

**Vestavia Hills
City Council Agenda
April 28, 2014
5:00 PM**

1. Call to Order
2. Roll Call
3. Invocation – Rev. Roger Salter, St. Matthew’s Episcopal Church
4. Pledge Of Allegiance Led By Cub Scouts, Pack 1
5. Announcements, Candidate and Guest Recognition
6. City Manager’s Report
7. Councilors’ Reports
8. Financial Report – Melvin Turner III, Finance Director
9. Approval of Minutes – April 14, 2014 (Regular Meeting) and April 17, 2014 (Work Session)

Old Business

10. Ordinance Number 2494 – Rezoning – 1421 Round Hill Road; Lot 19, 5th Addition To Vesthaven, Sector 4; Rezone From Vestavia Hills R-2 (Residential) To Vestavia Hills Inst-1 (Institutional); City Of Vestavia Hills, Owner (*public hearing*)
11. Ordinance Number 2495 – An Ordinance Granting A Conditional Use Approval For A 120’ Stealth Monopole (Monopine) On Property Located At 2062 Columbiana Road; AT&T Petitioner; Davis Properties, LLC, Owner; N. Andrew Rotenstreich, Representing (*public hearing*)
12. Resolution Number 4580 – A Resolution Authorizing The Mayor And City Manager To Enter Into An Agreement With Daniel Corporation As Master Developers Of Patchwork Farms (*public hearing*)
13. Ordinance Number 2498 – An Ordinance Adopting And Enacting A New Municipal Code Of Ordinances For The City Of Vestavia Hills (*public hearing*)

New Business

14. Resolution Number 4585 - A Resolution Appointing A Member To The Vestavia Hills Board Of Education
15. Resolution Number 4586 - A Resolution Declaring Certain Personal Property As Surplus And Directing The Sale/Disposal Of Said Property

16. Resolution Number 4587 - A Resolution Authorizing The City Manager To Execute And Deliver An Application For A CWSRF Loan From The Alabama Water Pollution Control Authority
17. Resolution Number 4588 – A Resolution Authorizing The City Manager To Make Application Through The FY 2014 Transportation Alternatives Program For Construction Of A Tunnel To Connect Pedestrian Routes In Vestavia Hills

First Reading (No Action Taken At This Meeting)

18. Citizens Comments
19. Discussion With GMC Concerning Interchange Improvements
20. With Motion For Adjournment

CITY OF VESTAVIA HILLS

CITY COUNCIL

MINUTES

APRIL 14, 2014

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:

Jeff Downes, City Manager
Rebecca Leavings, City Clerk
Melvin Turner, Finance Director
George Sawaya, Deputy Treasurer
Christopher Brady, City Engineer

Invocation was given by Samuel Bryant, Vestavia Primitive Baptist Church followed by the Pledge of Allegiance.

ANNOUNCEMENTS, GUEST RECOGNITION

- Tom Vigneulle, Candidate for 6th Congressional District, introduced himself and asked for support in the upcoming primary election.
- David Wheeler, 2532 Crossgate Place, introduced himself and declared that he is a candidate for State House District 47.
- Steve Ammons announced that he is a candidate for Jefferson County Tax Collector in the upcoming election.

PROCLAMATION

The Mayor presented a Proclamation designating April 29, 2014 as a “Day of Prayer and Thanksgiving.” Mr. Downes read the Proclamation.

PROCLAMATION

The Mayor presented a Proclamation designating April 21, 2014 as a "PowerTalk21 Day." Mr. Downes read the Proclamation.

CITY MANAGER REPORT

- Mr. Downes gave an update on the progress of tag renewals at the City. He indicated that the Finance Department processed 349 transactions during the first two weeks. He commended the Finance Department on handling this renewal on top of performing their day-to-day duties.
- Mr. Downes asked Chief St. John to update the Council on the selection of his Assistant Fire Chief.
 - Chief St. John stated that he studied the issue of an Assistant Chief when Chief Bonner retired. He explained that the size of the department warrants two assistant chiefs. One to handle administration and one to handle operations. This is similar to other departments the size of the Vestavia Hills Fire Department. Chief St. John announced that Terry Ray was selected as Assistant Chief for Administration and Marvin Green has been selected as Assistant Chief for Operations. Chief St. John explained the qualifications of each individual and indicated he feels this is a good reorganization for the Department.
- Mr. Downes announced that administrative offices in the City will be closed in observance of the Good Friday holiday on Friday, April 18, 2014.

COUNCILOR REPORTS

- Mr. Henley stated that the Council received 4 applications for an upcoming vacancy on the Vestavia Hills Board of Education. He asked the Council for dates and times for interviews. After discussion, Mr. Henley indicated that interviews would begin at 8 AM, Tuesday, April 22 and asked the City Clerk to set up interview schedules. The new appointment will be announced on April 28.
- Mr. Henley stated that the Board of Education has narrowed down the field of applicants for a new Superintendent. Interviews will be posted soon.
- Mr. Ammons commended the Police Department on a recent drug bust in the City and indicated that the arrested individuals are being each being held on a \$1 million bond.
- Mr. Pierce gave an update and details of a voluntary drug testing program beginning during registration upon enrollment in the next school year. He stated that it is an exciting program and is being met with a lot of positive enforcement.
- The Mayor stated that City Clerk Rebecca Leavings had been awarded the Master Municipal Clerk (MMC) designation by the International Institute of Municipal Clerks. He congratulated her on the accomplishment.

- The Mayor stated that the Dogwood Festival will be kicking off with a lawn judging by the Beautification Board.
- Mayor Zaragoza reminded everyone of the Mayor's Prayer Breakfast to be held April 29, 2014 beginning at 7:30 at the Vestavia Country Club. He encouraged everyone to purchase a ticket and attend.

PRESENTATION

Joan Wright, Childcare Resources, presented the Mayor and Council with the annual report and thanked the Council for continued support.

APPROVAL OF MINUTES

The minutes of the March 18, 2014 (Special Meeting), March 20, 2014 (Work Session) and March 24, 2014 (Regular Meeting) were presented for approval.

MOTION Motion to dispense with the reading of the minutes of the meeting of March 18, 2014 (Special Meeting), March 20, 2014 (Work Session) and March 24, 2014 (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. Sharp – yes	Mr. Ammons – yes
Mayor Zaragoza – yes	motion carried.

OLD BUSINESS

RESOLUTION NUMBER 4569

Resolution Number 4569 – Annexation – 90-Day Final – 3700 Altadena Circle; Lot 8, Ridge Forest; Ralph and Alison McCall, Owners (*public hearing*)

MOTION Motion to approve Resolution Number 4569 was by Mr. Pierce and second was by Mr. Henley.

The Mayor stated that this annexation and the seven that follow will be discussed together.

Mr. Pierce gave the report from the Annexation Committee with regard to each property and stated that no adverse information was found on any property.

The Mayor asked the applicants for annexation to stand and be recognized. The owners of all properties were present.

The Mayor opened the floor for a public hearing. There being no one to address the Council on these annexation requests, the Mayor closed the public hearing and called for the question.

Roll call vote as follows:

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

ORDINANCE NUMBER 2486

Ordinance Number 2486 – Annexation – Overnight - 3700 Altadena Circle; Lot 8, Ridge Forest; Ralph and Alison McCall, Owners (public hearing)

MOTION Motion to approve Ordinance Number 2486 was by Mr. Pierce and second was by Mr. Ammons.

The Mayor opened the floor for a public hearing. There being no one to address the Council on this matter, the Mayor closed the public hearing and called for the question.

Roll call vote as follows:

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

RESOLUTION NUMBER 4570

Resolution Number 4570 – Annexation – 90-Day Final – 4668 Caldwell Mill Road; Layne and Amy Savoie, Owners (public hearing)

MOTION Motion to approve Resolution Number 4570 was by Mr. Pierce and second was by Mr. Ammons.

The Mayor opened the floor for a public hearing. There being no one to address the Council on this matter, the Mayor closed the public hearing and called for the question.

Roll call vote as follows:

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

ORDINANCE NUMBER 2487

**Ordinance Number 2487 – Annexation – Overnight – 4668 Caldwell Mill Road;
Layne and Amy Savoie, Owners (public hearing)**

MOTION Motion to approve Ordinance Number 2487 was by Mr. Pierce and second was by Mr. Ammons.

The Mayor opened the floor for a public hearing. There being no one to address the Council on this matter, the Mayor closed the public hearing and called for the question.

Roll call vote as follows:

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

RESOLUTION NUMBER 4571

**Resolution Number 4571 – Annexation – 90-Day Final – 2640 Dolly Ridge Road;
Willard and Ruth Bowers, Owners (public hearing)**

MOTION Motion to approve Resolution Number 4571 was by Mr. Pierce and second was by Mr. Henley.

The Mayor opened the floor for a public hearing. There being no one to address the Council on this matter, the Mayor closed the public hearing and called for the question.

Roll call vote as follows:

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

ORDINANCE NUMBER 2488

**Ordinance Number 2488 – Annexation – Overnight – 2640 Dolly Ridge Road;
Willard and Ruth Bowers, Owners (public hearing)**

MOTION Motion to approve Ordinance Number 2488 was by Mr. Pierce and second was by Mr. Ammons.

