

**Vestavia Hills  
City Council Agenda  
March 11, 2013  
5:00 PM**

1. Call to Order
2. Roll Call
3. Invocation – Joe Slane, Pastor, Southminster Presbyterian Church
4. Pledge of Allegiance
5. Announcements and Guest Recognition
6. City Manager’s Report
  - a. Employees of the Month
7. Councilors’ Reports
  - a. Certificate of Recognition – Charles Farrell, Jr.
  - b. Board of Education Upcoming Vacancy – John Henley
8. Approval Of Minutes –February 21, 2013 (Special Meeting and Work Session) and February 25, 2013 (Regular Meeting)

**Old Business**

9. Resolution Number 4413 – A Resolution Authorizing The City Manager To Purchase Five (5) Chevrolet Tahoes For The Newly Hired School Resource Officers (SRO’s) (*Public Hearing*)
10. Resolution Number 4415 – A Resolution Authorizing The Mayor And City Manager To Execute An Agreement For Legal Services For The Purchase Of Property Development Of A New Municipal Center (*Public Hearing*)
11. Ordinance Number 2437 – An Ordinance Authorizing The Mayor And City Manager To Execute And Deliver A Purchase Agreement For Property Located 1034 Montgomery Highway (*Public Hearing*)
12. Resolution Number 4416 – A Resolution Approving Additional Inspection Services For Construction Of Healthy Way Entrance And Bridge (*Public Hearing*)
13. Resolution Number 4417 – A Resolution Authorizing The City Manager To Take All Actions Necessary To Proceed With The Demolition Of The Structures Located At 3363 Mountainside Road (*Public Hearing*)

14. Resolution Number 4418 – A Resolution Authorizing The City Manager To Purchase Metal Detectors And Retain Two Security Officers For Municipal Court Security (*Public Hearing*)

### **New Business**

15. Resolution Number 4419 – A Resolution Accepting A Settlement To Settle All Potential Claims Arising Out Of A Billing System Error For Collecting And Remitting Certain Line-Based Taxes, Fees Surcharges And Assessments On DS-0 And DS-1 Circuits
16. Resolution Number 4420 - A Resolution Declaring Certain Confiscated Personal Property As Surplus And Directing The Sale/Disposal Of Said Confiscated Property
17. Resolution Number 4425 – A Resolution Amending Resolution Number 4232 To Adopt Additional Incentives For The City Of Vestavia Hills

### **First Reading (No Action Taken At This Meeting)**

18. Resolution Number 4421 - A Resolution Authorizing The Mayor And City Manager To Execute An Agreement With Williams Blackstock Architects For Design Services For A Proposed Municipal Facility
19. Resolution Number 4404 - A Resolution Authorizing The Mayor And City Manager To Enter Into A Guaranteed Energy Cost Savings Contract With Trane US, Inc.
20. Resolution Number 4422 – A Resolution To Authorize The Mayor And City Manager To Execute An Agreement With CDG Engineers And Associates, Inc., For Engineering Services For ATRIP Project No. 37-03-33 Resurfacing Columbiana, Tyler And Overton Roads, Dated March 6, 2013
21. Resolution Number 4423 – A Resolution Authorizing The Mayor And City Manager To Execute An Agreement With Hansen Landscape Architects To Provide Design Services For The Pedestrian Bridge At McCallum Park
22. Resolution Number 4424 – A Resolution Authorizing The Mayor And City Manager To Execute An Agreement With Hansen Landscape Architects To Provide Design Services For A Proposed Trail At McCallum Park
23. Citizens Comments
24. Executive Session
25. Motion For Adjournment

**CITY OF VESTAVIA HILLS**  
**CITY COUNCIL**  
**MINUTES**  
**SPECIAL CALLED MEETING**  
**FEBRUARY 21, 2013**

The City Council of Vestavia Hills met in special session on this date at 4:30 PM following posting/publication as required by Alabama law. 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  
George Pierce  
John Henley  
Jim Sharp

**OTHER OFFICIALS PRESENT:**

Randy Robertson, City Manager  
Patrick H. Boone, City Attorney  
Rebecca Leavings, City Clerk  
Fred Baughman, Economic Dev. Director  
Melvin Turner, Finance Director  
George Sawaya, Dep. Treasurer  
Jim St. John, Fire Chief  
Terry Ray, Fire Department Battalion Chief  
Brian Davis, Public Services Director  
Lt. Jason Hardin, Police Department

The invocation was given by Mr. Pierce followed by the Pledge of Allegiance.

**RESOLUTION NUMBER 4409**

**Resolution Number 4409 – A Resolution Authorizing The City Manager To Purchase Parts For The City’s Telephone System Pursuant To Title 41-16-53, Code Of Alabama, 1975 (Public Hearing)**

The Mayor opened the floor for unanimous consent of immediate consideration and action of Resolution number 4409.

**MOTION** Motion for unanimous consent of the immediate consideration and action of all items of Resolution Number 4409 was by Mr. Pierce and second was by Mr. Ammons. Roll call vote as follows:

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

**MOTION** Motion to approve Resolution number 4409 was by Mr. Henley. Second was by Mr. Sharp.

Mr. Robertson gave a brief background on the proposed purchase of equipment for a backup system of the City's telephone system. He indicated loss of service at the Civic Center last year which alerted officials of the catastrophe that could come should the City's system fail at the Municipal Center. Funding was placed in the City's budget and a nationwide search began for the needed equipment. Most of the remanufactured equipment was finally located but has a backup buyer and the City needs to act now in order to acquire this equipment.

Chief Ray explained the search and the needed equipment. The funds are available for the purchase.

Discussion ensued with Mr. Boone explaining the reasons for emergency purchases, replacement time/costs, etc.

The Mayor 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. Ammons – yes	Mr. Sharp – yes
Mayor Zaragoza – yes	Motion carried.

### **CITIZEN COMMENTS**

None

**MOTION** Motion to adjourn the meeting at 4:45 PM to a work session was by Mr. Henley. Mr. Pierce seconded the motion. Roll call vote as follows:

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



**WORK SESSION**

Mayor Zaragoza called the work session to order in the North Conference Room at 5:00 PM.

The following issues were discussed by the Council as well as others attending the meeting:

- Update on the FEMA buyout at Meadowlawn with Jim Lehe;
- The proposed energy bonds and the proposed Trane contract with Heyward Hosch;
- An update on the sale of the former Food World building with Steve Monk;
- Plans for a new City Hall along with a decision on retaining an architect.

**MOTION** Motion to adjourn the meeting at 7:40 PM was by Mr. Ammons. Mr. Pierce seconded the motion. Roll call vote as follows:

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

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

## **CITY OF VESTAVIA HILLS**

### **CITY COUNCIL**

### **MINUTES**

**FEBRUARY 25, 2013**

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  
George Pierce  
John Henley  
Jim Sharp

**OTHER OFFICIALS PRESENT:**

Randy Robertson, City Manager  
Patrick Boone, City Attorney  
Rebecca Leavings, City Clerk  
Brian Davis, Public Services Director  
Christopher Brady, City Engineer  
Danny Rary, Police Chief  
Tim Holcomb, Deputy Police Chief  
Melvin Turner III, Finance Director  
Terry Ray, Fire Dept. Battalion Chief  
Fred Baughman, Economic Dev. Director  
Mark Salter, Fleet Manager

Invocation was given by Brad Allison, Altadena Valley Presbyterian Church, followed by the Pledge of Allegiance led by William Earnest, Matthew Earnest and Davis Burns, Boy Scout Troop 96.

### **ANNOUNCEMENTS, GUEST RECOGNITION**

- Mayor Zaragoza asked everyone to welcome David Carrington, President of the Jefferson County Commission.

### **CITY MANAGER REPORT**

- Mr. Robertson announced a Senior Health Fair on Wednesday, February 27, 2013 beginning at 10 AM at the New Merkle House. He stated that they hope to have a city--wide health fair on May 5<sup>th</sup>.
- Mr. Baughman announced the February “Business of the Month” is Mark’s Outdoor Sports and presented a Certificate of Recognition to Mrs. Dana McMaster Whitlock and Shelly Whitlock Smith.

### **COUNCILOR REPORTS**

- Mr. Henley announced an upcoming vacancy on the City’s Board of Education. He stated that the Council will begin accepting applications to fill the vacancy on Tuesday, March 12, 2013 until April 8, 2013. Applications may be obtained online or in the City Clerk’s office.

### **FINANCIAL REPORTS**

Mr. Turner presented the financial reports for month ending January 2013. He read and explained the balances of the report.

### **APPROVAL OF MINUTES**

The minutes of the February 11, 2013 (Regular Meeting) were presented for approval.

**MOTION** Motion to dispense with the reading of the minutes of the February 11, 2013 (Regular Meeting) and approve them as presented was by Mr. Pierce and second by Mr. Henley. Roll Call vote as follows:

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

### **OLD BUSINESS**

#### **RESOLUTION NUMBER 4405**

**Resolution Number 4405 – A Resolution Accepting A Proposal From The Regional Planning Commission Of Greater Birmingham For Planning Assistance In The Evaluation Of A 1.4 Mile Multi-Modal Trail Along The Cahaba River And Old Overton Road (*Public Hearing*)**

**MOTION** Motion to adopt Resolution Number 4405 was by Mr. Ammons and second was by Mr. Sharp.

Mr. Robertson explained that this Resolution is to determine the feasibility of a multi-modal trail through an APPLE grant with an 80/20 match. He explained the terms of the grant and the locations of the study.

Discussion ensued as to the location of the proposed trail, the meaning of multi-modal, etc.

The Mayor opened the floor for a public hearing.

David Harwell, 1803 Catala Road, asked if the funds were budgeted and, if not, from where would the funding be derived.

Mr. Robertson explained that the funds were not budgeted and would come from the general fund.

There being no one present to address the Council concerning this issue, 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. Ammons – yes	Mr. Sharp – yes
Mayor Zaragoza – yes	Motion carried.

### **RESOLUTION NUMBER 4406**

**Resolution Number 4406 – A Resolution Authorizing The City Manager To Hire Six (6) New Police Officers And To Promote Six (6) Existing Officers To The Rank Of Sergeant To Fill Six (6) Desk Sergeant Positions (*Public Hearing*)**

**MOTION** Motion to adopt Resolution Number 4406 was by Mr. Ammons and second was by Mr. Henley.

Mr. Robertson gave a brief background on this request which derives from the movement of the public communications department to Shelby County. He indicated that this has been discussed in past presentations to the Council and now comes forward with all the information for the request.

Chief Rary explained that this would also enhance the careers of some of the personnel by rotating sergeants to different areas of the department and have one sergeant in control at all times. It also helps to put more officers out on the street.

The Mayor opened the floor for a public hearing. There being no one else present to address the Council concerning this issue, 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. Ammons – yes Mr. Sharp – yes  
Mayor Zaragoza – yes Motion carried.

**RESOLUTION NUMBER 4407**

**Resolution Number 4407 – A Resolution Authorizing The City Manager To Hire Five (5) School Resource Officers (“SRO’s”) For Added Security In The Vestavia Hills School System (*Public Hearing*)**

**MOTION** Motion to adopt Resolution Number 4407 was by Mr. Ammons and second was by Mr. Pierce.

Mr. Robertson gave a brief background on this request which derives from the Board of Education to place a SRO into each of the schools with 2 at the high school. He stated that the Council has met with the Superintendent and provided that the City will pay for some of the officers and the Board will pay for the others.

Mr. Henley stated that he felt this was a great collaboration between the City and the Board.

The Mayor opened the floor for a public hearing. There being no one else present to address the Council concerning this issue, 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. Ammons – yes Mr. Sharp – yes  
Mayor Zaragoza – yes Motion carried.

**ORDINANCE NUMBER 2434**

**Ordinance Number 2434 - An Ordinance Transferring The Mayor’s Administrative Duties Authorized In City Ordinances To The City Manager (*Public Hearing*)**

**MOTION** Motion to adopt Resolution Number 2434 was by Mr. Sharp and second was by Mr. Pierce.

Mr. Boone explained that the laws of the State of Alabama clearly state that the City Manager became the CEO of the City last November. He stated that this Ordinance simply re-states that all administrative duties delegated to the Mayor in past Ordinances of the City are now the responsibility of the City Manager.

The Mayor opened the floor for a public hearing. There being no one else present to address the Council concerning this issue, 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. Ammons – yes                    Mr. Sharp – yes  
Mayor Zaragoza – yes                Motion carried.

**NEW BUSINESS**

**RESOLUTION NUMBER 4408**

**Resolution Number 4408 – A Resolution Accepting A Bid For Computers For The City Of Vestavia Hills (Public Hearing)**

**MOTION** Motion to adopt Resolution Number 4408 was by Mr. Ammons and second was by Mr. Henley.

Mr. Robertson explained that this is a lease purchase agreement for 25 computers that were funded in the budget.

Mr. Estes stated that the computers were bid and he reviewed the bid recommendations to accept the bid.

The Mayor opened the floor for a public hearing.

Donald Harwell asked the name of the winning bidder.

Mr. Robertson stated that it was Dasher Technologies.

There being no one present to address the Council concerning this issue, 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. Ammons – yes                    Mr. Sharp – yes  
Mayor Zaragoza – yes                Motion carried.

**RESOLUTION NUMBER 4410**

**Resolution Number 4410 – A Resolution Authorizing The Mayor And City Manager To Execute An Agreement With Barry Davis Architects P.C. For Architectural Services Of A Proposed Garage/Maintenance Facility At Wald Park**

**MOTION** Motion to adopt Resolution Number 4410 was by Mr. Sharp and second was by Mr. Henley.

Mr. Robertson explained that this Resolution is an extension of the previous contract to determine the feasibility of a garage/maintenance facility in Wald Park which includes a geo-technical survey, schematics, etc., before beginning a design.

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

**RESOLUTION NUMBER 4411**

**Resolution Number 4411 – A Resolution Authorizing The Mayor And City Manager To Execute An Agreement With Alabama Department Of Transportation For Jefferson County Project Number; NH-HSIP-003(574) For Improvements Along SR-3 (US-31) From Shades Crest Road To Hollywood Boulevard**

**MOTION** Motion to adopt Resolution Number 4411 was by Mr. Pierce and second was by Mr. Ammons.

Mr. Robertson stated that this is an ALDOT project for street repairs beginning at Shades Crest Road and going down into Homewood that requires no monetary commitment from the City.

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

**RESOLUTION NUMBER 4414**

**Resolution Number 4414 – A Resolution Authorizing Change Orders For Veterans Landscape At Patchwork Farms**

**MOTION** Motion to adopt Resolution Number 4414 was by Mr. Henley and second was by Mr. Sharp.

Mr. Robertson stated that this Resolution allows change orders in the amount of \$16,500 from the \$107,000 alternates that were not taken on the project so is still within the original budgeted amount.

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

**ORDINANCE NUMBER 2435**

**Ordinance Number 2435 – An Ordinance To Amend Ordinance Number 2323 To Authorize And Direct A Modification To The Real Estate Sales Contract By And Between The City Of Vestavia Hills, As “Seller” And NSH Corp. As Purchaser” And To Authorize And Direct The Execution And Delivery Of A Sanitary Sewer Easement To Jefferson County, Alabama**

**MOTION** Motion to adopt Resolution Number 2435 was by Mr. Pierce and second was by Mr. Ammons.

Mr. Robertson stated that this agreement modifies the original to allow the execution of a deed for sanitary sewer for the five lots that they were purchasing.

Mr. Boone stated that he has reviewed the paperwork and finds no problem.

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

**ORDINANCE NUMBER 2436**

**Ordinance Number 2436 – An Ordinance Authorizing And Directing The Demolition, Razing And Removal Of A Dilapidated Single-Family Dwelling Situated On The Patchwork Farm Property At 4609 Old Looney Mill Road In The City Of Vestavia Hills Sometimes Referred To As The “Thuss Farmhouse”**

**MOTION** Motion to adopt Resolution Number 2436 was by Mr. Pierce and second was by Mr. Henley.



Mr. Robertson stated that this agreement modifies the agreement that Signature Homes has with a company to demolish the old home on Patchwork Farms. He acknowledged that Signature Homes has graciously offered to tear down the old home free of charge to the City.

Mr. Boone stated that he has reviewed the paperwork and offered an addendum to the contract that allows Signature to tear down the home and thanked them for their generosity.

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

**NEW BUSINESS (REQUESTING UNANIMOUS CONSENT)**

**RESOLUTION NUMBER 4412**

**Resolution Number 4412 – A Resolution Authorizing The Mayor And City Manager To Execute An Agreement With New World Systems To Establish Hardware And Software For A “Stand-Alone” System For The City After Separating From Homewood (Public Hearing)**

Mayor Zaragoza opened the floor for unanimous consent for immediate consideration and action on Resolution Number 4412.

**MOTION** Motion for unanimous consent for the immediate consideration and action on Resolution Number 4412 was by Mr. Pierce. Second was by Mr. Ammons. Roll call vote:  
Mr. Pierce – yes Mr. Henley – yes  
Mr. Ammons – yes Mr. Sharp – yes  
Mayor Zaragoza – yes Motion carried.

**MOTION** Motion to adopt Resolution Number 4412 was by Mr. Henley and second was by Mr. Sharp.

Mr. Robertson stated that this authorizes the City to obtain what’s needed in order for the City’s New World system to break away from Homewood.

Chief Holcomb explained the background associated with the New World system which was originally funded through a grant to share with Homewood. However, the time has come for the City to break away in order to do all updates within the City without having to go through Homewood.

Mr. Henley asked the timeline for completion.

Discussion ensued estimating the time for completion as next June and the advantages of breaking from Homewood.

The Mayor opened the floor for a public hearing.

David Harwell asked what was the advantage of moving dispatch to Shelby County.

The Mayor explained.

There being no one present to address the Council concerning this issue, 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. Ammons – yes	Mr. Sharp – yes
Mayor Zaragoza – yes	Motion carried.

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

The Mayor stated that the following Resolutions and/or Ordinances will be presented at a public hearing at the Council's next regularly scheduled meeting of February 25, 2013 at 5 PM.

- Resolution Number 4413 – A Resolution Authorizing The City Manager To Purchase Five (5) Chevrolet Tahoes For The Newly Hired School Resource Officers (SRO's) (*Public Hearing*)
- Resolution Number 4415 – A Resolution Authorizing The Mayor And City Manager To Execute An Agreement For Legal Services For The Purchase Of Property Development Of A New Municipal Center (*Public Hearing*)
- Ordinance Number 2437 – An Ordinance Authorizing The Mayor And City Manager To Execute And Deliver A Purchase Agreement For Property Located 1034 Montgomery Highway (*Public Hearing*)
- Resolution Number 4416 – A Resolution Approving Additional Inspection Services For Construction Of Healthy Way Entrance And Bridge (*Public Hearing*)
- Resolution Number 4417 – A Resolution Authorizing The City Manager To Take All Actions Necessary To Proceed With The Demolition Of The Structures Located At 3363 Mountainside Road (*Public Hearing*)
- Resolution Number 4418 – A Resolution Authorizing The City Manager To Purchase Metal Detectors And Retain Two Security Officers For Municipal Court Security (*Public Hearing*)

**CITIZENS COMMENTS**

None.

**MOTION** Motion to adjourn the meeting at 6:10 PM was by Mr. Pierce. Mr. Sharp seconded the motion. Roll call vote as follows:

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

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

**RESOLUTION NUMBER 4413**

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO PURCHASE FIVE (5) CHEVROLET TAHOES FOR THE NEW SCHOOL RESOURCE OFFICERS (SRO'S)**

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

1. The City Manager is hereby authorized to purchase five (5) new Chevrolet Tahoes for new School Resource Officers (SRO's) in an amount not to exceed \$132,253.00; and
2. The City Manager is hereby authorized to purchase and install emergency equipment on said vehicles at a cost not to exceed \$26,935.00; and
3. This Resolution Number 4413 shall become effective immediately upon adoption and approval.

**DONE, ORDERED, ADOPTED and APPROVED** this the 11<sup>th</sup> day of March, 2013.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

**VESTAVIA HILLS POLICE DEPARTMENT**



**To: Mr. Robertson**

**MEMO**

**From: Chief Dan Rary**

**CC: Becky Leavings**

**Date: 19 Feb 2013**

**Re: Request for Council agenda**

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Mr. Robertson,

I am requesting that the following item be placed on the City Councils agenda for 25 Feb 2013 for first read the following.

I am requesting the Council allocate non-budgeted funding for the purchase of five (5) Chevrolet Tahoes for the new SRO's to use in the performance of their duties at the schools.

The total cost for this project will be \$159,188.00 if purchased.

This will come from Capital Purchases.

**VESTAVIA HILLS POLICE DEPARTMENT**

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**To: Randy Robertson**

**MEMO**

**From: Chief Dan Rary**

**Date: 19 Feb 2012**

**Re: Purchase Cost of Chevy Tahoes**

**CC: Melvin Turner**

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The costs of purchasing the Chevy Tahoes are as follows.

2013 Alabama State Bid (Capital Chevy)	\$25,619.00
Add Positive Traction	259.60
Spot Lamps	404.80
Dual Batteries	167.20
TOTAL	\$26,450.60

5 Tahoes x 26,450.60 = **\$132,253.00**

Emergency Lighting, prisoner partition & graphics each	\$5,387.00
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5 Tahoes x 5,387.00 = **\$26,935.00**

**TOTAL \$159,188.00**

The cut off for ordering Tahoes from Chevrolet is 4 April. The delivery is 6-8 weeks from order.

This would come from Capital Purchases.

**RESOLUTION NUMBER 4415**

**A RESOLUTION AUTHORIZING THE MAYOR AND CITY MANAGER  
TO EXECUTE AN AGREEMENT WITH STEPHEN R. MONK OF  
BRADLEY, ARANT, BOULT, CUMMINGS, LLP**

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

1. The Mayor and City Manager are hereby authorized to enter into an agreement with Stephen R. Monk of the law firm Bradley Arant Boult Cummings LLP for legal services for the purchase and development of the property located at 1034 Montgomery Highway as a new municipal complex; and
2. A copy of said agreement is attached to and incorporated into this Resolution Number 4415 as though written fully therein; and
3. This Resolution Number 4415 shall become effective immediately upon adoption and approval.

**DONE, ORDERED, ADOPTED and APPROVED** this the 11<sup>th</sup> day of March, 2013.

Alberto C. Zaragzoa, Jr.  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk



Stephen R. Monk  
*Partner*  
Direct: (205) 521-8429  
Fax: (205) 488-6429  
smonk@bab.com

February 7, 2013

Mr. Randy Robertson, City Manager  
City of Vestavia Hills  
513 Montgomery Highway  
Vestavia Hills, Alabama 35216

RE: Relocation of City Hall

Dear Randy:

We are pleased that you have asked this firm to represent the City of Vestavia Hills, Alabama in connection with the matter we have been discussing. If at any time you have any questions or there is some action on our part that will better suit your needs, please contact us promptly. We want you to be sully satisfied with the legal services provided by us.

In our experience, a clear understanding, early in the representation, of the scope of the engagement and the fee arrangement assists both of us to establish a positive professional relationship and helps each of us avoid misunderstandings. It is thus often best to reduce these matters to writing. Accordingly, this letter and the attached printed General Provisions outline the basic scope of this engagement and the fee arrangement.

#### Scope of Employment

Our client in this matter will be the City of Vestavia Hills, Alabama (the "City" or "you") and we will advise the City in connection with, and the scope of our engagement and duties to the City shall relate solely to, the possible purchase by the City from Vestavia Plaza, LLC of the old "Food World" building and property in Vestavia Hills, Alabama, which will be redeveloped by the City for a new City Hall. The scope of our representation may be limited or expanded at your request from time to time, provided that any substantial expansion must be agreed to by us. You understand that we are not your general counsel and that the acceptance of this engagement does not involve representation of related entities, and our representation of you is limited to the matter described in this letter.

In performing our services we understand you will provide all information necessary for us to perform the requested legal services.

#### Delegation

During the course of our engagement, we will assign this project to professionals in our office who we believe can successfully accomplish the results you desire. I will be primarily responsible for the work on this matter, though I intend to use other partners, associates and legal



assistants where appropriate. If you request, we will advise you of the names of the persons who are or will be working on your matter.

### Fees

We suggest that the fee arrangement be on an hourly basis for the attorneys and legal assistants working on your matter. We customarily charge for time in ¼ hour increments. Our hourly rates vary depending on the experience level of the attorneys and legal assistants involved and are subject to periodic adjustment. My current hourly rate is \$420.00. We expect to utilize associates, or more junior partners, with lower hourly rates to do as much of the work as possible.

If requested, we will provide an estimate of the legal costs. Such estimate is not binding and is intended only to assist you in planning and budgeting, is subject to periodic revision and is not to be regarded as a guarantee of legal costs.

### Disbursements

You will be expected to reimburse us for the expenses such as copy charges, computer assisted research, delivery and courier services, secretarial overtime, filing fees, travel expenses, and other costs reasonably incurred. Depending on the nature of the expense, the Firm may ask that certain out-of-pocket charges be billed to you and paid directly by you. Please see the General Provisions section for additional information on these matters.

### Billing

Our billings will normally be monthly and will be due upon receipt. If you have any questions about any billing, please contact us immediately.

### Conflicts and Possible Adverse Representations

We have made a conflicts check and are not presently aware of any conflicts. As we have discussed, we are a relatively large law firm, and we represent many other companies and individuals in a variety of matters. It is possible that during the time that we are representing the City, some of our present or future clients will have disputes or transactions with the City. In particular, our representation of our clients could include representation of those clients in audits and appeals involving state and local sales, use, rental, lodging and other tax issues across the state. It is possible that during the time that we are representing the City, some of our present or future clients will have disputes or transactions with the City involving tax audits, tax abatement requests, zoning issues as well as other tax-related matters. You have agreed that this firm may continue to represent or may undertake in the future to represent other clients in any matter that is not substantially related to our work for you, even if the interests of such clients in those other matters are directly adverse to you or a related entity, and even if such representations would be simultaneous. We agree, however, that your prospective consent to conflicting representations shall not apply in an instance where, as the result of our representation of you, we have obtained sensitive, proprietary or other confidential or non-public information that, if known to any such

other client of ours, could be used in any such other matter by such other client to your material disadvantage. You have also agreed that our representation of you will not preclude us from undertaking any matter for a new client that may be adverse to you, or a related entity, so long as the conditions set forth in the preceding sentence regarding confidentiality of information provided or made available to us in the matter described in this letter have been met. You should know that, in similar engagement letters with many of our other clients, we have asked for similar agreements to preserve our ability to represent you.

Termination of Engagement

Following termination of our engagement, any otherwise nonpublic information you have supplied to us which is retained by us will be kept confidential in accordance with applicable rules of professional conduct. At your request, your papers and property will be returned to you; our own files, including lawyer work product, pertaining to the matter will be retained by us. For various reasons, including the minimization of unnecessary storage expenses, we reserve the right to destroy or otherwise dispose of any such items retained by us within a reasonable time after the termination of the engagement.

Our attorney-client relationship will be considered terminated upon our completion of specific services that you have retained us to perform. If you later retain us to perform further or additional services, our attorney-client relationship will be revived, subject to these and any supplemental terms of engagement. The fact that we may inform you from time to time of developments in the law which may be of interest to you, by newsletter or otherwise, should not be understood as a revival of an attorney-client relationship. Moreover, we have no obligation to inform you of such developments in the law unless we are engaged in writing to do so.

While we would prefer to have a signed copy of this letter in our file before beginning work on this matter, we will, of course, begin work earlier if circumstances require. Accordingly, the performance of services with your knowledge will be considered consent to the terms of the letter until or unless we hear to the contrary from you.

Bradley Arant Boult Cummings LLP

By: \_\_\_\_\_



ACCEPTED:

CITY OF VESTAVIA HILLS, ALABAMA

By: \_\_\_\_\_

Title: \_\_\_\_\_

**CONFIDENTIAL**

**BRADLEY ARANT BOULT CUMMINGS LLP**

**ENGAGEMENT LETTERS: GENERAL PROVISIONS**

Except as modified by the accompanying engagement letter, the following provisions will apply to the relationship between Bradley Arant Boult Cummings LLP and our clients:

1. Fees for services rendered will be based on the reasonable value of those services as determined in accordance with the applicable rules of professional conduct. Such fees will be based primarily on our hourly billing rates; there is a different billing rate for each attorney, depending generally on that attorney's experience and years of practice, and these rates are adjusted from time to time by the firm. The time for which a client will be charged will include, but will not be limited to, telephone and office conferences with the client or clients, counsel for other parties, witnesses, consultants, and others; conferences among our legal personnel; factual investigation; legal research; responding to clients' requests for us to provide information to their auditors in connection with reviews or audits of financial statements; preparation of letters, agreements, prospectuses, pleadings, briefs and other documents; travel time; waiting time in court; and time in depositions and other discovery proceedings. In an effort to reduce legal fees, as appropriate we utilize junior lawyers and legal assistant personnel. Time devoted by legal assistants to client matters is charged at hourly billing rates, which also are subject to adjustment from time to time by the firm. Other factors may be taken into consideration in determining our fees, including the responsibility assumed, the novelty and difficulty of the legal problem involved, the benefit resulting to the client and any unforeseen circumstances arising in the course of our representation.

2. In addition to our fees, we will be reimbursed for costs and expenses incurred in performing services such as copy costs, messenger and delivery service, secretarial overtime, Westlaw and Lexis-Nexis research, travel (including mileage, parking, airfare, lodging, meals and ground transportation), court costs and filing fees. We use unit rates or similar charges for some expenses, such as copy(ies) (10 cents per page). For such items, the amount charged approximates our cost as closely as possible. We do not charge for routine incoming or outgoing facsimiles or for long distance phone calls. Items of a non-routine nature such as, but not limited to, conference calls and telephone interviews will be charged at the actual cost to the firm as submitted by the carrier. We have negotiated favorable rates with Westlaw and Lexis-Nexis for the majority of their databases. Client charges for research performed in Westlaw and

Lexis-Nexis are designed to recoup the aggregate cost to the firm for Westlaw and Lexis-Nexis. Unless special arrangements are made at the outset, fees and expenses of others (such as outside copy services, experts, investigators, witnesses, consultants and court reporters) will not be paid by us and will be the responsibility of, and billed directly to, the client.

3. Although we may from time to time furnish estimates of fees or costs that we anticipate will be incurred, these estimates are by their nature inexact, are subject to periodic review and revision, and are not binding except to the extent expressly set forth in the engagement letter.

4. Fees and expenses will be billed monthly and are payable upon presentation. We expect payment within 30 days. We reserve the right to postpone or defer providing additional services or to discontinue our representation if billed amounts are not paid when due.

5. A client shall have the right at any time to terminate our services and representation upon written notice to the firm. Such termination shall not, however, relieve the client of the obligation to pay for all services rendered and costs or expenses paid or incurred on behalf of the client prior to the date of such termination.

6. We reserve the right to withdraw from our representation if, among other things, the client fails to honor the terms of the engagement letter, the client fails to cooperate or follow our advice on a material matter, or any fact or circumstance would, in our view, render our continuing representation unlawful or unethical. If we elect to withdraw, the client will take all steps necessary to complete our withdrawal, and we will be entitled to be paid for all services rendered and costs and expenses paid or incurred on behalf of the client to the date of withdrawal.

**ORDINANCE NUMBER 2437**

**AN ORDINANCE AMENDING ORDINANCE NUMBER 2420  
AUTHORIZING AND DIRECTING THE PURCHASING AND  
CLOSING OF THE SALE OF REAL ESTATE.**

**THIS ORDINANCE NUMBER 2437** is considered, approved, enacted and adopted on this the 11<sup>th</sup> day of March, 2013 to amend Ordinance Number 2420 adopted and approved on November 5, 2013 in its entirety as follows:

**WITNESSETH THESE RECITALS**

**WHEREAS**, municipalities in Alabama have the legal authority to acquire real estate by purchase pursuant to Title 11-40-1, *Code of Alabama, 1975*; and

**WHEREAS**, the City Council (the “City Council”) of the City of Vestavia Hills, Alabama, a municipal corporation (the “City”) finds and determines that the purchase by the City of the hereinafter described real property (the “Property”) will promote the health, safety and general welfare of the City; and

**WHEREAS**, Title 11-47-5, *Code of Alabama, 1975*, reads as follows:

“Contracts entered into by a municipality shall be in writing, signed and executed in the name of the city or town by the officers authorized to make the same and by the party contracting. In cases not otherwise directed by law or ordinance, such contracts shall be entered into and executed by the mayor in the name of the city or town and all obligations for the payment of money by the municipality, except for bonds and interest coupons, shall be attested by the clerk. This section shall not be construed to cover purchases for the ordinary needs of the municipality;” and

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

**1. PROMOTION OF PUBLIC WELFARE:** The City Council (the “City Council”) of the City of Vestavia Hills, Alabama, a municipal corporation (the “City”) finds and determines that the purchase by the City of the hereinafter described real property and improvements (the “Property”) will promote the health, safety and general welfare of the City.

2. **CONTRACT FOR PURCHASE OF REAL ESTATE:** The purchasing and closing of the sale of the Property shall be completed all in accordance with the terms, provisions, conditions and limitations of a written Real Estate Sales Contract (the “Contract”) negotiated by the City Manager and City Attorney and ultimately considered for acceptance and approval by the City Council at this regularly scheduled public meeting.

3. **CONTRACT:** A copy of the proposed contract is attached to and incorporated into this Ordinance Number 2437 as though written fully therein.

9. **POSTING OF ORDINANCE NUMBER 2437:** If the City Council approves, enacts and adopts Ordinance Number 2437, as amended, then in such event, said Ordinance shall be posted in three (3) public places within the City as required by Title 11-45-8(b)(1), *Code of Alabama, 1975*.

10. **EFFECTIVE DATE OF ORDINANCE NUMBER 2437:** Ordinance Number 2437 shall become effective five (5) days after posting in accordance with Title 11-45-8(3), *Code of Alabama, 1975*.

11. **CLOSING DATE:** The Real Estate Sales Contract shall be closed after the effective date of Ordinance Number 2437 on a date mutually agreed upon by Seller and Purchaser.

**DONE, ORDERED, APPROVED and ADOPTED**, this the 11<sup>th</sup> day of March, 2013.

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 # 2437 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 11<sup>th</sup> day of March, 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 \_\_\_\_\_ day of \_\_\_\_\_, 2012.

Rebecca Leavings  
City Clerk

**SOUTHPACE PROPERTIES, INC**  
**300 Richard Arrington, Jr. Boulevard, North**  
**Suite 900, Title Building**  
**Birmingham, Alabama 35203**  
**(205-326-2222)**

February \_\_, 2013

**GENERAL SALES CONTRACT** The Undersigned Purchaser(s) City of Vestavia Hills, Alabama, whose address is 513 Montgomery Highway, Vestavia Hills, Alabama 35216, Attention: Mr. Randy Robertson, City Manager, hereby agrees to purchase and the Undersigned Seller Southpace Properties, Inc. whose address is 300 Richard Arrington Jr. Blvd. North, Suite 900, Birmingham, AL 35203, Attn: Mr. John Lauriello, hereby agrees to sell the following described real estate, together with all improvements, shrubbery, plantings, fixtures and appurtenances, situated in the City of Vestavia County of Jefferson, Alabama, on the terms stated below:  
Address 1034 Montgomery Highway, Vestavia Hills, AL 35216 and described as:

See Attached Site Plan/Exhibit A (collectively, the "Property").

1. **THE PURCHASE PRICE:** shall be \$ 1,150,000.00 which shall be payable as follows:

Earnest Money (the "Earnest Money")\$ 10,000.00

Cash on closing this sale. . . . . \$ 1,140,000.00

Total..... \$ 1,150,000.00

2. **TITLE INSURANCE:** The Seller agrees to furnish the Purchaser within 15 days after the Effective Date a standard owner's title insurance commitment for the issuance of an owner's title insurance policy, issued by a company qualified to insure titles in Alabama in the amount of the purchase price, showing Seller has fee simple title to the Property, together with the documents relating to exceptions to title referred to therein ("Title Commitment"). Purchaser shall notify Seller of any unacceptable liens, encumbrances, restrictions, or other defects or matters ("Title Objections") on or before the expiration of the Inspection Period; provided, however, that Purchaser shall not be required to provide any written notice of any Existing Mortgages and Subsequently-Created Title Matters, as herein defined, and Seller shall, at Seller's sole cost and expense, and subject to the Addendum in the case of the existing first mortgage, remove or eliminate on or prior to the closing, any and all Existing Mortgages and Subsequently-Created Title Matters. As used herein, the term "Existing Mortgages and Subsequently-Created Title Matters" means and refers to all mortgages, liens (other than the lien for ad valorem taxes not yet due), judgments or other encumbrances encumbering the Property which can be removed or eliminated by the payment of a fixed sum of money and any matters of title created or allowed to be created by Seller on the Property at any time after the effective date of the owner's title insurance commitment delivered to Purchaser. Except for any Existing Mortgages and Subsequently-Created Title Matters, in the event that Purchaser fails to notify Seller of any Title Objections within said time period, Purchaser shall be deemed to have accepted such title and all matters contained therein shall be deemed to be "Permitted Encumbrances". In the event that Purchaser does provide Title Objections within said time period, within five (5) days following Purchaser's delivery of the Title Objections, Seller shall elect (by written notice to Purchaser) to cure or decline to correct such Title Objections. If Seller advises Purchaser that Seller is unwilling or unable to correct any or all Title Objections or if Seller fails to respond, within five (5) days thereafter, Purchaser may elect to terminate this Agreement by giving written notice to Seller, at which time the Earnest Money shall be returned to Purchaser. In the event that Purchaser fails to provide such notice during such time, Purchaser shall be deemed to have accepted such title and such matters shall be deemed to be "Permitted Encumbrances". At closing, Seller shall pay for the owner's title insurance policy ("Owner's Policy") to be issued by the Title Company pursuant to the Title Commitment which shall contain references to the Permitted Encumbrances. In the event both Owner's and Mortgagee's title policies are obtained at the time of closing, the total expense of procuring the two policies will be divided equally between the Seller and the Purchaser provided the mortgagee is not the Seller. Purchaser shall pay for any special endorsements required by Purchaser or Purchaser's lender.

3. **PRORATIONS:** All items customarily prorated and adjusted in connection with the closing of real estate similar to the Property, including all ad valorem taxes, escrow deposits, rents, operating expenses, insurance, and accrued interest on mortgages assumed, if any, are to be prorated between Seller and Purchaser as of the Closing Date, and any advance escrow deposits held by Mortgagees shall be credited to Seller. The cost of recording the deed shall be paid by the Purchaser. UNLESS OTHERWISE AGREED HEREIN, ALL AD VALOREM TAXES EXCEPT MUNICIPAL TAXES ARE PRESUMED TO BE PAID IN ARREARS FOR PURPOSES OF PRORATION; MUNICIPAL TAXES, IF ANY, ARE PRESUMED TO BE PAID IN ADVANCE..

4. **CLOSING & POSSESSION DATES:** The sale shall be closed and the deed delivered (the "closing") at 10:00 a.m. Central Daylight Savings Time on June 3, 2013 (the "Closing Date") except the Seller shall have a reasonable length of time within which to perfect title or cure defects in the title to the said property. Possession, subject to any existing leases on the property, is to be given on delivery of the deed unless otherwise agreed to herein.

5. **CONVEYANCE:** The Seller agrees to convey said Property to the Purchaser by Statutory warranty deed free of all encumbrances, except for mineral and mining rights not owned by Seller and the "Permitted Encumbrances" and except as otherwise herein set out. Seller and Purchaser agree that any encumbrances not herein excepted or assumed may be cleared at the time of closing from sales proceeds.

6. **INTENTIONALLY OMITTED.**



**7. CONDITION OF PROPERTY:** Property is being sold in its present "as is" condition, including ordinary wear and tear to the closing date. Neither Seller nor any Agent makes any representations or warranties regarding condition of the Property except to the extent expressly and specifically set forth herein.

**8. INTENTIONALLY OMITTED.**

**9. HAZARDOUS SUBSTANCES:** Seller and Purchaser expressly acknowledge that the Agent(s) have not made an independent investigation or determination with respect to the existence or nonexistence of asbestos, PCB transformers, or other toxic, hazardous or contaminated substances or gases in, on, or about the Property, or for the presence of underground storage tanks. Any such investigation or determination shall be the responsibility of Seller and/or Purchaser and their respective Agent(s) shall not be held responsible therefor.

**10. SELLER WARRANTIES** Seller warrants that unless excepted herein, Seller has not received notification from any lawful authority regarding any assessments, pending public improvements, repairs, replacements, or alterations to the Property that have not been satisfactorily made. Seller warrants that Seller is the fee owner of the Property or is authorized to execute this document for the fee owner. Seller also represents that, to the best of its knowledge, except as may otherwise be expressly disclosed herein, Seller has not released or disposed of any hazardous or toxic waste, substance or material, including without limitation any asbestos or any oil or pesticides (collectively, "Hazardous Substances"), on or about the Property; has not disposed of or arranged for the disposition of any Hazardous Substances from the Property except in compliance with all applicable federal, state or local laws; and no Hazardous Substances exist on the Property or about the Property that threaten the Property. Seller makes no warranty that the Property is suitable for any particular purpose, nor that the Property is in compliance with the requirements of the Americans with Disabilities Act. **THESE WARRANTIES SHALL SURVIVE THE DELIVERY OF THE DEED.**

**11. EARNEST MONEY & PURCHASER'S DEFAULT:** The Seller hereby authorizes the \_\_\_\_\_ (the "Escrow Holder") to hold the earnest money in trust for the Seller in its general non-interest bearing escrow account, pending the fulfillment of this Contract. In the event the Purchaser fails to carry out and perform the terms of this agreement, then, as the sole and exclusive remedy hereunder to Seller, the Earnest Money shall be forfeited as liquidated damages. Said Earnest Money so forfeited shall be divided equally between the Seller and his Broker however Broker will not receive more than the fee that would have been received if the transaction had closed. If this Contract does not close and the Earnest Money is to be turned over to Seller or refunded to Purchaser pursuant to this Contract, Seller and Purchaser agree to execute a written release to the Escrow Holder affirming the proper disposition of the Earnest Money. If either party unreasonably refuses or fails to tender such written release, and in subsequent proceedings it is ruled the Earnest Money does not belong to them, then they shall be liable for all fees and expenses, including attorney fees, incurred by Escrow Holder and/or the other party in connection with their efforts to effect the proper disposition of the Earnest Money. In the event of a dispute between Seller and Purchaser with respect to the Earnest Money, the Escrow Holder shall be entitled to tender into the registry or custody of any court of competent jurisdiction the Earnest Money, together with such legal proceedings as it deems appropriate, and therefore to be discharged from all further duties under this Agreement. Escrow Holder shall be entitled to deduct or recover from the Earnest Money its court costs, reasonable attorney fees and other out-of-pocket expenses related to this interpleader. Seller and Purchaser agree to indemnify and hold harmless the Escrow Holder against any and all losses, claims, damages, liabilities, and expenses, including without limitation, attorney's fees and expenses, incurred by it in connection with its acceptance of this appointment as Escrow Holder. Purchaser and Seller agree that "Escrow Holder" shall not be required to deposit Purchaser's earnest money check until this Contract has been accepted and signed by all parties. If Purchaser's Earnest Money check is returned by a financial institution as unpaid, Seller shall have the right to void this Agreement and neither party shall have any further obligation to the other.

**12. DISCLAIMER:** Seller and Purchaser acknowledge that they have not relied upon advice or representations of Broker (or Broker's associated salespersons) relative to (i) the legal or tax consequences of this Contract and the sale, purchase or ownership of the Property, (ii) the structural condition of the Property, including condition of the roof and basement; (iii) construction materials; (iv) the nature and operating condition of the electrical, heating, air conditioning, plumbing, water heating systems and appliances; (v) the availability of utilities or sewer service; (vi) the character of the neighborhood; (vii) the investment or resale value of the Property; (viii) the existence of any hazardous or toxic waste, substance, or material, including without limitation any asbestos or any oil or pesticides; (ix) any state of facts which would be disclosed by an accurate survey of the Property; or (x) any other matters affecting their willingness to sell or purchase the Property on the terms and price herein set forth. Seller and Purchaser acknowledge that if such matters are of concern to them in the decision to sell or purchase the Property, they have sought and obtained independent advice relative thereto.

**13. SELECTION OF ATTORNEY:** Each party shall be responsible for its own attorneys' fees and expenses.

**14. SURVEY:** Purchaser at its expense may elect to obtain a current survey. In the event a current survey is obtained, all easements and other matters shown on the survey shall be Permitted Encumbrances unless objected to in writing prior to the end of the Review Period. If no survey is obtained, any easements and other matters that would be disclosed by a current and accurate survey shall be Permitted Encumbrances. Broker recommends the Purchaser obtain an ALTA Survey.

**15. INTENTIONALLY OMITTED.**

**16. ARBITRATION:** Any controversy or claim arising out of or relating to this Agreement, or the breach hereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Such arbitration shall be held in Birmingham, Alabama. Any party may, without any inconsistency with this Agreement, seek from a court any interim or provisional relief that is necessary to protect the rights of property of such party, pending the establishment of the arbitral tribunal (or pending the arbitral tribunal's determination of the merits of the controversy). Such arbitration and determination shall be final and binding on the parties, and the parties agree to abide by the arbitration findings. Judgment may be entered upon such determination and award in any court having jurisdiction thereof, and the parties agree that no appeals shall be taken there from. The arbitrator shall award to the prevailing party, if any, as determined by the arbitrator, all of its costs and fees in connection with such arbitration, including the arbitrator's fees, administrative fees, travel expenses, out-of-pocket expenses, court costs, witness fees and attorney's fees.

**17. INSURANCE AND RISK OF LOSS:** The Seller will keep in force sufficient hazard insurance on the property to protect all interests until sale is closed and the deed delivered. If the Property is destroyed or materially damaged between the date hereof and the closing, and Seller is unable or

unwilling to restore it to its previous condition prior to closing, Purchaser shall have the option of canceling this Agreement and receiving a full refund of the Earnest Money or accepting the Property in its then condition. If Purchaser elects to accept the Property in its damaged condition, any insurance proceeds (for damage to structures, only) otherwise payable to Seller by reason of such damage shall be applied to the balance of the purchase price or otherwise be payable to Purchaser.

**18. FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT (FIRPTA):** In the closing of this transaction, Seller and Purchaser shall comply with the FIRPTA and the regulations promulgated thereunder by the IRS.

**19. FACSIMILE AND COUNTERPART SIGNATURES:** This agreement may be executed in counterparts and by either party or by both parties by telecopy, electronic scanned email documents or facsimile and shall be binding upon the party so executing it upon receipt by the other party of the signature.

**20. NOTICE:** All notices, demands and/or consents provided for in this Agreement shall be in writing and shall be deemed to have been served on the date mailed by United States registered or certified mail, return receipt requested, with postage prepaid. All such notices and communications shall be addressed to the parties hereto at the respective addresses set forth at page 1 hereof, or at such other addresses as either may specify to the other in writing. If the parties fax number or email addresses are available notice shall be deemed to have been served when sent by one of these methods.

**21. ENTIRE AGREEMENT** This Agreement constitutes the entire agreement between Purchaser and Seller regarding the Property, and supersedes all prior discussions, negotiations and agreements between Purchaser and Seller, whether oral or written. Neither Purchaser, Seller, Agent nor any other sales agent shall be bound by any understanding, agreement, promise, or representation concerning the Property, expressed or implied, not specified herein. Any further changes or modifications to this Agreement must be in writing and signed by the parties hereto.

**22. ADDITIONAL PROVISIONS** set forth on any attached Addendum, signed and dated by all parties, are hereby made a part of this Contract.

**23. GOVERNING LAW:** This Agreement shall be governed by and construed in accordance with the laws of the State of Alabama, without regard to principles governing conflicts of law, except that it is agreed that the provisions of this Agreement relating to arbitration or disputes hereunder shall be governed by the Federal Arbitration Act, 9 U.S.C. § 1 *et seq.*, and, to the extent not in conflict with the Federal Arbitration Act, by the Commercial Arbitration Rules of the American Arbitration Association.

**24. TIME IS OF THE ESSENCE:** The Parties agree that time is of the essence of this Agreement.

**25. "EFFECTIVE DATE" OF CONTRACT:** THE "EFFECTIVE DATE" SHALL BE THE DATE ON WHICH THE SECOND PARTY EXECUTES THIS CONTRACT AS SHOWN ON THE SIGNATURE PAGE OR, IF THE CONTRACT INCLUDES SUBSEQUENT CHANGES SIGNED OR INITIALED AND DATED BY THE PARTIES, THE LATEST SUCH CHANGE AS SO SIGNED OR INITIALED AND DATED.

*[Remainder of page left intentionally blank]*

**THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT. IF YOU DO NOT UNDERSTAND THE LEGAL EFFECT OF ANY PART OF THIS CONTRACT, SEEK LEGAL ADVICE BEFORE SIGNING.**

SELLER:

SOUTHPACE PROPERTIES, INC.

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date of Execution: \_\_\_\_\_

\_\_\_\_\_  
Witness to Seller's Signature(s)

\_\_\_\_\_  
Witness to Seller's Signature(s)

PURCHASER:

CITY OF VESTAVIA HILLS, ALABAMA

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date of Execution: \_\_\_\_\_

\_\_\_\_\_  
Witness to Purchaser's Signature(s)

\_\_\_\_\_  
Witness to Purchaser's Signature(s)

**Receipt is hereby acknowledged of the earnest money as hereinabove set forth \_\_\_\_ CASH \_\_\_\_ CHECK**

Firm: \_\_\_\_\_

By: \_\_\_\_\_

## ADDENDUM

This Addendum shall supersede and override any and all language in the original General Sales Contract regarding the subject matter contained herein. This Addendum in its entirety is hereby made a part of this General Sales Contract.

1. Purchaser acknowledges that Seller has contracted to purchase the Property from Vestavia Plaza, LLC ("Owner") pursuant to a General Sales Contract having an effective date of even date herewith (the "Prior Agreement"). An unexecuted copy of the Prior Agreement is attached hereto and made a part hereof. Seller and Purchaser contemplate that the closing under this General Sales Contract shall occur either simultaneously with the closing under the Prior Agreement and that Seller shall obtain title to the Property from Owner and simultaneously transfer title to the Property to Purchaser or, if approved by Purchaser, Purchaser shall accept at the closing under this General Sales Contract an assignment of Seller's rights under the Prior Agreement pursuant to which Purchaser will obtain title to the Property from Owner on the terms and provisions set forth in the Prior Agreement and Purchaser shall pay to Seller the difference between the total purchase price for the Property set forth in this General Sales Contract and the total purchase price for the Property set forth in the Prior Agreement.
  
