

**Vestavia Hills  
City Council Agenda  
June 10, 2013  
5:00 PM**

1. Call to Order
2. Roll Call
3. Invocation – Joe Comer, Horizon Church
4. Pledge of Allegiance
5. Announcements and Guest Recognition
6. City Manager’s Report
7. Councilors’ Reports
8. Presentations:
  - a. Joan Wright, Executive Director, Childcare Resources
  - b. Jim Crego, Controller/Associate Director, Jefferson-Blount-St. Clair Mental Health Authority
9. Approval Of Minutes – May 16, 2013 (Meeting With The Mayor) And May 29, 2013 (Regular Meeting)

**Old Business**

10. Resolution Number 4454 – A Resolution Authorizing The Mayor And City Manager To Execute And Deliver An Agreement For Republication Of The City’s Municipal Code (*public hearing*)
11. Ordinance Number 2448 – An Ordinance Authorizing And Directing The Sale Of Real Estate More Particularly Described As A Portion Of Vacated Sicard Hollow Right-Of-Way As Recorded In Book 200808, Page 413, Jefferson County (*public hearing*)

**New Business**

12. Resolution Number 4456 – A Resolution Authorizing The Mayor And City Manager To Execute and Deliver An Agreement For Exclusive Real Estate Listing Of 17 +/- Acres at Patchwork Farms

### **New Business (Unanimous Consent Requested)**

13. Resolution Number 4457 – A Resolution Authorizing The Mayor To Execute And Deliver An Agreement For A New City Manager *(Public Hearing)*
14. Resolution Number 4460 – A Resolution Authorizing The Mayor And City Manager To Accept A Proposal From Terracon For Phase I Environmental Site Assessment For The Proposed New City Hall *(Public Hearing)*
15. Resolution Number 4461 – Declaring Certain Drainage/Street Repairs As An Emergency And Authorizing The Repair Of Said Drainage/Street Improvements *(Public Hearing)*

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

16. Resolution Number 4458 - Accepting A Bid For The Purchase And Installation Of Bleachers For The Parks And Recreation Department Of The City Of Vestavia Hills *(Public Hearing)*
17. Resolution Number 4459 - A Resolution Authorizing The Mayor And City Manager To Execute An Agreement With The Regional Planning Commission Of Greater Birmingham For Development Of A Form-Based Zoning Classification For The City Of Vestavia Hills *(Public Hearing)*
18. Citizens Comments
19. Executive Session
20. Motion For Adjournment

## CITY OF VESTAVIA HILLS

### CITY COUNCIL

### WORK SESSION

**MAY 16, 2013**

The City Council of Vestavia Hills met in work 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 Clerk checked the roll with the following:

**MEMBERS PRESENT:**

Alberto C. Zaragoza, Mayor\*  
Steve Ammons, Mayor Pro-Tem  
George Pierce  
Jim Sharp

**MEMBERS ABSENT:**

John Henley

**OTHER OFFICIALS PRESENT:**

Jim St. John, Interim City Manager  
Rebecca Leavings, City Clerk  
Mike Roy, Building Inspector  
Fred Baughman, Economic Dev. Director  
Dan Rary, Police Chief  
*\*arrived at 5:45 PM*

Mr. Ammons opened the meeting and introduced Mike Roy of the Building Safety and Inspections Department who presented a synopsis of the City's sign ordinance and the procedure for sign maintenance and construction. He answered questions from the Council regarding signage in the City.

Andrew Edwards, the City's representative on the MAXX Board, gave an update on the Board's progress, the new director of the Board, etc. He answered questions from the Council regarding upcoming proposals for the bus system within the City.

Fred Baughman and K. C. Pang discussed the prospect of the City entering into the "Sister City" program. He explained the scope of the program and steps to enter into it, including a student exchange and a teacher exchange.

Jim Sharp left the meeting at 5:30 PM.

Mr. Pierce gave a drug task force update at the City schools.

The Mayor indicated that Capital Med-Vest is supposed to close on the 7.5 acres at Patchwork and construct a 3-story office building next to the Northport property and that an extension would be again requested at the next meeting.

There being no further discussion, work session adjourned at 6:00 PM.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk



## **CITY OF VESTAVIA HILLS**

### **CITY COUNCIL**

### **MINUTES**

**MAY 29, 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:**

Jim St. John, Interim City Manager  
Patrick Boone, City Attorney  
Rebecca Leavings, City Clerk  
Christopher Brady, City Engineer  
Melvin Turner III, Finance Director  
George Sawaya, Dep. Finance Director  
Danny Rary, Police Chief  
Tim Holcomb, Deputy Police Chief  
Fred Baughman, Economic Dev. Director

Invocation was given by Steve Ammons, followed by the Pledge of Allegiance.

### **ANNOUNCEMENTS, GUEST RECOGNITION**

- The Mayor stated that the new café at the Library in the Forest is set to open tomorrow at 5:30.

### **CITY MANAGER REPORT**

- Mr. St. John congratulated John Penrose for being selected as the Optimist Club “Officer of the Year” for 2013.
- The Library is set to kick off the Summer Reading Program which they anticipate will draw approximately 500 children.
- The Fire Department will have two retirements coming up, Wade Brown and Randy Rutledge.

- Mr. St. John indicated that he and Mr. Boone have met with Alabama Power to discuss the method of tree trimming in the City. He stated that Alabama Power has provided some information that will be posted on the website for resident information along with a contact phone number if they experience a problem.
- Alagasco has suspended some of their repairs within the streets until schools close after causing a long back-up during carpool. They reported they will return to finish the repairs after school closes for the summer.

### **COUNCILOR REPORTS**

- No Reports.

### **FINANCIAL REPORTS**

Melvin Turner III, Finance Director, presented the financial reports for month ending April 2013. He read and explained the balances.

### **APPROVAL OF MINUTES**

The minutes of the May 13, 2013 (Regular Meeting) were presented for approval.

**MOTION** Motion to dispense with the reading of the minutes of the May 13, 2013 (Regular Meeting) and approve them as presented was by Mr. Pierce and second 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.

### **OLD BUSINESS**

#### **ORDINANCE NUMBER 2447**

**Ordinance Number 2447 – An Ordinance Authorizing And Directing The Purchase Of Real Estate Situated At 1105 Mayland Lane (*public hearing*)**

**MOTION** Motion to adopt Ordinance Number 2447 was by Mr. Pierce and second was by Mr. Henley.

Mr. St. John stated that this Ordinance authorizes the purchase of 2.6 +/- acres of property which will be used to complement the property being purchased for location of a new City Hall. He stated that the terms of the agreement set forth a condition that the

City will only close on this property if it closes on the other property. The closings will be done at the same time.

Mr. Boone stated that he has reviewed the contract and finds no problems with it.

Mr. Henley recused himself from the vote.

Mr. Ammons asked if the property would have to be rezoned.

Ms. Leavings stated that the property is now zoned B-2 and a public facility is allowed within that zoning classification.

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 4451**

#### **Resolution Number 4451 – A Resolution Accepting A Bid For Protective Clothing For The Fire Department**

**MOTION** Motion to adopt Resolution Number 4451 was by Mr. Henley and second was by Mr. Sharp.

Mr. St. John stated that this Resolution accepts a 3-year bid for protective clothing for the Fire Department. He explained the purpose of the clothing and the reason the recommendation for acceptance is not going to the lowest bidder who gave an exception to a certain type of detergent to be used on these uniforms and, once the detergent is added, the bid is no longer the lowest. Therefore, the recommendation is for the next lowest bid.

**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 4452**

**Resolution Number 4452 – A Resolution Authorizing The Mayor And City Manager To Execute An Agreement For Security Services For Municipal Court**

**MOTION** Motion to adopt Resolution Number 4452 was by Mr. Ammons and second was by Mr. Pierce.

Ms. Leavings explained that the funding for security for the City’s Municipal Court was approved at a previous meeting. This Resolution authorizes the City to enter into an agreement to retain the guards from Security Engineers. Mr. Boone has reviewed the agreement and offered an amendment which has been forwarded to the company.

**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)**

The Mayor opened the floor for a motion for unanimous consent for the immediate consideration and action on Resolution Number 4453.

**MOTION** Motion for unanimous consent for the immediate consideration and action of Resolution Number 4453 was by Mr. Ammons. Second was 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.

**RESOLUTION NUMBER 4453**

**Resolution Number 4453 – A Resolution Authorizing The City Manager To Purchase A LiveScan System For The City Of Vestavia Hills Police Department (*public hearing*)**

**MOTION** Motion to adopt Resolution Number 4453 was by Mr. Ammons and second was by Mr. Sharp.

Chief Rary stated that the City was awarded a grant to pay for this system in full; however, the City must first purchase the system and the grant will reimburse the City. He stated that the City’s current system has far outlived its usefulness and this new system is state-of-the-art and will take the entire hand print and submit it to the proper entities for fingerprinting.

The Mayor stated that this equipment will be purchased through the state bid.

Chief Rary agreed.

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.

### **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 June 10, 2013 at 5 PM.

- Resolution Number 4454 – A Resolution Authorizing The Mayor And City Manager To Execute And Deliver An Agreement For Republication Of The City's Municipal Code (*public hearing*)
- Ordinance Number 2448 – An Ordinance Authorizing And Directing The Sale Of Real Estate More Particularly Described As A Portion Of Vacated Sicard Hollow Right-Of-Way As Recorded In Book 200808, Page 413, Jefferson County (*public hearing*)

### **CITIZENS COMMENTS**

No one was present to address the Council.

### **EXECUTIVE SESSION**

The Mayor indicated that the Council has a need to enter into Executive Session in order to discuss the following: (1) purchase/sale of property; (2) pending litigation; and (3) good name and character of an individual.

Mr. Boone concurred that was sufficient reason and indicated that Ben Goldman and Mark Waggoner of Hand Arendall LLP were present in regard to the litigation discussion.

The Mayor estimated that the Executive Session would last approximately 90 minutes and stated that there would be business conducted after the session. He opened the floor for a motion for the Executive Session.

**MOTION** Motion to move into an executive session for an estimated 90 minutes with further business to be conducted after the meeting was by Mr. Sharp and second was by Mr. Pierce. Roll call vote as follows:  
Mr. Pierce – yes                      Mr. Henley – yes  
Mr. Ammons – yes                      Mr. Sharp – yes  
Mayor Zaragoza – yes                      Motion carried.

The Council exited the Chamber and entered into Executive Session at 5:40 PM. At 7:45, they re-entered the Chamber and the Mayor called the meeting back to order.

The Mayor opened the floor for a motion for unanimous consent for the immediate consideration and action on Resolution Number 4455.

**MOTION** Motion for unanimous consent for the immediate consideration and action of Resolution Number 4455 was by Mr. Ammons. Second was 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.

**RESOLUTION NUMBER 4455**

**Resolution Number 4455 – A Resolution Authorizing The Mayor To Settle Jefferson County Circuit Court Case Number CV-2012-01005 Entitled City Of Vestavia Hills V. Maddox Enterprises LP Et Al**

**MOTION** Motion to adopt Resolution Number 4455 was by Mr. Ammons and second was by Mr. Sharp.

Mr. St. John stated that this Resolution will settle a lawsuit regarding the motel on Montgomery Highway.

Mr. Boone recommended an amendment to the Resolution to attach the terms of the settlement.

**MOTION** Motion to amend Resolution Number 4455 in order to attach and incorporate the terms of the settlement into the Resolution was by Mr. Ammons. Mr. Henley seconded the agreement. Roll call vote, as follows:  
Mr. Pierce – yes                      Mr. Henley – yes  
Mr. Ammons – yes                      Mr. Sharp – yes  
Mayor Zaragoza – yes                      Motion carried.

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.

The Mayor opened the floor for a motion for unanimous consent for the immediate consideration and action on Ordinance Number 2433-A.

**MOTION** Motion for unanimous consent for the immediate consideration and action of Ordinance Number 2433-A was by Mr. Pierce. Second was 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.

**ORDINANCE NUMBER 2433-A**

**Ordinance Number 2433-A – Amending Ordinance 2433 For Extension Of A Purchase/Sale Agreement For Real Estate**

**MOTION** Motion to adopt Ordinance Number 2433-A was by Mr. Ammons and second was by Mr. Henley.

Mr. St. John stated that this Ordinance allows Capital Med-Vest extra time to complete due diligence and purchase property in Patchwork.

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.

**MOTION** Motion to adjourn was by Mr. Pierce. Meeting adjourned at 7:50 PM.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk



**RESOLUTION NUMBER 4454**

**A RESOLUTION AUTHORIZING THE MAYOR AND CITY MANAGER  
TO EXECUTE AND DELIVER AN AGREEMENT FOR  
REPUBLICATION OF THE CITY'S MUNICIPAL CODE**

**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 Municipal Code Corporation ("Municode") for republication of the City's Code and Zoning Ordinance in an amount not to exceed \$14,990.
2. A copy of said agreement is attached to and incorporated into this Resolution Number 4454 as if written fully therein; and
3. The expense of the above-described agreement shall be spread over two fiscal years beginning with a \$7,000 deposit to be remitted upon execution of the agreement and the remainder to be due and payable following completion and/or after October 1, 2013; and
4. This Resolution Number 4454 shall become effective immediately upon adoption and approval.

**DONE, ORDERED, ADOPTED and APPROVED** this the 10<sup>th</sup> day of June, 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

May 20, 2013

By Hand Delivery

City Clerk Rebecca Leavings  
Vestavia Hills Municipal Center  
513 Montgomery Highway  
Vestavia Hills, Alabama 35216

In Re: Agreement With Municode for Republishing the City Code

Dear Becky:

I agree with you that professional services contracts for codification and publication of the laws and ordinances of municipalities are exempt from the Alabama Competitive Bid Law by virtue of Title 41-16-51(a), *Code of Alabama, 1975*.

After a careful review of the proposal, dated April 24, 2013, submitted by Municode, it is my legal opinion that said proposal meets the requirements of Alabama law. It is my further legal opinion that the City Council may legally select any of the options outlined in the proposal.

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

Sincerely,



Patrick H. Boone  
Vestavia Hills City Attorney

PHB:gp

cc: Interim City Manager James R. St. John (by hand)  
Mayor Alberto C. Zaragoza, Jr. (by hand)

# INTEROFFICE MEMORANDUM

**DATE:** May 23, 2013  
**TO:** Jim St. John, Interim City Manager  
**FROM:** Rebecca Leavings, City Clerk  
**RE:** Republication of City Code and Zoning Ordinance

Attached you will find a copy of a proposed agreement with Municipal Code Corporation (“Municode”) for republication of the City’s code of ordinances. This agreement proposes two options: (1) republication of the City’s Code; and (2) republication of the City’s Code and Zoning Ordinance.

I am requesting this to be placed on the City Council agenda as a first read on Wednesday, May 29, 2013 for Option 2 which includes the City’s Zoning Code. The Zoning Code has never been included in the City’s Code and this makes it difficult for the general public to locate the Code in order to answer questions concerning zoning and permitted uses of property. As this Department develops a GIS zoning map, the intent is to place this zoning map online to provide complete access to zoning information. The inclusion of the Zoning Code is an additional \$4,750 expense but I believe it will make it easier for the general public to locate and access this information.

The agreement allows the City to spread the \$14,990 cost over 2 fiscal years. The \$7,000 required deposit is within the approved budget for the current fiscal year and the remainder will need to be committed by the City Council for the next fiscal year.

Republication was last completed in 2008 and currently there are 78 Ordinances held in NOW which need to be incorporated into the City’s Code. The expense of holding so many Ordinances within the NOW internet based storage currently will cost the City approximately \$6,000 this next year to continue to hold these ordinances. This will clear that NOW expense and bring the City’s Code back up to date.

Please let me know if you need any other information.

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Reply



# municode

Municipal Code Corporation • PO Box 2235 Tallahassee, FL 32316  
info@municode.com • 800.262.2633  
fax 850.575.8852 • www.municode.com

April 24, 2013

Ms. Rebecca Leavings  
City Clerk  
City of Vestavia Hills  
513 Montgomery Highway  
Vestavia Hills, AL 35216

Sent Via Email: [city.clerk@ci.vestaviiahills.al.us](mailto:city.clerk@ci.vestaviiahills.al.us)

Dear Ms. Leavings:

Thank you for corresponding with our Sales and Marketing Representatives, Faye Creel and Alicia Bywaters. Per your request, we are pleased to submit the following information and pricing to update and republish the City's Code of Ordinances.

**Republication.** In addition to updating the text, Index and tables of the Code to reflect the new ordinances, the preliminary pages of the Code will be appropriately updated. The updated volume will be repaginated and proofs will be provided for review prior to printing the new Code volumes.

The republication project does not include reorganizing Code content, renumbering Code chapters or proofreading unamended Code text. Code pages that are not impacted by the inclusion of an ordinance or by the inclusion of a current state law reference (see below) will be printed with no substantive changes.

**Electronic Media.** The existing media orders will carry over to the republished Code – Code on Internet. Additionally, the Code can be furnished in any electronic medium and format (PDF, RTF, HTML, or integrated with search engine, etc.) as selected by the City.

**Distribution Services.** With Municode as Total Code Administrator (TCA), we provide inventory for sale (Codes and/or reprint pamphlets) and we provide all services for outside subscribers. The TCA service is provided at no cost to you and totally at our expense.

**Supplement Service.** Supplementation of the Code will resume upon shipment of the new volume. In addition to providing traditional supplements, we offer an alternative supplementation option to those who receive their Code electronically – electronic updates provide current electronic data without preparing paper supplements.

We also offer a variety of specific publication schedules – a specific supplement publication schedule helps to ensure that supplements are provided regularly and it simplifies the transmission of ordinances. With a schedule in place, ordinances can be sent as enacted and we hold them in our files until it is time to proceed with work on the next scheduled supplement. Our records currently reflect an annual schedule (June) for publication of supplements to the Code. The schedule can be adjusted, as needed, to reflect current needs.

**New Ordinances on the Web (NOW).** Municode can post your ordinances on the web between supplements so that anyone viewing your Code will find the most current legislation. Although your ordinances will be a part of your Code database, Municode will not edit the Code to include the new ordinances – we will simply post the ordinances in their original form as a PDF. The ordinances are included in the opening page of the Code in a table to include ordinance title, adoption date and description. This table also contains a link directly to the ordinance for viewing. Once ordinances posted through the NOW service are included in a supplement to the Code, they will be removed from the web. We recommend sending legislation in an editable format via email for inclusion in the Code and posting for the NOW system. No setup fee is required.

**OrdLink.** As described in our NOW service above, Municode can post the ordinances passed between Printed Supplements or Electronic Updates on our website. OrdLink expands the NOW service to highlight the Code's Table of Contents and create a link from the amended section in the Code text to the ordinance(s) in the table and from the ordinance table to the amended text sections of the Code. Once the posted ordinances are incorporated



into the Code, they are removed from the website. We recommend sending legislation in an editable format via email for inclusion in the Code and posting for the OrdLink system. No setup fee is required.

**OrdBank.** Is a permanent collection of all ordinances sent to Municode, listed chronologically and organized by Supplement number, presented on-line with number, date with a brief description. Each ordinance in the list is linked to the actual ordinance as enacted, and from the History Note of the section derived from the ordinance.

**CodeBank.** Is a code management tool available on [municode.com](http://municode.com) that allows anyone to easily recreate a Code *as it existed after a previous update or Supplement*. Previous versions are accessible from a drop down box that appears with the on-line Code and when a previous version is selected, users are alerted that they are looking at an older version of the Code. The historic version of the Code is fully searchable and printable, making the task of researching past versions of your Code more efficient

If you have questions, or should you desire additional information, contact Steffanie, via e-mail at [info@municode.com](mailto:info@municode.com). Municode values its relationship with the City of Vestavia Hills and appreciates every opportunity to be of service.

Sincerely,

Dale Barstow  
Vice President – Sales

DMB/amb  
Enc.