The Mayor opened the floor for a public hearing. There being no one to address the Council on this matter, the Mayor closed the public hearing and called for the question.

Roll call vote as follows:

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

RESOLUTION NUMBER 4572

Resolution Number 4572 – Annexation – 90-Day Final – 3548 Valley Circle; Lot 12, Block 3, Dolly Ridge Estates, 2nd Addition; Benjamin and Carol Byrket, Owners (public hearing)

MOTION Motion to approve Resolution Number 4572 was by Mr. Pierce and second was by Mr. Sharp.

The Mayor opened the floor for a public hearing. There being no one to address the Council on this matter, the Mayor closed the public hearing and called for the question.

Roll call vote as follows:

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

ORDINANCE NUMBER 2489

Ordinance Number 2489 – Annexation – Overnight - 3548 Valley Circle; Lot 12, Block 3, Dolly Ridge Estates, 2nd Addition; Benjamin and Carol Byrket, Owners (public hearing)

MOTION Motion to approve Ordinance Number 2489 was by Mr. Pierce and second was by Mr. Ammons.

The Mayor opened the floor for a public hearing. There being no one to address the Council on this matter, the Mayor closed the public hearing and called for the question.

Roll call vote as follows:

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

RESOLUTION NUMBER 4573

Resolution Number 4573 – Annexation – 90-Day Final – 2760 Altadena Lake Drive; Lot 3, Block 5, First Addition to Altadena Valley, Fifth Sector; Lynne R. Smitherman, Trustee, Owner (*public hearing*)

MOTION Motion to approve Resolution Number 4573 was by Mr. Pierce and second was by Mr. Henley.

The Mayor opened the floor for a public hearing. There being no one to address the Council on this matter, the Mayor closed the public hearing and called for the question.

Roll call vote as follows:

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

ORDINANCE NUMBER 2490

Ordinance Number 2490 – Annexation – Overnight – 2760 Altadena Lake Drive; Lot 3, Block 5, First Addition to Altadena Valley, Fifth Sector; Lynne R. Smitherman, Trustee, Owner (*public hearing*)

MOTION Motion to approve Ordinance Number 2490 was by Mr. Pierce and second was by Mr. Ammons.

The Mayor opened the floor for a public hearing. There being no one to address the Council on this matter, the Mayor closed the public hearing and called for the question.

Roll call vote as follows:

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

RESOLUTION NUMBER 4574

Resolution Number 4574 – Annexation – 90-Day Final – 2468 Kenvil Circle; Lot 42, Buckhead, 2nd Sector; Tara Adams, Owner (*public hearing*)

MOTION Motion to approve Resolution Number 4574 was by Mr. Pierce and second was by Mr. Henley.

The Mayor opened the floor for a public hearing. There being no one to address the Council on this matter, the Mayor closed the public hearing and called for the question.

Roll call vote as follows:

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

ORDINANCE NUMBER 2491

Ordinance Number 2491 – Annexation – Overnight – 2468 Kenvil Circle; Lot 42, Buckhead, 2nd Sector; Tara Adams, Owner (public hearing)

MOTION Motion to approve Ordinance Number 2491 was by Mr. Pierce and second was by Mr. Henley.

The Mayor opened the floor for a public hearing. There being no one to address the Council on this matter, the Mayor closed the public hearing and called for the question.

Roll call vote as follows:

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

RESOLUTION NUMBER 4575

Resolution Number 4575 – Annexation – 90-Day Final – 2400 Rocky Ridge Road; Lot 105, Buckhead, 4th Sector; Michael and Donya Rumore, Owners (public hearing)

MOTION Motion to approve Resolution Number 4575 was by Mr. Pierce and second was by Mr. Ammons.

The Mayor opened the floor for a public hearing. There being no one to address the Council on this matter, the Mayor closed the public hearing and called for the question.

Roll call vote as follows:

Mr. Pierce – yes	Mr. Henley – yes
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Mr. Sharp – yes
Mayor Zaragoza – yes

Mr. Ammons – yes
motion carried.

ORDINANCE NUMBER 2492

Ordinance Number 2492 – Annexation – Overnight – 2400 Rocky Ridge Road; Lot 105, Buckhead, 4th Sector; Michael and Donya Rumore, Owners (public hearing)

MOTION Motion to approve Ordinance Number 2492 was by Mr. Pierce and second was by Mr. Henley.

The Mayor opened the floor for a public hearing. There being no one to address the Council on this matter, the Mayor closed the public hearing and called for the question.

Roll call vote as follows:

Mr. Pierce – yes
Mr. Sharp – yes
Mayor Zaragoza – yes

Mr. Henley – yes
Mr. Ammons – yes
motion carried.

RESOLUTION NUMBER 4576

Resolution Number 4576 – Annexation – 90-Day Final – 2835 Acton Road; Lot 1, Adams Resurvey; Brantley Bowden, Owner (public hearing)

MOTION Motion to approve Resolution Number 4576 was by Mr. Pierce and second was by Mr. Ammons.

The Mayor opened the floor for a public hearing. There being no one to address the Council on this matter, the Mayor closed the public hearing and called for the question.

Roll call vote as follows:

Mr. Pierce – yes
Mr. Sharp – yes
Mayor Zaragoza – yes

Mr. Henley – yes
Mr. Ammons – yes
motion carried.

ORDINANCE NUMBER 2493

Ordinance Number 2493 – Annexation – Overnight - 2835 Acton Road; Lot 1, Adams Resurvey; Brantley Bowden, Owner (public hearing)

MOTION Motion to approve Ordinance Number 2493 was by Mr. Pierce and second was by Mr. Henley.

The Mayor opened the floor for a public hearing. There being no one to address the Council on this matter, the Mayor closed the public hearing and called for the question.

Roll call vote as follows:

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

NEW BUSINESS

RESOLUTION NUMBER 4578

Resolution Number 4578 – A Resolution Declining Execution Of An Agreement Between The Alabama 911 Board And The City Of Vestavia Hills

MOTION Motion to approve Resolution Number 4578 was by Mr. Ammons and second was by Mr. Sharp.

Chief St. John gave a brief background relating to the 911 funds and the proposed agreement to escrow funds with the Alabama 911 Board. He stated that for auditing purposes, it was determined that the best course of action for the City would be to escrow the funds here rather than with the Alabama 911 Board. This Resolution will decline executing the proposed Alabama 911 agreement.

Mr. Henley stated that the City is not refusing to pay 911 funds, just escrowing the funds in-house until payment is called on the upgrades.

St. John stated that all of the funds are special funds and can only be utilized for this purpose. The funds will be held here until needed for upgrades and required payments by the Board.

There being no further discussion on the matter, the Mayor called for the question. Roll call vote as follows:

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

RESOLUTION NUMBER 4579

Resolution Number 4579 – A Resolution To Continue The Present Premium Pay Policy Of The City Of Vestavia Hills

MOTION Motion to approve Resolution Number 4579 was by Mr. Ammons and second was by Mr. Pierce.

Mr. Downes explained the current premium pay policy which is limited to public safety employees and the changes adopted by the Personnel Board within the timing of the current budget. He stated that this Resolution will keep the premium pay policy intact as it is today so there's no change within the budgeted salary structure of the departments and will keep it the same until changed by the Council.

There being no further discussion on the matter, the Mayor called for the question. Roll call vote as follows:

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

RESOLUTION NUMBER 4583

Resolution Number 4583 – A Resolution Approving An 020-Restaurant Liquor License For Thirty One LLC D/B/A Thirty One; Edward Beard Webber, Executive

MOTION Motion to approve Resolution Number 4583 was by Mr. Ammons and second was by Mr. Pierce.

Mr. Downes explained that the former Bar 31 has restructured and will soon reopen as a restaurant rather than a private club lounge.

Ed Webber was present in regard to the request.

Chief Rary stated that his department has reviewed the information and has no problems with the request.

The Mayor opened the floor for a public hearing. There being no one to address the Council on this matter, the Mayor closed the public hearing and called for the question.

Roll call vote as follows:

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

RESOLUTION NUMBER 4584

Resolution Number 4584 – A Resolution Authorizing The City Manager To Execute and Deliver An Agreement With ALDOT To Repair, Resurface US-31

MOTION Motion to approve Resolution Number 4584 was by Mr. Henley and second was by Mr. Sharp.

Mr. Downes explained that this Resolution authorizes all actions necessary to allow ALDOT to resurface US 31 beginning in June. This also includes replacement and repair of the loops for the traffic signals.

There being no further discussion on the matter, the Mayor called for the question. Roll call vote as follows:

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

ORDINANCE NUMBER 2496

Ordinance Number 2496 – An Ordinance To Provide For The Levying And Collection Of Municipal Taxes In Shelby County (Annual Tax Levy)

MOTION Motion to approve Ordinance Number 2496 was by Mr. Pierce and second was by Mr. Ammons.

Mr. Downes explained that this is the annual tax levy ordinance in order to authorize the assessment and collection of municipal ad valorem taxes in Shelby County.

