



Huntsville, Alabama

308 Fountain Circle
Huntsville, AL 35801

Cover Memo

Meeting Type: City Council Regular Meeting **Meeting Date:** 12/21/2023

File ID: TMP-3706

Department: Parks and Recreation

Subject:

Type of Action: Approval/Action

Resolution authorizing the Mayor to enter into a Facility Use and Operation Agreement between the City of Huntsville, Alabama, and Village of Promise, Inc.

Resolution No.

Finance Information:

Account Number: N/A

City Cost Amount: N/A

Total Cost: N/A

Special Circumstances:

Grant Funded: N/A

Grant Title - CFDA or granting Agency: N/A

Resolution #: N/A

Location: (list below)

Address: 2900 Fairbanks Street Huntsville, Al 35816

District: District 1 District 2 District 3 District 4 District 5

Additional Comments:

RESOLUTION NO. 23-____

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and he is hereby authorized to enter into an Agreement by and between the City of Huntsville and Village of Promise, Inc., on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to that certain document attached hereto and identified as "Facility Use and Operation Agreement between the City of Huntsville and Village of Promise, Inc.", consisting of ten (10) pages, in addition to Attachment A and the date of December 21, 2023, appearing on the margin of the first page, together with the signature of the President or President Pro-Tem of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this the 21st day of December, 2023.

President of the City Council of
the City of Huntsville, Alabama

APPROVED this the 21st day of December, 2023.

Mayor of the City of Huntsville,
Alabama

Facility Use and Operation Agreement
Between the City of Huntsville, Alabama,
and Village of Promise, Inc.

FACILITY USE AND OPERATION AGREEMENT

This Agreement is made and entered into on the 21st day of December, 2023, by and between the **City of Huntsville**, a municipal corporation in the State of Alabama, hereinafter referred to as the "City," and **Village of Promise, Inc.**, an Alabama non-profit corporation, hereinafter referred to as "VOP" or "Agency".

WITNESSETH:

WHEREAS, the City is the owner of a certain premises known as the Cavalry Hill School ("Cavalry Hill"), consisting of a building (the "Building") and related improvements located at 2800 Poplar Avenue, Huntsville, Alabama, 35816. An outline of the said building is shown in the drawing attached hereto and incorporated herein by reference as Attachment "A"; and

WHEREAS, VOP is a local non-profit organization serving families in low income neighborhoods, primarily focusing on early childhood, parenting and family-centric learning; and

WHEREAS, the parties desire to enter into this Agreement for VOP to operate within designated sections of the Building in order to provide community and youth services to the Huntsville community;

NOW, THEREFORE, FOR AND IN CONSIDERATION of the mutual covenants and agreements contained hereinbelow, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1.0 Occupation and Operation of the Center.

(a) VOP shall assume occupancy and control of those portions of the Building designated "VOP" in Attachment "A". VOP will utilize the said space to provide the following community services to families in the neighborhoods adjacent to Cavalry Hill: Infant University, CDF Freedom School™, and Family Connections.

(b) All remaining space in the Building shall be reserved for use by the City of Huntsville Parks and Recreation Department. The Director of the Parks and Recreation Department (or his/her designee) may authorize the Agencies' use of the gymnasium in the Building; however, the Director (or designee) shall have sole discretion as to when or how often either or both of the agencies shall have use of the gymnasium.

2.0 TERM. The term of this Agreement shall be five (5) years, commencing on January 1, 2024 and continuing through December 31, 2028. The parties may mutually consent to renew this Agreement for two additional five-year terms; however, any such renewal(s) must be approved by the Huntsville City Council. If the Council fails to approve any such extension,

then this Agreement ends, and the Agencies must vacate the Cavalry Hill premises no later than the end of the then-current term.

3.0 CONSIDERATION. As consideration for the use and occupancy of its area of Cavalry Hill to complete their missions, VOP will perform the activities described in Section One of this Agreement and will operate and maintain the Center in a manner satisfactory to the City of Huntsville.