2. (a) During the period of time beginning on the Effective Date and ending at 5:00 p.m. Central Standard/Daylight Savings Time on the date which is 60 days following the Effective Date (the "Inspection Period"), Purchaser, Purchaser's authorized agents and employees, as well as others authorized by Purchaser, shall have the right, at Purchaser's sole cost and expense, but subject to the rights of all existing tenants of the Seller's Property, as hereinafter defined, to enter upon the Property and conduct such tests, evaluations, inspections, investigations and reviews of the Property (collectively, the "Inspections") as Purchaser may desire. The Inspections may include, without limitation, negotiation and finalization of the COREA, as hereinafter defined, evaluating and/or conducting all architectural, engineering, topographical, geological, survey, floodway, soil, surface, subsurface, environmental, storm water drainage, traffic, utility availability, zoning and subdivision inquiries and otherwise conducting and performing all other tests and evaluations affecting the Property as Purchaser may require. Purchaser covenants and agrees to promptly repair any physical damage to the Property caused by, arising out of or resulting from any of the Inspections. Purchaser does hereby indemnify, agree to defend and hold Seller harmless from and against any and all claims, costs, expenses and liabilities, including reasonable attorneys' fees and expenses suffered, paid or incurred by Seller arising out of or by virtue of (i) any injury or damage to person (including death) or property caused by any act or omission of Purchaser, its agents, employees, representatives or contractors in conducting or performing any of the Inspections, (ii) Purchaser's failure to pay all bills, invoices, costs and other charges relating to the Inspections and (iii) Purchaser's failure to repair and replace any damage to the Property caused by, resulting from or arising out of any of the Inspections. The indemnification obligations of Purchaser set forth herein shall survive the closing or the termination and cancellation of this Agreement.  
  
(b) If, at any time on or before the expiration of the Inspection Period, Purchaser determines, in its sole and absolute discretion, that the results or findings of any of the Inspections or any other matters or things relating to the Property or Purchaser's acquisition of the Property for Purchaser's intended use are unacceptable to Purchaser, then Purchaser shall have the unqualified right, at its option, to cancel and terminate this Agreement upon written notice to Seller given at any time on or before the expiration of the Inspection Period in which event the Earnest Money shall be promptly returned to Purchaser, this Agreement shall be deemed canceled and terminated and, except for the indemnification obligations of

Purchaser set forth in Paragraph 2(a) above, neither party shall have any further obligation or liability to the other hereunder.

3. All of the terms and provisions of Paragraphs 3 through 7, inclusive, set forth in the Addendum to the Prior Agreement (collectively, the "Prior Agreement Addendum") are incorporated herein by reference as if fully set out herein and any and all capitalized terms set forth herein which are not specifically defined herein shall have the same meanings given to such defined terms in the Prior Agreement Addendum . Purchaser and Seller acknowledge and agree that:

- (a) The obligations of Seller (as purchaser) set forth in Paragraph 3 of the Prior Agreement Addendum shall be performed by Purchaser.

- (b) The Purchaser shall negotiate the terms and provisions of the COREA, as provided in Paragraph 4 of the Prior Agreement Addendum directly with the Owner. If, for any reason, the terms and provisions of the COREA are not fully agreed upon by Owner and Purchaser, each in their sole discretion, by the date which is 45 days following the Effective Date set forth in the Prior Agreement, then this General Sales Contract shall automatically terminate as of the Closing Date, the Earnest Money shall be refunded to Purchaser and neither party shall have any further obligation or liability to the other hereunder (other than the indemnification obligations of Purchaser set forth in Paragraph 2 above).

- (c) The obligations of Seller (as purchaser) set forth in Paragraph 5 of the Prior Agreement Addendum shall be performed by Purchaser.

- (d) Purchaser shall have the right to undertake on behalf of Seller (as purchaser) the reviews contemplated by the provisions of Paragraph 6 of the Prior Agreement Addendum.

- (e) Purchaser acknowledges and agrees to the terms and provisions of Paragraph 7 of the Prior Agreement Addendum and, at the closing, shall have the right to require that Seller (as purchaser under the Prior Agreement) transfer and assign to Purchaser, all of Seller's rights (as purchaser under the Prior Agreement) to enforce the terms and provisions of Paragraph 7 of the Prior Agreement Addendum against Owner.

4. Seller and Purchaser represent and warrant to each other that they have not dealt with any broker or sales agent in connection with this transaction. Seller and Purchaser acknowledge and agree that Seller is a licensed real estate broker. Seller and Purchaser each hereby agree to indemnify, defend and hold the other harmless from and against any and all claims, suits, liabilities, judgments and expenses, including reasonable attorneys' fees and expenses, suffered, paid or incurred by the other party as a result of any claim or claims for brokerage commissions, finder's fees or other compensation asserted by any person, firm or corporation in connection with the execution of this General Sales Contract and the consummation of the transactions contemplated by this General Sales Contract.

[Remainder of Page Left Intentionally Blank]

Seller:

SOUTHPACE PROPERTIES, INC.

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Purchaser:

CITY OF VESTAVIA HILLS, ALABAMA

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Its: \_\_\_\_\_

## MEMORANDUM

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TO Vestavia Hills – Relocation of City Hall (201814-301002)

FROM Stephen R. Monk

DATE February 28, 2013

SUBJECT Basic Terms and Provisions of Construction,  
Operation and Reciprocal Easement Agreement (“COREA”)

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For the purposes of this Memorandum, the following terms have the following meanings:

“Building Area” means (a) with respect to the Shop Space, the area consisting of 24,594 gross square feet, more or less, as currently situated on the property constituting the Shopping Center (to be shown on an attached site plan) and (b) with respect to the Outparcel, the area consisting of 3,120 square feet, more or less, as currently situated on the property constituting the Shopping Center (to be shown on an attached site plan). NOTE: The exact square footages will need to be confirmed and a site plan reflecting the above will be required for the COREA.

“City Hall” means administrative offices for the City such as, the City Manager’s office, City Council offices, City Council Chambers/Auditorium and offices for City employees and departments. The City Hall may (but is not required to) contain the police department, municipal court system, and other emergency-related facilities and departments.

“City Parcel” means the property to be acquired by the City which was formerly the Food World site and shall include any additional real property acquired by the City adjoining, contiguous or adjacent thereto.

“Common Area” means the existing parking lot (excluding the Outparcel) and the access points providing ingress and egress to and from U.S. Highway 31 and Vestavia Plaza Shopping Center and the sidewalk outside the Shop Space.

“Outparcel” means the existing improvements consisting of an approximately 3,120 gross square foot building and the current drive-through area for said building currently utilized by BB&T Bank as a branch bank. The Outparcel will be shown on a site plan to be attached to the COREA.

“Shop Space” means the existing buildings situated along the southern boundary of the Shopping Center containing approximately 24,594 gross square feet. The Shop Space will be shown on a site plan to be attached to the COREA.

“Shopping Center” shall mean and refer collectively to the Shop Space and the Outparcel.

The proposed COREA will address, among other matters, the following:

1. Easements.

- Access Easements. The owner of the Shopping Center will grant to the City access easements throughout the Common Area, which will include the rear drive/alley behind the Shop Space for the benefit and use of all of the City Parcel.
- Parking. The owner of the Shopping Center will grant to the City parking easements throughout the Common Area for the benefit and use of all of the City Parcel. In addition, the City will be granted 20 (plus 4 handicapped) assigned/reserved spaces in the Common Area in front of the City Parcel.
- Utilities. The owner of the Shopping Center will grant to the City for the benefit and use of all of the City Parcel easements to construct, operate and maintain underground utilities throughout the Common Area, including, specifically, the right to connect to the (a) existing sanitary sewer line running along the southern boundary of the Shopping Center (City’s architects/engineers need to confirm that this sanitary sewer line will be capable of serving the City Parcel) and (b) existing underground storm water drainage facility running through the Common Area of the Shopping Center (the City’s architects/engineers need to confirm that the size of the storm water lines will be sufficient for the City Parcel).
- Signage. The City should have some type of signage easement within the Common Area along U.S. Highway 31. Any signage erected by the City would be maintained solely by the City. [However, if any of the CAM expenses payable by the City includes electrical and other costs for existing signage, then the maintenance, lighting and electricity for the City’s signage should be part of the CAM expenses (although the City would pay the initial construction costs for such signage).]

2. Construction of City Hall.

- Minimum Square Footage. The City will construct one or more buildings on the City Parcel containing not less than 40,000 square feet for initial use as a City Hall. The City will commence demolition of the current structure within six (6) months from the closing and proceed with reasonable diligence to completion of construction.



- Approval of Plans for City Hall. The owner of the Shopping Center shall have the right to approve architectural renderings for the exterior building elevation for the City Hall, as well as a general site plan for the location of the City Hall on the City Parcel. [It is anticipated that this approval may include alternative elevations which must be provided to, and approved by, the owner of the Shopping Center prior to the end of the Inspection Period.]
- Construction Staging. In connection with the demolition of the existing improvements and the construction of City Hall on the City Parcel, the City will use reasonable efforts to utilize parking and access behind the existing building on the City Parcel to the extent feasible so as not to interfere with the existing tenant businesses at the shopping center; however, if necessary, an area to be designated in the COREA within the Common Area adjacent to the City Parcel may be utilized for construction staging purposes.
- Parking. The most current survey of the Shopping Center (and Food World site) prepared by Gonzales-Strength & Associates, Inc. dated January 3, 2005 indicates 210 total parking spaces within the Common Area (which includes (8) handicapped spaces). The current number of parking spaces may not satisfy existing zoning ordinance requirements for a 58,319 square foot retail facility (which based on one (1) space for 225 square feet would equal 260 spaces which calculation does not consider the additional spaces required for restaurants in the Shop Space or a decrease in spaces required for the bank on the Outparcel). We have been told that the gross square footage of the Food World building situated on the City Parcel is 30,605 gross square feet which, at one space for 225 square feet, would equal 136 spaces for the “old grocery store.” Because the “old grocery store” will be demolished and the City Hall will be constructed thereon, the City Hall should be classified as a public facility building which pursuant to item (g) of Table 8.1 of the City’s Zoning Ordinance, would require one (1) space per 400 square feet. Based on that ratio, if the total square footage of City Hall exceeds 54,400 square feet, then the City will be required to either provide additional parking spaces on the City Parcel or enter into a reciprocal parking agreement with an adjoining property owner. Based on the foregoing, the balance of the Shopping Center has 74 unassigned spaces (210 spaces less 136 spaces for the grocery store).

3. Construction/Reconstruction of Shopping Center.

- Building Area. No additional buildings or other improvements may be constructed within the Common Area. Any reconstruction or new construction for the Shopping Center shall be limited to the existing Building Area.

- Square Footages. The maximum gross square footage of all buildings in the Shopping Center may not exceed 27,714 square feet.
- Height Restrictions. The current building heights for the Shop Space and the Outparcel shall be calculated and no future construction shall be allowed to extend the building heights of any buildings as now exist within the Shop Space or the Outparcel.
- Outparcel. The current height, size and location of the building situated on the Outparcel may not be increased or changed and no additional structures or buildings may be constructed where the current drive-through is situated.
- Parking. Based on the foregoing calculation of parking for the City Hall, no uses shall be allowed within the Shopping Center which would increase beyond 74 spaces the number of spaces required by the City's Zoning Ordinance for all uses within the Shopping Center unless additional parking is obtained through reciprocal parking easements with adjoining property owners.
- Service Areas. All service areas for the Shop Space shall be at the rear of the existing Shop Space. No service areas shall be allowed on the Outparcel.

4. Common Areas and Common Area Maintenance.

- Maintenance Obligations. The owner of the Shopping Center shall provide Common Area maintenance for the Common Area. In addition, the COREA shall specify that parking lot lighting in the Common Area be provided continually from dusk to dawn each day and will also specify certain lighting standards which must be satisfied for all lighting within the Common Area.
- Common Area Maintenance Costs. Common Area maintenance expenses maintenance and repair and will include the following:
  - real estate ad valorem taxes on the Common Area only (this shall exclude all buildings and the footprint of land on which the Shop Space and Outparcel sit);
  - maintenance and repair of landscaping, irrigation and lighting of the Common Areas (excluding any buildings);
  - commercial general liability insurance for the Common Area only (naming the City as an additional insured);
  - general maintenance and cleaning expenses relating to the Common Area (i.e., sweeping, garbage collection, etc.), but

specifically excluding any such maintenance and cleaning services relating to any buildings;

- a maintenance reserve for patching, repaving and restriping of the parking areas and access areas within the Common Area;
  - water and electrical service charges for the Common Area (but specifically excluding building lighting); and
  - administrative fee of not more than 7% of the Common Area maintenance expense. (Note: the proposed 2013 budget for CAM prepared by owner reflects administrative fees and salaries at 21.8% of total CAM expenses. The department store "Target" usually limits this fee to 6-7% of CAM expenses).
- Budget for CAM Costs. Each year the budget for the CAM expenses must be approved in writing by the City. The City will also have audit rights regarding CAM costs.
  - Take-Over Rights. The City will have the right, at its option, to assume and take-over the responsibility to provide Common Area maintenance.
  - Payment of CAM Expenses. The City will pay 52.48% and the owner of the Shopping Center shall pay 47.52% of the CAM expenses.
  - Changes in Common Area. No changes will be made in the Common Area without the prior consent and approval of the City.
  - Use of Common Area by City. The COREA will provide that the City may (a) up to four (4) times a year, utilize the Common Area for festivals or other activities sponsored or approved by the City or the City Chamber of Commerce and (b) during each holiday season, shall have the right to erect and maintain, at the City's sole expense, holiday decorations, including, without limitation, Christmas trees and lighting with the Common Area.
5. Maintenance Responsibilities. The COREA will provide that the City, with respect to the City Parcel, and the owner of the Shopping Center, with respect to the Shopping Center, will be obligated to maintain their respective properties and improvements in good condition and repair at all times.
  6. Use Restrictions. For as long as the City Hall is operated and maintained on the City Parcel, the use restrictions set forth in the attached will be applicable to all of the Shopping Center.
  7. Damage or Destruction to the Shopping Center. The COREA will provide that if any of the improvements to the Shopping Center or the City Parcel

are damaged or destroyed by fire or casualty, then the owner thereof shall, commence within 120 days after such fire or casualty and promptly and diligently continue to completion, to either (a) demolish the damaged portions of such improvements, including the removal of all damaged improvements, and pave over such areas with asphalt or (b) restore the damaged portions of such improvements to substantially the same condition as existed immediately prior to such fire or casualty. No improvements may be constructed or reconstructed outside the Building Area.

8. Condemnation/Eminent Domain. In the event any portion of the Common Area is taken by eminent domain, the owner of the Shopping Center shall provide at its expense additional parking facilities and access ways for access to the City Parcel in an amount necessary to satisfy the then applicable parking requirements for the City Parcel and the Shopping Center. Any improvements (other than the Common Area) taken by the exercise of eminent domain will be restored, to the extent possible and, if restoration is not possible, shall be treated as a casualty as provided.
9. Default. The COREA will provide that should either party default in the performance of its obligations under the COREA, the other party shall have all rights and remedies available to such party at law or in equity, including self-help following the giving of notice and the expiration of applicable cure periods.
10. Right of First Refusal. The COREA will contain a right of first refusal in favor of the City as set forth in the existing General Sales Contract.
11. Mortgage Subordination. The current and all future mortgagees of the Shopping Center will subordinate their interests to the terms and provisions of the COREA.
12. Term. The term of the COREA will be for 99 years.
13. Amendments. The COREA may be amended only with the consent of the then owner of the Shopping Center and the then owner of the City Parcel.

## USE RESTRICTIONS

No portion of the Shopping Center shall be used for any of the following uses or purposes for as long as the City Hall is operated on the City Parcel (exclusive of periods of temporary closure or other than by reason of construction, renovation, reconstruction or repair):

- (a) Any motor vehicle service, fuel or gas stations, motor vehicle repairs including without limitation any body and fender repair work, car washes, or the displaying, renting, leasing, or sale of any automobile, truck, boat, trailer or other motor or recreational vehicle that is not entirely conducted inside of a building;
- (b) A venture whose primary business is the operation of video or arcade games;
- (c) Any adult book, comic book or adult video store; provided, however, that the foregoing shall not prohibit or limit the operation of a national, regional or local, reputable, general interest book store or video store such as, without limitation, Blockbuster, Barnes & Noble, Hollywood Video, Best Buy, or Borders Books;
- (d) Any massage parlor (except that this provision shall not prohibit massages in connection with a beauty salon);
- (e) Any warehouse or industrial use;
- (f) Any self-storage facility;
- (g) Any liquor store, bar or tavern (whether selling liquor for on-site or off-site consumption), except (i) one (1) upscale wine-only shop, (ii) as incidental to a drug or grocery store, and (iii) a restaurant not in violation of subsection (h) below;
- (h) A restaurant whose sales of alcohol products exceeds 35% of gross revenues;
- (i) A fast food restaurant situated in a free-standing building; provided, however, that the foregoing shall not prohibit a free-standing coffee shop serving food;
- (j) Except as currently existing on the Outparcel, any drive-through service areas;
- (k) Any establishment for the sale of guns or other firearms, except sporting goods retailers that sell firearms as an ancillary use shall be permitted;
- (l) A tattoo or piercing parlor;
- (m) Any business which creates or permits a public or private nuisance;
- (n) A convenience store;

- (o) Any business which causes or permits obnoxious odors except customary odors emanating from restaurants;
- (p) Any business which includes the storage, display, or sale of explosives or fireworks;
- (q) Any distillation (including so-called micro-brewing of beer), refining, smelting, agriculture or mining operations;
- (r) Any mobile home or trailer court, labor camp, junk yard, stock yard or animal raising;
- (s) Any drilling for and/or removal of subsurface substances, except to the extent reasonably required for the development of the Project or any portion thereof for uses permitted hereunder;
- (t) Any garbage dump;
- (u) Any cemetery, mortuary, funeral home or similar service establishment;
- (v) Any business engaging in a fire sale, bankruptcy sale (unless pursuant to a court order) or auction operation;
- (w) A movie theatre;
- (x) Any roller-skating rink, bowling alley, discotheque, dance hall, video game parlor, pool room, off-track betting facility, casino, card club, bingo parlor, or facility containing gaming equipment;
- (y) Any school, training, or educational facility, including but not limited to: beauty schools, barber colleges, nursery schools, diet centers, reading rooms, places of instruction or other operations catering primarily to students or trainees rather than to customers; provided however that this prohibition shall not be applicable to on-site employee training by an occupant incidental to the conduct of its business, to Sylvan Learning Center, or any medically-related instruction incidental to a primary medical use;
- (z) Any second-hand or "surplus" stores, thrift stores, or flea markets;
- (aa) A laser tag or virtual reality facility, an arcade or a pinball or computer game room (provided that retail facilities in the Shopping Center may display for sale [but not solely for entertainment purposes] electronic games incidental to their primary operation);
- (bb) Any laundromat;

- (cc) Any cleaning facilities utilizing hazardous substances with an on-premises plant; provided, however, that nothing contained herein shall preclude a drop-off/pick-up dry cleaning business as long as no cleaning services are conducted at such location;
- (dd) Any veterinary hospital or animal raising facilities (except that this prohibition shall not prohibit pet shops);
- (ee) Any hotel, motel, short or long-term residential use;
- (ff) Any establishment selling or exhibiting drug-related paraphernalia or which exhibits either live or by other means to any degree, nude or partially clothed dancers;
- (gg) Any abortion clinic or drug rehabilitation clinics;
- (hh) Any unemployment agency, service or commission;
- (ii) Any check-cashing, pay day loan, car loan or title loan business (except this prohibition shall not prohibit any state or federally regulated bank or credit union).
- (jj) Any health spa, fitness center or athletic facility which occupies more than five thousand (5,000) square feet;
- (kk) Except during the construction of improvements at the Shopping Center, the storage of construction materials or equipment within any of the Common Area will be prohibited;
- (ll) The overnight parking of semi-tractor trailer rigs or 18-wheelers, recreational vehicles, buses or other equipment within any of the Common Area will be prohibited;
- (mm) Circus or carnival activities (other than those which the City is allowed to conduct as provided above) shall be prohibited in the Common Area and Shopping Center;
- (nn) Mobile food vendors (i.e., food trucks) shall not be allowed in the Common Area; or
- (oo) Outside sales conducted outside of any building within the Shopping Center shall be prohibited.

**RESOLUTION NUMBER 4416**

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO APPROVE  
ADDITIONAL INSPECTION SERVICES FOR THE CONSTRUCTION  
OF HEALTHY WAY/PATCHWORK BRIDGE AND INTERSECTION  
IMPROVEMENTS**

**WHEREAS**, on May 14, 2012, the City Council of the City of Vestavia Hills, Alabama, adopted and approved Resolution Number 4297 to authorize Goodwyn, Mills and Cawood to do inspection services for the construction of the Healthy Way/Patchwork Bridge and Intersection Improvements at a cost not to exceed \$41,600.00; and

**WHEREAS**, the City Engineer in a memorandum dated February 20, 2013 to the City Manager (copy attached) cited construction delays which have resulted in the need of additional inspection services in an amount estimated at \$15,000.00; and

**WHEREAS**, the City Manager has reviewed the request from the City Engineer and has recommended approval of said additional inspection services.

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

1. The City Manager is hereby authorized to approve additional inspection services as detailed in the attached memorandum in an amount not to exceed \$15,000.00; and
2. This Resolution Number 4416 shall become effective immediately upon adoption and approval.

**ADOPTED and APPROVED** this the 11<sup>th</sup> day of March, 2013.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk



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

**February 20, 2013**

To: Mr. Randy Robertson, City Manager  
CC: Rebecca Leavings, Brian Davis  
From: Christopher Brady  
RE: Goodwyn Mills and Cawood -- Inspection Services for construction of Healthy Way/  
Patchwork Bridge and Intersection Improvements

---

Mr. Robertson,

In May 2012, we entered into an agreement with Goodwyn Mills and Cawood to perform inspection services to assist with oversight and construction of the Patchwork Bridge and Cahaba River Road intersection improvement project (Resolution 4297). At that time, construction was anticipated to be a 6 to 7 month project. GMC's agreement was to perform these services for approximately 27 weeks at a cost of approximately \$41,600, billed at an hourly rate.

Due to project delays, the construction has exceeded the anticipated timeframe. GMC has continued services, but we anticipate exceeding the previously approved budget. With anticipation that construction may not be fully complete until April 2013, we anticipate total costs of these services to be approximately \$56,600, or an additional \$15,000.

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

Thank you,  
-Christopher




**RESOLUTION NUMBER 4297**

**A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH GOODWYN, MILLS AND CAWOOD FOR INSPECTION SERVICES FOR THE HEALTHY WAY ROAD/BRIDGE PROJECT**

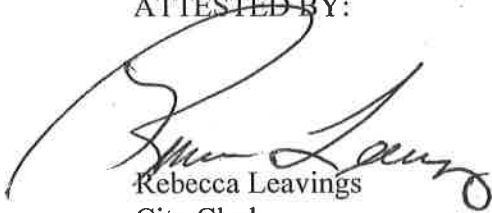
**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA, AS FOLLOWS:**

1. The Mayor is hereby authorized to enter into an agreement with Goodwyn, Mills and Cawood for inspection services for the Healthy Way road/bridge construction project; and
2. A copy of said agreement is attached to and incorporated in this Resolution Number 4297 as though written fully therein; and
3. This Resolution Number 4297 shall become effective immediately upon adoption and approval.


**DONE, ORDERED, ADOPTED and APPROVED** this the 14<sup>th</sup> day of May, 2012.

  
Mary Lee Rice  
Council President

ATTESTED BY:

  
Rebecca Leavings  
City Clerk

APPROVED BY:

  
Alberto C. Zaragoza, Jr.  
Mayor



May 7, 2012

Christopher Brady  
City Engineer  
City of Vestavia Hills  
513 Montgomery Highway  
Vestavia Hills, AL 35216

Re: **Patchwork Farm** via: email  
Vestavia Hills, AL  
*Proposal for Part-Time Construction Inspection Services*

Dear Christopher:

Thank you for the opportunity to submit a proposal for the Part-Time Construction Inspection Services for the entrance roadway and improvements to Cahaba River Road at the Patchwork Farm development in Vestavia Hills. We have prepared this proposal based on our discussions with you and our professional opinion as to the scope of work that will be required in order to provide construction inspection and oversight of the referenced project. We look forward to working with you throughout this project.

**A> PROJECT TEAM:**

Construction Inspection: *Goodwyn Mills & Cawood, Inc. (GMC)*

**B> PROJECT SCOPE & SCOPE OF SERVICES:**

From our previous conversations and understanding of the infrastructure obligations by the City, we have identified the following primary work items to be addressed in the near term:

**PROJECT SCOPE:**

GMC understands the scope of the project to be approximately 860 LF of new roadway, including clearing grading, curb and gutter, drainage, base and pave, and a pre-cast bridge structure. Also included is a traffic signal and required improvements to Cahaba River Road.

**CONSTRUCTION PERIOD SERVICES:**

1. Make visits to the site at intervals appropriate to the various stages of construction as GMC deems necessary in order to observe as an experienced and qualified design professional the progress and quality of the various aspects of contractor's work and to determine, in general, if such work is proceeding in accordance with the Contract Documents. In addition, GMC shall provide the services of a Resident Project Representative (RPR) at the site to assist GMC and to provide more continuous observations of such work. GMC shall not supervise, direct, control, or have authority over or be responsible for the means, methods, techniques, sequences or procedures of construction selected by Contractor(s) or the safety precautions and programs incident to the work of Contractor(s). GMC's effort will be directed toward providing a greater degree of confidence for OWNER that the completed work of Contractor(s) will be free from defects and will conform to the Contract Documents, but GMC shall not be responsible for the failure of Contractor(s) to perform the work in accordance with the Contract Documents. During such visits, and on the basis of on-site observations, GMC shall keep OWNER informed of the progress of the work.
2. During such visits and on the basis of such observations, GMC shall have authority to disapprove of or reject Contractor's work while it is in progress if GMC believes that such work will not produce a completed project that conforms generally to the contract documents or that it will prejudice the integrity of the design concept of the completed project as a function of the whole as indicated in the contract documents.
3. Issue necessary interpretations and clarifications of the Contract Documents and, act as initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the work thereunder; and make decisions on all claims of OWNER and Contractor(s) relating to the acceptability of the work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of

GOODWYN, MILLS AND CAWOOD, INC.

2701 1st Avenue South, Suite 100  
Birmingham, AL 35233  
Tel 205.879.4467 Fax 205.879.4493  
GMCNETWORK.COM



the work, but GMC shall not be liable for the results of any such interpretations or decisions rendered by him in good faith.

4. Conduct a final inspection to determine if the Project is substantially complete and to determine if the work has been completed in accordance with the Contract Documents and if each Contractor has fulfilled all of his obligations thereunder so that GMC may recommend, in writing, final payments to each Contractor and may give written notice to OWNER and the Contractor(s) that the work is acceptable to the best of GMC'S knowledge, information and belief and based on the extent of the services performed and furnished by GMC under this agreement.
5. GMC shall not be responsible for the acts or omissions of any Contractor or subcontractor, or any of the Contractor(s)' or subcontractors' agents or employees, or any other persons (except GMC's own employees and agents) at the site or otherwise performing any of the Contractor(s)' work. GMC shall not be responsible for the adequacy of the Contractor's safety program, safety supervision, or any safety measure which the Contractor takes or fails to take in, on, or near the project site.

**EXCLUDED SERVICES:**

- *As-Built Surveying:* GMC provides these services and will submit a proposal upon request.
- *Construction Management Services:* GMC does not manage the scheduling of construction activities, hire contractors or sub-contractors coordinate the work of contractors or otherwise participate in the management of construction activities. These are the responsibilities of a General Contractor or Construction Management firm, and are specifically excluded from the services we offer.
- *Other services:* not specifically included.

**PROJECT SCHEDULE:**

We approach each project with a professional level of diligence, and we strive to maintain our schedule commitments. The following table shall serve as an estimate of the durations we anticipate will be required to design your project as defined herein:

	ESTIMATED DURATION:	DEADLINE:
CONSTRUCTION ACTIVITIES: Construction Inspection Services:	Commencing and concurrent with construction for a total 180 days or 26 weeks	Concurrent w/ construction

**C> COMPENSATION & FORM OF CONTRACT:**

**BASIC SERVICES FEES:**

We propose performing the work illustrated above under the "Scope of Services" section in accordance with the following schedule. We calculate services in one of several manners:

- *Percentage of Construction (%C) fees* which are calculated as a fee percentage times the Construction Cost.
- *Lump Sum (LS) fees* are fixed fees
- *Hourly (H) fees* are calculated hourly based on the number of hours charged to the project times the hourly rate for that employee (See GMC Hourly Rate Schedule, updated annually in July). We have provided an allowance for anticipated cost of hourly services in the table below.
- *Allowances (Allow)* are occasionally included for anticipated work that is not yet quantifiable.

	UNIT [AREA or ESTIMATED CONST. COST]	BASIC SERVICES FEE		TYPE
		Unit Cost	Value	
CONSTRUCTION ACTIVITIES Construction Inspection Services:	20 hr/wk x 26 wks	x \$80.00/hr	= \$41,600.00	Allow

**REIMBURSABLE EXPENSES:**



Patchwork Farms - Construction Inspection Services  
 Vestavia Hills, AL  
 May 7, 2012

Reimbursable Expenses are project related expenses that accrue over the course of design and construction phases of the project. We do not consider telephone charges (including long distance), faxing, scanning, in-house small document copying, costs associated with e-mail correspondence or costs associated with maintaining our CAD software and systems as reimbursable expenses.

**PAYMENT TERMS:**

Professional services will be invoiced monthly in accordance with the status of the work. Payment is due 30 days from the invoice date, and are consider past-due thereafter. Past-due invoices will accrue interest at a rate of one percent (1%) per month.

**LIABILITY INSURANCE:**

Goodwyn Mills & Cawood Inc. maintains Workmen's' compensation, comprehensive commercial general liability, and professional liability (E&O) insurance coverage. A copy of our insurance certificate is available upon request.

**FORM OF CONTRACT:**

We recommend EJCDC E-520 Short Form of Agreement between Owner and Engineer for Professional Services; serve as the basis of our agreement. Through the use of this industry standard document, the contract language and the details of the project delivery method shall be well coordinated.

We will commence work in conjunction with the Contractor's schedule..

We appreciate the opportunity to work with you over the course of this project, and trust our proposal is consistent with your expectations. Please feel free to contact me at your convenience to discuss the terms of this proposal and any questions or concerns you may have.

Sincerely,  
 GOODWYN MILLS AND CAWOOD INC.

J. Coleman Williams, P.E.

Civil Engineering  
 Birmingham Division

Cc:  
 File

ACCEPTED:	
DATE:	

ARCHITECTURE ENGINEERING ENVIRONMENTAL GEOTECHNICAL INTERIOR DESIGN LANDSCAPE PLANNING SURVEYING TRANSPORTATION

## **RESOLUTION NUMBER 4417**

### **A RESOLUTION AUTHORIZING THE CITY MANAGER TO TAKE ALL ACTIONS NECESSARY TO DEMOLISH THE STRUCTURES ON THE PROPERTY LOCATED AT 3363 MOUNTAINSIDE ROAD**

**WHEREAS**, on October 8, 2012, the City Council of the City of Vestavia Hills adopted and approved Resolution Number 4335 to declare the structures on the property located at 3363 Mountainside Drive and to order the demolition of said structures; and

**WHEREAS**, the Building Safety Official has received proposals for demolition as well as the removal and mitigation of known asbestos materials within the structure and has detailed said proposals in a memorandum to the City Manager dated February 20, 2013; a copy of which is attached to and incorporated into this Resolution Number 4417 as if written fully therein; and

**WHEREAS**, the Building Official has reviewed the proposals and recommended the acceptance of Slate Barganier Building for the demolition of the structure at a cost not to exceed \$9,850.00 and the acceptance of the proposal from Lakeshore Environmental Contractors for mitigation and removal of known asbestos materials at a cost not to exceed \$4,250.00; and

**WHEREAS**, the City Manager has reviewed the recommendations of the Building Safety Official and has recommended approval.

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

1. The City Manager is hereby authorized to take all actions and execute all documents necessary to demolish and remove the structures on the property located at 3353 Mountainside Road at a total cost not to exceed \$14,100.00; and
2. This Resolution Number 4417 shall become effective immediately upon adoption and approval.

**ADOPTED and APPROVED** this the 11<sup>th</sup> day of March, 2013.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

**VESTAVIA HILLS BUILDING SAFETY DEPARTMENT  
513 MONTGOMERY HIGHWAY  
VESTAVIA HILLS, ALABAMA 35216  
(205) 978-0225  
(205) 978-0205 (FAX)**

**JAMES R. ST. JOHN  
FIRE CHIEF**

**MEMORANDUM**

TO: Mr. Robertson  
FROM: Keith Blanton  
CC: Chief St. John  
DATE: February 20<sup>th</sup>, 2013  
RE: Asbestos removal and demolishing of 3363 Mountainside Road.

I have received three (3) proposals for the demolishing and one (1) proposal for the asbestos removal for 3363 Mountainside Road.

**Demo Contractors:**

Crowder Custom Homes 2304 Ridge Trail Birmingham, AL. 35242 Terry Crowder – 229-0484	Declined
New Centennial Reality 3505 Bent River Road Birmingham, Al. 35216 Gary Smith – 612-1509	\$8,500.00
Slate Barganier Building 3172 Cahaba Heights Road Vestavia Hills, AL. 35242 Carmon Eaton – 283-9372	\$9,850.00
Lakeshore Environmental 5513 Eastciff Industrial Loop Birmingham, AL. 35210 Henry Harrison – 281-8702	\$18,185.00

**Asbestos Removal Contractors**

Lakeshore Environmental



5513 Eastcliff Industrial Loop  
Birmingham, AL. 35210  
Henry Harrison – 281-8702

\$4,200.00

Building Environments INC.  
PO Box 55627  
Birmingham, AL. 35255  
Lee Clayton – 321-1223

Did not submit

Meredith Environmental  
1400 Porter Road  
Mulga, Al.  
444-1202

Does not perform - Recommended Lakeshore Environmental

My recommendations are as follows:

**Demo Contractor**

Slate Barganier Building  
3172 Cahaba Heights Road  
Vestavia Hills, AL. 35243

\$9,850.00

**Asbestos Removal**

Lakeshore Environmental Contractors  
5513 Eastcliff Industrial Loop  
Birmingham, AL. 35210

\$4,250.00

**Total cost of asbestos removal and demolishing** \$14,100.00

The structure must be removed by April 6<sup>th</sup> in order to comply with city council approval for abatement.

Please advise if I'm clear to move forward with sending this information to Pat Boone.

**RESOLUTION NUMBER 4418**

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO PURCHASE METAL DETECTORS FOR MUNICIPAL COURT AND TO RETAIN TWO SECURITY OFFICERS FOR THE SECURITY OF PERSONS ENTERING MUNICIPAL COURT**

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

1. The City Manager is hereby authorized to accept a quote from Shelsky Metal Detectors Sales and Service, LLC for the purchase of a walk-through metal detector, two handheld wands and equipment to be used with the metal detectors for scanning and security of individuals entering into Municipal Court; and
2. The City Manager is hereby authorized to retain two security guards to utilize the metal detectors for security of individuals entering into Municipal Court; and
3. Funding for the metal detectors and the security guards shall be expensed to the Special Judicial Fund; and
4. This Resolution Number 4418 shall become effective immediately upon adoption and approval.

**ADOPTED and APPROVED** this the 11<sup>th</sup> day of March, 2013.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

# Shelsky Metal Detectors Sales & Service LLC

PROPOSAL: VESTAVIA  
DATE: JANUARY 4, 2013

3640 Northcote Drive  
Birmingham, AL 35223  
Phone 205 529-1111 Fax 205 538-5278  
mshelsky929@gmail.com

LOCATION

TO City of Vestavia Hills  
513 Montgomery Highway  
Vestavia, Alabama 35216  
Rebecca Leavings  
205-978-0184  
City.clerk@vestavi hills.al.us

## Quote

SALESPERSON	JOB	SHIPPING METHOD	SHIPPING TERMS	DELIVERY DATE	PAYMENT TERMS	DUE DATE
Marvin Shelsky	Walk Through Metal Detector		Delivered		Net 10 days	

QTY	ITEM #	DESCRIPTION	UNIT PRICE		LINE TOTAL
1	1168411	PD6500i Walk Through Metal Detector	4,270.00		4,270.00
1	1603900	Stabilizer Base for PD6500i	79.00		79.00
2	1165190	Super Scanner V Hand Held	159.00		318.00
1	1169000	Permanent Magna Dolly	269.00		269.00
Lot		Labor for installation, calibrating, testing and training of personnel	390.00		390.00

Plus Applicable Sales Tax

SUBTOTAL \$5,326.00

SALE TAX N/A

TOTAL

Quotation prepared by: Marvin Shelsky  
Shelsky Metal Detectors Sales and Service, LLC DOES NOT supply conduit, electrical service, or trenching unless specified.

Signature Denotes Acceptance: \_\_\_\_\_

THANK YOU FOR THE OPPORTUNITY TO OFFER THIS QUOTE!

## Rebecca Leavings

---

**From:** Tommy Spina <tommyspina@bellsouth.net>  
**Sent:** Monday, February 18, 2013 1:45 PM  
**To:** Rebecca Leavings  
**Subject:** Re: court security

Please go forward with your plan

Tommy Spina  
1330 21st Way South  
Birmingham , Al. 35205  
205.939.1330 (Off)  
205.933.0101 (Fax)  
[tommy@tommyspina.com](mailto:tommy@tommyspina.com)  
[tommyspina.com](http://tommyspina.com)

On Feb 18, 2013, at 12:09 PM, "Rebecca Leavings" <[city.clerk@ci.vestaviahills.al.us](mailto:city.clerk@ci.vestaviahills.al.us)> wrote:

Dear Judge Spina,

I am prepared to bring the request for Court security to the Council as first read Monday and then action on the 11th of March.

The plan is to purchase a walk-through metal detector with two wands to set up in the lobby on court day. I will have two employees of Security Engineers manning the detectors and, if there is a questionable entry, these guys will consult with a Court bailiff to determine entry. These guards are not armed.

The building entrances will be locked down to prevent any entry from the general public other than the primary front entry. A sign will be posted to show anyone entering is subject to search.

In order to bring this forward, I need written confirmation that you are in support or whether or not you have any concerns or comments.

Thanks!!!

---

Rebecca Leavings, City Clerk  
City of Vestavia Hills  
513 Montgomery Highway  
Vestavia Hills AL 35216  
(205) 978-0184 Phone  
(205) 978-0122 Fax  
[city.clerk@ci.vestaviahills.al.us](mailto:city.clerk@ci.vestaviahills.al.us)

# Interoffice Memorandum

**DATE:** January 28, 2013  
**TO:** Randy Robertson, City Manager  
**FROM:** Rebecca Leavings, City Clerk



**RE:** Municipal Court Security

This year, the Alabama Legislature enacted legislation that established a Special Judicial fund for Municipal Courts specifically designated for the "operation of the Court." The revenues for this special fund were never acknowledged in the budget because it went into effect just before the fiscal year and is set to sunset in three years. The Municipal Judge has examined his court and has determined security is needed for the operation of the Courts.

A review of the current as well as anticipated revenues for this fund is detailed below off-set with expected expenditures within this fund over the current fiscal year and into the next:

### Judicial Fund Balance:

Balance as of December 31, 2012 - \$14,498.86  
Estimated \$2,500 in collections each month through fiscal year will result in balance of:

\$	36,998.86	
(	5,326.00	Cost of Metal Detector (walk through and 2 wands)
(	3,000.00	Est. Cost of Security (2 Sec. Eng officers)
(	15,000.00	Est. Cost of E-Citation System for 2013 year
\$	13,522.86	Est. Remaining Balance as of 9/30/2013

FR 2014

Recommendation is to purchase a walk through metal detector with a permanent magna dolly to allow portability when not in use along with two (2) hand held wands. Retaining two (2) security guards to man the detector and, should the guards be unsure of whether or not to admit an individual due to questionable readings from the equipment, that decision will be made by a court bailiff (an on-duty police officer).

The Municipal Judge and I request this be presented to the City Council for approval. I stand ready and willing to answer any questions and/or address any concerns with this request.

---

## Rebecca Leavings

---

**From:** K York  
**Sent:** Wednesday, January 30, 2013 8:58 AM  
**To:** Rebecca Leavings  
**Subject:** Courtroom Security

As per our conversation of the 29<sup>th</sup> of January I have a few suggestions and comments that I hope will be helpful,

### Private Security Officers (Unarmed)

I have no problems with using Private Security Officers in the lobby to control traffic flow of personnel wanting to enter the courtroom and to operate the Scanning Wand and Security Scanner. We should check with Mr. Boone City Attorney, to be sure but they can also have people open their bags or brief cases for a cursory look for weapons. Any problems they may have they can ask one of the Police Officers working Court Baliff that night for assistance. The Baliffs are then free to work the inside of the courtroom unless there is a problem.

### Securing the Courtroom and controlling access

First to control access we need to lock the North door of the courtroom/council chambers and lock the door leading from downstairs (Fire and Bldg Insp), there is a problem with that lock in that there appears to be no key to it so it would have to be replaced. However the back door downstairs leading into Fire Admin/inspections will be locked at night. Lawyers and clients can confer in the hallway next to the Magistrates window and the South Conference room. The hallway leading into Police Admin is coded and locked so no personnel will be entering from that area except Police. Signs will be placed at the back door instructing personnel to come around to the front Lobby. All personnel for Court will enter thru the Lobby doors and be processed thru the Scanner and Security Checkpoint. A sign should be place either outside or in the lobby explaining the Scanning procedure and what will be considered contraband and those items prohibited in the Courtroom.

It is my opinion, based on my experience in these areas with Civilian Law Enforcement and the Military that these measures will greatly improve security for our Courtroom and all personnel involved. The amount of inconvenience to the Public is minimal as opposed to the feeling of and actual security these measures will provide.

Any other questions you might have I will be glad to help



Lt. Kevin D. York  
Emergency Services and Security Coordinator  
Vestavia Hills Police Department  
(205) 978-0123 Office  
(205) 978-0207 FAX  
kyork@ci.vestavi hills.al.us

**Multi-brand compatibility**  
can be added to existing checkpoints without having to replace other brand units. Includes multiple channels and 2,300 selectable operating frequencies.

**22 Standard programs**  
for security application versatility

**Pacing lights**  
Universal "Wait" and "proceed" symbols at the detector entrance for traffic controls.

**Directional counter**  
four settings for counting patrons: forward, reverse, subtract in reverse and bidirectional

### PD 6500i™

Walk-Through Metal Detector

US / INTERNATIONAL

Gray ■ PN 1168414 / 1168424

Beige ■ PN 1168411 / 1168421

Standard 30" clearance versions

#### 28" Restricted Clearance option (Gray color):

1168428 (U.S.)

#### 32" ADA-Compliant Clearance option (Gray):

1168432 (U.S.)

#### EZL Option (Beige color):

Standard 30" clearance with zone lights on both the entry and exit sides, allowing the operator to view the alarmed object from any position.

1168412 (U.S.) / 1168422 (International)



#### 33 Pinpoint Zones

to precisely identify multiple target locations from head to toe on the left, center and right sides of the body.



#### Advanced networking (optional)

manage walkthroughs individually or as groups and perform statistical analysis via network with CMA interface module. Supervisors can remotely access controls, visual alarms and statistics.

#### Advanced broadband technology

provides superior target analysis, ferrous and non-ferrous weapons detection, discrimination and higher throughput.

#### Superior versatility

Selectable settings designed for airports, courthouses, prisons, schools, facilities, special events, mass transit, loss prevention, and other applications.

#### Dual detection

transmitters and receivers in each panel scan from both sides, providing superior detection, uniformity and performance.

#### International security standards

PD 6500i meets the world's highest test certifications, including the following international airports:



\*IP 65 options also available. Contact Garrett for more information

Contact us at 1.800.234.6151 (USA and Canada) • 1.972.494.6151 • [www.garrett.com](http://www.garrett.com)

Made in the USA







Used in public transportation, special events, airports, corporate security, courts and prisons for threat detection.



## **RESOLUTION NUMBER 4419**

### **A RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT A SETTLEMENT OFFER FROM AT&T FOR ALL POTENTIAL CLAIMS ARISING OUT OF A BILLING SYSTEM ERROR FOR COLLECTING AND REMITTING CERTAIN LINE-BASED TAXES, FEES, SURCHARGES AND ASSESSMENTS ON DS-9 AND DS-1 CIRCUITS**

**WHEREAS**, in April of 2010, AT&T Corp (“AT&T”) discovered that it was not billing, collecting and remitting certain line-based taxes, fees, surcharges and assessments (the “fees”) on DS-0 and DS-1 circuits billed from its Universal Biller system; and

**WHEREAS**, AT&T immediately formed a team to quantify the problem and implement a fix; and

**WHEREAS**, on October 1, 2010, a partial fix was installed and on April 1, 2011, the remainder of the fix was installed. Thereafter, AT&T determined that all line-based fees were being correctly billed, collected and remitted on these DS-0 and DS-1 circuits; and

**WHEREAS**, in April of 2011, AT&T back-billed its customers of the DS-0 and DS-1 circuits for 5 or 6 months of back fees and remitted the fees it collected from these customers to the City of Vestavia Hills through normal remittances process; and

**WHEREAS**, AT&T is now offering to settle all potential claims arising out of this billing system error by paying to the City of Vestavia Hills the estimated 911 that AT&T would have billed, collected and remitted to the City for the 2 years prior to the April 1, 2011 implementation of the final fix, less the 5 or 6 months of fees that were back-billed and collected from customers and previously remitted; and

**WHEREAS**, the amount that AT&T is offering the City is \$626.40 which was calculated as follows: AT&T determined the June 2011 taxes that were properly remitted (\$26.10), multiplied that amount by 24, and then subtracted \$0/00 (the amount of fees that were back billed to customers, collected and remitted in 2011 equaling the above-stated balance.

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

1. The City of Vestavia Hills hereby accepts the settlement offered by AT&T in the amount of \$626.40; and
2. This Resolution Number 4419 shall become effective immediately upon adoption and approval.

**ADOPTED AND APPROVED** this the 11th day of March, 2013.

Alberto C. Zaragoza, Jr  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

VESTAVIA HILLS FIRE DEPARTMENT  
513 MONTGOMERY HIGHWAY  
VESTAVIA HILLS, ALABAMA 35216  
(205) 978-0225  
(205) 978-0205 (FAX)

JAMES R. ST. JOHN  
FIRE CHIEF

MEMORANDUM

TO: Randy Robertson, City Manager  
FROM: Chief St. John  
DATE: March 5, 2013 JS  
RE: AT&T offer

The attached memorandum from Deputy Chief Bonner describes an offer by AT&T to settle a 9-1-1 billing issue. The offer is also attached, along with a copy of an email message from Mr. Roger D. Wilson, current president of the state Wireless Board, advising us to reject the offer.

The relatively small amount of the offer is not likely to increase by much, and AT&T by far remits the most of any wireless provider, so I recommend that the offer be accepted and the matter closed. The City Council is the Emergency Communications District Board, so I recommend discussing the situation with them to determine their desire to accept or reject the offer.

**RESOLUTION NUMBER 4420**

**A RESOLUTION DETERMINING THAT CERTAIN  
CONFISCATED PERSONAL PROPERTY IS NOT  
NEEDED FOR PUBLIC OR MUNICIPAL PURPOSES  
AND DIRECTING THE SALE/DISPOSAL OF SAID  
SURPLUS CONFISCATED PROPERTY**

**WITNESSETH THESE RECITALS**

**WHEREAS**, the City of Vestavia Hills, Alabama, is the owner of confiscated personal property detailed in the attached “Exhibit A”; and

**WHEREAS**, the City has determined that it would be in the best public interest to sell said confiscated property.

**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, also finds and determines that it would be in the best interest of the City to sell said surplus confiscated property; and
2. The City Manager is hereby authorized to sell the above-referenced surplus personal property and to earmark proceeds from the sale of said property to law enforcement.

**DONE, ORDERED, APPROVED and ADOPTED** on this the 11<sup>th</sup> day of March, 2013.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

**Vestavia Hills Police  
Department**

# Memo

**To:** Rebecca Leavings

**From:** Deputy Chief Holcomb *MA*

**CC:** Chief Rary *DR*

**Date:** 3/5/2013

**Re:** Surplus Property

---

Please see the attached court order. We would like to have a request to declare the listed vehicle as surplus and listed for sale on gov deals added to the next City Council agenda.



IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA  
 BIRMINGHAM CIVIL DIVISION

STATE OF ALABAMA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 \$864.00 U.S. CURRENCY; ONE 2008 )  
 LEXUS IS, LIC. # WFJ1W (FLORIDA) )  
 VIN# JTHBP262X85001243, )  
 )  
 JAMES LEE COLEMAN, IV, )

CV 2011-1227 PJ

DEFAULT JUDGMENT

This is a Condemnation action filed by the State of Alabama. It appears that notice to all parties was given advising them to make any claim they may have to the property sought to be condemned. Specifically, the Court finds that counsel for James Lee Coleman, IV has accepted service on his behalf. No claims have been filed. Accordingly, a default judgment is due to be entered.

Upon motion by the State, it is therefore Ordered, Adjudged and Decreed as follows:

1. The **\$864.00 U.S. Currency** is declared to be contraband and is condemned and forfeited to the State of Alabama because said currency was furnished or intended to be furnished in exchange for a controlled substance or said currency is traceable to such an exchange or said currency was used or intended to be used to facilitate a violation of a controlled substance law. At the request of the State, the currency is awarded to **Vestavia Hills Narcotics, Vestavia Hills Police Department; 513 Montgomery Highway; Vestavia Hills, Alabama 35216** for use in the enforcement of the law.

2. The **2008 Lexus IS, LIC. # WF J1W (FLORIDA), VIN# JTHBP262X85001243** is declared to be contraband and is condemned and forfeited to the State of Alabama because said

conveyance was used or was intended for use to transport or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of controlled substances. At the request of the State, the vehicle is awarded to the **Vestavia Hills Narcotics, Vestavia Hills Police Department; 513 Montgomery Highway; Vestavia Hills, Alabama 35216** for use in the enforcement of the law including, but not limited to, sale of the vehicle.

3. All claims to the property, if any, are forever barred.

4. Any applicable court costs, including publication and service costs, are taxed to the **Vestavia Hill Police Department** and shall be paid to the Circuit Clerk. The Motion for Default Judgment fee is retaxed.

DONE AND ORDERED, this the 14<sup>th</sup> day of February 2013.

  
HOUSTON L. BROWN  
PRESIDING JUDGE

cc: Brady Rigdon, Deputy District Attorney

## **RESOLUTION NUMBER 4425**

### **A RESOLUTION AMENDING RESOLUTION NUMBER 4232 FOR ADDITIONAL INCENTIVES FOR THE CITY OF VESTAVIA HILLS**

**WHEREAS**, on September 12, 2011, the City Council of the City of Vestavia Hills adopted and approved Resolution Number 4232 to establish an Economic Development Incentive Policy for the City of Vestavia Hills; and

**WHEREAS**, the Economic Development Director has recommended additional incentives to be added to the policy as detailed in “Exhibit A” which is attached and incorporated into this Resolution Number 4425 as though written fully therein; and

**WHEREAS**, the City Manager, Mayor and City Council have reviewed the attached information and feel it is in the best public interest to adopt the additional incentives.