There being no further discussion on the matter, the Mayor called for the question. Roll call vote as follows:

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

ORDINANCE NUMBER 2497

Ordinance Number 2497 – An Ordinance To Provide For The Levying And Collection Of Municipal Taxes In Jefferson County (Annual Tax Levy)

MOTION Motion to approve Ordinance Number 2497 was by Mr. Henley and second was by Mr. Ammons.

Mr. Downes explained that this is the annual tax levy ordinance in order to authorize the assessment and collection of municipal ad valorem taxes in Jefferson County.

There being no further discussion on the matter, the Mayor called for the question. Roll call vote as follows:

Mr. Pierce – yes	Mr. Henley – yes
Mr. Sharp – yes	Mr. Ammons – 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 on April 28, 2014 at 5 PM.

- Ordinance Number 2494 – Rezoning – 1421 Round Hill Road; Lot 19, 5th Addition To Vesthaven, Sector 4; Rezone From Vestavia Hills R-2 (Residential) To Vestavia Hills Inst-1 (Institutional); City Of Vestavia Hills, Owner
- Ordinance Number 2495 – An Ordinance Granting A Conditional Use Approval For A 120' Stealth Monopole (Monopine) On Property Located At 2062 Columbiana Road; AT&T Petitioner; Davis Properties, LLC, Owner; N. Andrew Rotenstreich, Representing
- Resolution Number 4580 – A Resolution Authorizing The Mayor And City Manager To Enter Into An Agreement With Daniel Corporation As Master Developers Of Patchwork Farms

CITIZENS COMMENTS

Mr. Henley asked for an update on the flooding event on US 31.

Mr. Downes and the Mayor updated the Council on the flooding damages, the cleaning of culverts, disaster declaration, etc.

EXECUTIVE SESSION

The Mayor stated that the Council needed to move into executive session in order to discuss the purchase/sale of property. He stated that the session would be an estimated 45 minutes and that there'd be no business conducted afterward. He opened the floor for a motion.

MOTION Motion to move into executive session for an estimated 45 minutes for the potential purchase/sale of property was by Mr. Pierce and second was by Mr. Ammons. Roll call vote as follows:

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

The Council exited the Chamber and moved into executive session at 6:15 PM. AT 7:30 PM, the Council re-entered the Chamber and the Mayor called the meeting back to order.

MOTION Motion to adjourn was by Mr. Pierce and second was by Mr. Ammons. Meeting adjourned at 7:32 PM.

Alberto C. Zaragoza, Jr.
Mayor

Attested by:

Rebecca Leavings
City Clerk

CITY OF VESTAVIA HILLS

CITY COUNCIL

WORK SESSION

MINUTES

APRIL 17, 2014

The City Council of Vestavia Hills met in a regularly scheduled work session on this date at 4:30 PM following posting/publishing pursuant to Alabama law. The Mayor called the work session to order and the acting City Clerk checked 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:

Jeff Downes, City Manager
Rebecca Leavings, City Clerk
Lt. Kevin York, Police Department
Jim St. John, Fire Chief

The Mayor called the work session to order.

The Mayor gave an update on the flooding event on US 31 and indicated that ALDOT has crews at the culvert to clean the creek and the barrels. The Mayor also gave an update on the demolition of the Vestavia Motor Lodge and reported that the slab will remain on the property for various reasons, including maintenance of the property and safety. The committee studying the food trucks in the City will soon make a recommendation to the City Manager concerning a proposed ordinance to regulate them. He stated that this is a growing industry and needs to be addressed early.

Mr. Downes gave an update on a de-annexation request and indicated that the architects have submitted renderings of the proposed interiors of the new City Hall facility.

The Mayor indicated that there is a need for an executive session to discuss the good name and character of an individual. The Council entered into executive session at 5:07 PM. The Council exited executive session at 6 PM and the Mayor adjourned the work session at 6:01 PM.

Alberto C. Zaragoza, Jr.
Mayor

Attested by:

Rebecca Leavings
City Clerk

ORDINANCE NUMBER 2494

AN ORDINANCE TO FURTHER AMEND THE ZONING ORDINANCE AND THE ZONING MAP OF THE CITY OF VESTAVIA HILLS, ALABAMA, ADOPTED SEPTEMBER 16, 1985, AND AS LAST AMENDED SO AS TO CHANGE THE CLASS OF DISTRICT ZONING OF A PARCEL OF PROPERTY FROM VESTAVIA HILLS R-2 TO VESTAVIA HILLS INST-1

BE IT ORDAINED by the City Council of the City of Vestavia Hills, Alabama, as follows: That the Zoning Ordinance and Zoning Map of the City of Vestavia Hills, Alabama, adopted September 16, 1985, and as last amended so as to change the class of district zoning of the following described property from Vestavia Hills R-2 to Vestavia Hills Inst-1;

1421 Round Hill Road
Lot 19, 5th Addition to Vesthaven, Sector 4
City of Vestavia Hills, Owner(s)

APPROVED and ADOPTED this the 28th day of April, 2014.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

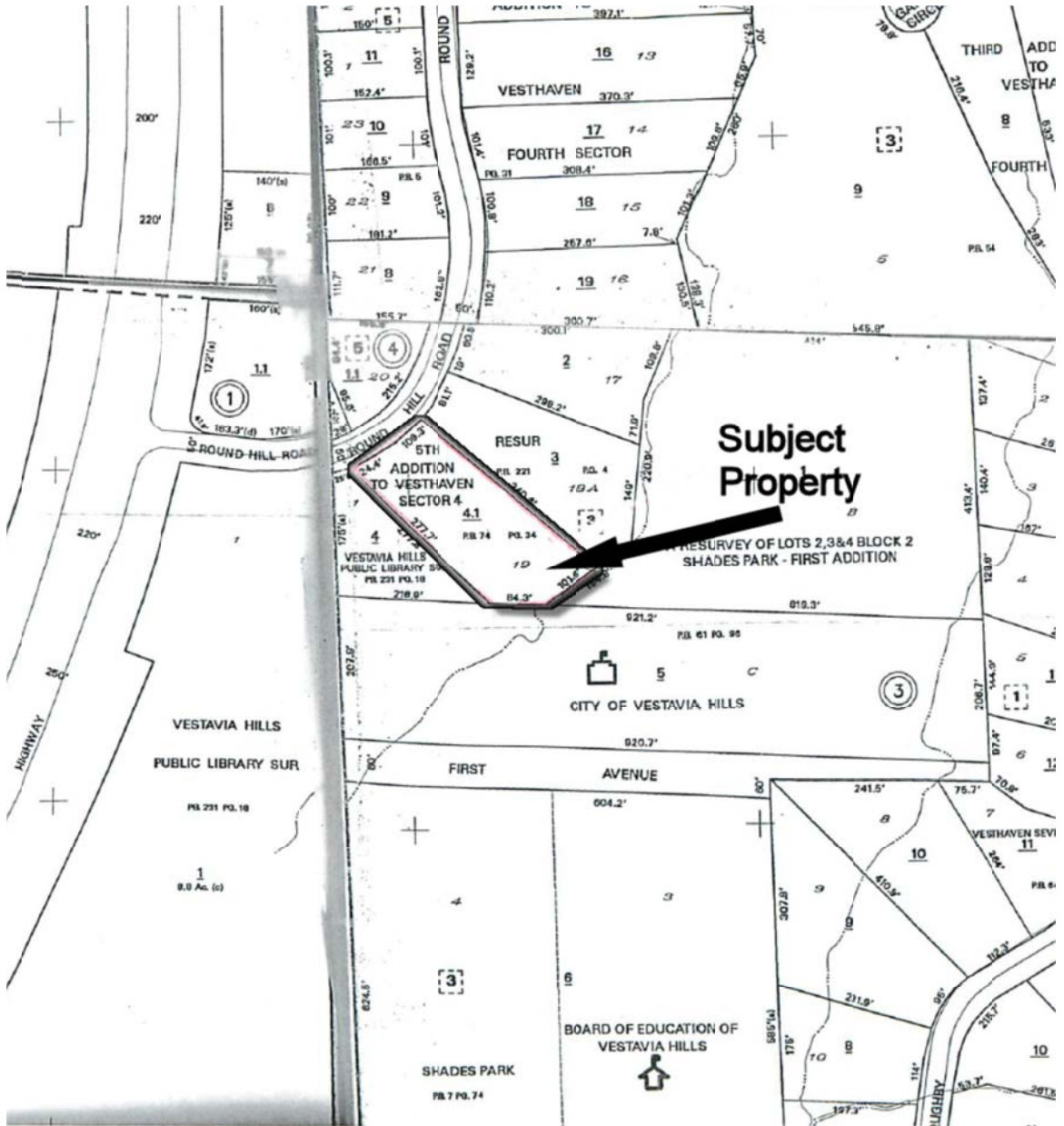
Rebecca Leavings
City Clerk

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 # 2494 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 28th day of April, 2014 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 _____, 2014.

