnis, V. President - District 4
Beth Wilder, 3rd Presiding Officer - District 2
Michelle Watkins - District 1
Pam Hill - District 5

March 27, 2017

Mr. Jeff Downes
 City Manager
 City of Vestavia Hills
 1032 Montgomery Highway
 Vestavia Hills, Alabama 35216

Mr. Downes,

Please accept this communication as a formal recommendation of TCU Consulting, Inc. (TCU) for their proficiency in services including, but not limited to; program management, construction administration, contract negotiation, and litigation support.

Since May of 2012, TCU has been engaged to provide each of the aforementioned services for the Huntsville City Board of Education. During the course of performance, TCU and its personnel have demonstrated high levels of ability, versatility, professionalism and consistency.

TCU continues to play an integral role in the planning and execution of the District's \$290,000,000 capital program, and it is my intention that their involvement with our construction efforts continue until the last ribbon is cut. I consider Ken Upchurch a trusted advisor, which is of vital importance when considering the significance of the capital undertaking in Huntsville. I can attest to the fact that this sentiment is shared by the District's Directors of Operations and Construction.

In the event that you have any questions or concerns regarding this recommendation, please feel free to contact me directly (256) 763-1175.

Sincerely,

Jason W. Taylor CPA, CGMA
 Chief Financial Officer
 Huntsville City Board of Education

Post Office Box 1256 ♦ Huntsville, Alabama 35807-4801
 (256) 428-6800

www.huntsvillecityschools.org
 AN EQUAL OPPORTUNITY EMPLOYER

Matthew Akin, Ed.D.
Superintendent



BOARD OF EDUCATION

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Beth Wilder, 3rd Presiding Officer - District 2
Michelle Watkins - District 1
Pam Hill - District 5

March 29, 2017

Mr. Jeff Downes
 City Manager
 City of Vestavia Hills
 1032 Montgomery Highway
 Vestavia Hills, AL 35216

Dear Mr. Downes,

It is with great pleasure that I write this letter of recommendation for TCU Consulting Services, Inc. and their staff. I have had the privilege of working with TCU as the Director of Construction and Renovation as well as, the head of Huntsville City Schools Energy Management Program. While here at HCS, I have worked with several individuals from TCU Consulting, and would like to highlight a few key personnel in the TCU organization. The TCU Team is a very cohesive group that work well together bring their wide array of diverse talents together for our success.

Andy Bernard is the Program Director for the TCU Huntsville team, and my “Go-To” guy. He has always been there to give me the straight information I needed to manage our \$291M Capital projects program, as well as he serves HCS as the “Energy Consultant” for our Energy Master Plan from inception through implementation. Andy has the knowledge, and experience, needed to advise HCS with concise, relevant facts which allow me to make good decisions on all of our projects. Andy continues to balance the management of the overall Program Budget, the multiple design entities, the multiple construction projects through the efficient management style with his team. With relation to the energy program, it was Andy who masterminded the award-winning energy master plan that we are currently implementing.

Kevin Overton has been focused of the completion of the first of two large high schools in HCS’ capital projects program, Jemison High School. This 340,000-sf building sitting on 62 acres has been a very large project for HCS which Kevin has been instrumental in managing all aspects from design, bidding, construction, and our extensive building occupancy process. His eye for detail and constant efforts to get the project completed, have led him to be an extremely valuable resource that I count on every day. Kevin’s experience as a project manager allows him to interface with contractors, sub-contractors, design team and HCS to facilitate a successful

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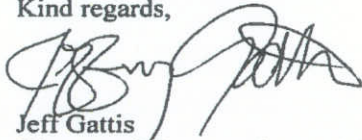
completion of a \$75M construction project. Without his guidance, we would be struggling to finish this project.