# PROFESSIONAL SERVICES QUOTATION SHEET <sup>1</sup> - CITY OF VESTAVIA HILLS, ALABAMA

**[ ] REPUBLISHING THE CODE, Base Cost Includes:**

\$10,240

- Incorporation of Material (Updating State Law References; 2220; 2224; 2236; 2241; 2248; 2255; 2256; 2257; 2258; 2259; 2260; 2261; 2262; 2263; 2265; 2266; 2279; 2280; 2281; 2282; 2283; 2284; 2285; 2286; 2287; 2288; 2289; 2290; 2291; 2292; 2293; 2294; 2295; 2296; 2297; 2298; 2299; 2300; 2301; 2302; 2303; 2304; 2305; 2306; 2307; 2308; 2309; 2310; 2311; 2312; 2313; 2314; 2315; 2316; 2317; 2318; 2326; 2329; 2330; 2332; 2333; 2338; 2339; 2340; 2342; 2361; 2372; 2377; 2378; 2382; 2395; 2396; 2411; 2418; 2419; 2427; 2429 & 2434);
- Updating of preliminary pages (title page, officials' page, and preface);
- Repagination;
- Graphics<sup>2</sup> & Tabular<sup>3</sup> matter;
- Updated Index;
- Printing 15 copies (pages only)<sup>4</sup>;
- Code posted online (existing order);
- NOW postings<sup>5</sup> (73 ordinances)
- Base number of pages, as established in the table below

Estimated pages based on page format and font size	
Page Format	Font Size
Single Column	10 point, New Century Schoolbook font 586

**Base cost does not include:**

- Reorganizing, renumbering or legally reviewing Code content
- Adding ordinances to the Code not listed under Base Cost<sup>6</sup>
- Pages in excess of the base, per page \$16
- 3-post expandable binders, \$54 each qty \_\_\_\_\_ \$ \_\_\_\_\_  
Select Binder color: [ ] Semi-Bright Black, [ ] Maroon, [ ] Brittany Blue, [ ] Deep Green
- Freight
- Sales Tax, if applicable

**Elections** to be made applying to the Republication:

- [ ] **Inclusion of Ordinance No. 2331 – Zoning** \$4,750
  - Based on 232 single column pages, graphics & tabular matter and providing 15 sets of two new divider tabs (Appendix A & Appendix A – Zoning)
- [ ] **Printing 3 pages in color at \$15.00 per page**, will be an additional cost and is optional \$45

**Electronic Code Options** - data provided via ftp unless requested otherwise

- [ ] Database in Adobe (PDF files – entire Code) \$150
- [ ] RTF/HTML/XML (entire Code) \$150
- [ ] Municode Desktop (entire Code) \$295

**Payment for Republication:  
Code only \$10,240**

**Payment for Republication – Code & Zoning Ordinance  
(\$10,240 + \$4,750 = \$14,990)**

Execution of Agreement = \$7,000  
Upon delivery (or after 10/1/2013) = Balance due

Execution of Agreement = \$7,000  
Upon delivery (or after 10/1/2013) = Balance due

<sup>1</sup> Applicable sales taxes and actual shipping charges will be added.  
<sup>2</sup> Includes printing all copies. Additional fee if graphic includes color.  
<sup>3</sup> Tabular matter is defined as tables, Algebra formulae, or other materials that require special programs or extra editorial time to modify and prepare for inclusion in an update.  
<sup>4</sup> Municode uses only acid-free paper.  
<sup>5</sup> There are a total of 78 ordinances posted on NOW and the City has already paid for five of those postings in 2009.  
<sup>6</sup> New ordinances may be added, but will be charged at \$24.89 per page affected. This fee applies even if base page allowance is not exceeded. An estimate will be provided upon request.



# PROFESSIONAL SERVICES QUOTATION SHEET CONTINUED<sup>1</sup> - CITY OF VESTAVIA HILLS, ALABAMA

## Supplement Service Base Page Rate<sup>2</sup>

Page Format	Base Page Rate
Single Column	\$19.89 per page

### Base page rate above includes:

- Acknowledgement of Material
- Data conversion, as necessary
- Editorial Work
- Proofreading
- Updating the Index
- Schedule as selected by Client<sup>3</sup>
- Updating Electronic versions<sup>4</sup> (CDs and Internet)
- Printing<sup>5</sup> 15 copies

### Base page rate does not include:

- |   |                |
|---|----------------|
| • Freight, prebilled  | Actual freight |
| • State Sales Tax   | If applicable  |
| • Graphics <sup>6</sup> & Tabular <sup>7</sup> matter, per graphic or table | \$10           |

### Optional Services to Supplement Service (please check)

- |  |       |
|--|-------|
| <input type="checkbox"/> Code on the Internet with CodeBank, invoiced annually in November | \$700 |
| <input type="checkbox"/> Electronic delivery handling fee, per delivery <sup>8</sup>       | \$75  |
| <input type="checkbox"/> New Ordinances on the Web (NOW)/OrdBank, per ordinance            | \$35  |
| <input type="checkbox"/> OrdLink/OrdBank <sup>9</sup> , per ordinance                      | \$60  |

### Payment for Supplements and Additional Services:

- Invoices will be submitted upon shipment of project(s).

<sup>1</sup> Applicable sales taxes and actual shipping charges will be added.

<sup>2</sup> All prices quoted in this section may be increased annually in accordance with the Producer Price Index – Internet Publishing and web search portals (NAICS 519130) as reported by US Department of Labor – Bureau of Labor Statistics.

<sup>3</sup> Schedule for Supplements can be weekly, bi-weekly, monthly, bi-monthly, quarterly, tri-annual, semi-annual, annual or upon authorization. Electronic Updates can occur more frequently than printed Supplements.

<sup>4</sup> We do not charge a per page rate for updating CDs or the Internet, however a handling fee is charged.

<sup>5</sup> Municode uses only acid-free paper.

<sup>6</sup> Includes printing all copies. Additional fee if graphic includes color of \$15 per page.

<sup>7</sup> Tabular matter is defined as tables, Algebra formulae, or other materials that require special programs or extra editorial time to modify and prepare for inclusion in an update.

<sup>8</sup> "delivery" is defined as delivering electronic data available to the City on CD-ROM or via FTP. Fee applies whenever updated content is delivered via one of the above-defined products.

<sup>9</sup> If OrdLink is selected the NOW service is unnecessary.



# municode

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**Term of Agreement.** This Agreement shall begin upon execution of this Agreement and end three years thereafter. In the absence of notice of cancelation, this Agreement shall be automatically renewed from year to year provided that either party may cancel or change this agreement with sixty (60) days written notice.

Submitted by:

## MUNICIPAL CODE CORPORATION

Municode Officer: \_\_\_\_\_

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

Witness: \_\_\_\_\_

Date: \_\_\_\_\_

Accepted by:

## CITY OF VESTAVIA HILLS, ALABAMA

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

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

Witness: \_\_\_\_\_


Date: \_\_\_\_\_



# WEBSITE SERVICES

**Cross Reference Hyperlinking** – Cross references within the Code will be linked to their respective destination Article, Chapter, or Section. *This feature is offered to you as part of your annual Internet fee.*

**Static Hyperlinking to your Code** – Each level of the code has a static link that will enable your users to easily create “Hot Links” to any section of the code. Simply click the permalink icon to the right of each heading level and paste the URL into the destination of your choice. *This feature is offered to you as part of your annual Internet fee.*


**Sec. 2-73. - Same—To reconsider.**  ← **Static Link**

In all cases, a motion to reconsider will be entertained only when made by a member who voted with the prevailing side. A majority of those present can reconsider any vote, but the motion to do so shall be made at the same session of the council during which such vote was taken. A motion to reconsider shall have precedence of all other questions, and when it has once been put and lost, it shall not be renewed. This rule, however, is subject to [section 2-74](#).

→ **Cross Reference Link**

(Code 1976, § 2-24)

**Mouseover (cluetips)** - Navigate to a code and any linked cross reference will display the pop-up after a 1 second delay. You'll need to clear your browser cache to enable them (Tools -> Internet Options -> Delete -> Temporary Internet Files). *This feature is offered to you as part of your annual Internet fee.*

**Sec. 2-386. - Definition.** 

As used in this article th

(Code 1976, § 2-114; 9-4-07)  
Cross reference— Definitions and

**Sec. 2-387. - Created; name.**

There is hereby created

Development Authority of the C

(Code 1976, § 2-114; 9-4-07)  
State law reference— Authority fo

**Sec. 2-388. - Board of direct**

The authority shall be governed by board of directors in which all powers of the authority shall be vested, composed of seven (7) members appointed by the city council as provided by general law.

Close

created by [section 2-387](#).

**Navigate to any linked cross reference, which will display the pop-up after a 1 second delay**

**Email (from the Web)** – Chapters, Articles or individual Sections may be selected for emailing. The functionality is very intuitive and easy to use and *is included in your annual Internet fee.*

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Charlottesville, Virginia - Code of Ordinances

CODE OF THE CITY OF CHARLOTTESVILLE (19

SUPPLEMENT HISTORY TABLE

CHARTER

Sec. 1. - Enactment.

Sec. 2. - Boundaries; corporate status.

Sec. 3. - University of Virginia excluded from c

Sec. 4. - Wards.

Sec. 5. - Elective officers; qualifications and te

powers vested in city council; salaries of cour

CODE OF ORDINANCES

City of

CHARLOTTESVILLE, VIRGINIA

Codified through

Ordinance of July 16, 2012.

(Supp. No. 43)

The listing below includes all legislation received by Municipal Code since the last legislation has been enacted, but has not yet been codified.

**E-Mail Button & Menu**

**Print or Save** – Similar to Emailing, Chapters, Articles or individual Sections may be selected for Printing or Saving. Save (as compared to “blocking & copying”) preserves the formatting when the document is edited using your word processing software. *These features are offered to you as part of your annual Internet fee.*

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CODE OF ORDINANCES

City of

CHARLOTTESVILLE, VIRGINIA

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(Supp. No. 43)

The listing below includes all legislation received by Municipal Code since the last legislation has been enacted, but has not yet been codified.

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**San Buenaventura, California - Code of Ordinances**  
**24V.100.030 - Transect Zone Descriptions**

TABLE A: Transect Zone Discriptions. This table provides a generalized transect for Ventura. A detailed description of the transect refinements used in this Development Code is in Section 24V 100 030, subsections A through D

**T1 THE NATURAL ZONE** consists of the natural and permanent open space areas within Ventura that are intended for preservation. These include the sand beach along the ocean, the Ventura River corridor, the Santa Clara River corridor, the hillsides to the north, and the Ventura/Oxnard Greenbelt to the south, and certain barrancas within the City fabric. The T1 zone may also include lands unsuitable for settlement due to topography, hydrology or vegetation.

**T2 THE RURAL ZONE** consists of areas of Ventura that are reserved for agricultural use (SOAR), and have an open "country road" character and are sparsely settled. Significant T2 areas are present between the 101 Freeway and the Santa Clara River in the Olivas, Northbank, Montalvo and Serra Communities; in the "internal greenbelt" running north to Foothill Road through the Serra, and Poinsettia Communities; south of Foothill Road in the Juanamaria and Wells Communities, and in small patches of the North Avenue Community.

**T3 THE SUB-URBAN ZONE** consists of low-density suburban residential areas within the College, Thille Montalvo, Poinsettia, Juanamaria, Serra, Saticoy and Wells Communities. Planting is naturalistic with relatively deep setbacks. Blocks may be large and the roads irregular to accommodate natural conditions.

**In-Line Tables, Graphics & Photos**

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CHANGE LOCATION

CODE OF THE CITY OF CHARLOTTESVILLE (1990)

SUPPLEMENT HISTORY TABLE

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CODE COMPARATIVE TABLE - 1976 CODE

CODE COMPARATIVE TABLE - ORDINANCES

STATE LAW REFERENCE TABLE

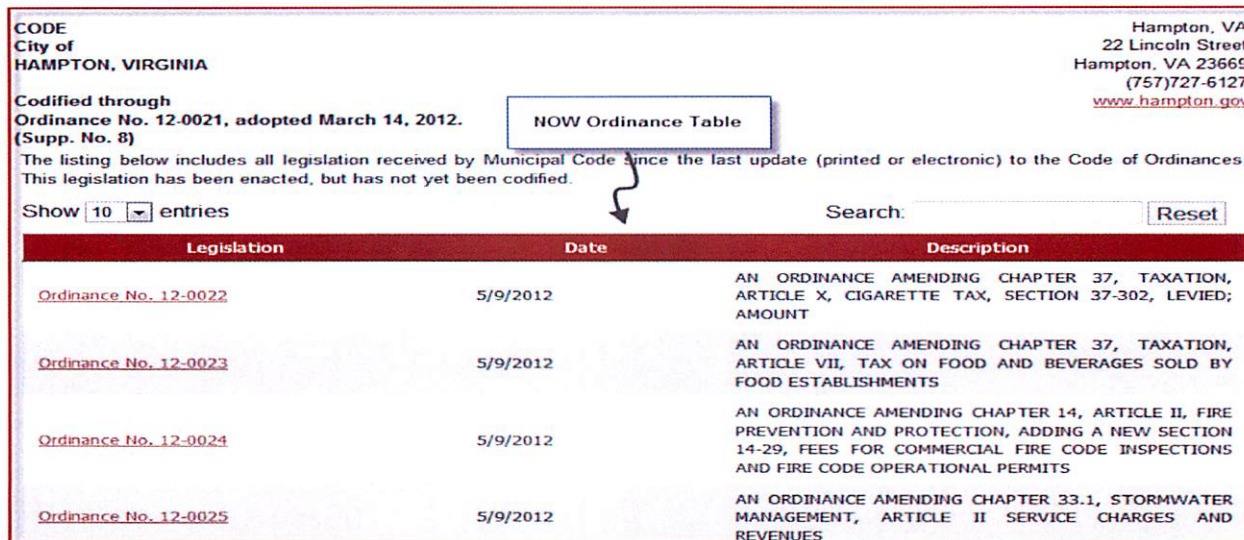
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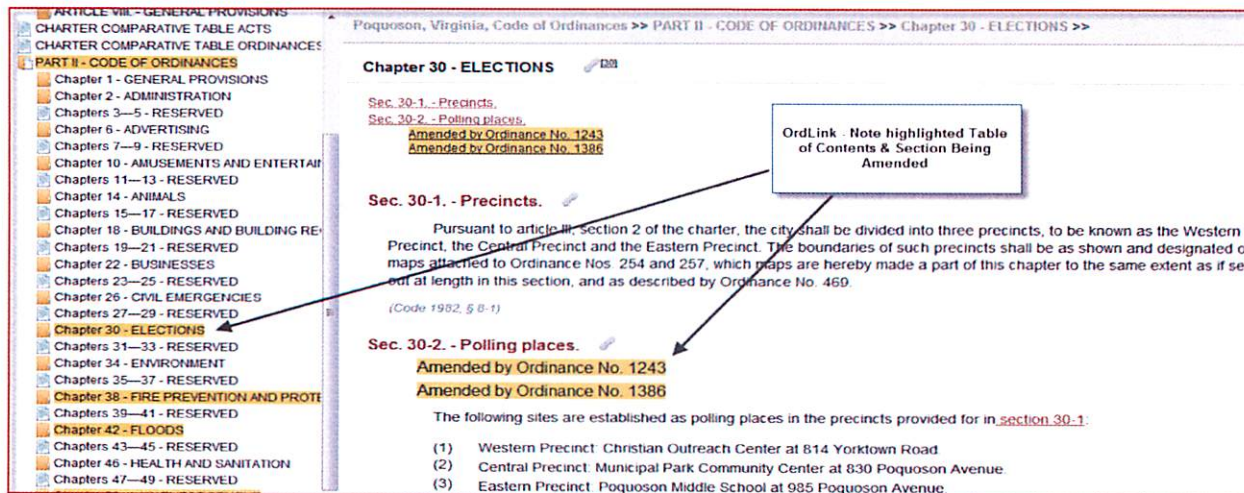
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**OrdLink.** OrdLink links a NOW ordinance to the section being amended. Linked Sections will be highlighted in the Table of Contents and a link is created from the amended section to the new ordinance. Once the linked NOW ordinances are incorporated into the Code they are removed from the website. For the linked NOW ordinance to be searchable, they must be sent in an editable format. Scanned documents can be included in the list and are viewable, but not searchable. No setup fee is required and the cost for this service is \$50 per ordinance.





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**Ord Bank**

OrdBank is a permanent repository of ordinances submitted by this municipality (this may include all ordinances or simply those designated by the municipality) OrdBank has two key components – the table you see below, and a link from the history note within the code to the referenced ordinance. Both references will display the PDF of the original ordinance as it was adopted. Additionally, you may use the search box below to locate ordinances by supplement, number, adopted date, description.

OrdBank is a feature provided by the municipality to all users of the online code. If you do not see any ordinances listed below, your municipality may contact our Sales Department at [info@municode.com](mailto:info@municode.com) for more information about this valuable service.

Show 10 entries Search

Supplement	Legislation	Date	Description
Supplement 23	<a href="#">Ordinance No. C-7-2011</a>	8/8/2011	FREEWAY REDEVELOPMENT OVERLAY DISTRICT 2
Supplement 23	<a href="#">Ordinance No. C-8-2011</a>	8/8/2011	FREEWAY REDEVELOPMENT OVERLAY DISTRICT 3
Supplement 23	<a href="#">Ordinance No. C-5-2011</a>	6/13/2011	HISTORIC DISTRICTS AND HISTORIC DISTRICT COMMISSION ORDINANCE
Supplement 23	<a href="#">Ordinance No. C-6-2011</a>	6/13/2011	CITY PLANNING COMMISSION ORDINANCE
Supplement 23	<a href="#">Ordinance No. C-4-2011</a>	4/11/2011	FREEWAY REDEVELOPMENT OVERLAY DISTRICT ORDINANCE

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Supplement 27

Current Version  
Supplement 28 (01/05/2012)

**Supplement 27**

Code of Ordinances

CODE OF ORDINANCES  
City of  
FORT LAUDERDALE, FLORIDA

Codified through  
Ordinance No. C-11-25, enacted September 20, 2011.  
(Supp. No. 27)  
(Includes UNIFIED LAND DEVELOPMENT REGULATIONS)

Codified through  
Ordinance No. C-11-24, enacted September 20, 2011.  
(Supp. No. 21))

[CODE OF ORDINANCES - OF THE - CITY OF - FORT LAUDERDALE, FLORIDA](#)  
[SUPPLEMENT HISTORY TABLE](#)  
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[CODE COMPARATIVE TABLE LAWS OF FLORIDA](#)  
[CODE COMPARATIVE TABLE - RESOLUTIONS](#)  
[CODE COMPARATIVE TABLE - ORDINANCES](#)  
[CODE COMPARATIVE TABLE RESOLUTIONS](#)  
[STATE LAW REFERENCE TABLE](#)

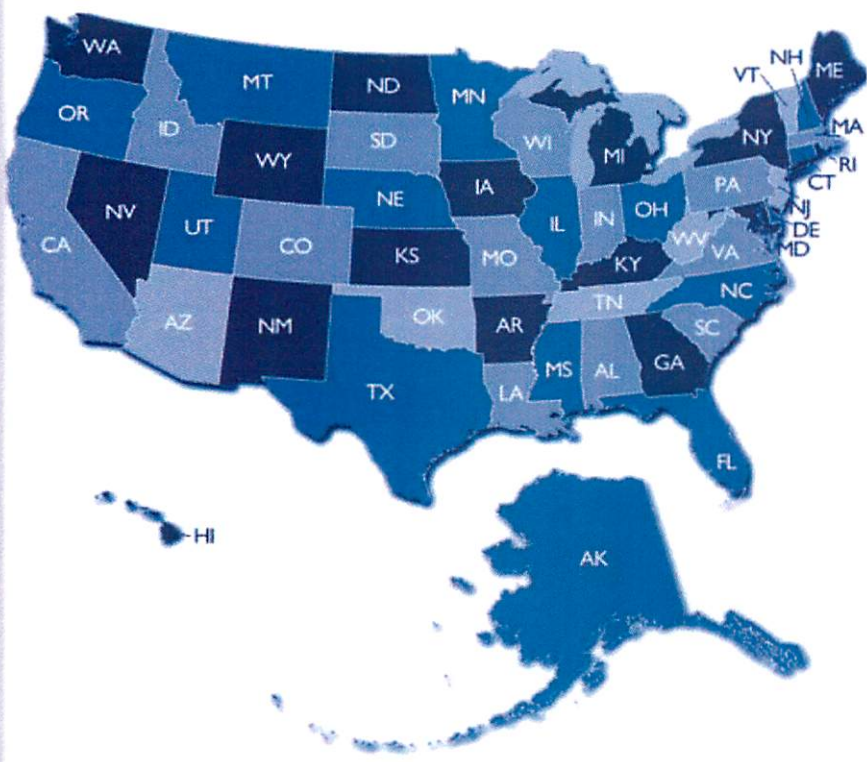


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- ❸ **MuniPRO Notes.** Create a note and attach it to any document in any publication. Note icons will show in both the Table of Contents and search results page, alerting the user to a previously written note. Notes can be shown or hidden when browsing and searching a publication, and a global listing of notes can be accessed with a single click from the Dashboard.
- ❹ **MuniPRO Drafts.** Begin a new ordinance draft to keep track of pending legislation. Drafts icons will appear in the Table of Contents and search results, and can also be accessed from a single click.

