

**REGULAR MEETING OF THE CITY COUNCIL
OF THE CITY OF EAST RIDGE**

**February 23, 2023
6:00 pm**

1. Call to Order
2. Invocation
3. A. Roll Call
- B. Oath of Honor – Three Police Officers
4. Approval of Minutes February 9, 2023 Council Meeting
5. Communication from Citizens
6. Communication from Councilmembers
7. Communication from City Manager
8. Old Business: None
9. New Business:
 - A. **RESOLUTION NO. 3362** – A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EAST RIDGE, TENNESSEE, APPROVING THE EXECUTION AND DELIVERY OF A DEVELOPMENT AGREEMENT WITH KELLEY X-RAY CO., RELATING TO A PROJECT IN THE BORDER REGION RETAIL DEVELOPMENT DISTRICT AND AUTHORIZING CERTAIN ACTIONS RELATING THERETO
 - B. **RESOLUTION NO. 3363** – A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EAST RIDGE, TENNESSEE AUTHORIZING THE CITY OF EAST RIDGE TO RETURN FUNDS FROM THE SAFE ROUTES TO SCHOOLS GRANT TO THE TENNESSEE DEPARTMENT OF TRANSPORTATION
 - C. Discussion of Tentative Agenda Items for the **March 9, 2023** Council Meeting (see Attachment A)
10. Adjourn

**ATTACHMENT A
TENTATIVE AGENDA
March 9, 2023**

3. B. Milestone Awards for February 2023

8. **Old Business:** None

9. **New Business:**

- A. **ORDINANCE NO.** ____ - Rezone 918 and 1000 S. Crest from R-1 Residential to R-2 Residential Duplex (1st reading)
- B. **RESOLUTION NO.** ____ - Approval to rescind Resolution No. 3357 and Approve Revised Agreement with Academy + Outdoors
- C. **RESOLUTION NO.** ____ - Use on Review for Child Care Facility on S. Terrace
- D. **RESOLUTION NO.** ____ - Bids for Maintenance Garage at Camp Jordan (bid opening February 22, 2023)
- E. **RESOLUTION NO.** ____ - RFQ for Animal Shelter
- F. **RESOLUTION NO.** ____ - Bids for Replacement Roof for Municipal Court

AGENDA MEMORANDUM

Oath of Honor

February 23, 2023

Submitted by:

Clint Uselton

Clint Uselton, Chief of Police

SUBJECT:

Officers Ackermann, Resendiz, and Wilson recently graduated from the Police Academy and are in our Field Training Program. Mayor Williams administers the Oath of Honor to officers post-graduation.

**MEETING OF THE CITY COUNCIL
OF THE CITY OF EAST RIDGE**

February 9, 2023

6:00 pm

The East Ridge City Council met pursuant to notice on February 9, 6:00 pm at East Ridge City Hall. Mayor Williams called the meeting to order.

Debbie Lance, True Life Church, gave the invocation. All joined in the Pledge of Allegiance to the Flag.

Present: Mayor Williams, Vice Mayor Haynes, Councilmember Cagle, Councilmember Tyler, Councilmember Witt, City Manager Miller, City Attorney Litchford, and City Recorder Middleton.

Attendance: 17

Milestone Award for January 2023 – Mayor Williams announced that Sinisa Stojnic has 10 years with the City and Hal Duncan has 35 years.

Special Proclamation – Mayor Williams and Council presented a proclamation to the McDonald family on the occasion of the 106th birthday of Delapheene (Della) McDonald.

Special Presentation – Mayor Williams and the Council recognized Officer Alan Resendiz, Officer Teddy Dyer, Officer Arthur Richardson, and Corporal Joseph Jansen for saving the life of a young child who was in a car accident on I-75. Mayor Williams expressed appreciation from the Council and presented them with City challenge coins.

Chief Uselton also announced that the Police Department is accepting applications for the Citizen's Police Academy which will be starting on February 28th.

Consent Agenda:

- A. Approval of Minutes January 26, 2023 Council Meeting
- B. Declaration of Surplus Property

Councilmember Witt made a motion, seconded by Vice Mayor Haynes, to approve the Consent Agenda. The vote was unanimous. Motion approved.

Communication from Citizens: None

Communication from Councilmembers:

Councilmember Cagle and Vice Mayor Haynes had nothing at this time.

Councilmember Witt encouraged citizens to sign up for the Citizen's Police Academy.

Mayor Williams discussed the following:

- Library
 - February 14 - Storytime, 10:30 – 11:00 am
 - February 16 and 23 - Senior Bingo, 2:00 – 3:00 pm
- Parks and Recreation
 - Spring registration for soccer, baseball, t-ball, softball, adult softball is going on
 - April 25 - D-bat - Free clinic camp
 - April 28 - D-bat - Parks and rec night
 - June 13 - Softball night at Lookouts
 - Soccer all-star weekend with rec teams
 - April 29 - Red Wolves parks and rec night
 - March 5 - Last day of sign-ups for baseball, softball, t-ball
 - February 24 – last day for soccer sign-ups
 - March 19th – last day for sign-ups for adult softball

Go to agallum@eastridgetn.gov for more information.

The Mayor wished everyone a Happy Valentine's Day.

Communication from City Manager:

- The new leaf truck arrived last week and is in operation in the northwest part of the City moving eastward.
- We will have presentations from three architectural firms on Tuesday, February 14th regarding the new animal shelter. It may be on the next agenda or possibly on March 9th.
- A Ringgold Road progress meeting was held today. Talley construction will be working on the south side for six more weeks until mid-March and then move to north side. Completion is scheduled for October or November 2023.

Old Business: None

New Business:

RESOLUTION NO. 3355 – A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EAST RIDGE, TENNESSEE, TO APPROVE AN APPOINTMENT BY COUNCILMEMBER CAGLE TO THE EAST RIDGE INDUSTRIAL DEVELOPMENT BOARD TO FILL THE UNEXPIRED TERM OF SUSAN THOMAS - City Attorney Litchford read on caption. Councilmember Cagle appointed Jeff Ezell. Councilmember Witt made a motion, seconded by Vice Mayor Haynes, to approve Resolution No. 3355 appointing Jeff Ezell to the Industrial Development Board. The vote was unanimous. Motion approved.

RESOLUTION NO. 3356 – A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EAST RIDGE, TENNESSEE, AUTHORIZING THE RENEWAL OF AN AGREEMENT WITH FAMILY CONCESSIONS, LLC FOR THE OPERATION OF FOOD AND REFRESHMENT CONCESSIONS FOR THE EAST RIDGE PARKS AND RECREATION DEPARTMENT - City Attorney Litchford read on caption. Parks and Recreation Director Skiles stated the term will now expire in 2027, and it can be renewed for one additional year after the fourth year. We have also added beer sales into the contract, giving

Family Concessions, LLC the first right of refusal to sell beer at non-city sponsored special events. Councilmember Cagle made a motion, seconded by Councilmember Tyler, to approve Resolution No. 3356. The vote was unanimous. Motion approved.

RESOLUTION NO. 3357 – A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EAST RIDGE, TENNESSEE, AUTHORIZING THE CITY TO ENTER INTO A SPONSORSHIP AGREEMENT WITH ACADEMY SPORTS + OUTDOORS - City Attorney Litchford read on caption. Director Skiles discussed the highlights which includes a \$2,000 sponsorship rider, a \$250 gift card, and startup packs of baseballs, softballs, and soccer balls. They also pay for our sports engine, which is the website. Councilmember Witt made a motion, seconded by Councilmember Cagle, to approve Resolution No. 3357. The vote was unanimous. Motion approved.

RESOLUTION NO. 3358 – A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EAST RIDGE, TENNESSEE, ACCEPTING A PROPOSAL FROM CHATTANOOGA DOCK BUILDERS FOR THE DESIGN AND CONSTRUCTION OF A BOARDWALK AND FISHING PIER AT CAMP JORDAN PARK - City Attorney Litchford read on caption. Director Skiles stated we received one proposal from Chattanooga Dock Builders. Councilmember Tyler made a motion, seconded by Vice Mayor Haynes, to approve Resolution No. 3358. Jeff Sikes with Asa Engineering stated there is a discrepancy in the amount of the proposal. Page 11 stated the amount as \$163,822.22 as opposed to page 12 that states the amount as \$150,054.01. Mr. Sikes discussed other issues, such as the warranty on work below the waterline, additional cost for pile driving, and no construction schedule provided. He recommends the City and Chattanooga Dock Builders clarify these issues during the contract negotiations. Councilmember Cagle asked Mr. Sikes if they foresee any dynamite blasting. Mr. Sikes stated if they hit shallow rock they will auger, not blast. Mayor Williams stated the amount of the proposal is still under the \$250,000 amount we were awarded in the grant. The vote was unanimous. Motion approved.

RESOLUTION NO. 3359 – A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EAST RIDGE, TENNESSEE AUTHORIZING THE MAYOR OR HIS DESIGNEE TO EXECUTE A CONTRACT WITH HHM, CERTIFIED PUBLIC ACCOUNTANTS, FOR AUDITING SERVICES FOR FY 2022-2023 AS REQUIRED BY THE STATE OF TENNESSEE AND OTHER REGULATORY AGENCIES - City Attorney Litchford read on caption. City Manager Miller stated we have used HHM since 2012 for our audits. The contract is for \$34,000, plus \$5,000 if a single audit is necessary. Mr. Miller stated the Multi-modal grant will have to be audited but not in this fiscal year; it will be in the next. Councilmember Witt made a motion, seconded by Vice Mayor Haynes, to approve Resolution No. 3359. The vote was unanimous. Motion approved.

RESOLUTION NO. 3360 – A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EAST RIDGE, TENNESSEE, TO WAIVE THE FEE FOR USE OF CAMP JORDAN ARENA BY THE RIVER CITY CORVETTE CLUB FOR A FUNDRAISER TO HELP BENEFIT THE EAST RIDGE NEEDY CHILD FUND AND THE CHATTANOOGA FOOD BANK - City Attorney Litchford read on caption. Director Skiles stated the event would be a car show on August 5, 2023. The amount we are waiving is approximately \$1,700. Vice Mayor Haynes made a motion, seconded by Councilmember Cagle, to approve Resolution No. 3360. The vote was unanimous. Motion approved.

RESOLUTION NO. 3361 – A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EAST RIDGE, TENNESSEE, APPROVING THE APPLICATION FOR AND ACCEPTANCE OF THE LOCAL PARKS AND RECREATION FUND 2023 GRANT PROGRAM - City Attorney Litchford read on caption. Development Administrator McAllister stated the City must submit an intent to apply letter to be eligible for the grant. If awarded, we will use the grant for improvement and renovations at the Community Center. The grant has a maximum of \$2 million with a 50% match from the City. Mr. Miller wants to expand the gym in order to get it tournament certified. At the present time, it is not a full court. Vice Mayor Haynes made a motion, seconded by Councilmember Witt, to approve Resolution No. 3361. The vote was unanimous. Motion approved.

Discussion of Tentative Agenda Items for the February 23, 2023 Council Meeting (see Attachment A)

- **Old Business:** None
- **New Business:**
- **RESOLUTION NO. ____ - Bids for Seal Coating the Splashpad (opens February 16, 2023)** – Director Skiles stated this was not done when the splashpad was built. Staff feels that it needs to be sealed for safety reasons.
- **RESOLUTION NO. ____ - RFP for Generator at City Hall (opens February 15, 2023)** Chief Building Official Howell stated the servers are currently located at the Fire and Police building but will be moved to City Hall, in order to protect them better.
- **RESOLUTION NO. ____ - Development Agreement with Kelley X-ray (if approved by IDB)** – City Manager Miller stated this business located at 1500 Fruitland Drive in the summer of 2022. They have invested \$855,000 into the business. They sell x-ray equipment to hospitals, veterinarians, etc. The IDB will consider this agreement on February 16, 2023.
- **RESOLUTION NO. ____ - RFQ – Construction of Animal Shelter** – Mr. Miller stated we received letters of interest from three firms. On Tuesday, February 14th, we will hear presentations from all three firms.
- **Mr. Miller would like to add the following:**
 - **Safe Routes to Schools Grant** – Mr. Miller stated we received this grant in 2015. It included sidewalks on the west side of Belvoir Avenue going north, and a pathway from East Ridge Elementary School to John Ross Road. The Belvoir portion of the grant was eliminated and the only thing left was the walkway which goes from the school and ends at John Ross Road, with no sidewalks from that point to Ringgold Road. He feels this is not a safe environment. It would cost the City \$250,000 to build a sidewalk from that point to Ringgold Road. The City will have to reimburse the State approximately \$24,000 for the amount we have received and give up the grant. Mr. Miller’s recommendation is to give up the grant.