Rebecca Leavings
City Clerk



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

Date: **MARCH 13, 2014**

- **CASE:** P-0314-03
- **REQUESTED ACTION:** Rezoning from Vestavia Hills R-2 to Vestavia Hills Inst-1
- **ADDRESS/LOCATION:** 1421 Round Hill Rd
- **APPLICANT/OWNER:** City of Vestavia Hills
513 Montgomery Hwy
Vestavia Hills, AL 35216
- **GENERAL DISCUSSION:** Lot is located directly to the east of the Library in the Forrest. The City has purchased this lot to expand library parking. The new parking lot will hold 46 spaces. The lot did have covenants prohibiting the rezoning that have been waived.
- **VESTAVIA HILLS COMPREHENSIVE PLAN:** The request may not be consistent with the plan which calls for a neighborhood use; however, it is not spot zoning because it is adjacent to an institutional use.
- **STAFF REVIEW AND RECOMMENDATION:**
 1. **City Planner Review:** I have looked at all of the relevant zoning / subdivision requirements related to this proposal, including application, notification, setbacks, area of lot development, etc. Notification has been sent to property owners pursuant to Alabama law. I have reviewed this request and find it does meet the minimum requirements of the proposed zoning.

City Planner Recommendation: No recommendation
 2. **City Engineer Review:** I have reviewed the application and I have no issues with this request.
 3. **City Fire Marshal Review:** I have reviewed the application and I have no issues with this request.
 4. **Building Safety Review:** I have reviewed the application and I have no issues with this request.

MOTION: Mr. Visintainer made a motion to recommend approval for Rezoning of 1421 Round Hill Rd. from Vestavia Hills R-2 to Vestavia Hills Inst-1. Second was by Mr. Burrell. Motion was carried on a roll call; vote as follows:

Mr. Goodwin – yes

Mr. Visintainer – yes

Mrs. Fancher – yes

Mr. House – yes

Motion carried.

Mr. Burrell – yes

Mr. Brooks – yes

Mr. Sharp – yes

Mr. Larson – yes

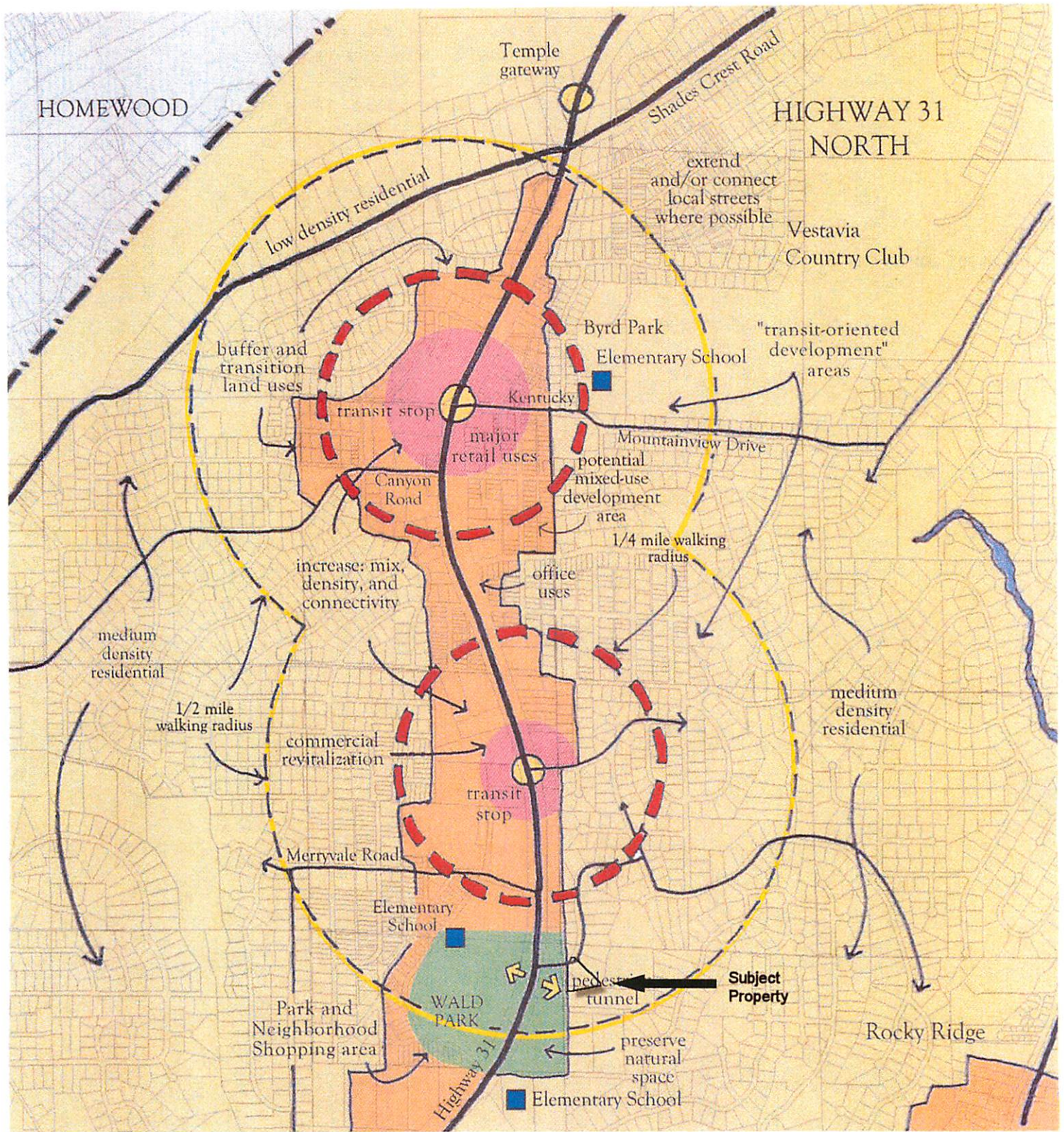


Figure 17: Highway 31 North
Land Use Analysis

- | | |
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| <ul style="list-style-type: none"> Neighborhood - primarily low / medium density single-family residential areas with higher densities near village center(s). Other uses may include schools, places of worship, recreational areas, and open space. Village Center - mixed use centers with highest densities in core areas. Mix of uses should include retail and service businesses, professional offices, high density residential areas, institutions, recreation areas, and public spaces. Commercial Core - primarily high density, retail and service business areas with professional offices and multi-family residences on upper floors or on periphery. Other uses may include institutions and public space. Gateways and Nodes - Gateways are entryways into the community or village enhanced with consistent signage, landscaping, and other elements. Nodes are sites, such as transit stops, where public spaces, signage, and other public design elements should be considered. | <ul style="list-style-type: none"> Professional Offices - primarily professional office uses. Density should vary according to surroundings. Other uses may include retail and services (supporting offices and employees), places of worship, public spaces, and open space. Recreation and Open Space - public and private recreation facilities and preserved natural spaces. Recreation facilities may be active, passive or combined. Open spaces are areas preserved in a natural state and may include passive recreational uses. Trailheads - Trailheads are public sites along a trail, where bike racks, seating, parking, and public amenities are provided for trail users. Schools - School facilities administrated by the Vestavia Hills School System. |
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ORDINANCE NUMBER 2495

**AN ORDINANCE GRANTING A CONDITIONAL USE
APPROVAL FOR A 120' STEALTH MONOPOLE (MONOPINE)**

WHEREAS, on December 13, 2010 the City Council of the City of Vestavia Hills, Alabama approved and adopted Ordinance Number 2331 entitled the Vestavia Hills Zoning Code and establishing a conditional use approval for certain uses not permissible by right in zoning classifications; and

WHEREAS, on February 6, 2014, Davis Properties LLC submitted an application for construction and operation of a 120' stealth monopole (monopine) on the property located at 2062 Columbiana Road currently zoned Vestavia Hills B-1; and

WHEREAS, Section 7.9 of the Vestavia Hills Zoning Code sets forth development criteria for new telecommunications facilities; and

WHEREAS, AT&T has shown a need for added coverage in the general area of subject property in and along area rights-of-way; and

WHEREAS, the Vestavia Hills Planning and Zoning Commission at its regular meeting of March 13, 2014 voted unanimously to recommend approval of the request for a 120' stealth monopole (monopine) be approved as requested, with certain stipulations; and

WHEREAS, a copy of said application dated February 6, 2014 is attached and hereby incorporated into this Ordinance Number 2495.

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

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

1. Conditional Use Approval is hereby approved for AT&T Mobility for construction and operation of the Monopole on property owned by Davis Properties, LLC and located at 2062 Columbiana Road with the following conditions:
 - (a) The Monopole shall be a monopine stealth structure limited to 120' in height with accompanying facilities; and
 - (b) The Monopole "branches and aesthetics" shall be kept in good condition while in use; and
 - (c) Any and all fencing surrounding the Monopole and related facilities shall be kept in good condition; and
 - (d) The areas surrounding the Monopole and related facilities shall be adequately landscaped; and
 - (e) Landscaping and proposed fencing shall be reviewed and approved by the City's Design Review Board.
2. If at any time the Monopole is destroyed or its intended use as a telecommunications tower terminated, and such structure is not reconstructed, refurbished or used for communication purposes for a period in excess of three hundred and sixty-five (365) days from the date of destruction or non-use, said Ordinance Number 2495 and said conditional use approval shall be nullified.