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### RECENT FAVORITES

[Sec. 6-64 - Standards for areas of shallow flooding \(AH and AO zones\)](#)  
[Sec. 4-141 - Dangerous dog classification](#)

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[flood damage protection](#)  
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### RECENT CODES

[Tallahassee Code of Ordinances](#)  
[Lauderdale-By-The-Sea Code of Ordinances](#)

**ORDINANCE NUMBER 2448**

**AN ORDINANCE AUTHORIZING AND DIRECTING THE SALE OF REAL ESTATE, MORE PARTICULARLY DESCRIBED AS A PORTION OF VACATED SICARD HOLLOW RIGHT-OF-WAY AS RECORDED IN BOOK 200808, PAGE 413, JEFFERSON COUNTY.**

**THIS ORDINANCE NUMBER 2448** is approved and adopted by the City Council of the City of Vestavia Hills, Alabama on this the 10<sup>th</sup> day of June, 2013.

**WITNESSETH THESE RECITALS:**

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

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

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

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

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

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

**WHEREAS**, the City of Vestavia Hills, Alabama (“City”) is the owner of real property situated in the City of Vestavia Hills, Jefferson County, Alabama, which said real estate shall hereinafter be referred to as the “subject property” and is more particularly described as follows:

A part of the right of way of Sicard Hollow Road vacated by Book LR 200808 Pg 413, as recorded in the Probate Office of Jefferson County, Alabama. Being a part of the vacated right to way lying in the NE ¼ of the NE ¼ of Section 18 Township 18 South, Range 1 West and being more particularly described as follows:

A parcel of land situated in the NE ¼ of Section 18, Township 18 South, Range 1, West Jefferson County Alabama being more particularly described as follows:

Commence at the NE corner of said Section 18 and run south 00 degrees 42 minutes 50 seconds East along the east line thereof for a distance of 747.23 feet to the POINT OF BEGINNING of said parcel, said point also being on a curve turning to the left, said curve having a radius of 612.96 feet, a central angle of 11 degrees 13 minutes 14 seconds, a chord bearing of South 51 degrees 57 minutes 12 seconds West, and a chord length of 119.85 feet; thence run in a Southwesterly direction along said arc for a distance of 120.04 feet; thence run South 46 degrees 19 minutes 48 seconds West for a distance of 208.07 feet to the point of beginning of a curve to the right having a radius of 278.31 feet, a central angle of 43 degrees 19 minutes 40 seconds, a chord bearing of South 67 degrees 59 minutes 19 seconds West, and a chord length of 205.48 feet; thence run in a Southwesterly direction along the arc of said curve for a distance of 210.46 feet; thence run South 89 degrees 38 minutes 30 seconds West for a distance of 74.56 feet to a point on a curve turning to the left having a radius of 278.73 feet, a central angle of 37 degrees 55 minutes 57 seconds, a chord bearing of South 70 degrees 40 minutes 57 seconds West, and a chord length of 181.18 feet; thence run in a Southwesterly direction along the arc of said curve for a distance of 184.53 feet; thence run North 89 degrees 49 minutes 08 seconds East for a distance of 317.36 feet to the currently existing Northeasterly right of way of Sicard Hollow Road; thence run North 47 degrees 22 minutes 58 seconds East along said right of way for a distance of 500 feet, more or less, to the Easterly line of said Section 18; thence turn left and run North 00 degrees 42 minutes 50 seconds West along said Easterly line of Section 18 to the point of beginning and end of this parcel; and

**WHEREAS**, Jordy Henson, Managing Member of HCI Holdings LLC, an Alabama limited liability corporation, has requested that the City declare said property as

surplus and offer for sale to Harris Doyle Homes, Inc., for development of a subdivision;  
and

**WHEREAS**, the City finds and determines that it is willing to accept the offer by Harris Doyle Homes, Inc.; for an amount equivalent to \$2,400 with the purchaser paying all costs associated with closing of said property; and

**WHEREAS**, the City Council of the City of Vestavia Hills, Alabama finds and determines that the subject property is not needed for municipal or public purposes; and

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

1. The subject property is found and determined to not be needed for public or municipal purposes by the City of Vestavia Hills and is hereby declared as surplus property all in accordance with the requirements of Title 11-47-20, *Code of Alabama, 1975*.

2. The Mayor and City Manager are hereby authorized and directed to execute and deliver all documents required to close said sale for and on behalf of the City of Vestavia Hills, Alabama.

3. A copy of said real estate closing documents, along with said payment, will be submitted upon closing and kept on file in the office of the City Clerk of the City of Vestavia Hills, Alabama for inspection by members of the general public.

4. Upon approval, adoption and enactment of this Ordinance Number 2448 the Mayor and City Manager are hereby authorized and directed to take any and all legal action necessary to close the sale of the subject property all in accordance with the terms, provisions and conditions previously described.

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*.

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



**DONE, ORDERED, APPROVED and ADOPTED** this the 10<sup>th</sup> day of June, 2013.

CITY OF VESTAVIA HILLS, ALABAMA

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

ATTESTED BY:

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

**CERTIFICATION:**

I, Rebecca Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance # 2448 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 10<sup>th</sup> day of June, 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 \_\_\_\_\_, 2013.

Rebecca Leavings  
City Clerk

HCI Holdings LLC  
2644 Old Rocky Ridge Road  
Birmingham, AL 35216

June 21, 2013

Mayor & Vestavia Hills City Council  
c/o Mayor Butch Zaragoza  
513 Montgomery Highway  
Vestavia Hills, AL 35216

Dear Mayor Zaragoza and City Council:

I am the owner of a parcel of property off Sicard Hollow Road in the Cotswold Subdivision. Parcel is otherwise referred to as Stanton Parcel. The parcel is under contract to be purchased by Harris Doyle Homes Inc.

It has come to my attention that a small rear portion of the property is reportedly owned by the City of Vestavia Hills. The subject piece was reportedly granted to the City when Sicard Hollow Road was rerouted and the Right of Way was rededicated. The piece is between the Stanton parcel and the drop off at the rear of the Liberty Park Fields. It appears to be surplus and of no real potential use to the City.

I am requesting that the City declare the piece as surplus and offer to sell it to Harris Doyle Homes Inc. immediately.

Thank you for your consideration.

Sincerely,



Jordy Henson  
Managing Member

**Serving the citizens of Jefferson County, Alabama**

**Tax Assessor - Parcel ID for Legal Information**

Inquiries to Tax Assessor recordings

[Return to Electronic Courthouse Search Home](#)

Tax Assessor County Tax Inquiry - Tax Year - 2011-			
<b>Mailing Address</b>			
VESTAVIA HILLS CITY OF 513 MONTGOMERY HWY VESTAVIA AL / 352161807			
<b>Site Address</b>			
4690 SICARD HOLLOW RD 35242 <b>Fire District (ESN): #490 OREX LAKE F.D.</b>			
<b>Legal Discription</b>			
COM NE COR SEC 18 TP 18 R1W TH S 790 FT TH SW 380 FT TO POB TH SWLY 105 FT TH W 317.4 FT TH NE 140 FT TH NELY 75 FT TH			
<b>Miscellaneous Information</b>			
<b>Section:</b>	18	<b>Parcel:</b>	27-18-1-0-226-RR-0
<b>Township:</b>	18S	<b>Map Book:</b>	0
<b>Range:</b>	1W	<b>Map Page:</b>	0
<b>Tax Year:</b>	2011		
<b>Land Value:</b>	\$2400.00	<b>Tax District:</b>	002
<b>Improvements Value:</b>	\$0.00	<b>Sub District:</b>	0
<b>Total Value:</b>	<b>\$2400.00</b>	<b>Deed Book:</b>	200901
		<b>Deed Page:</b> 5619	<b>Deed Date:</b> 20081230
<b>Land Use Information</b>			
<b>Land Use One:</b>	COMMERCIAL		
<b>Land Use Two:</b>	UNAVAILABLE		
<b>Class One:</b>	2		
<b>Class Two:</b>			

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The Board of Equalization (205) 325-5566  
 Tax Assessor's Office (205) 325-5505  
 Tax Collector's Office (205) 325-5500

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

**May 23, 2013**

To: Rebecca Leavings, City Clerk  
CC: Brian Davis, Director of Public Services  
From: Christopher Brady, City Engineer  
RE: Sicard Hollow property adjacent to Liberty Park Sports Complex

---

I have reviewed the request of the City potentially releasing this property. I do not see any intended uses of this property for City needs.

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

-Christopher



**RESOLUTION NUMBER 4042**

**A RESOLUTION ACCEPTING DEDICATION OF PROPERTY  
FOR PUBLIC PURPOSES**

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

1. The City Council hereby accepts dedication offered by Cotswold Development LTD, An Alabama limited partnership) more particularly described as follows:

A part of the right of way of Sicard Hollow Road vacated by Book LR 200808 Pg 413, as recorded in the Probate Office of Jefferson County, Alabama. Being a part of the vacated right to way lying in the NE ¼ of the NE ¼ of Section 18 Township 18 South, Range 1 West and being more particularly described as follows:

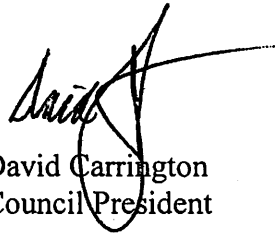
A parcel of land situated in the NE ¼ of Section 18, Township 18 South, Range 1, West Jefferson County Alabama being more particularly described as follows:

Commence at the NE corner of said Section 18 and run south 00 degrees 42 minutes 50 seconds East along the east line thereof for a distance of 747.23 feet to the POINT OF BEGINNING of said parcel, said point also being on a curve turning to the left, said curve having a radius of 612.96 feet, a central angle of 11 degrees 13 minutes 14 seconds, a chord bearing of South 51 degrees 57 minutes 12 seconds West, and a chord length of 119.85 feet; thence run in a Southwesterly direction along said arc for a distance of 120.04 feet; thence run South 46 degrees 19 minutes 48 seconds West for a distance of 208.07 feet to the point of beginning of a curve to the right having a radius of 278.31 feet, a central angle of 43 degrees 19 minutes 40 seconds, a chord bearing of South 67 degrees 59 minutes 19 seconds West, and a chord length of 205.48 feet; thence run in a Southwesterly direction along the arc of said curve for a distance of 210.46 feet; thence run South 89 degrees 38 minutes 30 seconds West for a distance of 74.56 feet to a point on a curve turning to the left having a radius of 278.73 feet, a central angle of 37 degrees 55 minutes 57 seconds, a chord bearing of South 70 degrees 40 minutes 57 seconds West, and a chord length of 181.18 feet; thence run in a Southwesterly direction along the arc of said curve for a distance of 184.53 feet; thence run North 89 degrees 49 minutes 08 seconds East for a distance of 317.36 feet to the currently existing Northeasterly right of way of Sicard Hollow Road;

thence run North 47 degrees 22 minutes 58 seconds East along said right of way for a distance of 500 feet, more or less, to the Easterly line of said Section 18; thence turn left and run North 00 degrees 42 minutes 50 seconds West along said Easterly line of Section 18 to the point of beginning and end of this parcel; and

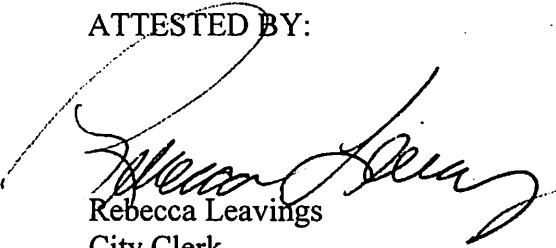
2. That Cotswold Development LTD shall prepare and execute all instruments necessary to deed the property to the City of Vestavia Hills; and
3. That the property described be used only for public purposes as approved by the Vestavia Hills City Council; and
4. This Resolution shall become effective immediately upon adoption and approval.

**APPROVED and ADOPTED** this the 28<sup>th</sup> day of December, 2009.



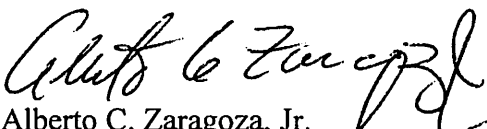
David Carrington  
Council President

ATTESTED BY:

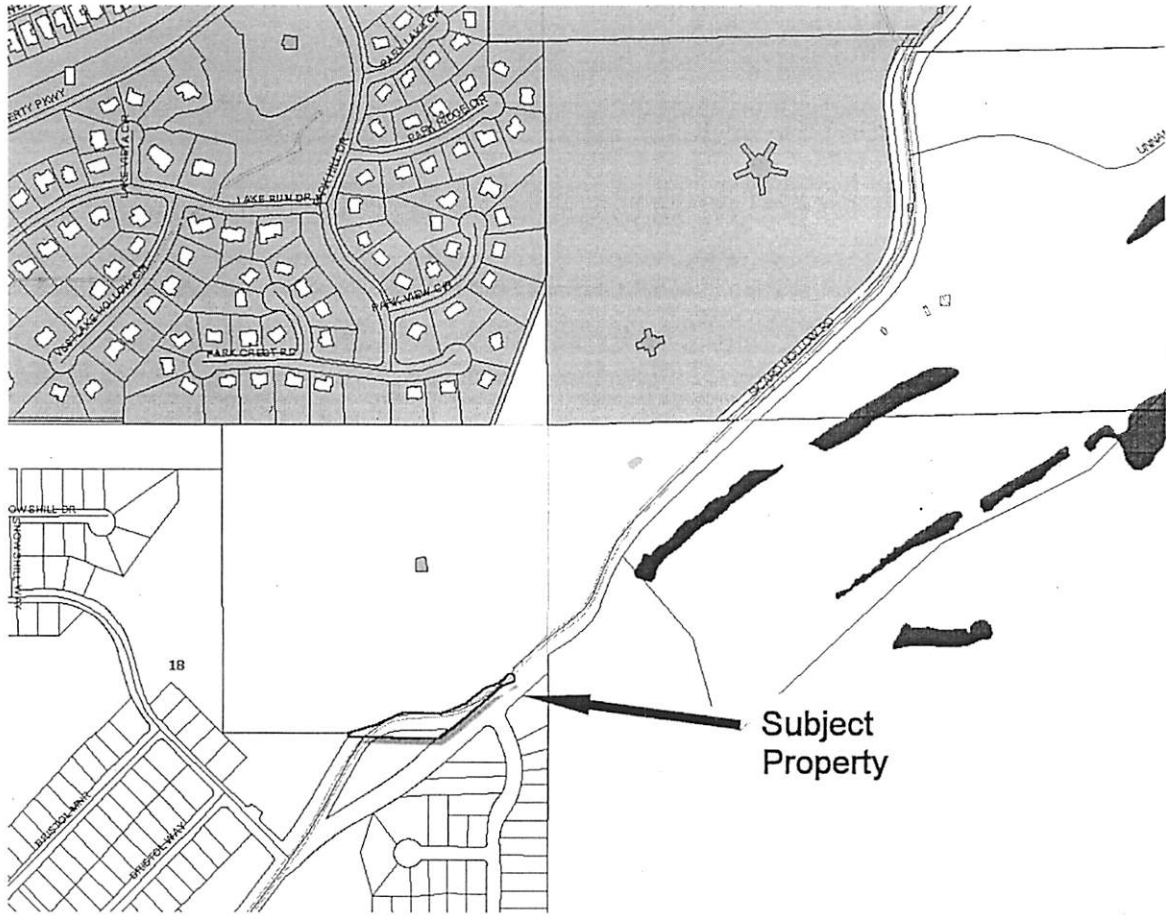


Rebecca Leavings  
City Clerk

APPROVED BY:



Alberto C. Zaragoza, Jr.  
Mayor



**CITY OF VESTAVIA HILLS**  
**ENGINEERING DEPARTMENT**  
**INTER-DEPARTMENT MEMO**

**December 10, 2009**

**To: Rebecca Leavings**

**From: Christopher Brady**

**RE: Sicard Hollow property adjacent to existing Liberty Park Sports Complex  
Dedication to City**

---

Becky,

I am recommending the City's acceptance of the portion of property described by the attached map. This property was offered by the Cotswald Development upon the relocation of Sicard Hollow right-of-way. The abandoned asphalt roadway has been graded over. There are no additional engineering concerns regarding this property.

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

-Christopher





**RESOLUTION NUMBER 4456**

**A RESOLUTION AUTHORIZING THE MAYOR AND CITY MANAGER  
TO EXECUTE AND DELIVER AN AGREEMENT FOR EXCLUSIVE  
REAL ESTATE LISTING OF 17 +/- ACRES AT PATCHWORK FARMS**

**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 exclusive real estate listing for 17 +/- acres at Patchwork Farms; and
2. A copy of said agreement is attached to this Resolution Number 4456 and incorporated as though written fully therein; and
3. This Resolution Number 4456 shall become effective immediately upon adoption and approval.

**DONE, ORDERED, ADOPTED and APPROVED** this the 10<sup>th</sup> day of June, 2013.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

**EXCLUSIVE LISTING AGREEMENT**

**THIS EXCLUSIVE LISTING AGREEMENT** is made and entered into on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between **Chase Commercial Realty, Inc.**, an Alabama Corporation, having a mailing address at 3000 Riverchase Galleria Suite 760 Birmingham, Alabama 35244 attention **Mr. Taylor Glaze** (hereinafter referred to as "Broker") and **City of Vestavia Hills, Mayor Alberto C. "Butch" Zaragoza and Interim City Manager Jim St. John** (hereinafter referred to as "Owner").

The terms of this Agreement are as follows:

**1. EMPLOYMENT OF BROKER.** In consideration of services to be rendered by Broker, Owner employs Broker as an exclusive agent to procure the sale of the property at **Patchwork Farms**, in the City of **Vestavia Hills**, County of **Jefferson**, State of **Alabama**, containing approximately **17.11** acres of land more particularly described on Schedule "A" attached hereto and made a part hereof by reference, with zoning of **PB-CU or General Business**. Property will need to be re-zoned to commercial use per Owner's re-zoning regulations. Owner shall determine the terms and conditions for the sale of the property, and Broker is authorized to offer for sale at a mutually agreed upon price.

**2. TERM.** This Agreement shall continue in force for a period of 6 months, beginning on the \_\_\_\_ day of **June, 2013**, and ending on the \_\_\_\_ day of **November, 2013**. At the expiration of the term hereof, Broker's rights hereunder as to parties with whom Broker may have been negotiating at the time of expiration shall continue for a period of one hundred twenty (120) days following the expiration and Broker shall be entitled to compensation for the same.

**3. COMPENSATION.** As compensation for Broker's services and efforts to procure a sale, Owner agrees to pay Broker FIVE percent (5%) of the sales price ("**Sales Commission**"). All Sales Commission is payable at closing.

Broker's commission shall not be diminished in the event that the Owner defaults under the contract agreement or fails to exercise default remedies provided within the contract or by law. In the event the Purchaser defaults under the contract and the earnest money is taken as liquidated damages, the Owner agrees to split the earnest money 50/50 with Broker; provided, however, that the amount paid to Broker shall not exceed the total amount of Broker's commission.

**4. ADVERTISING.** Broker shall be responsible for the cost of advertising specified under this agreement. Broker agrees to place a sign on the premises indicating that the property is "Available". Broker shall obtain the prior approval of Owner for all promotions and advertisements it desires to use in marketing the property.

**Exclusive Listing Agreement  
Chase Commercial Realty, Inc.**

**5. RESPONSIBILITIES OF BROKER.**

A. Broker agrees to act diligently and to use his best efforts to produce a closing and sale of the property.

B. Broker shall faithfully observe and comply with the real estate laws, rules and regulations of the State of Alabama. In the event Broker is found guilty of violating any real estate law, or for any reason loses its real estate license, Owner shall be entitled to immediately terminate this Agreement.

C. Representations made by the Broker with respect to the listed property shall not vary from the information provided Broker by Owner as specified in Schedule "A". Broker shall indemnify Owner against any damages or liabilities resulting from Broker's failure to comply with this provision.

D. Broker shall use only such forms, information sheets, brochures, or other informational material as provided to Broker by Owner at Owner's expense, or brochures/presentations prepared by the Broker with the Owners approval at the Brokers expense.

**6. SUCCESSORS AND ASSIGNS.** All of the terms and provisions of this Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and assigns.

**7. ATTORNEY'S FEES.** Should either party to this Agreement institute litigation against the other for relief of any type arising out of or pertaining to this Agreement, the prevailing party in such litigation shall entitled to recover all costs incurred, including but not limited to reasonable attorney's fees, such additional costs as a Court may determine to be fair and proper in the circumstances.

