

**Vestavia Hills
City Council Agenda
AMENDED
December 10, 2012
5:00 PM**

1. Call to Order
2. Roll Call
3. Invocation – Dennis Anderson, Vestavia Hills Baptist Church
4. Pledge of Allegiance
5. Candidates, Announcements and Guest Recognition
6. City Manager’s Report
7. Councilors’ Reports
8. Approval Of Minutes –November 26, 2012 (Regular Meeting)

New Business (Requesting Unanimous Consent)

9. Resolution Number 4378 – A Resolution To Appoint A Member To The Vestavia Hills Library Board
10. Resolution Number 4379 – A Resolution To Appoint A Member To The Vestavia Hills Park And Recreation Board

Old Business

11. Ordinance Number 2424 – Rezoning – 740 Sussex Drive; Rezone from Jefferson County Unknown to Vestavia Hills R-2, Residential; Joe and Paula Fiore, Owners; Ray Weygand, Weygand Surveyors, Representing
12. Resolution Number 4374 – A Resolution Accepting A Quote From MG&A For Erosion Control And Grassing At Sicard Hollow
13. Resolution Number 4375 – A Resolution Authorizing The Mayor And City Manager To Enter Into An Agreement With Alabama Department Of Transportation For Project CMAQ-PE12(), Preliminary Engineering Project To Design Sidewalks Along Massey Road, Montgomery Highway And Columbiana Road
14. Resolution Number 4276 – A Resolution Authorizing The Mayor And City Manager To Enter Into An Agreement With ALDOT For Project Number DE-AL104(916); Vestavia Hills Pedestrian Walkway; Supplement Number 1 (*Postponed From March 12, 2012 Meeting*)

15. Resolution Number 4270-A – A Resolution Authorizing The Mayor And City Manager To Enter Into An Agreement With ALDOT For Project Number HPP-A124() Pedestrian Walkway Over US-31; Supplement Number 1 (*Postponed From March 12, 2012 Meeting*)

New Business

16. Resolution Number 4361-A – A Resolution Amending Resolution Number 4361 - Changing City Officials Designated To Sign Checks At Pinnacle Bank For The Library Account
17. Resolution Number 4377 - A Resolution Accepting A Bid For Janitorial Services At The Civic Center

New Business (Requesting Unanimous Consent)

18. Resolution Number 4376 - A Resolution Authorizing The Mayor And City Manager To Enter Into An Agreement For Architectural Services To Design A Fleet Maintenance Facility For The City Of Vestavia Hills

First Reading (No Action Taken At This Meeting)

19. Ordinance Number 2427 – An Ordinance Establishing And Creating The Alcohol Abuse Education Program And The Traffic Safety Education Program For The Municipal Court Of The City Of Vestavia Hills, Alabama
20. Ordinance Number 2426 – An Ordinance Authorizing And Directing The Sale Of Real Estate Situated At 1112 Montgomery Highway In The City Of Vestavia Hills, Alabama, Commonly Referred To As The Old Library Property And More Particularly Described In Exhibit A And The Execution And Delivery Of A Real Estate Purchase And Sale Agreement (*public hearing scheduled for January 14, 2013*)
21. Citizens Comments
22. Executive Session
23. Motion For Adjournment

CITY OF VESTAVIA HILLS

CITY COUNCIL

MINUTES

NOVEMBER 26, 2012

The City Council of Vestavia Hills met in regular session on this date at 5:00 PM. The Mayor called the meeting to order and the City Clerk called the roll with the following:

MEMBERS PRESENT:

Mayor Alberto C. Zaragoza, Jr.
Steve Ammons, Mayor Pro-Tem
Jim Sharp
George Pierce
John Henley

OTHER OFFICIALS PRESENT:

Randy Robertson, City Manager
Patrick H. Boone, City Attorney
Rebecca Leavings, City Clerk
Christopher Brady, City Engineer
Dan Rary, Police Chief
Melvin Turner, III, Finance Director
George Sawaya, Deputy Treasurer
Jim St. John, Fire Chief
Fred Baughman, Economic Dev. Director

Invocation was given by Dr. Scott Guffin, Liberty Park Baptist Church, followed by the Pledge of Allegiance.

ANNOUNCEMENTS, CANDIDATES, GUESTS

- Mr. Henley welcomed the following Boy Scouts to the meeting: Patrick Mills (1768 Twin Bridge Drive) and Wills Dunham (1005 Wickford Road).
- Mayor Zaragoza recognized the following guests from the Rambling Rebels Girls Traveling Softball Team: Tallulah Meloun, 4134 Alston Lane; Kristin Guidey, 1905 Old Orchard Road; Gwinnie Hornibrook, 4061 Alston Way; Lagen Higgenbotham, 3305 Shallowford Road; and Cat Grace Dini, 3012 Asbury Park Place.

EMPLOYEE OF THE MONTH

Mr. Robertson recognized Christian “C.J.” Elliott as the City’s November Employee of the Month. He read some of Mr. Elliott’s accomplishments and congratulated him on the recognition.

CITY MANAGER REPORTS

- Mr. Robertson stated that the Holiday in the Hills celebration has kicked off and enumerated several upcoming events including the tree lighting ceremony.
- The U.S. 31 Redevelopment Study has been unveiled to property and business owners along the corridor and a public forum will be held Thursday, November 29, 2012 at 6:30 PM in the Dogwood Room. Everyone is invited to attend.
- City Officials will meet with representatives from Southpace Properties to once again discuss the City’s pending real estate transaction.
- Mr. Robertson read a commendation from the Jefferson County Personnel Board and commended Chief St. John on information provided to them to get approval to move the City’s communications.

COUNCILOR REPORTS

- Mr. Ammons stated that the Council will interview applicants for the Library Board and the Park and Recreation Board.
- Mr. Henley indicated that the Vestavia Rotary Club has decorated the southern gateway.

APPROVAL OF MINUTES

The minutes of the November 5, 2012 (Organizational Meeting); November 5, 2012 (Regular Meeting); November 12, 2012 (Special Called Meeting) and November 15, 2012 (Special Called Meeting) were presented for approval.

MOTION Motion to dispense with the reading of the minutes of the November 5, 2012 (Organizational Meeting); November 5, 2012 (Regular Meeting); November 12, 2012 (Special Called Meeting) and November 15, 2012 (Special Called Meeting) and approve them as presented was by Mr. Pierce and second by Mr. Ammons. Voice vote as follows:

Mr. Pierce – yes	Mr. Henley – yes
Mr. Sharp – yes	Mr. Ammons – yes
Mayor Zaragoza – yes	Motion carried.

OLD BUSINESS

RESOLUTION NUMBER 4367

Resolution Number 4367 – A Resolution Appropriating Matching Funds For ADECA Grant Entitled Land And Water Conservation Fund – Little Shades Creek Bridge – 1 (public hearing)

MOTION Motion to adopt Resolution Number 4367 was by Mr. Sharp and second was by Mr. Henley.

Mr. Robertson explained that this is a Resolution to appropriate a share of grand funding for a bridge over Little Shades Creek at McCallum Park.

Mr. Brady gave a brief background of this request and a previous request, both of which are part of the Park Foundation's plans. The Foundation will eventually reimburse much of the costs of the City's share of this proposed project.

Mayor Zaragoza opened the floor for a public hearing. There being no one present to address the Council concerning this request, the Mayor closed the public hearing and called for the question.

MOTION Question called on a roll call vote:
Mr. Pierce – yes Mr. Henley – yes
Mr. Sharp – yes Mr. Ammons – yes
Mayor Zaragoza – yes Motion carried.

RESOLUTION NUMBER 4369

Resolution Number 4369 – A Resolution Enjoining The Cooperation Of The City Of Mountain Brook With Street And Drainage Improvements To East Street

MOTION Motion to adopt Resolution Number 4369 was by Mr. Pierce and second was by Mr. Henley.

Mr. Robertson explained that this Resolution embraces a co-operational effort between the City of Mountain Brook and the City of Vestavia Hills for improvements in and along East Street to make the traffic and drainage situation there safer for the general public and for the ingress/egress of patrons from the Mountain Brook athletic complex. This effort does not require any expenditure from Vestavia Hills.

MOTION Question called on a roll call vote:
Mr. Pierce – yes Mr. Henley – yes
Mr. Sharp – yes Mr. Ammons – yes

Mayor Zaragoza – yes

Motion carried.

NEW BUSINESS

RESOLUTION NUMBER 4372

Resolution Number 4372 A Resolution Accepting a bid for Public Services Maintenance Uniforms

MOTION Motion to adopt Resolution Number 4372 was by Mr. Pierce and second was by Mr. Ammons.

Mr. Robertson explained that bids were let on uniforms for the maintenance workers in Public Services as well as the next request for Fire Department uniforms. He stated that even though several invitations were sent, only one company responded on each bid. He stated that both of these companies met the bid specifications and the funding for the bids are in the budget.

The Mayor asked why only one bid was returned for each request.

Mr. Robertson explained that the Fire Department specifications called for a certain fabric and not many companies could meet the specifications. He indicated that he couldn't answer on the Public Services uniforms except to say that all companies had ample time to respond; they just didn't bother with the bid.

There being no further discussion, the Mayor called for the question.

MOTION Question called on a roll call vote:

Mr. Pierce – yes

Mr. Henley – yes

Mr. Sharp – yes

Mr. Ammons – yes

Mayor Zaragoza – yes

Motion carried.

RESOLUTION NUMBER 4373

Resolution Number 4373 - A Resolution Accepting a bid for Fire Dept Uniforms

MOTION Motion to adopt Resolution Number 4373 was by Mr. Ammons and second was by Mr. Henley.

The Mayor indicated that this bid was discussed with the previous bid. With no further discussion, the Mayor called for the question.

MOTION Question called on a roll call vote:

Mr. Pierce – yes

Mr. Henley – yes

Mr. Sharp – yes
Mayor Zaragoza – yes

Mr. Ammons – yes
Motion carried.

FIRST READING (NO ACTION TO BE TAKEN AT THIS MEETING)

Mr. Ammons stated that the following Resolutions and/or Ordinances will be presented at a public hearing at the Council's next regularly scheduled meeting of November 5, 2012 at 5 PM.

- Ordinance Number 2424 – Rezoning – 740 Sussex Drive; Rezone from Jefferson County Unknown to Vestavia Hills R-2, Residential; Joe and Paula Fiore, Owners; Ray Weygand, Weygand Surveyors, Representing
- Resolution Number 4374 – A Resolution Accepting A Quote From MG&A For Erosion Control And Grassing At Sicard Hollow
- Resolution Number 4375 – A Resolution Authorizing The Mayor And City Manager To Enter Into An Agreement With Alabama Department Of Transportation For Project CMAQ-PE12(), Preliminary Engineering Project To Design Sidewalks Along Massey Road, Montgomery Highway And Columbiana Road

CITIZENS COMMENTS

Matt Meloun, 4134 Alston Lane, stated that he represents a girl's softball team called the Rambling Rebels who are in attendance tonight. He indicated that they have made numerous requests for practice time on City fields and cannot receive any responses. He stated that he was recently sent a City policy on field usage but still no answers.

The Mayor suggested that he seek guidance from the Park Board at their regular meeting. Discussion ensued.

MOTION Motion to adjourn the meeting at 6:40 PM was by Mr. Ammons. Mr. Pierce seconded the motion. Roll call vote as follows:
Mr. Pierce – yes Mr. Henley – yes
Mr. Sharp – yes Mr. Ammons – yes
Mayor Zaragoza – yes Motion carried.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

RESOLUTION NUMBER 4378

**APPOINTING A MEMBER TO THE
VESTAVIA HILLS LIBRARY BOARD**

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

WHEREBY, Ashley Hicks is hereby appointed as a member of the City of
Vestavia Hills Library Board; and

WHEREAS, the said appointment of Ashley Hicks shall be effective January 1,
2013 and shall expire December 31, 2016.

APPROVED AND ADOPTED this the 10th day of December, 2012.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

RESOLUTION NUMBER 4379

**APPOINTING A MEMBER TO THE
VESTAVIA HILLS PARK AND
RECREATION BOARD**

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

WHEREBY, Tommy Coggins is hereby appointed as a member of the City of
Vestavia Hills Park and Recreation Board; and

WHEREAS, the appointment of Tommy Coggins shall be effective January 1,
2013, and shall expire December 31, 2017.

APPROVED AND ADOPTED this the 10th day of December, 2012.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

ORDINANCE NUMBER 2424

AN ORDINANCE TO FURTHER AMEND THE ZONING ORDINANCE AND THE ZONING MAP OF THE CITY OF VESTAVIA HILLS, ALABAMA, ADOPTED SEPTEMBER 16, 1985, AND AS LAST AMENDED SO AS TO CHANGE THE CLASS OF DISTRICT ZONING OF A PARCEL OF PROPERTY FROM JEFFERSON COUNTY UNKNOWN TO VESTAVIA HILLS R-2

BE IT ORDAINED by the City Council of the City of Vestavia Hills, Alabama, as follows: That the Zoning Ordinance and Zoning Map of the City of Vestavia Hills, Alabama, adopted September 16, 1985, and as last amended so as to change the class of district zoning of the following described property from Jefferson County Unknown to Vestavia Hills R-2;

740 Sussex Drive
Paula and Joe Fiore, Owner(s)

APPROVED and ADOPTED this the 10th day of December, 2012.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

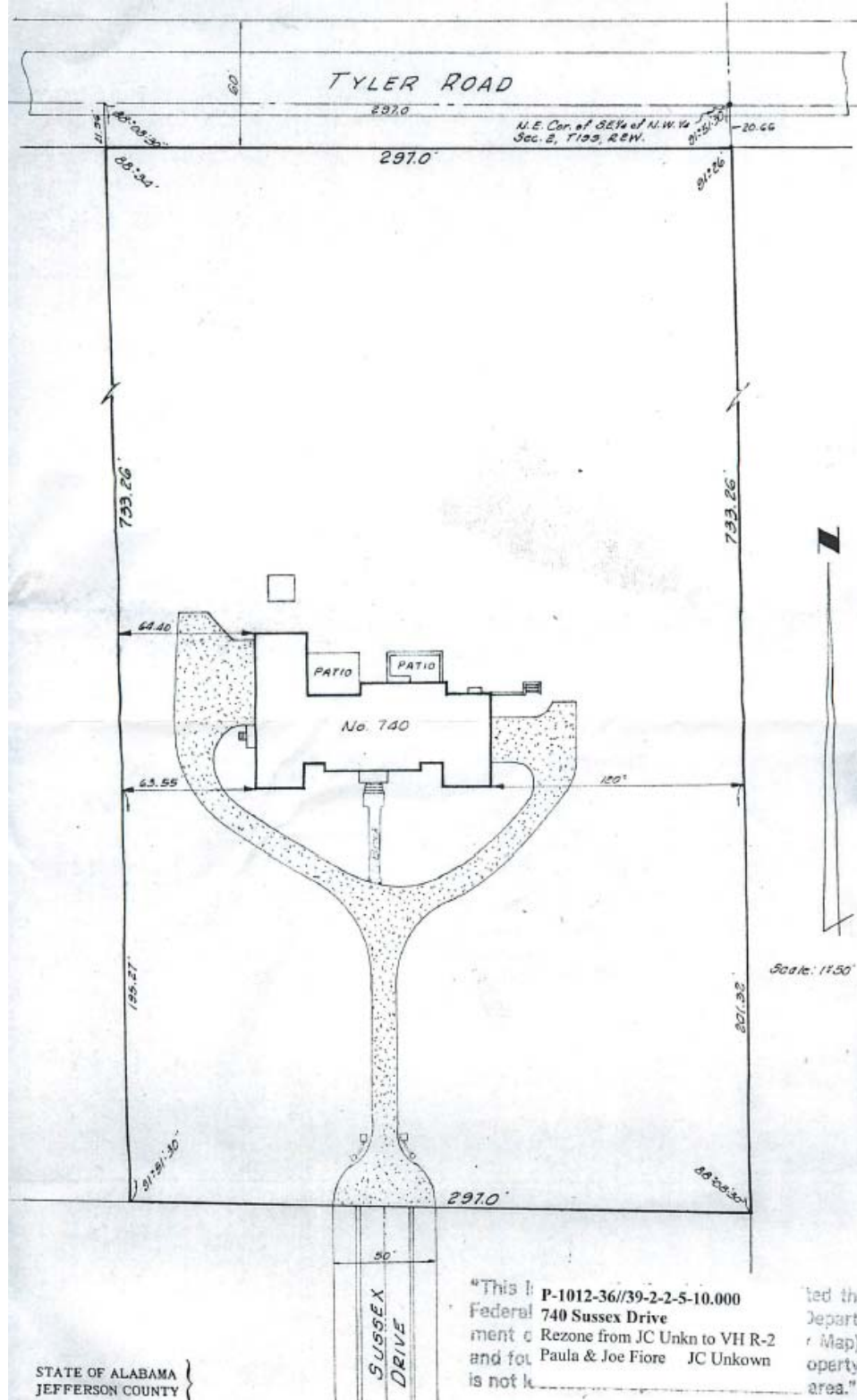
Rebecca Leavings
City Clerk

CERTIFICATION:

I, Rebecca Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance # 2424 is a true and correct copy of such Ordinance that was duly adopted by the City Council of the City of Vestavia Hills on the 10th day of December, 2012 as same appears in the official records of said City.