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

1. Resolution Number 4232 is hereby amended so as to include additional incentives as detailed in the attached “Exhibit A”; and
2. The City Manager is hereby authorized to execute any and all documentation necessary in order to validate said Incentive Package as required by Alabama Law; and
3. This Resolution Number 4425 shall become effective immediately upon adoption.

**ADOPTED and APPROVED** this the 11<sup>th</sup> day of March, 2013.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk



**TEMPORARY SALES TAX REBATE PROGRAM**

**“Exhibit A”**

A portion of the City of Vestavia Hills’ share of non-dedicated sales tax will be temporarily rebated to qualifying businesses located within the corporate boundaries of the City of Vestavia Hills, Alabama.

**NOTE: The portion of the City’s sales tax dedicated to Vestavia Schools and Capital Reserve are not included within the rebate program.**

Only businesses that in whole, or in majority part, provide sales of goods and/or services subject to general sales tax will be eligible to participate in the program. In addition, each business must also meet the eligibility criteria for its corresponding category as outlined below.

**New Business:** New retail businesses that locate within the US-31 Corridor Redevelopment district may apply for a sales tax rebate from the City of Vestavia Hills. Such rebate will consist as follows:

<b>Year</b>	<b>Rebate</b>
1	50%
2	40%
3	30%
4	20%
5	10%

The rebate for new business shall not in any given year exceed \$150,000. For a business to participate in the program as a new business, the business must meet each of the following criteria:

- The business must generate a minimum of \$50,000 in annual taxable sales.
- The business must not have been established at any other location within the city limits of the City of Vestavia Hills prior to January 1, 2013.

**For Existing Businesses that are accepted into the program, the rebate for the five (5) years will be calculated using the baseline figure on the application from the previous 12-months sales tax remittance. If a business was closed for part of the 12-months or has been in business less than 12-months, then the base rate of the months available will be used.**

**Existing US-31 Corridor Business:** Existing businesses currently located in the City of Vestavia Hills, Alabama, may also apply for a sales tax rebate from the City of Vestavia Hills. The rebate will apply only to the portion of taxable retail sales in excess of the business’ preceding 12-month taxable sales. Such rebate will consist as follows:

<b>Year</b>	<b>Rebate</b>
1	50%
2	40%
3	30%
4	20%
5	10%

The rebate for an existing business shall not in any given year exceed \$150,000. In addition, to participate as an existing business, the business must meet at least **one** of the following criteria:

- The business must expand its interior floor space by at least 25% during the 12-month period following its application.
- The business must create at least 2 FTE jobs during the 12-month period following its application. To qualify through job creation, the job created must provide an average wage for a retail position in the City of Vestavia Hills (to be determined by the City’s Economic Development Director at time of application).
- The business must make an investment of at least \$5,000 in interior renovations, streetscaping or façade improvements during the 12-month period following its application.

**APPLICATION PROCESS OVERVIEW**

Application packets can be downloaded from the City of Vestavia Hills’ website, or can also be picked up in person at the Economic Development Office in the Vestavia Hills City Hall, 513 Montgomery Highway, Vestavia Hills, Alabama.

**Instructions:**

1. Complete and sign application.
2. Attach the following to the application:
  - a. A copy of business license from the City of Vestavia Hills showing the address of the business and certifying that business is located within the City of Vestavia Hills, Alabama.
  - b. A copy of the Alabama Sales Tax Permit.
  - c. If existing or relocating business, previous 12-months sales tax reports.
3. Contact the Economic Development Director at City Hall to schedule an application review appointment.
4. Application submitted to City Council for acceptance into the program. First year of the program begins on the first day of the month following acceptance into the program.
5. Rebate request forms with verifications attached must be received within 90 days of 12-month anniversary of acceptance into the program.
6. Rebate requests must be submitted to the City Council from the City Manager within 60 days of submission of completed and verified rebate request. Missing or incorrect information will delay the presentation to the City Council for the rebate.

**EXAMPLE OF SALES TAX REBATE COMPUTATION**

Annual Retail Sales	\$10,000,000		
Prior Year Annual Retail Sales	\$0		
Sales for Rebate Computation	\$10,000,000		
<b>SALES TAX:</b>			
Total	9%	\$900,000	
State of Alabama	4%	\$400,000	
Jefferson County	2%	\$200,000	
City of Vestavia Hills	3%	\$300,000	
Schools	30% of 1/12 <sup>th</sup>		\$7,500

Capital Reserve	70% of 1/12 <sup>th</sup>	\$17,500
City (Eligible of Rebate)	11/12 <sup>th</sup>	\$275,000

<u>Year</u>	<u>Rebate %</u>	<u>Rebate \$</u>	<u>Retained \$</u>
1	50%	\$137,500	\$137,500
2	40%	\$110,000	\$165,000
3	30%	\$82,500	\$192,500
4	20%	\$55,000	\$220,000
5	10%	<u>\$27,500</u>	<u>\$247,500</u>
		\$412,500	\$962,500

**RESOLUTION NUMBER 4421**

**A RESOLUTION AUTHORIZING THE MAYOR AND CITY MANAGER TO EXECUTE AN AGREEMENT WITH WILLIAMS BLACKSTOCK ARCHITECTS TO PROVIDE ARCHITECTURAL AND ENGINEERING SERVICES FOR A PROPOSED CITY HALL**

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

1. The Mayor and City Manager are hereby authorized to execute an agreement with Williams Blackstock Architects for architectural and engineering services for a new City Hall as detailed in the information labeled as “Exhibit A,” a copy of which is attached to and incorporated into this Resolution Number 4421 as though written fully therein; and
2. This Resolution Number 4421 shall become effective immediately upon adoption and approval.

**DONE, ORDERED, ADOPTED and APPROVED** this the 25<sup>th</sup> day of March, 2013.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

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

March 7, 2013

By Hand Delivery

City Manager Randy Robertson  
Vestavia Hills Municipal Center  
513 Montgomery Highway  
Vestavia Hills, Alabama 35216

In Re: Agreement Between the City of Vestavia Hills, Alabama, as “Owner”,  
and Williams Blackstock Architects, P.C., as “Architect”

Dear Mr. Robertson:

On February 22, 2013, you furnished me with copies of the following documents with a request that I review them and provide you with my written legal opinion and recommendations:

1. AIA Document B101—2007, Standard Form Agreement Between City of Vestavia Hills, as “Owner,” and Williams Blackstock Architects, P.C., as “Architect.”
2. Additions and Deletions Report for AIA Document B101—2007.
3. Certification of Document’s Authenticity AIA Document D401—2003.
4. AIA Document B101—2007 SP Exhibit A, Initial Information.
5. Additions and Deletions Report for AIA Document B101—2007 SP Exhibit A.
6. Letter, dated February 14, 2013, from Stephen Allen of Williams Blackstock Architects, P.C. to you.

The Agreement Between Owner and Architect reflects that it is comprised of AIA Document E201—2007, Digital Data Protocol Exhibit and Exhibit B—Description and Cost of Proposed Additional Services. However, they were not included in the package. I have requested these documents from architect, Jarod Fulton, but have yet to receive them.

The purpose of this letter is to respond to your request.

## I. AGREEMENT

Some highlights of the proposed Agreement are summarized below.

A. **PROJECT SITE:** The real estate and improvements situated at 1034 Montgomery Highway, Vestavia Hills, Alabama 35216 in the Vestavia Plaza Shopping Center sometimes known as the "Food World" property consisting of approximately 1.792± acres.

B. **DESCRIPTION OF PROJECT:** Construction of a new City Hall with a total square footage of approximately 40,000 to 50,000 square feet.

C. **PROJECTED BUDGET FOR THE NEW CITY HALL:** Approximately \$6,000,000.00 to \$11,000,000.00.

D. **ARCHITECTURAL FEE:** A lump sum fee of Forty-one Thousand Dollars (\$41,000.00) for the space programming and conceptual planning, and property acquisition, plus a percentage fee of 5.6% of the cost of the work.

(Note: Williams Blackstock Architects, P.C. stated in its February 14, 2013 letter that the percentage fee of 5.6% of the cost of the work is over two percent (2%) less than what the State Building Commission Fee Schedule dictates for this project and is a significant discount for the City of Vestavia Hills. Attached hereto is a copy of the Alabama Building Commission Basic Fee Rate Schedule for Architectural Services.)

## II. SOME ALABAMA LAW APPLICABLE TO THIS AGREEMENT

A. **THE PROPOSED PROJECT IS A "PUBLIC WORKS PROJECT":** The proposed work for the construction of a city hall is a "public works project." Alabama law defines a "public works project" in Title 39-2-1(6), *Code of Alabama, 1975*, which reads as follows:

"(6) PUBLIC WORKS. The construction, installation, repair, renovation, or maintenance of public buildings, structures, sewers, waterworks, roads, curbs, gutters, side walls, bridges, docks, underpasses, and viaducts, as well as any other improvement to be constructed, installed, repaired, renovated, or maintained on public property and to be paid, in whole or in part, with public funds or with financing to be retired with public funds in the form of lease payments or otherwise."

B. **SERVICES OF A REGISTERED AND LICENSED ARCHITECT ARE REQUIRED FOR THIS PUBLIC WORKS PROJECT:** Alabama law at Title 34-2-32(c), *Code of Alabama, 1975*, requires the City of Vestavia Hills to use the services of a registered and licensed architect (Title 34-2-31, *Code of Alabama, 1975*), for this public works project.

**C. SERVICES OF A PROFESSIONAL ENGINEER ARE REQUIRED FOR THIS PUBLIC WORKS PROJECT:** In addition, Alabama law at Title 34-11-10, *Code of Alabama, 1975*, provides that it is unlawful for any state, county or municipal entity to engage in the construction of any public work over \$20,000.00 that involves the practice of engineering, unless the engineering drawings, plans and specifications have been prepared by a professional engineer.

**D. THIS CONTRACT IS NOT SUBJECT TO THE ALABAMA COMPETITIVE BID LAW:** The Alabama Public Works law at Title 39-2-2(d), *Code of Alabama, 1975*, provides that contracts with architects and engineers do not have to be competitively bid provided no actual construction work is performed by that architect or engineer.

Title 41-16-51(a)(3), *Code of Alabama, 1975*, also provides as follows:

“(a) Competitive bids shall not be required for utility services, the rates for which are fixed by law, regulation, or ordinance, and the competitive bidding requirements of this article shall not apply to:

(3) Contracts for securing services of attorneys, physicians, architects, teachers, superintendents of construction, artists, appraisers, engineers, consultants, certified public accountants, public accountants, or other individuals possessing a high degree of professional skill where the personality of the individual plays a decisive part.”

### **III. MY RECOMMENDATIONS**

**A. ADDENDUM TO AGREEMENT:** I recommend that the City and Williams Blackstock Architects, P.C. execute and deliver the enclosed Addendum to Agreement, which addresses the following terms, provisions and conditions:

1. **Preparation of Construction Contract.** In my opinion, the Architect should prepare all of the Construction Contract documents rather than simply assist the Owner in doing so (*See Section 3.4.3*).

2. **Advertisement for Bids:** The Architect should perform all services required under the Alabama Public Works Competitive Bid Law for advertising and inviting competitive bids (*see Section 3.4.3*).

3. **Prequalification of Bidders:** The Architect should prequalify the contractors who wish to bid on the project.

4. **Immigration:** Act Number 2011-535 (Title 31-13-9, *Code of Alabama, 1975*) requires the parties to acknowledge that they will not violate the Immigration Law.

5. **Contingency:** If the City does not purchase the Food World property, then in such event the Architect's services shall automatically terminate and the City shall not be obligated for further payment to the Architect.

**B. CONSTRUCTION MANAGER:** I strongly recommend that the City Council seriously consider hiring the employment of a Construction Manager as it did for the new Vestavia Hills Library in the Forest. I make this recommendation for the following reasons:

1. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures of the Contractor (*Section 3.6.1.2*).

2. The Architect shall not be responsible for the Contractor's failure to perform the work in accordance with the requirements of the Contract Documents (*Section 3.6.1.2*).

3. The Architect shall not have control over the Contractor or be responsible for its work (*Section 3.6.1.2*).

4. The Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of work (*Section 3.6.2.1*).

5. The Architect is only required to report to the Owner:

(a) Known deviations from the Contract Documents and defects and deficiencies observed in the work.

(b) The issuance of a certificate for payment by the Architect shall not be a representation that the Architect has:

(i) Made exhaustive or continuous on-site inspections to check the quality or quantify of the work;

(ii) Reviewed construction means, methods, techniques, sequences or procedures;

(iii) Reviewed copies of requisitions received from subcontractors and material suppliers, and other data requested by the Owner to substantiate the Contractor's right to payment; or

(iv) Ascertain how or for what purpose the Contractor has used money previously paid on account of the contract. (*Section 3.6.3.2*)

I want to point out that the above provisions are customary for contracts between Owner and Architect.



March 7, 2013  
page 5

I recommend approval of the Owner and Architect Agreement provided the Addendum is signed by both parties.

Please call me if you have any questions regarding any of the matters stated in this legal opinion. In the meantime, I will review AIA Document E201—2007, Digital Data Protocol Exhibit and Exhibit B—Description and Cost of Proposed Additional Services after I receive them from Williams Blackstock Architects, P.C.

Sincerely,



Patrick H. Boone  
Attorney for City of Vestavia Hills, Alabama

PHB:gp

Enclosures: (1) Addendum  
(2) Alabama Building Commission  
Basic Fee Rate Schedule for Architectural Services

cc: City Clerk Rebecca Leavings (by hand)

**170-X-4-.09 SUBSEQUENT DUPLICATION.**

The agreement shall stipulate that under any subsequent owner-architect agreement, the basic fee for any substantial duplication of buildings covered by the original agreement will be paid in accordance with rule 170-X-4-.07-(4). However, the fee schedule in effect at the date of the subsequent agreement will apply.

**Author:** Stedmann B. McCollough

**Authority:** Code of Ala. 1975, § 41-9-141

**History:** New, Filed: Apr 17, 1997: Certified Aug 29, 1997: Effective Oct 3, 1997

**179-X-4.10 SCHEDULE of BASIC FEE RATES.**

(1) The "Schedule of Basic Fee Rates" is graduated by project cost and categorized by building groups defined in 170-X-4.10-(2).

COST OF THE WORK	FEE IN PERCENTAGE				
	BUILDING GROUP				
	I	II	III	IV	V
Up to \$100,000	8.0	9.0	10.0	11.0	12.0
100,001 to 200,000	7.0	8.0	9.0	10.0	11.0
200,001 to 300,000	6.0	7.0	8.0	9.0	10.0
300,001 to 400,000	5.9	6.9	7.9	8.9	9.9
400,001 to 500,000	5.8	6.8	7.8	8.8	9.8
500,001 to 600,000	5.7	6.7	7.7	8.7	9.7
600,001 to 700,000	5.6	6.6	7.6	8.6	9.6
700,001 to 800,000	5.5	6.5	7.5	8.5	9.5
800,001 to 900,000	5.4	6.4	7.4	8.4	9.4
900,001 to 1,000,000	5.3	6.3	7.3	8.3	9.3
1,000,001 to 1,250,000	5.2	6.2	7.2	8.2	9.2
1,250,001 to 1,500,000	5.1	6.1	7.1	8.1	9.1
1,500,001 to 1,750,000	5.0	6.0	7.0	8.0	9.0
1,750,001 to 2,000,000	4.9	5.9	6.9	7.9	8.9
2,000,001 to 2,500,000	4.8	5.8	6.8	7.8	8.8
2,500,001 to 3,000,000	4.7	5.7	6.7	7.7	8.7
3,000,001 to 3,500,000	4.6	5.6	6.6	7.6	8.6

3,500,001 to 4,000,000	4.5	5.5	6.5	7.5	8.5
4,000,001 to 5,000,000	4.4	5.4	6.4	7.4	8.4
5,000,001 to 6,000,000	4.3	5.3	6.3	7.3	8.3
6,000,001 to 8,000,000	4.2	5.2	6.2	7.2	8.2
8,000,001 to 10,000,000	4.1	5.1	6.1	7.1	8.1
10,000,001 to 12,000,000	4.0	5.0	6.0	7.0	8.0
12,000,001 to 14,000,000	3.9	4.9	5.9	6.9	7.9
14,000,001 to 16,000,000	3.8	4.8	5.8	6.8	7.8
16,000,001 to 18,000,000	3.7	4.7	5.7	6.7	7.7
18,000,00 to 20,000,000	3.6	4.6	5.6	6.6	7.6
20,000,001 to 22,000,000	3.5	4.5	5.5	6.5	7.5
22,000,001 to 24,000,000	3.4	4.4	5.4	6.4	7.4
24,000,001 to 27,000,000	3.3	4.3	5.3	6.3	7.3
27,000,001 to 30,000,000	3.2	4.2	5.2	6.2	7.2
30,000,001 to 33,000,000	3.1	4.1	5.1	6.1	7.1
33,000,001 to 36,000,000	3.0	4.0	5.0	6.0	7.0
36,000,001 to 39,000,000	2.9	3.9	4.9	5.9	6.9
39,000,001 to 42,000,000	2.8	3.8	4.8	5.8	6.8
42,000,001 to 46,000,000	2.7	3.7	4.7	5.7	6.7
46,000,001 to 50,000,000	2.6	3.6	4.6	5.6	6.6
50,000,001 to and over	2.5	3.5	4.5	5.5	6.5

**(2) BUILDING GROUPS:**

**(a) Group I:** Industrial buildings without special facilities, parking structures and repetitive garages, simple loft type structures, warehouses exclusive of automated equipment, and other similar utilitarian type buildings.

**(b) Group II:** Armories, apartments, cold storage facilities, dormitories, exhibition halls, hangers, manufacturing/industrial plants, office buildings without tenant improvements, printing plants, public markets, and service garages.

**(c) Group III:**

1. College classroom facilities, convention facilities, correctional and detention facilities, extended care facilities, gymnasiums (simple, prefabricated-pre-

eng. (red, minimum types shall be classifi (red) under Group II), hospitals, institutional dining halls, laboratories, libraries, medical schools, medical office facilities and clinics, mental institutions, office buildings with tenant improvements, parks, playground and recreational facilities, police stations, public health centers, research facilities, schools (elementary and secondary), stadiums, and welfare buildings.

2. Also, central utilities plants, water supply and distribution plants, sewage treatment and underground systems, electrical sub-stations and primary and secondary distribution systems, roads, bridges and major site improvements when performed as independent projects. When any or all of these types of improvements are incidental to an overall plan of architectural development they will be grouped with the basic architectural service of the overall project unless stated otherwise in the agreement.

(d) **Group IV:** Aquariums, auditoriums, art galleries, college buildings with special facilities, communications buildings, special schools, theaters and similar facilities.

(e) **Group V:** Residences and specialized decorative buildings unless otherwise stated in the agreement. Custom designed furnishings shall be categorized in Group V except when considered incidental to the basic architectural service for a building.

**Author:** Stedmann B. McCollough

**Authority:** Code of Ala. 1975, § 41-9-141

**History:** New, Filed: Apr 17, 1997: Certified Aug 29, 1997: Effective Oct 3, 1997

## **ALABAMA BUILDING COMMISSION**

### **CHAPTER 170-X-5BIDDING AND AWARDING CONTRACTS FOR PROJECTS SUPERVISED AND ADMINISTERED BY THE ALABAMA BUILDING COMMISSION**

#### **170-X-5-.01 APPLICABILITY of CHAPTER.**

The rules of this chapter apply only to public construction and improvement projects assigned to the Alabama Building Commission by state law for its supervision and administration. Project supervision and administration will be carried out by the Technical Staff who will prepare and publish a Manual of Procedures containing procedures, standard forms, and uniform documents to be used by awarding authorities to effect compliance with this chapter. The rules of this chapter supplement the requirements of such laws as Title 34, Chapter 8-Contractors, Title 39-Public Works, and Title 41, Chapter 16-Public Contracts, Code of Alabama 1975.

**Author:** Stedmann B. McCollough

**Authority:** Code of Ala. 1975, § 41-9-141

**History:** New, Filed: Apr 17, 1997: Certified Aug 29, 1997: Effective Oct 3, 1997

#### **170-X-5-.02 EVIDENCE of BIDDER'S LICENSE.**

When the cost of the work exceeds the amount requiring licensing pursuant to Title 34, Chapter 8, Code of Alabama, 1975, each bidder must show evidence of this license before bidding or the bid shall not be received or considered. The

**STATE OF ALABAMA**

**JEFFERSON COUNTY**

**ADDENDUM TO AGREEMENT  
BETWEEN OWNER AND ARCHITECT**

**WITNESSETH THIS ADDENDUM TO AGREEMENT BETWEEN OWNER AND ARCHITECT**, made and entered into on this the 26<sup>th</sup> day of March, 2013, by and between the City of Vestavia Hills, Alabama, a municipal corporation, as “Owner,” and Williams Blackstock Architects, P.C., as “Architect.”

**WITNESSETH THESE RECITALS:**

**WHEREAS**, the City of Vestavia Hills, Alabama (“City”) is presently negotiating a Real Estate Sales Contract by and between Vestavia Plaza, LLC, as “Seller,” and the City of Vestavia Hills, Alabama, as “Purchaser,” for the sale of the real estate and improvements situated at 1034 Montgomery Highway, Vestavia Hills, Alabama 35216 in the Vestavia Plaza Shopping Center sometimes known as the “Food World” property consisting of approximately 1.792± acres; and

**WHEREAS**, a copy of the legal description of said property is attached hereto, marked as Exhibit 1 and is incorporated into this Addendum by reference as though set out fully herein and shall hereinafter referred to as “the Property”; and

**WHEREAS**, if the sale of the Property is closed, then in such event the City plans to build a new City Hall on said Property; and

**WHEREAS**, on March 25, 2013, the City Council approved and adopted Resolution Number 4421, which selected Williams Blackstock Architects, P.C. to be the Architect for the planned construction of a new Municipal City Hall on the Property and approved the execution and delivery of an Architect Contract by and between the City, as “Owner,” and Williams Blackstock Architects, P.C., as “Architect” (the “Agreement”); and

**WHEREAS**, both the City and the Architect executed and delivered the Agreement on March 26, 2013; and

**WHEREAS**, the City and Architect wish to amend the Agreement by the execution and delivery of this Addendum.

**NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:** That the Owner and Architect hereby mutually and expressly amend the contract as set forth below.

Notwithstanding anything contained in the Agreement to the contrary, the Owner and Architect agree to add the following terms, provisions and conditions to the said Agreement:

**A. PREPARATION OF CONSTRUCTION CONTRACT:** The Architect shall prepare the Construction Contract for acceptance and execution by the Contractor and Owner and the forms for the Performance Bond and the Labor and Materials Bond as required by the Public Works Law set forth in Title 39-1-1, et seq., *Code of Alabama, 1975*. The Construction Contract and the forms for the Performance Bond and Labor and Materials Bond shall constitute a part of the drawings, plans, specifications, project manual, contract documents and other bid documents submitted to prospective bidders as referred to in the advertisement for bids.

**B. ADVERTISEMENT FOR BIDS:** The Architect shall prepare the advertisement for bids and have it appropriately published in newspapers all in accordance with the requirements of the Alabama Public Works Law set forth at Title 39-2-2, *Code of Alabama, 1975*. The Owner will either pay for the publication directly to the publishers or reimburse the Architect for publications as a reimbursable expense.

**C. PREQUALIFICATION OF BIDDERS:** The Architect shall prequalify contractors who wish to bid on the work.

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

**E. CONTINGENCY:**

(a) The completion of the work by the Architect described in the Architect Agreement, dated March 26, 2013, is subject to and contingent upon the City of Vestavia Hills, Alabama closing the sale of the property by Vestavia Plaza, LLC and acquiring fee simple title to the property.

(b) If the City does not close the sale and acquire title to the property as aforesaid, then in such event the following things shall occur:

(i) The City shall provide written notice to Architect that it will not close the sale and acquire fee simple title to the property; and

(ii) The Architect Agreement shall automatically terminate on the date of said written notice and have no further force and effect, and become null and void; and

(iii) The Architect shall be compensated only for those services and work completed prior to the termination described in section (ii) above; and

(iv) The City shall not be liable to the Architect for any compensation for work that would have occurred subsequent to the date of termination.

**F. SEVERABILITY:** If any provision of this Agreement, as amended, or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this contract or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each provision shall be valid and enforceable to the fullest extent permitted by law.

**IN WITNESS WHEREOF,** the City of Vestavia Hills, Alabama and Williams Blackstock Architects, P.C. have hereunto set their hands and seals all being done in duplicate originals with one (1) original being delivered to each party on this the 26<sup>th</sup> day of March, 2013.

**OWNER:**  
CITY OF VESTAVIA HILLS, ALABAMA  
A Municipal Corporation

By \_\_\_\_\_  
Alberto C. Zaragoza, Jr.  
Its Mayor

By \_\_\_\_\_  
Randy Robertson  
Its City Manager

ATTESTED

By \_\_\_\_\_

**ARCHITECT:**  
WILLIAMS BLACKSTOCK ARCHITECTS, P.C.

By \_\_\_\_\_  
Its \_\_\_\_\_

ATTESTED:

By \_\_\_\_\_

**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, a municipal corporation, is signed to the foregoing Addendum to Agreement Between Owner and Architect, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, 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 26<sup>th</sup> day of March, 2013.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

SEAL



**STATE OF ALABAMA  
JEFFERSON COUNTY**

**ACKNOWLEDGMENT**

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Randy Robertson, whose name as City Manager of the City of Vestavia Hills, Alabama, a municipal corporation, is signed to the foregoing Addendum to Agreement Between Owner and Architect, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, 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 26<sup>th</sup> day of March, 2013.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

SEAL

**STATE OF ALABAMA  
JEFFERSON COUNTY**

**ACKNOWLEDGMENT**

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that \_\_\_\_\_ whose name as \_\_\_\_\_ of Williams Blackstock Architects, P.C. is signed to the foregoing Addendum to Agreement Between Owner and Architect and who is known to me, acknowledged before me on this day that, being informed of the contents of the contract, (s)he, as such officer and with full authority, executed the same voluntarily for and as the act of said Williams Blackstock Architects, P.C.

Given under my hand and official seal, this the 26<sup>th</sup> day of March, 2013.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

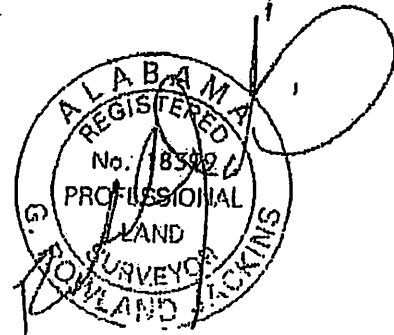
SEAL

**Proposed Parcel**

A parcel of land situated in the Northeast Quarter of the Southwest Quarter of Section 30, Township 18 South, Range 2 West, Huntsville Meridian, Jefferson County, Alabama; said parcel also being a part of Lot 2 according to Cobb's Addition to Vestavia Hills as recorded in Map Book 86, Page 83 in the office of the Judge Probate, Jefferson County, Alabama and being more particularly described as follows:

BEGIN at the southwest corner of Lot 2 according to Cobb's Addition to Vestavia Hills as recorded in Map Book 86, Page 83 in the office of the Judge Probate, Jefferson County, Alabama; thence run in a northerly direction along the west line of Lot 2 for a distance of 137.11 feet (plat-137.45 feet); thence turn an interior angle to the left of 105 degrees 01 minutes 18 seconds (plat 105 degrees 02 minutes 46 seconds) and leaving said west line run in a northeasterly direction along the northwest line of said Lot 2 for a distance of 390.75 feet; thence turn an interior angle to the left of 90 degrees 02 minutes 59 seconds and leaving said northwest line run in a southeasterly direction for a distance of 130.00 feet; thence turn an interior angle to the left of 137 degrees 26 minutes 45 seconds and run in a southwesterly direction for a distance of 156.42 feet to the south line of said Lot 2; thence turn an interior angle to the left of 113 degrees 06 minutes 43 seconds; and run in a westerly direction along said south line for a distance of 340.00 feet to the POINT OF BEGINNING.

Containing 1.792 acres (78,045 square feet) more or less.



7-6-12

# WILLIAMS · BLACKSTOCK

A R C H I T E C T S

February 14, 2013 (revised)

Mr. Randy Robertson  
City Manager  
City of Vestavia Hills  
513 Montgomery Highway  
Vestavia Hills, Alabama 35216

Re: Vestavia Hills – New City Hall – Architectural & Engineering Services Proposal

Mr. Robertson,

We appreciate the opportunity to provide you with this proposal for architectural and engineering services for the proposed City Hall for Vestavia Hills. We have enjoyed working with the City on this effort over the past several months and are pleased to be selected to help the City realize this unique opportunity to create an economical solution that also provides a signature statement that will transform this area and become an iconic New City Hall located in the heart of Vestavia Hills. .

## SCOPE OF WORK

We understand that the proposed project will include the new construction and/or potential renovation of an existing structure to relocate all City Hall functions currently housed in the existing City Hall facility, with a total square footage of approximately 40,000 to 50,000sf.

The site for this facility has not yet been determined and we will work with you to study various sites for the best "potential" fit. Some of the previous potential sites include a renovation/addition to the City Center, or possibly the previous Food World site. We will work with you to identify the best site to make this project a reality.

## BUDGET

We understand the construction cost is not yet set and could range from approximately \$6,000,000 to \$11,000,000 based on our current understanding of the project scope. The construction cost range will be whittled down once the site is selected and it is determined to consist of renovations, new construction, or a combination of both.

## PROJECT TEAM

We have selected a team of engineers to address all of the unique design needs for the New City Hall. We are happy to work with you to select the best engineers for your project, but at this time we have identified the following engineering team:

Our consultants include:

- Structural Design Group – Structural Engineering
- MJR Senter – Mechanical Engineering
- Sajjadih Engineering Group – Electrical Engineering
- LBYD, Inc. – Civil Engineering
- Johnson & Co. – Landscape Architecture
- Skipper Consulting – Traffic Consultant

## **BASIC SERVICES**

We propose to provide the basic architectural services in accordance with the American Institute of Architects (AIA) Standard Agreement between Owner and Architect. These basic services include Architectural design, Interior design, Structural, Mechanical, and Electrical consultant engineering services.

## **ADDITIONAL SERVICES**

Some additional services will be required to complete the project which are normally not part of the basic architectural services outlined above. These services may include:

- ADEM Permit Fee
- Detailed Project Cost Estimating
- Traffic consultant
- Boundary & Topographic Survey
- Property Subdivision Survey
- Geotechnical Subsurface Report
- Construction Materials Testing
- Utility extensions to site outside of site boundary
- Elevator consultant
- Hazardous Materials consultant
- Primary power distribution
- Color Perspective Renderings
- Furniture Design
- Artwork and Accessories
- Security System Coordination
- Audio Visual
- LEED Certification & Commissioning

## **PHASES OF SERVICE**

Our work will be performed in two phases based on your need to finalize the property acquisition details prior to proceeding with complete design services. The phases of work include:

### Phase 1: Preliminary Design Confirmation/Space Programming\*:

- A. Space Programming:
- Meet with representatives from each City Department to identify all current and projected future space needs for offices, storage, work areas, and other needs critical to their daily operations.
  - Prepare a space summary description for each department documenting their space needs, staff needs, office sizes, and adjacencies with other departments.
  - Develop a space program needs list that compiles all departmental needs into a comprehensive spreadsheet to identify the overall building square footage needs for both current and projected future needs.
  - The final document will be used to determine the necessary square footage of the new City Hall by identifying all current and future functions and space needs, including potential expansion needs.

- Work with the various City departments to confirm the general departmental locations within the new facility, as well as the general site layout.
  - Review layout options with the Police Department to resolve primary concerns such as the location of the jail and sally port.
- B. Property Acquisition Details:
- Work with both the City and any current land owner to assist in identifying and finalizing the details necessary for property acquisition.
  - Determine the overall acreage/square footage amount and property lines to be purchased.
  - Discuss overall construction phasing and schedule needs for both parties.

*\*Note: Based on the preliminary nature of these Phase I services, if the City chooses to stop pursuing a new and/or renovated City Hall during this phase you can stop our work at that time and we will work with you to capture our current cost at the time work was officially stopped so that our costs are covered and the City does not continue to incur additional costs if the project does not proceed.*

Phase 2: Schematic Design through Construction Administration:

Once the Phase 1 work has been completed for the City to finalize the property acquisition details, we will proceed into the comprehensive design work as follows:

A. *SCHEMATIC DESIGN (25%)*

- Develop site plan scenarios for optimization of site.
- Prepare schematic floor plans and exterior elevation schemes.
- Present schematic plans, elevations and site plans to Owner and revise as required to develop the optimum scheme.
- Work with you to determine the preliminary construction cost and make adjustments in cost as required.
- Meet with Owner at periodic intervals to discuss progress and gain input and approvals at each step of the way.

B. *DESIGN DEVELOPMENT (15%)*

- Based on approved Schematic Design Documents and any adjustments authorized by the Owner in the program, schedule or construction budget, prepare hard line drawings that fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, materials and such other elements.
- Develop exterior elevations to show materials and character of façade in detail.
- Develop interior elevation design drawings showing plans in more detail including cross sections and wall sections.
- Develop outline drawings of mechanical, electrical, plumbing and fire protection systems.
- Define structural system.
- Prepare materials palette of interior selections showing character and design for interior components of the project.
- Prepare a more detailed opinion of probable cost and work with you to make adjustments in design as required based on the cost.

*C. CONSTRUCTION DOCUMENTS (35%)*

- Prepare final construction documents including drawings and specifications.
- Provide interior design services consisting of the selection of finishes throughout the facility, including preparation of palette boards and necessary meetings and modifications as required.
- Final review of probable construction cost before final pricing.

*D. BID / NEGOTIATION (5%)*

- Issue drawings, answer contractor questions, issue addendum or clarifications during bidding.
- Identify cost reduction options as part of negotiation or as alternates as project is being bid.
- Assist Owner in preparing an Owner/Contractor Agreement.

*E. CONSTRUCTION ADMINISTRATION (20%)*

- Observe construction on regular basis for compliance with contract documents.
- Meet at site regularly to review construction progress with meeting at least one month relative to the Contractor's Application for Payment.
- Coordinate with Contractor throughout construction on field questions and clarifications.
- Review and approve contractor submittals including shop drawings and material submittals.
- Review and approve pay requests to confirm percentage complete is commensurate with work completed on site.
- Process any change orders to contract required or desired for changes in the work or schedule.
- Review completed project by conducting final review and punch list of work to be completed for final payment and release of retainage.
- Oversee submittal of project close out documents and record copies.

**FEE**

Phase 1: We propose a lump sum fee of \$41,000 for the space programming and conceptual planning, and property acquisition as outlined above.

Phase 2: For basic services for the design of the building including Schematic Design through Construction Administration Phases outlined above we propose a percentage fee of 5.6% of the cost of the Work. Note that this percentage fee is over 2% less than what the State Building Commission Fee schedule dictates for this project and is a significant discount for the City of Vestavia Hills. In addition, interior design is typically an additional service but we are providing in our basic services an additional value to the City.

**ADDITIONAL SERVICES**

Additional Services is for scope outside the limits of the typical Basic Services, changes in the scope of work that were unanticipated or additional work not originally contemplated under this agreement. We propose to invoice for these services, if required and authorized by the Owner, at the lump sum fees proposed below or at an hourly rate (per attached hourly rates) if the scope is not clearly defined. Additional Services of our consultants will be invoiced at 1.2 times direct cost. The following additional services are required and are outlined below.

• Programming	\$41,000 (included in Ph. 1 Services above)
• Civil Engineering	\$39,000
• Landscape Architect	\$60,000
• ADEM Permit Fee	\$4,000
• Detailed Project Cost Estimating	\$15,600 (professional cost estimator)
• Traffic consultant	\$12,000 (elective service if needed)
• Boundary & Topographic Survey	\$14,000 to \$18,000 range (or by Owner)
• Property Subdivision Survey	TBD (determine need as project develops)
• Geotechnical Subsurface Report	TBD or by Owner
• Construction Materials Testing	by Owner
• Utility extensions to site outside of site boundary	Not anticipated
• Elevator consultant	Not anticipated
• Hazardous Materials consultant	Not anticipated
• Primary power distribution	TBD if necessary
• Color Perspective Renderings	\$7,500
• Furniture Design	\$50,000
• Artwork and Accessories	\$10,000 (elective service)
• Security System Coordination	\$18,000
• Audio Visual	\$10,000
• LEED – USGBC Submittal Fees	\$35,000 (elective service if LEED is pursued)
• LEED – Certification Submittals & Energy Studies	\$88,000 (elective service if LEED is pursued)
• LEED – Commissioning	\$28,000 (elective service if LEED is pursued)

## SUMMARY DESCRIPTION

### Programming

See description above.

### Color Perspective Renderings

Watercolor and/or digital renderings will be produced of the final design to be used for public presentations and public awareness.

### Furniture Design

Our team will review new goals for furniture and equipment, offer alternatives available and develop bidding packages to competitively price the final selection. We will coordinate delivery and installation of new furniture requirement.

### Artwork and Accessories

Our team will coordinate all new and/or relocated artwork and displays necessary to fully furnish the new City Hall.

### Security System Coordination

Our team will coordinate special layout and requirements such as power for security equipment, special design, and coordination for seamless integration of systems into architectural solution.

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Audio Visual

Our team will coordinate locations, details, power requirements and special detailing required for integration of AV system.

LEED and Commissioning

As part of our Basic Services we approach each project seeking to incorporate sustainable and energy efficient features regardless of pursuing LEED Certification. We can also pursue LEED certification as an additional service, which would include a comprehensive development of the LEED checklist and cost options for each LEED feature for you to decide what sustainable features to include. Our additional services would include the extensive paperwork, substantiation and submittals necessary to register your project with the USGBC (US Green Building Council) and achieve LEED certification. In addition, the LEED process would require building commissioning and energy studies by the mechanical engineering engineer. These studies evaluate the energy savings for LEED features relative to the mechanical systems and the exterior envelope of the building so that the energy savings are substantiated to be submitted to USGBC for LEED certification.

**REIMBURSABLE EXPENSES**

Reimbursable expenses are in addition to the fee and are for project-related expenses incurred in the City's behalf such as postage, printing and reproductions during the course of the project. We propose to invoice for reimbursable expenses at 1.15 times the direct cost of plotting and printing associated with the project.

If you find this proposal acceptable we propose to formalize our agreement on an American Institute of Architects AIA Standard Form of Agreement between Owner and Architect. We enjoyed working with you during this summer and fall to assist in dreaming what your New City Hall can be, and we appreciate the opportunity to provide you with this proposal and look forward to an opportunity to work with you and the City of Vestavia Hills. If you have any questions, please don't hesitate to call

Sincerely,



Stephen Allen, AIA

Enclosures: Architect's Hourly Rates



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### 2013 TYPICAL HOURLY RATES SCHEDULE

Williams • Blackstock Architects, P.C.

Principal ...	\$250.00 / hour
Director of Technical Resources ...	\$150.00 / hour
Senior Project Manager ...	\$140.00 / hour
Project Manager ...	\$ 130.00 / hour
Assistant Project Manager...	\$ 100.00 / hour
Staff Architect / Interior Designer – Level 1 ...	\$ 90.00 / hour
Staff Architect / Interior Designer – Level 2 ...	\$ 65.00 / hour
Administrative - Staff...	\$ 60.00 / hour
Intern / Draftsmen...	\$ 45.00 / hour

# AIA<sup>®</sup> Document B101<sup>™</sup> – 2007

## ***Standard Form of Agreement Between Owner and Architect***

**AGREEMENT** made as of the Fourteenth day of February in the year Two Thousand Thirteen  
*(In words, indicate day, month and year.)*

**BETWEEN** the Architect's client identified as the Owner:  
*(Name, legal status, address and other information)*

City of Vestavia Hills  
513 Montgomery Highway  
Vestavia Hills, AL 35216

and the Architect:  
*(Name, legal status, address and other information)*

Williams Blackstock Architects, PC  
2204 1<sup>st</sup> Avenue South, Suite 200  
Birmingham, AL 35233

for the following Project:  
*(Name, location and detailed description)*

Vestavia Hills City Hall  
Vestavia Hills, Alabama  
The new construction and/or potential renovation of an existing structure to relocate all City Hall functions currently housed in the existing City Hall facility, with a total square footage of approximately 40,000 to 50,000sf.

The Owner and Architect agree as follows.

### **ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

TABLE OF ARTICLES

- 1 INITIAL INFORMATION
- 2 ARCHITECT'S RESPONSIBILITIES
- 3 SCOPE OF ARCHITECT'S BASIC SERVICES
- 4 ADDITIONAL SERVICES
- 5 OWNER'S RESPONSIBILITIES
- 6 COST OF THE WORK
- 7 COPYRIGHTS AND LICENSES
- 8 CLAIMS AND DISPUTES
- 9 TERMINATION OR SUSPENSION
- 10 MISCELLANEOUS PROVISIONS
- 11 COMPENSATION
- 12 SPECIAL TERMS AND CONDITIONS
- 13 SCOPE OF THE AGREEMENT

EXHIBIT A INITIAL INFORMATION

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Article 1 and in optional Exhibit A, Initial Information:

*(Complete Exhibit A, Initial Information, and incorporate it into the Agreement at Section 13.2, or state below Initial Information such as details of the Project's site and program, Owner's contractors and consultants, Architect's consultants, Owner's budget for the Cost of the Work, authorized representatives, anticipated procurement method, and other information relevant to the Project.)*

§ 1.2 The Owner's anticipated dates for commencement of construction and Substantial Completion of the Work are set forth below:

.1 Commencement of construction date:

| To be determined

.2 Substantial Completion date:

| To be determined

§ 1.3 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services and the Architect's compensation.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement.



§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project. The Architect makes no other representations or warranties, whether expressed or implied, with respect to the services rendered hereunder.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.5 The Architect shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost:

*(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)*

.1 General Liability

\$1,000,000 per occurrence; \$2,000,000 aggregate

.2 Automobile Liability

\$1,000,000 per occurrence; \$2,000,000 aggregate

.3 Workers' Compensation

Per Statutory limits

.4 Professional Liability

\$1,000,000 per claim; \$2,000,000 aggregate

### ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.



§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution made without the Architect's approval. The Owner shall defend, indemnify and hold the Architect harmless from any claims or demands arising out of a directive or substitution made against the Architect's advice.

§ 3.1.5 The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

### § 3.2 SCHEMATIC DESIGN PHASE SERVICES

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement or delivery method and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project's requirements agreed upon with the Owner, the Architect shall prepare and present for the Owner's approval a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall discuss with the Owner environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other environmentally responsible design services under Article 4.

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule and budget for the Cost of the Work.

§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

### § 3.3 DESIGN DEVELOPMENT PHASE SERVICES

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building



systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work.

§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

#### § 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms.

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

#### § 3.5 BIDDING OR NEGOTIATION PHASE SERVICES

##### § 3.5.1 GENERAL

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

##### § 3.5.2 COMPETITIVE BIDDING

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by

- .1 procuring the reproduction of Bidding Documents for distribution to prospective bidders;
- .2 distributing the Bidding Documents to prospective bidders, requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders;
- .3 organizing and conducting a pre-bid conference for prospective bidders;
- .4 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda; and
- .5 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.



§ 3.5.2.3 The Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

### § 3.5.3 NEGOTIATED PROPOSALS

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.

§ 3.5.3.2 The Architect shall assist the Owner in obtaining proposals by

- .1 procuring the reproduction of Proposal Documents for distribution to prospective contractors, and requesting their return upon completion of the negotiation process;
- .2 organizing and participating in selection interviews with prospective contractors; and
- .3 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.5.3.3 The Architect shall consider requests for substitutions, if the Proposal Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective contractors.

### § 3.6 CONSTRUCTION PHASE SERVICES

#### § 3.6.1 GENERAL

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™–2007, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201–2007, those modifications shall not affect the Architect’s services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor’s failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect’s negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.3, the Architect’s responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

#### § 3.6.2 EVALUATIONS OF THE WORK

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.



§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 The Initial Decision Maker, as defined in AIA Document A201–2007, Shall be an Architect in the employ of the Architect of Record and shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

### § 3.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

### § 3.6.4 SUBMITTALS

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review.

§ 3.6.4.2 In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.



§ 3.6.4.4 Subject to the provisions of Section 4.3, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

**§ 3.6.5 CHANGES IN THE WORK**

§ 3.6.5.1 The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to the provisions of Section 4.3, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

**§ 3.6.6 PROJECT COMPLETION**

§ 3.6.6.1 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

**ARTICLE 4 ADDITIONAL SERVICES**

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Additional Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. *(Designate the Additional Services the Architect shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)*

Additional Services	Responsibility <i>(Architect, Owner or Not Provided)</i>	Location of Service Description <i>(Section 4.2 below or in an exhibit attached to this document and identified below)</i>
§ 4.1.1 Programming	Architect	See Attachment 'B'



§ 4.1.2	Multiple preliminary designs	Architect	See Attachment 'B'
§ 4.1.3	Measured drawings	Not required	
§ 4.1.4	Existing facilities surveys	Not required	See Attachment 'B'
§ 4.1.5	Site Evaluation and Planning (B203™–2007)	Not required	See Attachment 'B'
§ 4.1.6	Building information modeling	Not required	
§ 4.1.7	Civil engineering	Architect	See Attachment 'B'
§ 4.1.8	Landscape design	Architect	See Attachment 'B'
§ 4.1.9	Architectural Interior Design (B252™–2007)	Architect	See Attachment 'B'
§ 4.1.10	Value Analysis (B204™–2007)	Not required	
§ 4.1.11	Detailed cost estimating	Architect	See Attachment 'B'
§ 4.1.12	On-site project representation	Not required	
§ 4.1.13	Conformed construction documents	Not required	
§ 4.1.14	As-Designed Record drawings	Architect	
§ 4.1.15	As-Constructed Record drawings	Contractor	
§ 4.1.16	Post occupancy evaluation	Not required	
§ 4.1.17	Facility Support Services (B210™–2007)	Not required	
§ 4.1.18	Tenant-related services	Not required	
§ 4.1.19	Coordination of Owner's consultants	Architect	See Attachment 'B'
§ 4.1.20	Telecommunications/data design	Owner	
§ 4.1.21	Security Evaluation and Planning (B206™–2007)	Owner	
§ 4.1.22	Commissioning (B211™–2007)	Not required	See Attachment 'B'
§ 4.1.23	Extensive environmentally responsible design	Not required	
§ 4.1.24	LEED® Certification (B214™–2007)	Not required	See Attachment 'B'
§ 4.1.25	Fast-track design services	Not required	
§ 4.1.26	Historic Preservation (B205™–2007)	Not required	
§ 4.1.27	Furniture, Furnishings, and Equipment Design (B253™–2007)	Architect	See Attachment 'B'
4.1.28	ADEM Permit Fee	Architect	See Attachment 'B'
4.1.29	Traffic Consultant	Architect	See Attachment 'B'
4.1.30	Boundary & Topographic Survey	Owner	See Attachment 'B'
4.1.31	Property Subdivision Survey	TBD	
4.1.32	Geotechnical Subsurface Report	Owner	See Attachment 'B'
4.1.33	Construction Materials Testing	Owner	
4.1.34	Utility Extensions outside of site boundary	Not required	
4.1.35	Elevator Consultant	Not required	
4.1.36	Hazardous Materials Consultant	Not required	
4.1.37	Building Envelope Consultant	Not required	
4.1.38	Primary Power Distribution	Not required	
4.1.39	Color Perspective Renderings	Architect	See Attachment 'B'

§ 4.2 Insert a description of each Additional Service designated in Section 4.1 as the Architect's responsibility, if not further described in an exhibit attached to this document.

Refer to Exhibit B for a description of proposed Additional Services and associated cost proposals.

§ 4.3 Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.3 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.3.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following services until the Architect receives the Owner's written authorization:



- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;
- .3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 Preparing digital data for transmission to the Owner's consultants and contractors, or to other Owner authorized recipients;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .7 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .8 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .9 Evaluation of the qualifications of bidders or persons providing proposals;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- .11 Assistance to the Initial Decision Maker, if other than the Architect.

§ 4.3.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services:

- .1 Reviewing a Contractor's submittal out of sequence from the submittal schedule agreed to by the Architect;
- .2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker;
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or
- .6 To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion identified in Initial Information, whichever is earlier.

§ 4.3.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 Three ( 3 ) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor
- .2 Bi-monthly ( every two to three weeks ) visits to the site by the Architect over the duration of the Project during construction
- .3 Two ( 2 ) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 Two ( 2 ) inspections for any portion of the Work to determine final completion

§ 4.3.4 If the services covered by this Agreement have not been completed within thirty ( 30 ) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.



## ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§ 5.2 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.6 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants maintain professional liability insurance as appropriate to the services provided.

§ 5.7 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.8 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.9 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.10 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor and the Architect's consultants through the Architect about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Architect of any direct communications that may affect the Architect's services.

§ 5.11 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.



§ 5.12 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

## ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work or from any estimate of the Cost of the Work or evaluation prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the program and scope of the Project; and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requests detailed cost estimating services, the Architect shall provide such services as an Additional Service under Article 4.

§ 6.4 If the Bidding or Negotiation Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, through no fault of the Architect, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect, without additional compensation, shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6. If the Architect is required to make revisions to the Contract Documents, the Architect shall be entitled to compensation, as an Additional Service for changes to Contract Documents that result from (1) scope changes directed by the Owner that materially impact costs, (2) market fluctuation in the price of construction goods and services that could not have been reasonably anticipated by Architect, (3) revisions to the Contract Documents directed by the Owner that resulted in an increase in the Construction Budget, or (4) matters beyond the reasonable control of Architect.



## ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service (including without limitation any future additions or alterations to the Project) without retaining and maintaining the retention of the author of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to defend, indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

## ARTICLE 8 CLAIMS AND DISPUTES

### § 8.1 GENERAL

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2007, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

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§ 8.2 MEDIATION

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:  
*(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)*

- Arbitration pursuant to Section 8.3 of this Agreement
- Litigation in a court of competent jurisdiction
- Other (Specify)

*(Paragraphs deleted)*  
§

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the

Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 9.7.

§ 9.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect.

§ 9.8 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 11.9.

## ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2007, General Conditions of the Contract for Construction.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. The Architect shall not, in connection with any such assignment by the Owner, be required to execute any documents that in any way might, in the sole judgment of the Architect, increase the Architect's contractual or legal obligations or risks, or the availability or costs of its professional or general liability insurance.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.



§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site. In the event that the Architect or any other party encounters asbestos or hazardous or toxic materials at the job site, or should it become known in any way that certain materials may be present at the job site or any adjacent areas that may affect the performance of the Architect's services, the Architect may, at its option and without liability for consequential or any other damages, suspend performance of service on the Project until the Owner retains appropriate specialist consultant's or contractor's to identify, abate and/or remove the asbestos or hazardous or toxic material, and warrant that the job site is in full compliance with applicable laws and regulations.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

§ 10.8 If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information. This section shall not apply to information in whatever form that comes into the public domain, nor shall it restrict the Architect or Owner from giving notices required by law or complying with an order to provide information or data when such order is issued by a court, administrative agency or other authority with proper jurisdiction, or if it is reasonably necessary for the Architect or Owner to defend itself from any suit or claim.