**8. ENTIRE AGREEMENT.** This Agreement contains the entire agreement between the parties, and shall not be modified except by document in writing signed by both parties. This Agreement shall be governed by and construed in accordance with the Laws of the State of Alabama.

**9. SINGLE BROKER/AGENT.** Broker shall serve as a single Broker/Agent for the Seller.

**10. USE OF PROPERTY.** Anything contained in this Agreement to the contrary notwithstanding, the City of Vestavia Hills, Alabama, as Owner, lists said property for sale with the expectation that the property will be sold and closed to a legal entity that will operate a commercial retail business that will generate sales tax, ad valorem tax and business license fee taxes for the City.

**Exclusive Listing Agreement  
Chase Commercial Realty, Inc.**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

**ATTESTED:** \_\_\_\_\_

**By:** \_\_\_\_\_  
**Mayor – City of Vestavia Hills**

**Date:** \_\_\_\_\_

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

**ATTESTED:** \_\_\_\_\_

**By:** \_\_\_\_\_  
**City Manager – City of Vestavia Hills**

**Date:** \_\_\_\_\_

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

**ATTESTED:** \_\_\_\_\_

**By:** \_\_\_\_\_  
**Chase Commercial Realty, Inc.**

**Date:** \_\_\_\_\_

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



**RESOLUTION NUMBER 4457**

**A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AND  
DELIVER AN EMPLOYMENT CONTRACT FOR A CITY MANAGER**

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

1. The Mayor is hereby authorized to execute and deliver an employment contract with Mr. Jeffrey D. Downes as City Manager; and
2. A copy of said contract is attached to this Resolution Number 4457 marked as “Exhibit A” and is incorporated by reference as though written fully therein; and
3. This Resolution Number 4457 shall become effective immediately upon adoption and approval.

**DONE, ORDERED, ADOPTED and APPROVED** this the 10<sup>th</sup> day of June, 2013.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

STATE OF ALABAMA

JEFFERSON COUNTY

Proposed  
**EMPLOYMENT CONTRACT**

WITNESS, THIS AGREEMENT, made and entered into on this the 31<sup>st</sup> day of May, 2013, by and between the City of Vestavia Hills, Alabama, a municipal corporation organized, existing and operating pursuant to the laws of the State of Alabama located in Jefferson County, in the State of Alabama (hereinafter referred to as the "City"), and Jeffrey D. Downes (hereinafter referred to as "City Manager").

**WITNESS THESE RECITALS:**

**WHEREAS**, on and prior to-wit, December 14, 2009, the City Council of the City of Vestavia Hills, Alabama found and determined that it would be in the public interest for the City to employ a fulltime City Manager; and

**WHEREAS**, on December 14, 2009, the City Council of the City of Vestavia Hills approved and adopted Resolution Number 4041 requesting the Legislature for the State of Alabama to enact a new law authorizing the City to change from a Mayor-Council form of government to a Council-Manager form of government provided the change was approved by a majority of the qualified electors residing in the City by referendum; and

**WHEREAS**, the Legislature of the State of Alabama prepared Act Number 2010-544, which proposed authorizing the City of Vestavia Hills, Alabama to change the City Mayor-Council form of government to a Council-Manager form of government; and

**WHEREAS**, Act Number 2010-544 proposed to amend Sections 11-43A-16, 11-43A-18 and 11-43A-32, *Code of Alabama, 1975*, and to add Section 11-43A-3.3 to the *Code of Alabama, 1975*; and

**WHEREAS**, on February 11, 2010, the Alabama Legislature enacted Act Number 2010-544 authorizing the City of Vestavia Hills to change to the Council-Manager form of government and the new law was signed by the Governor on April 21, 2010; and

**WHEREAS**, Act Number 2010-544 provides that the governing body shall hold the election before January 1, 2011 and that the question submitted at the election shall be:

"Shall the municipality of Vestavia Hills adopt a council-manager form of government consisting of a mayor and four council members elected in an at-large election to become operative on the first Monday in November 2012? The governing body of the municipality shall call the election and the election shall be conducted pursuant to general municipal election laws."

**WHEREAS**, the City of Vestavia Hills, Alabama submitted its application to the United States Justice Department pursuant to 28 C.F.R. Part 51 for approval under Section 5 of the Voting Rights Act of 1965, 42 USC §1973c of a change in the form of government from a Mayor-Council form of government to a Council-Manager form of government pursuant to Alabama Act Number 2010-544, which became law on April 21, 2010; and

**WHEREAS**, on June 28, 2010, the United States Justice Department provided written notice to the City that it interposes no objection to the City changing from a Mayor-Council form of government to a Council-Manager form of government; and

**WHEREAS**, on August 24, 2010, a referendum vote by the qualified electors of the City of Vestavia Hills was conducted pursuant to Act Number 2010-544 and the results of that election were as follows:

1,780 votes in favor of Council-Manager form of government  
1,144 votes against Council-Manager form of government; and

**WHEREAS**, Title 11-43A-3.3(c), *Code of Alabama, 1975*, provides that a change in the form of government adopted pursuant to Act Number 2010-544 shall become effective on the first Monday of November 2012; and

**WHEREAS**, the City conducted a search for the purpose of recruiting the best qualified person to fill the position of City Manager for the City of Vestavia Hills, Alabama; and

**WHEREAS**, the City of Vestavia Hills, Alabama desires to employ Jeffrey D. Downes as City Manager of the City pursuant to the terms, provisions and conditions of this Employment Contract; and

**WHEREAS**, Jeffrey D. Downes desires to accept said employment; and

**WHEREAS**, the City and City Manager have agreed that it is in the best interest of both parties that a contract of employment be reduced to writing and duly executed.

**NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:** That in consideration of the mutual covenants, promises and premises contained herein and the sum of One Dollar (\$1.00) and other good and valuable consideration, paid by the parties to each other, the receipt and sufficiency whereof is hereby mutually acknowledged, the City and the City Manager hereto covenant and agree as follows:



**I. EMPLOYMENT**

A. **CITY MANAGER:** The City has and does hereby employ said Jeffrey D. Downes as City Manager of the City of Vestavia Hills for a period of two (2) years, commencing on the fifteenth (15<sup>th</sup>) day of July 2013, and ending on July 15, 2015. The City may, by specific action and with the consent of the City Manager, extend the termination date of this contract.

**II. TERM OF CONTRACT**

The City has and does hereby employ said Jeffrey D. Downes as City Manager for the City of Vestavia Hills, Alabama pursuant to Alabama Act Number 2010-544 for a period of two (2) years beginning July 15, 2013 and ending July 15, 2015 to perform the duties set forth in Section XI-B of this Employment Contract.

**III. ANNUAL SALARY**

The City Manager agrees to faithfully perform the duties of City Manager as set forth in Section XI of this contract. The annual salary of the City Manager for and during the terms described in Section II, A and B above, shall be One Hundred Fifty Thousand Dollars (\$150,000) and shall be paid in twelve (12) equal, monthly installments of Twelve Thousand Five Hundred Dollars (\$12,500) at the times and in accordance with payroll procedures of the City.

**IV. TRANSPORTATION OF CITY MANAGER**

During the terms of this contract and any extension thereof, the City shall provide the City Manager with an automobile allowance of \$500 per month in recognition of the transportation costs to the City Manager in the performance of official duties under this contract.

**V. BUSINESS EXPENSES**

A. It is intended by the City that the City Manager, in the execution of his official duties, exhibit responsibility and accountability in leading the City forward. Furthermore, the City Manager, in promoting the interests of the City of Vestavia Hills, will become a viable and integral part in the community. To that end, the City shall pay all expenses necessarily incurred by City Manager in the conduct of City of Vestavia Hills business all in accordance with City policy.

B. The City shall also pay the professional dues for the City Manager as approved by the City.

**VI. TRAVEL EXPENSES**

All expenses as may be necessarily incurred by the City Manager in attending appropriate professional meetings at the local, state and national level and any and all expenses incurred by him in transacting the business of the City outside the City of Vestavia Hills, Alabama, including transportation expense, meals, lodging and other reasonable expenses as he may incur, shall be paid by the City all in accordance with City policy.

**VII. MOVING, RELOCATION AND TRANSITIONAL EXPENSES**

The City will reimburse up to a maximum of Seven Thousand Five Hundred Dollars (\$7,500.00) for the City Manager to move his immediate family and normal household belongings to the City of Vestavia Hills, Alabama.

The City will reimburse up to a maximum of Six Thousand Five Hundred Dollars (\$6,500.00) for the City Manager to conduct up to two (2) house-hunting trips and for other transitional expenses incidental to moving his residence from Montgomery, Alabama to the City of Vestavia Hills, Alabama.

The City Manager shall reimburse the City of Vestavia Hills, Alabama for the above described expenses should he voluntarily terminate his employment according to the following schedule:

<u>Time Frame</u>	<u>Reimbursement Schedule</u>
1 <sup>st</sup> day to 12 months	100%
12 months to 18 months	80%
18 months to 24 months	60%

**VIII. VACATION TIME AND SICK LEAVE**

The City Manager will immediately be given five (5) days of vacation and five (5) days of sick leave upon his employment. Vacation and sick leave will accrue thereafter at the rates specified by City policy.

**IX. FRINGE BENEFITS**

Benefits for the City Manager will be provided by the City all in accordance with the terms, provisions and conditions of City policy, a copy of which is attached hereto and incorporated into this contract by reference as though set out fully herein.

**X. DUTIES OF CITY MANAGER**

**A. DUTIES OF CITY MANAGER:** The City Manager shall meet all of the requirements, as imposed by the *Code of Alabama, 1975*, and the City, with respect to the qualifications, certification and filings in connection with the appointment as City Manager and shall perform the following services beginning July 15, 2013:

**(1) General Duties:**

- (a) The City Manager shall serve as Chief Executive Officer of the City;
- (b) The City Manager shall perform the duties and services established by Alabama law; and
- (c) The City Manager shall perform the duties and services established by federal law; and
- (d) The City Manager shall perform the duties and services established by City of Vestavia Hills' ordinances, policies, rules and regulations; and

**(2) Specific Duties:** The City Manager shall perform any and all duties as set forth in the Alabama Council-Manager Act of 1982 set forth in Section 11, Chapter 43A, Article 1 through 52, *Code of Alabama, 1975*, which specifically includes, but are not limited to the following:

The City Manager shall be chosen by the City Council solely on the basis of executive and administrative qualifications with special reference to actual experience in, or knowledge of, accepted practice in respect to the duties of the office as hereinafter set forth. At the time of appointment, the City Manager may but need not be a resident of the municipality or state, but during the tenure of office, the City Manager shall reside within the municipality.

The City Manager shall be the head of the administrative branch of the municipal government. The City Manager shall be responsible to the City Council for the proper administration of all affairs of the municipality and, subject to the provisions of any law applicable to such municipality and except as otherwise provided herein, the City Manager shall have power and shall be required to:

- (a) Enforce all laws and ordinances;
- (b) Appoint and, when necessary for the good of the service, remove all officers and employees of the municipality except as otherwise provided by the Alabama Council-



Manager Act of 1982 and except as the City Manager may authorize the head of a department or office to appoint and remove subordinates in such department or office; provided that the City Manager shall not appoint or remove officers and employees of:

- (i) Any library board of the municipality;
  - (ii) Any board of the municipality having control over any park, recreation facility, fair or exhibit;
  - (iii) Any municipally owned public utility and any municipally owned service enterprise, including inter alia, electric, gas and water boards, agencies, etc.;
  - (iv) Any school board of the municipality;
  - (v) Any hospital board of the municipality;
  - (vi) Any airport board of the municipality;
  - (vii) Any housing authority;
  - (viii) Any city plumbers or electricians boards;
  - (ix) Any planning board of the municipality;
  - (x) Any zoning board of the municipality.
- (c) Exercise administrative supervision and control over all officers, employees, offices, departments, boards and agencies created by the Alabama Council-Manager Act of 1982 or hereafter created by the City Council, except those enumerated in paragraphs (a) to (j) of subdivision (2) inclusive, set out above in the Alabama Council-Manager Act of 1982, and except those otherwise given independent status; and subject to any civil service or merit system law in effect in such municipality;
- (d) Keep the City Council fully advised as to the financial conditions and needs of the municipality; to prepare and submit a budget proposal annually to the City Council and be responsible for its administration after its adoption; to prepare and submit, as of the end of the fiscal year, a complete report on the financial and administrative activities of the municipality for such year;
- (e) Recommend to the City Council such actions as the City Manager may deem desirable;
- (f) Prepare and submit to the City Council such reports as may be required of the City Manager;
- (g) Perform such other duties as may be prescribed by the Alabama Council-Manager Act of 1982 or required of the City Manager by ordinance or by resolution of the City Council not inconsistent with the Alabama Council-Manager Act of 1982. To perform these duties during a

temporary absence or temporary disability, the City Manager may designate by letter filed with the City Clerk a qualified administrative officer of the municipality. In the event of failure of the City Manager to make such designation, the City Council may by resolution appoint a qualified administrative officer of the municipality to perform the duties of the City Manager until the City Manager's return or disability ceases.

**(3) Other Duties:**

(a) The City Manager, at least forty-five (45) days prior to the beginning of each budget year, shall submit to the City Council a budget proposal with explanations as required by Title 11-43A-29, *Code of Alabama, 1975*.

(b) No contract involving the payment of money out of the appropriation of more than one (1) year shall be made for a period of more than five (5) years, nor shall any such contract be valid unless made or approved by ordinance, and signed in the name of the municipality by the Mayor and countersigned by the City Manager as required by Title 11-43A-48, *Code of Alabama, 1975*.

(c) The City Manager shall supervise the Economic Development and Revitalization of Commercial Retail Districts Departments.

(d) The City Manager shall devote full working time and effort to the services of the City as its City Manager.

**XII. RELATIONSHIP WITH CITY COUNCIL**

The City Council of the City of Vestavia Hills, Alabama shall evaluate and assess the performance of the City Manager.

A. The City shall evaluate the City Manager twice during the initial year of employment at six (6) month intervals.

B. The City shall evaluate the City Manager at least annually following the first year of employment.

The evaluation and assessment shall be related to the position description of the City Manager and the quality of his services in the performance of his duties. All evaluations shall be for formative purposes and shall recommend ways for professional growth.

The City Council and City Manager shall meet on or before the above described dates for the purpose of mutual evaluation of the performance of the City Manager. If the City Council determines that the performance of the City Manager is unsatisfactory in any respect, then in such event it shall describe in writing and with reasonable detail specific instances of unsatisfactory performance. A copy of the written evaluation shall be delivered to the City Manager. The City Manager shall have the right

to make a written response to all evaluations. All evaluations by the City Council and responses by the City Manager shall become a permanent attachment to the City Manager's personnel file. Within thirty (30) days of the delivery of the written evaluation to the City Manager, the City Council shall meet with the City Manager to discuss the evaluation.

### **XIII. TERMINATION OF CONTRACT**

Title 11-43A-18, *Code of Alabama, 1975*, provides in pertinent parts as follows:

"The Council shall appoint the City Manager for an indefinite term, but the Council may remove the Manager at any time by a majority vote of the whole qualified membership of the Council.....In any Class 7 City in which the governing body is organized as provided in Section 11-43A-3.3, removal of the City Manager shall be subject to the contract between the governing body and the City Manager."

**A. TERMINATION BY CITY:** It is expressly agreed by and between the City and the City Manager that the City may terminate the City Manager's employment for "good and just cause" or "without good and just cause" at any time.

**B. DEFINITION OF "GOOD AND JUST CAUSE":** For purposes of this Employment Contract, the term "good and just cause" shall be defined and construed to mean any one of the following:

- (1) Incompetency.
- (2) Insubordination.
- (3) Neglect of the proper performance of his duties.
- (4) Immorality.
- (5) Failure to perform duties in a satisfactory manner.
- (6) Violation of acceptable business and public standards and ethics.
- (7) Dishonesty.
- (8) Theft.
- (9) Fraud.
- (10) Embezzlement.
- (11) The charging of City Manager with a felony or a crime involving moral turpitude.
- (12) Substantial dependence or addiction to alcohol or any drug.
- (13) Any ground put forward by the City Council, which is not arbitrary, irrational, unreasonable or irrelevant to the City Council's task of building up and maintaining an efficient city.



(14) Any other legitimate and nondiscriminatory reason that constitutes good and just cause, is reasonably specific, is consistent with City rules, regulations and policies and is not motivated by any non-work related preference or animus for or against any person.

**C. TERMINATION BY CITY FOR “GOOD AND JUST CAUSE”:** If the City terminates the employment of the City Manager for “good and just cause,” then in such event the City shall have no further legal obligation for the payment of compensation to the City Manager or for the performance of any term, provision, condition or obligation of this Employment Contract. If the City Manager is terminated for “good and just cause,” then in such event the City shall have no legal obligation for the payment of any severance pay.

**D. TERMINATION BY CITY WITHOUT “GOOD AND JUST CAUSE”:** Should, however, the City terminate the employment of the City Manager without “good and just cause” within the first year of employment, then in such event the City shall pay the City Manager severance pay in an amount equal to six (6) months salary (not including benefits). The amount of severance pay shall be increased by one (1) month per year of service completed, not to exceed a total of twelve (12) months of severance pay.

**E. TERMINATION FOR DEATH OR DISABILITY:**

(1) This contract shall be terminated upon the death or permanent disability of the City Manager. In either event, the City shall pay to the City Manager or his legal representative all salaries payable hereunder, up to but not exceeding a period of ninety (90) days from the date of termination.

(2) For purposes of this Employment Contract, the term “permanent disability” shall be construed to mean that the City Manager is permanently and totally disabled, mentally or physically, resulting from bodily injury or disease, which wholly prevents him from engaging in further employment with the City and that such disability will be permanent and continuous during the remainder of his life.

**F. TERMINATION BY CITY MANAGER:** The City Manager shall have the right to terminate this Employment Contract for any reason at any time upon ninety (90) days written notice to the City. If this contract is so terminated by the City Manager, he shall continue to receive his monthly salary for said 90-day term, provided he continues to render in good faith the services he has agreed to perform hereunder. In the alternative, the City Manager may terminate this Employment Contract at any time without giving advance notice provided he pay to the City an amount aggregating three (3) months compensation at the then rate of compensation. Any legal fees that might be incurred by the City Manager in seeking to protect his rights under this contract shall be paid by the City Manager.

**XIV. PRE-EMPLOYMENT MEDICAL EXAMINATION**

The City Manager does hereby agree to have a comprehensive pre-employment physical in accordance with City policy. Reasonable costs of the examination and reports required by the City shall be paid by City.

**XV. ANNUAL REPORT**

Within thirty (30) days of the close of the fiscal year, the City Manager shall provide a written report to the City Council setting forth in meaningful detail the progress and status of the City business just past.

**XVI. INDEMNITY**

The City agrees that it shall defend, hold harmless and indemnify the City Manager from any and all demands, claims, suits, actions and legal proceedings brought against the City Manager in his individual capacity or in his official capacity as agent and employee of the City, providing the incidents arose while the City Manager was acting within the line and scope of his employment, but excluding intentional wrongful and criminal acts and litigation arising out of intentional wrongful and criminal acts. The City shall not, however, be required to pay any cost of any legal proceedings in the event the City and City Manager have adverse interests in litigation between said City and City Manager. During the term of this contract or any extension thereof, the City shall maintain and pay the premiums on a general comprehensive liability insurance policy, including error and omissions, coverage, insuring the City Manager for all demands, claims, suits, actions and legal proceedings brought against the City Manager in his individual capacity or in his official capacity as agent and employee of the City for acts or omissions within the line and scope of his employment. This coverage is presently provided by S.S. Nesbitt Co., Inc.

**XVII. MISCELLANEOUS**

**A. WAIVER OF MODIFICATION:** Any waiver, alteration or modification of any of the provisions of this contract shall not be valid unless in writing and signed by the parties hereto. This contract may be amended at any time by written agreement of City Manager and City.

**B. AUTHORITY:** The provisions of this contract and the execution and delivery thereof were approved by the City at a valid meeting of the City Council held \_\_\_\_\_, 2013.

**C. GOVERNING LAW:** This contract 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 contract shall be construed fairly and equitably regardless of the participation of either party in drafting this contract. The reference in terms to gender and number shall be modified as may be appropriate.

**E. EXECUTION IN COUNTERPARTS:** This contract 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 Employment Contract shall inure to the benefit of, and shall be binding upon the City Manager 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 contract 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. NOTICES:** Any and all notices required or permitted to be given under this contract will be sufficient if furnished in writing and sent by Registered Mail to the parties' last known address.

**I. 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 contract, 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.