Being no further business, the meeting was adjourned.

RESOLUTION NO. 3362

BRIAN WILLIAMS
Mayor

JACKY CAGLE
Councilmember

ANDREA WITT
Councilmember



ESTHER HAYNES
Vice Mayor

DAVID TYLER
Councilmember

J. SCOTT MILLER
City Manager

City of East Ridge

*1517 Tombras Avenue
East Ridge, Tennessee 37412
(423) 867~7711*

MEMORANDUM

TO: City Council
FROM: Mark Litchford
DATE: February 20, 2023
RE: Development Agreement – KELLEY X-RAY CO

KELLEY X-RAY CO. developed a commercial retail x-ray equipment sales company in East Ridge and has engaged in various meetings with City administrators over the past year regarding a financial incentive package provided under the Border Region Act. The Developer has requested the City Council to approve the IDB's execution of a Development Agreement Relating to the Border Region Retail Development District pursuant to the Border Region Act, T.C.A. § 7-40-101 *et seq.* The proposed development is located in East Ridge, Tennessee, at the following commonly known addresses:

- 1500 Fruitland Dr, East Ridge, Tennessee 37412
- tax map number: 169J-G-013.01

The purpose of the Development Agreement is to establish the rights and obligations between the City, the IDB, and the Developer with respect to allocated state tax revenues as provided in the Border Region Act that are generated on the aforementioned property.

RESOLUTION NO. 3362

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EAST RIDGE, TENNESSEE, APPROVING THE EXECUTION AND DELIVERY OF A DEVELOPMENT AGREEMENT WITH KELLEY X-RAY CO., RELATING TO A PROJECT IN THE BORDER REGION RETAIL DEVELOPMENT DISTRICT AND AUTHORIZING CERTAIN ACTIONS RELATING THERETO

WHEREAS, the City has designated a certain area within the City as a Border Region Retail Tourism Development District (the “District”) pursuant to Tenn. Code. Ann. §§ 7-40-401 et seq. (the “Border Region Act”), which District has been approved by the Tennessee Commissioner of Revenue; and

WHEREAS, the City of East Ridge seeks to increase tourism and the competitiveness of the City, County, and State by improving the City’s extraordinary retail and other tourism facilities located in the District and to benefit other private and public peripheral retail and tourism developments for the City; and

WHEREAS, development of the District is critical to the growth and sustainability of the tax base of the City; and

WHEREAS, KELLEY X-RAY CO. (“Developer”) owns property at 1500 Fruitland Drive, East Ridge, Tennessee, tax map number 169J-G-013.01 (the “Property”), and has undertaken, or intends to undertake, an economic development project within the meaning of the Border Region Act (collectively the “Project”) to accompany the Extraordinary Retail Facility as defined by the Border Region Retail Tourism Development District Act, codified as Tenn. Code Ann. §§ 7-40-101 et seq. (“Border Region Act”), such economic development project being a commercial and retail x-ray equipment sales company; and

WHEREAS, Developer has requested a financial incentive package from the East Ridge Industrial Development Board (“Board”) consistent with the Act; and

WHEREAS, the Property is believed to be in the District and believed to be eligible for the receipt of Border Region State sales tax revenues generated by the retail businesses on the Project Property; and

WHEREAS, there has been submitted to the Board the proposed form of a Development Agreement Relating to Border Region Retail Tourism Development District (the “Agreement”) between the Board and the Developer pursuant to which the Board would agree to distribute certain of the state sales and use taxes allocable to the Board to Developer that are attributable solely from retail businesses operating on the Project Property in accordance with the provisions of the Act (“Financial Incentive Package”) to reimburse certain costs of the Project that are eligible to be paid under the Border Region Act; and

WHEREAS, the Board approved the proposed Development Agreement and a true and correct copy of the proposed Development Agreement as approved by the IDB is attached hereto as *Exhibit A*.

WHEREAS, the Financial Incentive Package shall be distributed in accordance with the Development Agreement to Developer provided the Project qualifies under the Act; and

WHEREAS, the establishment of a the economic development project within the meaning of the Border Region Act as proposed by Developer is anticipated to increase tourism within the District and is also intended to accompany the construction and development of other projects within the District and create a financially and economically positive impact on the District and other public or private peripheral development for the District throughout the City and County, including without limitation increased competitiveness, retail projects, jobs, and property values; and

WHEREAS, the City Council deems the approval of the financial assistance and incentive package for Developer to be in the best interest of the citizens of East Ridge; and

WHEREAS, the execution of such Agreement will further the public purposes of the Board and the District by promoting development in the District and enhancing the economic growth of the City.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EAST RIDGE, TENNESSEE, that

1. It is hereby found and determined that the assistance by the City and the Board with the Project will promote the economy and development in the State of Tennessee and City and the welfare of the citizens thereof.

2. The Development Agreement Relating to Border Region Retail Tourism Development District is hereby approved for the benefit of Developer provided the Project qualifies under the Act with said funding to be derived and paid in accordance with the Border Region Tourism Development District Act, pursuant to the terms of the Development Agreement entered into by and between the East Ridge Industrial Development Board and Developer.

3. The Mayor and City Manager are hereby approved and authorized to take all actions necessary to implement this resolution.

4. The officers of the Board are hereby authorized and directed to execute, deliver and file such other certificates and instruments and to take all such further action as they may consider necessary or desirable in connection with the consummation of the transactions described above and the performance of the Agreement, including, without limitation, taking all actions as are necessary or appropriate to file and to assist the City in filing annual cost certifications with the State of Tennessee Department of Revenue and to receive all state sales and use taxes to which the City or the IDB is entitled under the Border Region Act.

5. The officers of the Board are hereby authorized to sign any and all documents necessary to administer all funds allocated to the Board under the Border Region Act,

including establishing such accounts as such officers deem appropriate to hold funds allocated to the Board, in accordance with this Resolution.

6. Pursuant to T.C.A. § 7-40-107 and in order to advance the proposed development within the District, the City Council irrevocably delegates to the Board the incremental state sales and use tax revenues payable to the City in accordance with T.C.A. § 7-40-101 *et seq.* that are attributable solely from retail businesses operating on the Project Property in accordance with the provisions of the Act and the Development Agreement entered into between the East Ridge Industrial Development Board and Developer.

7. All other acts of the officers of the Board which are in conformity with the purposes and intent of this resolution are hereby ratified, approved and confirmed.

BE IT FURTHER RESOLVED that the City of East Ridge, Tennessee, hereby indicates its intention to adopt any and all further resolutions as required by applicable law to effectuate its intentions expressed herein.

BE IT FURTHER RESOLVED that this resolution shall take effect immediately after its passage, the public welfare of the City requiring it.

Adopted this _____ day of _____ 2023

Brian W. Williams, Mayor

Attest:

J. Scott Miller, Interim City Manager

Approved as to Form:

Mark W. Litchford, City Attorney

**DEVELOPMENT AGREEMENT RELATING TO THE BORDER REGION RETAIL
TOURISM DEVELOPMENT DISTRICT**

THIS DEVELOPMENT AGREEMENT RELATING TO THE BORDER REGION RETAIL TOURISM DEVELOPMENT DISTRICT (this "Agreement") is made and entered into as of the **th** day of , **2023**, by and among **THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF EAST RIDGE**, a public nonprofit corporation organized under Tenn. Code Ann. §§ 7-53-101, et seq., (the "IDB"), and **KELLEY X-RAY CO.**, a Tennessee For-Profit Corporation, control no. 000199812 (the "Developer").

WITNESSETH:

WHEREAS, the Border Region Retail Tourism Development District Act, codified as Tenn. Code Ann. §§ 7-40-101 et seq. ("Border Region Act"), was enacted to increase tourism and the competitiveness of the State of Tennessee ("State") with bordering states by empowering local governments to encourage the development of extraordinary retail or tourism facilities, including shopping, recreational and other activities; and

WHEREAS, pursuant to the Border Region Act and at the request of the City of East Ridge, Tennessee ("City"), the Commissioner of the Department of Revenue of the State of Tennessee (the "Commissioner") has certified an area within the City as a border region retail tourism development district (the "Border Region District"); and

WHEREAS, after such certification, a portion of the state sales and use tax revenues collected in the Border Region District is being distributed to the City as provided in the Border Region Act (the "Allocated State Tax Revenues"); and

WHEREAS, a Bass ProShop store (the "Extraordinary Retail Facility") has been developed in the Border Region District as an extraordinary retail or tourism facility within the meaning of the Border Region Act; and

WHEREAS, Developer previously proposed the development of property located in East Ridge, Tennessee, at the following commonly known address (hereinafter the "Property"):

- 1500 Fruitland Drive, East Ridge, Tennessee 37412
- Tax Map Number: 169J-G-013.01

WHEREAS, the Property is believed to be located within the Border Region District (hereinafter referred to as the "Project Property") and, therefore, believed to be eligible for the receipt of Allocated State Tax Revenues generated by the retail business; and

WHEREAS, the Developer constructed an economic development project within the meaning of the Border Region Act (collectively the "Project") to accompany the Extraordinary Retail Facility, such economic development being a commercial and retail x-ray equipment sales company; and

WHEREAS, Developer has requested a financial incentive package from the Board consistent with the Act for the purpose of reimbursing eligible costs and expenses under the Act including, but not limited to, improving, upgrading and renovating the Property to construct a commercial and retail coffee cafe; and

WHEREAS, the establishment of the economic development project within the meaning of the Border Region Act as proposed by Developer is anticipated to increase tourism within the Border Region

District and is also intended to accompany the construction and development of other projects within the Border Region District and create a financially and economically positive impact on the Border Region District and other public or private peripheral development for the District throughout the City and Hamilton County (the "County"), including without limitation increased competitiveness, retail projects, jobs, and property values; and

WHEREAS, the execution of such Agreement will further the public purposes of the IDB and the Border Region District by promoting development in the Border Region District and enhancing the economic growth of the City; and

WHEREAS, the Developer contacted the City to discuss entering into a Border Region Development Agreement for the allocation of Border Region State sales tax revenues generated by the retail operations on the Project Property; and

WHEREAS, in an effort to facilitate the discussion of certain information relating to this Agreement and the Project, the Developer agrees to refrain from allowing the Property to be the subject of any other agreement that would impact the payment allocations as set forth in this Agreement; and

WHEREAS, pursuant to the Border Region Act, the City is authorized to delegate to the IDB the authority to carry out any project authorized by the Border Region Act and to incur costs for the any such project; and

WHEREAS, provided the City Council approves this Agreement by resolution, the City will make such a delegation to the IDB with respect to the Project; and

WHEREAS, pursuant to such delegation, the City will pay to the IDB certain portions of the Allocated State Tax Revenues described herein that are to be allocated to the City pursuant to the Border Region Act; and

WHEREAS, the IDB has agreed that those certain Allocated State Tax Revenues described herein will be paid to the Developer to reimburse a portion of the costs of the development of the Project as provided herein; and

WHEREAS, pursuant to the Border Region Act, the City and the IDB are authorized to provide such incentives or financial support in the Border Region District as they deem appropriate in support of an economic development project, within the meaning of the Border Region Act; and

WHEREAS, for the purpose of establishing the rights and obligations of the parties with respect to the matters described above and related matters, the parties have entered into this Agreement.