Robert Brown has been an instrumental asset to me as a technical resource within the TCU team. His vast experience as an Architect, and a project manager, has proven that there is no issue out there that he has not seen. Robert researches the issue, relies upon his knowledge of construction, construction management, and construction materials to advise me on possible solutions to the root problem. Robert has saved HCS time, money, and heart-ache on countless issues which we have thrown at him. He has yet to encounter an issue that he cannot quickly find solutions. Robert is an invaluable member of our team.

Raynor Boles has many talents which he brings to the table; working with our consultants to help craft the re-zoning of our district, classroom capacity analysis issues, and helping the district navigate the Department of Justice Consent Order. Raynor's understanding of demographics and building capacities has helped HCS create a clear and concise plan that has been a vital part of our process toward Unitary Status. He is very focused on how HCS understands building capacities, allowing us to navigate the waters of the DOJ Consent Order with a clear understanding of our responsibilities. His guidance and ability to work with demographer has provided a clear plan that we will follow throughout this DOJ process. Raynor has successfully managed many of our smaller projects from design through construction.

Ken Upchurch, and his team, have guided me through all aspects of our current capital program and without hesitation I would recommend them to anyone considering them for their program management consultant team. They have been strategic advisor, mentor, and friend to me on all of my projects at Huntsville City Schools. Please feel free to contact me at Jeffrey.gattis@hsv-k12.org, or 256-527-5159, for any additional information or further discussions about Ken and his TCU team.

Kind regards,



Jeff Gattis
Director of Construction and Renovation
Huntsville City Schools

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March 27, 2017

My name is Tracy Richter, President of Cooperative Strategies Inc., formerly known as DeJONG-RICHTER. Our company is a national educational facilities planning firm focused on K-12 educational facilities planning, demographic analysis and GIS services. Our firm has worked in 48 States and with several hundred school districts across the country. I start with this only to tell you that our company has the opportunity to work with many firms serving the K-12 industry across the country and I am proud to say that TCU Consulting is a firm we are honored to call our partners and had the pleasure to work with work with for nearly 12 years.

I am writing this specifically as a letter of recommendation for Mr. Andy Bernard and Mr. Raynor Boles of TCU Consulting. Andy and Raynor have both worked on projects with our firm not only in Alabama but in other States providing master planning and consulting services. Both of these gentleman have always displayed not only the highest quality of work product but have held the highest standards of professionalism as anybody I have been associated with in the industry. This not only comes from my observations but from the words of both my staff and the clients we serve.

I believe that the high quality of work that Andy and Raynor produce is a result of two things; first their commitment to create a better educational experience for all children and second, and I believe most important, is their high quality of character. I have worked side by side with these gentleman for the past six years and have personally experienced both of those characteristics in our day to day work. Their commitment to their clients is second to none and I would recommend both of them and TCU without any reservations.

Thank you for the opportunity to provide this letter of recommendation.

Sincerely,

Tracy Richter,
President, Partner
Cooperative Strategies, Inc.
614.284.2123 (c)
614.526.3072 (d)
trichter@coopstrategies.com



City of **Montgomery**, Alabama

OFFICE OF THE MAYOR
Todd Strange, Mayor

Post Office Box 1111
Montgomery, Alabama
36101-1111

PH 334.625.2000
FX 334.625.2600

March 28, 2017

Mr. Jeff Downes
City Manager
City of Vestavia Hills
1032 Montgomery Highway
Vestavia Hills, Alabama 35216

Dear Jeff:

We are delighted to present this letter of recommendation on behalf of TCU Consulting Services, LLC. The City of Montgomery is moving in a direction of growth and vibrancy in which we take great pride. TCU Consulting Services, LLC has been a substantial partner in this process.

In the past several years, TCU, LLC has acted as the City of Montgomery's owner representative on more than 10 major projects totaling in excess of \$75 million dollars. These projects include:

- City Hall renovation
- Cramton Bowl Stadium
- The Multiplex at Cramton Bowl
- Emory Folmar Soccer Complex
- City of Montgomery Customer Service Center
- Montgomery Police Department Driving & Training Facility
- Park Crossing Connector Road

The excellent work and exceptional service alone would merit my recommendation. However, the continued relationship that the City of Montgomery and TCU, LLC maintains after a project is complete is an attribute that cannot be valued.