Posted at Vestavia Hills Municipal Center, Vestavia Hills New Merkle House, Vestavia Hills Civic Center and Vestavia Hills Library in the Forest this the _____ day of _____, 2012.

Rebecca Leavings
City Clerk



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

Date: October 4, 2012

- **CASE:** P-1012-36
-
- **REQUESTED ACTION:** Application for final map approval of **Rezoning of 740 Sussex Drive**
-
- **PROPOSED USE(S):** residential
- **ADDRESS/LOCATION:** 740 Sussex Drive
- **APPLICANT/OWNER:** Paula and Joe Fiore; 740 Sussex Drive; Vestavia Hills AL 35226
- **REPRESENTING AGENT:** Paula and Joe Fiore; 740 Sussex Drive; Vestavia Hills AL 35226
- **GENERAL DISCUSSION:** This property is located on the end of Sussex Drive and is a large parcel containing 5 +/- acres and backs up to Tyler Road. The property has been research and appears to have no official zoning. The request is to rezone the property similar to properties surrounding the property to Vestavia Hills R-2 in order to eventually develop three single family residential lots facing Tyler Road.
- **CITY OF VESTAVIA HILLS COMPREHENSIVE PLAN:** This property is not located in any Figure of the Vestavia Hills Comprehensive Master Plan and is located in an area developed as low/medium density residential. This request is consistent with the plan.
- **STAFF REVIEW AND RECOMMENDATION:**
 1. **City Clerk Review:** I have looked at all of the relevant zoning / subdivision requirements related to this proposal, including application, notification, setbacks, area of lot development, etc. Notification has been sent to property owners pursuant to Alabama law. I have reviewed this request and find it does meet the minimum requirements of the proposed zoning.

City Clerk Recommendation: No recommendation
 2. **City Engineer Review:** no problems noted

3. **City Fire Marshal Review:**. No problems noted.
4. **Building Safety Review:** no problems noted.

P&Z Recommendation:

MOTION Motion to recommend approval of the rezoning of 740 Sussex Drive from Jefferson County unknown to Vestavia Hills R-2 was by Mr. Farrell and second was by Mr. Gilchrist. Roll call vote, as follows:

Mr. Sharp –yes	Mr. Gilchrist – yes
Ms. Fancher – yes	Mr. Burrell – yes
Mr. House – yes	Mr. Farrell – yes
Mr. Brooks – yes	Mr. Visintainer – yes

Motion carried.

RESOLUTION NUMBER 4374

**A RESOLUTION ACCEPTING A QUOTE FROM MG&A FOR
EROSION CONTROL AND GRASSING AT SICARD HOLLOW**

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

1. That the City Manager is hereby authorized to accept a quote from MG&A for erosion control and grassing at Sicard Hollow at a cost not to exceed \$42,450.00; and
2. A copy of said proposal along with a memorandum from the Public Services Director explaining said proposal is attached to and written into this Resolution Number 4374 as if written fully therein; and
3. This Resolution Number 4374 is effective immediately upon adoption and approval.

DONE, ORDERED, ADOPTED and APPROVED this the 10th day of
December 2012.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

City of Vestavia Hills Public Services
513 Montgomery Highway
Vestavia Hills, AL 35216
205.978.0150

Interoffice Memo

November 20, 2012

TO: Randy Robertson
City Manager

FROM: Brian C. Davis *bcd*
Public Services Director

RE: Erosion Control and Grassing at Sicard Hollow

There are some needs at Sicard Hollow where water has created some potential for structural damage to one of the press boxes and one of the sidewalks. Please see the attached proposal from Myrick, Gurosky and Associates to repair the eroded areas and redirect the water flow, as well as adding some grass and erosion control around the perimeter of the fields.

I would like to proceed with the grassing and erosion control at a total cost not to exceed \$42,450.00, which includes a 10% contingency. This is not in our current FY budget; therefore it needs approval by the council.

CC: Rebecca Leavings, City Clerk
Christopher Brady, City Engineer

- **Perimeter of Artificial Turf Fields – Grassing and Erosion Control**

Flat area above the berm:

2.25 Acres of seed and hay mulch

3200 SY of rolled erosion control product, type (3b) (double net straw/coconut netting)

250 SY of rolled erosion control product type (4) (double net coconut netting)

Quote: \$14,950.00

- **Berm and Outfall Areas:**

1.25 Acres of seeding and hay mulch:

1950 SY of rolled erosion control product, Type (4) (double net coconut netting)

Quote: \$13,500.00

- **Machine work:** (machine work will consist of filling multiple small washed areas with topsoil prior to re-seeding and one larger washed area with rip-rap. Also at one area, at far maintenance building on lower fields there is water run-off from field that is under mining corner of building. This area will be supplied a drain inlet and water will be piped to relief.) We will also re-shape a few key areas around the upper perimeter of the fields to redirect the water flow. This price does not include reshaping any of the storm water outfalls. (Topsoil and rip-rap by others)

Quote: \$10,138.00

NOTE: The above-prices do not include heavy earth moving. We will not be re-working grades, slopes, retention areas, storm outfalls, etc...

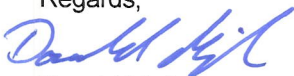
NOTE: The perimeter of artificial turf field area work includes seeding and mulching all bare areas between the gravel path and existing berm including rolled erosion control products. The soil stockpile area work includes seeding and mulching the bare areas no machine work is included in this area. The parking lot entrance work includes seeding and mulching the bare areas at Sicard Hollow Road at the entrance to the property. The above erosion control prices are based on ALDOT 2008 standard specifications for highway construction and the 2008 general application special provisions. The above seeding work will be applied with the ALDOT 2008 standard specification seed mix for the appropriate season and a fertilizer rate of 700lbs./acre and mulch rate of 2 tons/acre. We do not warranty these areas due to a lack of irrigation. We will provide one application only and it will be up to the owner to maintain it.

Exclusions: Tap, backflow preventer, power to controller, water/sewer fees, conduit for control wires, rock removal, repair/replace existing landscape, sleeves, locating existing sleeves, locating utilities, pumps, wells, boring walks/drives, maintenance, etc...

TOTAL: \$38,588.00

NOTE: The above total price is based on all work being done at the same time.

Regards,



Donald Myrick
mg&a

Myrick Gurosky & Associates, Inc.



RESOLUTION NUMBER 4375

**A RESOLUTION AUTHORIZING THE MAYOR AND CITY
MANAGER TO ENTER INTO AN AGREEMENT WITH
ALABAMA DEPARTMENT OF TRANSPORTATION FOR
PRELIMINARY ENGINEERING ON PROJECT CMAQ-PE12()**

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

1. That the City enter into an agreement with the State of Alabama, acting by and through the Alabama Department of Transportation for:

Project CMAQ-PD12() a preliminary engineering project to design sidewalks along CR-42 (Massey Road) from SR-3 (US-31, Montgomery Highway) to CR-99 (Columbiana Road) in the City of Vestavia Hills Alabama; which agreement is before this Council.
2. That the Agreement be executed in the name of the City by its Mayor and City Manager, for and on its behalf;
3. That the Agreement be attested by the City Clerk and the seal of the City affixed thereto.

BE IT FURTHER RESOLVED that upon the completion of the execution of the Agreement by all parties, that a copy of such Agreement be kept on file by the City Clerk.

PASSED, ADOPTED and APPROVED this the 10th day of December, 2012.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

CERTIFICATION:

I, the undersigned qualified and acting City Clerk of the City of Vestavia Hills, do hereby certify that the above and foregoing is a true copy of a Resolution passed and adopted by the City Council on the City named therein, at a regular meeting of such Council held on the 10th day of December 2012 and that such resolution is on file in the City Clerk's Office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City on this the ____ day of _____, 2012.

Rebecca Leavings
City Clerk

CITY OF VESTAVIA HILLS
DEPARTMENT OF PUBLIC SERVICES
OFFICE OF CITY ENGINEER
INTER-DEPARTMENT MEMO

November 19, 2012

To: Rebecca Leavings
CC: Mayor Zaragoza, City Manager Robertson, B.Davis
From: Christopher Brady
RE: ALDOT CMAQ funding agreement
Preliminary Engineering for Massey Road Improvements

Becky,

The attached funding agreement from ALDOT is to perform Preliminary Engineering services for Massey Road Improvements. As stated in the agreement, the funding is for an approximated cost of upto \$166,400 with City providing 20%, or \$33,280.

This is a City project on the Birmingham MPO Transportation Improvement Program (TIP) FY 2012-2015. It is a multi-phase project. Once the PE is in progress, we will better determine RW, UT, and CN costs. Programmed estimated costs are as follows:

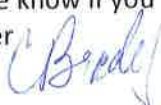
	Federal (80%)	City (20%)	Est Cost	description
PE (FY 2012)	\$128,000	\$32,000	\$160,000	preliminary engineering
RW (FY 2013)	\$ 64,000	\$16,000	\$ 80,000	right-of-way acquisition
UT (FY 2013)	\$ 64,000	\$16,000	\$ 80,000	utility relocation
CN (FY 2014)	\$688,000	\$172,000	\$860,000	construction
Total	\$944,000	\$236,000	\$1,180,000	

This project consists of roadway shoulder improvements along Massey Road, from US 31 near Mark's Outdoors to Columbiana Road, including the potential to add sidewalk and bicycle access. This project will include shoulder widening and stabilization.

I am in the process of updating cost estimates for this preliminary engineering work, but am hereby recommending approval of this funding agreement.

Please let me know if you have any questions or need additional information.

-Christopher





ALABAMA DEPARTMENT OF TRANSPORTATION

THIRD DIVISION
OFFICE OF DIVISION ENGINEER

1020 BANKHEAD HWY. WEST

P.O. Box 2745

BIRMINGHAM, ALABAMA 35202-2745

Telephone: (205) 328-5820

FAX: (205) 254-3199



Robert Bentley
Governor

John R. Cooper
Transportation Director

November 5, 2012

The Honorable Alberto Zaragoza, Jr.
Mayor, City of Vestavia Hills
City Hall
513 Montgomery Highway
Vestavia Hills, Alabama 35216

RE: Jefferson County
Project Number: CMAQ-PE12()
[Proj. Ref. No. 100057171]
Sidewalks along CR-42 (Massey Road)
from SR-3 (US-31, Montgomery Highway)
to CR-99 (Columbiana Road) in the City of
Vestavia Hills

Dear Mayor Zaragoza,

I have enclosed the original Preliminary Engineering Agreement (and one copy) between the State of Alabama and the City of Vestavia Hills, Alabama for the above referenced project.

This Agreement is submitted to the City for approval. After execution by the City Council, please return the original document and the copy, with original signature and the City Seal affixed to both to this office for further handing. A certified resolution, which authorizes the Mayor to sign the Agreement, affixed with the City seal should be included with the original Agreement, as well as with the copy.

If I can supply you with any additional information or clarify any point contained herein, please feel free to contact me at your convenience.

Sincerely,

Brian C. Davis
Division Engineer

BCD/LAT/SFPB

Enclosure

C: Mrs. Sandra F. P. Bonner
File w/Enc.



ALABAMA DEPARTMENT OF TRANSPORTATION

1409 Coliseum Boulevard, Montgomery, Alabama 36110



Robert Bentley
Governor

John R. Cooper
Transportation Director

October 29, 2012

Mr. Brian C. Davis
Division Engineer
Alabama Department of Transportation
Post Office Box 2745
Birmingham, Alabama 35202

SUBJECT: CMAQ-PE12()
Sidewalks along CR-42 (Massey Road)
from SR-31 (US-31, Montgomery Highway)
to CR-99 (Columbiana Road)
Vestavia Hills, Alabama
Jefferson County
Reference Number: 100057171

Dear Mr. Davis:

The enclosed funding agreement between the State and the City of Vestavia Hills, Alabama, is to obligate federal funds for preliminary engineering for the referenced project.

Please review this agreement and, if it is acceptable, present it to the city for approval. The agreement should be executed by the city, signed by the mayor with the city seal affixed and a resolution attached authorizing the mayor to be the signatory on behalf of the city. After the agreement is executed by the city, please sign and return this document to this office.

Please contact Mary Lou Crenshaw at 334-353-6439 if you have any questions.

Sincerely,

Robert J. Jilla
Multimodal Transportation Engineer

By: C. W. Colson, Jr.
C. W. Colson, Jr.
Special Programs Engineer

RJJ:CWC:mlc
Attachment
c: file

7

**AGREEMENT
FOR
PRELIMINARY ENGINEERING**

**BETWEEN THE STATE OF ALABAMA
AND
THE CITY OF VESTAVIA HILLS**

**Project CMAQ-PE12()
Sidewalks along CR-42 (Massey Road)
From SR-3 (US-31, Montgomery Highway) to CR-99 (Columbiana Road)
Vestavia Hills, Alabama
Reference Number:100057171**

THIS AGREEMENT is made and entered into by and between the State of Alabama, acting by and through the Alabama Department of Transportation, hereinafter referred to as STATE; and the City of Vestavia Hills, Alabama, hereinafter referred to as CITY, in cooperation with the United States Department of Transportation, Federal Highway Administration, hereinafter referred to as the FHWA; and

WHEREAS, a Transportation Improvement Program has been developed for the Birmingham urbanized area and certain transportation improvements and priorities are listed therein; and

WHEREAS, it is in the public interest for the STATE and the CITY to cooperate toward the implementation of the Transportation Improvement Program; and

WHEREAS, the STATE and the CITY desire to cooperate in a preliminary engineering project to design sidewalks along CR-42 (Massey Road) from SR-3 (US-31, Montgomery Highway) to CR-99 (Columbiana Road in the City of Vestavia Hills, Alabama.