**ARTICLE 11 COMPENSATION**

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

*(Insert amount of, or basis for, compensation.)*

- Phase 1: \$41,000 (lump sum)
- Phase 2: 5.6% of the cost of the Work

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Architect as follows:  
*(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)*

Programming	\$41,000 (included in Ph. 1 Services above)
Civil Engineering	\$39,000
Landscape Architect	\$60,000
ADEM Permit Fee	\$4,000
Detailed Project Cost Estimating	\$15,600 (professional cost estimator)
Traffic consultant	\$12,000 (elective service if needed)
Boundary & Topographic Survey	\$14,000 to \$18,000 range (or by Owner)
Property Subdivision Survey	TBD (determine need as project develops)
Geotechnical Subsurface Report	TBD or by Owner
Construction Materials Testing	by Owner
Utility extensions to site outside of site boundary	Not anticipated
Elevator consultant	Not anticipated
Hazardous Materials consultant	Not anticipated
Primary power distribution	TBD if necessary
Color Perspective Renderings	\$7,500
Furniture Design	\$50,000
Artwork and Accessories	\$10,000 (elective service)
Security System Coordination	\$18,000
Audio Visual	\$10,000

LEED – USGBC Submittal Fees	\$35,000 (elective service if LEED is pursued)
LEED – Certification Submittals & Energy Studies	\$88,000 (elective service if LEED is pursued)
LEED – Commissioning	\$28,000 (elective service if LEED is pursued)

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows:  
*(Insert amount of, or basis for, compensation.)*

See Attachment 'B', or as noted above

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus twenty percent ( 20 %), or as otherwise stated below:

§ 11.5 Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows:

Schematic Design Phase	twenty-five	percent (	25	%)
Design Development Phase	fifteen	percent (	15	%)
Construction Documents Phase	thirty-five	percent (	35	%)
Bidding or Negotiation Phase	five	percent (	5	%)
Construction Phase	twenty	percent (	20	%)
<hr/>				
Total Basic Compensation	one hundred	percent (	100	%)

§ 11.6 When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the Work for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.  
*(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

Employee or Category	Rate
Principal	\$250 per hour
Director of Technical Resources	\$150
Senior Project Manager	\$140
Project Manager	\$130
Assistant Project Manager	\$100
Staff Architect / Interior Designer – level 1	\$90
Staff Architect / Interior Designer – level 2	\$65
Administration	\$60
Intern / Draftsmen	\$45

**§ 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES**

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:



- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses; and
- .11 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus fifteen percent ( 15 %) of the expenses incurred.

#### § 11.9 COMPENSATION FOR USE OF ARCHITECT'S INSTRUMENTS OF SERVICE

If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Section 9.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project as follows:

#### § 11.10 PAYMENTS TO THE ARCHITECT

§ 11.10.1 An initial payment of zero (\$ 0.00 ) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid thirty-one ( 31 ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.  
*(Insert rate of monthly or annual interest agreed upon.)*

Prime rate of interest as advertised by BBVA Compass plus 2%

§ 11.10.3 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.10.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

#### ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

Article 12.1: Neither the Owner nor the Architect shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of, or connected in any way to the Project or this Agreement. This mutual waiver includes, but is not limited to, damages related to loss of use, loss of profits, loss of income, loss of reputation, unrealized savings or diminution of property value and shall apply to any cause of action including negligence, strict liability, breach of contract and breach of warranty.

**ARTICLE 13 SCOPE OF THE AGREEMENT**

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents listed below:

- .1 AIA Document B101™–2007, Standard Form Agreement Between Owner and Architect
- .2 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:
  
- .3 Other documents:  
*(List other documents, if any, including Exhibit A, Initial Information, and additional scopes of service, if any, forming part of the Agreement.)*

| Exhibit B - Description and Cost of Proposed Additional Services

This Agreement entered into as of the day and year first written above.

**OWNER**

**ARCHITECT**

\_\_\_\_\_  
*(Signature)*

Randy Robertson, City Manager

\_\_\_\_\_  
*(Printed name and title)*

\_\_\_\_\_  
*(Signature)*

Stephen Allen , Principal

\_\_\_\_\_  
*(Printed name and title)*

# **Additions and Deletions Report for** **AIA<sup>®</sup> Document B101<sup>™</sup> – 2007**

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 08:42:26 on 02/15/2013.

## **PAGE 1**

**AGREEMENT** made as of the Fourteenth day of February in the year Two Thousand Thirteen

...

City of Vestavia Hills  
513 Montgomery Highway  
Vestavia Hills, AL 35216

...

Williams Blackstock Architects, PC  
2204 1<sup>st</sup> Avenue South, Suite 200  
Birmingham, AL 35233

...

Vestavia Hills City Hall  
Vestavia Hills, Alabama  
The new construction and/or potential renovation of an existing structure to relocate all City Hall functions currently housed in the existing City Hall facility, with a total square footage of approximately 40,000 to 50,000sf.

## **PAGE 2**

To be determined

...

To be determined

## **PAGE 3**

**§ 2.2** The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project. The Architect makes no other representations or warranties, whether expressed or implied, with respect to the services rendered hereunder.

...

\$1,000,000 per occurrence; \$2,000,000 aggregate



...

\$1,000,000 per occurrence; \$2,000,000 aggregate

...

Per Statutory limits

...

\$1,000,000 per claim; \$2,000,000 aggregate

**PAGE 4**

§ 3.1.4 The Architect shall not be responsible for an Owner’s directive or substitution made without the Architect’s approval. The Owner shall defend, indemnify and hold the Architect harmless from any claims or demands arising out of a directive or substitution made against the Architect’s advice.

...

§ 3.2.5.1 The Architect shall ~~consider~~ discuss with the Owner environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner’s program, schedule and budget for the Cost of the Work. The Owner may obtain other environmentally responsible design services under Article 4.

**PAGE 7**

§ 3.6.2.5 ~~Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201–2007, the Architect~~ The Initial Decision Maker, as defined in AIA Document A201–2007, Shall be an Architect in the employ of the Architect of Record and shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

**PAGE 8**

§ 4.1.1	Programming	<u>Architect</u>	<u>See Attachment 'B'</u>
§ 4.1.2	Multiple preliminary designs	<u>Architect</u>	<u>See Attachment 'B'</u>
§ 4.1.3	Measured drawings	<u>Not required</u>	
§ 4.1.4	Existing facilities surveys	<u>Not required</u>	<u>See Attachment 'B'</u>
§ 4.1.5	Site Evaluation and Planning (B203™–2007)	<u>Not required</u>	<u>See Attachment 'B'</u>
§ 4.1.6	Building information modeling	<u>Not required</u>	
§ 4.1.7	Civil engineering	<u>Architect</u>	<u>See Attachment 'B'</u>
§ 4.1.8	Landscape design	<u>Architect</u>	<u>See Attachment 'B'</u>
§ 4.1.9	Architectural Interior Design (B252™–2007)	<u>Architect</u>	<u>See Attachment 'B'</u>
§ 4.1.10	Value Analysis (B204™–2007)	<u>Not required</u>	
§ 4.1.11	Detailed cost estimating	<u>Architect</u>	<u>See Attachment 'B'</u>
§ 4.1.12	On-site project representation	<u>Not required</u>	
§ 4.1.13	Conformed construction documents	<u>Not required</u>	
§ 4.1.14	As-Designed Record drawings	<u>Architect</u>	
§ 4.1.15	As-Constructed Record drawings	<u>Contractor</u>	
§ 4.1.16	Post occupancy evaluation	<u>Not required</u>	
§ 4.1.17	Facility Support Services (B210™–2007)	<u>Not required</u>	
§ 4.1.18	Tenant-related services	<u>Not required</u>	
§ 4.1.19	Coordination of Owner’s consultants	<u>Architect</u>	<u>See Attachment 'B'</u>
§ 4.1.20	Telecommunications/data design	<u>Owner</u>	
§ 4.1.21	Security Evaluation and Planning (B206™–2007)	<u>Owner</u>	

§ 4.1.22	Commissioning (B211™–2007)	<u>Not required</u>	<u>See Attachment 'B'</u>
§ 4.1.23	Extensive environmentally responsible design	<u>Not required</u>	
§ 4.1.24	LEED® Certification (B214™–2007)	<u>Not required</u>	<u>See Attachment 'B'</u>
§ 4.1.25	Fast-track design services	<u>Not required</u>	
§ 4.1.26	Historic Preservation (B205™–2007)	<u>Not required</u>	
§ 4.1.27	Furniture, Furnishings, and Equipment Design (B253™–2007)	<u>Architect</u>	<u>See Attachment 'B'</u>
4.1.28	ADEM Permit Fee	<u>Architect</u>	<u>See Attachment 'B'</u>
4.1.29	Traffic Consultant	<u>Architect</u>	<u>See Attachment 'B'</u>
4.1.30	Boundary & Topographic Survey	<u>Owner</u>	<u>See Attachment 'B'</u>
4.1.31	Property Subdivision Survey	<u>TBD</u>	
4.1.32	Geotechnical Subsurface Report	<u>Owner</u>	<u>See Attachment 'B'</u>
4.1.33	Construction Materials Testing	<u>Owner</u>	
4.1.34	Utility Extensions outside of site boundary	<u>Not required</u>	
4.1.35	Elevator Consultant	<u>Not required</u>	
4.1.36	Hazardous Materials Consultant	<u>Not required</u>	
4.1.37	Building Envelope Consultant	<u>Not required</u>	
4.1.38	Primary Power Distribution	<u>Not required</u>	
4.1.39	Color Perspective Renderings	<u>Architect</u>	<u>See Attachment 'B'</u>

PAGE 9

Refer to Exhibit B for a description of proposed Additional Services and associated cost proposals.

PAGE 10

- .1 Three ( 3 ) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor
- .2 Bi-monthly ( every two to three weeks ) visits to the site by the Architect over the duration of the Project during construction
- .3 Two ( 2 ) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 Two ( 2 ) inspections for any portion of the Work to determine final completion

§ 4.3.4 If the services covered by this Agreement have not been completed within thirty ( 30 ) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

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§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect, without additional compensation, shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6. If the Architect is required to make revisions to the Contract Documents, the Architect shall be entitled to compensation, as an Additional Service for changes to Contract Documents that result from (1) scope changes directed by the Owner that materially impact costs, (2) market fluctuation in the price of construction goods and services that could not have been reasonably anticipated by Architect, (3) revisions to the Contract Documents directed by the Owner that resulted in an increase in the Construction Budget, or (4) matters beyond the reasonable control of Architect.

PAGE 13

§ 7.3.1 In the event the Owner uses the Instruments of Service (including without limitation any future additions or alterations to the Project) without retaining and maintaining the retention of the author of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising



from such uses. The Owner, to the extent permitted by law, further agrees to defend, indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

PAGE 14

[  ] Litigation in a court of competent jurisdiction

...

### **§ 8.3 ARBITRATION**

~~§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.~~

~~§ 8.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.~~

~~§ 8.3.2 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.~~

~~§ 8.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~

### **§ 8.3.4 CONSOLIDATION OR JOINDER**

~~§ 8.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).~~

~~§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.~~

~~§ 8.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.~~

§



PAGE 15

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. The Architect shall not, in connection with any such assignment by the Owner, be required to execute any documents that in any way might, in the sole judgment of the Architect, increase the Architect's contractual or legal obligations or risks, or the availability or costs of its professional or general liability insurance.

PAGE 16

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site. In the event that the Architect or any other party encounters asbestos or hazardous or toxic materials at the job site, or should it become known in any way that certain materials may be present at the job site or any adjacent areas that may affect the performance of the Architect's services, the Architect may, at its option and without liability for consequential or any other damages, suspend performance of service on the Project until the Owner retains appropriate specialist consultant's or contractor's to identify, abate and/or remove the asbestos or hazardous or toxic material, and warrant that the job site is in full compliance with applicable laws and regulations.

...

§ 10.8 If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information. This section shall not apply to information in whatever form that comes into the public domain, nor shall it restrict the Architect or Owner from giving notices required by law or complying with an order to provide information or data when such order is issued by a court, administrative agency or other authority with proper jurisdiction, or if it is reasonably necessary for the Architect or Owner to defend itself from any suit or claim.

...

Phase 1: \$41,000 (lump sum)  
Phase 2: 5.6% of the cost of the Work

...

Programming	\$41,000 (included in Ph. 1 Services above)
Civil Engineering	\$39,000
Landscape Architect	\$60,000
ADEM Permit Fee	\$4,000
Detailed Project Cost Estimating	\$15,600 (professional cost estimator)
Traffic consultant	\$12,000 (elective service if needed)
Boundary & Topographic Survey	\$14,000 to \$18,000 range (or by Owner)

Property Subdivision Survey	TBD (determine need as project develops)
Geotechnical Subsurface Report	TBD or by Owner
Construction Materials Testing	by Owner
Utility extensions to site outside of site boundary	Not anticipated
Elevator consultant	Not anticipated
Hazardous Materials consultant	Not anticipated
Primary power distribution	TBD if necessary
Color Perspective Renderings	\$7,500
Furniture Design	\$50,000
Artwork and Accessories	\$10,000 (elective service)
Security System Coordination	\$18,000
Audio Visual	\$10,000
LEED – USGBC Submittal Fees	\$35,000 (elective service if LEED is pursued)
LEED – Certification Submittals & Energy Studies	\$88,000 (elective service if LEED is pursued)
LEED – Commissioning	\$28,000 (elective service if LEED is pursued)

PAGE 17

See Attachment 'B', or as noted above

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus twenty percent ( 20 %), or as otherwise stated below:

...

Schematic Design Phase	<u>twenty-five</u>	percent (	<u>25</u>	%)
Design Development Phase	<u>fifteen</u>	percent (	<u>15</u>	%)
Construction Documents Phase	<u>thirty-five</u>	percent (	<u>35</u>	%)
Bidding or Negotiation Phase	<u>five</u>	percent (	<u>5</u>	%)
Construction Phase	<u>twenty</u>	percent (	<u>20</u>	%)

...

<u>Principal</u>	<u>\$250 per hour</u>
<u>Director of Technical Resources</u>	<u>\$150</u>
<u>Senior Project Manager</u>	<u>\$140</u>
<u>Project Manager</u>	<u>\$130</u>
<u>Assistant Project Manager</u>	<u>\$100</u>
<u>Staff Architect / Interior Designer – level 1</u>	<u>\$90</u>
<u>Staff Architect / Interior Designer – level 2</u>	<u>\$65</u>
<u>Administration</u>	<u>\$60</u>
<u>Intern / Draftsmen</u>	<u>\$45</u>

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§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus fifteen percent ( 15 %) of the expenses incurred.

...

§ 11.10.1 An initial payment of zero (\$ 0.00 ) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid thirty-one ( 31 ) days

after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

...

%—Prime rate of interest as advertised by BBVA Compass plus 2%

...

Article 12.1: Neither the Owner nor the Architect shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of, or connected in any way to the Project or this Agreement. This mutual waiver includes, but is not limited to, damages related to loss of use, loss of profits, loss of income, loss of reputation, unrealized savings or diminution of property value and shall apply to any cause of action including negligence, strict liability, breach of contract and breach of warranty.

PAGE 19

Exhibit B - Description and Cost of Proposed Additional Services

...

Randy Robertson, City Manager

Stephen Allen , Principal



## **Certification of Document's Authenticity**

**AIA® Document D401™ – 2003**

I, Stephen Allen, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 08:42:26 on 02/15/2013 under Order No. 4594091230\_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B101™ – 2007, Standard Form of Agreement Between Owner and Architect, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

---

*(Signed)*

---

*(Title)*

---

*(Dated)*



**AIA**<sup>®</sup>

# Document B101™ – 2007 SP Exhibit A

## **Initial Information**

**for the following PROJECT:**

*(Name and location or address)*

Vestavia Hills City Hall  
Vestavia Hills, Alabama

**THE OWNER:**

*(Name, legal status and address)*

City of Vestavia Hills  
513 Montgomery Highway  
Vestavia Hills, AL 35216

**THE ARCHITECT:**

*(Name, legal status and address)*

Williams Blackstock Architects, PC  
2204 1<sup>st</sup> Avenue South, Suite 200  
Birmingham, AL 35233

This Agreement is based on the following information.

*(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable," "unknown at time of execution" or "to be determined later by mutual agreement.")*

### **ARTICLE A.1 PROJECT INFORMATION**

**§ A.1.1** The Owner's program for the Project:

*(Identify documentation or state the manner in which the program will be developed.)*

The new construction and/or potential renovation of an existing structure to relocate all City Hall functions currently housed in the existing City Hall facility, with a total square footage of approximately 40,000 to 50,000sf.

**§ A.1.2** The Project's physical characteristics:

*(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)*

Specific project site is to be determined.

**§ A.1.3** The Owner's budget for the Cost of the Work, as defined in Section 6.1:

*(Provide total, and if known, a line item break down.)*

Range of \$6,000,000 to \$11,000,000

**§ A.1.4** The Owner's other anticipated scheduling information, if any, not provided in Section 1.2:

To be determined

### **ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Init.

§ A.1.5 The Owner intends the following procurement or delivery method for the Project:  
*(Identify method such as competitive bid, negotiated contract, or construction management.)*

| To be determined

§ A.1.6 The Owner's anticipated Sustainable Objective for the Project:  
*(Identify the Owner's Sustainable Objective for the Project such as Sustainability Certification, benefit to the environment, enhancement to the health and well-being of building occupants, or improvement of energy efficiency.)*

| To be determined

§ A.1.7 Incentive programs the Owner intends to pursue for the Project, including those related to the Sustainable Objective, and any deadlines for receiving the incentives, including those that are dependent on the Architect's services, are as follows:  
*(Identify incentive programs the Owner intends to pursue and deadlines for submitting or applying for the incentive program.)*

| To be determined

§ A.1.8 Other Project information:  
*(Identify special characteristics or needs of the Project not provided elsewhere, such as environmentally responsible design or historic preservation requirements.)*

| Unknown at time of contract execution

## ARTICLE A.2 PROJECT TEAM

§ A.2.1 The Owner identifies the following representative in accordance with Section 5.3:  
*(List name, address and other information.)*

Randy Robertson  
513 Montgomery Highway  
Vestavia Hills, AL 35216  
Telephone Number: 205-978-0195  
Email Address: [rrobertson@ci.vestaviiahills.al.us](mailto:rrobertson@ci.vestaviiahills.al.us)

§ A.2.2 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:  
*(List name, address and other information.)*

| To be determined

§ A.2.3 The Owner will retain the following consultants and contractors:  
*(If the Owner intends to retain consultants, including a commissioning agent, and contractors, list discipline and, if known, identify them by name and address.)*

| To be determined

§ A.2.4 The Architect identifies the following representative in accordance with Section 2.3:  
*(List name, address and other information.)*

Stephen Allen, Principal  
Williams Blackstock Architects, P.C.  
[StephenAllen@wba-architects.com](mailto:StephenAllen@wba-architects.com)  
(o) 205-252-9811  
(c) 205-862-2525



§ A.2.5 The Architect will retain the consultants identified in Sections A.2.5.1, A.2.5.2, and A.2.5.3.  
(List discipline and, if known, identify them by name, legal status, address and other information.)

§ A.2.5.1 Consultants retained under Basic Services:

.1 Structural Engineer

Structural Design Group  
700 Century Park South  
Suite 114  
Birmingham, AL 35226

.2 Mechanical Engineer

MJR Senter  
2117 First Ave. North  
Birmingham, AL 35203

.3 Electrical Engineer

Sajjadih Engineering Group  
1507 Alex Drive, Suite 101  
Birmingham, AL 35210

§ A.2.5.2 Consultants retained pursuant to Sustainability Services:

(If known, list Consultants who will provide services pursuant to Section 3.3 of AIA Document B101™-2007 SP, including any Consultants already listed in Section A.2.5.1.)

To be determined

§ A.2.5.3 Consultants retained under Additional Services:

CIVIL ENGINEER  
LBYD, Inc.  
716 South 30th Street  
Birmingham, AL 35233

LANDSCAPE ARCHITECT  
Johnson & Co.  
2115 1st Avenue North  
Birmingham, AL 35203

TRAFFIC CONSULTANT

Skipper Consulting, Inc.  
3644 Vann Road, Suite 100  
Birmingham, AL 35235

§ A.2.6 Other Initial Information on which the Agreement is based:  
(Provide other Initial Information.)

Unknown at time of execution



# **Additions and Deletions Report for** **AIA<sup>®</sup> Document B101<sup>™</sup> – 2007 SP Exhibit A**

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

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## **PAGE 1**

Vestavia Hills City Hall  
Vestavia Hills, Alabama

...

City of Vestavia Hills  
513 Montgomery Highway  
Vestavia Hills, AL 35216

...

Williams Blackstock Architects, PC  
2204 1<sup>st</sup> Avenue South, Suite 200  
Birmingham, AL 35233

...

The new construction and/or potential renovation of an existing structure to relocate all City Hall functions currently housed in the existing City Hall facility, with a total square footage of approximately 40,000 to 50,000sf.

...

Specific project site is to be determined.

...

Range of \$6,000,000 to \$11,000,000

...

To be determined

## **PAGE 2**

To be determined

...

To be determined

...

To be determined

...

Unknown at time of contract execution

...

Randy Robertson  
513 Montgomery Highway  
Vestavia Hills, AL 35216  
Telephone Number: 205-978-0195  
Email Address: rrobertson@ci.vestaviiahills.al.us

...

To be determined

...

To be determined

...

Stephen Allen, Principal  
Williams Blackstock Architects, P.C.  
StephenAllen@wba-architects.com  
(o) 205-252-9811  
(c) 205-862-2525

**PAGE 3**

Structural Design Group  
700 Century Park South  
Suite 114  
Birmingham, AL 35226

...

MJR Senter  
2117 First Ave. North  
Birmingham, AL 35203

...

Sajjadih Engineering Group  
1507 Alex Drive, Suite 101  
Birmingham, AL 35210

...

To be determined

...

CIVIL ENGINEER

LBYD, Inc.  
716 South 30th Street  
Birmingham, AL 35233

LANDSCAPE ARCHITECT  
Johnson & Co.  
2115 1st Avenue North  
Birmingham, AL 35203

TRAFFIC CONSULTANT  
Skipper Consulting, Inc.  
3644 Vann Road, Suite 100  
Birmingham, AL 35235

**PAGE 4**

Unknown at time of execution

**RESOLUTION NUMBER 4404**

**A RESOLUTION AUTHORIZING THE MAYOR AND CITY  
MANAGER TO ENTER INTO A GUARANTEED ENERGY COST  
SAVINGS CONTRACT**

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

1. The Mayor and City Manager are hereby authorized to enter into a Guaranteed Energy Cost Savings Contract (“Contract”) with Trane US, Inc. (“Trane”);  
and
2. A copy of said contract is attached to and incorporated into this Resolution Number 4404 as though written fully therein; and

**BE IT FURTHER RESOLVED**, that this Resolution Number 4404 shall only become effective upon the adoption and approval of an instrument securing a Qualified Energy Conservation Bond or other funding deemed appropriate solely to the discretion and approval of the City Council; and

**DONE, ORDERED, ADOPTED and APPROVED** this the 25<sup>th</sup> day of March, 2013.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

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

---

**TELEPHONE (205) 324-2018**  
**FACSIMILE (205) 324-2295**

March 5, 2013

By Hand Delivery

City Manager Randy Robertson  
Vestavia Hills Municipal Center  
513 Montgomery Highway  
Vestavia Hills, Alabama 35216

In Re: Agreement Between Trane US, Inc. and the City of Vestavia Hills, Alabama

Dear Mr. Robertson:

On February 20, 2013, John Medonia of Trane US, Inc. furnished to me PACT Agreement (hereinafter "Agreement"), dated February 25, 2013, by and between Trane US, Inc. (hereinafter "Trane") and the City of Vestavia Hills, Alabama (hereinafter "Customer"), together with the following exhibits:

- Exhibit A: Payment Schedule
- Exhibit B: Scope of Services
- Exhibit B, Attachment 1—Musco 25 Year Product Assurance & Warranty
- Exhibit B, Attachment 2—Musco 10 Year Warranty
- Exhibit B, Attachment 3—Musco Lighting Level Guarantee
- Exhibit B.1: Certificate of Substantial Completion and Acceptance
- Exhibit B.2: Certificate of Final Completion and Acceptance
- Exhibit C: Description of the Premises
- Exhibit D: Notice to Proceed
- Exhibit E: Guarantee
- Exhibit E.1: Energy Savings Guarantee
- Exhibit E.2: Lighting Maintenance Operational Savings
- Exhibit E.3: Miscellaneous Operational Savings
- Exhibit E.4: Electrical Rate Change Operational Savings
- Exhibit E.5: Capital Cost Avoidance Operational Savings
- Exhibit F: Hazardous Materials
- Exhibit G: Measurement and Verification

I have reviewed the Agreement and all of the exhibits attached thereto. The purpose of this letter is to furnish you with my legal opinion and recommendations.

## LEGAL OPINION

As you know, the Agreement has been revised by Trane from time to time. In response to the revised Agreements, I have prepared and submitted written legal opinions, dated December 17, 2012, January 21, 2013 and February 4, 2013. I am pleased to report that Trane has incorporated into the Agreement all of the recommended modifications made by me in my three previous legal opinions.

It is my legal opinion that the February 25, 2013 Agreement meets the requirements of Alabama law. Therefore, from a legal standpoint, I recommend its execution and delivery.

## MY RECOMMENDATIONS

It is my understanding that the Trane Agreement will be on the Agenda for the March 11, 2013 City Council Meeting for a first reading. It is my further understanding that the City Council will actually consider approval of the Trane Agreement at its March 25, 2013 Meeting. The following recommendations are made in contemplation of the approval of the Agreement by the City Council:

1. The total contract price is \$4,100,000.00, which will be paid in accordance with the following payment schedule:

<u>Milestone</u>	<u>Payment Due</u>
Initial Payment Upon Execution of Notice to Proceed (NTP) by Customer ("City")	\$ 820,000.00
30 days after NTP—Monthly Payment	615,000.00
60 days after NTP—Monthly Payment	615,000.00
90 days after NTP—Monthly Payment	410,000.00
120 days after NTP—Monthly Payment	410,000.00
150 days after NTP—Final Payment	410,000.00
180 days after NTP—Final Payment	410,000.00
210 days after NTP—Final Payment	205,000.00
240 days after NTP—Final Payment	<u>205,000.00</u>
Total Payments	\$4,100,000.00.

I recommend that the City Council proceed with making plans for the financing for the work described in the Agreement.

2. On January 30, 2013, the Vestavia Hills Board of Education (“Board”) approved and adopted the following resolution:

“H. Park and Rec Lighting

The Superintendent recommended the Board approve the upgrades for lighting at Central field, East field and the VHHS tennis courts by Vestavia Hills Park and Rec. This will be effective pending revision of the contract to reflect the Board may control the use of the lights manually at any time. Brian Davis, Vestavia Hills Parks and Recreation, and Patrick H. Boone, Board attorney, spoke. There was some discussion.”

The Agreement in Section 3.02(f) provides as follows:

“(f) Anything contained in this PACT Agreement to the contrary notwithstanding, the Board of Education of the City of Vestavia Hills, Alabama during the term of this Agreement or any extension thereof, shall have the right to manually operate the lights on and off at:

(1) The athletic fields at Vestavia Hills Elementary School East; and

(2) The athletic fields at Vestavia Hills Elementary School Central; and

(3) The tennis courts at Vestavia Hills High School.

(4) Anything contained in this PACT Agreement to the contrary notwithstanding, the City of Vestavia Hills, Alabama during the term of this Agreement or any extension thereof, shall have the right to manually operate the lights on and off at all other affected sites; and”

Section 3.02(m) of the Agreement provides as follows:

“(m) Customer is the fee owner of the Premises and the real estate upon which the Premises are located, with the exception of the East Elementary School, Central Elementary School and Vestavia Hills High School, all of which are owned by the Vestavia Hills Board of Education (the “Board”). Customer has obtained the written consent of the Board for the improvements to East Elementary School, Central Elementary School and Vestavia Hills High School and this Agreement with respect to such schools.”

Enclosed is a copy of the official Minutes of the January 30, 2013 of the Vestavia Hills Board of Education, which in my opinion satisfies the requirement of Section 3.02(m) of the Agreement.

3. Alabama law requires the Agreement to be signed by the Mayor and countersigned by the City Manager.

4. Section 4.01(b) requires the City to purchase and maintain property insurance for the installation work in progress at least in an amount equal to the contract price. Therefore, I recommend that the City insurance agent be contacted and that the process for obtaining that insurance coverage be initiated.

5. The City is required to locate underground utilities, irrigation systems and sprinkler heads on all of the properties where the work will be performed. I suggest that the Engineering Department proceed with locating those items.

6. The City is required to pay the extra cost for rock removal. Are there any geotechnical reports for any of the properties involved that would suggest that the work will encounter rock removal?

7. The City is responsible for acquiring any environmental permits. Exhibit F requires the City to dispose of PCB containing ballasts and mercury-containing lamps, which will be replaced by Trane. I recommend that the City make arrangements for such disposal.

Please call me if you have any questions regarding any of the matters contained in this report.

Sincerely,



Patrick H. Boone  
Attorney for City of Vestavia Hills

PHB:gp  
Attachment

cc: City Clerk Rebecca Leavings (by hand)  
Park and Recreation Director Brian Davis (by hand)



**Vestavia Hills City Schools****Board Meeting****1/30/2013 6:00:00 PM**

1204 Montgomery Highway

Vestavia Hills, AL 35216

**Meeting Minutes**

Printed : 1/31/2013 1:37 PM EST

**Mrs. Kim Benos Board President****Dr. Jamie Blair Superintendent****Attendees - voting members**

Kim Benos	President
Jerry Dent	Vice President
Kym Prewitt	Board Member
Dr. Nat Robin	Board Member
Mark Hogewood	Board Member

**Attendees - other**

Dr. Jamie Blair	Superintendent
Pat Boggs	Superintendent's Secretary
Patrick H. Boone	Board Attorney
Greg Maner	Custodian of Funds

**I. Call to Order**

The President called the meeting to order.

**II. Approval of the Amended Agenda**

The President called for approval of the Amended Agenda. There was no discussion.

Motion made by: Mark Hogewood

Motion seconded by: Dr. Nat Robin

**Voting**

Unanimously Approved

**III. Approval of the December 19, 2012 and January 3, 2013 Minutes**

The President called for approval of the December 19, 2012 and January 3, 2013 Minutes. There was no discussion.

Motion made by: Dr. Nat Robin

Motion seconded by: Jerry Dent

**Voting**

Unanimously Approved

**IV. Delegations-None****V. Administrative Reports-None****VI. Financial Statement**

The Superintendent recommended the Board approve the Financial Statement for December 2012. Board bank accounts have been reconciled through December 2012. There was no discussion.

Motion made by: Dr. Nat Robin

Motion seconded by: Jerry Dent

**Voting**

Unanimously Approved

**VII. Consent Items**

The Superintendent recommended the Board approve the following Consent Item:  
Out of State Trip:

VHHS-Boys Tennis Team-Blue Angels Southern Invitational Tennis Tournament-Pensacola, FL-March 7-10, 2013

There was no discussion.

Motion made by: Mark Hogewood

Motion seconded by: Kym Prewitt

Voting

Unanimously Approved

## VIII. Business

### A. Bid-CableLink, LLC

The Superintendent recommended the Board approve the low bid from CableLink LLC in the amount of \$185.00 per indoor camera installation, \$200.00 per outdoor camera installation below 15', and \$275.00 per outdoor camera installation above 15' for the IP Camera Installation Bid as submitted. There was some discussion.

Motion made by: Jerry Dent

Motion seconded by: Dr. Nat Robin

Voting

Unanimously Approved

### B. Bid-Vision Landscapes, Inc.

The Superintendent recommended the Board approve the bid from Vision Landscapes, Inc. in the amount of \$148,132.00 for landscape maintenance for Vestavia Hills City Schools as submitted. There was some discussion.

Motion made by: Dr. Nat Robin

Motion seconded by: Jerry Dent

Voting

Unanimously Approved

### C. Contract-Vision Landscapes, Inc.

The Superintendent recommended the Board approve the Contract between Vision Landscapes, Inc. and the Board in the amount of \$148,132.00 for landscape maintenance for Vestavia Hills City Schools as submitted. There was no discussion.

Motion made by: Mark Hogewood

Motion seconded by: Jerry Dent

Voting

Unanimously Approved

### D. Change Order Number One-Bennett Building, Inc.

The Superintendent recommended the Board approve Change Order Number One with Bennett Building, Inc. in the amount of \$92,382.89 for stadium restoration at Vestavia Hills High School as submitted. There was no discussion.

Motion made by: Mark Hogewood

Motion seconded by: Kym Prewitt

Voting

Unanimously Approved

### E. Change Order Number One-All-South Subcontractors, Inc.

The Superintendent recommended the Board approve Change Order Number One with All-South Subcontractors, Inc. in the amount of \$98,092.80 for partial repairs and re-roofing of Liberty Park Elementary School as submitted. There was no discussion.

Motion made by: Dr. Nat Robin

Motion seconded by: Jerry Dent

Voting

Unanimously Approved

F. Code of Conduct-Board of Education

The Superintendent recommended the Board approve the Code of Conduct for the Board of Education. First Reading November 28, 2012.

There was no discussion.

Motion made by: Mark Hogewood

Motion seconded by: Kym Prewitt

Voting

Unanimously Approved

G. Job Description-System Technician

First Reading

Table for a minimum of thirty days.

No Board action required.

H. Park and Rec Lighting

The Superintendent recommended the Board approve the upgrades for lighting at Central field, East field and the VHHS tennis courts by Vestavia Hills Park and Rec. This will be effective pending revision of the contract to reflect the Board may control the use of the lights manually at any time. Brian Davis, Vestavia Hills Parks and Recreation, and Patrick H. Boone, Board attorney, spoke. There was some discussion.

Motion made by: Dr. Nat Robin

Motion seconded by: Jerry Dent

Voting

Unanimously Approved

## IX. Personnel

The Superintendent recommended the Board approve the following Personnel Actions:

Retirements:

Cas McWaters-Principal-VHHS-effective July 1, 2013

Dennis Sullivan-Maintenance Engineer-VHHS-effective March 31, 2013

Transfer:

Carol Harrelson-Nurse-from Liberty Park Elementary to Liberty Park Middle-effective January 22, 2013

Leaves of Absence:

Shelley Blocker-Special Education Teacher-Central-for the 2013-2014 school year

Lakeytha Peterson-Secretary to the Exceptional Education Director-BOE-FMLA from February 4, 2013 through February 14, 2013

There was no discussion.

Motion made by: Dr. Nat Robin

Motion seconded by: Jerry Dent

Voting

Unanimously Approved

## X. Public Comment (Please limit comments to agenda items only.)

None

## XI. Adjournment

There being no further business, the meeting was adjourned.

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Kim Benos, President

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Jerry Dent, Vice President

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Kym Prewitt

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Nat Robin

---

Mark Hogewood

---

Jamie Blair, Superintendent



# **PACT™ Agreement**

**between**

***The City of Vestavia Hills, Alabama***

***and***

***Trane U.S. Inc.***

**February 25, 2013**

**Trane Contract No. J480612**





**This PACT™ Agreement** (hereinafter the "Agreement") is made and entered into as of February 25, 2013 by and between Trane U.S. Inc. (hereinafter "Trane") and **The City of Vestavia Hills, Alabama** (hereinafter "Customer") for the purpose of furnishing services designed to reduce energy consumption and operational costs at the premises, to guarantee a specified minimum level of energy savings, and furnish specified maintenance.

## ARTICLE 1 - THE SERVICES AND COMPENSATION

**Section 1.01. Articles and Exhibits.** This Agreement consists of Articles 1 through 8 and the following Exhibits, which are attached hereto and incorporated herein by this reference:

- Exhibit A: Payment Schedule
- Exhibit B: Scope of Services
- Exhibit B, Attachment 1 – Musco 25 Year Product Assurance & Warranty
- Exhibit B, Attachment 2 – Musco 10 Year Warranty
- Exhibit B, Attachment 3 – Musco Lighting Level Guarantee
- Exhibit B.1: Certificate of Substantial Completion and Acceptance
- Exhibit B.2: Certificate of Final Completion and Acceptance
- Exhibit C: Description of the Premises
- Exhibit D: Notice to Proceed
- Exhibit E: Guarantee
- Exhibit E.1 Energy Savings Guarantee
- Exhibit E.2 Lighting Maintenance Operational Savings
- Exhibit E.3 Miscellaneous Operational Savings
- Exhibit E.4 Electrical Rate Change Operational Savings
- Exhibit E.5 Capital Cost Avoidance Operational Savings
- Exhibit F: Hazardous Materials
- Exhibit G: Measurement and Verification

**Section 1.02. Contract Price.** Subject to the terms and conditions hereof, as payment for Trane's performance and furnishing of the Services, Customer shall pay or cause to be paid to Trane, pursuant to Section 1.05, the sum of **FOUR MILLION ONE HUNDRED THOUSAND AND 00/100 (\$4,100,000.00) DOLLARS**, which Contract Price includes all applicable sales, consumer, use and similar taxes (excluding income taxes) for the Services required to be paid by Trane and legally enacted as of the date of this Agreement. The Contract Price does not include the cost to Customer of maintenance (the "Maintenance Price") to be furnished by Trane pursuant to Exhibit G.

### Section 1.03. Services and Maintenance.

(a) **Services.** Within 270 days from Trane's receipt of the Notice to Proceed issued pursuant to Section 1.04, Trane shall have substantially completed performance of the Services defined in Exhibit B (hereinafter "Substantial Completion") at the Premises identified in Exhibit C. Trane's obligation hereunder is limited to performing the Services as defined herein. Excluded from the Services are any modifications or alterations to the Premises (not expressly included within the Services as defined) that may be required by operation of the Americans with Disabilities Act or any other law or building code(s).

(b) **Measurement and Verification.** During the Term hereof, Trane shall furnish, and Customer shall pay for, the measurement and verification services (the "Measurement and Verification") as and when described on Exhibit G. The Measurement and Verification Price is set forth on Exhibit G.

### Section 1.04. Notice to Proceed; Financing.

If this box is checked, Customer will not be financing payment of the Services with funds other than its own and will use its own funds to pay for the Services. Accordingly, upon execution of this Agreement by Trane, Customer's execution of this Agreement shall constitute the Notice to Proceed to Trane.

If this box is checked, Customer will be financing payment of the Services, but until financing is complete, Customer will use its own funds to pay for the Services. Accordingly, upon execution of this Agreement by Trane, Customer's execution of this Agreement shall constitute the Notice to Proceed to Trane. Within five (5) calendar days of Customer closing on its financing, Customer shall provide written notice of such closing to Trane.





If this box is checked, Customer intends to finance payment of the Services with funds other than its own. Accordingly, Trane shall not perform, nor be required to perform, any of the Services until and unless Customer has closed on its financing of this Agreement (the "Financing Closing"), as evidenced by fully executed contract documents for financing of the Contract Price and funding of any escrow account provided for by the financing documents. Customer will achieve Financing Closing on or before **March 15, 2013**, or such later date agreed to in writing by Trane. Within five (5) calendar days of the Financing Closing, Customer shall execute and issue a written Notice to Proceed (substantially in the form of Exhibit D hereto) to Trane, upon which event Trane will commence performance of the Services hereunder. In the event Customer does not achieve Financing Closing on or before the date specified in the preceding sentence, or such later date agreed to in writing by Trane, Trane may terminate this Agreement upon fourteen (14) calendar days prior written notice to Customer. Upon such termination of this Agreement, Trane shall have no further obligations to Customer hereunder; provided, however, that, notwithstanding such termination, Customer shall be obligated to immediately compensate Trane for the amount set forth in any Letter of Commitment, project development agreement, or comparable agreement between Customer and Trane.

**Section 1.05. Services Payment Terms.** Customer shall pay Trane or cause Trane to be paid for the Services as follows:

**Initial Payment:** Upon execution hereof, twenty percent (20%) of the Contract Price (for engineering, drafting, mobilization, and other costs) shall be due; and

**Monthly Payments and Final Payment:** In accordance with the dates and amounts on Exhibit A hereto, Trane will invoice for Contract Price on a monthly basis for all materials and equipment delivered to the Premises (or, as applicable, to an off-site storage facility) and for all installation, labor and services performed during the billing period; Customer shall pay all amounts due upon receipt of the invoice and any invoice not paid within thirty (30) calendar days of its date shall be past due. All amounts outstanding thirty (30) calendar days beyond the due date shall bear interest payable to Trane at the rate of 7 ½ % per annum, retroactive to the due date. Customer shall pay all costs (including attorneys' fees) incurred by Trane in successfully collecting amounts due from Customer.

**Section 1.06. Notices and Changes of Address.** All notices to be given by either party to the other shall be in writing and may be delivered in person, or may be sent by receipted courier, facsimile transmission, express mail, e-mail, or postage prepaid certified or registered mail, addressed to the party for whom it is intended, at the addresses as follows:

**If to Trane:** Trane  
4833 White Bear Parkway  
St. Paul, Minnesota 55110  
Attention: Comprehensive Solutions Leader

**If to Customer:** The City of Vestavia Hills, Alabama  
513 Montgomery Highway  
Vestavia Hills, Alabama 35216  
Attention: Mr. Alberto C. Zaragoza Jr.

or such other addresses as either party may hereinafter designate by notice to the other. Notices are deemed delivered or given and become effective upon mailing if mailed as aforesaid and upon actual receipt if otherwise delivered. All notices or other communications under this Agreement shall be in writing and may be delivered in person, or may be sent by receipted courier, facsimile transmission, express mail, e-mail, or postage prepaid certified or registered mail, addressed to the party for whom it is intended, at the addresses set forth in this Agreement. Either party may change its address for notice by giving written notice to the other party of the change. Any notice or other communication shall be deemed given no later than the date actually received. Notice by courier, express mail, certified mail, or registered mail shall be deemed given on the date it is officially recorded as delivered by return receipt or equivalent and, in the absence of such record of delivery, it shall be rebuttably presumed to have been delivered on the third business day after it was deposited, first-class postage prepaid, in the mails. Notices sent by fax or e-mail shall require tangible confirmation of receipt from the person to whom addressed.

**Section 1.07. Energy Savings Guarantee.** The energy savings guaranteed under this Agreement are set forth in Exhibit E and in the sub-exhibits thereto.

**Section 1.08. Term.** The term ("Term") of this Agreement shall commence as of the date first written above and shall end upon expiration of the **14** year Guarantee Term pursuant to Exhibit E, unless earlier terminated pursuant to the provisions hereof.

**Section 1.09. Customer's Authorized Representative(s).** Customer designates the following individual(s), and any successors to the positions noted, as the representative(s) of Customer with authority to sign on behalf of the Customer (the "Authorized Representative") the Certificate of Substantial Completion and Acceptance, Certificate of Final Completion and Acceptance, and Guarantee reconciliation reports:



**Authorized Representative**

**Position/Title**

**Alberto C. Zaragoza Jr.**

**Mayor**

Customer may change any Authorized Representative by providing written notice to Trane (in accordance with Section 1.06) at least fourteen (14) calendar days prior to the effective date of the change. Such change shall only be effective with respect to acts occurring after the required notice.

**IN WITNESS WHEREOF**, the duly authorized representatives of the parties have each executed this Agreement, effective as of the date first above written.

**Trane U.S. Inc.**

**The City of Vestavia Hills, Alabama**

*(Customer)*

By: \_\_\_\_\_  
**Mr. Steve Miclette – Georgia/Ala. Trane**  
Its: **District Manager**

By: \_\_\_\_\_  
**Alberto C. Zaragoza Jr.**  
Its: **Mayor**

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Trane's state contractor's license number: **20760**

## ARTICLE 2 - PERFORMANCE

**Section 2.01. Construction Procedures and Changes To Services.** Trane shall supervise and direct the Services using its best skill and attention. Trane shall have exclusive control over construction means, methods, techniques, sequences and procedures. Trane shall at all times have the right to replace, delete or substantially alter any item of equipment or part of the Services, correct any work, revise any procedures included in this Agreement, or take any other energy saving actions, provided, however, that Trane shall obtain Customer's prior consent to substantial deviations from the original scope of Services, said consent not to be unreasonably withheld or delayed.

**Section 2.02. Substantial Completion.** Prior to final completion, Trane may provide written notice to Customer that all or substantial portions of the Services are substantially complete and request that Customer issue a Certificate of Substantial Completion and Acceptance, substantially in the form of Exhibit B.1. Substantial Completion is the date when the specified Services have been performed or installed and are operating as required by this Agreement, with only minor work remaining as may be specified on a punch list agreed to by Customer and Trane. Within a reasonable time thereafter, Customer and Trane will inspect the specified Services to determine the status of completion. If Customer does not consider the specified Services substantially complete, it will notify Trane in writing, giving the reasons therefor. If Customer considers any or all of the specified Services substantially complete, a Certificate of Substantial Completion and Acceptance will be issued as to such specified Services, executed by the Authorized Representative of Customer. Trane's request for a Certificate of Substantial Completion and Acceptance shall not be unreasonably withheld or delayed by Customer. Exhibit B.1 shall fix the date(s) of Substantial Completion and the date(s) for commencement of warranties for the accepted specified Services; Exhibit B.1 may specify the responsibilities between Customer and Trane for Maintenance (pursuant to Exhibit G) and any adjustment of compensation therefor. There may be attached to the certificate a tentative list of items to be completed or corrected.

**Section 2.03. Final Completion.** Trane shall comply with Title 39-1-1(f), *Code of Alabama* (1975). Notwithstanding the foregoing, upon Customer's receipt of written notice from Trane that the Services are ready for final inspection and acceptance, Customer and Trane shall inspect the Services and determine whether the same have been performed in accordance with this Agreement. If Customer considers the Services complete and performed in accordance with this Agreement, Customer shall issue a Certificate of Final Completion and Acceptance, substantially in the form attached hereto as Exhibit B.2, to be executed by the Authorized Representative of Customer. In the event Trane presents a Certificate of Final Completion and Acceptance to Customer for execution and, within fourteen (14) calendar days from the date noted in the Certificate as the date of such presentation, Customer fails to deliver an executed original of the Certificate to Trane and does not provide to Trane written objections to issuance of the Certificate, identifying the specific parts of the Services the Customer believes have not been completed and providing specific facts in support of Customer's belief that the Services have not been finally completed, the Date of Final Completion shall be the date

noted in the Certificate as the date the Certificate was submitted to Customer.

**Section 2.04. Delays.** If Trane is delayed in the commencement or completion of any part of the Services due to an Event of Force Majeure, or due to Customer's action(s) or failure to perform its obligations under this Agreement or to cooperate with Trane in the timely performance of the Services, then Trane will notify Customer in writing of the existence, extent of, and reason(s) for such delay(s). Trane and Customer shall extend the contract time for such reasonable time as they shall agree and, if Trane's cost for furnishing the Services is increased as a result, the Contract Price shall be increased by Change Order by the amount of Trane's additional costs.

**Section 2.05. Equipment Location and Access.** Customer shall provide, without charge, a mutually satisfactory location or locations for the installation and operation of the equipment and the performance of the installation work, including sufficient areas for staging, mobilization, and storage. Customer shall provide access to the Premises for Trane and its contractors or subcontractors during regular business hours, or such other hours as may be requested by Trane and acceptable to Customer, to install, adjust, inspect, and correct the installation work. Trane's access to correct any emergency condition shall not be restricted by Customer.

**Section 2.06. Permits and Governmental Fees.** Trane shall secure (with Customer's assistance) and pay for building and other permits and governmental fees, licenses, and inspections necessary for proper performance and completion of the Services and which are legally required when bids from Trane's subcontractors are received, negotiations thereon concluded, or the effective date of a relevant Change Order, whichever is later. Customer is responsible for necessary private and governmental approvals, easements, assessments and charges for construction, use or occupancy of permanent structures or for permanent changes to existing facilities.

**Section 2.07. Utilities During Construction.** At no cost to Trane, Customer shall provide and pay for water, heat, and utilities consumed by Trane during performance of the Services hereunder. Trane shall install and pay the cost of any temporary facilities not already in existence that will be required during construction for accessing such water, heat, and utilities.

**Section 2.08. Concealed or Unknown Conditions.** Trane shall promptly notify Customer if it encounters the following conditions at the Premises, prior to significantly disturbing the same: (i) subsurface or otherwise concealed physical conditions or (ii) unknown physical conditions of an unusual nature that differ materially from those conditions ordinarily found to exist and generally recognized as inherent in construction activities of the type and character as the Services herein.. If such conditions cause an increase in Trane's cost of, or time required for, performance of any part of the Services: (a) Trane and Customer shall agree, by Change Order, on how to proceed and the extent of any adjustment to the time required for performance of the Services and to the Contract Price, in light of the differing conditions and any adjustments that may be required to the Guarantee; or (b) either party may terminate this Agreement

by delivery of written notice declaring termination, effective immediately pursuant to Section 3.05.

**Section 2.09. Damage to Equipment; Casualty or Condemnation of Premises.** Any fire, flood, other casualty or condemnation affecting any portion of the Premises shall be a Material Change to the Baseline and Customer shall furnish notice thereof to Trane upon occurrence of the Material Change. Trane may modify any Baseline applicable to the Guarantee to account for the Material Change. If any fire, flood, other casualty, or condemnation renders a majority of the Premises incapable of being occupied or destroys a substantial part of the area(s) within which the Services is/are to be performed, Trane may terminate this Agreement, effective immediately, by delivery of a written notice to Customer pursuant to Section 3.05. If any significant item of the equipment furnished hereunder is irreparably damaged by the negligence or willful misconduct of an employee, agent or invitee of Customer, or is destroyed or stolen, and if Customer fails to repair or replace said item within a reasonable period of time agreed to by Trane, Trane may terminate this Agreement, effective immediately, pursuant to Section 3.05.

### ARTICLE 3 - CUSTOMER'S OBLIGATIONS

**Section 3.01. Access to Premises.** Customer shall provide Trane with access to the Premises, with or without prior notice to Customer, to inspect for Trane's benefit the component parts of the Services installed on the Premises and/or to validate Customer's performance of its responsibilities.

**Section 3.02. Representations and Warranties of Customer.** Customer hereby warrants and represents to Trane that:

(a) Customer has furnished, or caused others to furnish, and, for the Term hereof, will continue to furnish to Trane, promptly as information becomes available, accurate and complete data concerning energy usage for and other information pertaining to the Premises, including but not limited to the following:

- utility records for the 36-month period preceding the date hereof and throughout the Term;
- occupancy and usage information, including current representative tenant leases, for the 36-month period preceding the date hereof and throughout the Term;
- written surveys or descriptions of heating, cooling, lighting or other systems or energy requirements and any changes thereto;
- descriptions of all energy consuming or saving equipment used on or affecting the Premises;
- any energy or environmental audits relating to all or any part of the Premises;
- any service or maintenance agreement(s) regarding any heating, cooling, lighting or other building systems, or part thereof;
- construction drawings ("as-builts") in existence as of the date hereof or developed during the Term hereof; and
- a description of energy management procedures presently utilized by Customer for the Premises and any revisions thereto.