**J. CONSTRUCTION OF TERMS:** The City and City Manager negotiated the terms, provisions and conditions of the Employment Contract and both parties had the equal opportunity for input for the drafting of this contract. Therefore, any ambiguities of this contract shall be construed fairly and equitably regardless of the participation of either party in drafting the Employment Contract.

**K. ENTIRE AGREEMENT:** This written agreement contains the entire Contract of Employment between the City of Vestavia Hills, Alabama and Jeffrey D. Downes.

**IN WITNESS WHEREOF,** the City of Vestavia Hills, Alabama has caused this contract to be executed by its duly authorized officers and its seal to be hereunder affixed; and Jeffrey D. Downes 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 \_\_\_\_\_ day of \_\_\_\_\_, 2013.

CITY OF VESTAVIA HILLS, ALABAMA

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

ATTESTED:

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

*Jeffrey D. Danner*  
\_\_\_\_\_

WITNESSED:

By *Gracie Davis*  
\_\_\_\_\_

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 Employment Contract, and who is known to me, acknowledged before me on this day that being informed of the contents of the contract, he in his capacity as such, executed the same voluntarily on the day the same bears date.

Given under my hand and official seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 2011.

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

STATE OF ALABAMA  
*Montgomery* COUNTY

**GENERAL ACKNOWLEDGMENT**

I, the undersigned authority, a Notary Public, in and for said County, in said State, hereby certify that Jeffrey D Downes, whose name is signed to the foregoing Employment Contract, and who is known to me, acknowledged before me on this day that being informed of the contents of the contract, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal, this the 31<sup>st</sup> day of May, 2013, 2011.

Gale Nanette Harwell  
Notary Public

NOTARY PUBLIC STATE OF ALABAMA AT LARGE  
MY COMMISSION EXPIRES: Mar 16, 2014  
BONDED THRU NOTARY PUBLIC UNDERWRITERS

**RESOLUTION NUMBER 4460**

**A RESOLUTION AUTHORIZING THE MAYOR AND CITY MANAGER  
TO ACCEPT A PROPOSAL FROM TERRACON FOR PHASE I  
ENVIRONMENTAL SITE ASSESSMENT FOR THE PROPOSED NEW  
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 accept a proposal from Terracon for Phase I – Environmental Site Assessment for the properties deemed the site of the new proposed City Hall in an amount not to exceed \$2,500; and
2. A copy of said proposal is attached to this Resolution Number 4460 marked as “Exhibit A” and incorporated as though written fully therein; and

**DONE, ORDERED, ADOPTED and APPROVED** this the 10<sup>th</sup> day of June, 2013.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

May 31, 2013



Mr. Jim St. John, Interim City Manager  
City of Vestavia Hills, AL  
513 Montgomery Highway  
Vestavia Hills, AL 35216

Telephone: 205-978-0100  
Facsimile: 205-978-0189  
E-mail: [st.john@ci.vestaviiahills.al.us](mailto:st.john@ci.vestaviiahills.al.us)

RE: Proposal for Phase I Environmental Site Assessment  
1034 Montgomery Highway and 1105 Mayland Lane  
Vestavia Hills, AL  
Terracon Proposal No. PE1130348R

Dear Mr. St. John:

Terracon Consultants, Inc. (Terracon) appreciates the opportunity to submit this proposal to City of Vestavia Hills, AL (client) to conduct a Phase I Environmental Site Assessment (ESA) of the above-referenced site.

## 1.0 PROJECT INFORMATION

We understand the site comprises two parcels: Lot 2A, approximately 1.79 acres located at 1034 Montgomery Highway, and an additional, contiguous 2.5 acre parcel at 1105 Mayland Lane, Vestavia Hills, Alabama. The properties contain a furniture sales building and a former restaurant building. If this is not accurate, or if you have additional useful information, please inform us as soon as possible.

## 2.0 SCOPE OF SERVICES

### 2.1. Base Phase I ESA Services

The ESA will be performed consistent with the procedures included in ASTM E 1527-05, *Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process*. The purpose of this ESA is to assist the client in developing information to identify recognized environmental conditions (RECs - as defined below) in connection with the site as reflected by the scope of this proposal. If modifications to the scope of services are required, please contact us to discuss proposal revisions.



Terracon Consultants, Inc. 110 12th St. North Birmingham, AL 35203  
P 205-942-1289 F 205-443-5302 [terracon.com](http://terracon.com)

Geotechnical



Environmental



Construction Materials



Facilities

### **Physical Setting**

The physical setting for the site will be described based on a review of the applicable USGS topographic quadrangle map, USDA soil survey, and selected geologic reference information.

### **Historical Use Information**

A review of selected historical sources, where reasonably ascertainable and readily available, will be conducted in an attempt to document obvious past land use of the site and adjoining properties back to 1940 or when the site was initially developed, whichever is earlier. The following selected references, depending on applicability and likely usefulness, will be reviewed for the site.

- Historical topographic maps
- Aerial photographs (approximate 10 to 15 year intervals)
- City directories (approximate 5 year intervals)
- Fire (Sanborn) insurance maps
- Property tax file information
- Site title search information, if provided by client
- Environmental liens, if provided by client
- Building department records
- Zoning records
- Prior environmental reports, permits and registrations; or geotechnical reports, if provided by the client

Pursuant to ASTM E 1527-05, the client should engage a title company or title professional to undertake a review of reasonably ascertainable recorded land title records and lien records for environmental liens currently recorded against or relating to the site. If the client is unable to provide land title records or environmental lien information, an abstract firm may be contracted by Terracon to develop a chain of title from a review of land title records for an additional fee. Documentation of environmental liens, if recorded, will be provided with the chain of title. Note, however, unless specifically requested within three days of project commencement, Terracon will rely on the client to provide land title records. **If land title records or environmental lien information are not provided for review in a timely manner, Terracon may conclude that the absence of records represents a significant data gap, which must be documented in the final report.**

## Proposal for Phase I Environmental Site Assessment

City of Vestavia Hills, AL ■ Vestavia Hills, AL

May 31, 2013 ■ Terracon Proposal No. PE1130348R



The client and the current owner or their representative will be interviewed to provide information regarding past uses of the site and information pertaining to the use of hazardous substances and petroleum products on the site. Additionally, a reasonable attempt will be made to interview past owners, operators, and occupants of the site to the extent that they are identified within the scope of the ESA and are likely to have material information that is not duplicative of information already obtained through the assessment process.

### REC Definition

Recognized Environmental Conditions are defined by ASTM E 1527-05 as “the presence or likely presence of any hazardous substances or petroleum products on a property under conditions that indicate an existing release, a past release, or a material threat of release of any hazardous substances or petroleum products into structures on the property or into the ground, groundwater, or surface water of the property. The term includes hazardous substances or petroleum products even under conditions of compliance with laws. The term is not intended to include *de minimis* conditions that generally do not present a material risk of harm to the public health or the environment and that generally would not be the subject of an enforcement action if brought to the attention of appropriate governmental agencies.”

### Regulatory Records Review

Consistent with ASTM E 1527-05, outlined below are the following federal, state, and tribal databases, where applicable are typically reviewed for indications of RECs, and the approximate minimum search distance of the review from the nearest property boundary. Evaluating identified regulatory facilities for potential vapor intrusion conditions is outside the scope of this proposal. A database firm will be subcontracted to access governmental records used in this portion of the assessment. Additional federal, state, and local databases may be reviewed if provided by the database firm. Determining the location of unmapped facilities is beyond the scope of this assessment.

Governmental Records	Search Distance
Federal NPL Site List	1.0 mile
Federal NPL (Delisted) Site List	0.5 mile
Federal CERCLIS Site List	0.5 mile
Federal CERCLIS NFRAP Site List	0.5 mile
Federal RCRA Corrective Actions (CORRACTS) TSD Facilities List	1.0 mile
Federal RCRA Non-CORRACTS TSD Facilities List	0.5 mile
Federal RCRA Generators List	Site and Adjoining
Federal Institutional Control/Engineering Control Registries	Site Only
Federal ERNS List	Site Only
State and Tribal-Equivalent NPL Site Lists	1.0 mile



## Proposal for Phase I Environmental Site Assessment

City of Vestavia Hills, AL ■ Vestavia Hills, AL

May 31, 2013 ■ Terracon Proposal No. PE1130348R



Governmental Records	Search Distance
State and Tribal-Equivalent CERCLIS Lists	0.5 mile
State and Tribal Landfill and/or Solid Waste Disposal Site Lists	0.5 mile
State and Tribal Leaking UST Lists	0.5 mile
State and Tribal Registered UST Lists	Site and Adjoining
State and Tribal Institutional Control/Engineering Control Registries	Site Only
State and Tribal VCP Site Lists	0.5 mile
State and Tribal Brownfield Site Lists	0.5 mile

Tribal databases will only be evaluated if the site is located in an area where a recognized tribe has jurisdiction for environmental affairs.

In addition to the database review and if customary practice for the site location, an attempt will be made to review reasonably ascertainable and useful local lists or records such as Brownfield sites, landfill/solid waste disposal sites, registered storage tanks, land records, emergency release reports, and contaminated public wells. A reasonable attempt will also be made to interview at least one staff member of any one of the following types of local government agencies: fire department, health agency, planning department, building department, or environmental department. As an alternative, a written request for information may be submitted to the local agencies.

If the results of the regulatory records review/local agency inquiry appear to warrant a review of applicable regulatory agency files, a cost estimate will be provided to the client for pre-approval. Review of regulatory files, when authorized, will be for the purpose of identifying RECs. Assessment of vapor intrusion conditions is outside the scope of a Phase I ESA. Please note that all requested files may not be available from regulatory agencies within the client's requested project schedule.

### Site and Adjoining/Surrounding Property Reconnaissance

A site reconnaissance will be conducted to identify RECs. The reconnaissance will consist of visual observations of the site from the site boundaries and selected interior portions of the site. The site reconnaissance will include, where applicable, an interview with site personnel who the client has identified as having knowledge of the uses and physical characteristics of the site. Pertinent observations from the site reconnaissance will be documented including:

- Site description
- General site operations
- Aboveground chemical or waste storage
- Visible underground chemical or waste storage, drainage, or collection systems
- Electrical transformers



## Proposal for Phase I Environmental Site Assessment

City of Vestavia Hills, AL ■ Vestavia Hills, AL

May 31, 2013 ■ Terracon Proposal No. PE1130348R



- Obvious releases of hazardous substances or petroleum products

The adjoining property reconnaissance will consist of visual observations of the adjoining/surrounding properties from the site boundaries and accessible public right-of-ways.

### Report Preparation

One hard copy and a PDF-formatted copy of the final report will be submitted that presents the results of this assessment, based upon the scope of services and limitations described herein. The final report will be signed by an environmental professional responsible for the Phase I ESA, and the report will contain an environmental professional statement as required by 40 CFR 312.21(d). Recommendations will be developed as part of the Phase I ESA scope of services. Prior to final report issuance, the client may request additional copies at a charge of \$50.00 per report copy.

### 2.2 Additional Services Beyond Base ESA

At the direction of the client, additional services beyond the scope of the base Phase I ESA have not been included.

### 2.3 Additional Services Not Included

The following services, although not specifically required by ASTM E 1527-05, may also be performed concurrently with ESAs and may be beneficial for the evaluation of environmental conditions and/or an evaluation of specific business environmental risks at the site. At your direction, these services have not been included as part of the scope of services for this ESA. Please note that this list is not all-inclusive. If you seek additional services, please contact us for a supplemental proposal and cost estimate.

- Limited Visual Observations for Asbestos
- Limited Asbestos Sampling
- Asbestos Survey (prior to renovation/demolition)
- Limited Visual Observations for Mold
- Limited Radon Records Review
- Limited Radon Testing
- Limited Visual Observations for Lead-Based Paint
- Limited Lead-Based Paint Survey

## Proposal for Phase I Environmental Site Assessment

City of Vestavia Hills, AL ■ Vestavia Hills, AL

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- Limited Lead in Drinking Water Records Review
- Limited Lead in Drinking Water Sampling
- Limited Wetland Review
- Limited Threatened/Endangered Species Review
- Limited Historic Properties/Archaeological Resources Review
- Vapor Encroachment Screening
- Regulatory Agency File Review

If the site is intended for future development, Terracon can also provide proposals for geotechnical investigations, geologic hazards (like growth faulting), construction materials testing, construction draw reviews and scope and budget review services.

### 2.4 Schedule

Services will be initiated upon receipt of the written notice to proceed. The final report will be submitted fifteen (15) business days after receipt of your written notice to proceed, assuming site access can be obtained within five (5) days after the notice to proceed.

In order to comply with the proposed schedule, please provide the following items at the time of notification to proceed.

- A signed Agreement for Services evidencing acceptance of this scope of services
- The completed ASTM E 1527-05 User Questionnaire, supplied as an attachment to this proposal
- Right of entry to conduct the assessment, including access to building interiors
- Notification of any restrictions or special requirements (such as confidentiality, scheduling, or on-site safety requirements) regarding accessing the site
- An accurate legal description and/or a diagram of the site such as a surveyor's plat map or scaled architect's drawing (if such diagrams exist)
- Current site owner, property manager, occupant information (including tenant list), and contact information for persons knowledgeable about the site history including current and historical use of hazardous substances and petroleum products on site (e.g., names, phone numbers, etc.)
- Copies of environmental reports, permits and registrations, and geotechnical reports that were previously prepared for the site

## Proposal for Phase I Environmental Site Assessment

City of Vestavia Hills, AL ■ Vestavia Hills, AL

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- Information relating to known or suspect environmental conditions at the site, including commonly known or reasonable ascertainable information within the local community about the site that is material to RECs in connection with the site
- Information about environmental liens and activity and use limitations for the site, if any
- Specialized knowledge or experience that is material to RECs in connection with the site, if any
- Knowledge that the purchase price of the site is significantly less than the purchase price of comparable properties
- Land title records

Please note that requested regulatory files or other information may not be provided to Terracon by the issuance date of the report. Consideration of information not received by the issuance date of the report is beyond the scope of this ESA.

### 2.5 Reliance

The ESA report will be prepared for the exclusive use and reliance of City of Vestavia Hills, AL. Reliance by any other party is prohibited without the written authorization of the client and Terracon.

If the client is aware of additional parties that will require reliance on the ESA report, the names, addresses, and relationship of these parties should be provided for Terracon approval prior to the time of authorization to proceed. Terracon may grant reliance on the ESA report to those approved parties upon receipt of a fully executed Reliance Agreement (available upon request) and receipt of information requested in the Reliance Agreement. If, in the future, the client and Terracon consent to reliance on the ESA by a third party, Terracon may grant reliance upon receipt of a fully executed Reliance Agreement, requested information and receipt of an additional minimum fee of \$250.00 per relying party.

Reliance on the ESA by the client and all authorized parties will be subject to the terms, conditions, and limitations stated in the Agreement for Services, sections of this proposal incorporated therein, the Reliance Agreement, and ESA report. The limitation of liability defined in the Agreement for Services is the aggregate limit of Terracon's liability to the client and all relying parties.

Continued viability of the report is subject to ASTM E 1527-05 Sections 4.6 and 4.8. If the ESA will be used by a different user (third party) than the user for whom the ESA was originally prepared, the third party must also satisfy the user's responsibilities in Section 6 of ASTM E 1527-05.

## **2.6 Scope and Report Limitations**

The findings and conclusions presented in the final report will be based on the site's current utilization and the information collected as discussed in this proposal. Please note that we do not warrant database or third party information (such as from interviewees) or regulatory agency information used in the compilation of reports.

Phase I ESAs, such as the one proposed for this site, are of limited scope, are noninvasive, and cannot eliminate the potential that hazardous, toxic, or petroleum substances are present or have been released at the site beyond what is identified by the limited scope of this ESA. In conducting the limited scope of services described herein, certain sources of information and public records will not be reviewed. It should be recognized that environmental concerns may be documented in public records that are not reviewed. This ESA does not include subsurface or other invasive assessments, business environmental risk evaluations, or other services not particularly identified and discussed herein. No ESA can wholly eliminate uncertainty regarding the potential for RECs. The limitations herein must be considered when the user of this report formulates opinions as to risks associated with the site. No warranties, express or implied, are intended or made.

An evaluation of significant data gaps will be based on the information available at the time of report issuance, and an evaluation of information received after the report issuance date may result in an alteration of our opinions and conclusions. We have no obligation to provide information obtained or discovered by us after the date of the report, or to perform any additional services, regardless of whether the information would affect any conclusions, recommendations, or opinions in the report. This disclaimer specifically applies to any information that has not been provided by the client.

**Proposal for Phase I Environmental Site Assessment**

City of Vestavia Hills, AL ■ Vestavia Hills, AL

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### 3.0 COMPENSATION

<b>Base Phase I ESA Services</b>	<b>Fee</b>
<b>Base Phase I ESA Services - Lump Sum</b> (Includes items outlined in Section 2.1. Cost to contract an abstract firm to develop a chain of title or environmental lien search is not included in this fee.)	<b>\$2,500</b>
<b>Additional Services</b>	<b>Fee</b>
Limited Visual Observations for Asbestos	*
Limited Asbestos Sampling	*
Asbestos Survey (prior to renovation/demolition)	*
Limited Visual Observations for Mold	*
Limited Radon Records Review	*
Limited Radon Testing	*
Limited Visual Observations for Lead-Based Paint	*
Limited Lead-Based Paint Survey	*
Vapor Encroachment Screening	*
Regulatory Agency File Review	*
Limited Lead in Drinking Water Records Review	*
Limited Lead in Drinking Water Sampling	*
Limited Wetland Review	*
Limited Threatened/Endangered Species Review	*
Limited Historic Properties/Archaeological Resources Review	*
<b>Additional Services - Subtotal</b>	<b>\$0</b>
<b>Lump Sum Total</b>	<b>\$2,500</b>

\* Not included in the scope of services per the client's direction.

The fee is valid for 90 days from the date of this proposal and is based on the assumption that all field services will be performed under safety Level D personal protective procedures and that only one site visit will be made by Terracon personnel. The lump sum fee is based on the assumptions and conditions provided at the time of this proposal.



## 4.0 AUTHORIZATION

If this proposal meets with your approval, work may be initiated by returning an original copy of the attached Agreement for Services to our Birmingham office. Project initiation may be expedited by sending a copy of the signed Agreement for Services via e-mail or facsimile.

We appreciate the opportunity to provide this proposal and look forward to working with you on this project. If you have any questions or comments regarding this proposal or require additional services, please give me a call.

Sincerely,

**Terracon Consultants, Inc.**



Leslie L. Noble

Department Manager III-Professional

Attachments: ASTM E 1527-05 User Questionnaire  
Agreement for Services

**ASTM E 1527-05 USER QUESTIONNAIRE**

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Proposal No: PE1130348

**In order to qualify for one of the Landowner Liability Protections (LLPs) offered by the Small Business Relief and Brownfields Revitalization Act of 2001, the user must respond to the following questions. Failure to provide this information to the environmental professional may result in significant data gaps, which may limit our ability to identify recognized environmental conditions resulting in a determination that “all appropriate inquiry” is not complete. This form represents a type of interview and as such, the user has an obligation to answer all questions in good faith, to the extent of their actual knowledge.**

Site Name: 1034 Montgomery Highway \_\_\_\_\_ Site Address: Vestavia Hills, Alabama \_\_\_\_\_

1) Are you aware of any environmental cleanup liens against the site that are filed or recorded under federal, tribal, state, or local law (40 CFR 312.25)?  No  Yes If yes, please explain.

2) Are you aware of any activity and use limitations (AULs), such as engineering controls, land use restrictions, or institutional controls that are in place at the site and/or have been filed or recorded in a registry under federal, tribal, state, or local law (40 CFR 312.26)?  No  Yes If yes, please explain.

3) As the user of this ESA, do you have any specialized knowledge or experience related to the site or nearby properties? For example, are you involved in the same line of business as the current or former occupants of the site or an adjoining property so that you would have specialized knowledge of the chemicals and processes used by this type of business (40 CFR 312-28)?  No  Yes If yes, please explain.

4) Does the purchase price being paid for this site reasonably reflect the fair market value of the site (40 CFR 312.29)?  No  Yes

If no, have you considered whether the lower purchase price is because contamination is known or believed to be present at the site (40 CFR 312.29)?  No  Yes If yes, please explain.

5) Are you aware of commonly known or reasonably ascertainable information about the site that would help the environmental professional to identify conditions indicative of releases or threatened releases (40 CFR 312.30)?  No  Yes If yes, please explain.

6) As the user of this ESA, based on your knowledge and experience related to the site, are there any obvious indicators that point to the presence or likely presence of contamination at the site (40 CFR 312.31)?  No  Yes If yes, please explain.

Please return this form with the signed and completed Agreement for Services.