WHEREAS, Federal transportation funds are dedicated specifically to the Birmingham Area by the 2005 Safe, Accountable, Flexible and Efficient Transportation Equity Act-Legacy for Users (SAFETEA-LU), as directed by the Birmingham Metropolitan Planning Organization (MPO), and hereinafter referred to as Congestion Mitigation and Air Quality (CMAQ) Improvement Program funds.

NOW, THEREFORE, the parties hereto, for, and in consideration of the premises stated herein do hereby mutually promise, stipulate, and agree as follows:

- 1) The CITY will perform or have performed all services required to fulfill the purposes of this Agreement. The Third Division of the Alabama Department of Transportation will be the lead agency for the STATE relative to the work under this agreement and will be the point of contact for the CITY. Plans will be by or for the CITY and approved by the STATE.
- 2) This Agreement will cover all aspects of the preliminary engineering phase of the project. The preliminary engineering phase is hereby defined as that work necessary to advance the development of the Project through construction authorization by FHWA. This phase will include all environmental studies and documentation required by FHWA.

- 3) Funding for this Agreement is subject to the availability of Federal Aid funds at the time of authorization by FHWA.
- 4) This Project will be administered by the CITY and all cost will be financed, when eligible for Federal participation, on the basis of 80 percent Federal funds and 20 percent CITY funds. Any recision mandated by Congress will be applied to the Federal Funds if applicable. The estimated cost and participation by the various parties are as follows:

	<u>Total Estimated Cost</u>	<u>Total Estimated Federal Funds</u>	<u>Estimated Local Funds</u>
Preliminary Engineering	\$ <u>166,400.00</u>	\$ <u>133,120.00</u>	\$ <u>33,280.00</u>
Total	\$ 166,400.00	\$ 133,120.00	\$ 33,280.00

It is understood that the above is an estimate only, and in the event the final cost exceeds the estimate, the CITY will be responsible for its proportional share above noted. The project will commence upon execution of this agreement and upon written authorization to proceed from the STATE directed to the CITY. After obligation, these funds are available until expended.

- 5) It is expressly understood that this is a cost reimbursement program and no federal funds will be provided to the CITY prior to accomplishment of work for which reimbursement is requested.
- 6) The CITY agrees that in the event the FHWA determines, due to rules and/or regulations of FHWA (including but not limited to delay of the projects, or delay of projects contemplated to be developed and accomplished in sequence to the current projects) that Federal funds expended on this project must be refunded to the FHWA, the CITY will reimburse and pay to the STATE a sum of money equal to the total amount of STATE and Federal funds expended under this Agreement.
- 7) The CITY will, when appropriate, submit invoices to the STATE for reimbursement for work performed by or for the CITY in carrying out the terms of this agreement. Requests for reimbursement will be made on forms provide by the STATE and will be submitted through the Division Engineer for payment. The CITY may bill the STATE not more often than once per month for the funds due for work performed under this Agreement. Invoices for payment will be submitted in accordance with state law and will indicate that the payment is due, true, correct, unpaid and the invoice will be notarized. Invoices for any work performed by the CITY under the terms of this agreement will be submitted within twelve (12) months after the completion and acceptance by the STATE for the work. Any invoices submitted after this twelve-month period will not be eligible for payment.
- 8) The performances of the work covered by this Agreement will be in accordance with the current regulations and requirements of the STATE and FHWA.

- 9) Any service of the STATE necessary to carry out the intent of this Agreement will be in accordance with the current regulations and requirements of the STATE and FHWA.
- 10) The STATE will assist the CITY in any public involvement actions that may be required.
- 11) The STATE will provide without cost to the CITY information available from its records that will facilitate the performance of the work.
- 12) Agency to Indemnify: The CITY will be responsible at all times for all of the work performed under this Agreement and the CITY will protect, defend, indemnify and hold harmless the State of Alabama, the Alabama Department of Transportation, the officials, officers, employees in both their official and individual capacities, and their agents and/or assigns, from and against any and all actions, damages, claims, loss, liabilities, including attorney's fees and expenses whatsoever or any amount paid in compromise thereof arising out of or connected with the work performed under this Agreement.
By entering into this agreement, the CITY is not an agent of the STATE, its officers, employees, agents or assigns. The CITY is an independent entity from the STATE and nothing in this Agreement creates an agency relationship between the parties.
- 13) Agreement Change: The terms of this Agreement may be modified by supplemental agreement duly executed by the parties hereto.
- 14) Termination: Either party has the right to terminate this Agreement at any time by giving thirty (30) days written notice of termination. Said notice will be mailed by certified or registered mail.
- 15) It is clearly understood by both parties that the STATE does not commit any STATE or Federal funds beyond those mentioned herein and that a separate Agreement will be required for the construction of the proposed improvements.
- 16) Arbitration: Any dispute concerning a question of fact in connection with the work not disputed of by this Agreement between the CITY and the STATE will be referred to the director of the State of Alabama Department of Transportation, whose decision will be final.
- 17) Exhibits M and N are hereby attached to and made a part of this Agreement.
- 18) 7/24th Law: Nothing shall be construed under the terms of this Agreement by the CITY or the STATE that shall cause any conflict with Section 23-1-63, Code of Alabama, 1975.

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IN WITNESS WHEREOF, the parties hereto cause this Agreement to be executed by those officers, officials and persons thereunto duly authorized, and the Agreement is deemed to be dated and to be effective on the date hereinafter stated as the date of the approval of the Governor of Alabama.

SEAL

ATTEST:

THE CITY OF VESTAVIA HILLS

BY: _____
City Clerk (Signature)

BY: _____
Mayor (Signature)

Type name of Clerk

Type name of Mayor

APPROVED AS TO FORM:

BY: _____
Jim R. Ippolito, Jr.
Chief Counsel
Alabama Department of Transportation

RECOMMENDED FOR APPROVAL:

Brian C. Davis
Division Engineer

Robert J. Jilla,
Multimodal Transportation Engineer

G. M. Harper, P.E.
Acting Chief Engineer

STATE OF ALABAMA
ACTING BY AND THROUGH THE
ALABAMA DEPARTMENT OF
TRANSPORTATION

John R. Cooper, Transportation Director

The foregoing Agreement is hereby executed in the name of the State of Alabama and signed by the Governor on this _____ day of _____, 20_____.

Robert Bentley
Governor, State of Alabama

RESOLUTION NUMBER _____

BE IT RESOLVED, by the City Council of the City of Vestavia Hills, Alabama as follows:

1. That the City enter into an agreement with the State of Alabama, acting by and through the Alabama Department of Transportation for:

Project CMAQ-PE12() a preliminary engineering project to design sidewalks along CR-42 (Massey Road) from SR-3 (US-31, Montgomery Highway) to CR-99 (Columbiana Road in the City of Vestavia Hills, Alabama; which Agreement is before this Council.

2. That the Agreement be executed in the name of the City, by its Mayor, for and on its behalf;
3. That the Agreement be attested by the City Clerk and the seal of the City affixed thereto.

BE IT FURTHER RESOLVED that upon the completion of the execution of the Agreement by all parties, that a copy of such Agreement be kept on file by the City Clerk.

Passed, adopted and approved this _____ day of _____, 20_____.

ATTESTED:

City Clerk

Mayor, City of Vestavia Hills

I, the undersigned qualified and acting City Clerk of the City of Vestavia Hills, do hereby certify that the above and foregoing is a true copy of a resolution passed and adopted by the City Council of the City named therein, at a regular meeting of such Council held on the _____ day of _____, 20_____ and that such resolution is on file in the City Clerk's Office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City on this _____ day of _____, 20_____.

City Clerk

CONSULTANT 3/19/90
REVISED 7/18/90
REVISED 6/16/11

EXHIBIT M

CERTIFICATION FOR FEDERAL-AID CONTRACTS: LOBBYING

This certification is applicable to the instrument to which it is attached whether attached directly or indirectly with other attachments to such instrument.

The prospective participant/recipient, by causing the signing of and the submission of this Federal contract, grant, loan, cooperative AGREEMENT, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, and the person signing same for and on behalf of the prospective participant/recipient each respectively certify that to the best of the knowledge and belief of the prospective participant or recipient and of the person signing for and on behalf of the prospective participant/recipient, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the prospective participant/recipient or the person signing on behalf of the prospective participant/recipient as mentioned above, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, the prospective participant/recipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant/recipient also agrees by submitting this Federal contract, grant, loan, cooperative agreement or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, that the prospective participant/recipient shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

CONSULTANT 2/15/95
REVISED 5/30/02
REVISED 6/16/11

EXHIBIT N

FUNDS SHALL NOT BE CONSTITUTED AS A DEBT

It is agreed that the terms and commitments contained herein shall not be constituted as a debt of the State of Alabama in violation of Article 11, Section 213 of the Constitution of Alabama, 1901, as amended by Amendment Number 26. It is further agreed that if any provision of this AGREEMENT shall contravene any statute or Constitutional provision of amendment, either now in effect or which may, during the course of this AGREEMENT, be enacted, then the conflicting provision in the AGREEMENT shall be deemed null and void.

In any controversy concerning contract terms, or on a question of fact in connection with the work covered by this project, including compensation for such work, the decision of the Transportation Director regarding the matter in issue or dispute shall be final and conclusive on all parties.

For any and all disputes arising under the terms of this contract, the parties hereto agree, in compliance with the recommendations of the Governor and Attorney General, when considering settlement of such disputes, to consider using appropriate forms of non-binding alternative dispute resolution.

TERMINATION DUE TO INSUFFICIENT FUNDS

- a. If the agreement term is to exceed more than one fiscal year, then said agreement is subject to termination in the event that funds should not be appropriated for the continued payment of the agreement in subsequent fiscal years.
- b. In the event of proration of the fund from which payment under this AGREEMENT is to be made, agreement will be subject to termination.

NO GOVERNMENT OBLIGATION TO THIRD PARTY CONTRACTORS

The STATE and CONSULTANT acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations of or liabilities to the STATE, CONSULTANT, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The CONSULTANT agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided to FHWA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

7

RESOLUTION NUMBER 4276

A RESOLUTION AUTHORIZING THE MAYOR AND CITY MANAGER TO ENTER INTO A SUPPLEMENT TO AN AGREEMENT WITH ALABAMA DEPARTMENT OF TRANSPORTATION FOR JEFFERSON COUNTY PROJECT NUMBER DE-AL104 ()

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

1. That the City enter into a Supplemental Agreement 1 with the State of Alabama acting by and through the Alabama Department of Transportation relating to Section 117 project titled Vestavia Hills Pedestrian Walkway, to amend the April 18, 2008 Agreement, which is before this Council, to change the bid responsibilities for the construction, include a revision regarding indemnification, provide a provision that allows the termination of the agreement by either party at any time upon receipt of written notice and to delete the expiration date. All other and remaining provisions of the agreement of April 18, 2008 shall remain the same.
2. That the Supplemental Agreement 1 be executed in the name of the City, by its Mayor and City Manager, for and on its behalf;
3. That the Agreement be attested by the City Clerk and the seal of the City affixed thereto.

BE IT FURTHER RESOLVED that the completion of the execution of this Supplemental Agreement by all parties, that a copy of such agreement be kept on file by the City Clerk.

PASSED, ADOPTED and APPROVED this the 10th day of December, 2012.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

CERTIFICATION:

I, the undersigned qualified and acting City Clerk of the City of Vestavia Hills, Alabama, do hereby certify that the above and forgoing is a true copy of a resolution passed and adopted by the City Council of the City named therein at a regular meeting of Such Council held on the 10th day of December, 2012 and that such resolution is on file in the City Clerk's Office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City on this ____ day of _____, 2012.

Rebecca Leavings
City Clerk

PATRICK H. BOONE
ATTORNEY AND COUNSELOR AT LAW
NEW SOUTH FEDERAL SAVINGS BUILDING, SUITE 705
215 RICHARD ARRINGTON, JR. BOULEVARD NORTH
BIRMINGHAM, ALABAMA 35203-3720
TELEPHONE (205) 324-2018
FACSIMILE (205) 324-2295

December 10, 2012

By Hand Delivery
and Electronic Mail

City Manager Randy Robertson
Vestavia Hills Municipal Center
P. O. Box 660854
Vestavia Hills, Alabama 35266-0854

In Re: Pedestrian Crossover Bridge

Dear Mr. Robertson:

In recent years, three separate grants have been approved for the City of Vestavia Hills, Alabama for the design, construction and inspection of a pedestrian crossover bridge over U.S. Highway 31 South at Round Hill Road connecting Wald Park to the Vestavia Hills Library in the Forest. The grants provide, among other things, that the City will receive federal funding in the amount of \$960,000.00. The City's share to be paid from local funds amounts to \$140,000.00.

On August 6, 2007, the City Council approved and adopted Resolution Number 3755 authorizing the execution and delivery of a contract regarding Grant DE-AL104. That Agreement was signed by Governor Bob Riley on April 18, 2008.

On November 19, 2007, the City Council approved and adopted Resolution Number 3797 authorizing the execution and delivery of a contract regarding Grant HPP-A124, which was signed by Governor Bob Riley on February 8, 2008.

On July 25, 2011, the City Council approved and adopted Resolution Number 4214 authorizing and directing the execution and delivery of an Agreement with Gresham, Smith & Partners ("GSP"), which provides, among other things that GSP will design the pedestrian crossover bridge for and in consideration of \$208,341.00.

On July 25, 2011, the City Council approved and adopted Resolution Number 4213, which authorized and directed the execution and delivery of an Agreement with University of Alabama at Birmingham ("UAB"). UAB will provide innovative design services for and in consideration of \$200,000.00.

December 10, 2012

Page 2

On January 25, 2012, Alabama Department of Transportation (“ALDOT”) wrote to the City requesting the execution and delivery of a Supplementary Agreement to Grant Agreement HPP-A124. On February 15, 2012, Alabama Department of Transportation wrote to the City requesting the execution and delivery of a Supplementary Agreement to Grant Agreement DE-AL104.

On March 15, 2012, I prepared and submitted to Mayor Alberto C. Zaragoza, Jr. my legal opinion regarding the two proposed Supplementary Agreements. In the meantime, I have been in contact with ALDOT General Counsel Jim R. Ippolito, Jr. regarding the two Supplementary Agreements. We both mutually agreed to the language of the two documents.

On Friday, December 7, 2012, Krystal H. McDade in the Legal Department of ALDOT sent me via electronic mail the two Supplementary Agreements. I immediately forwarded both documents to City Clerk Becky Leavings.

I have reviewed both Supplementary Agreements and recommend that the City Council enact a resolution tonight authorizing and directing the Mayor and City Council to execute both Supplementary Agreements for and on behalf of the City of Vestavia Hills, Alabama. I also recommend that City Clerk Rebecca Leavings send the duly signed Supplementary Agreements to Krystal H. McDade on December 11, 2012. If ALDOT doesn’t receive those documents prior to December 31, 2012, the grants will expire.

I will be happy to discuss this matter upon your request.

Sincerely,



Patrick H. Boone
Vestavia Hills City Attorney

PHB:gp

Enclosures

cc: City Clerk Rebecca Leavings

AGREEMENT
FOR
CONSTRUCTION

BETWEEN THE STATE OF ALABAMA
AND
THE CITY OF VESTAVIA HILLS, ALABAMA

Project DE-AL104(916)
Vestavia Hills Pedestrian Walkway
Vestavia Hills, Alabama

SUPPLEMENT NUMBER 1

THIS AGREEMENT is made and entered into by and between the State of Alabama (acting by and through the Alabama Department of Transportation), hereinafter referred to as STATE; and the City of Vestavia Hills, Alabama, hereinafter referred to as CITY, in cooperation with the U. S. Department of Transportation, Federal Highway Administration and

WHEREAS, the STATE and the CITY entered into an agreement to obligate funds set aside in the Transportation, Independent Agencies and General Government Appropriations Act, 2005, Section 117 for the above referenced project on the 18th day of April 2008; and

WHEREAS, the STATE and the CITY desire to amend the Agreement entered into on the 18th day of April 2008, by execution of this supplemental Agreement.