NOW, THEREFORE, in consideration of the terms, conditions and mutual agreements by and between the parties, as hereafter set forth in detail, the parties do hereby mutually agree as follows:

**ARTICLE I
INCORPORATION OF RECITALS AND FINDINGS OF IDB**

Section 1.01 Incorporation of Recitals. The Recitals are an integral part of this Agreement and are incorporated herein by reference as though set forth in full herein.

Section 1.02 Findings of the IDB. The IDB finds that, when completed, the Project described herein will generate significant sales tax revenues for the County, the City and the Hamilton County Board of Education, will generate significant ad valorem property tax revenues for the County, the City, and the Hamilton County Board of Education, will generate significant sales tax revenue for the County and the City, and will create multiple employment opportunities. In addition, the IDB further finds that various site development work and improvements as proposed herein will also encourage further future commercial and economic development and/or expansion on properties adjoining and in the vicinity of Project Property and within the Border Region District and said anticipated future development will also generate sales tax revenue and ad valorem property tax revenue and will create employment opportunities. The IDB finds that an agreement whereby the City and/or the IDB provides incentives or financial support to the Developer to undertake the development of the Project to further enhance and encourage commercial retail development within the Border Region District is consistent with the authorization established pursuant to the Border Regions Act and is appropriate within the purpose, intent and meaning of the Border Regions Act, and is a cost effective and efficient use of the public funds of the City and the IDB. The IDB finds that entering into this Agreement is beneficial to and in the best interests of the City and its citizens and further finds that the transaction described herein is beneficial, from both economic development and other perspectives, to the City.

**ARTICLE II
REPRESENTATIONS AND WARRANTIES**

Section 2.01. Representations and Warranties of Developer. The Developer represents and warrants for the benefit of the IDB and the City as follows:

(a) Organization. The Developer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Tennessee, is in compliance with the laws of the State of Tennessee, and has the power and authority to own its properties and assets and to carry on its business in the State of Tennessee as now being conducted and/or as hereby contemplated.

(b) Authority. The Developer has the power and authority to enter into this Agreement and has taken all action necessary to cause this Agreement to be executed and delivered, and this Agreement has been duly and validly executed and delivered by the Developer.

(c) Binding Obligations. This Agreement is a legal, valid and binding obligation of the Developer enforceable against the Developer in accordance with its terms, subject to applicable insolvency laws and equitable principles.

(d) No Litigation. No litigation at law or in equity or proceeding before any private individual or entity or any governmental agency involving the Developer is pending or, to the knowledge of the Developer, threatened, in which any liability of the Developer is not adequately covered by insurance or in which any judgment or order would have a material adverse effect upon the business or assets of the Developer or the performance of its obligations hereunder, including the development of the Project.

(e) No Default. The Developer is not in default under or in violation of, and the execution, delivery and compliance by the Developer with the terms and conditions of this Agreement will not conflict with or constitute or result in a default under or violation of (i) any material agreement or other instrument to which the Developer is a party or by which it is bound, or (ii) any constitutional or statutory

provisions or order, rule, regulation, decree or ordinance of any court, government or governmental authority having jurisdiction over the Developer or its property, and no event has occurred and is continuing which with the lapse of time or the giving of notice, or both, would constitute or result in such a default or violation.

(f) Relationship to Border Region District. The construction and development of the Extraordinary Retail Facility and the development of the area surrounding the Extraordinary Retail Facility was an essential factor in the Developer undertaking the Project, and the economic activity generated by the Extraordinary Retail Facility will contribute materially to the economic success of the Project, which Project will provide ancillary retail support to the Extraordinary Retail Facility.

Section 2.02. Representation and Warranties of IDB. The IDB represents and warrants for the benefit of the Developer as follows:

(a) Organization. The IDB is a public non-profit corporation duly organized, validly existing and in good standing under the laws of the State of Tennessee, is in compliance with the laws of the State of Tennessee, and has the power and authority to own its properties and assets and to carry on its business in the State of Tennessee as now being conducted and as hereby contemplated.

(b) Authority. The IDB has the power and authority to enter into this Agreement and has taken all action necessary to cause this Agreement to be executed and delivered, and this Agreement has been duly and validly executed and delivered by the IDB.

(c) Binding Obligations. This Agreement is a legal, valid and binding obligation of the IDB enforceable against the IDB in accordance with its terms, subject to applicable insolvency laws and equitable principles; provided, however, that this subsection shall not be construed as a representation or warranty that the Commissioner will accept, confirm or approve any cost certification made by the City and/or the IDB to the Commissioner under the Border Region Act. Additionally, it is understood between the parties that in the event the Commissioner determines that the Property or the Project does not qualify for the Border Region Act as contemplated herein, then the IDB and/or the City shall not be liable for any amounts that would be owed if the Property or Project otherwise qualified under the Border Region Act.

(d) No Litigation. No litigation at law or in equity or proceeding before any governmental agency involving the IDB is pending or, to the knowledge of the IDB, threatened, in which any liability of the IDB is not adequately covered by insurance or in which any judgment or order would have a material adverse effect upon the business or assets of the IDB or the performance of its obligations hereunder.

(e) No Default. The IDB is not in default under or in violation of, and the execution, delivery and compliance by the IDB with the terms and conditions of this Agreement will not conflict with or constitute or result in a default under or violation of, (i) any material agreement or other instrument to which the IDB is a party or by which it is bound, or (ii) any constitutional or statutory provisions or order, rule, regulation, decree or ordinance of any court, government or governmental authority having jurisdiction over the IDB or its property, and no event has occurred and is continuing which with the lapse of time or the giving of notice, or both, would constitute or result in such a default or violation.

ARTICLE III UNDERTAKING DEVELOPMENT AND FINANCIAL INCENTIVES

Section 3.01. Undertaking of Development. The Developer has caused, or will cause, the Project to be constructed and developed on the Project Property as an economic development project within the meaning of the Border Region Act, including without limitation a commercial and retail x-ray equipment sales company in substantially the manner shown on the site plan attached as Exhibit A hereto in a manner consistent with the schematic renderings attached hereto as Exhibit B. The Developer has

already, or will commence construction of the Project not later than 12 months following the date of this Agreement with an anticipated completion date of 18 months following the date of this Agreement.

Section 3.02. Prohibited Retail Uses. During the period that the Developer is receiving payments pursuant to this Agreement, the IDB shall first be provided an opportunity to approve any replacement retail operations or business or any successor business in the Project. The Developer will not permit any use in the Project that does not generate Allocated State Tax Revenues or that is not appropriate for a first-class retail facility, including pawn shops, adult book and entertainment facilities, tanning salons, check cashing and payday loan facilities and similar types of establishments. The Developer will not permit any retail business to relocate any existing retail establishments located within fifteen (15) miles of the Border District to the Project unless the rentable retail sales space for the relocated establishment is increased by thirty-five percent (35%) or more of the existing retail establishment.

Section 3.03. Financial Assistance to Developer.

a) Subject to the terms and conditions of this Agreement, including without limitation the priority of payments to the Bass Pro Developer, as defined and described in Section 3.04 hereof, and in accordance with the Border Region Act, the IDB has determined that the provision of financial assistance to the Developer will further the purposes of the Border Region Act and the economic development of the City and the IDB hereby agrees to grant the Developer the amounts hereinbelow contingent upon satisfaction of the conditions provided in this Agreement. Notwithstanding, to the extent the State of Tennessee or any of its agencies or departments should determine that the Developer’s Project, Project Property, or its business operations do not qualify for retail sales or for reimbursement of costs as contemplated or defined by the Act, the parties understand and expressly agree the City and/or IDB shall not be responsible or liable for any payments set forth herein unless, and until, the State of Tennessee provides written approval.

b) Subject to the conditions set forth in this Agreement, the IDB agrees to pay or otherwise assign to the Developer annually (the “Annual Incentive Amount”) for the period set forth in Section 5.19 of this Agreement an amount equal to a percentage of the Allocated State Tax Revenues attributable solely from the sales or use taxes derived from retail businesses operating on the Project Property “Project State Tax Revenues” pursuant to the Border Region Act as set forth in Section 3.03(b)(i), provided the total amount of all Project State Tax Revenues to be shared between the City and Developer set forth in 3.03(b)(i) does not exceed the amount of Developer’s costs as defined in the Act. The percentages of the Project State Tax Revenues owed to Developer that will determine the Annual Incentive Amount are set forth herein as Section 3.03(b)(i); provided, however, it is expressly understood that the Developer is entitled to such amounts to the extent the State of Tennessee, via the Tennessee Department of Revenue (or whatever governing agency regulates and monitors the operations of the Border Region Act) does not otherwise deny the Developer’s eligibility for reimbursable expenses or costs under the Border Region Act. For purposes of making the calculation of the Annual Incentive Amount, the “base tax revenue” as defined in the Border Region Act shall be allocated to the Project Property based upon the sales and use taxes generated by or derived from the Project Property as established by the base year under the Border Region Act and the City’s certification of the Border Region District. The base tax revenue on the Project Property is estimated at Zero Dollars (\$0.00) and shall be assessed against Project State Tax Revenues generated by the Property.

i. The Annual Incentive Amount owed to Developer is equal to the following percentages of the Project State Tax Revenues, subject to the base tax revenue, if any, as provided herein:

Project State Tax Revenues shared between Developer and the City	
Developer Share 30%	City Share 70%

c) It is understood that such payments are for the purpose of reimbursing the Developer all or a portion of the eligible "costs" within the meaning of the Border Region Act incurred by or on behalf of the Developer relating to the Project and/or the Project Property.

d) The Developer shall provide a list of the eligible costs periodically, but not less than annually within thirty (30) days after the end of each of the City's fiscal years ending on June 30th of each year (a "Fiscal Year"), for each and every eligible cost for which the Developer claims reimbursement hereunder and shall update such list from time to time on at least an annual basis as additional costs are incurred at such times as are needed to permit the City and/or the IDB to submit such costs for approval by the Developer with respect to debt incurred to finance costs related to the Project Property; provided that in no event shall the annual interest rate on the debt resulting in any interest expense to be reimbursed exceed the highest lawful rate under applicable state law if other than Tennessee or federal law or if no such other law is applicable, under the Tennessee formula rate (within the meaning of T.C.A. § 47-14-103) at the time such debt was incurred. The Annual Incentive Amount payable to the Developer pursuant to this Agreement shall be payable solely from Project State Tax Revenues allocated to the IDB. The IDB and/or the City will submit the cost certification summaries required by the Border Region Act on an annual basis and shall request a distribution from the State of all eligible Allocated State Tax Revenues, including all amounts payable to the Developer as provided in this Agreement. The parties will fully cooperate in submitting such cost certifications. The Annual Incentive Amount shall be paid to the Developer within thirty (30) days after the City receives its annual allocation of Allocated State Tax Revenues from the State of Tennessee under the Border Region Act; provided, however, any Annual Incentive Amount is expressly subject to (1) Developer's satisfaction of all obligations and conditions under this Agreement, (2) the priority of payments to the Bass Pro Developer, as described in Section 3.04 hereinbelow, and (3) the State of Tennessee's approval of Developer's "costs" that are submitted to the State in accordance herewith.