4.0 MAINTENANCE OF THE CENTER BY THE AGENCY. The City shall be responsible for the maintenance of the roof, parking area, sidewalks, HVAC, plumbing, wiring and alarm and structural systems of the Center and also for those areas of the Building reserved for City use. VOP shall be responsible for all other maintenance of its designated area of the Building, including, but not limited to, janitorial service and routine maintenance.

(a) VOP shall not, in any manner, deface or injure the Building and will pay the cost of repairing any damage or injury done to the Building or any part thereof by the Agency or the Agency's employees, agents, contractors or invitees, ordinary wear and tear excepted. VOP agrees that it will keep the Building and the fixtures therein in clean, safe, sanitary and good order and condition and will, at the expiration or other termination of the term of this Agreement, remove all goods and effects not the property of the City and at VOP's expense and shall (i) promptly surrender to the City possession of its portion of the Building (including keys, locks and any fixtures or other improvements which the Agency hereby acknowledges are owned by the City) in good order and repair (ordinary wear and tear and damage due to casualty or condemnation excepted) and broom clean, (ii) remove therefrom all signs, goods, effects, machinery, furniture, fixtures computer/telephone cabling and equipment used in conducting the Agency's trade or business which is not owned by the City, and (iii) repair any damage caused by such removal. The City has the right to access all sections of the Building (including those provided for the use of each of the Agencies) at reasonable times and in a reasonable manner to inspect the Building for proper use and maintenance and to perform any functions required by this Agreement.

(b) VOP shall not attach any sign to the exterior of the Building unless the design, nature, and content thereof have been approved by the City, which approval shall not be unreasonably withheld. VOP shall at its expense maintain and repair any such sign and may upon the expiration of the term of this or any renewal thereof, remove said signs. All signs shall comply with all applicable laws and ordinances.

(c) All injury to Cavalry Hill caused by moving the property of VOP into, on, or out of, the Building and all breakage done by VOP, or its agents, servants, employees and visitors, shall be repaired by VOP, at its expense. In the event that VOP shall fail to do so, then the City shall have the right to make such necessary repairs, alterations and replacements (structural, nonstructural or otherwise) and any charge or cost so incurred by the City shall be paid by VOP. This provision shall be construed as an additional remedy granted to the City and not in limitation of any other rights and remedies which the City has or may have in said circumstances.

(d) All keys to the Building shall be issued solely by the City's Director of General Services, and VOP shall not copy any said key without the express written consent of the City. The Director of General Services shall determine how many keys are issued.

(e) All personal property of VOP in the Center shall be at the sole risk of VOP. The City shall not be liable for any accident to or damage to the personal property of VOP resulting from the use or operation of elevators or of the heating, cooling, electrical or plumbing apparatus unless caused by the negligence of the City, its employees, agents or contractors. The City shall not, in any event, be liable for damages to the personal property resulting from water, steam or other causes unless caused by the negligence of the City, its employees, agents or contractors. VOP hereby expressly releases the City from any liability incurred or claim by reason of damage to its personal property, other than any liability incurred or claim by reason of the negligence of the City, its employees, agents or contractors.

5.0 UTILITIES. The City will provide utilities to the Center throughout the term of this Agreement.

6.0 ALTERATIONS AND IMPROVEMENTS BY THE AGENCY. No alterations, additions, or Improvements to Cavalry Hill, except such as may be otherwise provided for in this Agreement, shall be made without first obtaining the City's written consent, and any improvements, additions or alterations requested by the Agency after such consent shall have been given, shall be installed by and under the sole control and supervision of the City. All requests for alterations, additions, or improvements shall be accompanied by architectural drawings depicting both the existing and proposed layout or depicting the existing and proposed condition of the alteration, addition, or improvement in question. The City agrees to give the Agency a contract price for all approved alterations, additions, or improvements and will endeavor to complete all work in a timely and workmanlike manner. Any and all fixtures installed, excepting trade fixtures, shall, at the City's option, remain on the Cavalry Hill premises as the property of the City, without compensation to the Agency, or, shall be removed therefrom and the Center restored to its original condition at the cost of the Agency at the expiration or sooner termination of this Agreement. The Agency shall, at its own cost, repair any damage caused by the removal of trade fixtures restoring the Center to its original condition.