NOW THEREFORE, the parties hereto, for, and consideration of the premises stated herein, do hereby mutually promise, stipulate, and agree that the foregoing agreement between the parties dated April 18, 2008, be and the same is hereby amended in the following respects:

PART TWO: PROJECT PROVISIONS, Paragraph H. Purchase of Project Equipment and/or Services, is hereby amended by deleting the existing paragraph and substituting the following:

H. Purchase of Project Equipment and/or Services: The purchase of project equipment and/or services financed in whole or in part pursuant to this Agreement will be in accordance with applicable state and federal laws, rules, regulation, and procedures, including state competitive bidding requirements applicable to counties and municipalities in the State of Alabama when the purchase is made by any such entity. The STATE shall provided oversight and construction engineering and inspection services (CE&I) using project construction funds. The STATE will solicit bids for construction when the entire bid package (plans, specification, estimates, etc.) has been reviewed and approved by the STATE. Following receipt of bids, the STATE will review all bids and make the award.

PART THREE (3) MISCELLANEOUS PROVISIONS, Paragraph A. Agency to indemnify, is hereby amended by adding the following paragraph:

By entering into this Agreement, the CITY is not an agent of the STATE, its officers, employees, agents or assigns. The CITY is an independent entity from the STATE and nothing in this agreement creates an agency relationship between the parties.

PART THREE (3) MISCELLANEOUS PROVISIONS, Paragraph D. Termination is hereby amended by deleting the existing paragraph and substituting the following:

Either party has the right to terminate this agreement at any time by giving thirty (30) days written notice of termination. Said notice will be mailed by certified or registered mail. Upon termination, the State shall reimburse the City for all federally eligible costs and expenses incurred by the City prior to termination. The State shall return any unspent portion of the City's financial contribution.

PART THREE (3) MISCELLANEOUS PROVISIONS, Paragraph R. Expiration, is amended by deleting said paragraph.

Exhibits M, N and O are hereby attached to and made a part of this Agreement. All other and remaining provisions of the Agreement of April 18, 2008, shall remain the same.

IN WITNESS WHEREOF, the parties hereto cause this Agreement to be executed by those officers, officials and persons thereunto duly authorized, and the Agreement is deemed to be dated and to be effective on the date stated hereinafter as the date of the approval of the Governor of Alabama.

SEAL

ATTEST:

THE CITY OF VESTAVIA HILLS, ALABAMA

City Clerk (Signature)

BY: _____
Mayor (Signature)

Type name of Clerk

Type name of Mayor

APPROVED AS TO FORM:

BY: _____
Jim R. Ippolito, Jr.
Chief Counsel
Alabama Department of Transportation

Brian Davis
Division Engineer

Robert J. Jilla
Multimodal Transportation Engineer

G. M. Harper
Acting Chief Engineer/Deputy Director

STATE OF ALABAMA
ACTING BY AND THROUGH THE
ALABAMA DEPARTMENT OF TRANSPORTATION

John R. Cooper, Transportation Director

The foregoing Agreement is hereby executed in the name of the State of Alabama and signed by the Governor on this _____ day of _____, 20____.

Robert Bentley
Governor, State of Alabama

CERTIFICATION FOR FEDERAL-AID CONTRACTS: LOBBYING

This certification is applicable to the instrument to which it is attached whether attached directly or indirectly with other attachments to such instrument.

The prospective participant/recipient, by causing the signing of and the submission of this Federal contract, grant, loan, cooperative AGREEMENT, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, and the person signing same for and on behalf of the prospective participant/recipient each respectively certify that to the best of the knowledge and belief of the prospective participant or recipient and of the person signing for and on behalf of the prospective participant/recipient, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the prospective participant/recipient or the person signing on behalf of the prospective participant/recipient as mentioned above, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, the prospective participant/recipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant/recipient also agrees by submitting this Federal contract, grant, loan, cooperative agreement or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, that the prospective participant/recipient shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

FUNDS SHALL NOT BE CONSTITUTED AS A DEBT

It is agreed that the terms and commitments contained herein shall not be constituted as a debt of the State of Alabama in violation of Article 11, Section 213 of the Constitution of Alabama, 1901, as amended by Amendment Number 26. It is further agreed that if any provision of this AGREEMENT shall contravene any statute or Constitutional provision of amendment, either now in effect or which may, during the course of this AGREEMENT, be enacted, then the conflicting provision in the AGREEMENT shall be deemed null and void.

In any controversy concerning contract terms, or on a question of fact in connection with the work covered by this project, including compensation for such work, the decision of the Transportation Director regarding the matter in issue or dispute shall be final and conclusive on all parties.

For any and all disputes arising under the terms of this contract, the parties hereto agree, in compliance with the recommendations of the Governor and Attorney General, when considering settlement of such disputes, to consider using appropriate forms of non-binding alternative dispute resolution.

TERMINATION DUE TO INSUFFICIENT FUNDS

- a. If the agreement term is to exceed more than one fiscal year, then said agreement is subject to termination in the event that funds should not be appropriated for the continued payment of the agreement in subsequent fiscal years.
- b. In the event of proration of the fund from which payment under this AGREEMENT is to be made, agreement will be subject to termination.

NO GOVERNMENT OBLIGATION TO THIRD PARTY CONTRACTORS

The STATE and CONSULTANT acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations of or liabilities to the STATE, CONSULTANT, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The CONSULTANT agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided to FHWA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

COOPERATIVE MAINTENANCE PROVISIONS

1. The STATE'S Division Office, Bureau of Maintenance, Landscape Architect, and in the case of interstate highways, the Federal Highway Administration, shall review and approve all final plans and specifications prior to advertisement for construction bids.
2. The AGENCY agrees to maintain the vegetative cover within the project boundaries by means of mowing with a flail or rotary mower and hand trimming such that a clean and attractive appearance is obtained. Mowing operations shall be conducted when the height of the vegetative cover (turf and ground cover) reaches 12 inches. Reschedule mowing operations in accordance with the planned frequency. In the event that shrubs and/or trees are planted within the area, trimming and weeding in and around the plant materials shall be done in conjunction with mowing to obtain a clean and attractive appearance. Clippings or other incidental debris (such as branches, trash, etc.) shall be removed if moundings of the clippings or other incidental debris occurs. Note: The AGENCY agrees to remove or cut to below 4 inches any vegetation that exceeds clear zone standards as defined in the AASHTO "Guide for Transportation Landscape and Environmental Design." For example: trees and shrubs whose ultimate trunk diameter exceeds 4 inches. The AGENCY will immediately remedy any and all clear zone and sight encroachments in accordance with AASHTO's "Transportation Landscape and Environmental Design Guide."
3. The AGENCY will see that adequate sight distances are maintained for maximum public safety; otherwise, the STATE reserves the right to remedy this situation in the most expedient manner.

4. The STATE is not responsible for the safety of the individuals involved or taking part in this work during maintenance operations. Signs indicating "MEN WORKING" can be obtained from the STATE prior to work and must be returned after completion of work.
5. If STATE construction (repair of drainage and traffic structures, crossovers and other minor construction) is done in the subject area, it will be the responsibility of the STATE to establish a stand of vegetative cover if deemed necessary by the STATE and then the AGENCY's responsibility to maintain the vegetative cover as stipulated herein.
6. All work shall be subject to the inspection and approval of the STATE. A detailed description of the proposed work must accompany this and any associated proposal. The STATE does not grant applicant any right, title, or claim on any highway right-of-way.
7. The AGENCY agrees to store no equipment, branches, mounds of clippings or plant debris of any kind or any other material on the shoulders of pavement and in the case of multi-lane highways, in the median strips. The pavement will be kept free from waste (clippings, mud and other debris) and equipment.
8. The AGENCY shall be solely responsible for and hold harmless the STATE for any claim for damage done to existing private property, public utility, or the traveling public.
9. All disturbed areas shall be topsoiled, and re-vegetated by the AGENCY in accordance with standard specifications of the STATE.
10. In accomplishment of the work by the AGENCY, or its contractor, no drainage structures or channels will be changed or altered other than as shown on the project plans.
11. Failure of the AGENCY to conform to the provisions of this Agreement will be cause to terminate this Agreement. Notification prior to termination will be made by the STATE.

RESOLUTION NUMBER _____

BE IT RESOLVED, by the City Council of the City of Vestavia Hills, Alabama as follows:

1. That the City enter into a Supplemental Agreement 1 with the State of Alabama, acting by and through the Alabama Department of Transportation relating to the Section 117 project titled Vestavia Hills Pedestrian Walkway, DE-AL104(), to amend the April 18, 2008 Agreement, which is before this Council, to change the bid responsibilities for the construction, include a revision regarding indemnification, provide a provision that allows the termination of the agreement by either party at any time upon receipt of written notice, delete the expiration date and update the agreement Exhibits. All other and remaining provisions of the Agreement of April 18, 2008, shall remain the same.
2. That the Supplemental Agreement 1 be executed in the name of the City, by its Mayor, for and on its behalf;
3. That the Agreement be attested by the City Clerk and the seal of the City affixed thereto.
BE IT FURTHER RESOLVED that upon the completion of the execution of

this Supplemental Agreement by all parties, that a copy of such agreement be kept on file by the City Clerk.

Passed, adopted and approved this _____ day of _____, 20_____.

ATTESTED:

City Clerk

Mayor

I, the undersigned qualified and acting City Clerk of the City of Vestavia Hills, Alabama, do hereby certify that the above and foregoing is a true copy of a resolution passed and adopted by the City Council of the City named therein, at a regular meeting of such Council held on the _____ day of _____, 20_____ and that such resolution is on file in the City Clerk's Office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City on this _____ day of _____, 20_____.

City Clerk

RESOLUTION NUMBER 4270-A

A RESOLUTION AMENDING RESOLUTION NUMBER 4270 AUTHORIZING THE MAYOR AND CITY MANAGER TO ENTER INTO A SUPPLEMENT TO AN AGREEMENT WITH ALABAMA DEPARTMENT OF TRANSPORTATION FOR JEFFERSON COUNTY PROJECT NUMBER HPP-AL124 ()S1

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

1. That the City enter into a Supplemental Agreement 1 with the State of Alabama acting by and through the Alabama Department of Transportation relating to the High Priority Project (HPP) titled Pedestrian Walkway Over US-31, HPP-AL124(), to amend the February 5, 2008 Agreement, which is before this Council, to change the bid responsibilities for the construction, provide a provision that allows the termination of the agreement by either party at any time upon receipt of written notice and to delete the expiration date. All other and remaining provisions of the agreement of February 5, 2008 shall remain the same.
2. That the Supplemental Agreement 1 be executed in the name of the City, by its Mayor, for and on its behalf;
3. That the Agreement be attested by the City Clerk and the seal of the City affixed thereto.

BE IT FURTHER RESOLVED that the completion of the execution of this Supplemental Agreement by all parties, that a copy of such agreement be kept on file by the City Clerk.

PASSED, ADOPTED and APPROVED this the 10th day of December, 2012.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

CERTIFICATION:

I, the undersigned qualified and acting City Clerk of the City of Vestavia Hills, Alabama, do hereby certify that the above and forgoing is a true copy of a resolution passed and adopted by the City Council of the City named therein at a regular meeting of Such Council held on the 10th day of December, 2012 and that such resolution is on file in the City Clerk's Office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City on this ____ day of _____, 2012.

Rebecca Leavings
City Clerk

AGREEMENT

BETWEEN THE STATE OF ALABAMA
AND
THE CITY OF VESTAVIA HILLS, ALABAMA

Project HPP-A124()
Pedestrian Walkway Over US-31
Vestavia Hills, Alabama

SUPPLEMENT NUMBER 1

THIS AGREEMENT is made and entered into by and between the State of Alabama (acting by and through the Alabama Department of Transportation), hereinafter referred to as State; and the City of Vestavia Hills, Alabama, hereinafter referred to as CITY, in cooperation with the U. S. Department of Transportation, Federal Highway Administration; and

WHEREAS, the STATE and the CITY entered into a High Priority Project Agreement for the above reference project on the 5th day of February 2008; and

WHEREAS, the STATE and the CITY desire to amend the Agreement entered into on the 5th day of February 2008, by execution of this Supplemental Agreement.

NOW THEREFORE, the parties hereto, for, and consideration of the premises stated herein, do hereby mutually promise, stipulate, and agree that the foregoing agreement between the parties dated February 5, 2008, be and the same is hereby amended in the following respects:

PART TWO: PROJECT PROVISIONS, Paragraph H. Purchase of Project Equipment and/or Services, is hereby amended by deleting the existing paragraph and substituting the following:

H. Purchase of Project Equipment and/or Services: The purchase of project equipment and/or services financed in whole or in part pursuant to this Agreement will be in accordance with applicable state and federal laws, rules, regulation, and procedures, including state competitive bidding requirements applicable to counties and municipalities in the State of Alabama when the purchase is made by any such entity. The STATE shall provided oversight and construction engineering and inspection services (CE&I) using project construction funds. The STATE will solicit bids for construction when the entire bid package (plans, specification, estimates, etc.) has been reviewed and approved by the STATE. Following, receipt of bids, the STATE will review all bids and make the award.

PART THREE (3) MISCELLANEOUS PROVISIONS, Paragraph A. Agency to Indemnify, is hereby amended by adding the following paragraph:

By entering into this Agreement, the CITY is not an agent of the STATE, its officers, employees agents or assigns. The CITY is an independent entity from the STATE and nothing in this agreement creates an agency relationship between the parties

PART THREE (3) MISCELLANEOUS PROVISIONS, Paragraph D. Termination, is hereby amended by deleting the existing paragraph and substituting the following:

Either party has the right to terminate this Agreement at any time by giving thirty (30) days written notice of termination. Said notice will be mailed by certified or registered mail. Upon termination, the State shall reimburse the City for all federally eligible costs and expenses incurred by the City prior to termination. The State shall return any unspent portion of the City's financial contribution.

PART THREE (3) MISCELLANEOUS PROVISIONS, Paragraph S. Expiration, is hereby amended by deleting said paragraph.

Exhibits M, N and O are hereby attached to and made a part of this Agreement. All other and remaining provisions of the Agreement of February 5, 2008, shall remain the same.

IN WITNESS WHEREOF, the parties hereto cause this Agreement to be executed by those officers, officials and persons thereunto duly authorized, and the Agreement is deemed to be dated and to be effective on the date stated hereinafter as the date of the approval of the Governor of Alabama.

SEAL

ATTEST: THE CITY OF VESTAVIA HILLS, ALABAMA

City Clerk (Signature) BY: _____
Mayor (Signature)

Type name of Clerk _____
Type name of Mayor

APPROVED AS TO FORM:

BY: _____
Jim R. Ippolito, Jr.
Chief Counsel
Alabama Department of Transportation

Brian Davis
Division Engineer

Robert J. Jilla
Multimodal Transportation Engineer

G. M. Harper
Acting Chief Engineer/Deputy Director

STATE OF ALABAMA
ACTING BY AND THROUGH THE
ALABAMA DEPARTMENT OF TRANSPORTATION

John R. Cooper, Transportation Director

The foregoing Agreement is hereby executed in the name of the State of Alabama and signed by the Governor on this _____ day of _____, 20____.