Section 3.04. Effect of Bass Pro Developer Allocation. The Developer acknowledges that the City and the IDB have previously agreed to pay to Exit One LLC (the "Bass Pro Developer"), as the developer of the Extraordinary Retail Facility, and affiliates of the Bass Pro Developer an annual amount equal to the Allocated State Tax Revenues derived from the parcel on which the Extraordinary Retail Facility is located and certain other parcels (the "Bass Pro Developer Parcels") plus the Allocated State Tax Revenues derived from the first \$10,000,000 of incremental sales above the base sales (as calculated pursuant to the Border Region Act) in the Border Region District (other than Bass Pro Developer Parcels) prior to the creation of the Border Region District as provided in that certain Development and Allocation Agreement Relating to Border Region Retail Development District dated as of June 20, 2014, between the IDB and the Bass Pro Developer (the "Bass Pro Development Agreement"). If in any future Fiscal Year, the incremental sales in the Border Region District (other than from the Bass Pro Developer Parcels) are not in excess of \$10,000,000 due to business closures or other unexpected reasons, the Developer acknowledges that the City and the IDB will not have sufficient unencumbered Allocated State Tax Revenues derived from such Fiscal Year to pay the Annual Incentive Amount to the Developer because all or a portion of the Allocated State Tax Revenues derived from the Project Property would be required to be used to make the required payment to the Bass Pro Developer. In any year in which the available Allocated State Sales Revenues are not sufficient to pay the Annual Incentive Amount to the Developer and similar annual incentives to other property owners or developers in the Border Region District, the amount paid to the Developer and other recipients of similar annual incentives shall be reduced proportionately based upon the respective Allocated State Tax Revenues received from the respective parcels as to which the incentives relate. If the Allocated State Tax Revenues for any Fiscal Year are insufficient to pay the Annual Incentive Amount for the reasons described in this Section, the shortfall shall be payable from Allocated State Tax Revenues relating to future Fiscal Year in which the incremental sales (other than from the Bass Pro Developer Parcels) as described above are at least \$10,000,000 subject to any other incentive commitments of the City and the IDB, which commitments shall be paid prior to any shortfall being paid.

Section 3.05. Identification of Applicable State Sales and Use Tax Revenues from Project Property and Incremental Tax Revenues. The Developer and the IDB will cooperate fully in identifying no later than thirty (30) days after each June 30 the amount of sales on the Project Property that are subject to state sales or use tax and that produced Allocated State Tax Revenues for the annual period ending on such June 30. In the event such sales data is not publicly available, the parties will use their best efforts to estimate the amount of such sales.

Section 3.06 Conversion to Financing. The IDB acknowledges that the Developer may desire in the future to finance costs incurred by the Developer with respect to the development of the Project and may desire to pledge the Project State Tax Revenues payable to the Developer hereunder to such financing and/or to request the IDB to issue bonds payable from such Project State Tax Revenues, the proceeds of which would be loaned to the Developer to reimburse the Developer for eligible costs. Upon the request of the Developer to assist with such financing, the IDB agrees to cooperate fully with the Developer, at the Developer's expense, to accomplish such financing and will negotiate in good faith such amendments to this Agreement as are necessary to enable such financing, provided such amendments do not increase any liabilities or create recourse financial obligations of the IDB or the City.

Section 3.07. Lender Estoppels. At the request of the Developer, the IDB shall agree to sign (and the IDB shall request the City to sign) such consents, estoppel agreements and other certificates as may be reasonably requested by any lender to the Developer relating to a loan to finance or refinance the cost of the Project so as to provide assurances to such lender that the payments to be made to the Developer under this Agreement have been properly assigned to such lender.

Section 3.08. Reporting Requirements. The IDB will submit or cause the City to submit the annual reports and certifications required by the Border Region Act in order to receive annual disbursements of Allocated State Tax Revenues pursuant to the Border Region Act. At the request of the IDB, the Developer will cooperate fully with the City and the IDB in connection with the submission of the reports and certifications described in this Section. In connection with such submissions, the Developer will provide the City and the IDB with an annual list of all eligible costs and supporting documentation relating thereto.

Section 3.09. Good and Workmanlike Manner. Developer shall perform the site improvement, construction and/or development of the Project in a good and workmanlike, lien-free manner, with the exception of any lender, in accordance with all applicable legal requirements and regulations. Developer hereby grants to the IDB, its contractors, agents and employees, a temporary license to enter upon any portion of the Project Property for the purpose of inspecting all or any part of the site improvement, construction and/or development of the Project.

Section 3.10. Warranty. Developer warrants to the IDB that all materials and equipment furnished in connection with the site improvement, construction and/or development of the Project shall be of good quality and new unless otherwise specified, and that all such work shall be of good quality, free from faults and defects. If required by the IDB, Developer shall furnish evidence that is satisfactory to the IDB as to the kind and quality of materials and equipment.

Section 3.11. Termination. The obligations of the IDB under this Agreement shall terminate upon the payment of the final Annual Incentive Amount to Developer as provided in Section 5.18 hereof.

Section 3.12 Compliance with Other Legal Requirements. The Developer acknowledges and agrees that this Agreement does not and shall not be construed to indicate or imply that the IDB, acting as a regulatory or permitting authority or as an instrumentality of the City, as granted or is obligated to grant or has the authority to grant any approval or permit required by law for the development of the Project. The Developer agrees to obtain and comply with all permits, licenses and governmental approvals required for the development of the Project and, upon completion of the Project, to maintain the Project in

compliance with all legal requirements applicable thereto. The Developer furthermore agrees, during the term of this Agreement, to pay all taxes levied against the Project Property on or before the date that such taxes would be delinquent.

ARTICLE IV EVENTS OF DEFAULT AND REMEDIES

Section 4.01. Event of Default. The occurrence and continuance of any of the following events shall constitute an "Event of Default":

(a) failure of the Developer to perform any of its obligations under this Agreement after written notice is given to the Developer of such failure and the Developer has not cured such failure within sixty (60) days of such notice; or

(b) any material representation, warranty, certification or other statement made or deemed made by Developer in this Agreement or in any statement or certificate at any time given by Developer in writing pursuant hereto or thereto or in connection herewith or therewith shall be false in any material respect as of the date made; or

(c) a court of competent jurisdiction shall enter a decree or order for relief in respect of Developer in an involuntary case under any applicable bankruptcy, insolvency or similar law now or hereafter in effect, which decree or order is not stayed, or any other similar relief shall be granted under any applicable federal or state law; or (ii) an involuntary case shall be commenced against Developer under any applicable bankruptcy, insolvency or similar law now or hereafter in effect; or a decree or order of a court having jurisdiction in the premises for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over Developer, as the case may be, or over all or a substantial part of its property, shall have been entered; or there shall have occurred the involuntary appointment of an interim receiver, trustee or other custodian of Developer for all or a substantial part of its property; or a warrant of attachment, execution or similar process shall have been issued against any substantial part of the property of Developer, and any such event described in this clause (ii) shall continue for sixty (60) days without having been dismissed, bonded or discharged; or

(d) Developer shall have an order for relief entered with respect to it or shall commence a voluntary case under any applicable bankruptcy, insolvency or similar law now or hereafter in effect, or shall consent to the entry of an order for relief in an involuntary case or to the conversion of an involuntary case to a voluntary case under any such law; or shall consent to the appointment of or taking possession by a receiver, trustee or other custodian for all or a substantial part of its property; or Developer shall make any assignment for the benefit of creditors, or Developer shall be unable, or shall fail generally, or shall admit in writing its inability, to pay its debts as such debts become due; or Developer shall adopt any resolution or otherwise authorize any action to approve any of the actions referred to herein or in Section 3.01(c); or

(e) Developer enters into an agreement or association with any other entity or individual, directly or indirectly, or such other parties' officers, owners, directors, agents, affiliates, or associates, that results in, or is intended to result in, or would result in, the decrease or loss of Allocated State Tax Revenues that the City or IDB may realize or be entitled to receive under this Agreement, including the City's retained share under Section 3.03 of this Agreement, or under the Border Region Act; or

(f) Developer enters into, without first obtaining written approval by the City and IDB, an agreement relative to the Project Property or the Project with any other entity or individual, directly or indirectly, (including such other entity's officers, owners, directors, agents affiliates, or associates), that has previously negotiated a Border Region development agreement with the IDB and/or City, if such agreement

would negatively impact the City or the IDB's entitlement to retain Project State Tax Revenues as provided under Section 3.03 of this Agreement, or under the Border Region Act.

Section 4.02. IDB Remedies. If a Developer Event of Default occurs hereunder, the IDB may terminate this Agreement upon written notice to the Developer at which time all of the rights and privileges of the Developer hereunder shall cease and be of no further force or effect. Additionally, if the Event of Default is triggered as a result of Section 4.01(e) or 4.01(f), then the IDB and the City shall be entitled to, in addition to all other remedies available at law or as provided in this Agreement, an amount equal to all Allocated State Tax Revenues generated from the Project Property, including Developer's portion of the Allocated State Tax Revenues as provided in Section 3.03 hereof, and all attorneys' fees, costs and expenses incurred by the IDB or the City in connection with enforcing the terms of this Agreement, including all appellate costs, attorneys' fees and expenses.

Section 4.03. Waiver. No failure by the IDB to exercise any right, remedy, or option under this Agreement or any present or future supplement hereto, or delay by the IDB in exercising the same, will operate as a waiver thereof. No waiver by the IDB will be effective unless it is in writing, and then only to the extent specifically stated. No waiver by the IDB on any occasion shall affect or diminish the IDB's rights thereafter to require strict performance by the Developer of any provision of this Agreement. The IDB's rights under this Agreement will be cumulative and not exclusive of any other right or remedy which the IDB may have.

ARTICLE V MISCELLANEOUS

Section 5.01. IDB Liability. No Personal Liability; No City Liability. THE LIABILITY OF THE IDB FOR ANY CLAIM BY DEVELOPER IS EXPRESSLY LIMITED TO THE IDB'S INTEREST IN ANY ALLOCATED STATE TAX REVENUES PAYABLE TO THE IDB FROM THE BORDER REGION DISTRICT AND NOT PLEDGED AND, OTHERWISE NOT ENCUMBERED. THE IDB SHALL NOT HAVE ANY PECUNIARY LIABILITY UNDER THIS AGREEMENT FOR ANY ACT OR OMISSION OF THE IDB. NO OTHER PROPERTY OR ASSETS OF THE IDB SHALL BE SUBJECT TO LEVY, EXECUTION OR OTHER PROCEDURES FOR THE SATISFACTION OF REMEDIES OF THE DEVELOPER HEREUNDER OR RELATING HERETO. UNDER NO CIRCUMSTANCES SHALL THE IDB BE LIABLE FOR ANY SPECIAL OR CONSEQUENTIAL DAMAGES, ALL OF WHICH ARE HEREBY WAIVED BY THE DEVELOPER. NO RECOURSE SHALL BE HAD FOR ANY CLAIM BASED UPON ANY OBLIGATION, COVENANT OR AGREEMENT IN THIS AGREEMENT OR ANY TRANSACTION OR MATTER RELATING HERETO AGAINST ANY PAST, PRESENT OR FUTURE DIRECTOR, OFFICER, EMPLOYEE, COUNSEL OR AGENT OF THE IDB, WHETHER DIRECTLY OR INDIRECTLY, AND ALL SUCH LIABILITY OF ANY SUCH INDIVIDUAL AS SUCH IS EXPRESSLY WAIVED AND RELEASED AS A CONDITION OF AND IN CONSIDERATION FOR THE IDB ENTERING INTO THIS AGREEMENT. NOTWITHSTANDING THE FOREGOING, THE PARTIES AGREE THAT THE DEVELOPER MAY ENFORCE THE TERMS OF THIS AGREEMENT THROUGH A CLAIM FOR SPECIFIC PERFORMANCE. THE DEVELOPER ACKNOWLEDGES THAT THE CITY IS A SEPARATE ENTITY FROM THE IDB, AND IN NO EVENT SHALL THE CITY BE RESPONSIBLE FOR THE PERFORMANCE OF ANY OBLIGATIONS OF THE IDB HEREUNDER OR LIABLE FOR ANY CLAIMS AGAINST THE IDB HEREUNDER.

