

**Vestavia Hills  
City Council Agenda  
March 15, 2013  
1:30 PM**

1. Call to Order
2. Roll Call

**New Business (Requesting Unanimous Consent)**

1. Unanimous Consent For Immediate Consideration And Action On Ordinance Number 2438
2. Ordinance Number 2438 – A Resolution Accepting the Resignation of the City Manager of the City of Vestavia Hills, Alabama and to Authorize and Direct the Mayor to Execute and Deliver A Settlement Agreement, Cancellation and Termination of Employment Contract, and Full and Final Release
3. Unanimous Consent For Immediate Consideration And Action On Ordinance Number 2439
4. Ordinance Number 2439 - A Resolution Authorizing The Employment Of A City Manager On An Interim Basis
5. Citizens Comments
6. Motion For Adjournment

**ORDINANCE NUMBER 2438**

**AN ORDINANCE TO ACCEPT THE RESIGNATION OF MR. RANDY E. ROBERTSON AS CITY MANAGER OF THE CITY OF VESTAVIA HILLS, ALABAMA AND TO AUTHORIZE; AND DIRECT THE MAYOR TO EXECUTE AND DELIVER A SETTLEMENT AGREEMENT, CANCELLATION AND TERMINATION OF EMPLOYMENT CONTRACT, AND FULL AND FINAL RELEASE.**

**THIS ORDINANCE NUMBER 2438** is approved and adopted by the City Council of the City of Vestavia Hills, Alabama on this the 15<sup>th</sup> day of March, 2013.

**WITNESS THESE RECITALS:**

**WHEREAS**, Mr. Randy E. Robertson has submitted to the City his written Resignation (Exhibit A) as City Manager due to family and health issues subject to and contingent upon the City executing and delivering the Settlement Agreement, Cancellation and Termination of Employment Contract, and Full and Final Release (Exhibit B), copies of which are attached hereto and marked as Exhibit A and Exhibit B respectively; and

**WHEREAS**, the City Council is willing to accept the Resignation of Mr. Randy E. Robertson as City Manager for the City of Vestavia Hills, Alabama, subject to and contingent upon the execution and delivery of the said Settlement Agreement, Cancellation and Termination of Employment Contract, and Full and Final Release.

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

1. Mr. Randy E. Robertson has submitted to the City his written Resignation as City Manager effective on this the 15<sup>th</sup> day of March, 2013. A copy of said Resignation is attached hereto, marked as Exhibit A and is incorporated into this ordinance by reference as though set out fully herein.

2. The City Council hereby accepts the Resignation of Mr. Randy E. Robertson as City Manager of the City of Vestavia Hills, Alabama effective on this the 15<sup>th</sup> day of March, 2013 at 1:30 p.m., Central Standard Time.

3. The Mayor is hereby authorized and directed to execute and deliver the Settlement Agreement, Cancellation and Termination of Employment Contract, and Full and Final Release, a copy of which is attached to this ordinance, marked as Exhibit B and incorporated into this ordinance by reference as though set out fully herein.

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

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

**DONE, ORDERED, APPROVED and ADOPTED** this the 15<sup>th</sup> day of March, 2013.

CITY OF VESTAVIA HILLS, ALABAMA

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

ATTESTED BY:

\_\_\_\_\_  
Rebecca Leavings  
City Clerk

# Exhibit A

TO: Members of the Vestavia Hills City Council:

14 March 2013

It is with deep regret that I submit my resignation as City Manager to you effective Monday, 18 March 2013. As you know, my father-in-law, who resides in Louisville, is gravely ill. By resigning, Darlene and I will have the opportunity and time to spend with him and my mother-in law. All of you know that Darlene and I served with the United States Army for a majority of our adult life, and as such, was separated from our families for extended periods of time. While we cannot recapture that time, we can do the best with what we have. Again, I sincerely regret this action, but at this point in our lives, family comes first.

Let me conclude by stating that I have thoroughly enjoyed leading the fine men and women who make up Team Vestavia Hills. I believe, as a team, we have made significant inroads towards better, more responsive service to our community, while looking for opportunities to save funds whenever possible.

I wish you, the Council every success for the future, and if there is anything I can do to assist, please do not hesitate to let me know.

Most Respectfully,



Randy E. Robertson

# Exhibit B

STATE OF ALABAMA

JEFFERSON COUNTY

**SETTLEMENT AGREEMENT,  
CANCELLATION AND TERMINATION OF  
EMPLOYMENT CONTRACT, AND FULL AND FINAL RELEASE**

WITNESS, THIS SETTLEMENT AGREEMENT, CANCELLATION AND TERMINATION OF EMPLOYMENT CONTRACT, AND FULL AND FINAL RELEASE, made and entered into on this the 15<sup>th</sup> day of March, 2013, by and between the City of Vestavia Hills, Alabama, a municipal corporation (hereinafter referred to as "City"), and Mr. Randy E. Robertson (hereinafter referred to as "Robertson").