**ASTM E 1527-05 USER QUESTIONNAIRE**

Page 2 of 3

Proposal No: PE1130348

**Request for Information and Documentation**

In addition to the specific questions outlined above, the user is requested to provide the following information and documentation, as available. ASTM requires that this information, if available, be provided to the environmental professional prior to the site visit.

<b>Item Supplied "X"</b>	<b>Not Applicable, Not Available or Not Known "X"</b>	<b>Item Requested (See Proposal)</b>	<b>Contacts/Comments or Indicate Attachment</b>
		Point of Contact for Access	Name/Phone:
		Current Site Owner	Name/Phone:
		Current Facility Operator	Name/Phone:
		Contacts for Prior Owners	Name/Phone:
		Contacts for Prior Occupants	Name/Phone:
		Access Restrictions	
		Notification of Special Requirements Regarding Confidentiality	
		Legal Description and Diagram / Survey of Site	
		Chain of Title with Grantor/Grantee Summary (back to 1940 or first developed use)	
		Reasons for Conducting ESA	

Please return this form with the signed and completed Agreement for Services.

**ASTM E 1527-05 USER QUESTIONNAIRE**

**Page 3 of 3**

**Proposal No: PE1130348**

**Helpful Documents Checklist**

Pursuant to ASTM E 1527-05 § 10.8, do you know whether any of the following documents exist related to the subject property and, if so, whether copies can and will be provided to the environmental professional? Check all that apply.

- |   |   |
|---|---|
| <input type="checkbox"/> Environmental site assessment reports  | <input type="checkbox"/> Notices or other correspondence from any governmental agency relating to past or current violations of environmental laws with respect to the property or relating to environmental liens encumbering the property |
| <input type="checkbox"/> Environmental compliance audit reports   |   |
| <input type="checkbox"/> Geotechnical studies   |   |
| <input type="checkbox"/> Reports regarding hydrogeologic conditions on the property or surrounding area | <input type="checkbox"/> Registrations for underground injection systems  |
| <input type="checkbox"/> Registrations for above or underground storage tanks                           | <input type="checkbox"/> Environmental permits/plans, solid waste permits, hazardous waste disposal permits, wastewater permits, NPDES permits, underground injection permits, SPCC plans   |

\_\_\_\_\_  
Name (Authorized Client Representative)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Please return this form with the signed and completed Agreement for Services.

**AGREEMENT FOR SERVICES**

This **AGREEMENT** is between City of Vestavia Hills, AL ("Client") and Terracon Consultants, Inc. ("Consultant") for Services to be provided by Consultant for Client on the 1034 Montgomery Highway project ("Project"), as described in the Project Information section of Consultant's Proposal dated 05/24/2013 ("Proposal") unless the Project is otherwise described in Exhibit A to this Agreement (which section or Exhibit is incorporated into this Agreement).

- 1. Scope of Services.** The scope of Consultant's services is described in the Scope of Services section of the Proposal ("Services"), unless Services are otherwise described in Exhibit B to this Agreement (which section or exhibit is incorporated into this Agreement). Portions of the Services may be subcontracted. Consultant's Services do not include the investigation or detection of, nor do recommendations in Consultant's reports address the presence or prevention of biological pollutants (e.g., mold, fungi, bacteria, viruses, or their byproducts) or occupant safety issues, such as vulnerability to natural disasters, terrorism, or violence. If Services include purchase of software, Client will execute a separate software license agreement. Consultant's findings, opinions, and recommendations are based solely upon data and information obtained by and furnished to Consultant at the time of the Services.
- 2. Acceptance/ Termination.** Client agrees that execution of this Agreement is a material element of the consideration Consultant requires to execute the Services, and if Services are initiated by Consultant prior to execution of this Agreement as an accommodation for Client at Client's request, both parties shall consider that commencement of Services constitutes formal acceptance of all terms and conditions of this Agreement. Additional terms and conditions may be added or changed only by written amendment to this Agreement signed by both parties. In the event Client uses a purchase order or other form to administer this Agreement, the use of such form shall be for convenience purposes only and any additional or conflicting terms it contains are stricken. This Agreement shall not be assigned by either party without prior written consent of the other party. Either party may terminate this Agreement or the Services upon written notice to the other. In such case, Consultant shall be paid costs incurred and fees earned to the date of termination plus reasonable costs of closing the project.
- 3. Change Orders.** Client may request changes to the scope of Services by altering or adding to the Services to be performed. If Client so requests, Consultant will return to Client a statement (or supplemental proposal) of the change setting forth an adjustment to the Services and fees for the requested changes. Following Client's review, Client shall provide written acceptance. If Client does not follow these procedures, but instead directs, authorizes, or permits Consultant to perform changed or additional work, the Services are changed accordingly and Consultant will be paid for this work according to the fees stated or its current fee schedule. If project conditions change materially from those observed at the site or described to Consultant at the time of proposal, Consultant is entitled to a change order equitably adjusting its Services and fee.
- 4. Compensation and Terms of Payment.** Client shall pay compensation for the Services performed at the fees stated in the Compensation section of the Proposal unless fees are otherwise stated in Exhibit C to this Agreement (which section or Exhibit is incorporated into this Agreement). If not stated in either, fees will be according to Consultant's current fee schedule. Fee schedules are valid for the calendar year in which they are issued. Fees do not include sales tax. Client will pay applicable sales tax as required by law. Consultant may invoice Client at least monthly and payment is due upon receipt of invoice. Client shall notify Consultant in writing, at the address below, within 15 days of the date of the invoice if Client objects to any portion of the charges on the invoice, and shall promptly pay the undisputed portion. Client shall pay a finance fee of 1.5% per month, but not exceeding the maximum rate allowed by law, for all unpaid amounts 30 days or older. Client agrees to pay all collection-related costs that Consultant incurs, including attorney fees. Consultant may suspend Services for lack of timely payment. It is the responsibility of Client to determine whether federal, state, or local prevailing wage requirements apply and to notify Consultant if prevailing wages apply. If it is later determined that prevailing wages apply, and Consultant was not previously notified by Client, Client agrees to pay the prevailing wage from that point forward, as well as a retroactive payment adjustment to bring previously paid amounts in line with prevailing wages. Client also agrees to defend, indemnify, and hold harmless Consultant from any alleged violations made by any governmental agency regulating prevailing wage activity for failing to pay prevailing wages, including the payment of any fines or penalties.
- 5. Third Party Reliance.** This Agreement and the Services provided are for Consultant and Client's sole benefit and exclusive use with no third party beneficiaries intended. Reliance upon the Services and any work product is limited to Client, and is not intended for third parties. For a limited time period not to exceed three months from the date of the report, Consultant will issue additional reports to others agreed upon with Client, however Client understands that such reliance will not be granted until those parties sign and return Consultant's reliance agreement and Consultant receives the agreed-upon reliance fee.
- 6. LIMITATION OF LIABILITY. CLIENT AND CONSULTANT HAVE EVALUATED THE RISKS AND REWARDS ASSOCIATED WITH THIS PROJECT, INCLUDING CONSULTANT'S FEE RELATIVE TO THE RISKS ASSUMED, AND AGREE TO ALLOCATE CERTAIN OF THE ASSOCIATED RISKS. TO THE FULLEST EXTENT PERMITTED BY LAW, THE TOTAL AGGREGATE LIABILITY OF CONSULTANT (AND ITS RELATED CORPORATIONS AND EMPLOYEES) TO CLIENT AND THIRD PARTIES GRANTED RELIANCE IS LIMITED TO THE GREATER OF \$50,000 OR CONSULTANT'S FEE, FOR ANY AND ALL INJURIES, DAMAGES, CLAIMS, LOSSES, OR EXPENSES (INCLUDING ATTORNEY AND EXPERT FEES) ARISING OUT OF CONSULTANT'S SERVICES OR THIS AGREEMENT. UPON WRITTEN REQUEST FROM CLIENT, CONSULTANT MAY NEGOTIATE A HIGHER LIMITATION FOR ADDITIONAL CONSIDERATION. THIS LIMITATION SHALL APPLY REGARDLESS OF AVAILABLE PROFESSIONAL LIABILITY INSURANCE COVERAGE, CAUSE(S) OR THE THEORY OF LIABILITY, INCLUDING NEGLIGENCE, INDEMNITY, OR OTHER RECOVERY. THIS LIMITATION SHALL NOT APPLY TO THE EXTENT THE DAMAGE IS PAID UNDER CONSULTANT'S COMMERCIAL GENERAL LIABILITY POLICY.**
- 7. Indemnity/Statute of Limitations.** Consultant and Client shall indemnify and hold harmless the other and their respective employees from and against legal liability for claims, losses, damages, and expenses to the extent such claims, losses, damages, or expenses are legally determined to be caused by their negligent acts, errors, or omissions. In the event such claims, losses, damages, or expenses are legally determined to be caused by the joint or concurrent negligence of Consultant and Client, they shall be borne by each party in proportion to its own negligence under comparative fault principles. Neither party shall have a duty to defend the other party, and no duty to defend is hereby created by this indemnity provision and such duty is explicitly waived under this Agreement. Causes of action arising out of Consultant's services or this Agreement regardless of cause(s) or the theory of liability, including negligence, indemnity or other recovery shall be deemed to have accrued and the applicable statute of limitations shall commence to run not later than the date of Consultant's substantial completion of services on the project.
- 8. Warranty.** Consultant will perform the Services in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions in the same locale. **EXCEPT FOR THE STANDARD OF CARE PREVIOUSLY STATED, CONSULTANT MAKES NO WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, RELATING TO CONSULTANT'S SERVICES AND CONSULTANT DISCLAIMS ANY IMPLIED WARRANTIES OR WARRANTIES IMPOSED BY LAW, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**
- 9. Insurance.** Consultant represents that it now carries, and will continue to carry: (i) workers' compensation insurance in accordance with the laws of the states having jurisdiction over Consultant's employees who are engaged in the Services, and employer's liability insurance (\$1,000,000); (ii) commercial general liability insurance (\$1,000,000 occ / \$2,000,000 agg); (iii) automobile liability insurance (\$1,000,000 B.I. and P.D. combined single



limit); and (iv) professional liability insurance (\$1,000,000 claim / agg). Certificates of insurance will be provided upon request. Client and Consultant shall waive subrogation against the other party on all general liability and property coverage.

- 10. CONSEQUENTIAL DAMAGES. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR LOSS OF PROFITS OR REVENUE; LOSS OF USE OR OPPORTUNITY; LOSS OF GOOD WILL; COST OF SUBSTITUTE FACILITIES, GOODS, OR SERVICES; COST OF CAPITAL; OR FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT, PUNITIVE, OR EXEMPLARY DAMAGES.**
- 11. Dispute Resolution.** Client shall not be entitled to assert a Claim against Consultant based on any theory of professional negligence unless and until Client has obtained the written opinion from a registered, independent, and reputable engineer, architect, or geologist that Consultant has violated the standard of care applicable to Consultant's performance of the Services. Client shall provide this opinion to Consultant and the parties shall endeavor to resolve the dispute within 30 days, after which Client may pursue its remedies at law. This Agreement shall be governed by and construed according to Kansas law.
- 12. Subsurface Explorations.** Subsurface conditions throughout the site may vary from those depicted on logs of discrete borings, test pits, or other exploratory services. Client understands Consultant's layout of boring and test locations is approximate and that Consultant may deviate a reasonable distance from those locations. Consultant will take reasonable precautions to reduce damage to the site when performing Services; however, Client accepts that invasive services such as drilling or sampling may damage or alter the site. Site restoration is not provided unless specifically included in the Services.
- 13. Testing and Observations.** Client understands that testing and observation are discrete sampling procedures, and that such procedures indicate conditions only at the depths, locations, and times the procedures were performed. Consultant will provide test results and opinions based on tests and field observations only for the work tested. Client understands that testing and observation are not continuous or exhaustive, and are conducted to reduce - not eliminate - project risk. Client agrees to the level or amount of testing performed and the associated risk. Client is responsible (even if delegated to contractor) for requesting services, and notifying and scheduling Consultant so Consultant can perform these Services. Consultant is not responsible for damages caused by services not performed due to a failure to request or schedule Consultant's services. Consultant shall not be responsible for the quality and completeness of Client's contractor's work or their adherence to the project documents, and Consultant's performance of testing and observation services shall not relieve Client's contractor in any way from its responsibility for defects discovered in its work, or create a warranty or guarantee. Consultant will not supervise or direct the work performed by Client's contractor or its subcontractors and is not responsible for their means and methods.
- 14. Sample Disposition, Affected Materials, and Indemnity.** Samples are consumed in testing or disposed of upon completion of tests (unless stated otherwise in the Services). Client shall furnish or cause to be furnished to Consultant all documents and information known or available to Client that relate to the identity, location, quantity, nature, or characteristic of any hazardous waste, toxic, radioactive, or contaminated materials ("Affected Materials") at or near the site, and shall immediately transmit new, updated, or revised information as it becomes available. Client agrees that Consultant is not responsible for the disposition of Affected Material unless specifically provided in the Services, and that Client is responsible for directing such disposition. In the event that test samples obtained during the performance of Services (i) contain substances hazardous to health, safety, or the environment, or (ii) equipment used during the Services cannot reasonably be decontaminated, Client shall sign documentation (if necessary) required to ensure the equipment and/or samples are transported and disposed of properly, and agrees to pay Consultant the fair market value of this equipment and reasonable disposal costs. In no event shall Consultant be required to sign a hazardous waste manifest or take title to any Affected Materials. Client shall have the obligation to make all spill or release notifications to appropriate governmental agencies. The Client agrees that Consultant neither created nor contributed to the creation or existence of any Affected Materials conditions at the site. Accordingly, Client waives any claim against Consultant and agrees to indemnify and save Consultant, its agents, employees, and related companies harmless from any claim, liability or defense cost, including attorney and expert fees, for injury or loss sustained by any party from such exposures allegedly arising out of Consultant's non-negligent performance of services hereunder, or for any claims against Consultant as a generator, disposer, or arranger of Affected Materials under federal, state, or local law or ordinance.
- 15. Ownership of Documents.** Work product, such as reports, logs, data, notes, or calculations, prepared by Consultant shall remain Consultant's property. Proprietary concepts, systems, and ideas developed during performance of the Services shall remain the sole property of Consultant. Files shall be maintained in general accordance with Consultant's document retention policies and practices.
- 16. Utilities.** Client shall provide the location and/or arrange for the marking of private utilities and subterranean structures. Consultant shall take reasonable precautions to avoid damage or injury to subterranean structures or utilities. Consultant shall not be responsible for damage to subterranean structures or utilities that are not called to Consultant's attention, are not correctly marked, including by a utility locate service, or are incorrectly shown on the plans furnished to Consultant.
- 17. Site Access and Safety.** Client shall secure all necessary site related approvals, permits, licenses, and consents necessary to commence and complete the Services and will execute any necessary site access agreement. Consultant will be responsible for supervision and site safety measures for its own employees, but shall not be responsible for the supervision or health and safety precautions for any other parties, including Client, Client's contractors, subcontractors, or other parties present at the site.

Consultant: **Terracon Consultants, Inc.**  
By: *Leslie L Noble* Date: 6/5/2013  
Name/Title: **Leslie L Noble / Department Manager III-  
Professional**  
Address: **110 12th St. North  
Birmingham, AL 35203**  
Phone: **(205) 942-1289** Fax: **(205) 443-5302**  
Email: **llnoble@terracon.com**

Client: **City of Vestavia Hills, AL**  
By: \_\_\_\_\_ Date: \_\_\_\_\_  
Name/Title: **Jim St. John/ Interim City Manager**  
Address: **513 Montgomery Highway  
Vestavia Hills, AL 35216**  
Phone: **(205) 978-0100** Fax: **(205) 978-0189**  
Email: **St.john@ci.vestavi hills.al.us**

Reference Number: PE1130348

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

Name/Title: **Mayor Butch Zaragoza**  
Address: **513 Montgomery Highway  
Vestavia Hills, AL 35216**  
Phone: **(205) 978-0100**  
Email: **mayor@ci.vestavi hills.al.us**

**RESOLUTION NUMBER 4461**

**A RESOLUTION FINDING AND DETERMINING THAT THE CONDITIONS OF CERTAIN PUBLIC STREETS AND ROADS IN THE CITY OF VESTAVIA HILLS, ALABAMA PRESENT THE POSSIBILITY OF PROPERTY DAMAGE AND/OR PERSONAL INJURY TO MEMBERS OF THE GENERAL PUBLIC; THAT SUCH CONDITIONS CONSTITUTE EMERGENCY SITUATIONS AS SET FORTH IN TITLE 39-2-2(e), CODE OF ALABAMA, 1975; AND AUTHORIZING THE MAYOR TO LET CONTRACTS FOR THE REPLACEMENT OF A DRAINAGE PIPE AND REPAIR AND/OR REPAVING OF THOSE PUBLIC ROADS AND STREETS WITHOUT PUBLIC ADVERTISEMENT INVITING COMPETITIVE BIDS UNDER THE ALABAMA PUBLIC WORKS LAW.**

WITNESSETH THIS RESOLUTION NUMBER 4461, which is considered, approved and adopted on by the City Council of the Vestavia Hills, Alabama on this the 10<sup>th</sup> day of June, 2013.

**WITNESSETH THESE RECITALS:**

**WHEREAS**, municipalities in Alabama have a legal duty to maintain public streets in a reasonably safe condition; and

**WHEREAS**, municipalities in Alabama may be liable for damages for failure to maintain such streets in a reasonably safe condition under certain circumstances (Title 11-47-190, *Code of Alabama, 1975*); and

**WHEREAS**, the City Council finds and determines that the following public roads and streets in the City of Vestavia Hills, Alabama are in such defective conditions that if not repaired and/or repaved immediately, present a possibility of property damage and/or personal injuries to members of the general public:

A drainage pipe on the public right-of-way at Oakview Lane and Cahaba Heights Road needs replacing and both of said public streets need repair and rehabilitation; and

**WHEREAS**, on June 5, 2013, City Engineer Christopher Brady recommended the replacement of a drainage pipe within the City right-of-way at Oakview Lane and Cahaba Heights Road and the repair and rehabilitation of both streets at an estimated cost of approximately Seventy-two Thousand Dollars (\$72,000.00) without public advertisement inviting competitive bids. He recommended that the City Council declare the situation to be an emergency and approve the expenditure and the work at its regularly scheduled City Council meeting on June 10, 2013. Copies of his written recommendations are attached hereto, marked

as Exhibits 1 and 2 and are incorporated into this Resolution Number 4461 by reference as though set out fully herein; and

**WHEREAS**, the City Council has received a written legal opinion from legal counsel advising that the City may spend an estimated amount of approximately \$72,000.00 of public funds to repair the defective conditions in said public roads and streets without public advertisement inviting competitive bids under the Alabama Public Works Law pursuant to the authority of Title 39-2-2(e), *Code of Alabama, 1975*.

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

A. That the City Council, in accordance with Title 39-2-2(e), *Code of Alabama, 1975*, finds and determines that the conditions of the following named public streets and roads in the City of Vestavia Hills, Alabama constitute an emergency affecting the public health, safety or convenience of members of the general public, including specifically but not limited to, possible personal injury and property damage:

A drainage pipe on the public right-of-way at Oakview Lane and Cahaba Heights Road needs replacing and both of said public streets need repair and rehabilitation.

B. Pursuant to the authority of Title 39-2-2(e), *Code of Alabama, 1975*, the Mayor is hereby authorized and directed to let contracts necessary to meet the emergencies without public advertisement inviting competitive bids, which specifically includes, but is not limited to, the repair, improvement and/or repaving of the above named streets and roads at an estimated cost of approximately Seventy-two Thousand Dollars (\$72,000.00).

**DONE, ORDERED, ADOPTED AND APPROVED** this the 10<sup>th</sup> day of June, 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**

**June 5, 2013**

To: Jim St. John, Interim City Manager

CC: Brian Davis, Director of Public Services

From: Christopher Brady, City Engineer

RE: Oakview Lane Pipe Replacement and Rehabilitation, emergency repair

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Attached report, photos, and cost estimate is related to drainage pipe replacement within the roadway right-of-way at Oakview Lane near Cahaba Heights Road.

This section of pipe has been monitored by City for a number of years and has been identified on our Infrastructure Improvement Projects High Priority List. A recent collapse has warranted this to be considered an emergency situation to mitigate safety concerns related to the traveling public.

This is an unbudgeted expense not to exceed \$72,000. While this project is allowable to utilize restricted funds for roadway maintenance, this cost would impact our upcoming Street Resurfacing Budget. Therefore, I am requesting funding from general funds balance.