Section 5.02. Indemnity. The Developer shall indemnify the IDB and the City and their successors and assigns, and every director, officer, employee, counsel and agent of the IDB (individually, an "Indemnitee") with respect to, and hold each Indemnitee harmless from and against, any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including, without limitation, the fees and disbursements of counsel for any Indemnitee in connection with any investigative, administrative or judicial proceeding,

whether or not such Indemnitee shall be designated a party thereto) which may be imposed on, incurred by, or asserted against such Indemnitee, in any way relating to or arising out of this Agreement (other than as a result of a breach hereof by the IDB), or the development of the Project or the submission of any certificate or report to the State by the IDB or the City in reliance on information provided by the Developer ("Indemnification Liabilities"). The Developer shall reimburse each Indemnitee on demand from time to time for all Indemnification Liabilities incurred by such Indemnitee. Each Indemnitee will promptly notify the Developer of the commencement of any proceeding involving it in respect of which indemnification may be sought pursuant to this Section. The obligations of the Developer under this Section 5.02 shall survive the termination of this Agreement.

Section 5.03. Assignment. The Developer may not assign or transfer this Agreement, or any interest of the Developer hereunder, without the prior written consent of IDB. Any such assignment shall not relieve the Developer of its liability for the performance of its duties and obligations hereunder unless IDB consents to such release. If Developer is a corporation, limited liability company, unincorporated association, or partnership, a transfer, assignment or hypothecation of any stock or interest in such corporation, company, association or partnership by any stockholder or partner so as to result in a change in the control thereof by the person, persons or entities owning a majority interest therein as of the date of this Agreement, shall be deemed to be an assignment of this Agreement. Any transfer of this Agreement from Developer by merger, consolidation, liquidation or otherwise by operation of law, including, but not limited to, an assignment for the benefit of creditors, shall be included in the term "assignment" for the purposes of this Agreement and shall be a violation of this Section. Notwithstanding, the Developer shall be permitted to assign and grant a security interest in its right to receive payments under this Agreement as security for a loan to finance or refinance the cost of the Project. In the event any assignment occurs in violation of this Section, neither the IDB nor the City shall be obligated to assign or otherwise pay any Annual Incentive Amount to any assignee unless otherwise agreed to by the IDB.

Section 5.04. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the parties hereto and the permitted successors and assigns of the parties. For purposes of this Agreement, Developer's heirs and/or estate shall be considered a permitted assignee and successor.

Section 5.05. Notices. Any notice, request, demand, tender or other communication under this Agreement shall be in writing, and shall be deemed to have been duly given at the time and on the date when personally delivered, or upon the Business Day (as defined below) following delivery to a nationally recognized commercial courier for next day delivery, to the address for each party set forth below, or upon the third (3rd) Business Day after being deposited in the United States Mail, Certified Mail, Return Receipt Requested, with all postage prepaid, to the address for each party set forth below.

If to the Developer to:

Colin Kelley
1500 Fruitland Drive
East Ridge, Tennessee 37412
Colin Kelley <colin@kelleyxray.com>

If to the IDB to:

The Industrial Development Board for the City of East Ridge

1517 Tombras Avenue
East Ridge, Tennessee 37412
Attention: Chairman

Copy to:

East Ridge City Manager
1517 Tombras Avenue
East Ridge, Tennessee 37412

Rejection or other refusal to accept or inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of such communication. By giving prior notice to all other parties, any party may designate a different address for receiving notices.

Section 5.06. Applicable Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Tennessee. Venue for any action arising out of this Agreement shall be exclusively in Hamilton County, Tennessee.

Section 5.07. Entire Agreement. This Agreement supersedes all prior discussions and agreements between the IDB and the Developer with respect all matters contained herein. This Agreement contains the sole and entire understanding between the IDB and the Developer with respect to the transactions contemplated by this Agreement.

Section 5.08. Amendment. This Agreement shall not be modified or amended in any respect except by written agreement executed by or on behalf of the parties to this Agreement in the same manner as this Agreement is executed.

Section 5.09. Severability. If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 5.10. Captions. All captions, headings and section and paragraph numbers and letters and other reference numbers or letters are solely for the purpose of facilitating reference to this Agreement and shall not supplement, limit or otherwise vary in any respect the text of this Agreement. All references to particular sections, paragraphs or subparagraphs by number refer to the particular section, paragraph or subparagraph so numbered in this Agreement unless reference to another document or instrument is specifically made.

Section 5.11. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts together shall constitute one and the same Agreement.

Section 5.12. Expenses. Each party shall promptly pay all of their own costs and expenses incurred in connection with the performance of their obligations under of this Agreement.

Section 5.13. Term. Unless terminated earlier as provided herein, this Agreement shall be effective as of the date hereof and shall remain in effect until the parties have performed all of their obligations hereunder or until terminated upon default or by mutual agreement of the parties and the City or their successors and assigns.

Section 5.14. No Government Limitation. This Agreement shall not be construed to bind any other agency or instrumentality of federal, state or local government in the enforcement of any regulation, code or law under its jurisdiction.

Section 5.15. Time of the Essence. Time shall be of the essence in the performance of the terms and conditions of this Agreement.

Section 5.16. Business Days. For purposes of this Agreement, "Business Day" means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the laws of, or are in fact closed in, the State of Tennessee. If any date on which performance or notice is due under this Agreement is not a Business Day, performance or notice shall not be due until the next Business Day.

Section 5.17. Approvals by IDB. Any actions in furtherance of the IDB's approval or performance of this Agreement may be carried out by a duly authorized representative of the IDB and does not require the signature(s) of the entire board of directors of the IDB, unless specifically provided otherwise herein or by the IDB's bylaws or by applicable law.

Section 5.18. Approvals by City and Intended Beneficiary. This Agreement is subject to the approval of the East Ridge City Council. Additionally, it is understood by Developer that the City is an intended beneficiary of this Agreement and has the same rights and remedies provided in this Agreement, and may, independent of the IDB, seek to enforce such rights and remedies against the Developer to the extent the City may deem such enforcement necessary or advisable to protect its rights or the rights of the IDB hereunder.

Section 5.19. Payment Obligation Term. Subject to the conditions set forth in this Agreement, the term for the payment obligations as provided in Section 3.03 of this Agreement shall commence in accordance with this Agreement and continue until the Border Region District is dissolved in accordance with T.C.A. § 7-40-104(d) or upon the date on which the eligible cost of the Project have been fully paid, whichever occurs sooner.

[Signature pages to follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

**THE INDUSTRIAL DEVELOPMENT BOARD OF
THE CITY OF EAST RIDGE, TENNESSEE**
A Tennessee Public Nonprofit Corporation

By: _____
Title: Chairman

STATE OF TENNESSEE:
COUNTY OF HAMILTON:

Before me, the undersigned authority duly authorized to take oaths and acknowledgements, personally appeared CASEY TUGGLE, to me known and known to me to be the Chairperson for the Industrial Development Board of the City of East Ridge, Tennessee, and he acknowledged executing the foregoing Development Agreement Relating to the Border Region Retail Tourism Development District under authority duly vested in him by said board as the free act and deed of said board for the purposes therein expressed.

WITNESS my hand and official seal this __ day of _____ 2023.

Notary Public
My Commission Expires: _____

KELLEY X-RAY CO.

By: _____
Print Name: _____
Title: _____

STATE OF TENNESSEE:
COUNTY OF HAMILTON:

Before me, the undersigned authority duly authorized to take oaths and acknowledgements, personally appeared _____, to me known to be the President of Kelley X-Ray Co. or properly represented to be upon submission of sufficient identification, and acknowledged executing the foregoing Development Agreement Relating to the Border Region Retail Tourism Development District as his free act and deed for the purposes therein expressed.

WITNESS my hand and official seal this __ day of _____ 2023.

Notary Public
My Commission Expires: _____

This Agreement has been approved and consented to by the East Ridge City Council on _____, 2023, pursuant to Resolution No. _____.

THE CITY OF EAST RIDGE, TENNESSEE,
a Tennessee Municipality

By: _____
Title: Mayor

STATE OF TENNESSEE:
COUNTY OF HAMILTON:

Before me, the undersigned authority duly authorized to take oaths and acknowledgements, personally appeared _____, to me known and known to me to be the Mayor for the City of East Ridge, Tennessee, and he acknowledged executing the foregoing Development Agreement Relating to the Border Region Retail Tourism Development District under authority duly vested in him by applicable law as the free act and deed of the City Council for the purposes therein expressed.

WITNESS my hand and official seal this ___ day of _____ 2023.

Notary Public

My Commission Expires: _____

Scott J. Miller

From: Mark Litchford <mark@lpafirm.com>
Sent: Monday, February 20, 2023 11:33 AM
To: Scott J. Miller; Brian Williams
Subject: Kelley X-Ray
Attachments: Kelley X-Ray Co Spreadsheet (004).xlsx

I wanted to make sure and clarify the arrangement for the Kelley X-Ray project. For this X-Ray project, this appears to be the first BR project that will have BR tax revenues (\$2.4M) far exceed the investment amount (\$855K). Thus, in this scenario the investment amount will be fully reimbursed with BR tax revenues, with the spillover being applied to all other City BR debt.

With the proposed allocation of BR tax revenues being 30% to the Developer and 70% to the City, then the breakdown of this BR project will be as follows:

Total Investment Amount for X-Ray <i>(this is also equal to the total amount eligible for reimbursement under this project)</i>	\$855,308.33	
Total Anticipated BR Tax Revenue	\$2,423,012.17	
30% of BR Tax Revenue to Developer	\$256,592.50	Note that these 2 amounts equal the Total Investment Amount for X-Ray (\$855,308.33)
70% of BR Tax Revenue to City	\$598,715.83	
Remainder of BR Tax Revenue Spillover to apply towards City's overall BR Debt <i>(Current total BR debt for City is approx. \$20M)</i>	\$1,567,703.84	In total, the City will receive \$2,166,419.57 in BR revenue that it will apply towards its overall BR Debt. (\$1,567,703.84 + \$598,715.83)

Thus, assuming the developer produces as anticipated, the developer will receive \$256,592.44 in reimbursement which is a 30% ROI

$\frac{\$256,592.44}{\$855,308.33}$	30%
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I have revised the spreadsheet to reflect the total amount of payouts for both the Developer and the City. I just wanted to make sure the developer and City are clear on what the expected payouts will be under this project.

We will announce only the amount of payouts at the City Council meeting for the Developer. We will not announce the ROI. I just put the ROI in this email for your edification. Call me if you have any questions.