**WITNESS THESE RECITALS:**

**WHEREAS**, the City and Robertson entered into an Employment Contract on September 26, 2011 ("Contract"), which provides, among other things, that Robertson would serve as Interim City Manager for the City from January 9, 2012 to November 5, 2012 and as City Manager from November 5, 2012 to November 4, 2014 for and in consideration of an annual salary in the amount of One Hundred Sixty-eight Thousand Dollars (\$168,000.00); and

**WHEREAS**, the City and Robertson expressly and mutually agree to cancel and terminate the Employment Contract, enter into a Settlement Agreement and to execute and deliver a Full and Final Release; and

**WHEREAS**, the City and Robertson have agreed that it is in the best interest of both parties that their agreement be reduced to writing and duly executed and delivered.

**NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:** That in consideration of the mutual covenants, promises and premises contained herein and the other good and valuable considerations made and paid by the parties to each other, the receipt and sufficiency whereof is hereby mutually acknowledged, the City and Robertson hereto covenant and agree as follows:

**I. SETTLEMENT AGREEMENT**

**A. RESIGNATION OF CITY MANAGER:** Mr. Randy E. Robertson hereby resigns the employment position of City Manager with the City of Vestavia Hills, Alabama due to family and health issues effective March 15, 2013 at 1:30 p.m., Central Standard Time. A copy of the

letter of resignation is attached hereto, marked as Exhibit A and is incorporated into this Settlement Agreement, Cancellation and Termination of Employment Contract, and Full and Final Release by reference as though set out fully herein.

**B. ACCEPTANCE OF RESIGNATION:** The City of Vestavia Hills, Alabama hereby accepts the resignation of Mr. Randy E. Robertson as City Manager for the City of Vestavia Hills, Alabama effective March 15, 2013 at 1:30 p.m., Central Standard Time.

**C. PAYMENT BY CITY TO ROBERTSON:** The City shall pay to Robertson, concurrently with the execution and delivery of this Settlement Agreement, Cancellation and Termination of Employment Contract, and Full and Final Release, the sum of One Hundred Fifty-two Thousand Nine Hundred Twenty-three and 20/100 Dollars (\$152,923.20), which Robertson accepts in full and final payment and settlement of any and all legal obligations owed by the City to Robertson pursuant to the Contract.

## **II. CANCELLATION AND TERMINATION OF EMPLOYMENT CONTRACT**

**A. CANCELLATION AND TERMINATION:** The City and Robertson expressly and mutually agree that the Employment Contract, dated September 26, 2011, by and between the City and Robertson is hereby cancelled, terminated and shall have no legal force and effect following the execution and delivery of this Settlement Agreement, Cancellation and Termination of Employment Contract, and Full and Final Release.

### **B. OBLIGATIONS:**

(1) **By City:** The City hereby acknowledges and agrees that Robertson is no longer legally required to perform any of the obligations set forth in the Contract subsequent to the execution and delivery of this document.

(2) **By Robertson:** Robertson hereby acknowledges and agrees that City is no longer legally required to perform any of the obligations set forth in the Contract subsequent to the execution and delivery of this document.

## **III. FULL AND FINAL RELEASE**

**A. BY ROBERTSON:** The undersigned, Mr. Randy E. Robertson, for and in consideration of the execution and delivery of this Settlement Agreement, Cancellation and Termination of Employment Contract, and Full and Final Release and the payment of the sum

recited above and other good and valuable consideration to him in hand paid by the City, the receipt of which is hereby acknowledged, does hereby completely and fully release, remise, discharge and acquit forever the City and any of its elected officials, servants, agents and employees and other representatives from and against any and all claims, demands, actions, causes of actions, suits, costs, damages, expenses and liability of every kind, character and description, either direct or consequential, at law or at equity, which he may have or have had at any time heretofore or may have at any time hereafter arising from, resulting from or in any manner incidental to any matter, thing or event occurring or failing to occur at any time in the future, including the date hereof, specifically including, but not limited to, those matters which relate directly or indirectly to the events arising out of the Employment Contract or any matter whatsoever incidental thereto.

**B. BY CITY:** The undersigned, City of Vestavia Hills, Alabama, for and in consideration of the execution and delivery of this Settlement Agreement, Cancellation and Termination of Employment Contract, and Full and Final Release and other good and valuable consideration to it in hand made and delivered by Robertson, the receipt of which is hereby acknowledged, does hereby completely and fully release, remise, discharge and acquit forever Robertson from and against any and all claims, demands, actions, causes of actions, suits, costs, damages, expenses and liability of every kind, character and description, either direct or consequential, at law or at equity, which it may have or have had at any time heretofore or may have at any time hereafter arising from, resulting from or in any manner incidental to any matter, thing or event occurring or failing to occur at any time in the future, including the date hereof, specifically including, but not limited to, those matters which relate directly or indirectly to the events arising out of the Employment Contract or any matter whatsoever incidental thereto.