I feel strongly that the City of Vestavia Hills would benefit greatly having TCU Consulting Services, LLC as their Community Spaces Program Management Consultant.

Yours very truly,

Todd Strange

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March 27, 2017

Mr. Jeff Downs, City Manager
 City of Vestavia Hills
 1032 Montgomery Highway
 Vestavia Hills, Alabama 35216

Re: TCU Consulting Services, LLC
 Construction Program Management Consultants

Dear Mr. Downs:

It is my pleasure to recommend TCU Consulting Services, LLC, for consideration to serve the City of Vestavia Hills as your Construction Program Management Consultant.

TCU Consulting Services has been working with Auburn City Schools to provide a Comprehensive Assessment of student demographics, build out analyses, enrollment projections, educational specifications and programming for a new high school and a new elementary school. They are also providing services for determining the needed renovations on other school facilities. This work was done to assist us in the planning process for the most efficient and economical use of capital dollars.

The Auburn City Schools district is one of the fastest growing systems in the state of Alabama. All of the work that the team at TCU has done has been on a very tight time frame to meet the district's planning needs. Their work products have been used to inform the community of our needs and the planned uses for the additional funding needed to implement our capital plans. We will be opening the new high school in August of 2017 and are very proud of the facility.

TCU has done everything they contracted to do and more to ensure that Auburn City Schools is receiving the information and services we need to implement our capital plan.

TCU receives our highest recommendation for their Construction Program Management services.

If you have any questions about TCU's performance, capabilities or staff, please give me a call to discuss.

Sincerely,

Karen T. DeLano
 Superintendent

Matthew Akin, Ed.D.
Superintendent



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Pam Hill - District 5

March 29, 2017

Mr. Jeff Downes
City Manager
City of Vestavia Hills
1032 Montgomery Highway
Vestavia Hills, Alabama 35216

Dear Mr. Downes:

As Director of Operations for Huntsville City Schools, I write to you today with great respect and admiration for the first class services and support that Ken Upchurch and TCU Consulting Services, LLC have provided to this district since 2012. After working with Ken and his team over the past five years, I can think of no better partner in capital planning, program management, and other analytic and consulting services related to facilities operations. I offer you my most enthusiastic and heartfelt recommendation for TCU as you consider the company as a potential program management partner.

I met Ken only a week after joining the Huntsville City Schools team in July, 2012. TCU was already working with the district in facilities condition assessment as a precursor to the development of a five-year, 200 million dollar capital plan. Coming to the district as a retired U.S. Army Lieutenant Colonel with 27 years of multifunctional logistics leadership experience, I was immediately impressed with Ken's personal, continuous, and dialectical teaching, coaching and mentoring of both my team and his, leveraging his broad and deep experience with and success within Alabama's complex socio-political, economic, and educational landscape to achieve the desired results in both process development and program execution. I and my team have learned much from Ken, and the impact of his mentorship to the district staff and the processes that have resulted from that mentorship will outlast even the buildings themselves.

Throughout the years of weekly operational level meetings with me and the Chief Financial Officer, the monthly in-process reviews for the Superintendent, and periodic public presentations to the Board of Education and school communities, I have most sincerely appreciated Ken's willingness to articulate his best professional advice with complete candor, and stand by the Superintendent's final decisions on program azimuth as if they were his own.

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As we now near the end of our ambitious capital plan, I reflect with total satisfaction on the end results. Standing before two new high schools, one new junior high school, two new P-8 schools, one new elementary school, one substantial elementary school renovation (the addition of a new classroom wing), one total building renovation (a new theater and total classroom renovation for our Academy for Academics and Arts P-8), and one high school Freshman Academy building, I state with complete confidence that no other company than TCU could have brought our paper and pencil vision to brick and mortar reality within designated resource parameters and within the designated time frame with the same sense of total commitment to the strategic vision of the district. Ken's ability to weld architects, construction companies, district staff, and the school communities themselves into a unified family has ensured that each completed school reflects the unique character of the constituency it serves, while also reflecting the overarching values of the district itself.