Mark W. Litchford

	Fiscal Year	State Taxable Sales	Border Region Percentage (4.125%)	Aggregate	30% to Developer	Aggregate for Developer	70% to City	Aggregate for City	Total Reimbursement
1	2023/2024	\$ 2,309,680.33	\$ 95,274.31	\$ 95,274.31	\$ 28,582.29	\$ 28,582.29	\$ 66,692.02	\$ 66,692.02	\$ 95,274.31
2	2024/2025	\$ 2,321,228.73	\$ 95,750.69	\$ 191,025.00	\$ 28,725.21	\$ 57,307.50	\$ 67,025.48	\$ 133,717.50	\$ 191,025.00
3	2025/2026	\$ 2,332,834.67	\$ 96,229.43	\$ 287,254.43	\$ 28,868.83	\$ 86,176.33	\$ 67,360.60	\$ 201,078.10	\$ 287,254.43
4	2026/2027	\$ 2,344,499.05	\$ 96,710.59	\$ 383,965.01	\$ 29,013.18	\$ 115,189.50	\$ 67,697.41	\$ 268,775.51	\$ 383,965.01
5	2027/2028	\$ 2,356,221.54	\$ 97,194.14	\$ 481,159.15	\$ 29,158.24	\$ 144,347.75	\$ 68,035.90	\$ 336,811.41	\$ 481,159.15
6	2028/2029	\$ 2,368,002.65	\$ 97,680.11	\$ 578,839.26	\$ 29,304.03	\$ 173,651.78	\$ 68,376.08	\$ 405,187.48	\$ 578,839.26
7	2029/2030	\$ 2,379,842.66	\$ 98,168.51	\$ 677,007.77	\$ 29,450.55	\$ 203,102.33	\$ 68,717.96	\$ 473,905.44	\$ 677,007.77
8	2030/2031	\$ 2,391,741.67	\$ 98,659.34	\$ 775,667.12	\$ 29,597.80	\$ 232,700.13	\$ 69,061.54	\$ 542,966.98	\$ 775,667.12
9	2031/2032	\$ 2,403,700.68	\$ 99,152.65	\$ 874,819.77	\$ 23,892.37	\$ 256,592.50	\$ 75,260.29	\$ 618,227.27	\$ 874,819.77
10	2032/2033	\$ 2,415,719.09	\$ 99,648.41	\$ 974,468.18			\$ 99,648.41	\$ 717,875.68	\$ 974,468.18
11	2033/2034	\$ 2,427,797.68	\$ 100,146.65	\$ 1,074,614.84			\$ 100,146.65	\$ 818,022.34	\$ 1,074,614.84
12	2034/2035	\$ 2,439,936.67	\$ 100,647.39	\$ 1,175,262.22			\$ 100,647.39	\$ 918,669.72	\$ 1,175,262.22
13	2035/2036	\$ 2,452,136.35	\$ 101,150.62	\$ 1,276,412.85			\$ 101,150.62	\$ 1,019,820.35	\$ 1,276,412.85
14	2036/2037	\$ 2,464,397.04	\$ 101,656.38	\$ 1,378,069.23			\$ 101,656.38	\$ 1,121,476.73	\$ 1,378,069.23
15	2037/2038	\$ 2,476,719.02	\$ 102,164.66	\$ 1,480,233.89			\$ 102,164.66	\$ 1,223,641.39	\$ 1,480,233.89
16	2038/2039	\$ 2,489,102.62	\$ 102,675.48	\$ 1,582,909.37			\$ 102,675.48	\$ 1,326,316.87	\$ 1,582,909.37
17	2039/2040	\$ 2,501,548.43	\$ 103,188.87	\$ 1,686,098.24			\$ 103,188.87	\$ 1,429,505.74	\$ 1,686,098.24
18	2040/2041	\$ 2,514,055.67	\$ 103,704.80	\$ 1,789,803.04			\$ 103,704.80	\$ 1,533,210.54	\$ 1,789,803.04
19	2041/2042	\$ 2,526,626.15	\$ 104,223.33	\$ 1,894,026.37			\$ 104,223.33	\$ 1,637,433.87	\$ 1,894,026.37
20	2042/2043	\$ 2,539,259.28	\$ 104,744.45	\$ 1,998,770.81			\$ 104,744.45	\$ 1,742,178.31	\$ 1,998,770.81
21	2043/2044	\$ 2,551,955.58	\$ 105,268.17	\$ 2,104,038.98			\$ 105,268.17	\$ 1,847,446.48	\$ 2,104,038.98
22	2044/2045	\$ 2,564,715.35	\$ 105,794.51	\$ 2,209,833.49			\$ 105,794.51	\$ 1,953,240.99	\$ 2,209,833.49
23	2045/2046	\$ 2,577,538.93	\$ 106,323.48	\$ 2,316,156.97			\$ 106,323.48	\$ 2,059,564.47	\$ 2,316,156.97
24	2046/2047	\$ 2,590,426.63	\$ 106,855.10	\$ 2,423,012.07			\$ 106,855.10	\$ 2,166,419.57	\$ 2,423,012.07
	Total		\$ 2,423,012.07	\$ 2,423,012.07	\$ 256,592.50	\$ 256,592.50	\$ 2,166,419.57	\$ 2,166,419.57	\$ 2,423,012.07

Time Period	Average Taxable Sales
Avg. YR 5	\$ 2,332,892.86
Avg. YR 10	\$ 2,362,347.11
Avg. YR 15	\$ 2,392,297.19
Avg. YR 20	\$ 2,422,752.50
Avg. YR 24	\$ 2,447,486.94

KELLY X-RAY COMPANY

Purchase of Property	\$	600,000.00
Closing Costs on Building Purchase	\$	21,162.60
Closing Costs on Rock Point Loan	\$	5,987.60
Demolition and Warehouse Paint	\$	4,049.58
Build-out and Upgrades	\$	133,526.00
Tree Removal/Installation of Fencing	\$	3,000.00
2-New Insulated Garage Doors	\$	10,750.00
Warehouse Industrial Fan	\$	554.65
New Interior Doors	\$	3,097.65
Repair/Replace damaged soffit metal	\$	1,526.95
New Flooring, Office Space, Restrooms and Breakroom	\$	22,000.00
New TPO Roof	\$	46,000.00
Exterior Sign	\$	430.80
Security Cameras and Alarm System	\$	1,145.00
Attorneys Fees	\$	990.00
Architects Fees	\$	1,087.50
TOTAL INVESTED	\$	855,308.33

1	BORDER REGION SALES TAXES						
2	Property Address		Tax ID Parcel	Border Region**	Average Annual Sales	Average Annual Border Region Sales Collected	Aggregate Border Region Sales Collected
3	1500 Fruitland Drive	1 YR	169J G 013.01	4.1250	\$ 2,332,892.86	\$96,231.83	\$96,231.83
4	1500 Fruitland Drive	10 YR		4.1250	\$ 2,362,347.11	\$97,446.82	\$974,468.18
5	1500 Fruitland Drive	15 YR		4.1250	\$ 2,392,297.19	\$98,682.26	\$1,480,233.89
6	1500 Fruitland Drive	20 YR		4.1250	\$ 2,422,752.50	\$99,938.54	\$1,998,770.81
7	1500 Fruitland Drive	24 YR		4.1250	\$ 2,447,486.94	\$100,958.84	\$2,423,012.07
8							
9	** Education fund backed out of calculation						
10							
11							
12	Developer to receive		\$ 256,592.50				



LOCATION MAP

Owner's Certification

I/We, the undersigned owner/s of the property shown herein, do hereby adopt this plat and certify that I/we own/s the property in fee simple

Steve Watkins

Steve Watkins (Lot 2)
Gor Masters Magic Wand, Inc.
5410 Ringgold Road
Chattanooga, Tennessee 37412
Phone: 423-698-5803

Richard F Owens

Richard F Owens (Lot 1)
10 Woodard Circle
Chattanooga, Tennessee 37412
Phone: 423-465-1150

Surveyor's Certification

I certify that I have surveyed the property shown herein that the survey is correct to the best of my knowledge and belief and that the ratio of precision of the unadjusted survey exceeds 1.00,000. This is a Category "1" Survey.

David Mathews PL38741



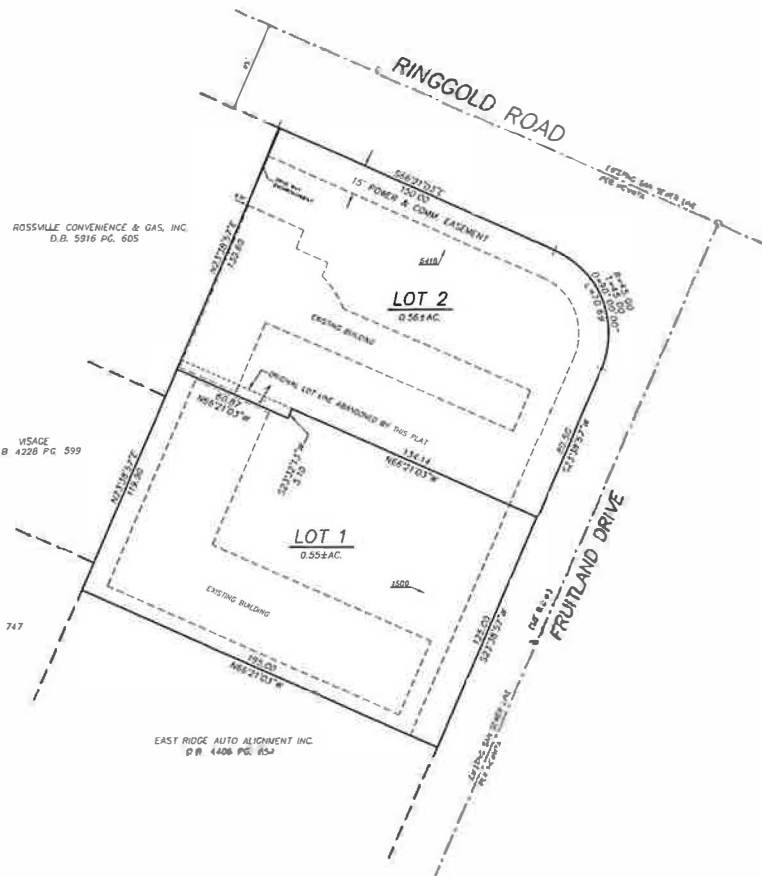
Survey No: 2001042400104
Date: 06/14/02
By: David Mathews
Title: Surveyor
Date: 06/14/02
Time: 10:00 AM
Station: To West, Register
Harrison County, Tennessee

RECORDED PLAT DOES NOT
TRANSFER PROPERTY
OR INTEREST THEREIN

APPROVED FOR RECORDING
HAMILTON COUNTY GIS DEPT
DATE: 5/14/02
BY: [Signature]
HAMILTON COUNTY GIS
DATE: 5/14/02
BY: [Signature]
JURISDICTION AUTHORITY
DATE: 5/14/02
BY: [Signature]
CHATTANOOGA COUNTY REGIONAL
PLANNING COMMISSION
DATE: 5/14/02
BY: [Signature]

GENERAL NOTES

1. Zoned: C-2
2. Acres subdivided: 1.11± acres
3. This plat subdivides deed: 3799-50 & 5751-142
4. Local government does not certify that utilities or utility connections are available.
5. This subdivision has been designed according to the design standards of the City of East Ridge Subdivision Regulations
6. All underground utility subsides and service lines to be a minimum depth of 24 inches when located within 60 feet of property corners
7. Tax Map No: 159 J-C-13 & 13.01
8. Public sanitary sewers are available by HCRWTA
9. Purpose of plat: To redivide lots 1 and 2 as shown.
10. All corners are iron pins set unless otherwise noted
11. Per FEMA FIRM No 47055C 0476F Dated 11-7-2002 these lot are in the 100 year flood area. The 100 year flood elevation is 680'