Robert Bentley
Governor, State of Alabama

CERTIFICATION FOR FEDERAL-AID CONTRACTS: LOBBYING

This certification is applicable to the instrument to which it is attached whether attached directly or indirectly with other attachments to such instrument.

The prospective participant/recipient, by causing the signing of and the submission of this Federal contract, grant, loan, cooperative AGREEMENT, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, and the person signing same for and on behalf of the prospective participant/recipient each respectively certify that to the best of the knowledge and belief of the prospective participant or recipient and of the person signing for and on behalf of the prospective participant/recipient, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the prospective participant/recipient or the person signing on behalf of the prospective participant/recipient as mentioned above, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, the prospective participant/recipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant/recipient also agrees by submitting this Federal contract, grant, loan, cooperative agreement or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, that the prospective participant/recipient shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

FUNDS SHALL NOT BE CONSTITUTED AS A DEBT

It is agreed that the terms and commitments contained herein shall not be constituted as a debt of the State of Alabama in violation of Article 11, Section 213 of the Constitution of Alabama, 1901, as amended by Amendment Number 26. It is further agreed that if any provision of this AGREEMENT shall contravene any statute or Constitutional provision of amendment, either now in effect or which may, during the course of this AGREEMENT, be enacted, then the conflicting provision in the AGREEMENT shall be deemed null and void.

In any controversy concerning contract terms, or on a question of fact in connection with the work covered by this project, including compensation for such work, the decision of the Transportation Director regarding the matter in issue or dispute shall be final and conclusive on all parties.

For any and all disputes arising under the terms of this contract, the parties hereto agree, in compliance with the recommendations of the Governor and Attorney General, when considering settlement of such disputes, to consider using appropriate forms of non-binding alternative dispute resolution.

TERMINATION DUE TO INSUFFICIENT FUNDS

- a. If the agreement term is to exceed more than one fiscal year, then said agreement is subject to termination in the event that funds should not be appropriated for the continued payment of the agreement in subsequent fiscal years.
- b. In the event of proration of the fund from which payment under this AGREEMENT is to be made, agreement will be subject to termination.

NO GOVERNMENT OBLIGATION TO THIRD PARTY CONTRACTORS

The STATE and CONSULTANT acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations of or liabilities to the STATE, CONSULTANT, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The CONSULTANT agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided to FHWA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

COOPERATIVE MAINTENANCE PROVISIONS

1. The STATE'S Division Office, Bureau of Maintenance, Landscape Architect, and in the case of interstate highways, the Federal Highway Administration, shall review and approve all final plans and specifications prior to advertisement for construction bids.
2. The AGENCY agrees to maintain the vegetative cover within the project boundaries by means of mowing with a flail or rotary mower and hand trimming such that a clean and attractive appearance is obtained. Mowing operations shall be conducted when the height of the vegetative cover (turf and ground cover) reaches 12 inches. Reschedule mowing operations in accordance with the planned frequency. In the event that shrubs and/or trees are planted within the area, trimming and weeding in and around the plant materials shall be done in conjunction with mowing to obtain a clean and attractive appearance. Clippings or other incidental debris (such as branches, trash, etc.) shall be removed if moundings of the clippings or other incidental debris occurs. Note: The AGENCY agrees to remove or cut to below 4 inches any vegetation that exceeds clear zone standards as defined in the AASHTO "Guide for Transportation Landscape and Environmental Design." For example: trees and shrubs whose ultimate trunk diameter exceeds 4 inches. The AGENCY will immediately remedy any and all clear zone and sight encroachments in accordance with AASHTO's "Transportation Landscape and Environmental Design Guide."
3. The AGENCY will see that adequate sight distances are maintained for maximum public safety; otherwise, the STATE reserves the right to remedy this situation in the most expedient manner.

4. The STATE is not responsible for the safety of the individuals involved or taking part in this work during maintenance operations. Signs indicating "MEN WORKING" can be obtained from the STATE prior to work and must be returned after completion of work.
5. If STATE construction (repair of drainage and traffic structures, crossovers and other minor construction) is done in the subject area, it will be the responsibility of the STATE to establish a stand of vegetative cover if deemed necessary by the STATE and then the AGENCY's responsibility to maintain the vegetative cover as stipulated herein.
6. All work shall be subject to the inspection and approval of the STATE. A detailed description of the proposed work must accompany this and any associated proposal. The STATE does not grant applicant any right, title, or claim on any highway right-of-way.
7. The AGENCY agrees to store no equipment, branches, mounds of clippings or plant debris of any kind or any other material on the shoulders of pavement and in the case of multi-lane highways, in the median strips. The pavement will be kept free from waste (clippings, mud and other debris) and equipment.
8. The AGENCY shall be solely responsible for and hold harmless the STATE for any claim for damage done to existing private property, public utility, or the traveling public.
9. All disturbed areas shall be topsoiled, and re-vegetated by the AGENCY in accordance with standard specifications of the STATE.
10. In accomplishment of the work by the AGENCY, or its contractor, no drainage structures or channels will be changed or altered other than as shown on the project plans.
11. Failure of the AGENCY to conform to the provisions of this Agreement will be cause to terminate this Agreement. Notification prior to termination will be made by the STATE.

RESOLUTION NUMBER 4361-A

A RESOLUTION AMENDING RESOLUTION NUMBER 4361 AND CHANGING THE CITY OFFICIALS DESIGNATED AND AUTHORIZED TO SIGN CHECKS AND DRAFTS FOR PAYMENTS FROM CITY OF VESTAVIA HILLS ACCOUNTS ON DEPOSIT IN THE PINNACLE BANK.

BE IT RESOLVED by the Mayor and City Council of the City of Vestavia Hills, Alabama, as follows:

1. That the Pinnacle Bank be, and hereby is, designated as the depository of the City of Vestavia Hills Library Account, and that the officers and employees of said City named herein below are hereby authorized to endorse, in the name of the City, for the purpose of deposit and collection, in and with said bank, checks, drafts, notes and other like obligations issued and drawn to and owned by said City; and it is further resolved that endorsement for deposit and collection may be by the written or stamped endorsement of the City without designation of the party making the endorsement.

2. That said bank be, and hereby is, authorized to pay out the funds of this corporation on deposit with it from time to time upon said depository and signed in the name of this corporation by any one (1) of the following [two (2) if any single transaction is in excess of \$1,000], whether said checks are payable to cash, bearer, or the order of the corporation, or to any third party, or to the order of any signing or countersigning officer of the corporation or any other corporation officer, in either their individual or official capacity, without further inquiry or regard to the authority of said officer(s) and/or other person(s) or the use of said checks, drafts, and orders or the proceeds thereof;

Alberto C. Zaragoza, Jr.
Mayor

Randy Robertson
City Manager

Rebecca Leavings
City Clerk

Melvin Turner, III
Finance Director/City Treasurer

Taneisha Young-Tucker
Library Director

Dr. Jimmy Bartlett
Chair, Vestavia Hills Library Board

Jason Gardner
Vice Chair, Vestavia Hills Library Board

3. That the said bank shall not be, in any manner whatsoever, responsible for or required to see the application of any of the funds of this corporation deposited with it, checked out, or borrowed from it, or secured by the discount of notes and other obligations to it as hereinbefore provided, and all such transactions shall be conclusively presumed to be legally binding upon this corporation.

4. That Rebecca Leavings, the City Clerk of this municipality, shall file with the said bank a certified copy of this resolution under the corporate seal of this corporation and shall also file with the said bank a certified list of the persons at the present time holding offices of Mayor, City Manager, City Clerk and City Treasurer in this corporation, and it shall be conclusively and presumed that the persons so certified as holding such offices continue respectively to hold the same until the said bank is otherwise notified in writing by the City of Vestavia Hills by duly authorized Resolution.

5. Any and all resolutions heretofore approved and adopted by the City Council of the City of Vestavia Hills, Alabama in conflict with this Resolution Number 4361-A are hereby rescinded.

6. That this resolution shall be in full force and effect and binding upon this municipality as of January 1, 2013 and shall remain in full force and effect until it shall have been rescinded and written notice of such recession under the corporate seal have been delivered to said bank.

ADOPTED and APPROVED this the 10th day of December, 2012.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

CERTIFICATION:

I the undersigned qualified Clerk of the City of Vestavia Hills, Alabama, do hereby certify that the above and foregoing is a true copy of a Resolution lawfully passed and adopted by the City Council of the City named therein, at a regular meeting of such Council held on the 10th day of December, 2012, and that such Resolution is of record in the Minute Book of the City at page __ thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City on this _____ day of _____, 2012.

Rebecca Leavings
City Clerk

SEAL

RESOLUTION NUMBER 4377

A RESOLUTION ACCEPTING A BID FOR THE CITY OF VESTAVIA HILLS FOR JANITORIAL SERVICES AT THE CIVIC CENTER

WHEREAS, the City of Vestavia Hills received and opened bids for janitorial services for the Civic Center on November 27, 2012; and

WHEREAS, four (4) was received; and

WHEREAS, the Public Services Director, in a memorandum dated December 4, 2012, recommended the acceptance of Professional Management of Alabama in the amount of \$2,299.73 per month; and

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

1. The bid package submitted by Professional Management of Alabama in the amount of \$2,299.73 per month is hereby accepted; and
2. This Resolution Number 4377 shall become effective immediately upon adoption and approval.

DONE, ORDERED, ADOPTED AND APPROVED this the 10th day of December, 2012.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

City of Vestavia Hills Public Services
513 Montgomery Highway
Vestavia Hills, AL 35216
205.978.0150

Interoffice Memo

December 4, 2012

TO: Randy Robertson
City Manager

Rec'd 4 Dec 12

FROM: Brian C. Davis *bcd*
Public Services Director

RE: Custodial Services for the Civic Center

Invitations to bid on custodial services were received on November 27. Four companies attended the pre-bid meeting and those four companies submitted bids to maintain the Civic Center from January 2013 through September 2013.

The bids were returned as follows:

Professional Management of Alabama	\$2,299.73/per month Total \$20,697.57
Eagle Cleaning Company	\$2,595.00/per month Total \$23,355.00
Jani-King	\$2,790.00/per month Total \$25,110.00
Trust Building Services	\$2,859.00/per month Total \$25,731.00

Mr. Jason Burnett and I called the references for Professional Management of Alabama, and we received great feedback from them.

I recommend and request that we select Professional Management of Alabama for the contract for cleaning the Civic Center. This is a budgeted item and the bid falls within our budgeted numbers.

Please let me know if you have any questions.

CC: Rebecca Leavings
Jason Burnett

RESOLUTION NUMBER 4376

A RESOLUTION AUTHORIZING THE MAYOR AND CITY MANAGER TO ENTER INTO AN AGREEMENT WITH BARRY DAVIS, ARCHITECTS, P.C. FOR ARCHITECTURAL SERVICES FOR THE VESTAVIA HILLS CITY GARAGE/FLEET MAINTENANCE BUILDING AND INTO AN AGREEMENT FOR ARCHITECTURAL SERVICES FOR THE MODIFICATIONS TO THE EXISTING VESTAVIA HILLS PUBLIC SERVICES FACILITY AT WALD PARK

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA, that the City enters into an agreement with Barry Davis, Architects, P.C. for architectural services for the Vestavia Hills Garage/Fleet Maintenance Building and Vestavia Hills Public Services Facility at Wald Park. Said agreement shall be executed in the name of the City, by the Mayor and City Manager, for and in its behalf, and that it be attested by the City Clerk and the seal of the City be affixed thereto.

BE IT FURTHER RESOLVED, said agreement shall state the terms of the agreement for base services for both facilities in the total amount of \$153,000.00.

BE IT FURTHER RESOLVED, that upon the completion of the execution of the agreement by all parties, that a copy of such agreement be kept on file by the City Clerk.

ADOPTED and APPROVED this the 10th day of December, 2012.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

CERTIFICATION:

I, the undersigned qualified and acting clerk of the City of Vestavia Hills, Alabama, do hereby certify that the above and foregoing is a true copy of a resolution lawfully passed and adopted by the City Council of the City, named therein, at a regular meeting of such Council held on the 10th day of December, 2012 and that such resolution is on file in the Office of the City Clerk.

IN WITNESS WHEREAS, I have hereunto set my hand and affixed the official seal of the City on this _____ day of _____, 2012.

Rebecca Leavings
City Clerk

CITY OF VESTAVIA HILLS
DEPARTMENT OF PUBLIC SERVICES
OFFICE OF CITY ENGINEER
INTER-DEPARTMENT MEMO

December 7, 2012

To: Mr. Randy Robertson, City Manager
CC: Rebecca Leavings, Brian Davis
From: Christopher Brady
RE: architectural services for design of new City Garage, and modifications to existing Public Services facility at Wald Park

Mr. Robertson,

I have pursued three proposals for architectural design services for the proposed subject facilities. I have engaged Barry Davis, Architects; Turner Batson; and Gresham, Smith and Partners in extensive review of these projects. Based on submitted proposals and further negotiation, I am happy to recommend the City pursue a design services contract with Barry Davis Architects.

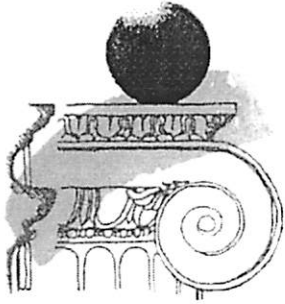
Please review the submitted proposal dated 2 Nov, 2012. Also, please note in email dated 7 December that Mr. Davis is willing to consider providing the listed services for a lump sum fee of \$153,000.

Please review and let me know if you have any questions. Based on the timelines identified for the development of this project, I would like to recommend immediate Council consideration of this item.

Thank you,

-Christopher





BARRY DAVIS, ARCHITECTS, P.C.

November 2, 2012

Mr. Christopher Brady, PE, City Engineer
City of Vestavia Hills
513 Montgomery Highway
Vestavia Hills, Alabama 35216

Re: Public Works and Parks and Recreation Maintenance Facilities
Proposal for Architectural Services

Dear Christopher:

Thank you for considering my firm for your design needs.

I understand the City of Vestavia Hills is planning to abandon your maintenance facility on U.S. Highway 31 (next to Walmart) and construct two new facilities – one at Wald Park and the other at a yet-to-be-purchased site in Cahaba Heights – to house Public Works as well as Parks and Recreation maintenance functions. This is to include consolidation of certain activities of the two departments and distribution between the two sites to provide two relatively autonomous, free-standing facilities from which to provide the various requisite services for the two departments.

The functions are to include:

- Vehicle/equipment Maintenance
- Vehicle/equipment Storage
- Indoor Storage for Various Parts, Supplies, Building Materials, etc.
- Outdoor Storage for Various Parts, Supplies, Building Materials, etc.
- Specialty Storage (Swimming Pool “Bubble,” Mulch, Fertilizer, etc.)
- Dormitory Facilities for Emergency Operations
- Offices
- Break Rooms with Kitchens
- Locker and Dressing Areas
- Showers and Toilets
- Parking for Workers and Visitors

It should be noted that the facility description in this proposal is very preliminary, intended only to provide a scope of work for budgeting purposes. If we are retained as the architect for this Project, we should perform more extensive, detailed programming before proceeding with schematic design.