7.0 INSURANCE REQUIREMENTS. During the term of this Agreement, VOP shall satisfy the following insurance requirements:

A. MINIMUM SCOPE OF INSURANCE:

1. General Liability:

Insurance will be written on an occurrence basis. Claims-made coverage will be accepted only on an exception basis after the City's approval.

Commercial General Liability

Contractual
Personal Injury
Broad Form Property Damage
No Exclusion for Sexual Misconduct or Molestation

2. Workers' Compensation Insurance:

Statutory protection against bodily injury, sickness or disease or death sustained by any employee in the scope of employment. Protection shall be provided by a commercial insurance company or a recognized self-insurance fund authorized before the State of Alabama Industrial Board of Relations. Waivers of subrogation in favor of the City shall be endorsed to Worker's Compensation coverage.

B. MINIMUM LIMITS OF INSURANCE:

1. General Liability:

Commercial General Liability on an "occurrence form" for bodily injury and property damage:

\$ 2,000,000 General Aggregate Limit

\$ 1,000,000 Each Occurrence

2. Workers' Compensation:

As Required by the State of Alabama Statute

C. OTHER INSURANCE PROVISIONS:

The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability Coverage's Only:

a. The City, its elected and appointed officials, employees, agents and specified volunteers are to be covered as Additional Insureds, as their interests may appear, as respects: liability arising out of activities performed by or on behalf of the Agency for products used by and completed operations of the Agency or automobiles owned, hired or borrowed by the Agency. Additional insured status shall be through ISO Additional Endorsement CG 2011 01 96 or equivalent that is sufficient to provide the coverage required by this Agreement.

b. The Agency's insurance coverage shall be the primary insurance as respects the City, its elected and appointed officials, employees, agents and specified volunteers, as their interests may appear as respects: liability arising out of activities performed by or on behalf of the Agency for products used by and completed operations of the Agency; or automobiles owned, hired or borrowed by the Agency. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents, or specified volunteers shall be excess of the Agency's insurance and shall not contribute to it.

c. The Agency's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. All Coverages:

a. The Agency is responsible for paying all deductibles. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by

certified mail, return receipt requested, has been given to the City. Cancellation of coverage for non-payment of premium will require ten (10) days written notice to the City.

b. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officers, employees, agents or specified volunteers.

D. ACCEPTABILITY OF INSURERS:

Insurance is to be placed with insurers with an A. M. Best's rating of no less than **B+ V**.

E. VERIFICATION OF COVERAGE:

The City shall be indicated as a Certificate Holder and the Agency shall furnish the City with Certificates of Insurance reflecting the coverage required by this document. The A. M. Best Rating and deductibles, if applicable, shall be indicated on the Certificate of Insurance for each insurance policy. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

F. HOLD HARMLESS AGREEMENT:

1. Other Than Professional Liability Exposures:

The Agency, to the fullest extent permitted by law, shall indemnify and hold harmless the City, its elected and appointed officials, employees, agents and specified volunteers against all claims, damages, losses and expenses, including, but not limited to, attorney's fees, arising out of or resulting from the Agency's occupancy and use of Cavalry Hill, provided that any such claim, damage, loss or expense (1) is attributable to personal injury, including bodily injury sickness, disease or death, or injury to or destruction of tangible property, including loss of use resulting therefrom, and (2) is caused by any negligent act or omission of the Agency or any of its consultants, invitees or anyone directly or indirectly employed by it or anyone for whose acts it is legally liable. Such obligation should not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this paragraph.

8.0 INSPECTIONS OF THE CENTER. City shall have the right to enter all areas of the Building at all reasonable times (but no less than once per year) for purposes of examining the Building for the purpose of discovering any defect or injury to the Building. The Agency shall, upon the discovery of any defect in or injury to the Center or any appurtenance or apparatus connected therewith, or any need of repairs, promptly make the said repair.

9.0 ASSIGNMENT BY AGENCY. The Agencies covenant and agree not to assign any of their rights or obligations under this Agreement, without the express written consent of the City.