(b) Customer has provided Trane with all records heretofore requested by Trane and the information set forth therein is, and all information in other records to be subsequently provided pursuant to this Agreement will be, true and accurate in all material respects except as may be disclosed to Trane by Customer in writing; and

(c) Customer has not entered into any contracts or agreements with other persons or entities regarding the provision of energy management services or with regard to any servicing of any of the energy related equipment located on the Premises, except as heretofore disclosed to Trane in writing by Customer; and

(d) During the term of this Agreement, Customer will not enter into any agreements with other persons or entities regarding the provision of energy management services or with regard to any servicing of any of the energy related equipment furnished by Trane hereunder, without prior written consent of Trane; and

(e) Customer presently intends to continue to use the Premises in a manner similar to its present use, except as may have been disclosed to Trane by Customer in writing; and

(f) Anything contained in this PACT Agreement to the contrary notwithstanding, the Board of Education of the City of Vestavia Hills, Alabama during the term of this Agreement or any extension thereof, shall have the right to manually operate the lights on and off at:

- (1) The athletic fields at Vestavia Hills Elementary School East; and
- (2) The athletic fields at Vestavia Hills Elementary School Central; and
- (3) The tennis courts at Vestavia Hills High School,
- (4) Anything contained in this PACT Agreement to the contrary notwithstanding, the City of Vestavia Hills, Alabama during the term of this Agreement or any extension thereof, shall have the right to manually operate the lights on and off at all other affected sites; and

(g) Customer has disclosed in writing to Trane the existence and location of all known or suspected asbestos and other Hazardous Materials on the Premises; and

(h) Customer will provide Trane with copies of any successor or additional contracts for management or servicing of preexisting equipment that may be executed from time to time hereafter within ten (10) days after execution thereof and information or services under Customer's control shall be furnished promptly by Customer; and

(i) the execution, delivery and performance by Customer of this Agreement does not violate any provision of law and does not conflict with or result in a breach of any order, writ, injunction or decree of any court or governmental instrumentality, domestic or foreign, or Customer's respective charter or by-laws or create a default under any agreement, bond, note or indenture to which Customer is a party or by which Customer is bound or to which any of Customer's property is subject; and Customer has no knowledge of any facts or circumstances that, but for the passage of time, would materially, adversely affect either party's ability to perform its respective obligations hereunder and, if Customer

is a governmental entity or instrumentality thereof, Customer has complied with all laws and regulations relative to procurement of the Services hereunder; and

(j) the Agreement has been duly authorized, executed and delivered by Customer, and constitutes the valid and legally binding obligation of Customer, enforceable in accordance with its terms, except as may be limited by bankruptcy, insolvency, reorganization or other laws or equitable principles of general application relating to or affecting the enforcement of creditor's rights and remedies;

(k) Customer shall notify Trane within twenty-four (24) hours of Customer's receipt of actual or constructive notice of (1) any material malfunction in the operation of the equipment installed or equipment affected by the Services provided pursuant to this Agreement and/or (2) any interruption or alteration of the energy supply to the Premises; and

(l) Customer acknowledges and agrees that the Measurement and Verification will be performed by Trane or on behalf of Trane by a Trane authorized service provider; and

(m) Customer is the fee owner of the Premises and the real estate upon which the Premises are located, with the exception of the East Elementary School, Central Elementary School and Vestavia Hills High School, all of which are owned by the Vestavia Hills Board of Education (the "Board"). Customer has obtained the written consent of the Board for the improvements to East Elementary School, Central Elementary School and Vestavia Hills High School and this Agreement with respect to such schools.

**Section 3.03. Customer Default.** Each of the following events or conditions shall constitute a default by Customer and shall give Trane the right to, without an election of remedies, immediately terminate this Agreement pursuant to section 3.05.

(1) Any failure by Customer to pay or cause to be paid amounts due Trane.

(2) Any representation or warranty furnished by Customer in this Agreement is false or misleading in any material respect when made;

(3) Any default by Customer under any instrument or agreement (i) related to the financing or leasing of all or any part of the Services or equipment hereunder and/or (ii) granting to any person or entity a security interest in and to the equipment to be installed or furnished hereunder;

(4) Any failure by Customer to perform or comply with any material term or condition of this Agreement, including breach of any covenant contained herein, provided that such failure continues for forty-five (45) days after written notice to Customer demanding that such failure be cured or, if cure cannot be effected in such forty-five (45) days, Customer fails to promptly begin to cure and diligently proceed to completion thereof;

(5) Any failure by Customer to pay as and when due the Measurement and Verification Price and/or any failure by Customer to perform or comply with any material term or condition of Exhibit G; or

(6) The commencement of any voluntary or involuntary proceedings in bankruptcy or receivership by or against Customer, Customer shall become insolvent, make a general assignment for the benefit of creditors, or Customer shall fail to pay its debts as and when they become due.

Without limiting the generality of the foregoing, in the event of a default by Customer in its payment obligations hereunder, upon prior notice to Customer, Trane may enter upon the Premises where the equipment comprising a part of the Services is located and disconnect and/or remove the same without being liable to any suit, action or other proceeding by the Customer.

**Section 3.04. Trane Default.** Each of the following events or conditions shall constitute a default by Trane and shall give Customer the right, upon thirty (30) calendar days prior written notice to Trane, to terminate this Agreement by delivery of written notice declaring termination, after which, if Trane has not cured the default within such thirty (30) day period, Customer may take possession of the site together with all materials thereon, and move to complete the Services itself expeditiously. If the unpaid balance of the Contract Price exceeds the expense of finishing the Services, the excess shall be paid to Trane, but if the expense exceeds the unpaid balance, Trane shall pay the difference to Customer upon demand by Customer:

(1) Any representation or warranty furnished by Trane in this Agreement is false or misleading in any material respect when made;

(2) Any failure by Trane to perform or comply with any material term or condition of this Agreement, including breach of any covenant contained herein, provided that such failure continues for thirty (30) days after written notice to Trane demanding that such failure be cured or, if cure cannot be effected in such thirty (30) days, Trane fails to promptly begin to cure and diligently proceed to completion thereof; or

(3) The commencement of any voluntary or involuntary proceedings in bankruptcy or receivership by or against Trane, Trane becomes insolvent, or Trane makes a general assignment for the benefit of creditors.

Trane's liability to Customer under the Guarantee shall be limited to energy savings guaranteed in connection with energy conservation measures that are completely installed by Trane (or by Customer in accordance with the specifications and requirements hereof, and/or prepared on behalf of Trane for the same, and Trane reasonably accepts the work) and such savings shall be determined in accordance with the appropriate Guarantee exhibit and generally accepted engineering principles. In the event Customer proceeds to complete the Services, it shall complete the same on or before the expiration of sixty (60) calendar days after the effective date of the termination of this Agreement by Customer.

**Section 3.05. Termination.** Termination of this Agreement will be effectuated by delivery of written notice by the party seeking termination declaring termination, upon which event a) Customer shall be liable to Trane for all Services furnished to date and any damages sustained by Trane, including lost

profits and the price of any specially manufactured items, whether in production or delivered; and b) Trane shall have no further obligation to Customer under this Agreement. Any termination under this Agreement not based on a default provision shall be deemed a termination for convenience.

#### ARTICLE 4 - INSURANCE

**Section 4.01. Trane's Liability Insurance.** Trane shall purchase from and maintain, without interruption from the commencement of the Services throughout the Term, a Commercial General Liability policy, Worker's Compensation and Employer's Liability policy and Commercial Automobile Liability policy, through a company or companies rated A VIII or better by A.M. Best Company, with the following limits:

Commercial General Liability	\$2,000,000 per occurrence
Automobile Liability	\$2,000,000 CSL
Workers Compensation	Statutory Limits

Trane will name Customer as an additional insured under Trane's insurance policy subject to Trane's manuscript additional insured endorsement under its primary Commercial General Liability policies.

**Section 4.02. Customer's Liability and Property Insurance.** (a) Customer shall be responsible for purchasing and maintaining Commercial General Liability Insurance of the type and amount Customer deems necessary and appropriate.

(b) Customer shall purchase and maintain (until the later of the date of issuance of the Certificate of Final Completion and the date of Customer's Final Payment) property insurance for the installation work in progress at least in an amount equal to the Contract Price, as the same may be adjusted from time to time, for the installation work (including the equipment) on a replacement cost basis from an insurer reasonably acceptable to Trane. Such property insurance shall include the interests of Customer, Trane, and its subcontractors (at whatever tier) as additional insureds as their interests may appear. The property insurance purchased by Customer shall be on an all-risk policy form

(c) A loss insured under Customer's property insurance shall be adjusted by Customer's Insurer as a fiduciary and made payable to Customer as a fiduciary for the insureds, as their respective interests may appear, subject to requirements of any applicable mortgagee clause. Trane shall pay its subcontractors their just shares of insurance proceeds received by Customer and remitted to Trane, and, by appropriate agreements, written where legally required for validity, shall require said subcontractors to make payments to their subcontractors in a similar manner. In its fiduciary role, Customer shall have the power to negotiate and settle a loss with insurers; provided, however, that at least ten (10) days prior to agreeing to the proposed settlement, Customer shall advise the parties in interest in writing of the terms of the same and the parties in interest shall have seven (7) days thereafter to object in writing to the proposed adjustment or settlement; if such objection is made, Customer shall not enter into or agree to the proposed adjustment or settlement and the parties shall proceed to resolve the disagreement.

**Section 4.03. Customer's Loss of Use/Business Interruption Insurance.** Customer may purchase and

maintain insurance to protect against loss of use of Customer's property or business interruption due to fire or other commonly insured hazards, however such fire or hazards may be caused. Customer acknowledges that Trane is not required to purchase or maintain such insurance against the loss of use of Customer's property or business interruption. CUSTOMER HEREBY WAIVES ALL CLAIMS AND CAUSES OF ACTION IT MAY HAVE AGAINST TRANE AND ANY OF ITS SUBCONTRACTORS, AGENTS, EMPLOYEES, AND OFFICERS FOR LOSS OF USE OF CUSTOMER'S PROPERTY OR BUSINESS INTERRUPTION, WHETHER INSURED OR NOT, INCLUDING CONSEQUENTIAL, INCIDENTAL, SPECIAL, OR OTHER DAMAGES DUE TO SUCH HAZARDS, REGARDLESS OF CAUSE.

**Section 4.04. Evidence of Insurance.** Customer and Trane shall furnish to the other certificate(s) of insurance prior to commencement of performance of any Services, evidencing the coverages and limits required to be maintained under this Agreement. Such certificate(s) shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least thirty (30) days prior written notice has been given to the other party. The certificate(s) shall name the other party as an "additional insured" to the extent of the indemnity obligation assumed by the insured party under this Agreement. Neither the procurement nor maintenance of any type of insurance by Customer shall in any way be construed or deemed to limit, waive, or release Customer from any of the obligations and risks of Customer under this Agreement, or to be a limitation on the nature and extent of such obligations and risks.

#### ARTICLE 5 - HAZARDOUS MATERIALS

**Section 5.01. Asbestos And Hazardous Materials.** Except as expressly stated in Exhibit B, Trane's Services expressly exclude any work connected or associated with Hazardous Materials. Hazardous Material means any pollutant, contaminant, toxic or hazardous substance, material or waste, any dangerous, potentially dangerous, noxious, flammable, explosive, reactive or radioactive substance, material or waste, urea formaldehyde, asbestos, asbestos-containing materials ("ACM's"), polychlorinated biphenyl ("PCB"), and any other substance, the manufacture, preparation, production, generation, use, maintenance, treatment, storage, transport, disposal, handling, or ownership of which is regulated, restricted, or prohibited, by any federal, state, or local statute, law, ordinance, code, rule or regulation now or at any time hereafter in effect, and as may be amended from time to time, including but not limited to, the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §§ 9601 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. §§ 1801 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. §§ 1251 et seq.), the Clean Air Act (42 U.S.C. §§ 7401 et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. §§ 2601 et seq.), and the Occupational Safety and Health Act (29 U.S.C. §§ 651 et seq.).

Trane shall not perform any identification, abatement, cleanup, removal, transport, treatment, storage or disposal of Hazardous Materials on Customer's premises. Customer warrants and represents that, except as expressly, and by



reference to this Section, set forth in Exhibit C (Description of Premises) or Exhibit F (Hazardous Materials), there are no Hazardous Materials on the Premises in areas within which Trane will be performing any part of the Services or Customer has disclosed to Trane the existence and location of any Hazardous Materials in all areas within which Trane will be performing any part of the Services. Trane's responsibility, if any, for any Hazardous Materials, shall be limited to and as expressly set forth in Exhibit F and Customer shall, at all times, be and remain the owner and generator of any and all Hazardous Materials on the Customer's premises and responsible for compliance with all laws and regulations applicable to such Hazardous Materials.

Should Trane become aware of or suspect the presence of Hazardous Materials in the course of performing the Services that are not disclosed in Exhibits B, C or F, or which present or may present a hazard to or endanger health welfare or safety, Trane shall have the right to immediately stop work in the affected area and shall notify Customer. Customer will be responsible for taking any and all action necessary to remove or render harmless the Hazardous Materials in accordance with all applicable laws and regulations. Trane shall be required to resume performance of the Services in the affected area only in the absence of Hazardous Materials or when the affected area has been rendered harmless; if the area has not been or cannot be rendered harmless within thirty (30) days of discovery of the Hazardous Material, Trane may terminate this Agreement pursuant to Section 3.05. Customer shall compensate Trane for any additional costs incurred by Trane as a result of work stoppage, including demobilization and remobilization. In addition to any other indemnity obligation of Customer to Trane, to the maximum extent permitted by law, Customer shall indemnify, defend, and hold harmless Trane, its officers, directors, beneficiaries, shareholders, partners, agents, representatives, and employees (collectively referred to as "Trane" for purposes of this Article 5) and Trane's subcontractors from all fines, suits, actions, claims, penalties, and proceedings of every kind, and all costs associated therewith (including attorneys' and consultants' fees) arising out of or in any way connected with or related to: (1) any leak, deposit, spill, discharge, or release or disposal of Hazardous Materials in connection with the performance of this Agreement, except to the extent such Hazardous Materials were brought onto the Premises by Trane; and/or (2) Customer's failure to identify and disclose Hazardous Materials and to fully comply with all federal, state, and local statutes, laws ordinances, codes, rules and regulation now or at any time hereafter in effect regarding Hazardous Materials.

#### **ARTICLE 6 - INDEMNIFICATION AND LIMITATION OF LIABILITY**

**Section 6.01. Indemnification.** To the maximum extent permitted by law, Trane and Customer shall indemnify and hold each other and all respective officers, directors, affiliates, shareholders, and employees harmless from any and all actions, costs, expenses, damages and liabilities, including reasonable attorneys' fees, resulting from death or bodily injury or damage to property of the other or other persons, to the extent arising out of or resulting from the negligence of their respective employees or other authorized agents in connection with the Premises. Neither party shall be required to indemnify the other against actions, costs, expenses, damages and liabilities to the extent attributable to the acts or

omissions of the other party. If the parties are both at fault hereunder, then any obligation to indemnify shall be proportional to their relative fault. The duty to indemnify will continue in full force and effect, notwithstanding the expiration or early termination of this Agreement, with respect to any claims based on facts or conditions that occurred prior to expiration or termination. In the event one party hereto knows or has reason to believe that the other party will be required, in connection with this Agreement, by any court or governmental administrative agency to respond to any legal action or other directive by such authorities, such party shall immediately notify the other in writing of the same.

**Section 6.02. Limitation of Liability.**  
**NOTWITHSTANDING ANY PROVISION TO THE CONTRARY, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL (INCLUDING WITHOUT LIMITATION LOST REVENUE OR PROFITS) OR PUNITIVE DAMAGES REGARDLESS OF WHETHER SUCH LIABILITY ARISES FROM BREACH OF CONTRACT, TORT OR ANY OTHER THEORY. IN NO EVENT SHALL TRANE BE LIABLE FOR ANY DAMAGES (WHETHER DIRECT OR INDIRECT) RESULTING FROM MOLD, FUNGUS, BACTERIA, MICROBIAL GROWTH, OR OTHER CONTAMINATES OR AIRBORNE BIOLOGICAL AGENTS.**

#### **ARTICLE 7 - WARRANTY**

**Section 7.01. Workmanship and Equipment Warranty.** Trane warrants that, for a period of one year from the date of Final Completion (the "Warranty Period"), Trane-manufactured equipment installed hereunder and the installation work included within the Services (i) shall be free from defects in material, manufacture, and workmanship and (ii) shall have the capacities and ratings set forth in Trane's catalogs and bulletins. Notwithstanding the foregoing, with respect to selected equipment to be identified in Exhibit B.1 (Certificate of Substantial Completion and Acceptance), Trane shall have the option of commencing the warranty period upon the later of (a) the date of initial startup of such selected equipment and (b) the date of Substantial Completion set forth in Section 2.02. Trane obligations of equipment start-up, if any are stated in the Proposal, are coterminous with the Warranty period. For Trane-manufactured equipment not installed by Trane the Warranty Period is the lesser of 12 months from initial start-up or 18 months from the date of shipment. Equipment and/or parts that are not manufactured by Trane are not warranted by Trane and have such warranties as may be extended by the respective manufacturer. If such defect in Trane-manufactured equipment or the installation work is discovered within the Warranty Period, Trane will correct the defect or furnish replacement equipment (or, at its option, parts therefor) and, if said Trane-manufactured equipment was installed pursuant hereto, labor associated with the replacement of parts or equipment not conforming to this warranty. No liability whatsoever shall attach to Trane until said equipment and Services have been paid for in full and then said liability shall be limited to Trane's cost to correct the defective equipment or work and/or the purchase price of the equipment shown to be defective. Trane's warranties expressly exclude any remedy for damage or defect caused by corrosion, erosion, or deterioration, abuse, modifications or repairs not performed by Trane, improper operation, or

normal wear and tear under normal usage. Trane shall not be obligated to pay for the cost of lost refrigerant.

The foregoing does not apply to Maintenance and the warranties for Maintenance (if any) are separately stated on Exhibit G of this Agreement.

**THE WARRANTY AND LIABILITY SET FORTH IN THIS SECTION ARE IN LIEU OF ALL OTHER WARRANTIES AND LIABILITIES, WHETHER IN CONTRACT OR IN NEGLIGENCE, EXPRESS OR IMPLIED, IN LAW OR IN FACT, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL TRANE BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL (INCLUDING WITHOUT LIMITATION LOST PROFITS), OR PUNITIVE DAMAGES. NO REPRESENTATION OR WARRANTY OF MERCHANTABILITY OR FITNESS OF PURPOSE IS MADE REGARDING PREVENTION BY THE SCOPE OF SERVICES, OR ANY COMPONENT THEREOF, OF MOLD, FUNGUS, BACTERIA, MICROBIAL GROWTH, OR ANY OTHER CONTAMINATES. TRANE SPECIFICALLY DISCLAIMS ANY LIABILITY IF THE SCOPE OF SERVICES OR ANY COMPONENT THEREOF IS USED TO PREVENT OR INHIBIT THE GROWTH OF SUCH MATERIALS.**

#### ARTICLE 8 - GENERAL PROVISIONS

**Section 8.01. Assignment.** Customer may not assign, transfer, or convey this Agreement, or any part hereof, or its right, title or interest herein, without the written consent of Trane, which consent shall not be unreasonably withheld or delayed. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties' respective successors and assigns.

**Section 8.02. Applicable Law and Jurisdiction.** This Agreement is made and shall be interpreted and enforced in accordance with the laws of the state in which the project is located. Customer hereby consents and submits to the personal jurisdiction of the courts of the state where the project is located and of the United States District Court in such state and to being sued, whether in the state where the project is located or elsewhere.

**Section 8.03. Complete Agreement.** This Agreement and the Exhibits attached hereto, together with any documents expressly incorporated herein by reference, shall constitute the entire Agreement between both parties regarding the subject matter hereof. There are no agreements, understandings, or covenants between the parties of any kind, expressed or implied, oral or otherwise pertaining to the Services that have not been set forth in this Agreement. Any Proposals furnished by Trane prior to execution of this Agreement were for negotiation purposes only and shall not constitute legally binding commitments. This Agreement may not be amended, modified or terminated except by a writing signed by the parties hereto. The energy audit authored by Trane and/or its consultant(s), including any summaries, excerpts, and abstracts thereof (collectively, the "Energy Audit"), are used to show operational and consumption data and calculations and projections regarding savings, but do not reflect the savings guaranteed by Trane; in the event of

any conflict or contradiction between the Energy Audit and the provisions of this Agreement and its Exhibits, the provisions of this Agreement and its Exhibits shall govern.

**Section 8.04. Force Majeure.** Neither party shall be considered to be in default hereunder when a failure of performance (other than Customer's obligation to make payment to Trane) is due to an Event of Force Majeure. An "Event of Force Majeure" shall mean any cause or event beyond the control of the party. Without limiting the foregoing, "Event of Force Majeure" includes: acts of God; acts of terrorism, war or the public enemy; flood; earthquake; tornado; storm; fire; civil disobedience; pandemic insurrections; riots; labor disputes; labor or material shortages; sabotage; restraint by court order or public authority (whether valid or invalid), and action or non-action by or inability to obtain or keep in force the necessary governmental authorizations, permits, licenses, certificates or approvals if not caused by the fault of the party. If either party is rendered unable to fulfill any of its obligations under this Agreement by reason of an Event of Force Majeure it shall give prompt written notice of such fact to the other and the obligated party obligations shall be suspended until removal of the Event of Force Majeure. If either party shall be unable to carry out any material obligation under this Agreement due to Event of Force Majeure, this Agreement shall, at the election of either party: (i) remain in effect but the parties' obligations shall be suspended until the uncontrollable event terminates; or (ii) be terminated upon ten (10) calendar days notice to the other party, pursuant Section 3.05.

**Section 8.05. Further Documents.** The parties shall timely execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Agreement.

**Section 8.06. Severability.** If any term or conditions of this Agreement is invalid, illegal or incapable of being enforced by any rule of law, all other terms and conditions of this Agreement will nevertheless remain in full force and effect so long as the economic or legal substance of the transaction contemplated hereby is not affected in a manner adverse to any party hereto. Upon any such determination of invalidity, illegality or unenforceability, the parties hereto shall negotiate in good faith to modify this Agreement so as to affect the original intent of the parties as closely as possible in an acceptable manner, to the end that the transactions contemplated by this Agreement are consummated to the extent possible.

**Section 8.07. Signatures in Counterpart.** This Agreement may be executed in several counterparts, each of which when executed shall be deemed to be an original, but all together shall constitute but one and the same Agreement. A facsimile copy hereof shall suffice as an original.

**Section 8.08. Neutral Interpretation.** The form of this Agreement has been prepared initially by Trane. However, the parties acknowledge that this is a negotiated Agreement and, in the event of any dispute over its meaning or application, this Agreement shall be interpreted fairly and reasonably and neither more strongly for, nor more strongly against, either party.

**Section 8.09. Bonds.** Trane shall furnish payment and performance bonds equal to 100% of the Contract Price.

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<sup>TM</sup>PACT is a trademark of Trane U.S. Inc.

Such bonds shall not cover any warranties beyond one year from completion of the installation. Trane will provide a Guaranteed Energy Savings ("GES Bond") for one year beginning on the date of Final Completion, in an amount equal to the annual Guaranteed Energy Savings calculated pursuant to Exhibit E of this Agreement. Customer shall pay Trane for the actual cost of the GES Bond annually in advance, which cost is not included in and is in addition to the Contract Price. The GES Bond shall be renewed annually during the term of this Agreement and at the Customer's expense, subject to the following limitation. The GES Bond is a surety product currently made available to energy savings performance contractors. Therefore, Trane's ability to provide the initial GES Bond, and annual renewals thereto, is subject to availability of this surety product in the commercial marketplace through Trane's usual bonding company relationship. In the event Trane is unable to obtain the GES bond in any given year, Trane shall provide written notice of that fact to Customer. The parties acknowledge that availability of the GES Bond surety product is a circumstance beyond Trane's control.

**Section 8.10 Attorneys' Fees and Costs.** Should either party employ an attorney to institute suit or demand arbitration to enforce any of the provisions hereof to protect its interests in any manner arising under this Agreement, or to recover on a surety bond furnished by a party to this Agreement

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**EXHIBIT A**  
**Payment Schedule**

Customer will make payments to Trane at the times and in the amounts set forth in the following schedule:

<i>Milestone</i>	<i>Payment Due</i>
Initial Payment Upon Execution of Notice to Proceed (NTP) by Customer	\$820,000.00
30 days after NTP - Monthly Payment	\$615,000.00
60 days after NTP - Monthly Payment	\$615,000.00
90 days after NTP - Monthly Payment	\$410,000.00
120 days after NTP - Monthly Payment	\$410,000.00
150 days after NTP - Final Payment	\$410,000.00
180 days after NTP - Final Payment	\$410,000.00
210 days after NTP - Final Payment	\$205,000.00
240 days after NTP - Final Payment	\$205,000.00
<b>Total Payments</b>	<b>\$4,100,000.00</b>



## **EXHIBIT B** **Scope of Services**

### ***The Services are defined as the following:***

Trane will furnish and install the sports lighting as defined in this scope of work

The lighting materials are as manufactured by Musco Lighting and will include the systems described below:

Light Structure Green™ System delivered to your site in Five Easy Pieces™

- Pre-cast concrete bases (where applicable)
- Galvanized steel poles (where applicable)
- UL Listed remote electrical component enclosures
- Pole length wire harness
- Factory-aimed and assembled luminaries

Sports Cluster Green™

- Factory aimed and assembled pole top luminaire assemblies
- 1500-watt metal halide fixtures
- UL Listed remote electrical component enclosures
- Mounting hardware for the pole top units and electrical component enclosures
- Pole length wire harness
- Disconnects

Control Link® Control & Monitoring System for flexible control and solid management of your lighting system on facilities with new LightStructure Green installations. Controls will be installed on all other facilities.

Lighting Contactors sized for the voltages available at the site.

The sports lighting will be installed at the following facilities:

- Wald Park Sports Lighting
  - - Baseball Fields (5)
  - - Pool
  - - Tennis Courts
- Cahaba Heights Sports Lighting
- Liberty Park Sports Lighting
- Central Elementary School Sports Lighting
- East Elementary School Sports Lighting
- Vestavia Hills High School Tennis Lights (6 courts)



The detailed scope of work for each facility is as follows:

**Wald Park Baseball Fields**

- Remove 219 existing fixtures
- Replace existing fixtures with 128 new Musco SCG fixtures
- Utilize 17 existing concrete poles
- In accordance with Exhibit B, Attachment 3, manufacturer's guaranteed Light levels of 50 foot candles on the infields and 30 foot candles on the outfields of all 5 fields
- In accordance with Exhibit B, Attachment 2, manufacturer's 10 year warranty on all equipment and two year warranty on all lamps. Year one of lamp warranty will include all lamps and labor cost. Year two of lamp warranty will only include lamps.
- Provide Controls for scheduling and on/off of the lighting system.

**Additional details of the scope of work to be provided are as follows:**

- Provide Project Management and assistance as needed.
- Provide required Musco Sports Cluster Green equipment.
- Provide Stamped Electrical plans from Licensed EE in the State of Alabama
- Remove fence as necessary to access fields.
- Remove and dispose of existing lighting fixtures, lamps, electrical enclosures, platforms, and cross arms on (17) concrete poles. This will include the recycling of lamps, aluminum reflectors, ballast and steel as necessary.
- Leave the existing grounding wires and power feed in place for reattachment to the new SCG product.
- Locate source of loop feed for track lighting and install disconnect, time clock and contactor for control.
- Provide storage containers for materials (including ballast boxes) as needed and waste disposal.
- Provide adequate security to protect Musco delivered products from theft, vandalism or damage during the installation.
- Provide equipment and materials to off load equipment at jobsite per scheduled delivery.
- Ground the new product on poles per the NFPA 780 code. This will include grounding of the electrical enclosures and remote light fixture cross arms.
- Install Musco electrical enclosures and (128) SCG fixtures on (17) existing poles. This will be for field lighting, track, and parking lighting and pool lighting on C2 pole (Remove steps if required to mount ballast boxes.)
- Install wiring from secondary of each pole mounted transformer to new electrical enclosures Segregate secondary wiring from the primary wiring inside of pole for SB and track lighting on 4 wagon wheel SB fields,. (note: track lighting on outfield poles on wagon wheel is loop fed from separate 240V source and have panel at base of poles.
- At single SB field, install wiring from existing 240V panel box on each pole, to new electrical enclosures. Terminate all wiring.
- Provide materials and equipment to wire and terminate ballasts to SCG fixtures, segregating fixture wires from primary wiring inside of pole.
- Provide equipment and materials to install and wire (2) new Control Link Retrofit units to control OCB switching as required (1 in concession building of wagon wheel , and 1 in press box on single field.) These will not control tracking lighting.
- Provide materials and equipment to mount the (2) Musco Supplied Surge Protection Devices to the distribution panel and terminate necessary wiring.
- Provide dedicated 2P30A breaker in distribution panel (Voltage to be determined) for surge protection device.





- Commission Control Link by contacting control-Link Central (877-347-3319) and going through the following steps:
  - -Check all zones to make sure they work in both auto and manual mode.
  - -1 hour comprehensive burn of the lights on each zone.
- Keep all heavy equipment off of playing fields. Repair damage to grounds, Ruts and sod damage caused by equipment traveling over wet grounds would be an example of damage requiring repair.
- Jobsite to be returned to condition substantially existing prior to construction of lighting system.
- Obtain any required building or electrical permitting

#### Customer Responsibilities:

- Reasonable access to the site for construction, including closing of the roads and moving cars out of parking areas to allow subcontractor to work on poles as needed.
- Locate existing underground utilities, irrigation lines, sprinkler heads as requested by Trane
- All necessary environmental permitting
- Structural inspection and signed drawings if required.
- Remove vegetation as needed to access poles.
- Trane will have to access fields to change lighting.
- Turnoff sprinklers 48 hours prior to the start of re installation to prevent ruts on soft field.
- Owner responsible for any utility company fees and requirements.

#### Wald Park Swimming Pool

- Remove 9 existing fixtures and 2 existing poles
- Replace existing fixtures with 14 Musco SCG fixtures
- Install 2 new concrete poles for the new fixtures
- In accordance with Exhibit B, Attachment 3, manufacturer's guaranteed Light levels of 40 foot candles
- In accordance with Exhibit B, Attachment 1, manufacturer's 25 year maintenance free warranty

#### Additional details of the scope of work to be provided are as follows:

- Provide required poles, fixtures, and foundations.
- Provide layout of pole locations and aiming diagram.
- Provide Project Management as required.
- Provide stamped foundation designs based on 2500psf soils.
- Provide Stamped Electrical plans from Licensed EE in the State of Alabama
- Remove Fencing as needed to access pool area.
- Provide plywood to protect pool deck from damage from heavy equipment if access to that area is required.
- Remove and dispose of the existing lighting fixtures, and electrical enclosures as required. (2) Fixtures are on (1) existing 30' pole which needs to be removed. And 2 fixtures are on tennis court wooden pole. This will include the recycling of lamps, aluminum reflectors, ballast and steel as necessary.
- Provide equipment and materials to off load equipment at jobsite per scheduled delivery.
- Provide storage containers for material, (including ballast boxes), as necessary and waste disposal.
- Provide stamped electrical plans for Musco to review prior to fabrication.
- Provide materials and equipment to install new panel if needed and LCC cabinet in Pump room. Feed 2 new poles and pole fixtures on existing C pole.
- Provide materials and equipment to mount the Musco Supplied Surge Protection Device to the distribution panel and terminate necessary wiring



- Provide dedicated breaker in distribution panel for surge protection device Provide materials and equipment to install all underground conduit, wiring, pull boxes etc. and terminate wiring as required per electrical design. This will be to 2 new poles and existing C2 pole.
- Provide materials and equipment to install (2) LSS foundations as specified on Layout.
- Provide and install ground rods for lightning protection per NFPA 780 Code, NEC Section 250, and local building codes. Poles 75' or shorter should use a #2 bare copper conductor to the ground rod. Poles taller than 75' should use a #2/0 bare copper conductor. For standard clay soil, the ground rod must not be less than 5/8"x 8' long, driven vertically into the soil until point is 10' below grade. Ground rods must be installed in soil, not in the concrete backfill. Measure resistance per NEC 250.56. If greater than 25 ohms, then install 2<sup>nd</sup> ground rod. Ground conductor to be attached by exothermic fusion welding.
- Remove spoils to owner designated location at jobsite.
- Provide materials and equipment to assemble (13) LSG fixtures and terminate all necessary wiring. (9) Fixtures on new poles, (Steps may need to be removed to install ballast boxes on C pole.)
- Provide equipment and materials to assemble and erect (2) LSS Poles with steps and cables if required for access.
- Provide step down transformer for 120v control circuit if not available.
- Commission Control Link by contacting Control Link Central at (877-347-3319) and going through the following steps:
  - -Check all Zones to make sure they work in both auto and manual mode.
  - -1 hour comprehensive burn of all lights on each zone.
  - -Set base line for the DAS (Diagnostic Acquisition System)
- Keep all heavy equipment off of playing fields. Repair damage to grounds, Ruts and sod damage caused by equipment traveling over wet grounds would be an example of damage requiring repair.
- Jobsite to be returned to condition substantially existing prior to construction of lighting system.
- Provide startup and aiming as required to provide complete and operating sports lighting system.
- Provide as built drawings on completion of installation.
- Obtain any required building or electrical permitting

#### Customer Responsibilities:

- Complete access to the site for construction using standard 2 wheel drive rubber tire equipment.
- Locate existing underground utilities, irrigation lines, sprinkler heads as requested by Trane.
- Locate and mark field reference points per Musco supplied layout.
- Pay for extra costs associated with foundation excavation in non-standard soils (rock, caliche, high water table, collapsing holes, etc.). Standard soils are defined as soils that can be excavated using standard earth auguring equipment.
- Foundation designs are based on level areas. Bases adjacent to slopes may require enhanced foundations and additional costs.
- Owner responsible for any utility company fees and requirements.
- All necessary environmental permitting
- Provide area on site for disposal of spoils from foundation excavation.

#### Wald Park Tennis Courts (8 courts)

- Remove 46 existing fixtures and 12 existing poles
- Replace existing fixtures with 24 new Musco SCG fixtures
- Install 8 new poles for the new fixtures
- In accordance with Exhibit B, Attachment 3, manufacturer's guaranteed light levels of 40 foot candles
- In accordance with Exhibit B, Attachment 1, manufacturer's 25 year maintenance free warranty



Additional details of the scope of work to be provided are as follows:

- Provide required poles, fixtures, and foundations.
- Provide layout of pole locations and aiming diagram.
- Provide Project Management as required.
- Provide stamped foundation designs based on 2500psf soils.
- Provide Stamped Electrical plans from Licensed EE in the State of Alabama
- Remove Fencing as need to access courts.
- Provide plywood to protect courts from damage from heavy equipment.
- Remove and dispose of the existing (46) lighting fixtures, electrical enclosures and transformers on (12) existing poles. This will include the recycling of lamps, aluminum reflectors, ballast and steel as necessary.
- Remove and dispose of 12 existing wooden poles.
- Provide equipment and materials to off load equipment at jobsite per scheduled delivery.
- Provide storage containers for material, (including ballast boxes), as necessary and waste disposal.
- Provide materials and equipment to install (2) new electrical services and panels as required.
- Provide stamped electrical plans for Musco to review prior to fabrication.
- Provide materials and equipment to mount the (2) Musco Supplied Surge Protection Devices to the distribution panel and terminate necessary wiring.
- Provide dedicated breaker in distribution panel for each surge protection device.
- Provide materials and equipment to install all underground conduit, wiring, pull boxes etc. and terminate wiring as required per electrical design.
- Provide materials and equipment to install (8) LSS foundations as specified on Layout.
- Provide and install ground rods for lightning protection per NFPA 780 Code, NEC Section 250, and local building codes. Poles 75' or shorter should use a #2 bare copper conductor to the ground rod. Poles taller than 75' should use a #2/0 bare copper conductor. For standard clay soil, the ground rod must not be less than 5/8"x 8' long, driven vertically into the soil until point is 10' below grade. Ground rods must be installed in soil, not in the concrete backfill. Measure resistance per NEC 250.56. If greater than 25 ohms, then install 2<sup>nd</sup> ground rod. Ground conductor to be attached by exothermic fusion welding.
- Remove spoils to owner designated location at jobsite.
- Provide materials and equipment to assemble (24) LSG fixtures and terminate all necessary wiring.
- Provide control wiring for (2) Player activated Push Button with Strobe.
- Provide equipment and materials to assemble and erect (8) LSS Poles with steps and cables.
- Provide equipment and materials to install (2) Lighting Contactor Cabinets and terminate all necessary wiring.
- Provide step down transformer for 120v control circuit if not available.
- Commission Control Link by contacting Control Link Central at (877-347-3319) and going through the following steps:
  - -Check all Zones to make sure they work in both auto and manual mode.
  - -1 hour comprehensive burn of all lights on each zone.
  - -Set base line for the DAS (Diagnostic Acquisition System)
- Provide startup and aiming as required to provide complete and operating sports lighting system.
- Provide as built drawings on completion of installation.
- Keep all heavy equipment off of playing fields. Repair damage to grounds, Ruts and sod damage caused by equipment traveling over wet grounds would be an example of damage requiring repair.
- Jobsite to be returned to condition substantially existing prior to construction of lighting system.
- Obtain any required building or electrical permitting

Customer Responsibilities:

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INITIALED BY: \_\_\_\_ Customer \_\_\_\_ Trane  
Exhibit B (11-28-07), Trane Project No.: J80612

<sup>TM</sup>PACT is a trademark of Trane Inc.



- Complete access to the site for construction using standard 2 wheel drive rubber tire equipment.
- Locate existing underground utilities, irrigation lines, sprinkler heads as requested by Trane.
- Locate and mark field reference points per Musco supplied layout.
- Pay for extra costs associated with foundation excavation in non-standard soils (rock, caliche, high water table, collapsing holes, etc.). Standard soils are defined as soils that can be excavated using standard earth auguring equipment.
- Foundation designs are based on level areas. Bases adjacent to slopes may require enhanced foundations and additional costs.
- All necessary environmental permitting
- Owner responsible for any utility company fees and requirements.
- Provide area on site for disposal of spoils from foundation excavation.

### **Cahaba Heights Athletic Field lighting**

- Remove 118 existing fixtures and 24 wood poles
- Replace existing fixtures with 74 new Musco LSG fixtures
- Install 20 new concrete poles for the new fixtures
- In accordance with Exhibit B, Attachment 3, manufacturer's guaranteed Light levels of 50 foot candles on the infield and 30 foot candles on the outfield on Kelly, Reese and Fox field. On Moss Field 30 foot candles will be guaranteed.
- In accordance with Exhibit B, Attachment 1, manufacturer's 25 year maintenance free warranty

### **Additional details of the scope of work to be provided are as follows:**

- Provide required poles, fixtures, and foundations.
- Provide layout of pole locations and aiming diagram.
- Provide Project Management as required.
- Provide stamped foundation designs based on 2500psf soils.
- Provide Stamped Electrical plans from Licensed EE in the State of Alabama.
- Remove and dispose of the existing (118) lighting fixtures, electrical enclosures and transformers on (24) existing poles. This will include the recycling of lamps, aluminum reflectors, ballast and steel as necessary.
- Provide equipment and materials to off load equipment at jobsite per scheduled delivery.
- Provide storage containers for material, (including ballast boxes), as necessary and waste disposal.
- Provide adequate security to protect Musco delivered products from theft, vandalism or damage during the installation.
- Provide materials and equipment to install new services where required for new ball fields. Demo or revamping of existing services may be required.
- Provide materials and equipment to mount the Musco Supplied Surge Protection Device to the distribution panel and terminate necessary wiring.
- Provide dedicated 3P 30A breaker in distribution panel for surge protection device.
- Provide materials and equipment to install all underground conduit, wiring, pull boxes etc. and terminate wiring as required per electrical design.
- Provide materials and equipment to install (20) LSS foundations as specified on Layout.
- Provide and install ground rods for lightning protection per NFPA 780 Code, NEC Section 250, and local building codes. Poles 75' or shorter should use a #2 bare copper conductor to the ground rod. Poles taller than 75' should use a #2/0 bare copper conductor. For standard clay soil, the ground rod must not be less than 5/8"x 8' long, driven vertically into the soil until point is 10' below grade. Ground rods must be installed in soil, not in the concrete backfill. Measure resistance per NEC 250.56. If greater than 25 ohms, then install 2<sup>nd</sup> ground rod. Ground conductor to be attached by exothermic fusion welding.
- Remove spoils to owner designated location at jobsite.



- Provide materials and equipment to assemble (76) LSG fixtures and terminate all necessary wiring.
- Provide equipment and materials to assemble and erect (20) LSS Poles.
- Provide equipment and materials to install (2) Lighting Contactor Cabinets and terminate all necessary wiring.
- Provide step down transformer for 120v control circuit if not available.
- Commission Control Link by contacting Control Link Central at (877-347-3319) and going through the following steps:
  - -Check all Zones to make sure they work in both auto and manual mode.
  - -1 hour comprehensive burn of all lights on each zone.
  - -Set base line for the DAS (Diagnostic Acquisition System)
- Provide startup and aiming as required to provide complete and operating sports lighting system.
- Provide as built drawings on completion of installation.
- Keep all heavy equipment off of playing fields. Repair damage to grounds, Ruts and sod damage caused by equipment traveling over wet grounds would be an example of damage requiring repair.
- Jobsite to be returned to condition substantially existing prior to construction of lighting system.
- Obtain any required building or electrical permitting

#### Customer Responsibilities:

- Complete access to the site for construction using standard 2 wheel drive rubber tire equipment.
- Locate existing underground utilities, irrigation lines, sprinkler heads as requested by Trane.
- Locate and mark field reference points per Musco supplied layout.
- Pay for extra costs associated with foundation excavation in non-standard soils (rock, caliche, high water table, collapsing holes, etc.). Standard soils are defined as soils that can be excavated using standard earth auguring equipment.
- Foundation designs are based on level areas. Bases adjacent to slopes may require enhanced foundations and additional costs.
- Owner responsible for any utility company fees and requirements.
- All necessary environmental permitting
- Provide area on site for disposal of spoils from foundation excavation.

#### Liberty Park Sports Lighting (ball fields and soccer fields)

- Remove 752 existing fixtures from the existing 50 concrete poles
- Replace existing fixtures with 395 new Musco SCG fixtures
- Utilize existing 50 concrete poles
- Manufacturer's guaranteed light levels of 50 foot candles on the infield and 30 foot candles on the outfield for all baseball /softball field.
- In accordance with Exhibit B, Attachment 3, manufacturer's guaranteed light levels of 30 foot candles on the soccer fields.
- In accordance with Exhibit B, Attachment 2, manufacturer's 10 year warranty on all equipment and two year warranty on all lamps; year one of lamp warranty will include all lamps and labor cost; year two will only include lamp cost.
- Provide controls for scheduling and controlling on/off of the lighting system.

#### Additional details of the scope of work to be provided are as follows:

- Provide Project Management and assistance as needed.
- Provide required Musco Sports Cluster Green equipment.
- Provide Stamped Electrical plans from Licensed EE in the State of Alabama
- Remove fence as necessary to access fields.
- Straighten 2 leaning poles on soccer field.





- Remove and dispose of (752) existing lighting fixtures, lamps, electrical enclosures, platforms and cross arms on (50) concrete poles. This will include the recycling of lamps, aluminum reflectors, ballast and steel as necessary.
- Leave the existing grounding wires and power feed in place for reattachment to the new SCG product.
- Provide storage containers for materials (including ballast boxes) as needed and waste disposal.
- Provide adequate security to protect Musco delivered products from theft, vandalism or damage during the installation.
- Provide equipment and materials to off load equipment at jobsite per scheduled delivery.
- Ground the new product on poles per the NFPA 780 code. This will include grounding of the electrical enclosures and remote light fixture cross arms.
- Install Musco electrical enclosures and (391) SCG fixtures on (50) existing poles.
- Terminate existing secondary power feed from transformer to new electrical enclosures, segregating it from the primary wiring inside of pole. Secondary disconnect may need to be supplied.
- Provide materials and equipment to wire and terminate ballasts to SCG fixtures, segregating fixture wires from primary wiring inside of pole.
- Provide equipment and materials to install and wire (3) new Control Link Retrofit units. and refeed OCB's.(1 in concession building of 4 plex, and 1 in 5 plex concession building, and 1 at soccer building.)
- Provide materials and equipment to mount the (3) Musco Supplied Surge Protection Devices to the distribution panel and terminate necessary wiring.
- Provide (3) dedicated 2P30A breaker in distribution panel (Voltage to be determined) for surge protection device.
- Commission Control Link by contacting control-Link Central (877-347-3319) and going through the following steps:
  - -Check all zones to make sure they work in both auto and manual mode.
  - -1 hour comprehensive burn of the lights on each zone. .
- Keep all heavy equipment off of playing fields. Repair damage to grounds, Ruts and sod damage caused by equipment traveling over wet grounds would be an example of damage requiring repair.
- Jobsite to be returned to condition substantially existing prior to construction of lighting system.
- Obtain any required building or electrical permitting

#### Customer Responsibilities:

- Reasonable access to the site for construction, including closing of the roads and moving cars out of parking areas to allow subcontractor to work on poles as needed.
- Locate existing underground utilities, irrigation lines, sprinkler heads as requested by Trane
- All necessary environmental permitting
- Structural inspection and signed drawings if required.
- Remove vegetation as needed to access poles.
- Trane will have to access fields to change lighting.
- Turnoff sprinklers 48 hours prior to the start of re installation to prevent ruts on soft field.
- Owner responsible for any utility company fees and requirements.

#### Central Elementary School Sports Lighting

Remove 48 existing fixtures from the existing 4 concrete poles

Replace existing fixtures with 28 new Musco SCG fixtures

Utilize existing 4 concrete poles

In accordance with Exhibit B, Attachment 3, manufacturer's guaranteed Light Levels of 30 foot candles





In accordance with Exhibit B, Attachment 2, manufacturer's 10 year warranty on all equipment and two year warranty on all lamps; year one of lamp warranty will include all lamps and labor cost; year two will only include lamp cost.

Provide Controls for scheduling and controlling on/off of the lighting system.

Additional details of the scope of work to be provided are as follows:

- Provide Project Management and assistance as needed.
- Provide required Musco Sports Cluster Green equipment.
- Provide Stamped Electrical plans from Licensed EE in the State of Alabama
- Remove and dispose of 48 existing lighting fixtures, lamps, electrical enclosures, and cross arms on (4) concrete poles. This will include the recycling of lamps, aluminum reflectors, ballast and steel as necessary.
- Leave the existing grounding wires and power feed in place for reattachment to the new SCG product.
- Provide storage containers for materials (including ballast boxes) as needed and waste disposal.
- Provide adequate security to protect Musco delivered products from theft, vandalism or damage during the installation.
- Provide equipment and materials to off load equipment at jobsite per scheduled delivery.
- Ground the new product on poles per the NFPA 780 code. This will include grounding of the electrical enclosures and remote light fixture cross arms.
- Install Musco electrical enclosures and (28) SCG fixtures on (4) existing poles.
- Terminate existing secondary power feed from transformer to new electrical enclosures, segregating it from the Primary wiring inside of pole. New secondary disconnect may need to be supplied.
- Provide materials and equipment to wire and terminate ballast to SCG fixtures, segregating fixture wires from Primary wiring inside of pole.
- Provide service as required in NE corner of field adjacent to service pole to refeed OCB and provide control circuit for Control Link retrofit unit.
- Provide equipment and materials to install (1) new Control Link Retrofit unit in NE corner of field. This will control OCB on utility service pole.
- Provide materials and equipment to mount the Musco Supplied Surge Protection Device to the distribution panel and terminate necessary wiring.
- Provide dedicated 2P30A breaker in distribution panel (Voltage to be determined) for surge protection device.
- Commission Control Link by contacting control-Link Central (877-347-3319) and going through the following steps:
  - -Check all zones to make sure they work in both auto and manual mode.
  - -1 hour comprehensive burn of the lights on each zone.
- Keep all heavy equipment off of playing fields. Repair damage to grounds, Ruts and sod damage caused by equipment traveling over wet grounds would be an example of damage requiring repair.
- Jobsite to be returned to condition substantially existing prior to construction of lighting system.
- Obtain any required building or electrical permitting

Customer Responsibilities:

- Reasonable access to the site for construction, including closing of the roads and moving cars out of parking areas to allow subcontractor to work on poles as needed.
- Locate existing underground utilities, irrigation lines, sprinkler heads as requested by Trane
- All necessary environmental permitting
- Structural inspection and signed drawings if required.
- Remove vegetation as needed to access poles.
- Trane will have to access fields to change lighting.



- Turnoff sprinklers 48 hours prior to the start of re installation to prevent ruts on soft field.
- Owner responsible for any utility company fees and requirements

### **East Elementary School Sports Lighting**

- Remove 72 existing fixtures from the existing 6 concrete poles
- Replace existing fixtures with 30 new Musco SCG fixtures
- Utilize existing 6 concrete poles
- In accordance with Exhibit B, Attachment 3, manufacturer's guaranteed Light Levels of 30 foot candles
- In accordance with Exhibit B, Attachment 2, manufacturer's 10 year warranty on all equipment and 2 year warranty on all lamps. Year one of lamp warranty will include all lamps and labor cost. Year two will only include lamps.
- Provide controls for scheduling and controlling on /off of the lighting system.

### **Additional details of the scope of work to be provided are as follows:**

- Provide Project Management and assistance as needed.
- Provide required Musco Sports Cluster Green equipment.
- Provide Stamped Electrical plans from Licensed EE in the State of Alabama.
- Remove and dispose of (72) existing lighting fixtures, lamps, electrical enclosures, platforms, and cross arms on (6) concrete poles. This will include the recycling of lamps, aluminum reflectors, ballast and steel as necessary.
- Leave the existing grounding wires and power feed in place for reattachment to the new SCG product.
- Provide storage containers for materials (including ballast boxes) as needed and waste disposal.
- Provide adequate security to protect Musco delivered products from theft, vandalism or damage during the installation.
- Provide equipment and materials to off load equipment at jobsite per scheduled delivery.
- Ground the new product on poles per the NFPA 780 code. This will include grounding of the electrical enclosures and remote light fixture cross arms.
- Install Musco electrical enclosures and (30) SCG fixtures on (6) existing poles.
- Terminate existing secondary power feed from transformer to new electrical enclosures, segregating it from the primary wiring inside of pole. New secondary disconnect may need to be supplied.
- Provide materials and equipment to wire and terminate ballast to SCG fixtures, segregating fixture wires from primary wiring inside of pole.
- Provide service as required at manual HV switch location. To feed new OCB and provide control circuit for Control Link retrofit unit.
- Provide equipment and materials to install (1) new Control Link Retrofit unit near new service. Install wiring as needed to control new utility installed OCB.
- Provide materials and equipment to mount the Musco Supplied Surge Protection Device to the distribution panel and terminate necessary wiring.
- Provide dedicated 2P30A breaker in distribution panel (Voltage to be determined) for surge protection device.
- Commission Control Link by contacting control-Link Central (877-347-3319) and going through the following steps:
  - -Check all zones to make sure they work in both auto and manual mode.
  - - 1 hour comprehensive burn of the lights on each zone.
- Keep all heavy equipment off of playing fields. Repair damage to grounds, Ruts and sod damage caused by equipment traveling over wet grounds would be an example of damage requiring repair



- Jobsite to be returned to substantially same condition existing prior to construction of lighting system.
- Obtain any required building or electrical permitting

**Customer Responsibilities:**

- Reasonable access to the site for construction, including closing of the roads and moving cars out of parking areas to allow subcontractor to work on poles as needed.
- Locate existing underground utilities, irrigation lines, sprinkler heads as requested by Trane
- All necessary environmental permitting
- Structural inspection and signed drawings if required.
- Remove vegetation as needed to access poles.
- Trane will have to access fields to change lighting.
- Turnoff sprinklers 48 hours prior to the start of re installation to prevent ruts on soft field.
- Owner responsible for any utility company fees and requirements.