GRAPHIC SCALE



REVISED PLAT

FRUITLANDS SUBDIVISION

LOTS 1 & 2

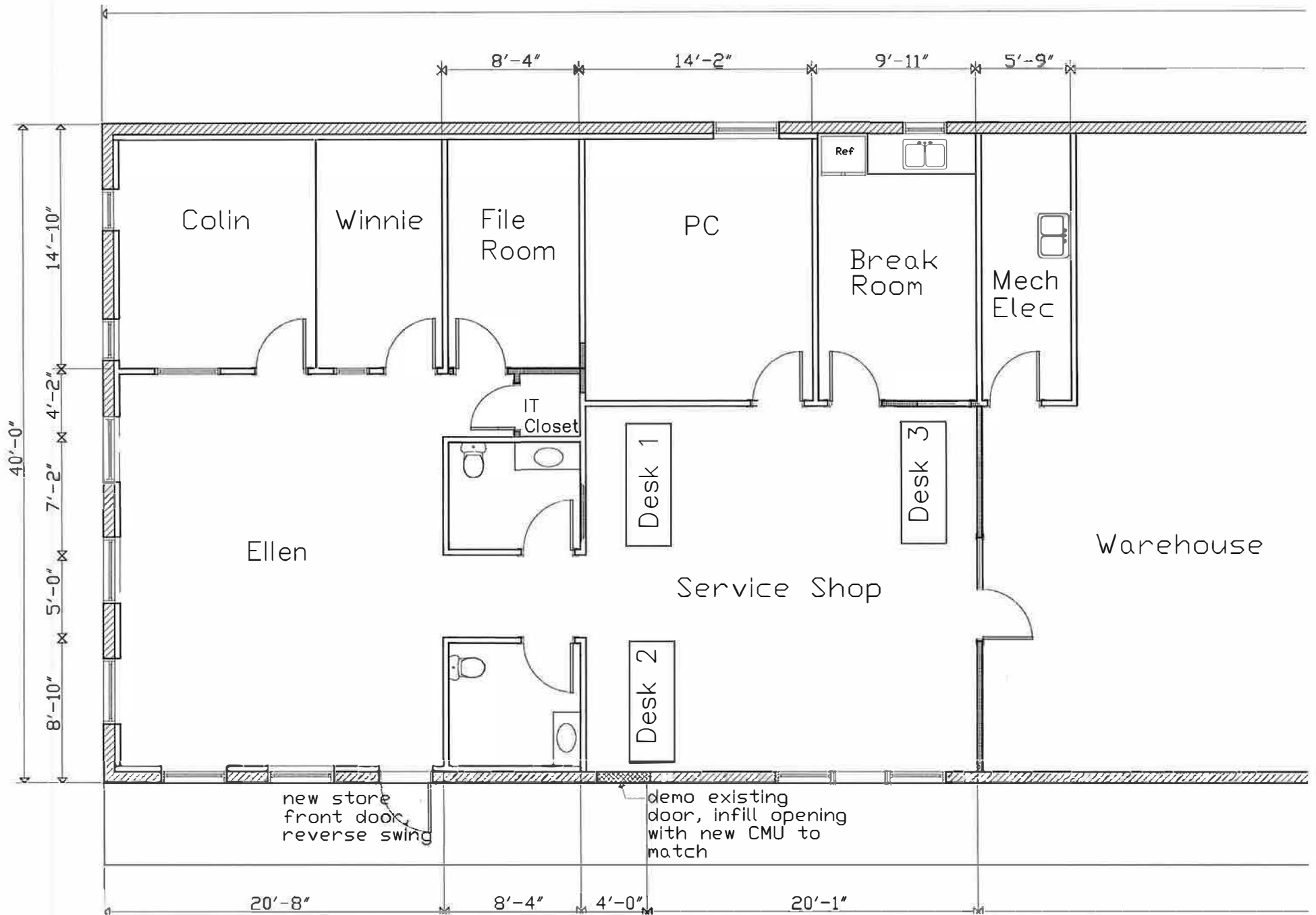
EAST RIDGE, HAMILTON COUNTY, TENNESSEE

PLAT: 08-386	BOOK: 08-386
PAGE: 1 OF 2	DATE: 08-2002

DAVID MATHEWS SURVEYING
430 DANIEL ROAD
16,711 HENRY, TN 37132

78 491 974 0071
18 423-779-2301

08-3865



RESOLUTION NO. 3363

AGENDA MEMORANDUM

PIN 122240 – Safe Routes to School Grant - Return

2/23/2023

Submitted by:

Cameron McAllister

Cameron McAllister, Development Administrator

SUBJECT:

The Economic & Community Development Department is asking for the approval from the Mayor and Council to return the funds for the Safe Routes to School grant. It has been determined that it is in the best interest of the City of East Ridge and East Ridge Elementary to return the funding at this time. The cancellation of this project is due to the reduced scope of work, project budget, and additional local funds needed to expand this project for beneficial use. The City of East Ridge will be responsible for issuing a payment of \$15,860.61 to the Tennessee Department of Transportation for invoices that had previously been reimbursed for consultant services.

RESOLUTION NO. 3363

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EAST RIDGE, TENNESSEE AUTHORIZING THE CITY OF EAST RIDGE TO RETURN FUNDS FROM THE SAFE ROUTES TO SCHOOLS GRANT TO THE TENNESSEE DEPARTMENT OF TRANSPORTATION

WHEREAS, the City Council of East Ridge, Tennessee applied for and accepted the Safe Routes to Schools Grant in August 2015 in the amount of \$179,442.00; and

WHEREAS, the concept for the grant was altered by State Officials and Thompson Engineering, eliminating a major part of the original plan for sidewalks in the area of East Ridge Elementary School; and

WHEREAS, the revised plan for sidewalks was not conducive to the location of the school at John Ross Road; and

WHEREAS, after consulting City Staff, State Officials, and Hamilton County school officials, it is determined that the best course of action is to return the grant funds.

WHEREAS, the City of East Ridge will not be penalized for returning the grant to the State, who is in favor of this course of action, and encourages the City of East Ridge to re-apply for the Safe Routes to School Grant at a later date

NOW, THEREFORE, BE IT RESOLVED that the City Council hereby authorizes the Mayor to submit a letter to State Officials requesting to return the Safe Routes to School Grant in the amount of \$179,442.00

BE IT FURTHER RESOLVED that the City of East Ridge agrees to remit payments for any outstanding invoices created by consultants that were contracted for this project, and payment to the State of Tennessee in the amount of \$15,860.61 for invoices that had previously been reimbursed

BE IT FURTHER AND FINALLY RESOLVED that this resolution shall take effect immediately after its passage, the public welfare of the City requiring it

Adopted this _____ day of _____, 2023

Brian W. Williams, Mayor

ATTEST:

J. Scott Miller, City Manager

APPROVED AS TO FORM:

Mark W. Litchford, City Attorney

AGENDA MEMORANDUM

REZONE

918 and 1000 S. Crest Road

March 9, 2023

Submitted by:



Michael Howell, Chief Building Official

SUBJECT:

**Rezone the following properties: 918 South Crest Rd (Tax Map # 168N H 001.01)
1000 South Crest Rd (Tax Map # 168N H 001)**

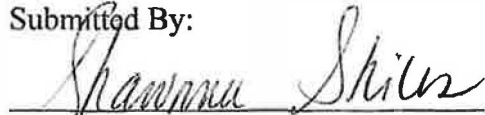
On February 7th, 2023, Trevor Jack petitioned the East Ridge Planning Commission to rezone the properties located at 918 and 1000 South Crest Rd from R-1 Residential to R-2 Residential-Duplex District. The East Ridge Planning Commission approved the request to rezone the existing duplex at 918 South Crest and denied the request to rezone the 1000 South Crest parcel.

Mr. Jack has requested both cases be moved forward to the city council for review.

AGENDA MEMORANDUM
ACADEMY SPORT + OUTDOORS

March 9, 2023

Submitted By:

A handwritten signature in cursive script that reads "Shawna Skiles". The signature is written in black ink and is positioned above a horizontal line.

Shawna Skiles, Parks and Recreation Director

SUBJECT:

At the February 9th council meeting, Council approved a Parks and Rec contract with Academy Sports + Outdoors. Revisions have been made to the original contract, so Resolution 3357 will need to be rescinded. A new resolution approving the revised contract will be presented at the March 9, 2023 meeting. The new contract from Attorney Litchford, which best represents the city's interest, has been provided to Academy Sports + Outdoors.

SS



This Sponsorship Summary ("**Summary**"), naming Academy Ltd. d/b/a Academy Sports + Outdoors ("**Academy**") as a Sponsor of the East Ridge Parks and Recreation ("**Recipient**"), is governed by that certain Sponsorship Rider ("**Rider**") between Academy and Recipient effective as of 2/2/2023 ("**Effective Date**").

The term of this Summary is for the period of time from the Effective Date until 2/1/2024 (the "**Term**"), unless earlier terminated in accordance with the provisions of the Rider. Academy shall have the right to extend this Agreement ("**Agreement**") as defined in the attached Rider) for an optional one (1) additional year period. This Agreement is not renewable after the optional one (1) year period and the parties must enter into a new agreement to the extent they desire to further engage in the services contemplated in this Agreement. Academy must notify Recipient of its intent to renew the Agreement with written notice to Recipient thirty (30) days prior to the end of the current term.

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1. Recipient will provide the following sponsorship benefits to Academy:

- Recipient shall place Academy banners on each of the Recipient's fields
- Recipient shall distribute Academy marketing materials when and where applicable. The content to be mutually agreed upon by the Parties.
- Recipient shall schedule a minimum of two (2) league night shopping events. Recipient must provide Academy with at least four (4) weeks advance notice for league night event requests and league night dates are subject to Academy's agreement. Recipient must promote league nights on Recipient's website, social media channels, and any other means applicable to ensure turnout.
- Category exclusive online advertising on the team web site, including:
 - One (1) masthead banner ad
 - One (1) 350 x 250 top right home page ad
 - Recipient agrees to send out an Academy approved e-mail message to all league participants monthly
- Recipient shall provide proof of performance to include number of participants and pictures of banners on Recipient's fields.

2. Academy will provide the following to Recipient:

- \$2,000 payable pursuant to attached Sponsorship Rider
- \$250 Academy Gift Card
- Ten (10) Dozen of Academy Baseballs
- Five (5) 6 pack of Academy Softballs
- Ten (10) Academy Soccer Balls
- Payment to SportsEngine, on behalf of Recipient, of the fees for the Starter Level Web Site Design package, in accordance with Academy's contract with SportsEngine, which includes the following:
 - Sitebuilder website content management system
 - Starter Level Mobile Responsive design template
 - Access to the SportsEngine registration system (transaction fees the responsibility of the league);
 - Functionality includes, hosted web site, team pages, content management

3. Invoicing:



Recipient shall submit its invoice(s) and W9 for payment processing via email to:

Cody.Reid@Academy.com

This Sponsorship Rider ("**Rider**") is entered into on the Effective Date, as listed in the Sponsorship Summary ("**Summary**") to which it is attached, between Academy, Ltd. d/b/a Academy Sports + Outdoors ("**Academy**"), a Texas limited partnership located at 1800 North Mason Road, Katy, Texas, 77449 and East Ridge Parks and Recreation ("**Recipient**"), a City Government, located at 323 Camp Jordan Parkway, Chattanooga, TN 37412. Academy and Recipient may sometimes be referenced herein individually as "**Party**" or collectively as the "**Parties**".

This Rider is made part of the Sponsorship Summary ("**Summary**") by and between Academy and Recipient to which it is attached. This Rider, agreed to by both Parties, modifies the terms and conditions of the Summary. Should any conflict arise between the Summary and this Rider, this Rider shall control and supersede all prior agreements and understandings, with respect to the subject matter hereof. Academy and Recipient agree that the following provisions shall be included as a part of the Parties' sponsorship agreement, and that this sponsorship agreement consists of the Summary, this Rider, and any Exhibits or Schedules referenced therein (collectively, the "**Agreement**").

1. **PRICING AND INVOICING.** Nothing herein shall permit an increase in the price for promotional or sponsorship rights or consideration specified in any Summary unless approved in writing and signed by Academy. All invoices will be paid within ninety (90) days after Academy's receipt of a valid and correct invoice. Academy shall have the right at any time to set-off any amount owed by Recipient to Academy under this Agreement or any other agreements between the Parties from and against any amount due and owing by Academy to Recipient under this Agreement.
2. **INSURANCE.** Recipient shall, at its own cost and expense, procure and maintain adequate commercial general liability, umbrella, business auto, worker's compensation, and/or other insurance to cover all claims, lawsuits, judgments, losses, civil penalties, liabilities, damages, costs and expenses, including attorney's fees and court costs, arising out of or related to this Agreement, statement of work, or any event or activity sponsored or promoted by Academy under this Agreement. Any deductible applicable to the insurance shall be paid by Recipient.
3. **REPRESENTATIONS, WARRANTIES AND GUARANTEES.**

3.1 Each Party warrants, represents, and guarantees to the other that:

- a. The Party (i) understands all of the terms of this Agreement; (ii) has had the opportunity to review this Agreement with its counsel; (iii) has the full power and authority to enter and perform this Agreement; (iv) has completed all necessary action to duly authorize the execution, delivery and performance of this Agreement; and (v) confirms that this Agreement has been duly executed and delivered on behalf of Recipient and is the valid and binding obligation of Recipient;
- b. The Party shall comply with all applicable federal, state, and local laws, statutes, codes, regulations, requirements, decrees, orders, judgments, injunctions, and all other government and/or regulatory directives (collectively, "**Laws**") at all times during the Term of this Agreement; and
- c. All services, consideration, or materials provided pursuant to the Agreement do not infringe any actual or alleged patent, design, trade name, trademark, copyright, intellectual property right, trade secret, or any other intellectual property right or entitlement of any third party.