ADOPTED and APPROVED this the 28th day of April, 2014.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

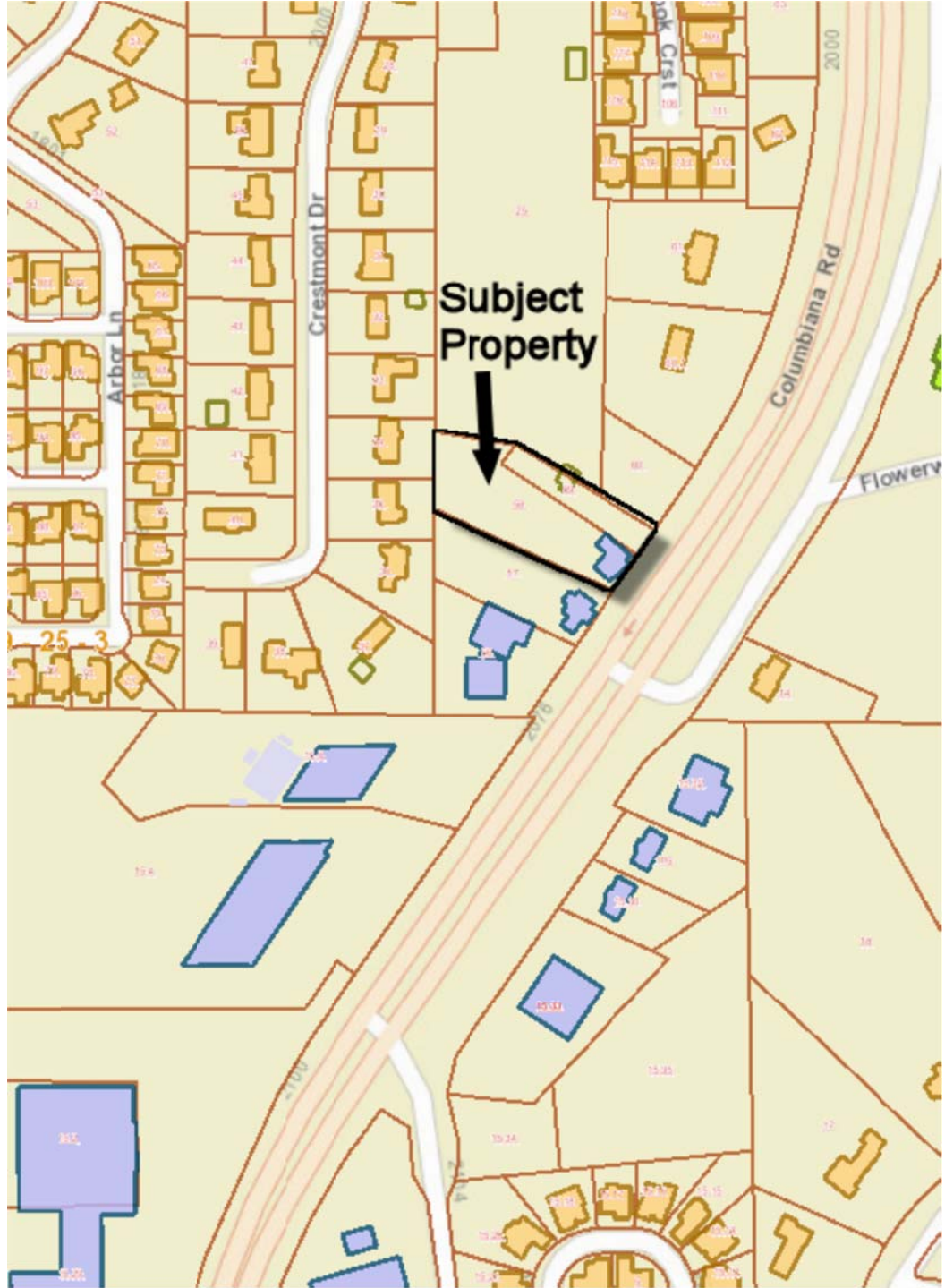
Rebecca Leavings
City Clerk

CERTIFICATION:

I, Rebecca Leavings, as Acting City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance # 2495 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 28th day of April, 2014 as same appears in the official records of said City.

Posted at Vestavia Hills Municipal Center, Vestavia Hills Library in the Forest, New Merkle House and Vestavia Hills Recreational Center this the _____ day of _____, 2014.

Rebecca Leavings
City Clerk



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

Date: **MARCH 13, 2014**

- **CASE:** P-0314-04
- **REQUESTED ACTION:** Conditional Use approval for a 120' telecommunications facility
- **ADDRESS/LOCATION:** 2062 Columbiana Rd.
- **APPLICANT/OWNER:** Davis Properties
2062 Columbiana Rd.
Vestavia Hills, AL 35216
205-798-8293
- **REPRESENTING AGENT:** Baker, Donelson, Bearman, Caldwell & Berkowitz,
P.C.
205-798-8293
- **GENERAL DISCUSSION:** Lot is located on Columbiana Rd. and house the Steven Davis & Company, Inc. CPA firm. The applicant and AT&T wish to construct a 120' cell phone tower towards the rear of the property in a wooded area. The pole would sit on an 80'x80 pad. The applicant has the option of building a monopole tower or a monopine tower. A monopine tower is a tower entwined with pine tree-like branches. The application meets the requirements for telecommunication facilities in Section 7.9 of the Zoning Code. The property is currently zoned Vestavia Hills B-1.
- **VESTAVIA HILLS COMPREHENSIVE PLAN:** The request is consistent with the Comprehensive Plan.
- **STAFF REVIEW AND RECOMMENDATION:**
 1. **City Planner Review:** I have looked at all of the relevant zoning / subdivision requirements related to this proposal, including application, notification, setbacks, area of lot development, etc. Notification has been sent to property owners pursuant to Alabama law. I have reviewed this request and find it does meet the minimum requirements of the proposed zoning.

City Planner Recommendation: Recommended with a monopine tower.

2. **City Engineer Review:** I have reviewed the application and I have no issues with this request.
3. **City Fire Marshal Review:** I have reviewed the application and I have no issues with this request.
4. **Building Safety Review:** I have reviewed the application and I have no issues with this request.

- **MOTION:** Motion to recommend approval with the conditions that

1. A “Monopine” tower be built;
2. The fence surrounding the structure be decorative in nature;
3. The area be adequately landscaped the Vestavia Hills Design Review Board’s satisfaction

was made by Mr. Burrell and 2nd was made by Mr. Visintainer. Motion was carried on a roll call; vote as follows:

Mr. Goodwin – yes	Mr. Burrell – yes
Mr. Visintainer – yes	Mr. Brooks – yes
Mrs. Fancher – yes	Mr. Sharp – yes
Mr. House – yes	Mr. Larson – yes

Motion carried.

RESOLUTION NUMBER 4580

A RESOLUTION AUTHORIZING THE MAYOR AND CITY MANAGER TO ENTER INTO A MASTER DEVELOPMENT AND BROKERAGE SERVICES AGREEMENT WITH DANIEL CORPORATION FOR THE DEVELOPMENT OF THE REMAINDER OF PATCHWORK FARMS

WHEREAS, on December 11-13, 2013, the City of Vestavia Hills, in coordination with consultant groups Goodwyn Mills and Cawood and Dover Kohl, hosted a planning charrette to determine the highest use and best planned development for the remaining undeveloped areas of Patchwork Farms; and

WHEREAS, the charrette ended with a detailed plan for a “village type” center to be located on the property, along with various mixed uses and strong recommendation made for the City to retain a master development to finalize and implement said planned development; and

WHEREAS, the City Manager has worked with Daniel Corporation to act as master developer for Patchwork Farms and has submitted a Master Development and Brokerage Services Agreement (“Agreement”) for said services, a copy of which is marked as “Exhibit A”, attached to and incorporated into this Resolution Number 4580; and

WHEREAS, the Mayor and the City Council have studied the proposed agreement and have concurred with the City Manager’s recommendation that it is in the best public interest to authorize the execution and delivery of said agreement.

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

1. The Mayor and City Manager are hereby authorized to execute and deliver said Agreement;
2. This Resolution Number 4580 shall become effective immediately upon adoption and approval.

ADOPTED and APPROVED this the 28th day of April, 2014.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

MASTER DEVELOPMENT AND BROKERAGE SERVICES AGREEMENT

BETWEEN

CITY OF VESTAVIA HILLS, ALABAMA

AND

DANIEL CORPORATION

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Exhibits:

- A -- Legal Description of BOE Property
- B -- Legal Description of City Property
- C -- Site Plan Reflecting “Current Site” and “New Site” for Northport Property
- D -- Time Schedule

Attachment “I”--Insurance

MASTER DEVELOPMENT AND BROKERAGE SERVICES AGREEMENT

THIS MASTER DEVELOPMENT AND BROKERAGE SERVICES AGREEMENT (this "Agreement") is made and entered into as of the ___ day of _____, 2014 by and between **CITY OF VESTAVIA HILLS, ALABAMA**, an Alabama municipal corporation (the "City"), and **DANIEL CORPORATION**, an Alabama corporation ("Daniel").