**Vestavia Hills Tennis Courts (6 courts)**

- Remove 32 existing fixtures and all existing poles
- Replace existing fixtures with 24 new Musco LCG fixtures
- Install 9 new concrete poles for the new fixtures
- In accordance with Exhibit B, Attachment 3, manufacturer's guaranteed Light Levels of 40 foot candles
- In accordance with Exhibit B, Attachment 1, manufacturer's 25 year maintenance free warranty.

**Additional details of the scope of work to be provided are as follows:**

- Provide required poles, fixtures, and foundations.
- Provide layout of pole locations and aiming diagram.
- Provide Project Management as required.
- Provide stamped foundation designs based on 2500psf soils.
- Provide Stamped Electrical plans from Licensed EE in the State of Alabama
- Remove Fencing as need to access courts.
- Provide plywood to protect courts from damage from heavy equipment.
- Remove and dispose of the existing lighting fixtures and poles on lower courts. This will include the recycling of lamps, aluminum reflectors, ballast and steel as necessary.
- Provide equipment and materials to off load equipment at jobsite per scheduled delivery.
- Provide storage containers for material, (including ballast boxes), as necessary and waste disposal..
- Provide materials and equipment to install (1) new electrical service and panel as required.
- Provide materials and equipment to mount the (1) Musco Supplied Surge Protection Devices to the distribution panel and terminate necessary wiring.
- Provide dedicated breaker in distribution panel for each surge protection device.
- Provide materials and equipment to install all underground conduit, wiring, pull boxes etc. and terminate wiring as required per electrical design.
- Provide materials and equipment to install (9) LSS foundations as specified on Layout.
- Provide and install ground rods for lightning protection per NFPA 780 Code, NEC Section 250, and local building codes. Poles 75' or shorter should use a #2 bare copper conductor to the ground rod. Poles taller than 75' should use a #2/0 bare copper conductor. For standard clay soil, the ground rod must not be less than 5/8"x 8' long, driven vertically into the soil until point is 10' below grade. Ground rods must be installed in soil, not in the concrete backfill. Measure resistance per NEC 250.56. If greater than 25 ohms, then install 2<sup>nd</sup> ground rod. Ground conductor to be attached by exothermic fusion welding.
- Remove spoils to owner designated location at jobsite.



- Provide materials and equipment to assemble (24) LSG fixtures and terminate all necessary wiring.
- Provide control wiring for (2) Player activated Push Button with Strobe.
- Provide equipment and materials to assemble and erect (9) LSS Poles with steps and cables.
- Provide equipment and materials to install (1) Lighting Contactor Cabinets and terminate all necessary wiring.
- Provide step down transformer for 120v control circuit if not available.
- Commission Control Link by contacting Control Link Central at (877-347-3319) and going through the following steps:
  - -Check all Zones to make sure they work in both auto and manual mode.
  - -1 hour comprehensive burn of all lights on each zone.
  - -Set base line for the DAS (Diagnostic Acquisition System)
- Provide startup and aiming as required to provide complete and operating sports lighting system.
- Provide as built drawings on completion of installation.
- Keep all heavy equipment off of playing fields. Repair damage to grounds, Ruts and sod damage caused by equipment traveling over wet grounds would be an example of damage requiring repair.
- Jobsite to be returned to condition substantially existing prior to construction of lighting system.
- Obtain any required building or electrical permitting

#### Customer Responsibilities:

- Complete access to the site for construction using standard 2 wheel drive rubber tire equipment.
- Locate existing underground utilities, irrigation lines, sprinkler heads as requested by Trane.
- Locate and mark field reference points per Musco supplied layout.
- Pay for extra costs associated with foundation excavation in non-standard soils (rock, caliche, high water table, collapsing holes, etc.). Standard soils are defined as soils that can be excavated using standard earth auguring equipment.
- Foundation designs are based on level areas. Bases adjacent to slopes may require enhanced foundations and additional costs.
- Owner responsible for any utility company fees and requirements.
- All necessary environmental permitting
- Provide area on site for disposal of spoils from foundation excavation.

#### Warranties

In accordance with Article 7 of the PACT Agreement, equipment and/or parts that are not manufactured by Trane are not warranted by Trane and have such warranties as may be extended by the respective manufacturer. Thus, the following warranties are extended by the lighting subcontractor, Musco Lighting, and are between the City of Vestavia Hills and Musco.

- Musco Constant 25™ product assurance and warranty program will be provided for the new Light Structure Green poles and fixtures equipment.
- Musco 10/2 product assurance and warranty program will be provided for the SportsCluster Green equipment that will be mounted on existing structures.

Additional details of the above Musco extended warranties are as shown on Attachment 1 ("Musco 25 Year Product Assurance & Warranty") and Attachment 2 ("Musco 10 Year Warranty") to this Exhibit B.

#### Lighting Level Guarantees

All lighting level guarantees stated herein are provided solely by the manufacturer, Musco Lighting, and are between the City of Vestavia Hills and Musco Lighting. Additional details of the lighting level guarantees are as shown on Attachment 3 ("Musco Light Level Guarantee") to this Exhibit B.

#### Additional Clarifications



- Shipment of entire project to each of the different park locations
- Voltage and phasing as available at the individual sites – each park built to available voltage
- Structural code and wind speed = 2006 IBC, 90 MPH Exposure C.
- Responsible for structural integrity of Musco poles only – not of poles supplied by others
- Confirmation of pole locations prior to production
- City of Vestavia Hills must provide access to all pole locations for maintenance and warranty inspection for the entire length of the Trane Contract.
- Permitting fees are not included We request that the fees be waived for work with the City of Vestavia Hills
- The proposal is based on Customer providing access to the facilities to allow a continuous installation period. Should the project require installation in two phases, Trane would reserve the right to request a price change for additional costs resulting from a two phase installation approach.





# Musco Constant 25™

## 25-Year Product Assurance & Warranty Program

Musco Sports Lighting, LLC will provide all materials and labor to maintain operation of your lighting system to original design criteria for 25 years, or until maximum hours of coverage have accumulated, whichever comes first. Musco products and services are guaranteed to perform on your project as detailed in this document.

### Light

Average Constant Light™ illumination levels are guaranteed through Musco's Smart Lamp® power regulator and service technology.

Musco will electronically monitor lamp operation and operating hours, and will group re-lamp as described in the Project Details on the following page.

Individual lamp outages that occur during the lamp warranty and maintenance period are repaired when the usage of any field is materially impacted. If actual usage exceeds the maximum hours of coverage, the customer will be required to purchase lamp replacements in order to maintain the warranty to the end of 25 years.

### Energy Consumption

Average and maximum energy consumptions for your lighting system are guaranteed. Exhibit A provides a 25-year energy cost model based upon the customer provided utility rate and anticipated hours of usage. Changes in rates or usage will proportionately change the costs.

### Monitoring, Maintenance and Control Services

Musco shall monitor the performance of your lighting system, including on/off status, hours of usage and lamp outages. If fixture outages that affect playability are detected, Musco will contact you and proactively dispatch technicians.

On-off control of your lighting system is provided via an easy-to-use web site scheduling system, phone, fax, or email. Our trained Control-Link Central™ service center staff is available toll-free 24/7. Regular usage reports are always available on Control-Link Central's web site.

### Spill Light Control

Spill light readings at identified locations are guaranteed to be controlled to the values provided in Musco's design documents for your project, shown in Exhibit B.

### Structural Integrity

Your project has been designed to \_\_\_\_\_ .  
Structural integrity of equipment manufactured by Musco is guaranteed.

Musco has a team of people to ensure fulfillment of our product and services warranty (Exhibit C) and maintains financial reserves dedicated to support our fulfillment of this warranty. Please keep this document as your signed contract guaranteeing comprehensive service for the 25 year period.





# Musco Constant 25™

25-Year Product Assurance & Warranty Program

## Project Details

Project Name: \_\_\_\_\_ Project Number: \_\_\_\_\_

Owner: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_

Product(s) Covered: \_\_\_\_\_

Date Issued: \_\_\_\_\_

Expiration: \_\_\_\_\_ or maximum hours of coverage noted below, whichever occurs first

Total Average kW per hour: \_\_\_\_\_ Total Maximum kW per hour: \_\_\_\_\_

Musco products and services are guaranteed to perform on your project as follows:

Field/Zone	Fixture Quantity	Lamp Type/ Lamp Hours	Average Target Constant Light Level	Uniformity Max/Min	Total Relamps Included	Estimated Annual/25- Year Estimated Usage Hours	Maximum Hours of Coverage



# Musco Constant 25™

## 25-Year Product Assurance & Warranty Program

### Terms and Conditions

Service under this Contract is provided by Musco Sports Lighting, LLC ("Musco") or an authorized servicer approved by Musco. Services performed under this Contract shall consist of furnishing labor and parts necessary to restore the operation of the Covered Product(s) to original design criteria provided such service is necessitated by failure of the Covered Product(s) during normal usage. This Contract covers Product(s) consisting of Musco's Green Generation Lighting® with Control-Link® and any additional Musco manufactured product as listed on page 2.

"We", "us" and "our" mean Musco. "You" and "your" mean the purchaser of the Covered Product(s). No one has the authority to change this Contract without the prior written approval of Musco. Musco shall not assume responsibility for their agents or assignees other than as described below. If there is a conflict between the terms of this Contract and information communicated either orally or in writing by one or more of our employees or agents, this Contract shall control.

#### Additional Provisions

- 1. Availability of Service:** Control-Link Central operators shall be available 24/7 via web site, phone, fax, or email. Maintenance service specialists shall be available 8AM to 5PM Central Time, and services shall be rendered during these same hours in your local time zone, Monday through Friday (with the exception of national holidays). Hours of operation are subject to change without notice to you. Musco will exercise all reasonable efforts to perform service under this Contract, but will not be responsible for delays or failure in performing such services caused by adverse weather conditions, acts of any government, failure of transportation, accidents, riots, war, labor actions or strikes or other causes beyond its control.
- 2. Determination of Repairs:** Musco will utilize the field monitoring system and any information provided by the customer to determine when the usage of the field is materially impacted. From this information, Musco will determine needed repair and/or replacement of Covered Product(s) and parts. Repair will be with product(s) of like kind and quality.
- 3. Your Requirements Under this Contract:** You must meet all electrical and installation requirements as specified by the manufacturer. In addition, you promise and assure: full cooperation with Musco, Musco's technicians and authorized servicers during telephone diagnosis and repair of the Covered Product(s); reasonable accessibility of the Covered Product(s); a non-threatening and safe environment for service.

You agree to check fuses and to replace fuses as needed. Musco provides spare fuses in the lowest alpha-numeric numbered enclosure. Musco will replenish spare fuses used.

You agree to keep your Green Generation Lighting system online. This means keeping the required control voltage to the control system at all times. Any deviation from this practice must be discussed with Musco's Warranty Department.

- 4. Service Limitations - This Contract does not cover:** Maintenance, repair or replacement necessitated by loss or damage resulting from any external causes such as, but not limited to, theft, environmental conditions, negligence, misuse, abuse, improper electrical/power supply, unauthorized repairs by third parties, attachments, damage to cabinetry, equipment modifications, vandalism, animal or insect infestation, physical damage to Covered Products parts or components, failure of existing structures, supporting electrical systems or any non-Musco equipment, or acts of God/nature (including, but not limited to: earthquake, flood, tornadoes, typhoons, hurricanes or lightning).

#### 5. Contract Limitations:

- a. EXCLUSIONS FROM COVERAGE:** IN NO EVENT WILL MUSCO BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES WHICH INCLUDE, BUT ARE NOT LIMITED TO, ANY DELAY IN RENDERING SERVICE OR LOSS OF USE DURING THE REPAIR PERIOD OF THE COVERED PRODUCT(S) OR WHILE OTHERWISE AWAITING PARTS.
  - b. Limitation of Liability:** To the extent permitted by applicable law, the liability of Musco, if any, for any allegedly defective Covered Product(s) or components shall be limited to repair or replacement of the Covered Product(s) or components at Musco's option. THIS CONTRACT IS YOUR SOLE EXPRESS WARRANTY WITH RESPECT TO THE COVERED PRODUCT(S). ALL IMPLIED WARRANTIES WITH RESPECT TO THE COVERED PRODUCT(S) INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY EXPRESSLY EXCLUDED.
  - c. For the purposes of and by your acceptance of this Contract you acknowledge and agree that if a surety bond ("Bond") is provided the warranty and/or maintenance guarantee provided for in this Contract and any corresponding liability on behalf of the issuing surety under the Bond is limited to the first twelve (12) months of said warranty and/or maintenance guarantee coverage period. Any warranty and/or guarantee coverage period in excess of said initial 12 month period does not fall within the scope of the Bond and shall be the sole responsibility of Musco.**
  - d. Musco requires reasonable access for a crane or man lift equipment to service the lighting system. Musco will not be responsible for damage from operating the vehicle on the property when the equipment is operated in the prescribed manner over the designated access route.**
- 6. Transfer and Assignment:** Except to owners, you shall not have the right to assign or otherwise transfer your rights and obligations under this Contract except with the prior written consent of Musco; however, a successor in interest by merger, operation of law, assignment or purchase or otherwise of your entire business shall acquire all of your interests under this Contract.
  - 7. Governing Law:** Unless otherwise governed by applicable state law, the Contract shall be interpreted and enforced according to the laws of the State of Iowa.
  - 8. Subrogation:** In the event Musco repairs or replaces any Covered Product(s), parts or components due to any defect for which the manufacturer or its agents or suppliers may be legally responsible, you agree to assign your rights of recovery to Musco. You will be reimbursed for any reasonable costs and expenses you may incur in connection with the assignment of your rights. You will be made whole before Musco retains any amounts it may recover.

Signature: \_\_\_\_\_

Vice President of Sales



## 10 Year Warranty

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### Equipment

Musco warrants your lighting system (excluding fuses and lamps) to be free from defects in materials and workmanship for a period of ten years starting from the date of shipment.

**Two Years Labor** — Musco agrees to provide labor and materials for a period of two years to replace defective parts or repair defects in workmanship or, at its election, to pay the reasonable cost of labor for such repairs. For the remainder of the warranty period, replacement materials will be provided at no charge. Labor costs will be the owner's expense.

### Lamps

Lamps are warranted not to fail for two years from the date of shipment. Lamps which fail during the first year of the warranty period will be replaced and installed at no cost to the owner.

Lamps which fail during the second year of the warranty period will be replaced by the manufacturer, but installation will be the owner's responsibility. Lamps damaged by physical trauma or electrical surges are not covered by this warranty.

### Alignment

Musco warrants accurate alignment of the luminaires on the luminaire assembly for a period of ten years starting from the date of shipment.

### Limitations

The following are not covered by this warranty:

- Fuses
- Weather condition events such as lightning or hail damage
- Improper installation, vandalism or abuse
- Unauthorized repairs or alterations

Repair and/or replacement are the complete warranty and constitute the exclusive remedy.

## Project Submittal: Performance Guarantee - 10/2 Year Warranty

Musco hereby guarantees compliance with the following specifications for your project.

Field	Constant Average Illumination		Uniformity	
	Infield	Outfield	Infield	Outfield
Liberty Park Fields 1-9	50fc	30fc	2.0:1.0	2.5:1.0

Field	Constant Average Illumination	Uniformity
Liberty Park Soccer 10-14	30fc	2.0:1.0
Central Elementary Soccer	30fc	2.5:1.0
East Elementary Entire Area	30fc	2.5:1.0

This guarantee is dependent upon the following:

- All test stations matched exactly to the number and location of points supplied with the Musco computer generated light scan for constant light levels.
- Pole placement must be within 3 feet of Musco recommendation.
- Voltage supply to the ballast of all fixtures must be no less than 97% of the designed secondary voltage.

In the unlikely event that these performance specifications are not met, Musco shall provide necessary corrective action at no expense to the owner.

We trust this meets with your approval.

Musco Sports Lighting, LLC



Luann Ferreira  
Vice-President Sales

**Project Submittal: Performance Guarantee – Constant 25 Year Warranty**

Musco hereby guarantees compliance with the following specifications for your project. Furthermore, Musco guarantees the constant light levels for 25 years.

Field	Constant Average Illumination		Uniformity	
	Infield	Outfield	Infield	Outfield
Cahaba Heights – Reese, Moss, Kelly and Fox Fields	50fc	30fc	2.0:1.0	2.5:1.0

Field	Constant Average Illumination	Uniformity
Vestavia Hills – Tennis 1-2, 3-6	50fc	2.0:1.0
Wald Park - Pool	40fc	2.0:1.0
Wald Park - Tennis	40fc	2.0:1.0

This guarantee is dependent upon the following:

- All test stations matched exactly to the number and location of points supplied with the Musco computer generated light scan for constant light levels.
- Pole placement must be within 3 feet of Musco recommendation.
- Voltage supply to the ballast of all fixtures must be no less than 97% of the designed secondary voltage.

In the unlikely event that these performance specifications are not met, Musco shall provide necessary corrective action at no expense to the owner.

We trust this meets with your approval.

Musco Sports Lighting, LLC



Luann Ferreira  
Vice-President Sales



**EXHIBIT B.1**  
**Certificate of Substantial Completion**

**Certificate of Substantial Completion and Acceptance**

**City of Vestavia Hills, Alabama**  
*Trane Project No.: J480612*  
**Date Certificate Submitted to Customer:**

The Services performed pursuant to the PACT™ Agreement, by and between **The City of Vestavia Hills, Alabama** (“Customer”) and Trane U.S. Inc., dated as of February 25, 2013, have been inspected by the undersigned Customer, have been determined to be substantially complete, and Customer accepts the same.

The Date(s) of Substantial Completion for the Services noted below is/are hereby established as the earlier of (i) the date Customer executes this Certificate, as noted below, or (ii) fourteen (14) calendar days after the date noted above as the date this Certificate is submitted to Customer.

The Warranty Period, pursuant to Article 7 of the Agreement, commences as of the Warranty Commencement Date stated below with respect to the following corresponding equipment or work:

Services: Description of Equipment or Work	Warranty Commencement Date

Customer, by and through the undersigned duly authorized representative, accepts the above listed Services as substantially complete and assumes full possession thereof as of the Date of Substantial Completion.

**City of Vestavia Hills, Alabama**  
(Customer)

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date of Customer’s Signature: \_\_\_\_\_





**EXHIBIT B.2**  
**Certificate of Final Completion**

**Certificate of Final Completion and Acceptance**

**City of Vestavia Hills, Alabama**  
**Trane Project No.: J480612**  
**Date Certificate Submitted to Customer:**

The Services performed pursuant to the PACT™ Agreement, by and between **The City of Vestavia Hills, Alabama** ("Customer") and Trane U.S. Inc., dated as of February 25, 2013, have been inspected by the undersigned Customer and have been determined to be finally complete.

The Date of Final Completion is hereby established as the earlier of (i) the date Customer executes this Certificate, as noted below, or (ii) fourteen (14) calendar days after the date noted above as the date this Certificate is submitted to Customer.

The Warranty Period, pursuant to Article 7 of the Agreement, commences as of the Date of Final Completion, except as noted below with respect to the following equipment or work:

Description of Equipment or Work	Warranty Commencement Date

Customer, by and through the undersigned duly authorized representative, accepts the Services as finally complete and assumes full possession thereof as of the Date of Final Completion.

**The City of Vestavia Hills, Alabama**  
(Customer)

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date of Customer's Signature: \_\_\_\_\_



**EXHIBIT C**  
**Description of the Premises**

The Premises are described as follows:

Civic Center / Wald Park Athletic Complex  
1973 Merryvale Road  
Vestavia Hills, Alabama

Cahaba Heights Athletic Complex  
4405 Dolly Ridge Road –  
Vestavia Hills, Alabama

Liberty Park Athletic Complex  
4700 Sicard Hollow Road  
Vestavia Hills, Alabama

Central Elementary School Athletic Field  
Mary Fox Lane & Willoughby Rd.  
Vestavia Hills, Alabama

East Elementary School  
2109 Tyson Drive  
Vestavia Hills, Alabama

Vestavia Hills High School  
2235 Lime Rock Rd  
Vestavia Hills, Alabama



**EXHIBIT D**  
**Notice to Proceed**

**The City of Vestavia Hills, Alabama**  
**Trane Project No.: J480612**

Customer has closed on its financing (the "Financing Closing") of the PACT™ Agreement, dated February 25, 2013 as evidenced by the attached fully executed contract documents for financing of the Contract Price and funding of any escrow account provided for by the financing documents.

The entity providing funding to Customer:

Company Name:

Address:

Contact Name:

Telephone No.:

Email:

Pursuant to Section 1.04 of the Agreement, Customer hereby executes and issues this written Notice to Proceed authorizing Trane to immediately commence performance of the Services in accordance with the Agreement.

**The City of Vestavia Hills, Alabama**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

**EXHIBIT E**  
**Energy Savings Guarantee & Operational Savings**

**Section 1. Energy Savings Guarantee.** Trane guarantees that, as a result of the Services Trane will furnish hereunder, Customer will realize Total Energy Savings of 1,025,281 kWh defined in Table 1, in each of the consecutive twelve-month periods following the Commencement Date (each such twelve-month period being hereafter referred to as a "Guarantee Year") for the Guarantee Term (collectively, the "Guarantee"). The 1,025,281 kWh Guarantee equates to the sum of \$102,528 in Total Energy Savings each Guarantee Year calculated using the value of \$0.10 per kWh as stipulated by the parties in Exhibit E.1.

**Table 1 – Annual Total Energy Savings Per Building or ECM**

<i>Building or ECM</i>	<b>Option A: Partially Measured Retrofit Isolation</b>				
	<b>KWH Saved</b>	<b>KW Saved</b>	<b>Therms Saved</b>	<b>Gallons Saved (fuel oil)</b>	<b>Gallons Saved (water)</b>
<b>Central Elementary</b>	<b>26,319</b>	<b>34.0</b>	<b>NA</b>	<b>NA</b>	<b>NA</b>
<b>East Elementary</b>	<b>27,212</b>	<b>69.7</b>	<b>NA</b>	<b>NA</b>	<b>NA</b>
<b>Liberty Park</b>	<b>683,471</b>	<b>600.5</b>	<b>NA</b>	<b>NA</b>	<b>NA</b>
<b>Wald Park Baseball Fields</b>	<b>155,701</b>	<b>154.6</b>	<b>NA</b>	<b>NA</b>	<b>NA</b>
<b>Wald Park Pool</b>	<b>-9,398</b>	<b>-7.3</b>	<b>NA</b>	<b>NA</b>	<b>NA</b>
<b>Wald Park Tennis Courts</b>	<b>57,661</b>	<b>37.0</b>	<b>NA</b>	<b>NA</b>	<b>NA</b>
<b>Cahaba Heights</b>	<b>78,857</b>	<b>75.4</b>	<b>NA</b>	<b>NA</b>	<b>NA</b>
<b>Vestavia High School Tennis Courts</b>	<b>5,458</b>	<b>-3.3</b>	<b>NA</b>	<b>NA</b>	<b>NA</b>
	<b>Option B: Retrofit Isolation</b>				
	<b>KWH Saved</b>	<b>KW Saved</b>	<b>Therms Saved</b>	<b>Gallons Saved (fuel oil)</b>	<b>Gallons Saved (water)</b>
	<b>NA</b>	<b>NA</b>	<b>NA</b>	<b>NA</b>	<b>NA</b>
	<b>Option C: Whole Facility</b>				
	<b>KWH Saved</b>	<b>KW Saved</b>	<b>Therms Saved</b>	<b>Gallons Saved (fuel oil)</b>	<b>Gallons Saved (water)</b>
	<b>NA</b>	<b>NA</b>	<b>NA</b>	<b>NA</b>	<b>NA</b>
	<b>Option D: Calibrated Simulation</b>				
	<b>KWH Saved</b>	<b>KW Saved</b>	<b>Therms Saved</b>	<b>Gallons Saved (fuel oil)</b>	<b>Gallons Saved (water)</b>
	<b>NA</b>	<b>NA</b>	<b>NA</b>	<b>NA</b>	<b>NA</b>

<b>Grand Total Energy Savings (annual)</b>	<b>1,025,281</b>	<b>735.1</b>	<b>NA</b>	<b>NA</b>	<b>NA</b>
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*Due to rounding of numbers, some numbers in the table above may vary slightly from similar energy references within this Agreement.*

**Section 2. Calculated Monetary Value of Total Energy Savings.** Table 2 sets forth the annual calculated monetary value of Total Energy Savings per building or ECM for each method using the Base Utility Rates defined in Section 14.

**Table 2 – Calculated Monetary Value of Annual Total Energy Savings Per Building or ECM**

Building or ECM (Exhibit ID#)	Guarantee Options				Total Energy Savings
	Option A	Option B	Option C	Option D	
	Partially Measured Retrofit Isolation	Retrofit Isolation	Building or ECM (Exhibit ID#)	Guarantee Options	
Central Elementary	\$2,632	NA	NA	NA	\$2,632
East Elementary	\$2,721	NA	NA	NA	\$2,721
Liberty Park	\$68,347	NA	NA	NA	\$68,347
Wald Park Baseball Fields	\$15,570	NA	NA	NA	\$15,570
Wald Park Pool	-\$940	NA	NA	NA	-\$940
Wald Park Tennis Courts	\$5,766	NA	NA	NA	\$5,766
Cahaba Heights	\$7,886	NA	NA	NA	\$7,886
Vestavia High School Tennis Courts	\$546	NA	NA	NA	\$546
<b>Total</b>	<b>\$102,528</b>	<b>NA</b>	<b>NA</b>	<b>NA</b>	<b>\$102,528</b>

\* Some of the dollar amounts in the table above may vary slightly from similar dollar amounts within this Agreement due to rounding.

**Section 3. Calculated Monetary Value of Energy and Operational Savings With Escalation.** Table 3 sets forth the calculated monetary value of Total Energy Savings (calculated using the Base Utility Rates defined in Section 14) and Operational Savings for each year of the Guarantee Term, escalated each year by the stipulated percentage shown, which is a reasonable projection of inflation (for utility costs and otherwise) based on past inflation experience and the parties' expectations. Operational Savings are stipulated by the parties and are not included within the Guarantee.

**Table 3 – Calculated Monetary Value of Annual Total Energy Savings and Operational Savings With 4.4% Annual Utility Escalation**

Total Savings (\$)			
Year	Total Energy Savings	Operational Savings (stipulated)	Total Savings
<b>1</b>	<b>102,528</b>	<b>187,277</b>	<b>289,805</b>

2	107,039	193,631	300,671
3	111,749	200,266	312,015
4	116,666	207,192	323,857
5	121,799	214,422	336,221
6	127,158	221,971	349,130
7	132,753	229,852	362,605
8	138,594	238,080	376,674
9	144,693	246,670	391,362
10	151,059	255,638	406,697
11	157,706	265,000	422,706
12	164,645	274,774	439,419
13	171,889	284,978	456,868
14	179,452	295,632	475,084
15	187,348	263,897	451,245
16	195,591	275,508	471,100
17	204,198	287,631	491,828
18	213,182	300,267	513,469
19	222,562	313,499	536,061
20	232,355	327,293	559,648

**Section 4. IPMVP Methodology.** Four (4) different methods may be utilized to measure and calculate the Total Energy Savings: Option A – Partially Measured Retrofit Isolation and/or Stipulated; Option B – Retrofit Isolation; Option C – Whole Facility; and Option D – Calibrated Simulation. Each method is in accordance with the International Performance Measurement and Verification Protocol (IPMVP). The four methods are generally described in Sections 5 through 8. The type and location of energy conservation measures (ECM) installed determine which measurement and calculation method to utilize.

**Section 5. Option A. Partially Measured Retrofit Isolation.** The verification techniques for Option A determine energy savings by measuring the capacity or efficiency of a system before and after a retrofit, and multiplying the difference by an agreed-upon or “stipulated” factor, such as hours of operation or load on the system. Careful review of ECM design and installation ensure that stipulated values fairly represent the probable actual value. Specific M&V methodologies and stipulations are identified for each savings strategy are detailed in sub Exhibit E.1.

**Section 6. Option B. Retrofit Isolation.** Verification techniques for Option B are designed for projects where long-term continuous measurement of performance is desired. Under Option B, individual loads are continuously monitored to determine performance, and this measured performance is compared with a baseline to determine savings. Option B M&V techniques provide long-term persistence



data on ECM operation and performance. This data can be used to improve or optimize the operation of the equipment on a real-time basis, thereby improving the benefit of the retrofit. Option B also relies on the direct measurement of affected end uses. *Option B is not proposed for this project.*

**Section 7. Option C. Whole Facility.** Verification techniques for Option C determine savings by studying overall energy use in a facility and identifying the effects of energy projects from changes in overall energy use patterns. This approach is intended for measurements of the whole-facility or specific meter baseline energy use, and measurements of whole-facility or specific meter post-implementation (Post) energy use can be measured. The methodology to establish baseline and Post parameter identification, modeling approach and baseline or model adjustments will be defined in the Section 18 of this Exhibit. Periodic inspections of baseline energy usage, operating practices, and facility and equipment, and meter measurements of the will be necessary to verify the on-going efficient operation of the equipment, systems, practices and facility, and saving attainment.

Except as otherwise provided, actual Total Energy Savings will be calculated for each month of each Guarantee Year as the product of (a) "units of energy saved" (kWh, Therms, GJ, etc.) multiplied by (b) applicable Base Utility Rates.

Units of energy saved are computed by the "Metrix" software application. "Metrix" is an accounting software application copyrighted by Abraxas Energy Services, Inc. Units of energy saved are calculated by subtracting current period measured units of energy consumed from the adjusted Base Facility Utility Consumption units of energy defined in Section 16, Table 8. Adjustments to the Base Facility Utility Consumption units of energy are based on factors such as weather, occupancy, operating hours, etc., and changes to the Base Conditions and operating practices as defined in Section 18. *Option C is not proposed for this project.*

**Section 8. Option D. Calibrated Simulation.** Option D is intended for energy retrofits where calibrated simulation of baseline energy use and calibrated simulations of post-installation energy consumption are used to measure savings from the retrofit. Option D can involve measurements of energy use both before and after the retrofit for specific equipment/systems or whole-building data for calibrating the simulation(s). Simulation routines must be demonstrated to adequately model actual energy performance measured in the facility. This option usually requires considerable skill in calibrated simulation. *Option D is not proposed for this project.*

**Section 9. Operational Savings.** Customer and Trane agree that, as a direct result of the Services, as of the Commencement Date, Customer shall have achieved no less than \$ 187,277 in annual operational cost savings ("Operational Savings") for each Guarantee Year during the Guarantee Term. Customer and Trane worked together to identify and quantify the Operational Savings based upon past and projected expenditure data provided by the Customer. Throughout the Guarantee Term, Operational Savings for each Guarantee Year after the First Guarantee Year will be deemed by Customer and Trane to escalate at a rate of four point four percent (4.4%) per year; accordingly, the Operational Savings for each Guarantee Year after the first Guarantee Year will be calculated by multiplying the immediately preceding Guarantee Year's Operational Savings by one hundred and four point four percent (104.4%). The parties agree that the 4.4% escalation rate is a reasonable projection of inflation based on past inflation experience and the parties' expectations. Customer and Trane worked together to identify and quantify Operational Savings based upon past and projected expenditure data provided by the Customer. Operational Savings specified herein are stipulated as fact, will not be measured, monitored or verified by Trane, and are considered satisfied effective on the Commencement Date. Operational Savings include the following categories (as applicable):

- a. Direct Cost Avoidance. Reduction or elimination of existing or planned service contracts, and material, supply, and labor expenditures;
- b. Indirect Cost Avoidance. Customer valuation – including such items as re-deployed labor resources and reduction in overhead; and

- c. Future Capital Cost Avoidance. Future replacement expenditures avoided as a result of new equipment installed;

The Operational Savings are detailed in the table below. Table 4 identifies the source of Operational Savings defined by Customer.

**Table 4 – Detailed Operational Savings**

	Description	Direct Cost Avoidance	Indirect Cost Avoidance	Future Capital Cost Avoidance
Item 1	Sports Lights Maint Ops (Exh E.2)	\$36,311		
Item 2	ARRA Lighting Energy (Exh E.3)	\$21,454		
Item 3	ARRA Lighting Maint Ops (Exh E.3)	\$4,377		
Item 4	Reduced Storm Damage (Exh E.3)	\$19,408		
Item 5	Reduced Labor & Vehicle (Exh E.3)	\$15,000		
Item 6	Capital Cost Avoidance (Exh E.5)			\$42,857

**Section 10. Total Energy Savings.** Total Energy Savings shall be computed as specified in this Exhibit, including the sub-Exhibits. Two different types of energy savings may be achieved under this Agreement: Energy Use Savings and Energy Rate Savings (hereinafter collectively referred to as "Total Energy Savings"). Total Energy Savings will be determined by adding the Energy Use Savings and Energy Rate Savings for each Billing Period (as hereinafter defined), together with any Installation Period Savings. Utilizing energy related bills furnished by Customer pursuant hereto, Trane shall then determine Total Energy Savings for each Billing Period and for each Guarantee Year when completed. Subject to Section 12 hereof, Trane will begin recording annual savings from and after the Commencement Date.

(a) **Energy Use Savings** are those energy savings achieved through reduction or shift in energy or demand use. Trane will calculate Energy Use Savings achieved at the Premises by subtracting energy consumption and demand for the current Billing Period from Baseline energy consumption and demand for the corresponding month as shown in Section 16, Table 8 and multiplying those savings by the current utility rate unit cost or the Base Utility Rates as described herein, whichever is higher. The Energy Use Savings will be adjusted for weather, occupancy, utilization, and facility changes as described herein.

(b) **Energy Rate Savings** are those savings achieved through a reduction in fuel and/or electricity rates by one or more of the following means:

- (i) Improved rate from local electric utility company, natural gas company, or fuel company;
- (ii) Direct purchase of natural gas or electricity; and/or
- (iii) Bulk purchase of fuel.

Trane will calculate the Energy Rate Savings obtained for each Billing Period by multiplying energy consumption and demand for the current Billing Period by the energy rate reduction, as shown in the Total Energy Savings Table 5, which is the amount by which the Base Utility Rate defined in Section 14, exceeds the improved rate. There will be no Energy Rate Savings calculation unless an energy rate reduction has been achieved either directly or indirectly by Trane through one or more of the means listed above in clauses (i) through (iii).

**Table 5 – Total Energy Savings (Use if Energy Rate Savings are applicable)**

<b>Total Energy Savings (\$)</b>			
<b>Year</b>	<b>Energy Use Savings</b>	<b>Energy Rate Savings</b>	<b>Total Energy Savings</b>
<b>1</b>	<b>102,528</b>	<b>47,873</b>	<b>150,401</b>
<b>2</b>	<b>107,039</b>	<b>49,979</b>	<b>157,018</b>
<b>3</b>	<b>111,749</b>	<b>52,179</b>	<b>163,928</b>
<b>4</b>	<b>116,666</b>	<b>54,474</b>	<b>171,140</b>
<b>5</b>	<b>121,799</b>	<b>56,871</b>	<b>178,670</b>
<b>6</b>	<b>127,158</b>	<b>59,374</b>	<b>186,532</b>
<b>7</b>	<b>132,753</b>	<b>61,986</b>	<b>194,739</b>
<b>8</b>	<b>138,594</b>	<b>64,713</b>	<b>203,307</b>
<b>9</b>	<b>144,693</b>	<b>67,561</b>	<b>212,254</b>
<b>10</b>	<b>151,059</b>	<b>70,533</b>	<b>221,592</b>
<b>11</b>	<b>157,706</b>	<b>73,637</b>	<b>231,343</b>
<b>12</b>	<b>164,645</b>	<b>76,877</b>	<b>241,522</b>
<b>13</b>	<b>171,889</b>	<b>80,260</b>	<b>252,149</b>
<b>14</b>	<b>179,452</b>	<b>83,791</b>	<b>263,243</b>
<b>15</b>	<b>187,348</b>	<b>87,478</b>	<b>274,826</b>
<b>16</b>	<b>195,591</b>	<b>91,327</b>	<b>286,918</b>
<b>17</b>	<b>204,198</b>	<b>95,345</b>	<b>299,543</b>
<b>18</b>	<b>213,182</b>	<b>99,540</b>	<b>312,722</b>
<b>19</b>	<b>222,562</b>	<b>103,920</b>	<b>326,482</b>
<b>20</b>	<b>232,355</b>	<b>108,493</b>	<b>340,848</b>

**Section 11. Installation Period Savings.** Energy Use Savings, as calculated in accordance with the sub-Exhibits, will accrue as the Services progress during the installation period until the Commencement Date. As applicable, Trane will calculate and document these savings as they accrue in accordance with the sub-Exhibit(s) (such savings hereinafter referred to as “Installation Period Savings”).

**Section 12. Billing Period.** The Billing Period is based on the time period between when readings are taken either electronically or manually by the utility or other designated agency. Utility bills will be prorated based on the number of days in the Billing Period month.

**Section 13. Commencement Date and Guarantee Term.** The "Commencement Date" shall be the first calendar day of the month following the month in which the Date of Final Completion occurs, unless the Date of Final Completion falls on the first calendar day of a month, in which event the Commencement Date shall be the Date of Final Completion, but in no event later than ninety (90) days after the date noted in the Certificate of Final Completion and Acceptance. The Guarantee shall begin as of the Commencement Date and, unless this Agreement shall terminate earlier, shall expire on the day immediately preceding the 14 year anniversary of the Commencement Date (hereinafter the "Guarantee Term").

**Section 14. Base Utility Rates.** Trane will use the greater of the then current applicable utility rate unit cost or the Base Utility Rates described herein to calculate the monetary value of Actual Savings; however, in the event Actual Savings are less than the Guarantee, the lesser of the then current applicable utility rate unit cost or the Base Utility Rates will be used to determine the monetary value of the shortfall in Actual Savings.

The following are the Base Utility Rates:

**Cost of Electricity**

**Table 6.0 – Electric Rate Structure**

<b>Utility Company:</b>	<b>Alabama Power Company</b>	
<b>Rate Schedule:</b>	<b>LAF</b>	
<b>Effective Date:</b>	<b>January 2006</b>	
Base Charge =	\$1.00	/month
Energy Cost Recovery =	\$0.02681	/kWh
Natural Disaster Reserve =	\$0.37	\$
Tax =	4%	
Billing Months	January - December	
All kWh =	\$0.153471	/kWh (Secondary)
All kWh =	\$0.143652	/kWh (Primary)
<b>Utility Company:</b>	<b>Alabama Power Company</b>	
<b>Rate Schedule:</b>	<b>LTU</b>	
<b>Effective Date:</b>	<b>January 2006</b>	
Base Charge =	\$20.00	/month
Energy Cost Recovery =	\$0.02681	/kWh
Natural Disaster Reserve =	\$0.37	\$
Tax =	4%	
Billing Months	June 1 – September 30	
kWh Energy Charge =	\$0.194831	/kWh Peak (noon – 7pm) M - F
kWh Energy Charge =	\$0.066931	/kWh Intermediate (10am – noon) M - F
kWh Energy Charge =	\$0.038431	/kWh Off-Peak (all other hrs & Sat/Sun)
Billing Months	October 1 – May 31	
kWh Energy Charge =	\$0.066931	/kWh Intermediate (7am – 9pm) M - F
kWh Energy Charge =	\$0.038431	/kWh Off-Peak (all other hrs & Sat/Sun)
Off-Peak Holidays =	New Year's Day	Independence Day
	Labor Day	Thanksgiving Day
	Christmas Day	

<b>Minimum Bill =</b>	\$20.00	Base Charge
	\$2.00	/kW billing capacity

**Cost of Fuel(s)**

**Table 6.1 – Gas Rate Structure**

<b>Utility Company:</b>	<b>Alagasco</b>	
<b>Rate Schedule:</b>	<b>SCSI</b>	
<b>Effective Date:</b>	<b>July 1, 2012</b>	
Service Charge =	\$15.03	/month
First 150 ccf =	\$1.3977	/ccf
Next 600 ccf =	\$1.2639	/ccf
Over 750 ccf =	\$1.2031	/ccf
State Utility Tax =	4.0%	

**Table 6.2 – Fuel Rates**

Facility	Fuel	Facilities Charge (per month)	Winter Rate (per therm)	Summer Rate (per therm)
NA	NA	N/A	NA	NA

**Cost of Water/Sewer**

**Table 6.3 – Water & Sewer Rates**

<b>Utility Company:</b>	<b>Talladega Water &amp; Sewer</b>	
<b>Rate Schedule:</b>	<b>Commercial</b>	
<b>Effective Date:</b>	<b>September 5, 2012</b>	
Minimum Water Charge =	\$23.14	/month
Water Consumption Charge =	\$0.31	/cgal
Minimum Sewer Charge =	\$24.14	/month
Sewer Consumption Charge =	\$0.31	/cgal
State Utility Tax =	4.0%	

**Section 15. Metering Information.** Option C verification requires specific energy or water usage data to be collected. The data collected will be based on the Meter information in Section 15 Table 7.

**Table 7. For Option C Measurement & Verification**

Facility	Utility Type	Serves	Account #	Meter #	Rate Schedule
NA	NA	NA	NA	NA	NA

**Section 16. Base Conditions.** Total Energy Savings will be calculated using the Base Facility Utility Consumptions defined in Table 8. The savings and forecast shown below are for facilities and energy conservation measures using Option C M&V method and do not include any adjustments that may be necessary at the time of reconciliation as defined in Section 18. This Base Facility Utility Consumption will be used as the reference against which future years utility usage will be compared to determine the Actual Savings.

**Table 8. Base Facility Utility Consumption for Option C Measurement & Verification**

Baseline				Adjusted Baseline (If Applicable)			Forecast			Savings		
Date	kWh	kW	CCF	kWh	kW	CCF	kWh	kW	CCF	kWh	kW	CCF
NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA

**Facility Lighting Operation**

The following operational parameters were collaboratively agreed upon by Customer and Trane and are stipulated as fact for the purposes of this Agreement. The parameters were used in the Detailed Energy Analysis process to determine Energy Use Savings and Customer bears the risk of decreased energy savings if the facilities are operated outside of these parameters. Variation from these parameters will permit Trane to make an adjustment to the Baseline as indicated in Section 18.

**Table 9 – Athletic Field Lighting Operational Parameters**

Facility	Annual Lighting Burn Hours
Central Elementary	180
East Elementary	540
Liberty Park	720
Wald Park Baseball Field	720
Wald Park Pool	360
Wald Park Tennis	1080
Cahaba Heights	540
Vestavia	1080

Customer is responsible to perform the updates to the control system to conform to the above table. The Customer should limit access to lighting controls to prevent unwarranted lighting operations.

**Section 17. Guarantee Reconciliation.** Subject to Customer’s obligations to furnish the data and information required hereunder, within forty-five (45) days after the final month of each Guarantee Year, Trane will determine the actual Total Energy Savings (the “Actual Savings”) as described in this Exhibit and the sub-Exhibits and report the same to Customer in a Reconciliation Report. Customer shall be deemed to have accepted the determinations contained in the Reconciliation Report in the event Customer fails to object to the same within forty five (45) calendar days after delivery of the Reconciliation Report to Customer. In the event the Actual Savings, together with any Installation Period Savings that have not been previously applied against any shortfall in Total Energy Savings, are less than the Guarantee, within thirty (30) days after delivery of the Reconciliation Report Trane will pay Customer the difference between the Guarantee and the Actual Savings (credited by unapplied Installation Period Savings) for that Guarantee Year. Trane shall reimburse Customer for any such shortfall of guaranteed energy cost savings on an annual basis.

**Section 18. Adjustments to Baseline.** Trane may, at its sole discretion, make adjustments to the Baseline using standard and sound engineering principles as follows:



- a. Building Utilization: The total number of building occupants is a variable that may be adjusted for if the number of occupants differs from the Baseline quantity;
- b. Building Occupancy Hours: The hours the building(s) is/are occupied and/or equipment and/or lighting is utilized is a variable which may be adjusted for if the hours (quantity or time-of-day) differs from the hours identified in this Exhibit E and its sub-Exhibits. Buildings that have Trane energy management equipment will be monitored by Trane to verify hours of equipment operation. Buildings without energy management systems will have to have equipment operation logged by Customer's building staff as specified in Section 19, Customer Responsibilities, of this Exhibit E;
- c. Weather: Utility bills will be adjusted for weather;
- d. Building Changes: The Baseline may be adjusted to account for any building square footage changes, remodeling, and addition of equipment or change in usage. Customer agrees to contact Trane within seven (7) calendar days of commencement of any changes or additions of equipment or environments; and
- e. Trane's discretion, based on data or other information newly discovered or otherwise not readily available at the time the Baseline was prepared; and/or
- f. Failure of Customer to perform its obligations under Section 19 of this Exhibit E.
- g. Baseline Adjustment: Any adjustment in the baseline model of the building created as part of the engineering study appropriate to represent operation of the building if it had been designed, constructed, and/or operated in accordance with local and national codes in place as of the date of the Agreement. Such adjustments can include, but are not limited to, increased ventilation rates for code compliance and the addition of heating and/or air-conditioning to areas that previously had no environment conditioning. *No Baseline Adjustments were made.*

**Section 19. Customer Responsibilities:** Customer acknowledges that it has an integral role in achieving savings and agrees to perform the following responsibilities:

- a. Properly maintain, repair, and replace all energy consuming equipment with equipment of equal or better energy and operational efficiencies and promptly notify Trane of the repair and /or replacement, but no later than within fourteen (14) calendar days from the commencement thereof;
- b. Make available to Trane upon its request copies of maintenance records and procedures regarding maintenance of the Premises;
- c. Promptly provide Trane with notice of system and building alterations at the Premises that impact energy consumption, including but not limited to: energy management systems, automatic door operation, structural, occupancy sensors, photocell/timer control of exterior lighting and heat recovery systems;
- d. Log any utility meters and the operation of any energy consuming devices or equipment as directed by Trane and furnish copies of such logs to Trane within thirty (30) calendar days after preparation of the logs;
- e. Provide to Trane true, accurate and complete copies of all energy related bills within ten (10) days after Customer's receipt of such bills. The parties stipulate that, in each event that Customer fails to provide an energy related bill within thirty (30) days after the end of the Billing Period to which the bill relates, Customer shall be deemed to have realized that portion of the

Total Energy Savings prorated for the utility billing period to which said energy related bill relates and for such subsequent utility billing periods as are affected by an increase in energy and/or demand use that could have been avoided had Trane been provided with the energy related bill in a timely manner. In the event Trane subsequently receives or obtains the untimely energy related bill and such bill discloses that savings were achieved in an amount greater than had been stipulated hereunder, such greater savings will be used in calculating Actual Savings;

- f. Provide to Trane true, accurate and complete descriptions of all energy consuming devices within seven (7) days after installation and startup of such equipment. This equipment includes, but is not limited to heating, cooling or ventilating equipment, computers and other electronics, water heaters, kitchen equipment, laundry equipment, mobile trailer units, portable hospital equipment. The parties stipulate that, in each event that Customer fails to provide this information within thirty (30) days after the startup of such equipment, Customer shall be deemed to have realized that portion of the Total Energy Savings prorated for the utility billing period to which said energy related bill relates and for such subsequent utility billing periods as are affected by an increase in energy and/or demand use that could have been avoided had Trane been provided with the energy related information in a timely manner. In the event Trane subsequently receives or obtains the untimely energy related bill and such bill discloses that savings were achieved in an amount greater than had been stipulated hereunder, such greater savings will be used in calculating Actual Savings;
- g. Furnish to Trane true, accurate and complete copies of any utility rate schedules or tariffs promptly upon Trane's request for the same and, in any event, within thirty (30) calendar days after Customer's receipt of notice of a utility rate change;
- h. Maintain in effect and fully perform its obligations under the Maintenance Agreement throughout the duration of the Guarantee; and
- i. During the Term of the Agreement, permit only Trane and/or Customer approved personnel to repair, adjust or program equipment, systems, and/or controls covered by this Agreement or affecting equipment, systems, and/or controls covered by this Agreement, except in the event of an emergency, in which event Customer shall immediately notify Trane of the existence of the emergency no later than within twenty-four (24) hours of the commencement of the emergency condition.

**Section 20.** Exclusions from Trane's Responsibilities: Trane shall not be responsible for any of the following:

- a. Any shortfalls in Total Energy Savings, failure to satisfy the Guarantee, or for loss, damage or malfunction to equipment, systems, controls or building(s) structures resulting from non-Trane personnel examining, adjusting or repairing equipment, systems, or controls, except that personnel of MUSCO Sports Lighting LLC may examine, adjust or repair equipment, systems or controls in its provision of warranty services pursuant to Exhibit B, Attachment 1;
- b. Any failure of Customer to achieve or realize Operational Savings;
- c. Any damage or malfunction resulting from freezing, corrosion or erosion on the water side of the equipment or caused by scale or sludge on equipment;
- d. Problems or damages caused by utility service or damage sustained by equipment or systems;
- e. Furnishing any items of equipment, material, or labor, or performing tests recommended or required by insurance companies or federal, state, or local governments; and

- f. Failure or inadequacy of any structure or foundation supporting or surrounding equipment or work or any portion thereof.

**Section 21. Independent Audit.** Within forty-five (45) days after each anniversary of the Commencement Date, Customer may provide written notice to Trane that Customer intends to have performed an audit of the savings calculations and billings for the immediately preceding Guarantee Year. Customer and Trane shall thereupon select agreed upon experienced and qualified energy engineering auditors to complete and submit to the parties an audit of the savings calculations and billings for the immediately preceding Guarantee Year. Customer shall pay for the entire cost of the audit. The audit shall be completed within forty-five (45) days of selection of the auditor. Exercise of the right to request an audit shall in no way relieve Customer of its continuing obligation to make current payments pursuant to this Agreement. Any payments between the parties necessary to resolve any agreed upon irregularities identified in the audit will be made within sixty (60) days after submission of the audit to the parties. Any dispute arising from or related to the audit shall be resolved by recourse to the procedures set forth in Article 8 of this Agreement.

**Section 22. Agreed Upon Parameters.** Customer agrees that the parameters set forth in the sub-Exhibits (used for Options A, B, C & D) are mutually agreed upon and form the basis of the Guarantee. These parameters are hereby recognized, for the purposes of this Agreement, as fact and will not be measured, monitored or adjusted. These parameters apply to Total Energy Savings that shall be computed as specified in this Exhibit and sub-Exhibits.