At the Wald Park site, the design must account for parking problems on Old Montgomery Highway during multiple park events and must allow for movement of vehicles and equipment into and out of the facility during such events. This will involve, first, demolition of the existing building and widening of the Old Montgomery Highway. Then, a new office building will be constructed – probably on the higher ground immediately south of the Lodge. This building will include offices; emergency dormitory facilities for six workers; showers; lockers and dressing space for approximately ten workers; toilets; a kitchen and break room to accommodate approximately ten workers; and storage. We estimate this building will be approximately 2,500 square feet. A vehicle maintenance/storage shed will be constructed at the level of the existing facility and immediately adjacent to the office building. This will include ten ±30' deep bays; workshop; conditioned (indoor) storage; unconditioned (outdoor) storage; specialty storage; and toilets. We estimate this building will be approximately 3,600 square feet. Site work will include additional access from the northwest. We estimate the cost of the office building to be approximately \$450,000; the maintenance/storage building to be approximately \$300,000; and site work and demolition to be approximately \$300,000, for a total estimated cost of \$1,050,000 at this site.

We anticipate the building(s) at the Cahaba Heights site to be similar to that at Wald Park except that this site is to handle maintenance of police department vehicles, fire department apparatuses, and public works vehicles. The maintenance building will include six enclosed service bays, some of which will accommodate taller (14' vertical clearance, minimum) vehicles and lifting equipment. It will include secure tool storage, parts storage, and storage space for approximately 100 tires. Site work will include removal of storm water piping and a “pocket” park. We estimate the office section of the building to be approximately 2,500 square feet and the maintenance section to be approximately 5,500 square feet. We estimate the cost of the office building to be approximately \$450,000; the maintenance/storage building to be approximately \$450,000; and site work to be approximately \$175,000, for a total estimated cost of \$1,075,000 at this site.

We propose to provide architectural services for this Project using the AIA Document B151 – 1997 *Abbreviated Standard Form of Agreement Between Owner and Architect*, with our compensation being a percentage of the Construction Cost using the attached “Fee Structure” Group II. Note that the Basic Services explicitly included in this form of agreement are Schematic Design, Design Development, Construction Documents, Bid, and Construction Administration, and include structural, mechanical, and electrical engineering. We propose to include civil engineering as a Basic Service – assuming site work remains in the Work to be bid – with the exception of services described below. In addition to civil engineering, we propose to include programming and representation at the meetings required to get the Cahaba Heights site re-zoned.

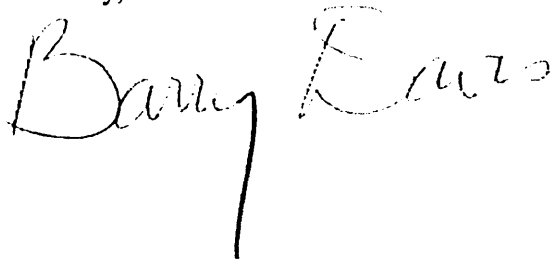
Civil engineering does not include surveying or geotechnical investigation; however, we can provide these as additional services or recommend consultants who can provide them for you. This proposal assumes the widening of Old Montgomery Highway and connection to the cul-de-sac to the northwest will require no extraordinary expenses such as extensive utility relocations, problems with the rights-of-way, or other unknown conditions. If we encounter such unanticipated conditions, we may request an additional allowance. Also, this does not include the requisite asbestos survey for the Wald Park site; we can provide this for an additional \$1,500. Other services that are not included in our proposed Basic Services (with proposed additional fees) follow:

- Topographic Survey of the Wald Park site (including roadways, utilities, and as-builts of the existing structures): \$3,200 - \$4,000
 - Topographic Survey of the Cahaba Heights site: \$2,500
 - Geotechnical Investigation for the Wald Park site: \$5,500 - \$6,500 (Note that there could be some savings if the City were to dig the test pits)
 - Geotechnical Investigation for the Cahaba Heights site: \$5,500
 - *Jefferson County Environmental Services Allowance for the Wald Park site: \$2,500 - \$5,000
 - *Jefferson County Environmental Services Allowance for the Cahaba Heights site: \$2,500 - \$5,000
 - Record Map for the Cahaba Heights site: \$2,000
 - Phase I Environmental Report for the Wald Park site: \$2,800
 - Phase I Environmental Report for the Cahaba Heights site: \$2,600
 - Phase II Environmental Report for the Wald Park site (if required): \$8,500 - \$12,000
(Note that we do not anticipate the need for an asbestos survey or Phase II Environmental Report for the Cahaba Heights site.)
- *Normal design work is included in our Basic Services. Jefferson County occasionally requires some extraordinary, additional work during the approval process, as-built drawings of existing services, etc. Such additional work may require additional fees.

We are prepared to begin work as soon as we can execute an agreement.

Please call if you have any questions or concerns. Again, thank you for the opportunity to serve as Vestavia Hills' architect.

Sincerely,



Barry Davis, AIA, NCARB, LEED® AP
President
Attachments: Fee Structure

Christopher Brady

From: Barry Davis [Barry@BarryDavisArchitects.com]
Sent: Friday, December 07, 2012 8:20 AM
To: Christopher Brady
Subject: RE: architectural services

Christopher:

This is feasible, and while the fixed fee of \$153,000 will be a little difficult for us, we can make it happen. We want to be your architect.

Tell me what you would like for us to do next.

Thank you for this opportunity.

Barry Davis, AIA, NCARB, LEED AP
President

BARRY DAVIS, ARCHITECTS, P.C.

<http://www.BarryDavisArchitects.com>

100 Chase Park South, Suite 112

Birmingham, Alabama 35244

(205)444-1112



From: Christopher Brady [<mailto:city.engineer@ci.vestaviahills.al.us>]
Sent: Thursday, December 06, 2012 5:51 PM
To: Christopher Brady
Cc: Randy Robertson; Brian Davis
Subject: architectural services

Gentlemen:

Thank you for your expressions of interest to design the future city garage in Cahaba Heights/Sunview and modifications to the existing Wald Park Public Services facilities. We appreciate your time and the strong bids. Given the urgency of this matter and the need to present to City Council a recommendation on Monday night, I request your thoughts on a flat fee of \$153,000 to do the following:

For both the Sunview site and the Wald Park site, please include in this total fee:

- Preliminary site layout/schematic drawing, design development, construction drawings, bid and construction contract negotiation, and construction administration services;
- Interior design and cost estimating services;
- Structural, mechanical, and electrical design drawings;
- Programming and coordination of these various services;
- Representations at rezoning meetings, planning commission, and City of Vestavia Hills Design Review meeting;
- Allowances for complete Civil/Site engineering design services;
- Allowances for site survey work, including topographic survey;

- Allowances for providing a record plat map for resurvey of lot lines;
- Allowances for geotechnical exploration and reporting;
- Allowances for environmental phase 1 report.

Not included in this fee, if needed, phase II environmental study, utility relocation or extraordinary design services related to utility extensions or utility as-built conditions. Additional services outside of those listed paid at an hourly basis based on your submitted proposal.

We have to release the packet by Friday AM for City Council consideration. The City Manager requests you reply no later than 9am.

Thank you for this consideration,

Christopher Brady, PE, CFM
City Engineer, City of Vestavia Hills
Associate Director, Department of Public Services
513 Montgomery Highway
Vestavia Hills, Alabama 35216
phone: 205-978-0150
direct: 205-978-0198
fax: 205-978-0199
email: city.engineer@ci.vestaviahills.al.us

ORDINANCE NUMBER 2427

AN ORDINANCE ESTABLISHING AND CREATING THE ALCOHOL ABUSE EDUCATION PROGRAM AND THE TRAFFIC SAFETY EDUCATION PROGRAM FOR THE MUNICIPAL COURT OF THE CITY OF VESTAVIA HILLS, ALABAMA.

THIS ORDINANCE NUMBER 2427 is approved and adopted by the City Council of the City of Vestavia Hills, Alabama on this the 26th day of December, 2012.

WITNESSETH THESE RECITALS:

WHEREAS, the Legislature of the State of Alabama enacted Title 12-14-1(a), *Code of Alabama, 1975*, which authorizes municipalities to establish a Municipal Court; and

WHEREAS, Title 12-14-2, *Code of Alabama, 1975*, provides that:

“(a) The municipality shall provide appropriate facilities and necessary supportive personnel for the municipal court and may provide for probation services, clerks and municipal employees designated as magistrates.

(b) Municipalities shall furnish prosecutorial services in municipal courts and in appeals from such judgments and orders.”; and

WHEREAS, Title 12-14-3, *Code of Alabama, 1975*, provides that:

“The municipal court shall have the number of judges and shall hold court at times and places provided by the municipal governing body.”; and

WHEREAS, Title 12-14-13, *Code of Alabama, 1975*, provides that:

(a) Municipal courts may suspend execution of sentence and place of defendant on probation for varying periods of time, not to exceed two years...

(d) The court shall determine and may, at any time, modify the conditions of probation and may require the probationer to comply with the following or any other conditions:..

(9) To attend defensive driving schools, alcohol countermeasure programs or courses where available and support his dependents to the best of his ability.”; and

WHEREAS, the City Council of the City of Vestavia Hills, Alabama, pursuant to the above legal authority, enacted Ordinance Number 397 on December 27, 1977, which established The Municipal Court for the City of Vestavia Hills, Alabama; and

WHEREAS, Section 6 of Ordinance Number 397 sets forth the powers of the Court and reads in pertinent part as follows:

“F. The Municipal Judge shall have the authority to continue the case from time to time to permit the fine and costs to be paid, remit fines, costs and fees, impose intermittent sentences, establish work release programs, require attendance of educational, corrective or rehabilitative programs, suspend driving privileges for such times and under such conditions as provided by law and order hearings to determine the competency of the defendant to stand trial; provided further, that the judge may enter an order authorizing the defendant to drive under the conditions set forth in the order.”; and

WHEREAS, the City wishes to create and establish an alcohol countermeasure program and a defensive driving school as described in Title 12-14-13(d)(9), *Code of Alabama, 1975*.

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

1. There is hereby established an Alcohol Abuse Educational Program to be known as the Highway Intoxication Seminar, which shall be under the supervision of the Clerk of the Municipal Court. Each person attending the Seminar shall be charged no more than Three Hundred Dollars (\$300.00) for evaluation and/or registration. Such fees are to be assessed by the Judge of the Municipal Court as appropriate, unless the same is waived by the Municipal Judge or by the Clerk of Municipal Court in such cases where the individual is being referred by an outside agency.

2. There is hereby established a Traffic Safety Educational Program, which shall be under the supervision of the Clerk of the Municipal Court. Each person attending the Seminar shall be charged not more than One Hundred and Fifty Dollars (\$150.00) for registration. Such fees are to be assessed by the Judge of the Municipal Court as appropriate, unless the same is waived by the Municipal Judge or by the Clerk of Municipal Court in such cases where the individual is being referred by an outside agency.

3. There is hereby established an Advisory Committee consisting of the Presiding Municipal Judge or his designee, the Chief of Police or his designee, and the City Attorney or his designee.

4. The Clerk of the Municipal Court shall be responsible for scheduling of classes, instructors and facilitators and setting reasonable fees for the payment of the instructors and facilitators. The Clerk of Municipal Court shall adopt rules and regulations for the operation of the established educational programs, criteria for acceptance and completion and established fees for the appropriate program. These rules and regulations, policy and procedures, and fee list shall be readily available for public inspection.

5. All monies collected as a result of the operation of the Alcohol Abuse Education Program and the Traffic Safety Education Program in the form of registration fees, evaluation fees and/or tuition fees shall be maintained in a separate account with the City Finance Department to be distributed as follows:

(a) to fully cover the cost of services provided by the previously mentioned education programs;

(b) an amount equivalent to Fifty-five Dollars (\$55.00) per individual participant to the City's "Court and Correction Fund";

(c) an amount equivalent to Ten Dollars (\$10.00) per applicant to the "Municipal Court Judicial Administrative Fund"; and

(d) all remaining monies to be used for the purpose of providing various other traffic safety education and awareness programs to the Vestavia Hills community through the Traffic Safety Office of the Vestavia Hills Police Department or any other police activities. The collection and use of these monies shall be under the supervision of the Police Chief and Finance Director.

6. This ordinance shall become effective upon its approval, adoption, enactment and publication by posting as set forth in Title 11-45-8(b), *Code of Alabama, 1975*.

7. If any part, section or subdivision of this ordinance shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this ordinance which shall continue in full force and effect notwithstanding such holding.

DONE, ORDERED, ADOPTED and APPROVED this the 26th day of December, 2012.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

CERTIFICATION:

I, Rebecca Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance # 2427 is a true and correct copy of such Ordinance that was duly adopted by the City Council of the City of Vestavia Hills on the 26th day of December, 2012 as same appears in the official records of said City.

Posted at Vestavia Hills Municipal Center, Vestavia Hills New Merkle House, Vestavia Hills Civic Center and Vestavia Hills Library in the Forest this the _____ day of _____, 2012.

Rebecca Leavings
City Clerk

PATRICK H. BOONE
ATTORNEY AND COUNSELOR AT LAW
NEW SOUTH FEDERAL SAVINGS BUILDING, SUITE 705
215 RICHARD ARRINGTON, JR. BOULEVARD NORTH
BIRMINGHAM, ALABAMA 35203-3720
TELEPHONE (205) 324-2018
FACSIMILE (205) 324-2295

November 21, 2012

By Electronic Mail

City Manager Randy Robertson
Vestavia Hills Municipal Center
P. O. Box 660854
Vestavia Hills, Alabama 35266-0854

In Re: Ordinance to Establish Alcohol Abuse Education Program
and Traffic Safety Education Program

Dear Mr. Robertson:

I forward suggested draft of an Ordinance for the City Council to consider if it elects to establish and create an Alcohol Abuse Education Program and Traffic Safety Education Program.

Please call me if you have any questions regarding this matter.

Sincerely,



Patrick H. Boone
Vestavia Hills City Attorney

PHB:gp
Enclosure
cc: City Clerk Rebecca Leavings

ORDINANCE NUMBER 2426

AN ORDINANCE AUTHORIZING AND DIRECTING THE SALE OF REAL ESTATE SITUATED AT 1112 MONTGOMERY HIGHWAY IN THE CITY OF VESTAVIA HILLS, ALABAMA, COMMONLY REFERRED TO AS THE OLD LIBRARY PROPERTY AND MORE PARTICULARLY DESCRIBED IN EXHIBIT A AND THE EXECUTION AND DELIVERY OF A REAL ESTATE PURCHASE AND SALE AGREEMENT.

THIS ORDINANCE NUMBER 2426 is approved and adopted by the City Council of the City of Vestavia Hills, Alabama on this the 14th day of January, 2013.

WITNESSETH THESE RECITALS:

WHEREAS, Title 11-40-1, *Code of Alabama, 1975*, declares municipalities corporate and gives them the power to contract and be contracted with; and

WHEREAS, Title 11-43-56, *Code of Alabama, 1975*, provides that the City Council shall have the management and control of the finances and all of the property, real and personal, belonging to the City; and

WHEREAS, Title 11-47-20, *Code of Alabama, 1975*, provides that the City Council may, by ordinance to be entered on its minutes, direct the disposal of any real property not needed for public or municipal purposes and direct the mayor to make title thereto, and a conveyance made by the mayor in accordance with such ordinance invests the grantee with the title of the municipality; and

WHEREAS, Title 11-43A-28, *Code of Alabama, 1975*, provides that the City Manager shall be the head of the administrative branch of the government of the City of Vestavia Hills and shall be responsible to the City Council for the proper administration of all municipal affairs; and

WHEREAS, Title 11-43A-48, *Code of Alabama, 1975*, provides that all contracts for the City of Vestavia Hills shall be made and approved by ordinance and signed in the name of the City of Vestavia Hills by the Mayor and countersigned by the City Manager; and

WHEREAS, the Alabama Open Meetings Act set forth at Title 36-25A-1, et seq., *Code of Alabama, 1975*, provides that the deliberative process of conducting City business shall be open to the public at regularly scheduled or specially called meetings after providing the required notice; and

WHEREAS, the Alabama Open Meetings Law also provides at Title 36-25A-7(a)(6), *Code of Alabama, 1975*, specifically as follows:

“§36-25A-7. Executive sessions.