R E C I T A L S:

The City is the owner of the City Property, as hereinafter defined, and has or will enter into an agreement by which the BOE, as hereinafter defined, will agree to sell and the City will have the right to purchase the BOE Property, as hereinafter defined, which City Property and BOE Property consist of approximately 46.3 acres, more or less, and is commonly known as Patchwork Farms.

The City has determined that it would be necessary, proper and in the public interest to promote the economic and commercial development of Patchwork Farms in order to maintain a strong local economy, increase employment opportunities, broaden the City's tax basis, increase revenues, provide necessary services to the residents of the City and thus improve the overall quality of life for all residents of the City.

The City desires to engage Daniel to assist the City with the planning, design and development of Patchwork Farms as a mixed-use project which serves the community and creates long-term value for the City and its residents.

Daniel has agreed to provide development management and brokerage services to the City with respect to Patchwork Farms in accordance with the terms and provisions of this Agreement.

The parties desire to enter into this Agreement in order to set forth their understanding and agreements regarding the specific duties and responsibilities of each party hereto.

NOW, THEREFORE, in consideration of the premises, the mutual undertakings, terms, conditions and agreements set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the City and Daniel, the parties agree as follows:

ARTICLE I DEFINITIONS

1.01 **Definitions.** In addition to the other defined terms set forth in this Agreement, the following terms shall have the meanings set forth below, which meanings shall be applicable to both the singular and plural forms and tenses of such terms:

(a) **Annual Budget.** The term “Annual Budget” shall mean and refer to each annual budget which Daniel will assist the City in preparing which will address any and all Common Expenses, as defined in the Restrictive Covenants, which would be provided and paid for by a property owners’ association established under the Restrictive Covenants, together with the annual costs and expenses of operating any such property owners’ association.

(b) **BOE.** The term “BOE” shall mean the City of Vestavia Hills Board of Education.

(c) **BOE Property.** The term “BOE Property” shall mean and refer to that certain real property owned by the BOE which is more particularly described in **Exhibit A** attached hereto and incorporated herein by reference which constitutes part of Patchwork Farms.

(d) **Building Permits Fees.** The term “Building Permit Fees” shall mean and refer to any and all building permit fees paid to the City by the purchaser of any Development Parcel.

(e) **City Property.** The term “City Property” shall mean and refer to that certain real property owned by the City which is more particularly described in **Exhibit B** attached hereto and incorporated herein by reference which constitutes part of Patchwork Farms; provided, however, that with respect to the Northport Property, only that portion of the Northport Property which is not ultimately owned by Northport Holding, LLC shall be considered part of the City Property.

(f) **Consultants.** The term “Consultants” shall mean and refer to engineers, architects, landscape architects, land planners and other professionals to be selected and approved by the City (with the assistance of Daniel) and with whom Daniel or the City will enter into a contract for the performance of services relating to the preparation of the Plans as provided in **Section 2.03.**

(g) **DRS.** The initials “DRS” shall mean and refer to Daniel Realty Services, L.L.C., an Alabama limited liability company which is an affiliate of Daniel.

(h) **Development Budget.** The term “Development Budget” shall mean the budget which Daniel shall assist the City in preparing with respect to the Development Costs, as provided in **Section 2.06** below.

(i) **Development Costs.** The term “Development Costs” shall mean (a) all costs and expenses of Consultants involved in the preparation and implementation of the Plans, (b) all costs and expenses relating to the construction of the Infrastructure, (c) marketing costs

with respect to the marketing and sale of the Development Parcels and (d) any and all other costs and expenses set forth in the Development Budget approved by the City.

(j) **Development Parcel.** The term “Development Parcel” shall mean and refer to each portion of Patchwork Farms (other than the Northport Property) which may be sold by the City to any purchaser for the future development of retail and office uses and related improvements and possible residential uses (including assisted living facilities).

(k) **Established Land Value.** The term “Established Land Value” shall have the meaning given to such term in Section 2.12(b)(iii) below.

(l) **Fiscal Impact Analysis.** The term “Fiscal Impact Analysis” shall mean and refer to a projection or estimate of revenues to be generated to the City (and the BOE) through ad valorem taxes, sales taxes, use taxes, rent and other taxes, building permit fees, license fees and other sources of revenue which may be derived from the sale and development of the Development Parcels, which shall be prepared by Daniel and submitted to the City from time to time pursuant to the terms and provisions of Section 2.08 below.

(m) **Gross Sales Price.** The term “Gross Sales Price” shall mean and refer to the total gross sales price paid by any third party purchaser to the City in connection with the sale by the City of a Development Parcel to such third party purchaser.

(n) **Infrastructure.** The term “Infrastructure” shall mean and refer to all paved, public or private roads, sidewalks, parks, trails, preserves, nature areas, lighting, landscaping, hardscape (*i.e.*, entrance walls, water features and other improvements made for the benefit of the overall Patchwork Farms development), signage and utility lines, pipes, wiring, conduit, equipment, fixtures, and appurtenances and any other apparatus related thereto which may be reasonably necessary or desirable for the future development of any of the Development Parcels and the Nature Park Parcel, as defined in the PUD Plan, pursuant to the Master Plan.

(o) **Infrastructure Plans.** The term “Infrastructure” shall mean and refer to the plans and specifications to be prepared by the Consultants for any of the Infrastructure. In addition, the Infrastructure Plans shall include plans for the development, improvement, use, and upkeep of the “Nature Park Parcel”, as defined in the PUD Plan.

(p) **Master Plan.** The term “Master Plan” shall mean and refer to the Master Plan to be prepared for Patchwork Farms which will be submitted to the City and the BOE for approval, as the same may be amended from time to time with the consent and approval of the City and the BOE. The Master Plan shall reflect contemplated or proposed principal land uses, densities (allowed number of units or square footage of buildings within a Development Parcel), other land planning criteria (*i.e.*, building heights, setbacks, drainage and retention areas) and proposed Infrastructure for the development of Patchwork Farms in a manner which will reflect a class-A planned development which creates a long-term value for the City with an emphasis on generating long-term local revenues for the City and a development which will benefit the residents of the City in the form of services, jobs and quality of life.

(q) **Northport Property.** The term “Northport Property” shall mean and refer to (*i*) that certain real property which the City has previously sold, transferred and conveyed

to Northport Holding, LLC which is depicted as the “Current Site” in **Exhibit C** attached hereto and incorporated herein by reference or (ii) to the extent the City and Northport Holding, LLC agree to an exchange of property within Patchwork Farms pursuant to the terms of that certain Development Agreement dated February 27, 2014 between the City and Northport Holding, LLC, then the term “Northport Property” shall mean and refer to the real property depicted as the “New Site” on **Exhibit C** hereto or (iii) any other portion of the Property which Northport Holding, LLC agrees to accept from the City in exchange for the “Current Site” shown on **Exhibit C** hereto.

(r) **Outside Broker.** The term “Outside Broker” means any real estate broker, licensee or sales agent which is not affiliated with Daniel or DRS.

(s) **Plans.** The term “Plans” shall mean and refer collectively to (i) the Infrastructure Plans, the Development Budget, and the Master Plan, as approved by the City and (ii) any amendments to the PUD Plan which have been approved by the City (including the City’s Planning Commission and City Council, if applicable).

(t) **Patchwork Farms.** The term “Patchwork Farms” shall mean collectively, the BOE Property, the City Property and both the “Current Site” and the “New Site” comprising the Northport Property (or any other portion of the Property which Northport Holding, LLC agrees to accept from the City in exchange for the “Current Site” comprising the Northport Property).

(u) **Property.** The term “Property” shall mean, collectively, the BOE Property and the City Property.

(v) **PUD Plan.** The term “PUD Plan” shall mean the Planned Unit Development Zoning Application and Development Plan for Patchwork Farms approved by the City pursuant to Ordinance No. 2253, together with any and all modifications and amendments thereto approved by the City.

(w) **Restrictive Covenants.** The term “Restrictive Covenants” shall mean collectively, (a) the Patchwork Farms Commercial Declaration of Covenants, Conditions and Restrictions dated April 4, 2012 and recorded in Bk: LR201212, Page 19387 in the Office of the Judge of Probate of Jefferson County, Alabama, together with any amendments thereto approved from time to time by the City and (b) any other restrictive covenants which may be adopted for any of Patchwork Farms by the City or BOE.

(x) **Right of First Offer.** The term “Right of First Offer” shall have the meaning given to such term in **Section 6.01(a)** below.

(y) **Right of First Refusal.** The term “Right of First Refusal” shall have the meaning given to such term in **Section 6.02** below.

(z) **Term.** The term “Term” shall have the meaning given to such term in **Section 7.01** below.

(aa) **Time Schedule.** The term “Time Schedule” shall mean and refer to the schedule attached hereto as **Exhibit D** and incorporated herein by reference which sets forth the dates by which the Plans will be submitted by Daniel to the City for review and approval.