**Section 23. Detailed Energy Analysis.** The "Detailed Energy Analysis," presented by Trane and MUSCO Sports Lighting, is incorporated herein for the limited purposes of presenting a description of existing conditions and the methodologies used for calculating projected energy savings with respect to the energy conservation measures comprising the Scope of Services in Exhibit B. Statements of savings contained in the Detailed Energy Analysis are projections only and do not constitute, and shall not in any way modify, the statements of Trane's Guarantee contained in this Exhibit E and sub-Exhibits referenced herein.

**EXHIBIT E.1**  
**Energy Savings Guarantee**  
**Sports Lighting Retrofit**

Applicability:

This performance guarantee applies to the high efficiency sports lighting retrofit energy conservation measures installed by Trane in the following Vestavia Hills facilities:

- Central Elementary School Sports Lighting
- East Elementary School Sports Lighting
- Liberty Park Sports Lighting
- Wald Park Sports Lighting
  - - Baseball Fields (5)
  - - Pool
  - - Tennis Courts
- Cahaba Heights Sports Lighting
- Vestavia Hills High School Tennis Lights (6 courts)

The following are mutually agreed upon parameters that form the basis of this performance guarantee. These parameters are hereby stipulated for the purposes of this Agreement as fact and will not be measured, monitored or adjusted.

**Existing Fixture Watt Usage**

Two types of fixtures are currently installed. All sites, except the lighting at the Vestavia Hills High School tennis courts utilize 1500 watt metal halide fixtures. The Vestavia Hills High School tennis courts use a 1000 watt metal halide fixture. These are standard fixtures. Manufacturer’s catalog data indicates that the existing 1500 watt MH Lamps are rated for 1500 watts and the associated ballast power adds another 8%. Including the ballast power, the established usage of the 1500 watt fixtures is 1,620 watts per fixture. Similarly, the 1000 watt MH Lamps are rated for 1000 watts and the associated ballast power adds another 7%. Using the ballast power, the established usage of the 1000 watt fixture becomes 1,070 watts per fixture. Actual field measurement would yield different results due to the loss of lighting, and resulting lower power usage that occurs with age and use. Thus, to provide a fair comparison, the established values below represent the watt usage of existing fixtures in a new condition. These initial watt per fixture usage values (Table 1) are stipulated and it is agreed that they will be used in the calculations for the Guarantee.

Table 1 – Existing Watt Usage per Fixture

Existing Fixtures	Watt Usage per Fixture
1500 Watt Metal Halide	1620 Watts
1000 Watt Metal Halide	1070 Watts

**Hours of Operation**

The current hours of operation were provided by Vestavia Hills. The new lighting controls provide the means to remotely turn on and off the sports lighting. This control has the capability of reducing operating hours since it will no longer require trips to the site for turning lighting on and off and lighting can be set to turn on and off to effectively reduce hours of operation. Musco had indicated that sites can achieve up to a thirty percent reduction in operating hours when the new controls are installed and utilized. For conservatism, a twenty percent reduction on operation hours has been used in the energy savings calculations. These current hours of operation and planned hours of operation values (Table 2) are stipulated and it is agreed that they will be used in the calculations for the energy savings Guarantee.

Table 2 – Hours of Operation

Site	Current Hours of Use	Planned Hours of Use
Central Elementary School Sports Lighting	616	492.8
East Elementary School Sports Lighting	344	275.2
Liberty Park Sports Lighting	944	755.2
Wald Park Sports Lighting		
- Baseball Fields (5)	800	640
- Pool	3200	2560
- Tennis Courts	1296	1036.8
Cahaba Heights Sports Lighting	800	640
Vestavia Hills High School Tennis Lights (6 courts)	1296	1036.8

**Post-Retrofit Measurements:**

The following describes the methodology for proving per-fixture wattage reductions as a result of the installation of energy efficient lighting equipment. Actual wattage measurements are taken to validate the post-retrofit, per-fixture wattage as represented in the energy savings calculations contained in Table 3.

**Measurement Methodology:**

Trane will install new fixtures. The detailed survey/scope of work contained in Table 3 illustrates the types of retrofits installed, and estimates the wattage of the retrofits. The purpose of this section is to validate these estimates through actual wattage measurement.

In order to validate the wattage estimates of the lighting retrofits, Trane will measure a sampling of the actual wattage consumed at each facility. This measurement will occur at the end of the first year of operation. Appropriate representatives of Vestavia Hills should be present to witness the measurement. The measurements will be taken utilizing an accurate, properly calibrated wattmeter. A qualified electrician will take the measurements, witnessed by Vestavia Hills (at its option) and Trane, and will record the results. Readings will be taken on one pole at each of the following sites:

- Central Elementary School Sports Lighting
- East Elementary School Sports Lighting



- Liberty Park Sports Lighting
- Wald Park Sports Lighting
- Cahaba Heights Sports Lighting
- Vestavia Hills High School  
Tennis Lights (6 courts)

Watts used per fixture will be calculated by dividing the reading from the pole by the number of fixtures on the pole.

The cost of this measurement and the responsibility for the provision of a qualified electrician will be borne entirely by Trane.

#### **Calculation of Guaranteed Energy Savings**

Table 3, Item I shows the calculation of the KW hours used in the Pre-Retrofit conditions, using the fixture watt usage and hours of use defined above. Similarly, Table 3, Item II shows the calculation of the KW Hours used in the Post-Retrofit conditions using again using the fixture watt usage and hours of operation defined above. Table 3, Item III. Shows the reduction in Kw Hours used (1, 025, 281 Kw Hours) and applies \$0.10 per Kw hr to produce Total Energy Savings in dollars of \$102,528. The \$0.10 per Kw Hour represents a conservative value of the cost of electricity based on the Vestavia Hills utility bills over the last 12 months. This value is stipulated and it is agreed that it will be used on the conversion of Kw Hours to dollars.

#### **Calculation of Actual Savings**

At the end of the first year of operation, Trane will measure the watts used by the methods defined above (Post-Retrofit Measurements). The measured actual Watts per fixture will be used to calculate the actual conditions after retrofit. Table 3, Item II calculations will be redone using the measured watts per fixture. As shown in Table 3, Item III., the difference between the Pre-Retrofit Conditions and the Post-Retrofit Conditions will be established in Kw Hours and converted to dollars using the stipulated \$0.10 per Kw Hour.



**Table 3 – Energy Savings Calculations**

<b>I. PRE RETROFIT CONDITIONS</b>					
SITE	Quantity of Fxtures	Fixture Type	Watts per Fixture	Hours of Use	Total Kw Hrs
Central Elementary School Sports Lighting	48	1500 watt metal halide	1620	616	47,900
East Elementary School Sports Lighting	72	1500 watt metal halide	1620	344	40,124
Liberty Park Sports Lighting	752	1500 watt metal halide	1620	944	1,150,019
Wald Park					
- Baseball Fields (5)	219	1500 watt metal halide	1620	800	283,824
- Pool	9	1500 watt metal halide	1620	3200	46,656
- Tennis Courts	46	1500 watt metal halide	1620	1296	96,578
Cahaba Heights Sports Lighting	118	1500 watt metal halide	1620	800	152,928
Vestavia Hills High School Tennis Lights (6 courts)	32	1000 watt metal halide	1070	1296	44,375
<b>Total Kw Hours Used Per Year</b>					<b>1,862,404</b>

<b>II. POST RETROFIT CONDITIONS</b>					
SITE	Quantity of Fxtures	Fixture Type	Watts per Fixture	Hours	Total Kw Hrs
Central Elementary School Sports Lighting	28	MUSCO LSG 1500	1564	492.8	21,581
East Elementary School Sports Lighting	30	MUSCO LSG 1500	1564	275.2	12,912
Liberty Park Sports Lighting	395		1564	755.2	466,547
Wald Park		MUSCO LSG 1500			0
- Baseball Fields (5)	128	MUSCO LSG 1500	1564	640	128,123
- Pool	14	MUSCO LSG 1500	1564	2560	56,054
- Tennis Courts	24	MUSCO LSG 1500	1564	1036.8	38,917
Cahaba Heights Sports Lighting	74	MUSCO LSG 1500	1564	640	74,071
Vestavia Hills High School Tennis Lights (6 courts)	24	MUSCO LSG 1500	1564	1036.8	38,917
<b>Total Kw Hours Used Per Year</b>					<b>837,123</b>

<b>III. SAVINGS CALCULATION</b>	<b>Total Kw Hours Saved</b>	<b>Average Annual \$ / Kw Hours</b>	<b>Total Savings, \$</b>
Central Elementary School Sports Lighting	26,319	\$0.1000	\$2,632
East Elementary School Sports Lighting	27,212	\$0.1000	\$2,721
Liberty Park Sports Lighting	683,471	\$0.1000	\$68,347
Wald Park		\$0.1000	\$0
- Baseball Fields (5)	155,701	\$0.1000	\$15,570
- Pool	-9,398	\$0.1000	(\$940)
- Tennis Courts	57,661	\$0.1000	\$5,766
Cahaba Heights Sports Lighting	78,857	\$0.1000	\$7,886
Vestavia Hills High School Tennis Lights (6 courts)	5,458	\$0.1000	\$546
	1,025,281		\$102,528



**EXHIBIT - E.2**  
**Lighting Maintenance Operational Savings**

**1.0 Agreed Upon Parameters:**

*The following are mutually agreed upon parameters that describe the basis for the Operational Savings. These parameters are hereby stipulated for the purposes of this Agreement, as fact and will not be measured, monitored or adjusted.*

**a) Applicability**

By implementing this project at the various athletic complexes as described in this Agreement, the City of Vestavia Hills will realize labor and materials savings associated with common maintenance activities of athletic field lighting.

Base Utility Rates are set forth in Exhibit E Section 14.0

**b) Annual Operating Characteristics**

The annual operating characteristics are based on the detailed audit of the sports lighting systems at the various complexes, customer interviews, customer maintenance invoices, and industry standard percentages of average failure rates for new lamps and ballasts. These values are mutually agreed to by Customer and Trane.

**2.0 Computation of Savings:**

*The following describes the stipulated methodology for computing Operational Savings based on the agreed to lamp and ballast failure rates.*

**a) Presentation of Data**

The following data is presented for use in the Operational Savings calculation and has been established and collaboratively agreed to by the Customer and Trane. For the purposes of this Agreement, the data is considered fact and will not be measured, monitored or adjusted.



Facility	Avg Rated Lamp Life, hrs	Avg Annual Use, hrs	Estimated Lamp Life, yrs	# of Fixtures	Estimated L & M Maint Cost/Fix	Estimated L & M Maint \$/relamp	Contract Term, yrs	# relamps per term	Total Relamp \$/term	Annual Relamp Cost, \$
<b>Central Park</b>										
Existing	3000	616	4.87	48	125	\$6,000	15	3.08	\$18,480	\$1,232
Proposed	5000	493	10.14	28	125	\$3,500	15	1.479	\$5,177	\$345.10
<b>Savings</b>									<b>\$13,304</b>	<b>\$887</b>

<b>East Elementary</b>										
Existing	3000	344	8.72	72	125	\$9,000	15	1.72	\$15,480	\$1,032
Proposed	5000	275	18.18	30	125	\$3,750	15	0	\$0	\$0.00
<b>Savings</b>									<b>\$15,480</b>	<b>\$1,032</b>

<b>Liberty Park</b>										
Existing	3000	944	3.18	752	125	\$94,000	15	4.72	\$443,680	\$29,579
Proposed	5000	755	6.62	395	125	\$49,375	15	2.265	\$111,834	\$7,455.63
<b>Savings</b>									<b>\$331,846</b>	<b>\$22,123</b>

<b>Wald Park Baseball Fields</b>										
Existing	3000	800	3.75	219	125	\$27,375	15	4	\$109,500	\$7,300
Proposed	5000	640	7.81	128	125	\$16,000	15	1.92	\$30,720	\$2,048.00
<b>Savings</b>									<b>\$78,780</b>	<b>\$5,252</b>

<b>Wald Park Pool</b>										
Existing	3000	1600	1.88	9	125	\$1,125	15	8	\$9,000	\$600
Proposed	5000	1600	3.13	9	125	\$1,125	15	0	\$0	\$0.00
<b>Savings</b>									<b>\$9,000</b>	<b>\$600</b>



**Wald Park Tennis**

Existing	3000	1296	2.31	46	125	\$5,750	15	6.48	\$37,260	\$2,484
Proposed	5000	1296	3.86	46	125	\$5,750	15	0	\$0	\$0.00
<b>Savings</b>									<b>\$37,260</b>	<b>\$2,484</b>

**Cahaba Heights**

Existing	3000	800	3.75	118	125	\$14,750	15	4	\$59,000	\$3,933
Proposed	5000	800	6.25	118	125	\$14,750	15	0	\$0	\$0.00
<b>Savings</b>									<b>\$59,000</b>	<b>\$3,933</b>

**Vestavia Hills High School Tennis Courts**

Existing	3000	1	3000.00	0	125	\$0	15	0.005	\$0	\$0
Proposed	5000	1	5000.00	0	125	\$0	15	0.003	\$0	\$0.00
<b>Savings</b>									<b>\$0</b>	<b>\$0</b>

**Grand Total Savings for 15 yrs**

**\$544,669**

**Grand Total Annualized Savings**

**\$36,311.28    \$36,311**



### 3.0 Presentation of Savings:

*The following values are the stipulated lighting maintenance savings the City of Vestavia Hills will realize by retrofitting the existing lights as presented in the proposal.*

**Total Annual Stipulated Lighting Materials Deferment Savings = \$36,311**

The above Operational Savings are mutually agreed to by Customer and Trane, will not be measured or recalculated during the life of the Agreement, and are hereby stipulated for the purposes of this Agreement.



## **EXHIBIT - E.3**

### **Miscellaneous Operational Savings**

#### **1.0 Agreed Upon Parameters:**

*The following are mutually agreed upon parameters that describe the basis for the Operational Savings set forth herein. These parameters are hereby stipulated for the purposes of this Agreement, as fact and will not be measured, monitored or adjusted.*

##### **a) Applicability**

Associated with the implementation of this project are several valid opportunities to obtain operational savings:

- i) The retrofit of various fluorescent lighting fixtures in certain city buildings will reduce energy consumption for those particular retrofitted fixtures
- ii) The retrofit of various fluorescent lighting fixtures in certain city buildings will reduce lamp and ballast replacement labor & material.
- iii) The retrofit of the athletic field lighting with the MUSCO systems will reduce typical storm damage that occurs when the fields are subjected to high wind speeds & stormy weather conditions.
- iv) The retrofit of the athletic field lighting with the MUSCO systems will reduce or eliminate the labor & vehicle usage currently required to turn the lights on/off each day.

Base Utility Rates are set forth in Exhibit E Section 14.0

##### **b) Annual Operating Characteristics**

The annual operating characteristics are based on the detailed audit of [a] certain city buildings (performed by Mayer Energy Services), and [b] the sports lighting systems at the various athletic complexes (performed by MUSCO Lighting), customer interviews, customer maintenance invoices, and industry standard percentages of average failure rates for new lamps and ballasts. These values are mutually agreed to by Customer and Trane.

#### **2.0 Computation of Savings:**

*The following describes the stipulated methodology for computing Operational Savings based on the agreed to lamp and ballast failure rates.*

##### **a) Presentation of Data**

The following data is presented for use in the savings calculation and has been established and collaboratively agreed to by the Customer and Trane. For the purposes of this Agreement, the data is considered fact and will not be measured, monitored or adjusted.

- i) The city provided Trane with the Detailed Audit report performed on the building lighting for several of the city's buildings. These buildings were retrofitted with more efficient T8/Electronically Ballasted lighting systems. The results of that audit, provided by the city, show an annual savings of \$21,451/year.
- ii) Also, this audit showed that the maintenance labor & material savings due to upgrading those lights was calculated to equal \$4,377 per year.
- iii) Based on invoices provided by the city, storm damage in 2011 resulted in \$129,389 just from the one storm. In as much as storm damage is not uncommon, but is highly unpredictable, the amount to be used for annual operational savings, at 15%, is taken as \$ 19,408.



- iv) As an example, Google Maps gives a roundtrip distance of 23.4 miles and an approximate drive time of 0.54 hours to make the roundtrip. Allowing about 10 minutes per stop, this gives about 2 hours per roundtrip to drive and perform the task. Two roundtrips are required per day, one to turn on the lights and one trip to turn them off. Using a Labor Rate of \$15.00/hour, a vehicle cost of \$0.51/mile, and 280 days/year, results in a cost of \$23,512/year. To be conservative, the reduced Man-hour and vehicle mileage costs are agreed to be \$15,000/year.

**3.0 Presentation of Savings:**

*The following values are the stipulated miscellaneous Operational Savings the City of Vestavia Hills will realize by retrofitting the existing lighting systems as presented in the proposal.*

**Total Annual Stipulated Miscellaneous Operational Savings = \$60,239**

The above Operational Savings are mutually agreed to by Customer and Trane, will not be measured or recalculated during the life of the Agreement, and are hereby stipulated for the purposes of this Agreement.



## **EXHIBIT - E.4**

### **Electrical Rate Change Operational Savings**

#### **1.0 Agreed Upon Parameters:**

*The following are mutually agreed upon parameters that describes the basis for the Energy Rate Savings herein. These parameters are hereby stipulated for the purposes of this Agreement, as fact and will not be measured, monitored or adjusted.*

##### **a) Applicability**

The Wald Park, Cahaba Heights, East Elementary, and Sicard Hollow complexes have meters that are on the Alabama Power LAF electrical rate structure. These meters can benefit by being changed to the LTU, time of use, rate structure.

Base Utility Rates are set forth in Exhibit E Section 14.0

##### **b) Annual Operating Characteristics**

The annual operating characteristics are based on the detailed audit of the sports lighting systems at the various complexes, customer interviews, customer maintenance invoices, and industry standard percentages of average failure rates for new lamps and ballasts. These values are mutually agreed to by Customer and Trane.

#### **2.0 Computation of Savings:**

*The following describes the stipulated methodology for computing savings based on the agreed to lamp and ballast failure rates.*

##### **a) Presentation of Data**

The following data is presented for use in the savings calculation and has been established and collaboratively agreed to by the Customer and Trane. For the purposes of this Agreement, the data is considered fact and will not be measured, monitored or adjusted.

Based on the rate comparison performed by Alabama Power, the savings realized by merely changing the rate structure based on historical energy consumption is \$47,873.

#### **3.0 Presentation of Savings:**

*The following values are the stipulated Energy Rate Savings the City of Vestavia Hills will realize by retrofitting the existing lights as presented in the proposal.*

**Total Annual Stipulated Energy Rate Savings = \$47,873**

The above Energy Rate Savings is mutually agreed to by Customer and Trane, will not be measured or recalculated during the life of the Agreement, and are hereby stipulated for the purposes of this Agreement.

**EXHIBIT - E.5**  
**Capital Cost Avoidance Operational Savings**

**1.0 Agreed Upon Parameters:**

*The following are mutually agreed upon parameters that describes the basis for the Operational Savings herein. These parameters are hereby stipulated for the purposes of this Agreement, as fact and will not be measured, monitored or adjusted.*

**a) Applicability**

Many of the parks have obsolete sports lighting systems that are at the end of their useful life and require replacement. The cost without the effect of inflation required to replace the obsolete sports lighting systems is about \$600,000. None of these costs are currently included in any near term capital plans. The implementation of this project provides a funding source for the sports lighting improvements and avoids the requirement to budget \$600,000 for the work necessary to keep the parks operational during the term of this Agreement.

Base Utility Rates are set forth in Exhibit E Section 14.0

**b) Annual Operating Characteristics**

The annual operating characteristics are based on the detailed audit of the sports lighting systems at the various complexes, customer interviews, customer maintenance invoices, and industry standard percentages of average failure rates for new lamps and ballasts. These values are mutually agreed to by Customer and Trane.

**2.0 Computation of Savings:**

*The following describes the stipulated methodology for computing capital costs avoidance.*

**a) Presentation of Data**

The following data is presented for use in the savings calculation and has been established and collaboratively agreed to by the Customer and Trane. For the purposes of this Agreement, the data is considered fact and will not be measured, monitored or adjusted.

The capital needs expressed over the 14 year term creates an annual capital cost avoidance of \$42,857 per year.

**3.0 Presentation of Operational Savings:**

*The following is the stipulated capital costs avoidance the City of Vestavia Hills will realize by retrofitting the existing lights as presented in the proposal.*

**Total Annual Stipulated Capital Costs Avoidance = \$42,857**

The above Capital Costs Avoidance is mutually agreed to by Customer and Trane, will not be measured or recalculated during the life of the Agreement, and are hereby stipulated for the purposes of this Agreement.



## ***EXHIBIT F***

### ***Hazardous Materials***

Pursuant to Section 5.01 of the Agreement, the existence of the following Hazardous Materials has been disclosed by Customer and/or otherwise identified prior to the execution of the Agreement:

- PCB-containing ballasts and mercury-containing lamps which shall be replaced by Trane and disposed of by Customer as owner/generator of the Hazardous Material.



**EXHIBIT G**  
**Measurement and Verification**

Commencing upon the Date of Final Completion, Trane will furnish the Measurement and Verification described in this Exhibit with respect to the Covered Equipment upon the terms and conditions contained in this Exhibit. In the event of an inconsistency or conflict between the terms and conditions of this Exhibit and the terms and conditions of the balance of this Agreement, the terms and conditions of this Exhibit shall control.

Included if Checked	Visits Per Year	Measurement and Verification Description
	1	Scheduled Service: M&V Visit
		<ul style="list-style-type: none"> <li>• Provide services of electrical subcontractor to measure actual watts used for on one pole at each of the following sites:               <ul style="list-style-type: none"> <li>• Central Elementary Athletic Field</li> <li>• East Elementary Athletic Field</li> <li>• Liberty Park Athletic Facility</li> <li>• Cahaba Heights Athletic Field</li> <li>• Wald Park Athletic Field</li> <li>• Vestavia Hills High School Tennis Courts</li> </ul> </li> </ul>
		<ul style="list-style-type: none"> <li>• Witness light wattage measurements</li> </ul>
		<ul style="list-style-type: none"> <li>• Prepare and submit savings report based on actual wattage measured</li> </ul>

**Measurement and Verification Price and Annual Adjustment.** The The price for Measurement and Verification is set forth below on an annual basis, subject to the adjustments provided for herein. Trane will invoice the Measurement and Verification Price once each year and each such invoice shall be due in advance of performance of the Measurement and Verification Trane reserves the right to add to any account outstanding for more than 30 days a service charge equal to the lesser of the maximum allowable legal interest rate or 1.5% of the principal amount due at the end of each month. Trane may discontinue Measurement and Verification whenever payment is overdue. Unless otherwise expressly agreed in writing, Customer shall pay, in addition to the stated Measurement and Verification Price, all taxes not legally required to be paid by Trane or, alternatively, shall provide Trane with an acceptable, valid certificate of tax exemption. Customer shall pay all costs (including attorneys' fees) incurred by Trane in attempting to collect amounts due. Effective upon each annual anniversary of the Maintenance and Verification Commencement Date, the annual Measurement and Verification Price shall be adjusted upward by the Annual Adjustment Rate; for each year of this Agreement subsequent to the first anniversary of the Measurement and Verification Commencement Date, the Annual Adjustment Rate shall be applied to the annual Maintenance Price as previously adjusted.

First Year Annual Measurement and Verification Price	\$10,000
Any Applicable Tax* and Freight	\$N/A
First Year Annual Measurement and Verification Price Total	\$10,000

Annual Adjustment Rate	4%
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(\* \$0.00 tax is contingent upon Customer furnishing evidence to Trane of valid, applicable exemption from sales/use or other applicable taxes.)

**Term.** Trane's obligations to furnish the Measurement and Verification shall commence upon the Date of Final Completion as defined in Section 2.03 of this Agreement (the "Measurement and Verification Commencement Date") and, unless this Agreement is terminated earlier, shall end upon expiration of the Guarantee Term set forth in Exhibit E.

**Schedule A to Exhibit G  
Covered Equipment**

<b>Equipment Type</b>	<b>Quantity</b>	<b>Manufacturer</b>	<b>Model Number</b>	<b>Location</b>
<b>Sports Lighting Fixtures</b>	<b>See Scope of Work Exhibit B</b>	<b>Musco Lighting</b>		<b>See Scope of Work Exhibit B</b>



## Exhibit G Additional Terms and Conditions

**Performance.** Trane shall perform the Maintenance described in the schedules included with this Exhibit G with respect to the listed Covered Equipment with reasonable promptness in a workmanlike manner in accordance with industry standards generally applicable in the area. Except as otherwise expressly stated, Measurement and Verification will be performed during Trane's normal business hours and any after-hours services shall be billed separately according to then prevailing overtime or emergency labor rates. Trane's duty to perform Measurement and Verification is subject to Events of Force Majeure, and contingent upon the ability to procure materials from the usual sources of supply. This Agreement presupposes that all major pieces of equipment are in proper operating condition as of the date hereof. Customer shall perform required restoration at its cost prior to Trane being obligated to perform hereunder. Measurement and Verification furnished is premised on the Covered Equipment being in a maintainable condition. If initial or seasonal startup is included in the Measurement and Verification, or an inspection by Trane prior to commencement of the Measurement and Verification, indicates repairs are required, Customer shall authorize Trane to perform such repairs pursuant to a quote for the repairs provided by Trane. During the Term, Trane may elect to install/attach to Customer equipment or provide portable devices (hardware and/or software) for execution of control or diagnostic procedures. Such devices shall remain the personal proprietary property of Trane and shall in no event become a fixture of customer locations. Customer shall not acquire any interest, title or equity in any hardware, software, processes, and other intellectual or proprietary rights to devices used in connection with providing service on Covered Equipment. Trane reserves the right to remove such items at its discretion.

**Customer Obligations.** Throughout the Term, Customer shall:

- a. Provide Trane reasonable and safe access to all Covered Equipment;
- b. Follow manufacturer recommendations concerning teardown and internal inspection, major overhaul, restoration, or refurbishing of the Equipment; unless expressly stated in the Scope of Services statement, Trane is not performing any manufacturer recommended teardown and internal inspection, major overhaul, restoration, or refurbishing of the equipment; Trane shall not be responsible to perform any subsequent repairs to the Equipment necessitated by Customer's failure to follow such manufacturer recommendations;
- c. Reimburse Trane for services, repairs, and/or replacements performed by Trane beyond the scope of Measurement and Verification or otherwise excluded hereunder. Such reimbursement shall be at the then prevailing overtime/holiday rates for labor and prices for materials and may at Trane's option be subject to a separate written agreement prior to its undertaking such work;
- d. Promptly notify Trane of any unusual performance of Covered Equipment;
- e. Permit only qualified personnel to repair or adjust Covered Equipment and/or controls during the Term;
- f. Utilize qualified personnel to properly operate the Covered Equipment in accordance with the applicable operating manuals and recommended procedures; and
- g. Unless water treatment is expressly included in the Measurement and Verification, provide professional cooling tower water treatment in accordance with any reasonable recommendations provided by Trane.

**Exclusions.** Unless expressly included in "Scope of Services" or "Equipment Coverage," the services to be provided by Trane do not include, and Trane shall not be liable for, any of the following:

- a. Any guarantee of system performance, except as expressly stated in Exhibit E to this Agreement; Repairs or replacement of parts made necessary as a result of electrical power failure, low voltage, burned out main or branch fuses, low water pressure, vandalism, misuse or abuse, improper operation, unauthorized alteration of Equipment, accident, negligence of Customer or others, damage due to freezing weather, calamity or malicious act;

- b. Any damage or malfunction resulting from vibration, electrolytic action, freezing, contamination, corrosion, erosion.,;
- c. Furnishing any items of equipment, material, or labor/labour, or performing special tests recommended or required by insurance companies or federal, state, or local governments;
- d. Failure or inadequacy of any structure or foundation supporting or surrounding the Equipment or any portion thereof;
- e. Building access or alterations that might be necessary to repair or replace Customer's existing equipment;
- f. Any services, claims, or damages arising out of Customer's failure to comply with its obligations under this Agreement;
- g. Failure of Customer to follow manufacturer recommended guidelines concerning overhaul and refurbishing of the Equipment;
- h. Any claims, damages, losses, or expenses, arising from or related to conditions that existed in, on, or upon the premises before the effective date of this Agreement ("Pre-Existing Conditions"), including, without limitation, damages, losses, or expenses involving pre-existing building envelope issues, mechanical issues, plumbing issues, Operation of the equipment; and
- i. Any claims, damages, losses, or expenses, arising from or related to work done by or services provided by individuals or entities that are not employed by or hired by Trane.

## **RESOLUTION NUMBER 4422**

**A RESOLUTION TO AUTHORIZE THE MAYOR AND CITY MANAGER TO EXECUTE AN AGREEMENT WITH CDG ENGINEERS AND ASSOCIATES, INC., FOR ENGINEERING SERVICES FOR ATRIP PROJECT NO. 37-03-33 RESURFACING COLUMBIANA, TYLER AND OVERTON ROADS DATED MARCH 6, 2013**

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

1. The Mayor and City Manager are hereby authorized to execute and deliver an agreement with CDG Engineers and Associates, Inc., for engineering services for ATRIP Project No. 37-03-33, Resurfacing Columbiana, Tyler and Overton Roads, Dated March 6, 2013 at a cost not to exceed \$185,906 (Rocky Ridge Road - \$109,321 and Columbiana/Tyler/Overton Roads - \$76,585); and
2. A copy of the agreement is attached to and incorporated into this Resolution Number 4422 as though written fully therein; and
3. This Resolution Number 4422 shall become effective immediately upon adoption and approval.

**ADOPTED and APPROVED** this the 25<sup>th</sup> day of March, 2013.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

ATRIP project cost estimates

breakdown of approximate percentage per municipal jurisdictions

updated: 6-March-2013

ATRIP No. 37-03-34

Rocky Ridge  
5.71 miles      Estimated Cost      20% Match      estimated PE fees  
\$ 2,677,308.69      \$ 535,461.74      \$ 109,321.00

Jeff Co	0.55			
Jeff Co(MtnBrk/VH)	0.79			
Jeff Co(VH/Hoover)	0.22	27.3%	\$ 146,290.77	\$ 29,867.03
Vestavia	2.72	47.6%	\$ 255,071.09	\$ 52,075.85
Hoover	1.43	25.0%	\$ 134,099.87	\$ 27,378.11

ATRIP No. 37-03-33

Columbiana/Tyler/Overton  
1.35 miles      Estimated Cost      20% Match      estimated PE fees  
\$ 1,057,504.00      \$ 211,500.80      \$ 76,585.00

Jeff Co (VH/Hoover)	0.189	14.0%	\$ 29,610.11	\$ 10,721.90
Vestavia	1.161	86.0%	\$ 181,890.69	\$ 65,863.10

## Rebecca Leavings

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**From:** Christopher Brady  
**Sent:** Wednesday, March 06, 2013 11:58 AM  
**To:** Rebecca Leavings; Randy Robertson  
**Cc:** Brian Davis  
**Subject:** FW: ATRIP Resurfacing - CDG Engineerign Design Proposal  
**Attachments:** CDG Eng Services Agreement \_ATRIP 37-03-33 -Columbiana-Tyler-Overton Rd Resurfacing 3-6-13.pdf; CDG Eng Services Agreement \_ATRIP 37-03-34 -Rocky Ridge Rd Resurfacing 3-6-13.pdf; atrip\_splits.pdf

Attached are two design proposals from CDG Engineers for design services related to ATRIP projects. In order to meet ALDOT timeline to complete these services and move toward construction, I am recommending these be placed as 1<sup>st</sup> read on March 11 Council agenda.

The fees associated with these services are:

Rocky Ridge Road ---- \$109,321  
Columbiana, Tyler, Overton – \$76,585

An updated breakdown of approximate cost sharing of these projects with Jefferson County and City of Hoover are attached.

Please let me know if any questions.

-----

Christopher Brady, PE  
City Engineer, City of Vestavia Hills

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**From:** Marc Thompson [<mailto:mthompson@cdge.com>]  
**Sent:** Wednesday, March 06, 2013 11:14 AM  
**To:** Christopher Brady  
**Cc:** Anthony Kamburis  
**Subject:** RE: ATRIP Resurfacing - CDG Engineerign Design Proposal

Hi Christopher, please find attached our proposed Engineering Services Agreement for each project.

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

Marc Thompson

**CDG Engineers & Associates, Inc.**

100 Concourse Parkway  
Suite 170  
Hoover, AL 35244  
Phone: (205) 403-2600  
Fax: (205) 403-2623  
Cell: (205) 994-4641  
[mthompson@cdge.com](mailto:mthompson@cdge.com)  
[www.cdge.com](http://www.cdge.com)

## **AGREEMENT FOR ENGINEERING SERVICES**

THIS AGREEMENT, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2013, by and between the City of Vestavia Hills, hereinafter referred to as the Owner, and CDG ENGINEERS & ASSOCIATES, INC., hereinafter referred to as the Engineer.

WHEREAS, the Owner desires to have professional engineering services and consultation performed relative to designing construction plans to ALDOT specifications for ATRIP Project Nos. 37-03-33 Resurfacing Columbiana, Tyler and Overton Roads, hereinafter referred to as the Project.

WHEREAS, not having engaged any other engineers for the Project, Owner desires to retain the Engineer as its sole and exclusive engineering and consulting firm for the Project;

NOW THEREFORE, in consideration of the mutual covenants and conditions hereinafter contained, the Owner and Engineer do agree, each with the other, as follows:

### **ARTICLE 1. Basic Services.**

The Engineer shall provide the Owner the following basic professional engineering services and consultation:

#### The Design Phase

1.1 The Engineer will consult with the Owner to determine the Owner's requirements for the project.

1.2 Complete geotechnical field evaluation and provide a report outlining recommended pavement section(s).

1.3 Develop final construction plans to ALDOT specifications, including resurfacing and safety improvements as required on the project.

1.3 The Engineer will facilitate the required ALDOT review(s) and approval(s) necessary to let the contract to construction in accordance with established ATRIP procedures.

The Proposal for Professional Engineering Services for ATRIP Project No. 37-03-33 Resurfacing Columbiana, Tyler and Overton Roads, Dated March 6, 2013 – and its detailed scope of work – as provided to and approved by the City of Vestavia Hills is attached hereto and made a part of this Agreement.

## **ARTICLE 2. Additional Services.**

If authorized in writing by Owner and accepted by Engineer through written amendment hereto, Engineer shall furnish, or obtain from others, additional services of the types listed below. These services will be paid for by the Owner as indicated in Article 4 of the Agreement.

2.1 Preparation of applications and supporting documents (in addition to those furnished under Article 1, if applicable) for private or governmental grants, loans or advances in connection with the Project; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.

2.2 Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner.

2.3 Services resulting from significant changes in the scope, extent, or character of the portions of the Services designed or specified by Engineer or its design requirements including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date of this Agreement or are due to any other causes beyond Engineer's control.

2.4 Providing renderings or models not defined as part of construction plans for Owner's use.

2.5 Physical testing of materials and equipment to be incorporated in the work and other such analysis or testing when necessary or deemed advisable by the Engineer, including but not limited to that testing included in the Owner's Project budget.

2.6 Undertaking investigations and studies including, but not limited to, detailed consideration of operations, maintenance, and overhead expenses; the preparation of feasibility studies, cash flow and economic evaluations, rate schedules, and appraisals; assistance in obtaining financing for a Project; evaluating processes available for licensing, and assisting Owner in obtaining process licensing; detailed quantity surveys of materials, equipment, and labor; and audits or inventories required in connection with construction performed by Owner.

2.7 Services during out-of-town travel required of Engineer other than for visits to the Site or Owner's office.

2.8 Providing construction surveys and staking to enable Contractor to perform its work, and any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.

2.9 Preparing and furnishing to Owner Record Drawings showing appropriate record information based on Project annotated record documents received from Contractor.



2.10 Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration or other dispute resolution process related to the Project.

2.11 Prepare property deeds, temporary easements, construction easements, Right-of-Way documents, and assist in acquisition of such documents deemed necessary in the scope of each project.

2.12 Other services performed or furnished by Engineer not otherwise provided for in this Agreement.

### **ARTICLE 3. Responsibilities of the Owner.**

The Owner shall provide for the Engineer the following information and shall do the following:

3.1 The Owner shall provide all criteria and complete information as to the Owner's requirements for the Project and shall furnish all design and construction standards which the Owner will require to be included in the engineering plans, specifications, and operational narrative.

3.2 The Owner will assist the Engineer by placing at the Engineer's disposal all available information pertinent to the Project.

3.3 The Owner shall arrange for access to and make all provisions for the Engineer to enter upon public and private property to perform surveying, testing and other data collection as required for Engineer to perform services under this Agreement. Owner shall appoint and designate in writing a person to act as Owner's site access representative for such purpose, and shall include contact information for the individual so designated. Owner agrees to hold the Engineer harmless from any and all claims, actions, damages and costs, including but not limited to attorneys fees, arising from Owner's arrangements and provisions for access to property.

3.4 The Owner shall be responsible for funding Right-of-Way (R.O.W.) acquisitions and/or Easements necessary to carry out construction tasks detailed within the project plans and specifications.

3.5 The Owner shall designate in writing a person to act as the Owner's representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions and receive information.

3.6 The Owner shall provide such accounting, independent cost estimating and insurance counseling services as may be required for the Project. The Owner shall also provide such legal services as the Owner may require or the Engineer may reasonably request with regard to legal issues pertaining to the Project that must be resolved in order for the Engineer to carry out its obligations under this Agreement. It is expressly understood and agreed that the Engineer itself shall not furnish or render any legal opinions or legal interpretations as to matters of law or application of law.

3.7 The Owner agrees to pay all costs of physical testing of materials and equipment to be incorporated in the work and other such analysis or testing when necessary or deemed advisable by the Engineer, including but not limited to that testing provided for and reflected in the Owner's Project budget.

#### **ARTICLE 4. Compensation.**

4.1 The Owner agrees to pay to the Engineer, in cash, total compensation of **Seventy-Six Thousand, Five Hundred Eighty Five Dollars (\$76,585.00)** to be paid periodically as work progresses on the Design Phase.

4.2 The Owner may, from time to time, request changes in the scope of the services of the Engineer to be performed hereunder. Such changes, including any increase or decrease in the amount of Engineer's compensation, that are mutually agreed upon by the Owner and the Engineer, shall be incorporated in written amendments to this Agreement.

4.3 Owner shall reimburse Engineer for all costs incurred for ALDOT's direct instruction to rebid the project at the rates shown in the Engineer's most current Standard Fee Schedule.

4.4 Owner shall reimburse Engineer for all costs incurred for the physical testing of materials and equipment to be incorporated in the work and other such analysis or testing when necessary or deemed advisable by the Engineer, including but not limited to that testing included in the Owner's Project budget.

4.5 Compensation for services performed by Engineer's employees as witnesses giving testimony in any litigation, arbitration or administrative proceeding shall be paid by Owner at a rate of 1.5 times the Engineer's standard hourly rates. Whenever Engineer's bill to Owner includes charges for Engineer's consultants for such services, those charges shall be the amounts billed by Engineer's consultant to Engineer times a factor of 1.15.

4.6 Invoices are due and payable within 30 days of receipt. If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice therefore, the amounts due Engineer will be increased at the rate of 1.5% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Engineer has been paid in full all amounts due for services, expenses, and other related charges. Payments will be credited first to interest and then to principal. Owner shall pay all costs and fees, including but not limited to attorney's fees, incurred by Engineer in the collection of any sums due for services rendered and related service expenses.

#### **ARTICLE 5. Relationship of the Parties.**

5.1 The parties intend that this Agreement create an independent contractor relationship between them. The Engineer is a professional corporation and is not an agent or employee of

Owner for any purpose. The Engineer cannot and will not represent that he has the authority to bind Owner in any contractual manner.

5.2 Neither party is to represent to others that the relationship between them is other than as stated above.

5.3 Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than the Owner and the Engineer, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of the Owner and the Engineer and not for the benefit of any other party.

5.4 The Owner and the Engineer each is hereby bound and the partners, successors, executors, administrators, legal representatives and assigns (to the extent permitted by Paragraph 5.5 below) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrations, legal representatives and said assigns of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

5.5 Neither the Owner nor the Engineer shall assign, sublet or transfer any rights under or interest in this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent the Engineer from employing such independent professional associates, consultants, subcontractors, and vendors as the Engineer may deem appropriate to assist in the performance of services hereunder.

5.6 Engineer may employ such independent professional associates, consultants, subcontractors, and vendors as the Engineer may deem appropriate to assist in the performance or furnishing of services under this Agreement. Engineer shall not be required to employ any consultant unacceptable to Engineer.

## **ARTICLE 6. Ownership and Use of Project Documents.**

6.1 All documents are instruments of service in respect to the Services, and Engineer shall retain an ownership and proprietary property interest therein (including the right of reuse at the discretion of the Engineer) whether or not the Services are completed.

6.2 Copies of documents that may be relied on by Owner are limited to the printed copies (also known as hard copies) that are signed or sealed by the Engineer. Files in electronic media format of text, data, graphics, or of other types that are furnished by Engineer to Owner are only for convenience of Owner. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.

6.3 Owner may make and retain copies of documents for information and reference in connection with the services by Engineer. Such documents are not intended or represented to be suitable for reuse by Owner or others on extensions of the services or on any other project. Any

such reuse or modification without written verification or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to Engineer's consultants. Owner shall indemnify and hold harmless Engineer and Engineer's consultants from all claims, damages, and expenses including attorneys' fees arising out of or resulting therefrom.

6.4 In the event of a discrepancy between the electronic files and the hard copies, the hard copies govern.

6.5 Any verification or adaptation of the documents for extensions of the services or for any other services will entitle Engineer to further compensation at rates to be agreed upon by Owner and Engineer.

## **ARTICLE 7. Liability and Indemnity.**

7.1 The Engineer will not be responsible for delays or obstacles attributable to acts of God, acts of third parties, weather, intervention of public authorities, work stoppages, changes in the applicable laws or regulations after the date of commencement of performance hereunder and any other acts or omissions or events which are beyond the control of the Engineer.

7.2 Owner may not utilize Engineer's construction cost estimate after thirty calendar days from the date of delivery to Owner without Engineer's written consent. Estimates of cost are made on the basis of the Engineer's experience, qualifications, and professional judgment, but since Engineer has no control over the cost of labor, materials, equipment or services furnished by others, or over competitive bidding or market conditions, Engineer cannot and does not guarantee or warrant that proposals, bids or actual construction costs will not vary from estimates of probable costs prepared by Engineer. Approvals, recommendations, estimates and decisions by the Engineer are made on the basis of the Engineer's experience, qualifications, and professional judgment and are not to be construed as warranties or guarantees.

7.3 Notwithstanding any other provision of this Agreement, the Engineer's total liability to the Owner for any loss or damages from claims arising out of or in connection with this Agreement from any cause including the Engineer's strict liability, breach of contract, or professional negligence, errors and omissions (whether claimed in tort, contract, strict liability, nuisance, by statute or otherwise) shall not exceed the lesser of the total contract price of this Agreement or the proceeds paid under Engineer's liability insurance in effect at the time such claims are made. The Owner hereby releases the Engineer from any liability exceeding such amount. In no event shall either party to this Agreement be liable to the other for special, indirect, incidental or consequential damages, whether or not such damages were foreseeable at the time of the commencement of the work under this Agreement.

7.4 Any and all liability resulting from conditions not created or caused to be created by the Engineer shall be the liability of the Owner. Any and all liability that may arise from the construction, ownership and/or operation of the improvements is solely the responsibility of the Owner, and the Owner hereby agrees to indemnify and hold the Engineer harmless from such

liability, claims, actions, loss or damage, including but not limited to attorney's fees, arising therefrom.

7.5 The Owner shall make no claim for professional negligence, either directly or by way of a cross complaint against the Engineer unless the Owner has first provided the Engineer with a written certification executed by an independent consultant currently practicing in the same discipline as the Engineer and licensed in the State of Alabama. This certification shall: a) contain the name and license number of the certifier, b) specify the acts or omissions that the certifier contends are not in conformance with the standard of care for an engineer performing professional services under similar circumstances; and c) state in detail the basis for the certifiers opinion that such acts or omissions do not conform to the standard of care. This certificate shall be provided by the consultant not less than thirty (30) calendar days prior to the presentation of any claim or the institution of any arbitration or judicial proceeding. This Certificate of Merit clause will take precedence over any existing state law in force at the time of the claim or demand for arbitration

#### **ARTICLE 8. Termination.**

8.1 This Agreement shall be subject to termination by either party hereto, with or without cause, upon twenty (20) days advance notice in writing. Payment due Engineer at such time shall be computed upon applicable terms of Article 4, the amount of work completed or in progress as of the termination date and Engineer's reasonable cost of winding down its services after termination.

#### **ARTICLE 9. Binding Arbitration.**

9.1 Any dispute arising out of or relating to this contract, including the breach, termination or validity thereof, shall be finally resolved by arbitration in accordance with the International Institute for Conflict Prevention and Resolution Rules for Non-Administered Arbitration by a sole arbitrator. The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1 et seq., and judgment upon the award rendered by the arbitrator may be entered by any court having jurisdiction thereof. The place of the arbitration shall be in Andalusia, Alabama.

#### **ARTICLE 10. Miscellaneous.**

10.1 This Agreement represents the entire and integrated Agreement between the Owner and Engineer and supersedes all prior negotiations, representations or agreements, whether written or oral. This Agreement may only be amended, supplemented or modified by written instrument executed by both the Owner and the Engineer.

10.2 It is understood and agreed by the parties hereto, that if any part, term or provision of this Agreement is held by any court of competent jurisdiction to be illegal or in conflict with any applicable law, the validity of the remaining portion or portions of this Agreement shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

10.3 It is expressly understood and agreed that the indemnity and insurance obligations of this Agreement, as well as the Engineer's proprietary interest in its engineering plans and specifications, shall survive the termination of this Agreement under Article 8 above as well as the completion of services under this Agreement.

10.4 This Agreement is to be governed by the laws of the State of Alabama.

WHEREFORE, the undersigned, by their signatures, certify that they have carefully read this Agreement, understand the terms and conditions contained herein, have proper authority to execute this Agreement, and do so as their own free act:

Owner: \_\_\_\_\_

Engineer: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Owner's Designated Representative:

Engineer's Designated Representative:

\_\_\_\_\_

\_\_\_\_\_ Marc Thompson \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_ Project Manager \_\_\_\_\_

Phone: \_\_\_\_\_

Phone: \_\_\_\_\_ (205) 403-2600 \_\_\_\_\_

Fax: \_\_\_\_\_

Fax: \_\_\_\_\_ (205) 406-2623 \_\_\_\_\_

Email: \_\_\_\_\_

Email: \_\_\_\_\_ mthompson@cdge.com \_\_\_\_\_



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35244

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FAX: 205.403.2623

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March 6, 2013

Christopher Brady, P.E.  
City Engineer  
City of Vestavia Hills  
513 Montgomery Highway  
Vestavia Hills, Alabama 35216

**Reference: Proposal for Professional Engineering Services**  
ATRIP Project No. 37-03-33  
Resurfacing Columbiana, Tyler and Overton Roads  
The City of Vestavia Hills  
Jefferson County, AL

Dear Mr. Brady:

CDG Engineers and Associates, Inc (CDG) is pleased to submit this proposal for professional engineering design services on the above referenced project. Our staff has experience on many similar projects and is delighted to be working with the City of Vestavia Hills (the City).

We understand this project will be funded through the Alabama Transportation Rehabilitation and Improvement Program (ATRIP) and have formulated this proposal accordingly. Generally, our scope of services will include existing pavement coring and geotechnical evaluation to develop a materials report and final construction plans for the above referenced project. Outlined below is a detailed summary of our proposed scope of work:

**Proposed Scope of Geotechnical Services**

Our geotechnical services will include preparing a materials report for the proposed roadway rehabilitations to Columbiana, Tyler and Overton Roads. Our scope of work will consist of a condition survey of the existing pavements, obtaining asphalt cores, and preparation of a geotechnical report containing recommendations for the rehabilitative treatments for the projects.

The provided information indicates that resurfacing will occur along Columbiana Road from US-31 to north of Crossroads School, along Tyler Road from Southland Drive to Columbiana Road, and along Overton Road from south of I-459 to Liberty Park Bridge. The total length of the projects is approximately 1.8 miles. Tyler and Overton roads are primarily two-laned, while Columbiana Road is primarily four-laned. All of the roadways are currently surfaced with asphalt pavements.

The distress survey will be conducted in general accordance with ALDOT 392 and include documentation of observed distress as outlined in the FHWA's *Distress Identification Manual for the LTPPP* (2003). The scope of work will include coring of the existing pavement to





determine in-place pavement and base material types and thicknesses at approximately 12 to 14 locations. Traffic control will be provided during the coring process.

Design of the rehabilitative treatments for the project will be based on provided traffic volumes, assumed subgrade support characteristics, the results of the subsurface exploration and AASHTO's *Guide for Design of Pavement Structures* (1993). Design recommendations will consist of one (1) pavement typical section for each of the roadways (total of 3).

### **Final Construction Plans**

CDG will complete final construction plans for the project in accordance with established ATRIP guidelines. Development of final construction plans will include:

- Attendance at an on-site project scoping meeting.
- Perform limited survey of the project in areas requiring shoulder, guardrail, drainage and other roadside improvements.
- Coordination with ALDOT for ATRIP project initiation documentation submittals;
- Completion of roadway resurfacing plans. The plan assembly will likely include:
  - Typical Sections;
  - Intersection Layouts;
  - Signal loop wire schematic sketches;
  - Summary of Quantities and detailed quantity box sheets;
  - Erosion Control Plans, if necessary;
  - Traffic Control Sheets;
  - Associated project notes, details and drawings.
- Integration of materials report recommendations into final design plans
- Preparation of comprehensive project cost estimate(s);
- Submittal of comprehensive design package to the City;
- Facilitation of the ALDOT review process:
  - Submittal and approval of project materials report;
  - Plans, Specifications and Estimate (PS&E) Review submittal to ALDOT's 3<sup>rd</sup> Division;
  - Attendance at PS&E review meeting and site inspection as required;
  - Revisions to plan assembly resultant of PS&E review;
  - Construction Bureau Review submittal and plan revisions;
  - Final, signed Mylar submitted to the Bureau of Innovative Projects for project letting (by ALDOT).

All plan assembly submittals shall be completed according to ALDOT's published timeline for ATRIP projects based upon a December 6, 2013 letting date.

### **Project Fee**

CDG proposes to complete the above described scope of services for limited survey, materials report and roadway resurfacing plan assembly for a lump sum fee of **\$76,585.00**. Please note this fee does not include traffic counts/studies, and utility relocation design, if required.

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We appreciate the opportunity to submit this proposal. If you have any questions, comments or require additional information, please give us a call.

Sincerely,

**CDG Engineers & Associates**



Marc Thompson, P.E.  
Project Manager

Cc: Project File

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## **AGREEMENT FOR ENGINEERING SERVICES**

THIS AGREEMENT, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2013, by and between the City of Vestavia Hills, hereinafter referred to as the Owner, and CDG ENGINEERS & ASSOCIATES, INC., hereinafter referred to as the Engineer.