#### **IV. FUTURE LAWSUITS AND CLAIMS**

**A. ROBERTSON:** As further consideration for the execution and delivery of this Settlement Agreement, Cancellation and Termination of Employment Contract, and Full and Final Release by Robertson, the undersigned, Mr. Randy E. Robertson, hereby covenants and agrees with the City that he will never file or institute any lawsuit or action at law or in equity or otherwise, for anything of any nature arising out of the above captioned Employment Contract or

by reason of any other matter, cause or thing whatsoever from the beginning of the world to the day of this release, including March 15, 2013.

**B. CITY:** As further consideration for the execution and delivery of this Settlement Agreement, Cancellation and Termination of Employment Contract, and Full and Final Release by City, the undersigned, City of Vestavia Hills, Alabama, hereby covenants and agrees with Robertson that it will never file or institute any lawsuit or action at law or in equity or otherwise, for anything of any nature arising out of the above captioned Employment Contract or by reason of any other matter, cause or thing whatsoever from the beginning of the world to the day of this release, including March 15, 2013.

**V. OTHER PROVISIONS**

**A.** The City and Robertson further agree that the provisions of this Settlement Agreement, Cancellation and Termination of Employment Contract, and Full and Final Release are contractual and not mere recitals.

**B.** The City and Robertson further declare and represent that they have not been coerced or induced to enter into this Settlement Agreement, Cancellation and Termination of Employment Contract, and Full and Final Release and that they are relying wholly upon their own judgment and knowledge, as well as upon legal advice of their attorneys in entering into this Settlement Agreement, Cancellation and Termination of Employment Contract, and Full and Final Release as being in their best interest.

**C.** The City and Robertson further declare and represent that no promise, inducement or agreement not herein expressed has been made to them by the other or any other party connected with the City and Robertson and that this Settlement Agreement, Cancellation and Termination of Employment Contract, and Full and Final Release contains the entire agreement between the parties.

**D.** This Settlement Agreement, Cancellation and Termination of Employment Contract, and Full and Final Release shall be executed in multiple counterparts with each to act as the original.



E. This Settlement Agreement, Cancellation and Termination of Employment Contract, and Full and Final Release shall be legally binding upon the City and Robertson and their heirs, successors and assigns.

**VI. MISCELLANEOUS**

A. **WAIVER OF MODIFICATION:** Any waiver, alteration or modification of any of the provisions of this Settlement Agreement, Cancellation and Termination of Employment Contract, and Full and Final Release shall not be valid unless in writing and signed by the parties hereto.

B. **AUTHORITY:** The provisions of this Settlement Agreement, Cancellation and Termination of Employment Contract, and Full and Final Release and the execution and delivery thereof were approved by the City at a valid meeting of the City Council held on March 15, 2013.

C. **GOVERNING LAW:** This Settlement Agreement, Cancellation and Termination of Employment Contract, and Full and Final Release shall be interpreted, construed and governed according to the laws of the State of Alabama.

D. **ARTICLE AND SECTION HEADINGS:** The article and section headings and captions contained herein are included for convenience only, and shall not be considered a part hereof or affect in any manner the construction or interpretation hereof. Any ambiguities of this Settlement Agreement, Cancellation and Termination of Employment Contract, and Full and Final Release shall be construed fairly and equitably regardless of the participation of either party in drafting this document. The reference in terms to gender and number shall be modified as may be appropriate.

E. **EXECUTION IN COUNTERPARTS:** This Settlement Agreement, Cancellation and Termination of Employment Contract, and Full and Final Release may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

F. **BINDING EFFECT:** This Settlement Agreement, Cancellation and Termination of Employment Contract, and Full and Final Release shall inure to the benefit of, and shall be binding upon Robertson and his heirs, successors and assigns. It shall also be binding upon the respective successors and assigns of the City.

**G. SEVERABILITY:** In the event any provision of this Settlement Agreement, Cancellation and Termination of Employment Contract, and Full and Final Release shall be held invalid or unenforceable by any Court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

**H. NON-WAIVER:** The failure of the City to insist, in any one or more instances, upon a strict performance of any of the covenants of this Settlement Agreement, Cancellation and Termination of Employment Contract, and Full and Final Release, or to exercise any option herein contained, shall not be construed as a waiver, or a relinquishment for the future of such covenant or option, but the same shall continue and remain in full force and effect.