ARTICLE II APPOINTMENT AND DUTIES OF DANIEL

2.01 **Appointment.** The City hereby appoints Daniel, and Daniel hereby accepts appointment, as an independent contractor, to provide the services hereinafter described for the Property. Notwithstanding anything provided herein to the contrary, the City acknowledges and agrees that Daniel shall not be deemed to have assumed any duties, obligations or liabilities or otherwise guaranteed or warranted any materials or work of any Consultants, contractors or other parties (or any subcontractors thereof) which provide any services, materials, labor or supplies in connection with the development of the Property. It is expressly understood and agreed that in the performance of its obligations under this Agreement, Daniel is and shall at all times be an independent contractor. Daniel, as an independent contractor, shall be solely responsible for its respective employees and neither Daniel nor any of its employees shall at any time represent to any third party that such employees are the agents or employees of the City. Daniel shall take all steps necessary to ensure that its employees are not deemed to be employees of the City. Daniel shall be solely responsible for the hiring and termination of the employment of any of its employees whose services are utilized in connection with the Property and shall be solely responsible for all compensation and benefits of any kind, terms and conditions of employment, liability for any form of contribution of payroll taxes and compliance with statutes governing employment practices, workmen’s compensation insurance and all employer-employee matters.

2.02 **Duties of Daniel.** During the Term (or any earlier termination of the Term), Daniel’s duties hereunder include all of the duties and responsibilities set forth in **Sections 2.03 through 2.16** hereof.

2.03 **Consultants.** Daniel shall assist the City in the selection of the Consultants for the preparation of the Plans and shall coordinate all activities between and among such Consultants, the City and the BOE relating to the preparation and finalization of the Plans and the approval of the Plans by the City and the BOE. If required by the City, the Consultants shall be hired directly by Daniel and the fees and expenses of such Consultants approved by the City shall be paid as provided in **Section 3.01** below. The City shall have final decision making authority on the selection of all Consultants. Daniel shall not have any authority to hire or engage any Consultants for the City unless the City approves in writing the hiring of such Consultants by Daniel.

2.04 **Master Plan.** Daniel will serve as a principal member of a strategic planning and development team comprised of the Consultants, the City and the BOE for the planning of the development of Patchwork Farms and the creation of the Master Plan. Contemporaneously herewith, Daniel shall, with the City, the BOE and those Consultants approved by the City, begin the preparation of a Master Plan for all of Patchwork Farms. The Master Plan must be approved by both the City and BOE. The Time Schedule sets forth an estimated timetable reflecting the process for commencement of planning activities for the development of Master Plan through the point at which the final Master Plan will be submitted to the City and the BOE for final approval.

The City and BOE have sole and final approval rights of the Master Plan and the mix of uses contemplated with Patchwork Farms. Any modification to the Master Plan during the Term must be approved by Daniel, the City and the BOE.

2.05 **PUD Plan Amendments.** In connection with the preparation and approval of the Master Plan, Daniel shall recommend to the City amendments, if any, which may be necessary to be made to the PUD Plan to accommodate the development and use of Patchwork Farms in accordance with the Master Plan approved by the City and the BOE. Daniel shall assist the City with the preparation of such amendments and the presentation of the same to the City's Planning Commission and City Council, as well as attendance at any charrettes or public forums, if any, held with respect to any such amendments to the PUD Plan.

2.06 **Infrastructure Plans and Development Budget.** Contemporaneously with the finalization of the Master Plan, Daniel shall assist the City in the preparation of the Infrastructure Plans by the Consultants for any Infrastructure reflected on the Master Plan. All Infrastructure Plans shall be subject to the City's review and approval. In connection with the finalization of the Infrastructure Plans, Daniel shall also assist the City in the preparation of the initial Development Budget. The Development Budget shall include all Development Costs and must be approved by the City. Upon approval of the Infrastructure Plans and Development Budget by the City, Daniel shall, as provided in Section 2.09 below, assist the City in the implementation of the same.

2.07 **Annual Budgets.** Promptly following the City's approval of the Plans, Daniel shall assist the City in the preparation of an Annual Budget for the operation of Patchwork Farms. Each year thereafter throughout the Term, Daniel shall assist the City in the preparation of subsequent Annual Budgets for Patchwork Farms. Each Annual Budget must be approved by the City.

2.08 **Fiscal Impact Analysis and City Incentives.** Promptly following the City's approval of the Plans, Daniel shall prepare and submit to the City a Fiscal Impact Analysis. The Fiscal Impact Analysis shall reflect the generation of recurring revenues to the City and the BOE which will support the BOE school system as well as generate future revenues for the benefit of the City. The Fiscal Impact Analysis shall be updated from time to time by Daniel to reflect the revenue impact to the City (and BOE) of any sales or development of any of the Development Parcels as well as revenue projections for future years. Daniel will also recommend to the City funding alternatives and proposed transaction structures to address the physical impact of the development of the Development Parcels. Daniel will provide the City with guidance concerning tax credits and other enhancements and any public sector incentives which may be provided to developers of any of the Development Parcels; provided, however, that in no event shall the City be obligated to provide any tax credits; enhancements or public sector enhancements to any developer of any of the Development Parcels.

2.09 **Management and Coordination of Construction Activities.**

(a) Upon approval of the Plans, Daniel shall coordinate with the City and its selected contractors (as approved by the City) for the implementation of the Plans utilizing Consultants approved by the City. In connection therewith, Daniel shall act as the City's

primary liaison with, and coordinate the activities of, all Consultants and contractors approved by the City as well as any other parties performing any work in connection with the construction of the Infrastructure. The City shall determine if and when any Infrastructure Work will be undertaken at Patchwork Farms.

(b) In connection with any Infrastructure work to be undertaken (or paid for) by the City, Daniel shall assist the City in:

- (i) Selecting contractors to perform such Infrastructure work;
- (ii) Providing value-engineering with respect to any such Infrastructure work;
- (iii) Pricing and bidding of any such Infrastructure work;
- (iv) Coordinating Consultants and contractors during construction of any such Infrastructure work;
- (v) Establishing schedules for the commencement and completion of any such Infrastructure work;
- (vi) Monitoring construction progress of any such Infrastructure work, including making regular job-site visits with representatives of the City, and providing the City with on-going advice, as necessary, regarding whether the construction process is proceeding in accordance with the approved Infrastructure Plans and Development Budget;
- (vii) Attending regular progress meetings with the City, Consultants and contractors performing any of such Infrastructure work;
- (viii) If requested by the City, reviewing invoices and billing statements from contractors, subcontractors, suppliers, vendors, Consultants and other persons performing any of such Infrastructure work; and
- (ix) Coordinating with all contractors performing any of such Infrastructure work regarding the maintenance of insurance which satisfies all requirements of the City. In connection therewith, all such insurance shall name Daniel and the City (and the BOE with respect to the BOE Property) as “additional insured” on a primary and non-contributory basis and shall endeavor to cause certificates thereof to be delivered to the City and the BOE, as applicable, which certificates shall also indicate that all policies (including worker’s compensation) have been endorsed so that the insurer waives any and all rights of subrogation against Daniel, the City and the BOE.

(c) If any Infrastructure work will be performed by any purchaser of any Development Tract, Daniel shall assist the City in overseeing that any such Infrastructure work is undertaken and completed in accordance with the Plans.

(d) Daniel shall assist the City in the review of all development plans of all purchasers of any of the Development Parcels in order to assure compliance with the Master Plan.

(e) As provided in the Restrictive Covenants, the development of Patchwork Farms shall implement “Green Building Construction Standards”, as defined in the Restrictive Covenants. Daniel agrees to assist and recommend to the City methods for implementation of such Green Building Construction Standards with respect to the undertaking and completion of the Infrastructure and shall assist purchasers and prospective purchasers of any of the Development Parcels in the implementation of such Green Building Construction Standards in all buildings and other improvements to be constructed on any of the Development Parcels. Furthermore, Daniel shall coordinate with the City and the purchasers of any Development Tracts the undertaking of all improvements to any Development Parcels, including, without limitation, assisting such purchaser in the design review process, permitting and build-out of improvements on any Development Parcel.

(f) To the extent the City and Daniel mutually agree that any Infrastructure work will be undertaken by Daniel, then the City and Daniel shall either enter into an amendment to this Agreement or enter into a new agreement setting forth the manner in which the Infrastructure work will be undertaken by Daniel, how the Development Costs with respect to such Infrastructure work will be paid by the City and shall include a mutually agreed upon fee to be paid by the City to Daniel for such work and services, which fee shall be in addition to the fees set forth in this Agreement.

2.10 **Restrictive Covenants.**

(a) Daniel shall assist the City in the preparation of, or the amendment of, any Restrictive Covenants affecting any of Patchwork Farms to the extent necessary to implement the Master Plan approved by City and the BOE. The City shall retain control of all architectural review committees as well as rights to appoint and remove board members and officers of any property owners’ associations established under the Restrictive Covenants. To the extent required by the City, Daniel shall provide insight to the City as to architectural review functions and, if requested by the City, assist in architectural reviews for any proposed development of any of the Development Parcels.