3.2 Recipient warrants, represents, and guarantees to Academy that:

- a. Recipient shall, at all times during the term of this Agreement, comply with the provisions of Academy's Vendor Code of Conduct located at <http://vendor.academy.com>.

4. **TERMINATION.** This Agreement may be terminated: (A) for a Party's breach of this Agreement which remains uncured thirty (30) days after receipt of written notice; (B) by Academy for any reason upon thirty (30) days' written notice to Recipient; (C) for a Party's insolvency or bankruptcy not discharged within sixty (60) days following any filing thereof.
5. **FORCE MAJEURE.** In the event of unforeseen circumstances affecting the ability of the Parties to fulfill this Agreement which are not the result of a Party's fault or negligence, the Parties shall, within a commercially reasonable time, enter into good faith discussions regarding adjustments and/or amendments to this Agreement. If the Parties do not agree, this Agreement shall terminate, and Recipient shall provide to Academy a refund equal to the value of sponsorship benefits Academy has prepaid but not received.
6. **MARKS.** Each Party grants to the other a limited, non-assignable, non-sublicensable, royalty free, non-exclusive license for the use of copyrights, service marks, logos, trademarks, word marks, symbols, emblems, designs, patents, or other intellectual property (collectively "**Marks**") for the duration of the Term and only as set forth in the Summary. Each Party's use of the Marks under trademark or copyright law or other property rights shall inure to the benefit of and be the exclusive property of the Party owning such Marks. Except as set forth herein, neither Party may use the other Party's Marks without prior written consent. Each Party agrees that nothing in this Agreement shall give one Party any right, title or interest in the other Party's Marks and nothing contained herein shall be construed as an assignment or grant from one Party to the other of any right, title or interest in or to the other Party's Marks.
7. **INDEMNIFICATION. RECIPIENT SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS ACADEMY, ITS OWNERS, PARENTS, AFFILIATES, SUBSIDIARIES, OFFICERS, MANAGERS, PARTNERS, EMPLOYEES, AND AGENTS FROM AND AGAINST ANY AND ALL ALLEGATIONS, CLAIMS, LAWSUITS, JUDGMENTS, LOSSES, CIVIL PENALTIES, LIABILITIES, DAMAGES, COSTS, AND EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES AND COURT COSTS (EACH A "CLAIM"), ARISING OUT OF OR RELATED TO (A) ANY INJURY, DEATH, OR PROPERTY DAMAGE CAUSED BY ANY ACT OR OMISSION OF RECIPIENT OR RELATED TO A PROMOTIONAL EVENT UNDER THIS AGREEMENT; (B) ANY NEGLIGENT OR GROSSLY NEGLIGENT ACTION, INACTION, OMISSION OR INTENTIONAL MISCONDUCT OF RECIPIENT IN ITS PERFORMANCE OF THIS AGREEMENT; (C) RECIPIENT'S BREACH OF ANY REPRESENTATION, WARRANTY, TERM, COVENANT, OR OTHER OBLIGATION UNDER THIS AGREEMENT, INCLUDING COMPLIANCE WITH ALL LAWS; AND/OR (D) ANY INFRINGEMENT OR MISAPPROPRIATION OF ANY THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS BY ANY PRODUCT OR SERVICE DELIVERED PURSUANT TO THIS AGREEMENT.**
8. **LIMITATIONS AND WAIVERS.**
- 7.1 **DAMAGE LIMITATIONS.** REGARDLESS OF THE LEGAL OR EQUITABLE BASIS OF ANY CLAIM IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR ANY OTHER DAMAGES (EXCEPT DIRECT DAMAGES), INCLUDING WITHOUT LIMITATION, ANY DAMAGES RESULTING FROM LOSS OF REVENUES OR PROFITS, EVEN IF SUCH DAMAGES WERE FORESEEABLE OR THE ALLEGED BREACHING PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 7.2 **LIMITATION OF LIABILITY.** EACH PARTY'S TOTAL AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, SHALL NEVER EXCEED THE TOTAL AMOUNT PAID OR INCURRED BY ACADEMY TO RECIPIENT UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH ACTION. THE LIMITATION OF LIABILITY CONTAINED IN THIS SECTION IS CUMULATIVE WITH ALL OF ACADEMY'S EXPENDITURES BEING AGGREGATED TO DETERMINE SATISFACTION OF THE LIMIT. EACH PARTY HEREBY RELEASES THE OTHER PARTY FROM ALL OBLIGATIONS, LIABILITY, CLAIMS, OR DEMANDS IN EXCESS OF THIS LIMITATION. THE PARTIES ACKNOWLEDGE THAT EACH OF THEM RELIED UPON THE INCLUSION OF THIS LIMITATION IN CONSIDERATION FOR ENTERING INTO THIS AGREEMENT. THE



LIMITATIONS IN THIS SECTION DO NOT APPLY TO THE INDEMNITY OBLIGATIONS THAT EACH PARTY MAY OWE TO THE OTHER UNDER THIS AGREEMENT.

- 9. **ACKNOWLEDGEMENT.** The Parties acknowledge that Academy has no responsibility or obligation to do or cause to be done anything in connection with any Recipient events or Recipient premises other than that which is specifically provided for in the Agreement. It is understood that, at all times as between Academy and Recipient, Recipient will control the Recipient events and/or Recipient premises.
- 10. **ASSIGNMENT.** Either Party may assign this Agreement to a present or future parent, subsidiary, or affiliated entity, including a future successor or party acquiring all or part of the Party's business. All other assignments, transfers, or delegations require written consent of both Parties. Any attempted assignment or transfer in contravention of this Section shall be void.
- 11. **ENTIRE AGREEMENT/CHANGES.** This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and supersedes any and all prior or contemporaneous agreements, understandings, negotiations, representations or proposals or any kind, whether written, oral or otherwise. Neither Party has relied upon any statements, representations or other communications that are not contained in this Agreement. This Agreement may not be modified or amended except in writing executed by the duly authorized representatives of each Party to this Agreement.
- 12. **RELATIONSHIP OF THE PARTIES.** The relationship of Academy and Recipient under this Agreement shall be that of independent contractors and nothing herein or in any related document or representation shall be construed to create or imply any relationship of employment, agency, partnership, exclusivity, or any other relationship other than that of independent contractors. Academy and Recipient acknowledge and agree that each is engaged in a separate and independent business and neither shall state, represent, or imply any interest in or control over the business of the other.
- 13. **CONFIDENTIALITY.** Recipient shall not disclose the terms of this Agreement including assets and compensation and other Academy proprietary business information. During and after the Term of this Agreement, Recipient shall keep these matters secret, and use its best efforts to ensure confidential information is not disclosed to anyone.
- 14. **CHOICE OF LAW AND FORUM.** THE LAWS OF THE STATE OF TENNESSEE GOVERN THIS AGREEMENT AND ANY DISPUTES RELATED TO THIS AGREEMENT WITHOUT REFERENCE TO PRINCIPLES OF CHOICE OR CONFLICTS OF LAW. EXCEPT WHERE INJUNCTIVE OR OTHER EQUITABLE RELIEF IS SOUGHT, THE PARTIES AGREE THAT, AS A CONDITION PRECEDENT TO ANY ACTION REGARDING DISPUTES ARISING UNDER THIS AGREEMENT, SUCH DISPUTES SHALL FIRST BE SUBMITTED TO MEDIATION BEFORE A PROFESSIONAL MEDIATOR SELECTED BY THE PARTIES, AT A MUTUALLY AGREED TIME AND PLACE, AND WITH THE MEDIATOR'S FEES SPLIT EQUALLY BETWEEN THE PARTIES. IF MEDIATION IS UNSUCCESSFUL, THE PARTIES AGREE TO SUBMIT ALL DISPUTES TO THE EXCLUSIVE JURISDICTION OF THE STATE OR FEDERAL COURTS IN HAMILTON COUNTY, TENNESSEE.

Deleted: TEXAS

Deleted: HARRIS

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IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

ACADEMY:

Academy, Ltd. d/b/a
Academy Sports + Outdoors
By: Academy Managing Co., L.L.C.
Its General Partner

RECIPIENT:

East Ridge Parks and Recreation





Sponsorship Summary & Rider
East Ridge Parks and Recreation

By: _____ By: _____

Name:

Title:
Name:

Title:

**AGENDA MEMORANDUM
USE PERMITTED ON REVIEW
(CHILD CARE CENTER)**

March 9, 2023

Submitted by:



Michael Howell, Chief Building Official

SUBJECT:

Cynthia Evans has requested approval from the East Ridge city council to operate a childcare center at 4308 South Terrace, located within the R-1 Residential District. This district allows childcare centers as defined in ARTICLE II of the East Ridge Municipal Zoning Ordinance.

“A place operated by a person, society, agency, corporation, institution or other group wherein are received for pay (8) eight or more children under 17 years of age, for less than 24 hours per day without transfer of custody.”

The R-1 Residential District allows childcare centers to be permitted only after being reviewed and approved by East Ridge City Council as a Use on Review.

AGENDA MEMORANDUM
CAMP JORDAN MAINTENANCE GARAGE

March 9, 2023

Submitted By:


Shawna Skiles, Parks and Recreation Director

SUBJECT:

The Parks and Recreation Department is accepting competitive bids from experienced contractors to build a new maintenance garage, located at Camp Jordan Park in the City of East Ridge.


All bids will be opened and read aloud at 2:00 pm on Wednesday February 22, 2023. A vendor recommendation will be presented by staff to city council at the March 9, 2023, city council meeting.

SS

AGENDA MEMORANDUM
ARCHITECTURAL AGREEMENT – ANIMAL SHELTER/OFFICES

March 9, 2023

Submitted By:


J. Scott Miller, City Manager

SUBJECT:

The City received three (3) proposals for architectural services for the design, drafting of the specification and bid documents, and construction management for the Animal Facility and Offices. They are:

- The Franklin Architects
- Allen & Hoshall
- MBI

The Selection Committee heard presentation from the three (3) firms and chose MBI as their top choice. The next step in the process is to work out a scope of services and negotiate an architectural agreement for their services. We are in the midst of this process at the present time in hopes of having a document ready for City Council's consideration for approval at the regular meeting of March 9, 2023.

JSM/

AGENDA MEMORANDUM
REPLACEMENT ROOF – MUNICIPAL COURT OFFICES

March 9, 2023

Submitted By:


J. Scott Miller, City Manager

SUBJECT:

The roof over the Municipal Court Offices/Holding Facility has developed leaks in the offices and the holding facility. The City's Building Maintenance Supervisor has checked the roof out on several occasions and has concluded that a new replacement roof is needed.

The City has obtained a rough quote for the replacement roof in the amount of \$62,000. The City has an appropriation in the Capital Projects Fund (Upgrades to Buildings – Various Sites) that may be used for major emergency maintenance expenses during the year. The replacement roof would certainly qualify for the use of these funds. Therefore, I am requesting the approval of the City Council to bid out this project.








Attachment

JSM/

Untitled Map

Write a description for your map.

Legend

-  East Ridge City Hall
-  East Ridge City Hall
-  East Ridge City Library
-  East Ridge Community Center
-  East Ridge History & Archive
-  Laurie D. Davis, FNP
-  Park