10.0 DEFAULT. In the event VOP defaults on any of its obligations under this Agreement, the City shall give VOP a 30-day period to correct said defaults. If VOP, in the City's sole discretion, fails to correct the said defaults, then the City may take any or all of the following actions:

(i) Terminate this Agreement as it relates to VOP, in which case VOP shall immediately surrender its occupation or possession of any portion of Cavalry Hill to the City.

(ii) The City may do whatever VOP is obligated to do by the provisions of this Agreement and may enter the Center without being liable to prosecution or any claim for damages therefore, in order to accomplish this purpose. VOP agrees to reimburse the City immediately upon demand for any expenses the City may incur in thus effecting compliance with this Agreement on behalf of VOP.

(iii) Pursue any and all other remedies available to the City at law or in equity.

In the event the City employs an attorney on account of any violation of any of the terms or conditions of this Agreement by VOP, VOP shall pay all expenses incurred including a reasonable attorney's fee.

11.0 SURRENDER. Upon the termination of this Agreement, VOP shall deliver up its portion of the Building in the same condition as the same was in at the commencement of the term of this Agreement (with the exception of any remodeling or structural changes previously approved by the City), reasonable and ordinary wear and tear and damage by fire and other casualty or condemnation excepted. Neither vacating the Building by VOP, nor the delivery of possession to the City, shall be deemed a surrender or an acceptance of surrender of VOP's interest in Cavalry Hill unless so stipulated in writing by the City.

12.0 FIRE, OTHER CASUALTY. If a fire, casualty, or taking renders the Center or any part thereof unfit for use and occupancy as intended in this Agreement, VOP's obligations under this Agreement shall be reduced to only those that can safely be performed in the Center in its then-existing condition. If a substantial portion of the Center is damaged by fire, casualty or taking, the City and the Agency shall each have the right to terminate this Agreement by notice given to the other party at any time within sixty (60) days after the date of such damage, casualty or taking.

13.0 MISCELLANEOUS. The parties hereto further agree as follows:

13.1 The non-enforceability or illegality of any provision of this Agreement shall not render the other provisions unenforceable, invalid or illegal.

13.2 The paragraph headings contained herein are only for convenience and reference and are not intended to be part of this Agreement or in any manner to define, limit or describe the scope and intent of this Agreement for the particular paragraph to which they refer.

13.3 Any notice or other communication provided for hereunder will be in writing and may be (i) served by personal delivery, (ii) made by electronic mail or facsimile transmission, or (iii) sent by overnight courier service (with all fees prepaid) to the receiving parties as follows, or to any other address which either party may hereafter designate for itself in writing:

City: City of Huntsville, Alabama
Post Office Box 308
Huntsville, Alabama 35804-0308
Attention: Director of Parks and
Recreation
(256) 564-8026
James.Gossett@huntsvilleal.gov

with a copy to: City Attorney's Office
Post Office Box 308
Huntsville, Alabama 35804-0308
Attention: City Attorney

VOP: Dana Gillis
Executive Director
Village of Promise, Inc.
200 Pratt Ave., Ste. B2

13.4 If either party hereto changes its address or other contact information for purposes of this Agreement, the party so changing shall give the other party appropriate written notice of change of address in the manner specified above.

13.5 The parties further agree that this Agreement is to be deemed to have been prepared jointly by the parties hereto, after arm's length negotiations, and that any ambiguity or uncertainty existing herein, if any, shall not be interpreted against the other party.

13.6 It is expressly understood that this Agreement sets forth the entire agreement of the parties and supersedes any prior written or oral agreements between them concerning the subject matter contained herein, oral or otherwise, and that there is no other agreement between the parties other than that contained herein.

13.7 The parties further agree to sign any and all instruments or documents necessary to carry out the full purpose and intent of this Agreement.

13.8 This Agreement shall be binding upon the parties, and their successors in interest.

13.9 Each party to this Agreement shall be responsible for the payment of all costs, expenses, legal fees and disbursements incurred or to be incurred by it or any of them in negotiating and preparing this Agreement, and all documents required to be delivered pursuant to this Agreement and in otherwise performing the transactions contemplated by this Agreement.

[Signatures follow on the next page.]