(a) Executive sessions are not required by this chapter, but may be held by a governmental body only for the following purposes:

(6) To discuss the consideration the governmental body is willing to offer or accept when considering the purchase, sale, exchange, lease, or market value of real property. Provided, however, that the material terms of any contract to purchase, exchange, or lease real property shall be disclosed in the public portion of a meeting prior to the execution of the contract.”; and

WHEREAS, the City of Vestavia Hills, Alabama is the owner of a parcel of land situated at 1112 Montgomery Highway in the City of Vestavia Hills, Jefferson County, Alabama constituting of approximately 1.66± acres, sometimes referred to as the “old Library property,” which said property is more particularly described in Exhibit A and shall hereinafter be referred to as “the Property;” and

WHEREAS, the Property has an appraised value of \$1,500,000.00 as of June 23, 2009; and

WHEREAS, the City Council hereby acknowledges receipt of an offer of HES Investments, LLC to purchase the property represented by a written real estate Purchase and Sale Agreement for a total sales price in the amount of \$750,000.00; and

WHEREAS, a copy of the real estate Purchase and Sale Agreement (hereinafter referred to as “Agreement”) is attached hereto, marked as Exhibit B and incorporated into this Ordinance Number 2426 by reference as though set out fully herein; and

WHEREAS, the City Council of the City of Vestavia Hills, Alabama (“City Council”) approved and adopted Resolution Number 4371 on November 15, 2012 all in accordance with Article IV, §94.01 of the *Constitution of Alabama, 1901* (hereinafter

referred to as “Amendment Number 772”), which provides, among other things, as follows:

“2. A public hearing will be held by the Vestavia Hills City Council on Monday, January 14, 2013, at the Vestavia Hills Municipal Center located at 513 Montgomery Highway in the City of Vestavia Hills, Alabama beginning at 5:00 p.m. as required by Article IV, §94.01 of the *Constitution of Alabama 1901*.

6. The City Clerk is hereby directed to take any and all steps necessary to publish notice of the public hearing on January 14, 2013, at 5:00 p.m. in *The Birmingham News* at least seven (7) days prior to the public meeting as aforesaid. The notice shall include all matters as required in Article IV, §94.01 of the *Constitution of Alabama 1901*.

WHEREAS, the sale and closing of the Property will be considered at a public hearing to be held on Monday, January 14, 2013, at the Vestavia Hills Municipal Center located at 513 Montgomery Highway in the City of Vestavia Hills, Alabama beginning at 5:00 p.m.,” and

WHEREAS, the notice required by Amendment Number 772 was published in the December 19, 2012 edition of *The Birmingham News*; and

WHEREAS, Title 11-45-8(b), *Code of Alabama, 1975*, provides that if an ordinance is published by posting, then in such event said ordinance shall take effect five days thereafter; and

WHEREAS, the City has found and determined by the approval and adoption of this Ordinance Number 2426 that the execution and delivery of the Agreement will promote economic development and the public interests and general welfare of the City of Vestavia Hills, Alabama.

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

1. The City Council of the City of Vestavia Hills, Alabama finds and determines that the property more particularly described in Exhibit A is not needed for municipal or public purposes.

2. The City Council, by the approval and adoption of Ordinance Number 2426, finds and determines that if a recognized company (“Company”), approved by the City in its sole discretion, shall have first agreed in writing with the City to open and operate a commercial retail sales business on the Property that will generate annual

municipal sales tax revenues in an amount sufficient to satisfy the City, in its sole discretion, that selling the Property for \$750,000.00:

- (a) meets the requirements of Amendment Number 772; and
- (b) promotes economic development; and
- (c) promotes the public interest and general welfare;

then in such events, the City will close the sale all in accordance with the terms, provisions and conditions of the Purchase and Sale Agreement designated as Exhibit B and attached hereto.

3. A copy of the real estate Purchase and Sale Agreement (hereinafter referred to as the “Agreement”) is attached hereto, marked as Exhibit B and incorporated into this Ordinance Number 2426 by reference as though set out fully herein.

4. The Mayor and the City Manager are hereby authorized and directed to execute and deliver the real estate Purchase and Sale Agreement for and on behalf of the City of Vestavia Hills, Alabama.

5. Anything contained in this Ordinance Number 2426 to the contrary notwithstanding, the sale of the Property pursuant to the real estate Purchase and Sale Agreement shall not be closed unless and until the terms, provisions and conditions of the Agreement have been satisfied, performed, completed and done, including specifically, but not limited to:

(a) The closing of the sale must be approved and validated by a judgment rendered by a Jefferson County Circuit Court Judge after a hearing on the merits; and

(b) A recognized company (“Company”) shall have first agreed in writing with the City to open and operate a commercial retail sales business on the Property that will generate annual municipal sales tax revenue in an amount sufficient to satisfy the City, in its sole discretion, that selling the subject property for \$750,000.00 meets the requirements of Article IV §94.01, *Constitution of Alabama of 1901*. If the City approves the Company, then in such event the approval shall be done by the enactment of a resolution at a public meeting. If the City disapproves the Company, then in such event the City shall not close the sale of the Property and the Contract shall automatically terminate, be null and void and have no legal force and effect.

6. If any part, section or subdivision of this ordinance shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this ordinance which shall continue in full force and effect notwithstanding such holding.

7. This ordinance shall become effective upon its approval, adoption, enactment and publication by posting as set forth in Title 11-45-8(b), *Code of Alabama, 1975*.

DONE, ORDERED, APPROVED and ADOPTED this the 14th day of January, 2013.

CITY OF VESTAVIA HILLS, ALABAMA

By _____
Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

CERTIFICATION:

I, Rebecca Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance #2426 is a true and correct copy of such Ordinance that was duly adopted by the City Council of the City of Vestavia Hills on the 14th day of January, 2013 as same appears in the official records of said City.

Posted at Vestavia Hills Municipal Center, Vestavia Hills New Merkle House, Vestavia Hills Civic Center and Vestavia Hills Library in the Forest this the 15th day of January, 2013.

Rebecca Leavings
City Clerk

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "Agreement") is entered into on or as of this _____ day of _____, 2012 by and between **The City of Vestavia Hills, Alabama** (the "Seller"), and **HES Investments, LLC**, an Alabama limited liability company or its assigns (the "Purchaser").

Recitals

A. Seller is the owner of that certain parcel of improved real property, being known as the old Vestavia Hills library property comprised of 1.66 acres and an approximate 22,000 square foot, three story building, located at 1112 Montgomery Highway in Vestavia Hills, Alabama, as depicted on the attached Exhibit A and made a part hereof (the "Property").

B. Purchaser desires to purchase the Property, and Seller desires to sell the Property, pursuant to the terms and conditions of this Agreement.

Agreement

NOW, THEREFORE, in consideration of the above Recitals and other good and valuable consideration, including the mutual covenants and promises herein contained, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser hereby agree as follows:

1. Purchase Price; Closing Date. The purchase price for the Property shall be \$750,000.00 (the "Purchase Price"), to be paid as hereinafter provided. The closing of the sale and purchase of the Property (the "Closing") shall occur on the Closing Date, as defined in paragraph 5.

2. Earnest Money; Inspection Period. No later than three (3) business days after the Effective Date (defined in Section 24 hereof), Purchaser shall pay to Seller immediately available funds in the amount of \$10,000.00 (the "Earnest Money"), to be held and disbursed by the Seller in accordance with the terms of this Agreement. Commencing on the Effective Date, Purchaser shall have **120** days (the "Inspection Period") to perform such inspections as Purchaser deems necessary to evaluate the Property, at Purchaser's sole expense. Purchaser shall indemnify and hold Seller harmless from any and all claims, damages and losses, including attorney fees, arising from such inspections. If Purchaser deems any inspection unsatisfactory, for any reason or no reason, Purchaser shall have the right to terminate this Agreement prior to the end of the Inspection Period, by written notice to Seller received prior to the end of the Inspection Period, and receive a full refund of the Earnest Money. If Purchaser does not terminate this Agreement prior to the end of the Inspection Period, all inspections shall be deemed satisfactory, and the parties shall proceed to Closing.

3. Application of Earnest Money. Unless this Agreement is terminated prior to the end of the Inspection Period, the Earnest Money shall become non-refundable and shall be applied to the Purchase Price to be paid by Purchaser at Closing.

4. Possession. Seller shall deliver possession of the Property to Purchaser on the Closing Date.

5. Place and Date of Closing. The Closing shall be on or before the date which is 30 days following the end of the Inspection Period provided the sale has been validated by the Circuit Court of Jefferson County, Alabama. The actual date of Closing is referred to herein as the "Closing Date." Time shall be of the essence with respect to the Closing Date.

6. Conveyance. Seller shall convey to Purchaser good and marketable fee simple title to the Property by general warranty deed.

7. Costs and Fees. Purchaser shall pay all other costs and fees related to closing including any updated survey, appraisal, environmental audits, title, mortgage tax, recording fees, etc. Seller and Purchaser shall pay the fees of their own attorneys for services related to the preparation and negotiation of this Agreement and the sale and purchase of the Property. All taxes will be prorated as of the day of closing.

Seller agrees to provide its most recent survey of the Property to Seller, together with other readily accessible reports, easements and other agreements relating to the Property now in Seller's possession, all within five (5) business days from the Effective Date.

8. Intentionally Deleted

9. Representations and Warranties of Seller. To induce Purchaser to enter into this Agreement, Seller makes the following representations and warranties, all of which are true as of the date hereof (unless otherwise specified) and shall also be true as of the Closing Date:

(a) Seller has full power and authority to enter into this Agreement and to perform all of its obligations hereunder.

(b) The execution and delivery of this Agreement and the performance by Seller of its obligations hereunder have been duly authorized by all requisite action, except for validation of the sale by a court order rendered by a Judge in the Tenth Judicial Circuit of Alabama after conducting a hearing for that purpose and the approval by the City of the Company (as defined in Section 25, Closing Condition Four) submitted by Purchaser.

(c) That unless excepted herein, Seller has not received notification from any lawful authority regarding any assessments, pending public improvements, repairs, replacement, or alterations to the Property that have not been satisfactorily made. Seller warrants that there is no unpaid indebtedness on the Property except as described in this Agreement. Seller warrants it is the fee owner of the Property or is authorized to execute this document for the fee owner.

(d) Seller has no actual knowledge that the Property has in the past been used or is presently used for the handling, storage, manufacturing, refining, transportation or disposal of "toxic material", "hazardous substances" or "hazardous waste". The terms "hazardous wastes", "hazardous substances", and "toxic material" include, without limitation, any flammable explosives, radioactive materials, hazard materials, hazardous wastes, hazardous or toxic substances or related materials defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 USC §960, et seq.), the Hazardous Materials Transportation Act, as amended (42 USC §1801 et seq), the Resource Conservation and Recovery Act, as amended (42 USC §9601 et seq.), the regulations

adopted and publications promulgated pursuant to the foregoing and any other federal, state or local environmental law, ordinance, rule or regulation. Furthermore, Seller has not received a summons, citation, directive, letter or other communication, written or oral, from any governmental authority as to any of the above environmental concerns.

(e) Seller shall neither market the Property for sale nor enter into a “back-up” contract with any other party for said Property throughout the term of this Agreement.

At Closing, Seller shall be deemed to have represented and warranted to Purchaser that Seller’s representations and warranties as stated herein are true and correct as of the Closing. Purchaser shall have the right, at its expense, to have a Phase 1 ESA performed on the Property.

THESE WARRANTIES SHALL SURVIVE THE DELIVERY OF THE DEED.

10. Documents for Closing.

(a) Seller, at Seller’s sole cost and expense, shall deliver or cause to be delivered to Purchaser the following documents (the “Closing Documents”):

(i) the Deed;

(ii) a certificate of non-foreign status to insure Seller’s compliance with Foreign Investment in Real Property Tax Act (“FIRPTA”) (Section 1445 of the Internal Revenue Code of 1986, as amended) in the form attached hereto as Exhibit C;

(iii) such additional documents and instruments as the title company may reasonably require to transfer Seller’s interest in the Property pursuant to the terms of this Agreement, each of which shall be in form and substance reasonably satisfactory to Seller.

(b) At the Closing, Purchaser shall deliver, or cause to be delivered, to Seller in accordance with the terms of this Agreement, the Purchase Price less the Earnest Money and prorations.

11. Default; Remedies. If Purchaser fails to perform its obligations under this Agreement within the time specified, Seller shall have the right to retain the Earnest Money as liquidated damages as its sole and exclusive remedy. If Seller fails to perform any of the covenants of this Agreement, then the Earnest Money paid by Purchaser shall be returned to Purchaser and thereupon Seller shall be released from any and all liability under the terms of this Agreement, or, alternatively, Purchaser may seek the remedy of specific performance so long as such action is filed within thirty (30) days of the alleged breach and or pursue any other remedies afforded to it under the law. If either party fails to comply with all of the terms, covenants and conditions of this Agreement, the prevailing party in any lawsuit will be entitled to all expenses, including a reasonable attorney’s fee, incurred as a result of such failure.

12. Condemnation and Destruction. If, on the Closing Date, all or any reasonably substantial portion of the Property is the subject of a pending or contemplated taking by eminent domain which has not been consummated or if the Property has been materially damaged or destroyed, Seller shall notify Purchaser of such fact and Purchaser shall have the option to terminate this Agreement and,

in the event Purchaser shall elect to terminate this Agreement, Seller shall refund to Purchaser the Earnest Money. If this Agreement is terminated and the Earnest Money is returned, as aforesaid, neither party shall have any further rights or obligations hereunder. If, after receipt of Seller's notice, as aforesaid, Purchaser does not exercise its option to terminate this Agreement, the parties hereto shall remain bound hereunder and Seller shall assign and turn over, and Purchaser shall be entitled to receive and keep, all awards for the taking by eminent domain described in said notice or all insurance proceeds payable as a result of such destruction or damage.

13. Final Agreement. This Agreement represents the final agreement of the parties and no agreements or representations, unless incorporated in this Agreement, shall be binding on any of the parties, and no portion hereof shall be amended or modified unless such change shall be in writing and signed by both parties thereto.

14. Notice. Any notice required hereunder shall be in writing and sent by certified mail, return receipt requested. Notice shall be deemed to be given when deposited in the United States mail, postage prepaid. Personal delivery and delivery by recognized overnight delivery service may be substituted for certified mail. Notice shall be sent to the following individuals:

If to Purchaser: Jordy Henson
 HES Investments, LLC
 2644 Old Rocky Ridge Road
 Birmingham, AL 35216

If to Seller: Mayor Alberto C. Zaragoza, Jr.
 City of Vestavia Hills, Alabama
 513 Montgomery Highway
 Vestavia Hills, Alabama 35216

With a copy to: Patrick H. Boone
 705 New South Federal Savings Building
 215 Richard Arrington, Jr. Boulevard North
 Birmingham, Alabama 35203-3720

15. Number and Gender. Whenever the singular number is used herein and when required by the context, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and the word "person" shall include a corporation, firm, partnership, joint venture, trust or estate.

16. Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Alabama.

17. Assignment. Purchaser may not transfer, assign or encumber its rights and or obligations under this agreement without the prior written consent of Seller, which approval may be

withheld in Seller's sole and absolute discretion; provided, however, that Purchaser shall have the right to transfer and assign this Agreement to any entity which is controlled by Purchaser.

18. Survival. The representations, warranties and indemnities contained herein shall be deemed to have been made again by the parties as of the Closing Date, and shall survive the expiration or termination of this Agreement, the discharge of all other obligations owed by the parties to each other, and any transfer of title to the Property, and shall not be affected by any investigation by or on behalf of Purchaser, or by any information which Purchaser may have or obtain with respect thereto.

19. Severability. In the event that any condition or covenant herein contained is held to be invalid or void by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect any other covenant or conditions herein contained. If such condition, covenant or other provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

20. Waiver. No breach of any provision hereof can be waived unless in writing. Waiver of any one breach shall not be deemed to be a waiver of any other breach of the same or any other provision hereof.

21. Captions and Interpretations. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Agreement or any provision hereof. No provision in this Agreement is to be interpreted for or against either party because that party or such party's legal representative drafted such provision.

22. Broker. Seller and Purchaser shall indemnify each other against any and all claims for broker's fees, costs or commissions which might arise in connection with the purchase and sale of the Property as a result of either's action. The provisions of this Paragraph shall survive closing. Each party hereby represents to the other that it has not utilized the services of any real estate agent or broker in connection with this Agreement.

23. Patriot Act Representations. Seller and Purchaser each represent and warrant to the other that they are not acting, directly or indirectly, for or on behalf of any person, group, entity, or nation named by the United States Treasury Department as a Specifically Designated National and Blocked Person, or for or on behalf of any person, group, entity, or nation designated in Presidential Executive Order 13224 as a person who commits, threatens to commit, or supports terrorism; and that they are not engaged in this transaction directly or indirectly on behalf of, or facilitating this transaction directly or indirectly in behalf of, any such person, group, entity, or nation.

24. Effective Date: The Effective Date of this Agreement is the date which is the sixth (6th) day following the posting of the ordinance approved and enacted by the City Council authorizing and directing the Mayor to sign the Agreement for and on behalf of the Seller.

25. **CONTINGENCIES AND CONDITIONS FOR CLOSING:** Anything contained in this Agreement to the contrary notwithstanding, this Agreement is subject to and contingent upon the completion and satisfaction of the following on or before the Seller is required to close this sale, hereinafter referred to collectively as "Closing Conditions":

CLOSING CONDITION ONE: Title 11-47-20, *Code of Alabama, 1975*, reads as follows:

“The governing body of any city or town in this state may, by ordinance to be entered on its minutes, direct the disposal of any real property not needed for public or municipal purposes and direct the mayor to make title thereto, and a conveyance made by the mayor in accordance with such ordinance invests the grantee with the title of the municipality.”

In order for the Seller to be required to close this sale pursuant to this Agreement, the City Council shall first make a determination, on or before the Effective Date set forth in Paragraph 24 hereof, that the Property is no longer needed for public or municipal purposes. If the City Council fails or refuses to make a determination that the Property is no longer needed for public or municipal purposes as aforesaid, then in such event the Seller shall not be required to close this sale and this Agreement shall be automatically terminated, be null and void and of no legal force and effect.

CLOSING CONDITION TWO: Amendment No. 772 to the *Constitution of Alabama* (1901) (Section 94.01(a)(3) of the *Recompiled Constitution of Alabama* (hereinafter referred to as “Amendment No. 772”), authorizes the City to lend its credit to or grant public funds and things of value in aid of or to any corporation or other business entity for the purpose of promoting the economic development of the City. Article IV, §94.01 of the *Constitution of Alabama of 1901* Amendment No. 772” reads in pertinent part as follows:

“(a) The governing body of any county, and the governing body of any municipality located therein, for which a local constitutional amendment has not been adopted authorizing any of the following, shall have full and continuing power to do any of the following:

(3) Lend its credit to or grant public funds and things of value in aid of or to any individual, firm, corporation, or other business entity, public or private, for the purpose of promoting the economic and industrial development of the county or the municipality.

(b) In carrying out the purpose of this amendment, neither the county nor any municipality located therein shall be subject to Section 93 or 94 of this Constitution.

(c) Neither the county nor any municipality located therein shall lend its credit to or grant any public funds or thing of value to or in aid of any private entity under the authority of this amendment unless prior thereto both of the following are satisfied:

(1) The action proposed to be taken by the county or municipality is approved at a public meeting of the governing body of the county or municipality, as the case may be, by a resolution containing a determination by the governing body that the expenditure of public funds

for the purpose specified will serve a valid and sufficient public purpose, notwithstanding any incidental benefit accruing to any private entity or entities.

(2) At least seven days prior to the public meeting, a notice is published in the newspaper having the largest circulation in the county or municipality, as the case may be, describing in reasonable detail the action proposed to be taken, a description of the public benefits sought to be achieved by the action, and identifying each individual, firm, corporation, or other business entity to whom or for whose benefit the county or the municipality proposes to lend its credit or grant public funds or thing of value.

For purposes of the foregoing, any sale, lease, or other disposition of property for a price equal to the fair market value thereof shall not constitute the lending of credit or a grant of public funds or thing of value in aid of a private entity.”

In order for the Seller to be required to close this sale pursuant to this Agreement, the City Council shall first publish the notice of a public meeting in strict compliance with the mandated requirements of Amendment No. 772. If the City Council fails or refuses to publish said notice as aforesaid, then in such event the Seller shall not be required to close this sale and this Agreement shall be automatically terminated, be null and void and have no legal force and effect.

CLOSING CONDITION THREE: In order for the Seller to be required to close this sale pursuant to this Agreement, the City Council shall first:

- (a) Hold and conduct the public meeting as required by Amendment No. 772; and
- (b) Find and determine that the sale of the property pursuant to the Agreement will:
 - (1) Promote the economic development of the City of Vestavia Hills, Alabama; and
 - (2) Serve as a valid and sufficient public purpose notwithstanding any incidental benefit accruing to any private entity or entities; and
 - (3) Benefit the public and promote the public welfare of the City of Vestavia Hills, Alabama; and
 - (4) Promote commercial development and the stimulation of the local economy; and
 - (5) Increase employment opportunities and create jobs in the City; and

(6) Increase the City's tax base, which will result in additional tax revenues for the City; and

(7) Promote the location, relocation, expansion and retention of commercial enterprises in the City.

(8) Find and determine that a recognized company ("Company") will locate on the Property that will open and operate a commercial retail sales business that will generate annual municipal sales tax revenue in an amount sufficient to justify the sale of the Property for less than the year 2009 appraised value.

(c) Approve and adopt an ordinance authorizing and directing the Mayor to sign this Agreement.

If the City Council fails or refuses to hold and conduct the public hearing as mandated by Amendment No. 772 or fails and refuses to make any of the findings or determinations as set forth in paragraphs (1) through (8) above, and/or fails or refuses to approve and adopt the ordinance referred to above, then in such event the Seller shall not be required to close this sale and the Agreement shall be automatically terminated, be null and void and have no legal force and effect.

CLOSING CONDITION FOUR: The Purchaser shall, on or before ninety (90) days from the Effective Date, produce to Seller a tenant or company (the "Company" or the "tenant") that will, prior to the end of said ninety (90) day period provide written confirmation to the Seller stating that it, the Company, pending and in accordance with a fully executed commercial lease with Purchaser, and provided this Agreement closes and the Company actually opens for business:

a) Will locate within the corporate boundaries of the City of Vestavia Hills and open and operate a commercial retail sales business on the Property; and

(b) Will purchase from Seller a business license the cost of which shall be based upon a fee and a percentage of gross retail sales; and

(c) Will be engaged in the commercial business of retail sales; and

(d) Expects to generate annual retail sales in an amount necessary to collect and pay over to the City annually municipal sales tax revenue, (which is presently calculated at three percent (3%) of gross retail sales) sufficient to justify, in the sole opinion of Seller, selling the Property at less than the year 2009 appraised value.

In order for the Seller to be required to close this sale pursuant to this Agreement, the City Council shall first accept, agree and approve the Company to locate and operate in the City of Vestavia Hills as completion and satisfaction of this Closing Condition Four. The acceptance by the Seller shall be in writing and approved by the enactment of a resolution at a public hearing, all within

ten (10) business days from Purchaser's submission of a Company to Seller for its approval or disapproval.

Purchaser and Seller agree that the Seller shall have the sole, unfettered and absolute discretion to approve or disapprove the Company offered by Purchaser in an effort to complete and satisfy this Closing Condition Four. If the City Council fails or refuses to accept the Company as completion and satisfaction of this Closing Condition Four, then in such event the Seller shall have no legal obligation to close this sale and this Agreement shall be automatically terminated, be null and void and of no legal force and effect and the Earnest Money shall be immediately returned to Purchaser.

Anything to the contrary in this Closing Condition Four notwithstanding, Purchaser shall have ninety (90) days from the Effective Date to continue to submit prospective tenants to Seller for Seller's approval or disapproval. If after said ninety (90) day period Seller has not approved of a Company, then and only then shall the Seller have the right but not the obligation to terminate the Agreement by immediately refunding the Earnest Money to Purchaser.

CLOSING CONDITION FIVE: Seller shall have no legal obligation to close this sale unless and until the Property is rezoned by the City of Vestavia Hills so as to permit the contemplated use by the Purchaser or Company referred to in Closing Condition Four. If the Property is not rezoned as aforesaid, then in such event the Seller shall have no legal obligation to close the sale of the Property and this Agreement shall be automatically terminated, be null and void and of no force and effect and the Earnest Money shall be immediately returned to Purchaser.

CLOSING CONDITION SIX: In order for the Seller to be required to close this sale pursuant to this Agreement, the Circuit Court of Jefferson County, Alabama shall have first entered a judgment validating and confirming this Agreement and the closing thereof, which judgment shall have become forever conclusive in accordance with and as provided in Section 6-6-755 of the *Code of Alabama, 1975*. If the Circuit Court of Jefferson County, Alabama fails or refuses to render a judgment validating and confirming this Agreement prior to the expiration of the Inspection Period, then in such event the Seller shall not be required to close this sale and the Agreement shall be automatically terminated, be null and void and of no force and effect and the Earnest Money shall immediately be returned to Purchaser.

CLOSING CONDITION SEVEN: If the sale of the Property is not closed on or before the Closing Date, then in such event this Agreement shall automatically be terminated, cancelled, null and void and of no legal force and effect.

The Seller shall have no legal obligation to close this sale unless and until all seven Closing Conditions have been completed and satisfied. Stated another way, if any one of the Closing Conditions is not completed and satisfied, then in such event this Agreement shall be automatically terminated and of no legal force and effect and the Earnest Money shall be immediately refunded to Purchaser.

26. CONDITION OF PROPERTY: The Property is sold in "as is condition with any and all faults." Purchaser expressly acknowledges and agrees that Seller makes no representations or

warranties regarding the condition of the Property, except to the extent expressly and specifically set forth herein.

27. CONSTRUCTION OF TERMS: Descriptive headings are for convenience only and shall not control or affect the meaning or construction of any provision. Any ambiguities of this Agreement shall be construed fairly and equitably regardless of the participation of either party in drafting this Agreement. The reference in terms to gender and number shall be modified as may be appropriate.

IN WITNESS WHEREOF, Seller and Purchaser have caused this Agreement to be executed as of the date first above written.

SELLER:

WITNESS

CITY OF VESTAVIA HILLS, ALABAMA

By _____
Alberto C. Zaragoza, Jr.
Its Mayor

PURCHASER:

WITNESS

HES INVESTMENTS, LLC

By _____
W. Jordy Henson
Its Managing Member

**STATE OF ALABAMA
JEFFERSON COUNTY**

ACKNOWLEDGMENT

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Alberto C. Zaragoza, Jr., whose name as Mayor of the City of Vestavia Hills, Alabama, is signed to the foregoing Real Estate Purchase and Sale Agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of the document, he, as such officer and with full authority, executed the same voluntarily for and as the act of said City of Vestavia Hills, Alabama.

Given under my hand and official seal, this the _____ day of _____, 2012.

My Commission Expires:

SEAL

Notary Public

**STATE OF ALABAMA
JEFFERSON COUNTY**

ACKNOWLEDGMENT

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that W. Jordy Henson, whose name as Managing Member of HES Investments, LLC, is signed to the foregoing Real Estate Purchase and Sale Agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of the document, he, as such officer and with full authority, executed the same voluntarily for and as the act of said HES Investments, LLC.

Given under my hand and official seal, this the _____ day of _____, 2012.

My Commission Expires:

SEAL

Notary Public

**EXHIBIT A
TO
PURCHASE AND SALE AGREEMENT**

A parcel of land situated in the Northeast Quarter of the Southwest Quarter of Section 30, Township 18 South, Range 2 West, Jefferson County, Alabama, being more particularly described as follows:

From the Southwest corner of said quarter-quarter section run thence in an Easterly direction along the South line of same for a distance of 589.77 feet to the point of beginning of the parcel herein described; thence turn an angle to the left of 103 degrees 33 minutes 57 seconds and run in a Northwesterly direction for a distance of 206.63 feet; thence turn an angle to the right of 101 degrees 35 minutes 18 seconds and run in an Easterly direction for a distance of 359.60 feet to a point on the Westerly right-of-way of U.S. Highway 31, said point being in a curve to the right having a radius of 3173.97 feet and a central angle of 3 degrees 54 minutes 57 seconds and being concave to the West with a chord which forms an interior angle of 98 degrees 29 minutes 45 seconds with the previous call; thence run along the arc of said curve in said right-of-way line in a southerly direction for a distance of 216.93 feet to the South line of said quarter-quarter section, the chord of said curve forming an interior angle of 79 degrees 31 minutes 36 seconds with said South line of said quarter-quarter section; thence run in a Westerly direction along said South line for a distance of 350.34 feet to the point of beginning.

**EXHIBIT B
TO
PURCHASE AND SALE AGREEMENT**

**EXHIBIT C
TO
PURCHASE AND SALE AGREEMENT**

**CERTIFICATION OF
NONFOREIGN STATUS**

This Certification of Nonforeign Status is made by _____
_____ (“Seller”) to the _____ (“Purchaser”), pursuant to
Section 1445 of the Internal Revenue Code (the “Code”).

Section 1445 of the Code provides that a transferee of a United States real property interest must withhold tax if the transferor is a foreign person. To inform the Purchaser that withholding of tax is not required upon the disposition of a United States real property interest by Seller, the undersigned hereby certifies the following on behalf of Seller:

1. Seller is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Internal Tax Regulations). Seller is a domestic corporation organized under the laws of the State of Alabama. Seller is not a partner in any foreign partnership and does not have any interest in any foreign trust or foreign estate (as those terms are defined in the Code and Income Tax Regulations).

2. Seller’s employer identification number is 63-0371391.

3. Seller’s office address is _____.

Seller understands that this Certification of Nonforeign Status may be disclosed to the Internal Revenue Service by Purchaser and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under the penalties of perjury, I declare that I have examined this Certification of Nonforeign Status and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of Seller.

[Signature Page Follows]

This Certification is signed by the undersigned on the ____ day of _____, 20____.

By: _____
Name: _____
Title: _____