**I. CONSTRUCTION OF TERMS:** The City and Robertson negotiated the terms, provisions and conditions of this Settlement Agreement, Cancellation and Termination of Employment Contract, and Full and Final Release and both parties had the equal opportunity for input for the drafting of said document. Therefore, any ambiguities of said document shall be construed fairly and equitably regardless of the participation of either party in drafting said Settlement Agreement, Cancellation and Termination of Employment Contract, and Full and Final Release.

**J. ENTIRE AGREEMENT:** This written agreement contains the entire Settlement Agreement, Cancellation and Termination of Employment Contract, and Full and Final Release between the City of Vestavia Hills, Alabama and Mr. Randy E. Robertson.

**IN WITNESS WHEREOF,** the City of Vestavia Hills, Alabama has caused this Settlement Agreement, Cancellation and Termination of Employment Contract, and Full and Final Release to be executed by its duly authorized officers and its seal to be hereunder affixed; and Mr. Randy E. Robertson has hereunto set his hand and seal, all being done in duplicate originals with one (1) original being delivered to each party on this the 15<sup>th</sup> day of March, 2013.

CITY OF VESTAVIA HILLS, ALABAMA

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

Settlement Agreement,  
Cancellation and Termination of Employment Contract,  
and Full and Final Release  
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ATTESTED:

By \_\_\_\_\_  
Rebecca Leavings  
City Clerk

\_\_\_\_\_  
Mr. Randy E. Robertson

WITNESSED:

By \_\_\_\_\_

**STATE OF ALABAMA**  
**JEFFERSON COUNTY**

**GENERAL ACKNOWLEDGMENT**

I, the undersigned authority, a Notary Public, in and for said County, in said State, hereby certify that Alberto C. Zaragoza, Jr., whose name as Mayor of the City of Vestavia Hills, Alabama is signed to the foregoing Settlement Agreement, Cancellation and Termination of Employment Contract, and Full and Final Release, and who is known to me, acknowledged before me on this day that being informed of the contents of the said document, he in his capacity as such and with full authority, executed the same voluntarily for and as the act of said City of Vestavia Hills, Alabama on the day the same bears date.

Given under my hand and official seal, this the 15<sup>th</sup> day of March, 2013

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

My Commission Expires:

\_\_\_\_\_  
SEAL

Settlement Agreement,  
Cancellation and Termination of Employment Contract,  
and Full and Final Release  
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**STATE OF ALABAMA  
JEFFERSON COUNTY**

**GENERAL ACKNOWLEDGMENT**

I, the undersigned authority, a Notary Public, in and for said County, in said State, hereby certify that Mr. Randy E. Robertson, whose name is signed to the foregoing Settlement Agreement, Cancellation and Termination of Employment Contract, and Full and Final Release, and who is known to me, acknowledged before me on this day that being informed of the contents of the said document, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal, this the 15<sup>th</sup> day of March, 2013.

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

My Commission Expires:

\_\_\_\_\_  
SEAL

**ORDINANCE NUMBER 2439**

**AN ORDINANCE AUTHORIZING THE EMPLOYMENT OF A CITY MANAGER ON AN INTERIM BASIS.**

**WITNESSETH THIS ORDINANCE NUMBER 2439** considered, approved and adopted by the City Council of the City of Vestavia Hills, Alabama on this the 15<sup>th</sup> day of March, 2013.

**WITNESS THESE RECITALS:**

**WHEREAS**, Mr. Randy E. Robertson has resigned his position as City Manager for the City of Vestavia Hills, Alabama for family and health reasons effective March 15, 2013 at 1:30 p.m., Central Standard Time; and

**WHEREAS**, the City Council of the City of Vestavia Hills, Alabama, by the enactment of Ordinance Number 2438, accepted the resignation of Mr. Randy E. Robertson as City Manager of the City of Vestavia Hills, Alabama; and

**WHEREAS**, Title 11-43A-18, *Code of Alabama, 1975*, provides, among other things, that a temporary acting City Manager may be designated by the City Council to serve for not more than four (4) months in the event that the position of City Manager becomes vacant; and

**WHEREAS**, the City Council wishes to appoint Jim St. John as the temporary and interim City Manager.

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

1. Jim St. John is hereby appointed as the temporary and interim City Manager until the first of the following two events:

A. The expiration of four (4) months from the enactment of this Ordinance Number 2439; or

B. The appointment of a permanent City Manager.

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

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

**DONE, ORDERED, APPROVED and ADOPTED** this the 15<sup>th</sup> day of March, 2013.

CITY OF VESTAVIA HILLS, ALABAMA

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

ATTESTED BY:

\_\_\_\_\_  
Rebecca Leavings  
City Clerk