When I arrived in 2012 as the Operations Director, I constructed the Directorate mission statement around the commitment to create and maintain holistically sustainable learning environments which enable all students to maximize their learning opportunities. Ken Upchurch and TCU Consulting Services, LLC have embodied that commitment, personifying it in everything they have done and are currently doing for Huntsville City Schools. I am sure they will do the same for you, and invite you to contact me at Jeffrey.wilson@hsv-k12.org, or 256-428-8346, for further conversation if you have any questions. Thank you for considering my comments in your decision making process.



Jeffrey S. Wilson, Ed.D.
Director of Operations
Huntsville City Schools

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Matthew Akin, Ed.D.
Superintendent



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Beth Wilder, 3rd Presiding Officer - District 2
Michelle Watkins - District 1
Pam Hill - District 5

March 27, 2017

Mr. Jeff Downes
 City Manager
 City of Vestavia Hills
 1032 Montgomery Highway
 Vestavia Hills, Alabama 35216

Mr. Downes,

Please accept this communication as a formal recommendation of TCU Consulting, Inc. (TCU) for their proficiency in services including, but not limited to; program management, construction administration, contract negotiation, and litigation support.

Since May of 2012, TCU has been engaged to provide each of the aforementioned services for the Huntsville City Board of Education. During the course of performance, TCU and its Huntsville staff (specifically; Mr. Andy Bernard, Mr. Kevin Overton, Mr. Robert Brown and Mr. Raynor Boles) have demonstrated high levels of ability, versatility, professionalism and consistency.

TCU continues to play an integral role in the planning and execution of the District's \$290,000,000 capital program, and it is my intention that their involvement with our construction efforts continue until the last ribbon is cut. I consider Ken Upchurch a trusted advisor, which is of vital importance when considering the significance of the capital undertaking in Huntsville. I can attest to the fact that this sentiment is shared by the District's Directors of Operations and Construction.

In the event that you have any questions or concerns regarding this recommendation, please feel free to contact me directly (256) 763-1175.

Sincerely,

Jason W. Taylor CPA, CGMA
 Chief Financial Officer
 Huntsville City Board of Education

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 (256) 428-6800

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**MONTGOMERY
PUBLIC SCHOOLS****Montgomery County Board of Education**

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MPS Mission: To Engage, Educate and Inspire our students to succeed in college, career and beyond!

March 30, 2017

Mr. Jeff Downes
City Manager
City of Vestavia Hills
1032 Montgomery Highway
Vestavia Hills, Alabama 35216

March 30, 2017

Dear Mr. Downes:

Montgomery Public Schools (MPS) has been in relationship with TCU Consulting for a number of years. The company has managed the majority of the construction projects initiated by the system to include small additions as well as large high schools. We have been very satisfied with the outcomes regarding timely completion and concluding with-in budget.

TCU's commitment to ensuring satisfaction has been commendable and reliable. MPS staff is invited to the table for updates and to receive timely answers to question that may arise. The company makes routine reports to the board about the progress that is being made. They also make known obstacles that may arise and provide viable options for next steps.

The expertise of the TCU staff is assuring to MPS staff and the school board that our goals are confidently being met. We always look forward to a quality product that is sure to benefit our students, school system, and the community.

Should you need additional information, I invite you to contact Mr. Donald Dotson, Assistant Superintendent of Operations at 334-223-6750 or call me directly at 334-223-6710.

Sincerely,

Margaret Allen
Superintendent
Montgomery Public Schools



TCU CONSULTING SERVICES, LLC

TCU Consulting Services, LLC appreciates the opportunity to submit our Proposal for the Capital Projects Program Management Services associated with the Community Spaces Plan. We look forward to working with the City of Vestavia Hills.