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

-Christopher



## **Oakview Drainage Pipe Replacement**

Project Description: remove and replace approximately 210 LF of deteriorated and partially collapsed large diameter drainage pipe in Oakview Lane right-of-way; add approximate 130 linear feet of concrete liner to rehabilitate existing pipe in Cahaba Heights Road right-of-way; reconstruct and add junction and inlet box structures

### **Estimated costs (6/5/13)**

<b><u>material costs</u></b>				<i><u>total</u></i>
arch pipe	56 lf	\$ 55.00	\$ 3,080.00	
36" RCP	152 lf	\$ 40.00	\$ 6,080.00	
rehab liner	130 lf		\$ 10,200.00	
stone			\$ 3,600.00	
junction box/inlets (material)			\$ 3,340.00	
metal grates			\$ 1,000.00	
				<u>\$ 27,300.00</u>
<b><u>equipment rental</u></b>				
track hoe (3 -week rental)			\$ 15,000.00	
dump tri/axle			\$ 9,000.00	
trench box			\$ 1,050.00	
temporary metal plates			\$ 640.00	
				<u>\$ 25,690.00</u>
<b><u>contracted services</u></b>				
asphalt patching			\$ 7,500.00	
				<u>\$ 7,500.00</u>
<b><u>contracted labor</u></b>				
junction and inlet box structures			\$ 8,000.00	
curb and gutter replacement			\$ 1,000.00	
				<u>\$ 9,000.00</u>
<b><u>utility repairs/relocations</u></b>				
remove/ replace			\$ 2,000.00	allowance
				<u>\$ 2,000.00</u>
Total Estimated Cost			\$ 71,490.00	





Looking downstream at route of deteriorated drainage pipe; this is at asphalt drive and parking area at 4200 Oakview Lane (Peters) looking down to corner parking space at 3135 Cahaba Heights Road (Cahaba Heights Plaza) and Cahaba Heights Road right-of-way.



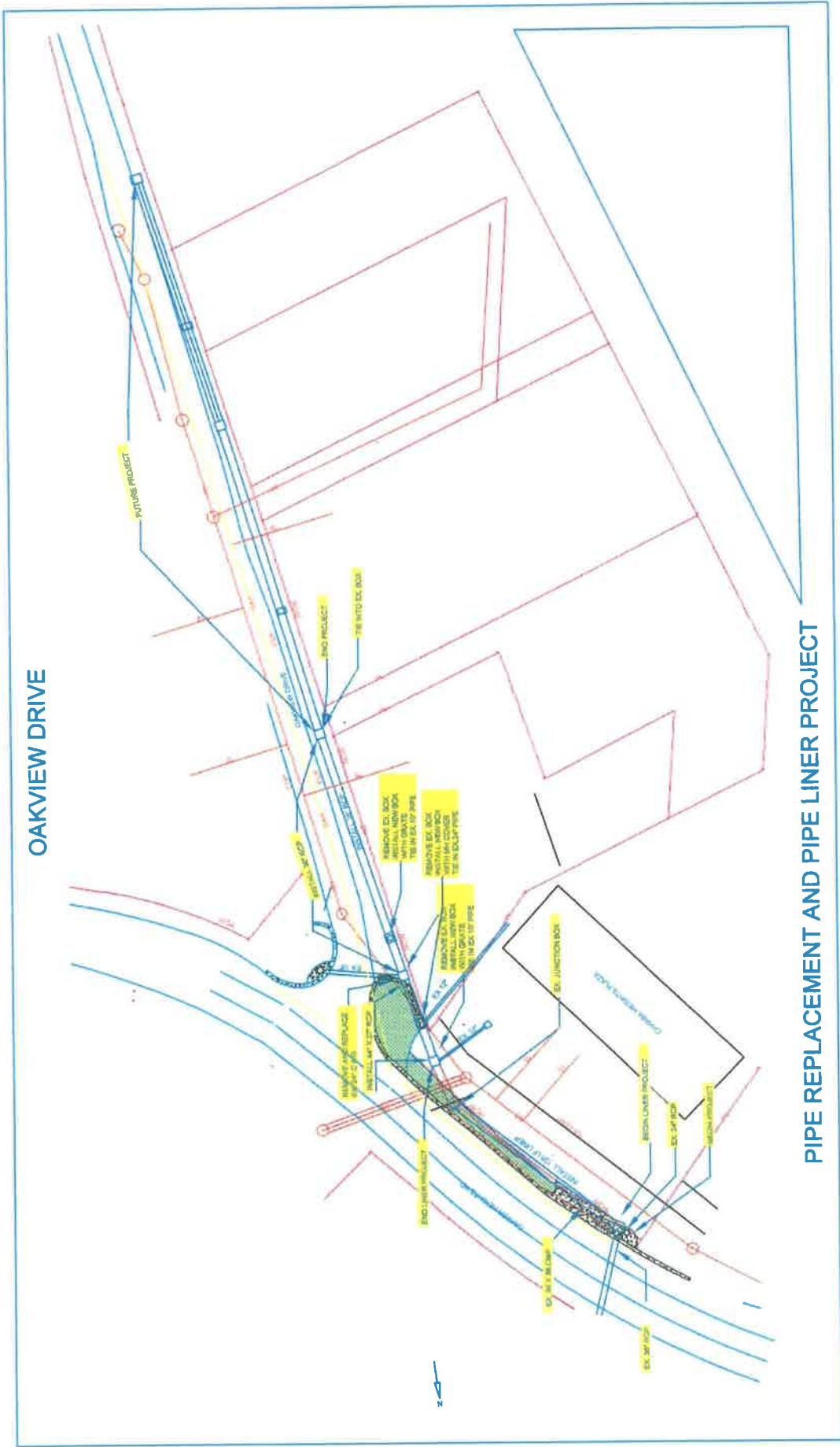
Area of collapsed asphalt and median area at parking area for Cahaba Heights Plaza; metal drainage pipe has deteriorated allowing dirt and subgrade to be eroded out from under and around pipe.



View of existing pipe invert showing extensive rusting and deterioration; subgrade soil is eroding.



OAKVIEW DRIVE



PIPE REPLACEMENT AND PIPE LINER PROJECT

500

495

490

485

480

0+00

0+50

1+00

PAGE 1

PAGE 1

PAGE 2

REMOVE EX. GRATE IN  
INSTALL NEW JUNCTION  
WITH GRATE INLET / TH

BOX 1  
STA. 1+34  
EXIST

INST. FALL 30  
BEGIN PIPE PR

END LINER PROJECT  
FL OUT 485.0  
EX PAD  
SEE NEW BOX DETAIL

EXISTING SS CROSSING W  
54" SEWER TUNNEL  
SEE PLAN SHEET FOR DE

STA. 1+15

FL-IN 485.9

0.94 % Slope

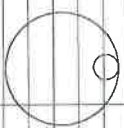
PLACE LINER EX. 36" x 58" CM/PPB

BEGIN PROJECT  
STA. 0+46

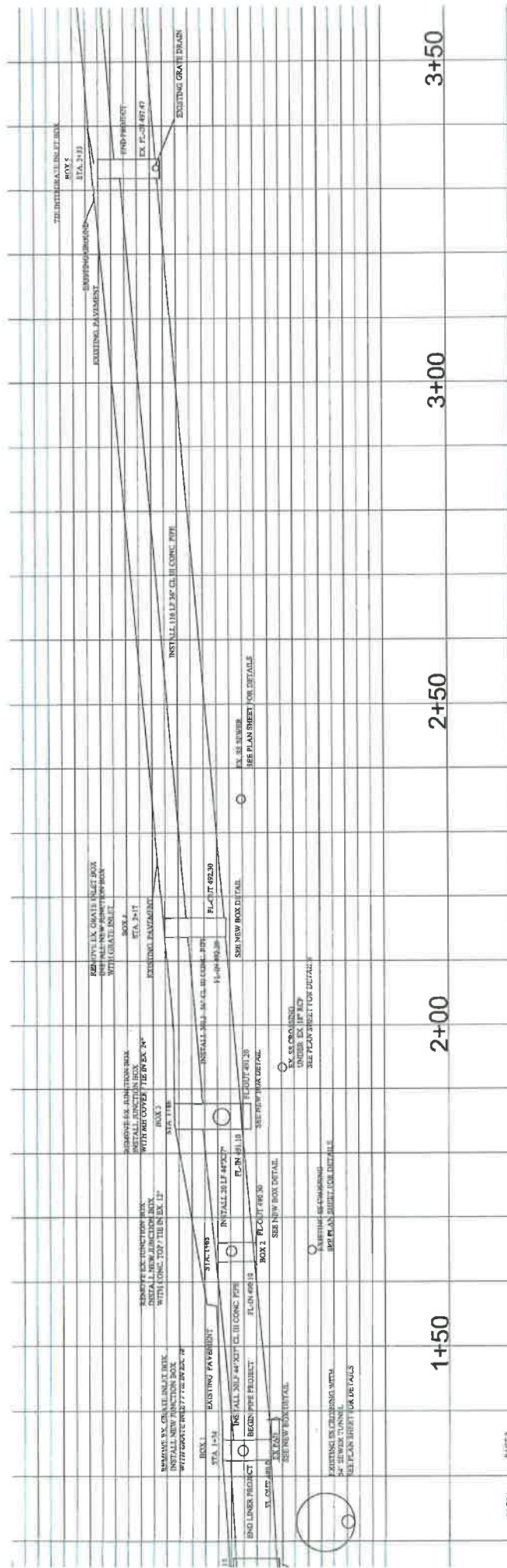
BEGIN LINER PROJECT

FL-IN 485.20

FL-IN 485.73



EXISTING JUNCTION BOX



1+50

2+00

2+50

3+00

3+50

**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  

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**TELEPHONE (205) 324-2018**  
**FACSIMILE (205) 324-2295**

June 6, 2013

By Hand Delivery

City Manager James R. St. John  
Vestavia Hills Municipal Center  
Post Office Box 660854  
Vestavia Hills, Alabama 35266-0854

In Re: Replacing Drainage Pipe on Public Right-of-Way and Repair of Public Street Under  
Emergency Situations

Dear Chief St. John:

On June 5, 2013, you requested that I furnish you with my written legal opinion as to whether or not the City may let contracts and/or spend public funds for replacing a drainage pipe on public right-of-way and the repair of a public street to the extent necessary to meet emergency situations without public advertisement inviting competitive bids under the Alabama Public Works Bid Law. The purpose of this letter is to respond to your request.

**I. FACTS**

On June 5, 2013, City Engineer Christopher Brady recommended the replacement of a drainage pipe within the City right-of-way at Oakview Lane and Cahaba Heights Road and the repair and rehabilitation of both streets at an estimated cost of approximately \$72,000.00 without public advertisement inviting competitive bids. He recommended that the City Council declare the situation to be an emergency and approve the expenditure and the work at its regularly scheduled City Council meeting on June 10, 2013. Copies of his written recommendations are attached hereto.

**II. LEGAL ISSUE**

May the City spend an estimated amount of approximately \$72,000.00 to replace a drainage pipe at Oakview Lane and Cahaba Heights Road and repair the streets without public advertisement inviting competitive bids under the Alabama Public Works Law?



### III. LEGAL OPINION

In my legal opinion, the answer to the legal question is in the affirmative provided certain conditions are met.

### IV. BASIS FOR LEGAL OPINION

I base my legal upon the following Alabama legal authorities:

#### A. MAINTENANCE, REPAIR AND IMPROVEMENT OF ROADS ANNEXED TO A MUNICIPALITY:

1. **Effect of Annexation:** The annexation of unincorporated territory into a municipality, after July 7, 1995, shall result in the municipality assuming responsibility to control, manage, supervise, regulate, repair, maintain and improve all public streets or parts thereof lying within the territory annexed, if such public streets or parts thereof were controlled, managed, supervised, regulated, repaired, maintained and improved by the county for a period of one year prior to the effective date of the annexation.

2. **Municipal Control Over Streets and Roads:** Title 11-49-80(b), *Code of Alabama, 1975*, provides that the annexation of unincorporated territory into a municipality shall result in the municipality assuming responsibility to control, manage, supervise, regulate, repair maintain and improve all public streets or parts thereof lying within the territory annexed.

In 1997, the Court of Civil Appeals of Alabama held that a city has the responsibility for the maintenance and control of a road situated in an area that had been annexed to the municipality. *McCool v. Morgan County Commission*, 716 So.2d 1201.

3. **Ownership of Entire Public Street or Road:** The Supreme Court of Alabama decided the case of *City of Orange Beach v. Benjamin*, 821 So.2d 193, in 2001 and held that a municipality owns the entire public right-of-way of a public street or road and that the abutting property owner owns no interest therein.

#### B. DUTY OF CARE TO MAINTAIN PUBLIC STREETS AND MUNICIPAL LIABILITY FOR FAILURE TO DO SO:

1. **Duty of a City:** A city has a legal duty to maintain streets in a reasonably safe condition (Title 11-47-190, *Code of Alabama, 1975*).

2. **Municipal Liability:**

(a) Title 11-47-190, *Code of Alabama, 1975*, provides as follows:

**§11-47-190. When Municipality Liable; Joint Liability of Other Persons or Corporations:** No city or town shall be liable for damages for injury done to or wrong suffered by any person or corporation, unless said injury or wrong was done or suffered through the neglect, carelessness or unskillfulness of some agent, officer or employee of the municipality engaged in work therefor and while acting in the line of his duty, or unless the said injury or wrong was done or suffered through the neglect, carelessness or failure to remedy some **defect** (*emphasis added*) in the streets, alleys, public ways or buildings after the same had been called to the attention of the council or other governing body or after the same had existed for such unreasonable length of time as to raise a presumption of knowledge of such **defect** (*emphasis added*) on the part of the council or other governing body and whenever the city or town shall be made liable to an action for damages by reason of the unauthorized or wrongful acts or the negligence, carelessness or unskillfulness of any person or corporation, then such person or corporation shall be liable to an action on the same account by the party so injured. (*Code 1907 §1273, Code 1923 §2029, Code 940 T.37 §502.*)

(b) If the liability was caused by a third party, the city has the right to have the liability of that other party tested, and, if found liable also, such liability takes priority over that of the city. In other words, if another party is liable along with the city, then the judgment shall be collected out of the other party first and the city shall pay only so much of the judgment as cannot be collected from the other defendant. Title 11-47-191, *Code of Alabama, 1975*.

Alabama law applicable to this situation is summarized below.

(c) The legal definition of “negligence” is the failure to do what a reasonably prudent person would have done under the same or similar circumstances, or, the doing of something which a reasonably prudent person would not have done under the same or similar circumstances.

(d) “Contributory negligence” is negligence on the part of the claimant that proximately contributed to the alleged property damage. Under Alabama law, if the plaintiff is guilty of contributory negligence, the plaintiff cannot recover for any simple negligence of the defendant.

(e) The Supreme Court of Alabama has held that municipal corporations may be liable for personal injuries and property damage suffered due to defects in sidewalks, streets and public ways where it has not exercised reasonable care. In general terms, the liability of a municipality is governed by the duty and obligation to exercise ordinary and reasonable care to keep its streets and sidewalks in a reasonably safe condition for travel. This imposition does not make the municipality a guarantor of the safe and unharmed travel to the public. The duty is based on the responsibility and accountability of the city to remedy such defects upon receiving actual notice, or after the same has remained for such length of time and under such conditions and circumstances that the law will infer that the defect ought to have been discovered and remedied.

### C. PUBLIC WORKS LAW:

1. Public Works Project: Title 39-2-1(6), *Code of Alabama, 1975*, defines a public works project 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.”

2. Bid Requirements for Public Works Projects: One of the primary requirements of Title 39 is that public works in excess of \$50,000.00 must be advertised for sealed bids. The *Alabama Code* also states that projects cannot be divided into parts smaller than \$50,000.00 for the purpose of evading the competitive bid requirements. Title 39-2-2(a), *Code of Alabama, 1975*.

An awarding authority (like the City of Vestavia Hills) may let contracts for public works involving Fifty Thousand Dollars (\$50,000.00) or less with or without advertising for sealed bids. Title 39-2-2(b), *Code of Alabama, 1975*.

The bidding requirements of the Publics Work Law are set forth in Title 39-2-2, *Code of Alabama, 1975*. Simply stated, those laws provide as follows:

“1. Public works projects involving expenditures of \$50,000.00 or less do not have to be bid; and

2. For public works contracts between \$50,000.00 and \$500,000.00, a city must publish notice of the request for bids at least once in a newspaper of general circulation published in the city; and

3. For contracts involving expenditures of more than \$500,000.00 for public works, a city must also advertise for sealed bids at least once in three newspapers of general circulation throughout the State of Alabama.”

**D. PUBLIC PROCUREMENTS DURING EMERGENCIES ARE EXEMPT FROM THE COMPETITIVE BID PROCESS IF DELAYS CAUSED BY ADVERTISING AND BIDDING WOULD AFFECT PUBLIC HEALTH, SAFETY OR CONVENIENCE:** Title 39-2-2(e), *Code of Alabama, 1975*, provides as follows:

“(e) In case of an emergency affecting public health, safety, or convenience, as declared in writing by the awarding authority, setting forth the nature of the danger to the public health, safety, or convenience which would result from delay, contracts may be let to the extent necessary to meet the emergency without public advertisement. The action and the reasons for the action taken shall immediately be made public by the awarding authority upon request.”

## **V. EMERGENCY**

**A. DEFINITION:** Generally, the term “emergency” signifies a situation which has suddenly and unexpectedly arisen which requires speedy action.

**B. OPINION OF ATTORNEY GENERAL:** The Attorney General, in an Opinion dated February 14, 1974, said that a municipality need not submit bids on a garbage truck if an emergency situation is declared and the provisions of Section 41-16-53 of the *Code of Alabama* are complied with.

**C. MY OPINION:** This is an emergency situation within the meaning of Title 39-2-2(e), *Code of Alabama, 1975*, because a delay to advertise could cause danger to the health, safety and general welfare of the general public. Defective conditions in public streets may cause personal injuries and/or property damages.

## **VI. CONCLUSION**

In my opinion, the City may spend an estimated amount of \$72,000.00 of public funds to repair defective streets without public advertisement inviting competitive bids under the Public Works Law in emergency situations that present possible property damages and/or personal injuries to members of the general public if there is any delay in repairing those defective streets.

## VII. MY RECOMMENDATIONS

A. The City Council should declare that the defective conditions of certain public roads and streets constitute emergency situations and authorize the Mayor to let contracts for the repair of those certain public roads and streets pursuant to the authority of Title 39-2-2(e), *Code of Alabama, 1975*; and

B. I have enclosed a suggested Resolution.

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

Very truly yours,



Patrick H. Boone  
Vestavia Hills City Attorney

PHB:gp

Enclosure: (1) Suggested Resolution

cc: Mayor Alberto C. Zaragoza, Jr.  
City Clerk Rebecca Leavings  
City Engineer Christopher Brady

## **RESOLUTION NUMBER 4458**

### **A RESOLUTION ACCEPTING A BID FOR BLEACHERS FOR THE PARKS AND RECREATION DEPARTMENT AND APPROVING THE FUNDING FOR SIX SETS OF BLEACHERS**

**WHEREAS**, the City of Vestavia Hills invited bids for bleachers for the Parks and Recreation Department; and

**WHEREAS**, bids were received on May 21, 2013 and read aloud publicly with the results tabulated and detailed in a recap, a copy of which is attached to this Resolution Number 4458; and

**WHEREAS**, a memorandum dated May 24, 2013 to City Manager Jim St. John from Brian Davis, Public Services Director, recommended the acceptance of Outdoor Aluminum company and requested additional funding in order to purchase and install six (6) sets of bleachers; and

**WHEREAS**, the Mayor and City Council agree it is in the best public interest to accept said bid and authorize the City Manager to expend a total of \$22,002 for purchase and installation of six (6) sets of bleachers as detailed in the attached memorandum.

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

1. The bid package submitted by Outdoor Aluminum in the amount of \$3,667 each (including installation) is hereby accepted; and
2. The City Manager is hereby authorized to expend \$1,002.00 over the budgeted amount of \$21,000 in order to purchase and install six (6) bleachers; and
3. This Resolution Number 4458 shall become effective upon adoption and approval.