IN WITNESS WHEREOF, the parties hereunto entered into this on the day first written above.

Dana Gillis, Executive Director
Village Of Promise



CITY OF HUNTSVILLE, ALABAMA
a municipal corporation

ATTEST:

By: _____
Shaundrika Edwards
ITS: Clerk

BY: _____
Tommy Battle
ITS: Mayor

STATE OF ALABAMA)
COUNTY OF MADISON)

I, the undersigned, a notary public in and for said County, in said State, hereby certify that Tommy Battle and Shaundrika Edwards, whose names as Mayor and City Clerk of The City of Huntsville, a municipal corporation are signed to the foregoing instrument, and who are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they, in their capacity as such officers, executed the same voluntarily for and as the act of said corporation on the day the same bears day.

GIVEN under my hand and official seal this the ____ day of _____, 2023.

Notary Public

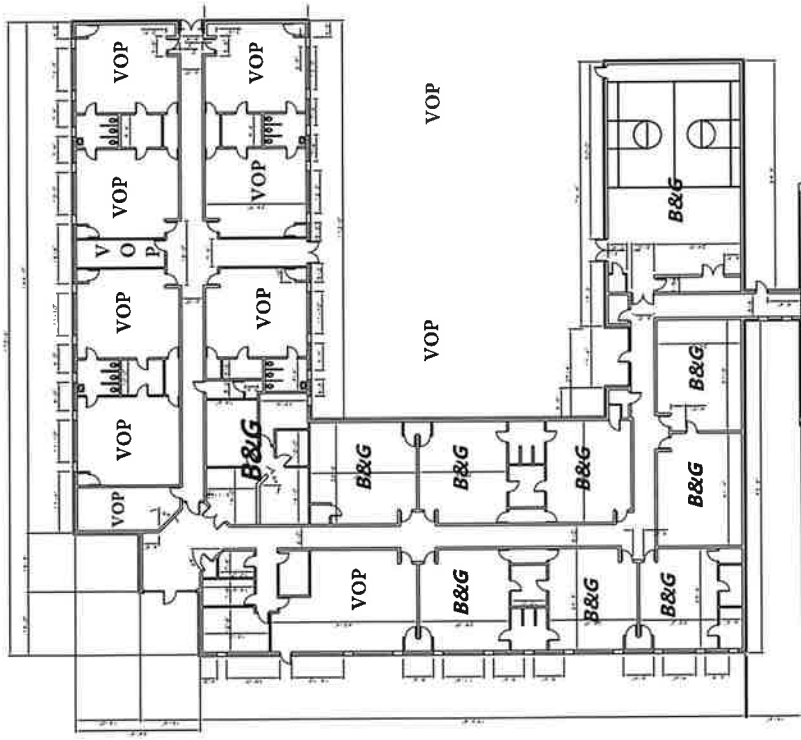
STATE OF ALABAMA)
COUNTY OF MADISON)

I, the undersigned, a notary public in and for said County, in said State, hereby certify that Dana Gillis whose name as Executive Director of Village of Promise, Inc., a non-profit corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, (s)he, in his or her capacity as such officer, executed the same voluntarily for and as the act of said corporation on the day the same bears day.

GIVEN under my hand and official seal this the ____ day of _____, 2023.

Notary Public

Attachment A



EXISTING CONDITIONS

NOTE: DRAWINGS BASED ON A GENERAL REVIEW OF EXISTING CONDITIONS TO PROVIDE AN APPROXIMATION OF EXISTING CONDITIONS.
 2. BUILDING CODE OF ADA COMPLIANCE NOT EVALUATED.



FIELD MEASUREMENTS
 CAVALRY HILL BUILDING
 2800 POPLAR NW
 HUNTSVILLE, ALABAMA 35816

| | |
|--------|------------|
| DATE: | 12/14/2016 |
| SCALE: | AS SHOWN |

| | |
|--------|------------|
| DATE: | 12/14/2016 |
| SCALE: | AS SHOWN |

PROJECT NUMBER
 2016-040
 DRAWING TITLE
 CAVALRY HILL SCHOOL
 COMPOSITE FLOOR
 PLAN

SHEET
A102