WHEREAS, the Owner desires to have professional engineering services and consultation performed relative to designing construction plans to ALDOT specifications for ATRIP Project Nos. 37-03-34 Resurfacing Rocky Ridge Road from Shades Crest Road to Lorna Road, hereinafter referred to as the Project.

WHEREAS, not having engaged any other engineers for the Project, Owner desires to retain the Engineer as its sole and exclusive engineering and consulting firm for the Project;

NOW THEREFORE, in consideration of the mutual covenants and conditions hereinafter contained, the Owner and Engineer do agree, each with the other, as follows:

### **ARTICLE 1. Basic Services.**

The Engineer shall provide the Owner the following basic professional engineering services and consultation:

#### The Design Phase

- 1.1 The Engineer will consult with the Owner to determine the Owner's requirements for the project.
- 1.2 Complete geotechnical field evaluation and provide a report outlining recommended pavement section(s).
- 1.3 Develop final construction plans to ALDOT specifications, including resurfacing and safety improvements as required on the project.
- 1.3 The Engineer will facilitate the required ALDOT review(s) and approval(s) necessary to let the contract to construction in accordance with established ATRIP procedures.

The Proposal for Professional Engineering Services for ATRIP Project No. 37-03-34 Resurfacing Rocky Ridge Road from Shades Crest Road to Lorna, Dated March 6, 2013 – and its detailed scope of work – as provided to and approved by the City of Vestavia Hills is attached hereto and made a part of this Agreement.

## **ARTICLE 2. Additional Services.**

If authorized in writing by Owner and accepted by Engineer through written amendment hereto, Engineer shall furnish, or obtain from others, additional services of the types listed below. These services will be paid for by the Owner as indicated in Article 4 of the Agreement.

2.1 Preparation of applications and supporting documents (in addition to those furnished under Article 1, if applicable) for private or governmental grants, loans or advances in connection with the Project; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.

2.2 Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner.

2.3 Services resulting from significant changes in the scope, extent, or character of the portions of the Services designed or specified by Engineer or its design requirements including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date of this Agreement or are due to any other causes beyond Engineer's control.

2.4 Providing renderings or models not defined as part of construction plans for Owner's use.

2.5 Physical testing of materials and equipment to be incorporated in the work and other such analysis or testing when necessary or deemed advisable by the Engineer, including but not limited to that testing included in the Owner's Project budget.

2.6 Undertaking investigations and studies including, but not limited to, detailed consideration of operations, maintenance, and overhead expenses; the preparation of feasibility studies, cash flow and economic evaluations, rate schedules, and appraisals; assistance in obtaining financing for a Project; evaluating processes available for licensing, and assisting Owner in obtaining process licensing; detailed quantity surveys of materials, equipment, and labor; and audits or inventories required in connection with construction performed by Owner.

2.7 Services during out-of-town travel required of Engineer other than for visits to the Site or Owner's office.

2.8 Providing construction surveys and staking to enable Contractor to perform its work, and any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.

2.9 Preparing and furnishing to Owner Record Drawings showing appropriate record information based on Project annotated record documents received from Contractor.

2.10 Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration or other dispute resolution process related to the Project.

2.11 Prepare property deeds, temporary easements, construction easements, Right-of-Way documents, and assist in acquisition of such documents deemed necessary in the scope of each project.

2.12 Other services performed or furnished by Engineer not otherwise provided for in this Agreement.

### **ARTICLE 3. Responsibilities of the Owner.**

The Owner shall provide for the Engineer the following information and shall do the following:

3.1 The Owner shall provide all criteria and complete information as to the Owner's requirements for the Project and shall furnish all design and construction standards which the Owner will require to be included in the engineering plans, specifications, and operational narrative.

3.2 The Owner will assist the Engineer by placing at the Engineer's disposal all available information pertinent to the Project.

3.3 The Owner shall arrange for access to and make all provisions for the Engineer to enter upon public and private property to perform surveying, testing and other data collection as required for Engineer to perform services under this Agreement. Owner shall appoint and designate in writing a person to act as Owner's site access representative for such purpose, and shall include contact information for the individual so designated. Owner agrees to hold the Engineer harmless from any and all claims, actions, damages and costs, including but not limited to attorneys fees, arising from Owner's arrangements and provisions for access to property.

3.4 The Owner shall be responsible for funding Right-of-Way (R.O.W.) acquisitions and/or Easements necessary to carry out construction tasks detailed within the project plans and specifications.

3.5 The Owner shall designate in writing a person to act as the Owner's representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions and receive information.

3.6 The Owner shall provide such accounting, independent cost estimating and insurance counseling services as may be required for the Project. The Owner shall also provide such legal services as the Owner may require or the Engineer may reasonably request with regard to legal issues pertaining to the Project that must be resolved in order for the Engineer to carry out its obligations under this Agreement. It is expressly understood and agreed that the Engineer itself shall not furnish or render any legal opinions or legal interpretations as to matters of law or application of law.

3.7 The Owner agrees to pay all costs of physical testing of materials and equipment to be incorporated in the work and other such analysis or testing when necessary or deemed advisable by the Engineer, including but not limited to that testing provided for and reflected in the Owner's Project budget.

#### **ARTICLE 4. Compensation.**

4.1 The Owner agrees to pay to the Engineer, in cash, total compensation of **One Hundred Nine Thousand, Three Hundred Twenty-One Dollars (\$109,321.00)** to be paid periodically as work progresses on the Design Phase.

4.2 The Owner may, from time to time, request changes in the scope of the services of the Engineer to be performed hereunder. Such changes, including any increase or decrease in the amount of Engineer's compensation, that are mutually agreed upon by the Owner and the Engineer, shall be incorporated in written amendments to this Agreement.

4.3 Owner shall reimburse Engineer for all costs incurred for ALDOT's direct instruction to rebid the project at the rates shown in the Engineer's most current Standard Fee Schedule.

4.4 Owner shall reimburse Engineer for all costs incurred for the physical testing of materials and equipment to be incorporated in the work and other such analysis or testing when necessary or deemed advisable by the Engineer, including but not limited to that testing included in the Owner's Project budget.

4.5 Compensation for services performed by Engineer's employees as witnesses giving testimony in any litigation, arbitration or administrative proceeding shall be paid by Owner at a rate of 1.5 times the Engineer's standard hourly rates. Whenever Engineer's bill to Owner includes charges for Engineer's consultants for such services, those charges shall be the amounts billed by Engineer's consultant to Engineer times a factor of 1.15.

4.6 Invoices are due and payable within 30 days of receipt. If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice therefore, the amounts due Engineer will be increased at the rate of 1.5% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Engineer has been paid in full all amounts due for services, expenses, and other related charges. Payments will be credited first to interest and then to principal. Owner shall pay all costs and fees, including but not limited to attorney's fees, incurred by Engineer in the collection of any sums due for services rendered and related service expenses.

#### **ARTICLE 5. Relationship of the Parties.**

5.1 The parties intend that this Agreement create an independent contractor relationship between them. The Engineer is a professional corporation and is not an agent or employee of

Owner for any purpose. The Engineer cannot and will not represent that he has the authority to bind Owner in any contractual manner.

5.2 Neither party is to represent to others that the relationship between them is other than as stated above.

5.3 Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than the Owner and the Engineer, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of the Owner and the Engineer and not for the benefit of any other party.

5.4 The Owner and the Engineer each is hereby bound and the partners, successors, executors, administrators, legal representatives and assigns (to the extent permitted by Paragraph 5.5 below) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrations, legal representatives and said assigns of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

5.5 Neither the Owner nor the Engineer shall assign, sublet or transfer any rights under or interest in this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated or restricted by law . Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent the Engineer from employing such independent professional associates, consultants, subcontractors, and vendors as the Engineer may deem appropriate to assist in the performance of services hereunder.

5.6 Engineer may employ such independent professional associates, consultants, subcontractors, and vendors as the Engineer may deem appropriate to assist in the performance or furnishing of services under this Agreement. Engineer shall not be required to employ any consultant unacceptable to Engineer.

## **ARTICLE 6. Ownership and Use of Project Documents.**

6.1 All documents are instruments of service in respect to the Services, and Engineer shall retain an ownership and proprietary property interest therein (including the right of reuse at the discretion of the Engineer) whether or not the Services are completed.

6.2 Copies of documents that may be relied on by Owner are limited to the printed copies (also known as hard copies) that are signed or sealed by the Engineer. Files in electronic media format of text, data, graphics, or of other types that are furnished by Engineer to Owner are only for convenience of Owner. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.

6.3 Owner may make and retain copies of documents for information and reference in connection with the services by Engineer. Such documents are not intended or represented to be suitable for reuse by Owner or others on extensions of the services or on any other project. Any



such reuse or modification without written verification or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to Engineer's consultants. Owner shall indemnify and hold harmless Engineer and Engineer's consultants from all claims, damages, and expenses including attorneys' fees arising out of or resulting therefrom.

6.4 In the event of a discrepancy between the electronic files and the hard copies, the hard copies govern.

6.5 Any verification or adaptation of the documents for extensions of the services or for any other services will entitle Engineer to further compensation at rates to be agreed upon by Owner and Engineer.

## **ARTICLE 7. Liability and Indemnity.**

7.1 The Engineer will not be responsible for delays or obstacles attributable to acts of God, acts of third parties, weather, intervention of public authorities, work stoppages, changes in the applicable laws or regulations after the date of commencement of performance hereunder and any other acts or omissions or events which are beyond the control of the Engineer.

7.2 Owner may not utilize Engineer's construction cost estimate after thirty calendar days from the date of delivery to Owner without Engineer's written consent. Estimates of cost are made on the basis of the Engineer's experience, qualifications, and professional judgment, but since Engineer has no control over the cost of labor, materials, equipment or services furnished by others, or over competitive bidding or market conditions, Engineer cannot and does not guarantee or warrant that proposals, bids or actual construction costs will not vary from estimates of probable costs prepared by Engineer. Approvals, recommendations, estimates and decisions by the Engineer are made on the basis of the Engineer's experience, qualifications, and professional judgment and are not to be construed as warranties or guarantees.

7.3 Notwithstanding any other provision of this Agreement, the Engineer's total liability to the Owner for any loss or damages from claims arising out of or in connection with this Agreement from any cause including the Engineer's strict liability, breach of contract, or professional negligence, errors and omissions (whether claimed in tort, contract, strict liability, nuisance, by statute or otherwise) shall not exceed the lesser of the total contract price of this Agreement or the proceeds paid under Engineer's liability insurance in effect at the time such claims are made. The Owner hereby releases the Engineer from any liability exceeding such amount. In no event shall either party to this Agreement be liable to the other for special, indirect, incidental or consequential damages, whether or not such damages were foreseeable at the time of the commencement of the work under this Agreement.

7.4 Any and all liability resulting from conditions not created or caused to be created by the Engineer shall be the liability of the Owner. Any and all liability that may arise from the construction, ownership and/or operation of the improvements is solely the responsibility of the Owner, and the Owner hereby agrees to indemnify and hold the Engineer harmless from such

liability, claims, actions, loss or damage, including but not limited to attorney's fees, arising therefrom.

7.5 The Owner shall make no claim for professional negligence, either directly or by way of a cross complaint against the Engineer unless the Owner has first provided the Engineer with a written certification executed by an independent consultant currently practicing in the same discipline as the Engineer and licensed in the State of Alabama. This certification shall: a) contain the name and license number of the certifier, b) specify the acts or omissions that the certifier contends are not in conformance with the standard of care for an engineer performing professional services under similar circumstances; and c) state in detail the basis for the certifiers opinion that such acts or omissions do not conform to the standard of care. This certificate shall be provided by the consultant not less than thirty (30) calendar days prior to the presentation of any claim or the institution of any arbitration or judicial proceeding. This Certificate of Merit clause will take precedence over any existing state law in force at the time of the claim or demand for arbitration

#### **ARTICLE 8. Termination.**

8.1 This Agreement shall be subject to termination by either party hereto, with or without cause, upon twenty (20) days advance notice in writing. Payment due Engineer at such time shall be computed upon applicable terms of Article 4, the amount of work completed or in progress as of the termination date and Engineer's reasonable cost of winding down its services after termination.

#### **ARTICLE 9. Binding Arbitration.**

9.1 Any dispute arising out of or relating to this contract, including the breach, termination or validity thereof, shall be finally resolved by arbitration in accordance with the International Institute for Conflict Prevention and Resolution Rules for Non-Administered Arbitration by a sole arbitrator. The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1 et seq., and judgment upon the award rendered by the arbitrator may be entered by any court having jurisdiction thereof. The place of the arbitration shall be in Andalusia, Alabama.

#### **ARTICLE 10. Miscellaneous.**

10.1 This Agreement represents the entire and integrated Agreement between the Owner and Engineer and supersedes all prior negotiations, representations or agreements, whether written or oral. This Agreement may only be amended, supplemented or modified by written instrument executed by both the Owner and the Engineer.

10.2 It is understood and agreed by the parties hereto, that if any part, term or provision of this Agreement is held by any court of competent jurisdiction to be illegal or in conflict with any applicable law, the validity of the remaining portion or portions of this Agreement shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

10.3 It is expressly understood and agreed that the indemnity and insurance obligations of this Agreement, as well as the Engineer's proprietary interest in its engineering plans and specifications, shall survive the termination of this Agreement under Article 8 above as well as the completion of services under this Agreement.

10.4 This Agreement is to be governed by the laws of the State of Alabama.

WHEREFORE, the undersigned, by their signatures, certify that they have carefully read this Agreement, understand the terms and conditions contained herein, have proper authority to execute this Agreement, and do so as their own free act:

Owner: \_\_\_\_\_

Engineer: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Owner's Designated Representative:

Engineer's Designated Representative:

\_\_\_\_\_

\_\_\_\_\_ Marc Thompson \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_ Project Manager \_\_\_\_\_

Phone: \_\_\_\_\_

Phone: \_\_\_\_\_ (205) 403-2600 \_\_\_\_\_

Fax: \_\_\_\_\_

Fax: \_\_\_\_\_ (205) 406-2623 \_\_\_\_\_

Email: \_\_\_\_\_

Email: \_\_\_\_\_ mthompson@cdge.com \_\_\_\_\_



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March 6, 2013

Christopher Brady, P.E.  
City Engineer  
City of Vestavia Hills  
513 Montgomery Highway  
Vestavia Hills, Alabama 35216

**Reference: Proposal for Professional Engineering Services**  
ATRIP Project No. 37-03-34  
Resurfacing Rocky Ridge Road from Shades Crest Road to Lorna  
Road  
The City of Vestavia Hills  
Jefferson County, AL

Dear Mr. Brady:

CDG Engineers and Associates, Inc (CDG) is pleased to submit this proposal for professional engineering design services on the above referenced project. Our staff has experience on many similar projects and is delighted to be working with the City of Vestavia Hills (the City).

We understand this project will be funded through the Alabama Transportation Rehabilitation and Improvement Program (ATRIP) and have formulated this proposal accordingly. Generally, our scope of services will include existing pavement coring and geotechnical evaluation to develop a materials report and final construction plans for the above referenced project. Outlined below is a detailed summary of our proposed scope of work:

**Proposed Scope of Geotechnical Services**

Our geotechnical services will include preparing a materials report for the proposed roadway rehabilitations to Rocky Ridge Road and providing foundation support recommendations for a proposed culvert extension and retaining wall installation. More specifically, our scope of work will consist of a condition survey of the existing pavements, obtaining asphalt cores, soil test borings at proposed retaining wall and culvert extension locations and preparation of a geotechnical report containing recommendations for the rehabilitative treatments and foundation recommendations for the project.

The provided information indicates that resurfacing of Rock Ridge Road will occur from U.S. Highway 280 to Lorna Road. The total length of the project is approximately 5.7 miles. The existing roadway is primarily two-laned and surfaced with asphalt pavements; however, short portions of the existing road widen to four lanes.

The distress survey will be conducted in general accordance with ALDOT 392 and include documentation of observed distress as outlined in the FHWA's *Distress Identification Manual for the LTPPP* (2003). The scope of work will include coring of the existing pavement to determine in-place pavement and base material types and thicknesses at approximately 14 to



16 locations. Traffic control will be provided during the coring process.

Design of the rehabilitative treatments for the project will be based on provided traffic volumes, assumed subgrade support characteristics, the results of the subsurface exploration and AASHTO's *Guide for Design of Pavement Structures* (1993). Design recommendations will consist of one (1) pavement typical section for each of the roadways (total of 3).

We estimate four (4) soil test borings will be required to provide foundation recommendations for a proposed culvert extension and retaining wall. The borings will extend to depths of 20 feet below the existing ground surface or to refusal, whichever occurs first. Borings will contain Standard Penetration Tests (SPT) at 2½-foot intervals in the upper 10 feet and 5-foot intervals thereafter.

### **Final Construction Plans**

CDG will complete final construction plans for the project in accordance with established ATRIP guidelines. Development of final construction plans will include:

- Attendance at an on-site project scoping meeting.
- Perform limited survey of the project in areas requiring shoulder, guardrail, drainage and other roadside improvements.
- Coordination with ALDOT for ATRIP project initiation documentation submittals;
- Completion of roadway resurfacing plans. The plan assembly will likely include:
  - Typical Sections;
  - Intersection Layouts;
  - Signal loop wire schematic sketches;
  - Summary of Quantities and detailed quantity box sheets;
  - Erosion Control Plans, if necessary;
  - Traffic Control Sheets;
  - Retaining wall as required;
  - Drainage sections as needed;
  - Plan Sheets of the proposed improvements;
  - Associated project notes, details and drawings.
- Integration of materials report recommendations into final design plans;
- Preparation of comprehensive project cost estimate(s);
- Submittal of comprehensive design package to the City;
- Facilitation of the ALDOT review process:
  - Submittal and approval of project materials report;
  - Plans, Specifications and Estimate (PS&E) Review submittal to ALDOT's 3<sup>rd</sup> Division;
  - Attendance at PS&E review meeting and site inspection as required;
  - Revisions to plan assembly resultant of PS&E review;
  - Construction Bureau Review submittal and plan revisions;
  - Final, signed Mylar submitted to the Bureau of Innovative Projects for project letting (by ALDOT).

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All plan assembly submittals shall be completed according to ALDOT's published timeline for ATRIP projects based upon a December 6, 2013 letting date.

**Project Fee**

CDG proposes to complete the above described scope of services for limited survey, materials report and roadway resurfacing plan assembly for a lump sum fee of **\$109,321.00**. Please note this fee does not include traffic counts/studies, and utility relocation design, if required.

We appreciate the opportunity to submit this proposal. If you have any questions, comments or require additional information, please give us a call.

Sincerely,

**CDG Engineers & Associates**

A handwritten signature in blue ink, appearing to read 'Marc Thompson', is written over the typed name and title.

Marc Thompson, P.E.  
Project Manager

Cc: Project File

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**RESOLUTION NUMBER 4423**

**A RESOLUTION AUTHORIZING THE MAYOR AND CITY MANAGER  
TO EXECUTE AN AGREEMENT WITH HANSEN LANDSCAPE  
ARCHITECTS TO PROVIDE DESIGN SERVICES FOR THE  
PEDESTRIAN BRIDGE AT MCCALLUM PARK**

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

1. The Mayor and City Manager are hereby authorized to execute an agreement with Hansen Landscape Architects for design and development of a pedestrian bridge in McCallum Park at a cost not to exceed \$39,700; and
2. A copy of the contract is attached to and incorporated into this Resolution Number 4423 as though written fully therein; and
3. This Resolution Number 4423 shall become effective immediately upon adoption and approval.

**DONE, ORDERED, ADOPTED and APPROVED** this the 25<sup>th</sup> day of March, 2013.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk



## Rebecca Leavings

---

**From:** Christopher Brady  
**Sent:** Wednesday, March 06, 2013 12:49 PM  
**To:** Rebecca Leavings; Randy Robertson  
**Cc:** Brian Davis  
**Subject:** council agenda\_McCallum Park design  
**Attachments:** agreement\_Hansen\_design\_McCallumParkBridge.pdf;  
agreement\_Hansen\_design\_McCallumPark\_trails.pdf

Attached are two design proposals and draft agreements from Hansen Landscape Architects to provide design services for McCallum Park pedestrian bridge and recreational trails. Both of these projects have ADECA funding, and these services will go toward City match requirements. These matching costs were committed at the time of approving these funding agreements.

As outlined in the attachments, services for the bridge project include design development, construction drawings, bid phase services, and construction administration. Included in this scope of work is survey, structural and geotechnical design for the bridge, and a flood study to certify no rise and no impact of the bridge within the flood hazard area. Total cost of these services is \$39,700.

Services for the trail project include design development, construction drawings, construction administration and project management. We anticipate construction of trails to potentially be partially done with in-house staff and/ or donated labor and materials. Total cost of these services is \$19,900.

Please note Mr. Hansen's willingness to provide additional "in-kind" services for these projects at no additional costs to the City.

In order to optimize construction timeframe of these projects during the drier summer months and meet ADECA funding guidelines, I would recommend we proceed with design as soon as possible. I recommend we submit for first read on March 11 Council agenda.

Please let me know if any questions.

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](mailto:city.engineer@ci.vestaviahills.al.us)

H A N S E N L/A

February 24 2013

Mr. Christopher Brady  
City of Vestavia Hills  
Municipal Center  
513 Montgomery Highway  
Vestavia Hills, Alabama 35216

RE: McCallum Park Pedestrian Bridge

Dear Christopher,

Thank for the opportunity to present this proposal for continuing the work at the park. Based on previous work on the bridge it appears that we will need to review and update plans and details that were developed several years ago.

I have spoke with the structural and geotechnical engineers regarding this work and they will need to review their recommendations in order to stamp their respective work.

The following is the proposed scope of work that will be required to complete construction plans, competitive bid plans and provide construction administration per ADECA requirements.

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<b>Design Development</b>	\$2,500.00
<ul style="list-style-type: none"><li>Review design options bridge and ramps</li><li>Coordinate flood study with city and LBYD</li><li>Review cost estimates of alternative designs</li></ul>	
<b>Construction Documents</b>	\$7,500.00
<ul style="list-style-type: none"><li>Update bridge location</li><li>Revise ramp layout as discussed with city engineer</li><li>Review ramp details and revise as necessary ( Steel post with rock face)</li><li>Confirm and update bridge type</li><li>Develop written specification per scope of work</li><li>Develop bid package suitable for competitive bids</li></ul>	
<b>Bids</b>	\$2,000.00
Solicit public bids for construction of bridge, ramp and sidewalk connection.	
<b>Construction Administration / Project Management</b>	\$7,500.00
Provide regular site visits to ensure quality work according to plans. 3 visits per week during active construction phase. This work will be coordinated with the city.	

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<b>Survey</b>	\$2,400.00
<ul style="list-style-type: none"><li>Profile of bridge location</li></ul>	
<b>Structural</b>	\$2,000.00
<ul style="list-style-type: none"><li>LBYD to review abutment and ramp details, stamp plans</li></ul>	
<b>Geotechnical</b>	\$2,000.00
<ul style="list-style-type: none"><li>Confirm geotechnical requirement for abutment.</li></ul>	
<b>Flood Study</b>	\$13,800.00
<ul style="list-style-type: none"><li>Provide revised layout, bridge and ramp details for flood study (By LBYD)</li></ul>	

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**39,700.00**

Sincerely,

Greg Hansen

# DRAFT AIA® Document B101™ - 2007

## Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the      day of      in the year       
(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner:  
(Name, legal status, address and other information)

« City of Vestavia Hills » «      »  
« 513 Montgomery Highway »  
« Vestavia Hills, AL 35216 »  
«      »

and the Architect:  
(Name, legal status, address and other information)

« Herrington Architects PCHANSEN I/A LLC » «      »  
« 101 Richard Arrington Jr. Blvd. South  
Birmingham, Alabama 35233 »  
« Telephone Number: 205.326.1134/205 714 9963 »  
« Fax Number: 205.326.1164 »

for the following Project:  
(Name, location and detailed description)

« General-Blank Document McCallum Park  
Pedestrian Bridge » and Approach Ramps  
Vestavia Hills, AL  
«      »  
«      »

The Owner and Architect agree as follows.

### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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### EXHIBIT A INITIAL INFORMATION

#### ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Article 1 and in optional Exhibit A, Initial Information:

*(Complete Exhibit A, Initial Information, and incorporate it into the Agreement at Section 13.2, or state below Initial Information such as details of the Project's site and program, Owner's contractors and consultants, Architect's consultants, Owner's budget for the Cost of the Work, authorized representatives, anticipated procurement method, and other information relevant to the Project.)*

« »

§ 1.2 The Owner's anticipated dates for commencement of construction and Substantial Completion of the Work are set forth below:

- .1 Commencement of construction date:

« June 2013 »

- .2 Substantial Completion date:

« November 2013 »

§ 1.3 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services and the Architect's compensation.

#### ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.5 The Architect shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost:

*(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)*

.1 General Liability

«N/A »

.2 Automobile Liability

«N/A »

.3 Workers' Compensation

«N/A »

.4 Professional Liability

« 500,000.00 »

### ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution made without the Architect's approval.

**§ 3.1.5** The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

**§ 3.1.6** The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

### **§ 3.2 SCHEMATIC DESIGN PHASE SERVICES**

**§ 3.2.1** The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

**§ 3.2.2** The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement or delivery method and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

**§ 3.2.3** The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

**§ 3.2.4** Based on the Project's requirements agreed upon with the Owner, the Architect shall prepare and present for the Owner's approval a preliminary design illustrating the scale and relationship of the Project components.

**§ 3.2.5** Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

**§ 3.2.5.1** The Architect shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other environmentally responsible design services under Article 4.

**§ 3.2.5.2** The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule and budget for the Cost of the Work.

**§ 3.2.6** The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

**§ 3.2.7** The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

### **§ 3.3 DESIGN DEVELOPMENT PHASE SERVICES**

**§ 3.3.1** Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

**§ 3.3.2** The Architect shall update the estimate of the Cost of the Work.

§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

#### § 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms.

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

#### § 3.5 BIDDING OR NEGOTIATION PHASE SERVICES

##### § 3.5.1 GENERAL

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

##### § 3.5.2 COMPETITIVE BIDDING

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by

- .1 procuring the reproduction of Bidding Documents for distribution to prospective bidders;
- .2 distributing the Bidding Documents to prospective bidders, requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders;
- .3 organizing and conducting a pre-bid conference for prospective bidders;
- .4 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda; and
- .5 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 The Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

##### § 3.5.3 NEGOTIATED PROPOSALS

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.

§ 3.5.3.2 The Architect shall assist the Owner in obtaining proposals by



- .1 procuring the reproduction of Proposal Documents for distribution to prospective contractors, and requesting their return upon completion of the negotiation process;
- .2 organizing and participating in selection interviews with prospective contractors; and
- .3 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.5.3.3 The Architect shall consider requests for substitutions, if the Proposal Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective contractors.

## § 3.6 CONSTRUCTION PHASE SERVICES

### § 3.6.1 GENERAL

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™-2007, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201-2007, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.3, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

### § 3.6.2 EVALUATIONS OF THE WORK

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

**§ 3.6.2.5** Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201-2007, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

**§ 3.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR**

**§ 3.6.3.1** The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

**§ 3.6.3.2** The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

**§ 3.6.3.3** The Architect shall maintain a record of the Applications and Certificates for Payment.

**§ 3.6.4 SUBMITTALS**

**§ 3.6.4.1** The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review.

**§ 3.6.4.2** In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

**§ 3.6.4.3** If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

**§ 3.6.4.4** Subject to the provisions of Section 4.3, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

**§ 3.6.5 CHANGES IN THE WORK**

§ 3.6.5.1 The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to the provisions of Section 4.3, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

**§ 3.6.6 PROJECT COMPLETION**

§ 3.6.6.1 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

**ARTICLE 4 ADDITIONAL SERVICES**

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Additional Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2.

*(Designate the Additional Services the Architect shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)*

Additional Services	Responsibility (Architect, Owner or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
§ 4.1.1 Programming	Not Provided	
§ 4.1.2 Multiple preliminary designs	Landscape Arch	See Attached Proposal ←
§ 4.1.3 Measured drawings	Not Provided	←
§ 4.1.4 Existing facilities surveys	Owner	←
§ 4.1.5 Site Evaluation and Planning (B203™-2007)	Landscape Arch	
§ 4.1.6 Building information modeling	Not Provided	
§ 4.1.7 Civil engineering	Landscape Arch	
§ 4.1.8 Landscape design	Landscape Arch	
§ 4.1.9 Architectural Interior Design (B252™-2007)	Not Provided	
§ 4.1.10 Value Analysis (B204™-2007)	Not Provided	

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§ 4.1.11	Detailed cost estimating	<a href="#">Landscape Arch</a>	
§ 4.1.12	On-site project representation	<a href="#">Landscape Arch</a>	
§ 4.1.13	Conformed construction documents	<a href="#">Landscape Arch</a>	
§ 4.1.14	As-Designed Record drawings	<a href="#">Landscape Arch</a>	
§ 4.1.15	As-Constructed Record drawings	<a href="#">Landscape Arch</a>	
§ 4.1.16	Post occupancy evaluation	<a href="#">Not Provided</a>	
§ 4.1.17	Facility Support Services (B210™-2007)	<a href="#">Not Provided</a>	
§ 4.1.18	Tenant-related services	<a href="#">Not Provided</a>	
§ 4.1.19	Coordination of Owner's consultants		
§ 4.1.20	Telecommunications/data design	<a href="#">Not Provided</a>	
§ 4.1.21	Security Evaluation and Planning (B206™-2007)	<a href="#">Not Provided</a>	
§ 4.1.22	Commissioning (B211™-2007)	<a href="#">Not Provided</a>	
§ 4.1.23	Extensive environmentally responsible design	<a href="#">Not Provided</a>	
§ 4.1.24	LEED® Certification (B214™-2007)	<a href="#">Not Provided</a>	
§ 4.1.25	Fast-track design services	<a href="#">Not Provided</a>	
§ 4.1.26	Historic Preservation (B205™-2007)	<a href="#">Not Provided</a>	
§ 4.1.27	Furniture, Furnishings, and Equipment Design (B253™-2007)	<a href="#">Not Provided</a>	

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§ 4.2 Insert a description of each Additional Service designated in Section 4.1 as the Architect's responsibility, if not further described in an exhibit attached to this document.

« »

§ 4.3 Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.3 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.3.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following services until the Architect receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;
- .3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 Preparing digital data for transmission to the Owner's consultants and contractors, or to other Owner authorized recipients;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .7 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .8 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .9 Evaluation of the qualifications of bidders or persons providing proposals;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- .11 Assistance to the Initial Decision Maker, if other than the Architect.

§ 4.3.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services:

- .1 Reviewing a Contractor's submittal out of sequence from the submittal schedule agreed to by the Architect;
- .2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker;
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or
- .6 To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion identified in Initial Information, whichever is earlier.

§ 4.3.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 «N/A» («») reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor
- .2 «N/A» («») visits to the site by the Architect over the duration of the Project during construction
- .3 «N/A» («») inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 «N/A» («») inspections for any portion of the Work to determine final completion

§ 4.3.4 If the services covered by this Agreement have not been completed within «12» («twelve») months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

## ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§ 5.2 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.6 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants maintain professional liability insurance as appropriate to the services provided.

§ 5.7 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.8 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.9 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.10 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor and the Architect's consultants through the Architect about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Architect of any direct communications that may affect the Architect's services.

§ 5.11 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

§ 5.12 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

#### ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work or from any estimate of the Cost of the Work or evaluation prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the program and scope of the Project; and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner

requests detailed cost estimating services, the Architect shall provide such services as an Additional Service under Article 4.

§ 6.4 If the Bidding or Negotiation Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, through no fault of the Architect, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect, without additional compensation, shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

#### ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.



§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

## ARTICLE 8 CLAIMS AND DISPUTES

### § 8.1 GENERAL

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2007, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

### § 8.2 MEDIATION

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:  
*(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)*

Arbitration pursuant to Section 8.3 of this Agreement

Litigation in a court of competent jurisdiction

Other (Specify) Mediation

### § 8.3 ARBITRATION

§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

§ 8.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.

§ 8.3.2 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

### § 8.3.4 CONSOLIDATION OR JOINDER

§ 8.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 8.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

## ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 9.7.

§ 9.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect.

§ 9.8 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 11.9.

#### **ARTICLE 10 MISCELLANEOUS PROVISIONS**

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2007, General Conditions of the Contract for Construction.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

§ 10.8 If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

**ARTICLE 11 COMPENSATION**

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

*(Insert amount of, or basis for, compensation.)*

« See Attached Proposal »

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Architect as follows:  
*(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)*

« N/A »

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows:

*(Insert amount of, or basis for, compensation.)*

« N/A »

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus « 0 » percent (« %»), or as otherwise stated below:

« At cost »

§ 11.5 Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows:

Schematic-Design-Phase	« »	percent (	« »	%)
Design Development Phase	« 2,500.00 »	percent (	« 5 »	%)
Construction Documents Phase	« 27,700.00 »	percent (	« -70 »	%)
Bidding or Negotiation Phase	« 2,000.00 »	percent (	« 5 »	%)
Construction Phase	« 7,500.00 »	percent (	« 20 »	%)
<b>Total Basic Compensation</b>	<b>one hundred 39,700.00</b>	<b>percent (</b>	<b>100</b>	<b>%)</b>

§ 11.6 When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the Work for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.

*(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

« N/A »

**Employee or Category**

**Rate**

**§ 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES**

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;

- .2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses; and
- .11 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus «10» percent («\_»%) of the expenses incurred.

#### § 11.9 COMPENSATION FOR USE OF ARCHITECT'S INSTRUMENTS OF SERVICE

If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Section 9.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project as follows:

«\_»

#### § 11.10 PAYMENTS TO THE ARCHITECT

§ 11.10.1 An initial payment of «0» (\$ «0») shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid «\_» («\_») days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.  
(Insert rate of monthly or annual interest agreed upon.)

«\_»% «\_»

§ 11.10.3 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.10.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

#### ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

«\_»

#### ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents listed below:

- .1 AIA Document B101™-2007, Standard Form Agreement Between Owner and Architect

AIA Document B101™ - 2007 (formerly B151™ - 1997). Copyright © 1974, 1978, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This draft was produced by AIA software at 11:55:32 on 09/20/2012 under Order No.5731602101\_1 which expires on 03/08/2013, and is not for resale.

User Notes:

(1096168056)

.2 AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed, or the following:



.3 Other documents:  
*(List other documents, if any, including Exhibit A, Initial Information, and additional scopes of service, if any, forming part of the Agreement.)*



This Agreement entered into as of the day and year first written above.

**OWNER**

**ARCHITECT**

*(Signature)*

« »« »

*(Printed name and title)*

*(Signature)*

« »« » Gregory A Hansen, owner

*(Printed name and title)*

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**RESOLUTION NUMBER 4424**

**A RESOLUTION AUTHORIZING THE MAYOR AND CITY MANAGER TO EXECUTE AN AGREEMENT WITH HANSEN LANDSCAPE ARCHITECTS TO PROVIDE DESIGN SERVICES FOR A PROPOSED TRAIL AT MCCALLUM PARK**

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

1. The Mayor and City Manager are hereby authorized to execute an agreement with Hansen Landscape Architects for design and development of a proposed trail in McCallum Park at a cost not to exceed \$19,900; and
2. A copy of the contract is attached to and incorporated into this Resolution Number 4424 as though written fully therein; and
3. This Resolution Number 4424 shall become effective immediately upon adoption and approval.

**DONE, ORDERED, ADOPTED and APPROVED** this the 25<sup>th</sup> day of March, 2013.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk



## Rebecca Leavings

---

**From:** Christopher Brady  
**Sent:** Wednesday, March 06, 2013 12:49 PM  
**To:** Rebecca Leavings; Randy Robertson  
**Cc:** Brian Davis  
**Subject:** council agenda\_McCallum Park design  
**Attachments:** agreement\_Hansen\_design\_McCallumParkBridge.pdf;  
agreement\_Hansen\_design\_McCallumPark\_trails.pdf

Attached are two design proposals and draft agreements from Hansen Landscape Architects to provide design services for McCallum Park pedestrian bridge and recreational trails. Both of these projects have ADECA funding, and these services will go toward City match requirements. These matching costs were committed at the time of approving these funding agreements.

As outlined in the attachments, services for the bridge project include design development, construction drawings, bid phase services, and construction administration. Included in this scope of work is survey, structural and geotechnical design for the bridge, and a flood study to certify no rise and no impact of the bridge within the flood hazard area. Total cost of these services is \$39,700.

Services for the trail project include design development, construction drawings, construction administration and project management. We anticipate construction of trails to potentially be partially done with in-house staff and/ or donated labor and materials. Total cost of these services is \$19,900.

Please note Mr. Hansen's willingness to provide additional "in-kind" services for these projects at no additional costs to the City.

In order to optimize construction timeframe of these projects during the drier summer months and meet ADECA funding guidelines, I would recommend we proceed with design as soon as possible. I recommend we submit for first read on March 11 Council agenda.

Please let me know if any questions.

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.vestavi hills.al.us](mailto:city.engineer@ci.vestavi hills.al.us)

# H A N S E N L/A

February 25, 2013

Mr. Christopher Brady  
City of Vestavia Hills  
Municipal Center  
513 Montgomery Highway  
Vestavia Hills, Alabama 35216

RE: McCallum Park Trails

Dear Christopher,

Thank for the opportunity to present this proposal for continuing the work at the park. Based on our conversation, the ADECA requirements and the Fresh Water Land Trust guidelines. I am happy to present this proposal for professional design services.

The following is the proposed scope of work that will be required to complete construction plans, provide construction administration and project management per ADECA requirements.\

The budget is \$140,000.00 which we anticipate will develop close to 1.5 miles of low impact trails, associated drainage, removal of invasive plants such as kudzu and privet.

---

<b>Design Development</b>	20%	\$3,600.00
<ul style="list-style-type: none"><li>• Review ADECA application and guidelines</li><li>• Review Fresh Water Land Trust requirements</li><li>• Meet with city and others for layout and design ideas</li><li>• Preliminary trail layout</li><li>• Educational design component, signage</li><li>• Public meeting (optional)</li><li>• Review plans with ADECA</li></ul>		
<b>Construction Documents</b>	30%	\$5,400.00
<ul style="list-style-type: none"><li>• Detailed layout of trails</li><li>• Construction details for trail, edging, drainage</li><li>• Signage details, locations, etc</li><li>• Develop written specification per scope of work</li></ul>		
<b>Construction Administration</b>	30%	\$6,400.00
<ul style="list-style-type: none"><li>• Daily site visits during construction</li><li>• Meet with city employees to coordinate work schedule, layout work</li><li>• Review work in progress, make necessary adjustments in field (coordinate with City Engineer)</li><li>•</li></ul>		
<b>Project Management</b>	10%	\$4,500.00
<ul style="list-style-type: none"><li>• Coordinate work with city personnel</li><li>• Update City Engineer with weekly field reports, meetings</li><li>• Process billings, time sheets etc. per ADECA requirements</li></ul>		
<b>Total Fee</b>		<b>\$19,900.00</b>

In addition to these services I will be happy to provide "in kind" professional services. I estimate that an extra 40 hours or \$5000 dollars will be applied to this project without cost to the city.

Sincerely,

Greg Hansen

## Project Schedule

Phase	Duration	Completion
Design Development Plans	30 days	March 2013
City Review		
ADECA Review		April 2013
Construction Documents	45 days	May 2013
City Review		
Public Bid	30 days	June 2013
Award Contract	15 days	July 2013
Begin Construction	30 days	August 2013
Construction	90 days	November 2013

# DRAFT AIA® Document B101™ - 2007

## Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the 03 day of March in the year 2013  
(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner:  
(Name, legal status, address and other information)

« City of Vestavia Hills »  
« 513 Montgomery Highway »  
« Vestavia Hills, AL 35216 »  
«    »

and the Architect:  
(Name, legal status, address and other information)

« Herrington Architects PCHANSEN L/A LLC »  
« 101 Richard Arrington Jr. Blvd. South  
Birmingham, Alabama 35233 »  
« Telephone Number: 205.326.1131/205.714.9963 »  
« Fax Number: 205.326.1164 »

for the following Project:  
(Name, location and detailed description)

« General-Blank Document McCallum Park Trails  
Vestavia Hills, AL »  
«    »  
«    »

The Owner and Architect agree as follows.

### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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**TABLE OF ARTICLES**

1	INITIAL INFORMATION
2	ARCHITECT'S RESPONSIBILITIES
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**EXHIBIT A INITIAL INFORMATION**

**ARTICLE 1 INITIAL INFORMATION**

§ 1.1 This Agreement is based on the Initial Information set forth in this Article 1 and in optional Exhibit A, Initial Information:

*(Complete Exhibit A, Initial Information, and incorporate it into the Agreement at Section 13.2, or state below Initial Information such as details of the Project's site and program, Owner's contractors and consultants, Architect's consultants, Owner's budget for the Cost of the Work, authorized representatives, anticipated procurement method, and other information relevant to the Project.)*

« »

§ 1.2 The Owner's anticipated dates for commencement of construction and Substantial Completion of the Work are set forth below:

.1 Commencement of construction date:

« June 2013 »

.2 Substantial Completion date:

« November 2013 »

§ 1.3 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services and the Architect's compensation.

**ARTICLE 2 ARCHITECT'S RESPONSIBILITIES**

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.5 The Architect shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost:

*(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)*

- .1 General Liability

«N/A »

- .2 Automobile Liability

«N/A »

- .3 Workers' Compensation

«N/A »

- .4 Professional Liability

« 500,000.00 »

### ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution made without the Architect's approval.

§ 3.1.5 The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

### § 3.2 SCHEMATIC DESIGN PHASE SERVICES

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement or delivery method and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project's requirements agreed upon with the Owner, the Architect shall prepare and present for the Owner's approval a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other environmentally responsible design services under Article 4.

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule and budget for the Cost of the Work.

§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

### § 3.3 DESIGN DEVELOPMENT PHASE SERVICES

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work.



§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

#### § 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms.

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

#### § 3.5 BIDDING OR NEGOTIATION PHASE SERVICES

##### § 3.5.1 GENERAL

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

##### § 3.5.2 COMPETITIVE BIDDING

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by

- .1 procuring the reproduction of Bidding Documents for distribution to prospective bidders;
- .2 distributing the Bidding Documents to prospective bidders, requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders;
- .3 organizing and conducting a pre-bid conference for prospective bidders;
- .4 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda; and
- .5 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 The Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

##### § 3.5.3 NEGOTIATED PROPOSALS

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.

§ 3.5.3.2 The Architect shall assist the Owner in obtaining proposals by

- .1 procuring the reproduction of Proposal Documents for distribution to prospective contractors, and requesting their return upon completion of the negotiation process;
- .2 organizing and participating in selection interviews with prospective contractors; and
- .3 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.5.3.3 The Architect shall consider requests for substitutions, if the Proposal Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective contractors.

## § 3.6 CONSTRUCTION PHASE SERVICES

### § 3.6.1 GENERAL

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™-2007, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201-2007, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.3, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

### § 3.6.2 EVALUATIONS OF THE WORK

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

**§ 3.6.2.5** Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201–2007, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

### **§ 3.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR**

**§ 3.6.3.1** The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

**§ 3.6.3.2** The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

**§ 3.6.3.3** The Architect shall maintain a record of the Applications and Certificates for Payment.

### **§ 3.6.4 SUBMITTALS**

**§ 3.6.4.1** The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review.

**§ 3.6.4.2** In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

**§ 3.6.4.3** If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

**§ 3.6.4.4** Subject to the provisions of Section 4.3, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

**§ 3.6.5 CHANGES IN THE WORK**

§ 3.6.5.1 The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to the provisions of Section 4.3, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

**§ 3.6.6 PROJECT COMPLETION**

§ 3.6.6.1 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

**ARTICLE 4 ADDITIONAL SERVICES**

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Additional Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2.

*(Designate the Additional Services the Architect shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)*

Additional Services	Responsibility (Architect, Owner or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
§ 4.1.1 Programming	Not Provided	
§ 4.1.2 Multiple preliminary designs	Landscape Arch	See Attached Proposal
§ 4.1.3 Measured drawings	Not Provided	
§ 4.1.4 Existing facilities surveys	Owner	
§ 4.1.5 Site Evaluation and Planning (B203™-2007)	Landscape Arch	
§ 4.1.6 Building information modeling	Not Provided	
§ 4.1.7 Civil engineering	Landscape Arch	
§ 4.1.8 Landscape design	Landscape Arch	
§ 4.1.9 Architectural Interior Design (B252™-2007)	Not Provided	
§ 4.1.10 Value Analysis (B204™-2007)	Not Provided	

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§ 4.1.11	Detailed cost estimating	Landscape Arch	
§ 4.1.12	On-site project representation	Landscape Arch	
§ 4.1.13	Conformed construction documents	Landscape Arch	
§ 4.1.14	As-Designed Record drawings	Landscape Arch	
§ 4.1.15	As-Constructed Record drawings	Landscape Arch	
§ 4.1.16	Post occupancy evaluation	Not Provided	
§ 4.1.17	Facility Support Services (B210™-2007)	Not Provided	
§ 4.1.18	Tenant-related services	Not Provided	
§ 4.1.19	Coordination of Owner's consultants		
§ 4.1.20	Telecommunications/data design	Not Provided	
§ 4.1.21	Security Evaluation and Planning (B206™-2007)	Not Provided	
§ 4.1.22	Commissioning (B211™-2007)	Not Provided	
§ 4.1.23	Extensive environmentally responsible design	Not Provided	
§ 4.1.24	LEED® Certification (B214™-2007)	Not Provided	
§ 4.1.25	Fast-track design services	Not Provided	
§ 4.1.26	Historic Preservation (B205™-2007)	Not Provided	
§ 4.1.27	Furniture, Furnishings, and Equipment Design (B253™-2007)	Not Provided	

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§ 4.2 Insert a description of each Additional Service designated in Section 4.1 as the Architect's responsibility, if not further described in an exhibit attached to this document.

« »

§ 4.3 Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.3 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.3.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following services until the Architect receives the Owner's written authorization:

1. Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
2. Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;
3. Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;
4. Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
5. Preparing digital data for transmission to the Owner's consultants and contractors, or to other Owner authorized recipients;
6. Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
7. Preparation for, and attendance at, a public presentation, meeting or hearing;
8. Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
9. Evaluation of the qualifications of bidders or persons providing proposals;
10. Consultation concerning replacement of Work resulting from fire or other cause during construction; or
11. Assistance to the Initial Decision Maker, if other than the Architect.

§ 4.3.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services:

- .1 Reviewing a Contractor's submittal out of sequence from the submittal schedule agreed to by the Architect;
- .2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker;
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or
- .6 To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion identified in Initial Information, whichever is earlier.

§ 4.3.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 «N/A» («\_») reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor
- .2 «N/A» («\_») visits to the site by the Architect over the duration of the Project during construction
- .3 «N/A» («\_») inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 «N/A» («\_») inspections for any portion of the Work to determine final completion

§ 4.3.4 If the services covered by this Agreement have not been completed within «12» («twelve») months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

## ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§ 5.2 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.6 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants maintain professional liability insurance as appropriate to the services provided.

§ 5.7 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.8 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.9 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.10 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor and the Architect's consultants through the Architect about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Architect of any direct communications that may affect the Architect's services.

§ 5.11 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

§ 5.12 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

#### **ARTICLE 6 COST OF THE WORK**

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work or from any estimate of the Cost of the Work or evaluation prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the program and scope of the Project; and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner



requests detailed cost estimating services, the Architect shall provide such services as an Additional Service under Article 4.

§ 6.4 If the Bidding or Negotiation Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, through no fault of the Architect, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect, without additional compensation, shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

#### ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

## ARTICLE 8 CLAIMS AND DISPUTES

### § 8.1 GENERAL

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2007, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

### § 8.2 MEDIATION

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

*(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)*

Arbitration pursuant to Section 8.3 of this Agreement

Litigation in a court of competent jurisdiction

Other (Specify) Mediation

### § 8.3 ARBITRATION

§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

§ 8.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.

§ 8.3.2 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

### § 8.3.4 CONSOLIDATION OR JOINDER

§ 8.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 8.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

## ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 9.7.

§ 9.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect.

§ 9.8 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 11.9.

#### **ARTICLE 10 MISCELLANEOUS PROVISIONS**

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2007, General Conditions of the Contract for Construction.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

§ 10.8 If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

**ARTICLE 11 COMPENSATION**

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

*(Insert amount of, or basis for, compensation.)*

« See Attached Proposal »

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Architect as follows:  
*(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)*

« N/A »

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows:

*(Insert amount of, or basis for, compensation.)*

« N/A »

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus « 0 » percent ( « 0 » %), or as otherwise stated below:

« At cost »

§ 11.5 Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows:

Schematic Design Phase	« »	percent (	« »	%)
Design Development Phase	« 3,600.00 »	percent (	« 19 »	%)
Construction Documents Phase	« 5,400.00 »	percent (	« -27 »	%)
Bidding or Negotiation Phase	« 6,400.00 »	percent (	« -32 »	%)
Project Management Construction Phase	« 4,500.00 »	percent (	« 22 »	%)
<b>Total Basic Compensation</b>	<b>one hundred 19,900.00</b>	<b>percent (</b>	<b>100</b>	<b>%)</b>

§ 11.6 When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the Work for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.

*(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

« N/A »

**Employee or Category**

**Rate**

**§ 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES**

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;

- .2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses; and
- .11 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus «10» percent ( «\_» %) of the expenses incurred.

**§ 11.9 COMPENSATION FOR USE OF ARCHITECT'S INSTRUMENTS OF SERVICE**

If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Section 9.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project as follows:

«\_»

**§ 11.10 PAYMENTS TO THE ARCHITECT**

§ 11.10.1 An initial payment of «Q» (\$ «Q») shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid «\_» ( «\_» ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.  
(Insert rate of monthly or annual interest agreed upon.)

«\_» % «\_»

§ 11.10.3 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.10.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

**ARTICLE 12 SPECIAL TERMS AND CONDITIONS**

Special terms and conditions that modify this Agreement are as follows:

«\_»

**ARTICLE 13 SCOPE OF THE AGREEMENT**

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents listed below:

- .1 AIA Document B101™-2007, Standard Form Agreement Between Owner and Architect

AIA Document B101™ - 2007 (formerly B151™ - 1997). Copyright © 1974, 1978, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This draft was produced by AIA software at 11:55:32 on 09/20/2012 under Order No.5731602101\_1 which expires on 03/08/2013, and is not for resale.  
User Notes: (1096168056)

.2 AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed, or the following:



.3 Other documents:

*(List other documents, if any, including Exhibit A, Initial Information, and additional scopes of service, if any, forming part of the Agreement.)*



This Agreement entered into as of the day and year first written above.

**OWNER**

**ARCHITECT**

*(Signature)*

« »« »

*(Printed name and title)*

*(Signature)*

« »« »

Gregory A Hansen , Owner

*(Printed name and title)*

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