**DONE, ORDERED, ADOPTED and APPROVED** this the 24<sup>th</sup> day of June, 2013.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk



Exhibit A

# BID SUMMARY

**BID-2013-07**

BID: Bleachers

BID OPENED: May 21, 2013  
2:00 PM

**PEOPLE PRESENT FOR BID OPENING**

1. Batt. Chf. James P. Barnes, VHFD
2. Batt. Chf. Terry E. Ray, VHFD
3. Dep. Chf. Lynn Bonner, VHFD
4. Brian Davis, Public Services Director
5. Melissa N. Hipp, Accounting Assistant II
6. Chief James R. St. John, VHFD
7. Rita C. Hosmer, Accountant
8. John Wilson, NAFECO

**BIDDERS:**

- |                                      |            |
|--------------------------------------|------------|
| 1. BSN Sports*                       | \$3,046.27 |
| 2. Outdoor Aluminum, Inc.            | \$3,667.00 |
| 3. Lanier Plans, Inc., DBA Korkat    | \$4,102.58 |
| 4. Bliss Products and Services, Inc. | \$4,792.00 |
| 5. Southern Bleacher Co., Inc.       | \$5,210.00 |
| 6. Giffen Recreation                 | No bid     |

\*BSN Sports bid did not include installation, which was requested in the invitation to bid.

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

**Interoffice Memo**

May 24, 2013

TO: James St. John  
Interim City Manager

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

RE: Bleacher purchase

*5/28/13  
Approved  
J. St. John*

An invitation to bid was issued to multiple companies for 5 row bleachers that have an enclosed fence around the levels that are more than 30 inches off the ground for safety reasons. Below are the results of the bid:

1. BSN \$3,046.27/each (does not include installation)
2. Outdoor Aluminum \$3,667/each (includes installation)
3. Southern Bleacher Company \$5,210/each (includes installation)
4. Korkat \$4,102.58 (includes installation)
5. Bliss \$4,792/each (includes installation)
6. Giffen Recreation No bid

BSN did not meet the requested guidelines for including installation.

I would like to request a purchase of 6 bleachers from Outdoor Aluminum, Incorporated. There is \$21,000 budgeted for bleacher purchases in our FY13 budget. Vestavia Hills Youth Baseball has agreed to fund the overage of \$1,002.00 (6 X \$3,667 = \$22,002). I am prepared to ask the Parks and Recreation Foundation for an additional \$3,667.00 to purchase one set. The total of 7 will complete Cahaba Heights Athletic Fields with new bleachers with safety fencing. We need a total of 17 bleachers replaced at various parks.

I will request \$36,670 to purchase the remaining 10 bleachers in the FY14 budget. Please let me know if you have any questions or concerns.

CC: Jason Burnett  
Bobby McDaniel

*JS*

**RESOLUTION NUMBER 4459**

**A RESOLUTION AUTHORIZING THE MAYOR AND CITY MANAGER TO EXECUTE AN AGREEMENT WITH THE REGIONAL PLANNING COMMISSION OF GREATER BIRMINGHAM FOR DEVELOPMENT OF A FORM-BASED ZONING CLASSIFICATION FOR THE CITY OF VESTAVIA HILLS**

**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 the Regional Planning Commission of Greater Birmingham (“RPCGB”) to accept a Building Communities Grant for the project entitled “US Form-Based Code Plan” in an amount not to exceed \$104,026.84 with a local match of twenty (20) percent or \$20,805.37; and
2. A copy of said agreement is attached to this Resolution Number 4459 marked as “Exhibit A” and incorporated as though written fully therein; and
3. This Resolution Number 4459 is effective immediately upon adoption and approval.

**DONE, ORDERED, ADOPTED and APPROVED** this the 24<sup>th</sup> day of June, 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**

May 23, 2013

By Hand Delivery

City Clerk Rebecca Leavings  
Vestavia Hills Municipal Center  
513 Montgomery Highway  
Vestavia Hills, Alabama 35216

In Re: Agreement Between the Regional Planning Commission of Greater Birmingham ("RPC")  
and the City of Vestavia Hills, Alabama ("Governmental Entity")

Dear Becky:

You have requested that I review the proposed Agreement by and between the Regional Planning Commission of Greater Birmingham ("RPC") and the City of Vestavia Hills, Alabama ("Governmental Entity") wherein RPC proposes to prepare a U.S. 31 Form-Based Code Plan for and in consideration of \$104,026.84. The maximum that the City will be required to pay will be \$20,805.37 representing twenty percent (20%) of the total cost. The balance in the amount of \$83,221.47, representing eighty percent (80%) of the total cost, will be paid from grant funds. The purpose of this letter is to respond to your request.

It is my legal opinion that the terms, provisions and conditions of the proposed Agreement meet the requirements of Alabama law. As you know, the Agreement provides that it will take nine (9) months for RPC to prepare the US 31 Form-Based Code Plan.

At this point, I do not have any idea what the final product to be produced by RPC will entail. The City ultimately will have the decision as to whether or not to actually adopt the US 31 Form-Based Code Plan. It will, therefore, be greatly appreciated if RPC will furnish to the City any one, some or all of the following items:

1. Legal opinion from the Attorney General of the State of Alabama opining that form-based plans similar to this one are legal.
2. Any precedent Court cases decided by Alabama appellate courts upholding the validity of such plans.
3. The names of any and all cities that have adopted similar plans.

May 23, 2013

Page 2

Nothing contained in this letter shall be construed as my legal opinion as to the validity or non of such form-based plans.

Please call me if you have any questions regarding any matters set forth in this letter. Thank you.

Sincerely,



Patrick H. Boone  
Vestavia Hills City Attorney

PHB:gp

cc: Interim City Manager James R. St. John (by hand)  
Mayor Alberto C. Zaragoza, Jr. (by hand)  
City Planner Conrad G. Garrison (by hand)



# Exhibit A

## AGREEMENT

**THIS AGREEMENT** (the "Agreement") is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2013, by and between the **Regional Planning Commission of Greater Birmingham**, a regional planning and development commission organized and existing under the laws of the State of Alabama ("RPC") and the **City of Vestavia Hills**, an Alabama Municipal Corporation ("Governmental Entity"), as follows:

### **WITNESSETH:**

**WHEREAS**, Governmental Entity has applied for to receive funding under the Building Communities Grant Program for the project entitled a **US 31 Form-Based Code Plan**; and

**WHEREAS**, Governmental Entity's project has been selected for funding, with a total project cost in the amount of **\$104,026.84**, to include local match, and

**WHEREAS**, Governmental Entity agrees to provide local match in the amount of **\$20,805.37**, and

**WHEREAS**, Governmental Entity agrees to work in good faith with RPC to complete the project in a timely and professional manner, and

**WHEREAS**, RPC agrees to secure third party contractor(s), if necessary, to provide professional services on behalf of Governmental Entity in order that the project might be completed according to the conditions set forth herein; and

**NOW THEREFORE**, in consideration of the premises and the mutual covenants, agreements, representations and warranties hereinafter set forth, RPC and Governmental Entity agree as follows:

1. **Engagement of RPC.** Governmental Entity hereby agrees to engage RPC, and RPC may engage a third party contractor(s) on behalf of Governmental Entity in order that the services which are identified and described in the "Scope of Work" set forth on Exhibit A attached hereto and incorporated herein by this reference shall be performed. RPC may, from time to time, request changes in the Scope of Services to be performed by third party contractor(s) on behalf of Governmental Entity. Such changes, including any increase or decrease in the amount of Governmental Entity's local match amount which are mutually agreed upon by RPC and Governmental Entity, shall be memorialized by written amendments to this Agreement, signed by both RPC and Governmental Entity.

2. **Compensation.** In consideration for the planning and development services to be performed hereunder, the Governmental Entity agrees that the RPC total project cost is **\$104,026.84** to include local match. The Governmental Entity agrees to provide local match in the amount of **\$20,805.37**. The above amount shall constitute full and complete compensation for the services to be provided by RPC directly or secured by RPC on Governmental Entity's behalf and includes all expenses arising from the performance of this Agreement.

3. **Method of Payment.** Payment shall be made in **one (1) installment.** Payment shall be due upon receipt of invoice from the RPC.

If compensation is not paid when due, RPC shall not engage in the provision of planning and development services nor shall RPC employ third party contractor(s) on behalf of Governmental Entity until such time as payment is made. If after a period of sixty (60) days compensation is not paid, Governmental Entity shall forfeit all claims to their awarded amount for the Building Communities Grant.

4. **Financial Records.** RPC shall keep and maintain complete and accurate books, records and procedures to account for all funds paid by Governmental Entity in accordance with this Agreement. RPC shall allow Governmental Entity to examine, copy and audit all such books, records and procedures, upon advance notice and during RPC's normal business hours. Any such examination or audit shall be conducted at the sole cost and expense of the party requesting same.

5. **Maintenance of Records.** RPC shall retain all records with respect to the matters made the subject of this Agreement for three (3) years following the termination or completion of this Agreement. This provision shall survive termination of this Agreement.

6. **Political Activity.** No portion of any funds to be paid by Governmental Entity to RPC for the services made the subject of this Agreement shall be used for any partisan political activity or to further the election or defeat of any candidate for public office.

7. **Qualified Personnel.** RPC represents that RPC employs, or will engage, all personnel required to perform the services made the subject of this Agreement. Such personnel shall not be employees of or have any contractual relationships with Governmental Entity, and all such personnel shall be reasonably qualified to perform the services assigned to them.

8. **Cooperation.** All information, data, reports, records and maps as are available, existing and necessary for performing the work made the subject of this Agreement shall be assembled for Governmental Entity by RPC or third party contractor(s) employed by RPC on Governmental Entity's behalf. However, Governmental Entity shall cooperate with RPC or third party contractor(s) employed by RPC in all reasonable ways to allow RPC or third party contractor(s) to conduct its planning and development work without undue delay.

9. **Title to Work.** Upon completion of the work, or each work element, as described in the Scope of Services and therefore as provided by this Agreement, all artwork, maps, stencils, negatives, plates and other supporting materials prepared as a part of such work, or element thereof, shall become the exclusive property of Governmental Entity, and any reproduction or other uses of such materials shall be approved by appropriate officials of Governmental Entity.

10. **Assignment.** Neither party may assign this Agreement, or any right or obligation herein, without the prior written consent of the other party.

11. **Equal Employment Opportunity.** In carrying out the work made the subject of this Agreement, RPC and third party contractor(s) shall not discriminate against

any employee or applicant for employment because of race, religion, national origin, sex, age or disability.

12. **Termination.** If RPC or third party contractor(s) shall fail to perform any of its obligations under this Agreement in a timely and proper manner, or if RPC or third party contractor(s) shall violate any of the covenants, agreements, or stipulations of this Agreement, Governmental Entity may give written notice of such breach to RPC. In the event RPC fails to cure such breach, to the reasonable satisfaction of Governmental Entity, within thirty (30) days following RPC's receipt of such written notice, Governmental Entity may terminate this Agreement upon written notice to RPC. In the event of such termination, Governmental Entity shall be entitled to all compensation not earned and accrued to and including the effective date of termination.

13. **Relationship of the Parties.** The relationship of the parties pursuant to this Agreement shall be that of independent contractors, and nothing contained in this Agreement shall be deemed to create any relationship of agency, joint venture, partnership or employer-employee. Neither party shall have the right or power to commit, contract for or otherwise obligate the other party to any third person or entity. RPC shall be responsible for the collection, filing, and payment of social security and other federal, state or local taxes or withholdings for RPC's employees. Governmental Entity shall have no right to control or direct the details, manner or means by which RPC accomplishes the results of the services to be performed pursuant to this Agreement.

14. **Notices.** Any notice to a party hereunder pursuant to this Agreement shall be given by certified or registered mail, return receipt requested,

If to RPC:

Regional Planning Commission of Greater Birmingham  
Center for Regional Planning and Design  
1731 First Avenue North  
Suite 200  
Birmingham, Alabama 35203  
Attention: Philip Amthor

If to Governmental  
Entity:

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

Attention: Conrad Garrison

or at such other address as either party may have advised the other in writing. Any such notice shall be deemed delivered when placed in the mail, properly addressed, with postage prepaid.

15. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto, and there are no agreements, understandings, restrictions, warranties or representations between the parties other than those set forth herein or herein provided for. The foregoing supersedes all prior agreements and understandings relating to the subject matter hereof.

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

**City of Vestavia Hills**

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**Honorable Alberto Zaragoza**

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**Mayor**

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**City Manager**

**Regional Planning Commission of Greater  
Birmingham**

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**Charles E. Ball**

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**Executive Director**

## Vestavia Hills Form Based Code Scope of Work

### **Project Overview**

The City of Vestavia Hills, with the assistance of the Regional Planning Commission of Greater Birmingham, recently completed a redevelopment plan for the US-31 corridor. The plan recommended a regulating plan for each of the three prospective development sites. The Plans would include: non-motorized transportation facilities, such as sidewalks and trails; on-street, on-site, and off-site parking; and typical street sections for the roadways that access and serve the development sites.

The potential for development in each of the sites located along US-31 represents an opportunity to address unique situations for redevelopment and travel. In order to make these opportunities a reality, however, the creation of a supporting administrative code to guide the underlying plan is required. The RPCGB will develop this underlying code for the City of Vestavia Hills.

### **Scope of Work**

#### **Task 1. Kick Off Meeting**

The RPCGB will facilitate *Kick-off* meeting with the City of Vestavia Hills, which would include key community leaders and partners. The group will discuss the project schedule, review base information needs, discuss the public participation process, identify additional stakeholders, locate future public meeting facilities, and discuss overall project direction. This meeting will also discuss the formation of the Planning and Implementation Team (PIT), which will, at a minimum, consist of the RPCGB, the Vestavia Hills Planning Commission Chairman, the City Planner, the City Clerk, and a designated member of the City Council.

#### **Task 2. Review Regulating Plan**

The RPCGB and the PIT will review and reach an understanding on the proposed regulating plan for each site. No code has been developed to accompany these regulating plans, so the RPCGB and the PIT must be in close agreement and understand the underlying plan before crafting the accompanying code.

#### **Task 3. Form Based Code Development**

The RPCGB, with input from the PIT, will develop a form based code to be applied for use within the City of Vestavia Hills. The code *Scope* and resulting regulating plans must include provisions for a plan review committee, must be able to accommodate a phased approach and provide for existing structures, and it must be graphical. The RPCGB will also create forms, checklists and operating procedures that must be followed in the administration of the code.

#### **Task 4. Public Involvement**

The RPCGB will conduct three (3) public meetings and a minimum of four (4) open work sessions. The RPCGB and the PIT will host these meetings. The first meeting will be a code development kick-off meeting to discuss the code and inform the public of the process. This is best done at a regularly scheduled planning commission meeting. The second meeting will present a draft of the plan and the third meeting will present the finished product to the Vestavia Hills planning commission for their approval, and request their recommendation for adoption by the city council. There will be multiple work sessions over the nine months of the project in which various draft products may be presented to the PIT for stage review and approval.

#### **Task 5. Design Review Standards**

The RPCGB and the PIT will develop design review guidelines for three sites along US 31 identified in the previous plan done for the corridor. Those sites include the Vestavia Plaza shopping center, Olde



Town Shopping Center, and the condemned Motor Lodge site. Aesthetic standards are an appropriate component of land use governance; it is paramount for the standards to protect against arbitrary and discretionary enforcement. The RPCGB and the PIT will survey and investigate design elements that will be appropriate for the community and the character of the three sites. The standards will create a character for the three sites, maintain traditional building elements, ensure buildings are in scale with the surroundings and add to the pedestrian experience using site planning concepts that enhance public spaces and preserve views.

### **Task 6. Corridor Level GIS Development**

The RPCGB will verify and correct GIS data within the US 31 corridor. GIS feature attributes that will be examined are zoning, land use, street names, number of lanes, water lines, sewer service areas, adjacent sidewalks, and parking lots. RPCGB will also remove duplicate parcels and duplicate records. The City of Vestavia Hills will be responsible for mailing and receiving address inquiries and RPCGB will use that information to update address records.

### **Task 7. Video Synopsis**

The RPCGB, working with a third-party contractor, will script and produce a short video explaining the form based code and the purpose and function of design review.

### **Task 8. Code Adoption**

The RPCGB will deliver to the City the calibrated Form Based Code developed under **Task 3**, which implements the regulating plans for each of the sites. The RPCGB will go through the formal approval and adoption process for the City of Vestavia Hills Form Based Code and attend meetings with the City of Vestavia Hills Planning Commission, Vestavia Hills Board of Zoning and Adjustment, and the Vestavia Hills City Council. The RPCGB will present the code to the City of Vestavia Hills Planning Commission at two (2) public hearings and make one (1) set of revisions based on instructions received following the hearing. RPCGB will present the Form Based Code to the City Council at two (2) meetings and make one (1) set of revisions based on instructions received following the meeting. Upon delivery of the final City of Vestavia Hills Form Based Code to the planning commission, the project will be considered complete.

### **Project Staffing & Cost**

The RPCGB will assign appropriate agency staff to complete this project. Additionally, RPCGB will procure third-party assistance to assist agency staff to complete this project. Third-party contractors will be secured through the Alabama Department of Transportation's designated procurement process.

### **Project Schedule**

This project will be completed within nine (9) months from the City of Vestavia Hills issuance of the Notice to Proceed.

The scope of services is based on RPCGB's understanding of regulatory approval processes and the desired product. Work will begin with the return of a signed copy of this contract and direction from the client. Many of the events in this work schedule are beyond the control of RPCGB. These events include obtaining data from Jefferson County government agencies, the review and approval of the preliminary and final plans, delays to the workflow as requested by the client, and information not available to RPCGB at the time this proposal was prepared.

### **Exclusions from Scope of Work**

The following services are not included in RPCGB's scope of services: environmental assessments, construction drawings, community or business association meetings beyond those identified in the project scope, road or utility design, and any other services not specifically listed in the project scope. Any Client directed changes to the final plan after the Client's approval of the draft revisions shall be reimbursed in accordance with RPCGB's billing rates in effect at the time the services are performed.

## **Compensation**

For services rendered, the Client agrees to pay RPCGB a lump sum fee of \$20,805.37. This amount represents the required 20% local match of the total project cost of \$104,026.84. The City of Vestavia Hills will be required to provide the local match prior to RPCGB starting the project.

**Project** Vestavia Hills Form Based Code  
**City/County** Vestavia Hills, Jefferson County Alabama  
**Description** Plan Development and Implementation  
**Scope of Work** Planning  
 Regional Planning Commission of Greater Birmingham

**Fee Proposal**

**PERSONNEL COST**

	Man-Days x Daily Rate			
Principal Planner (Land Use)	29.00	\$ 318.00	\$	9,222.00
Senior Planner (Land Use)	34.50	\$ 219.00	\$	7,555.50
Planner (Land Use)	44.00	\$ 229.00	\$	10,076.00
Planner (Land Use)	43.50	\$ 190.00	\$	8,265.00
Principal GIS Specialist	8.00	\$ 246.00	\$	1,968.00
Transportation Engineer	0.00	\$ 240.00	\$	-
			\$	37,086.50
Fringe Rate		147.00%	\$	54,517.16
Overhead Rate		171.00%	\$	93,224.34
Total Labor and Overhead			\$	93,224.34
<b>Out-of-Pocket Expenses</b>			\$	802.50
		<b>Sub-Total</b>	\$	<b>94,026.84</b>

**SUB-CONSULTANTS (attach man-day & fee FROM each sub-consultant; show total fee for each here)**

			\$	-
	1	\$ 10,000	\$	10,000.00
			\$	-
			\$	-
			\$	-
		<b>Sub-Total</b>	\$	<b>10,000.00</b>

<b>TOTAL FEE</b>	\$	<b>104,026.84</b>
<b>FEDERAL FUNDS</b>	\$	<b>83,221.47</b>
<b>LOCAL MATCH</b>	\$	<b>20,805.37</b>



# RPCGB

REGIONAL PLANNING COMMISSION  
OF GREATER BIRMINGHAM

Philip Amthor  
The Regional Planning Commission of Greater Birmingham  
2 20<sup>th</sup> Street North, Suite 1200  
Birmingham, Alabama 35203

March 26, 2013

Conrad Garrison  
City of Vestavia Hills  
513 Montgomery Hwy  
Vestavia Hills, AL 35216

Dear Mr. Garrison:

I am writing to confirm for you that funding for planning activities for the Regional Planning Commission of Greater Birmingham's member governments will be available for the foreseeable future. Our Building Communities Program, part of the Metropolitan Planning Organization's Unified Planning Work Program for Fiscal Year 2013, provides funds in an 80/20 match program for various transportation-related planning projects.

This funding source is ideal for the proposed project to develop a form-based code for parcels adjacent to or near US Highway 31 as it runs through Vestavia Hills. The proposed total budget for this project is \$104,026.84, making the federal funds we make available \$83,221.47 and the local match paid by the City of Vestavia Hills \$20,805.37. We look forward to working with the City of Vestavia Hills on this project.

Best Regards,

Philip Amthor, AICP  
Senior Planner