(b) The parties acknowledge and agree that the Restrictive Covenants shall provide or be amended to reflect that commencement of construction of a building on any Development Parcel sold by the City to any party (including Daniel pursuant to the exercise of Right of First Offer) must be commenced on or before twelve (12) months following the closing of the sale of such Development Parcel and that construction of such building must be completed on or before twenty-four (24) months from the date a building permit for such construction work has been issued by the City. The Restrictive Covenants shall also provide if construction has not commenced or been completed by the required dates set forth above, the City may repurchase such Development Parcel at a purchase price equal to ninety percent (90%) of the original purchase price paid to the City by the first purchaser of such Development Parcel.

2.11 **Marketing Materials.** Daniel will assist the City with the design, development and production of marketing materials for the development and sale of the Development Parcels in accordance with the Master Plan and shall otherwise coordinate and assist the City with public relations and marketing for the Development Parcels to insure a consistent delivery of such marketing materials to the appropriate parties. The cost of such marketing materials shall be included in the Development Budget and shall be paid for by the City.

2.12 **Marketing and Sale of Development Parcels.**

(a) During the Term, the City hereby appoints DRS as its sole marketing and sales representative for all of Patchwork Farms. The City shall participate in all major decision-making matters relating to the marketing and sale of any of the Development Parcels. All inquiries for the possible purchase of any of the Development Parcels received by the City shall be referred to DRS. DRS shall be entitled to receive those fees and compensation set forth in Section 4.03 below with respect to the sale of any of the Development Parcels.

(b) As the sales and marketing representative for all of the Development Parcels, DRS shall undertake the following:

(i) DRS shall provide sufficient experienced personnel to develop and carry out a marketing program for the sale of the Development Parcels. Such services shall include preparing market analyses, pricing schedules and establishing a marketing and sales program for the development and/or sale of all of the Development Parcels;

(ii) DRS shall be responsible for all sales activities, including the diligent pursuit of all prospects for the sale of all of the Development Parcels. DRS shall make all necessary proposals, contacts, sales calls and related sales activities to carry out such duties. In connection therewith, DRS will be responsible for the day-to-day costs of implementing such sales and marketing activities, including engagement and employment of sales persons, sales licensees and administrative personnel. All salaries and compensation payable to any employees, sales persons, sales licensees and administrative personnel of DRS shall be paid solely by DRS; and

(iii) In connection with its marketing activities for the Development Parcels, following (or contemporaneously with) the approval of the Plans by the City, DRS shall recommend to the City the estimated land value (the "Established Land Value") for each of the Development Parcels. The Established Land Value for each Development Parcel shall be approved by the City and shall be subject to modification from time to time, as determined by the City, in its sole and absolute discretion; provided, however, that (1) the Established Land Value for any of the BOE Property must be no less than the purchase price paid by the BOE to purchase the BOE Property and (2) the initial Established Land Value established for the Development Parcels shall not be subject to change by the City during the ROFO Period, as defined in Section 6.01(a) below. All proposals to be made by DRS to third parties for the sale of any of the

Development Parcels shall utilize the then applicable Established Land Value for such Development Parcel (subject to the remaining terms and provisions of this Section 2.12(b)(iii)). DRS shall assist the City in determining whether any proposed purchaser can be required to perform some or all of the Infrastructure work applicable to the Development Parcel to be purchased by such purchaser and how to adjust the Established Land Value for such Development Parcel to the extent the proposed purchaser will perform any Infrastructure work. Alternatively, if the City will perform any Infrastructure work for the benefit of any Development Parcel, then DRS will assist the City in determining the amount by which the Established Land Value for any Development Parcel benefited by such Infrastructure should be increased as a result of the performance of such Infrastructure work by the City. The City shall have the sole and exclusive right at any time to adjust the Established Land Value for any Development Parcel as a result of any Infrastructure work performed (or to be performed) by either the City or a third party purchaser for the applicable Development Parcel.

(c) In connection with the sale and marketing of the Development Parcels, DRS shall assist the City in the preparation of a general form sales contract to be utilized by the City with respect to the sale of any of the Development Parcels. The final form of the proposed sales contract must be approved by the City and, following such approval, DRS shall utilize such form sales contract in all offers or solicitations it makes to sell any portion of the Development Parcels.

2.13 **Joint Venture**. The City will consider (subject to appropriate approvals), on an individual Development Parcel-by-Development Parcel basis, the utilization of joint ventures or other participation arrangements with purchasers of any of the Development Parcels which may involve, among other things, the contribution by the City of a Development Parcel into a venture in exchange for a participant interest. In connection therewith, Daniel shall provide to the City information from any prospective purchaser of any of the Development Parcels concerning the possible joint venture or participation by the City in the development and sharing of revenues and profits derived from the development of any Development Parcel.

2.14 **Accounting**. Daniel shall provide to the City, at least on a monthly basis, or at such time as is otherwise mutually agreed between Daniel and the City, cost accounting and progress reports relating to the implementation of the Plans and all other matters for which the City may have any financial responsibility under this Agreement.

2.15 **Time Schedule**. Daniel covenants and agrees to use commercially reasonable efforts to cause all matters set forth on the Time Schedule to be satisfied in accordance with the deadlines (dates) set forth on the Time Schedule.

2.16 **Employees**. Subject to the provisions of Section 2.09(f) above, each of Daniel and DRS shall provide, at their respective sole cost and expense, all necessary personnel of Daniel required in connection with the performance of the duties and obligations of Daniel and DRS set forth in Sections 2.03 through 2.15 above. Except as otherwise provided in Section 2.09(f) above, neither Daniel nor DRS shall be entitled to any reimbursement from the City for

employee time, expenses, salaries or other compensation of any nature with respect to any of the foregoing.

ARTICLE III COSTS AND EXPENSES

3.01 Initial Costs and Expenses.

(a) From and after the date of this Agreement, the costs and expenses of all Consultants selected and approved by the City (regardless of whether such Consultants are hired as independent contractors by Daniel or the City) to prepare the Plans shall be paid as follows:

(i) The first \$15,000.00 in such costs shall be paid by the City;

(ii) Daniel shall be responsible for any such costs and expenses (up to a maximum of \$30,000.00 in expenditures by Daniel) in excess of the \$15,000.00 paid by the City pursuant to Section 3.01(a)(i) above; and

(iii) Any costs and expenses for Consultants in excess of \$45,000.00 must be agreed upon in writing by both the City and Daniel prior to incurring any such costs (and the determination of who shall be responsible for such costs and expenses).

(b) The forgoing shall be applicable only to the costs and expenses of Consultants approved by the City in connection with the preparation of the Plans. No out-of-pocket expenses or employee salary or compensation of any kind for Daniel or the City shall be subject to payment or reimbursement pursuant to the provisions of this Section 3.01.

3.02 **Additional Costs and Expenses.** The costs and expenses of constructing the Infrastructure, the development of any of the Property and all Development Costs shall be paid for solely by the City; provided, however, that in no event shall (a) either party have any obligation to pay any costs and expenses other than as set forth in Section 3.01 above and (b) Daniel have any right to obligate the City to pay, or otherwise incur, any costs or expenses relating to Patchwork Farms except for those set forth in Section 3.01 above.

ARTICLE IV FEES AND COMMISSIONS PAYABLE TO DANIEL AND DRS

4.01 **Initial Development Fee.** In consideration of the services to be provided hereunder by Daniel to the City, the City agrees to pay to Daniel an initial development fee of \$60,000.00 (the "Initial Development Fee"), which fee shall be due and payable as follows:

(a) On the date hereof, the City shall pay to Daniel \$10,000.00 as the initial installment of the Initial Development Fee.

(b) Commencing on the first day of each month after the date hereof and on the first day of each month thereafter for a total of ten (10) consecutive months, the City shall

pay Daniel the remainder of the Initial Development Fee in monthly installments of \$5,000.00 per month.

4.02 **Deferred Development Fee.**

(a) Subject to the remaining terms and provisions of this Section 4.02, the City agrees to pay to Daniel, in addition to the Initial Development Fee, an additional development fee equal to \$120,000.00 (the "Deferred Development Fee"), which shall be due and payable as follows:

(i) Commencing on the date hereof and continuing until the expiration (or earlier termination) of the Term, the City shall pay to Daniel until such time as all of the Deferred Development Fee has been paid in full (1) fifty percent (50%) of any Building Permit Fees received by the City during the Term (or any earlier termination of the Term as provided in Section 7.02 below) with respect to the construction of improvements on any Development Parcels sold to any purchasers (including Daniel and its affiliates) by the City at any time after the date hereof and (2) that portion of the Building Permit Fees described in Section 4.02(a)(ii) below;

(ii) Notwithstanding anything provided in this Agreement to the contrary, to the extent Northport Holding, LLC elects to accept the "New Site" as the Northport Property or any other portion of the Property as the Northport Property (and reconveys to the City the "Current Site"), then the City agrees to pay to Daniel twenty-five percent (25%) of any Building Permit Fees received by the City during the Term (or any earlier termination of the Term as provided in Section 7.02 below) from Northport Holding, LLC or any affiliates thereof with respect to the construction of improvements on the "New Site" or such other portion of the Property which Northport Holding, LLC agrees to accept from the City in exchange for the "Current Site". To the extent Northport Holding, LLC elects to retain the "Current Site" as the Northport Property, then no portion of the Building Permit Fees paid to the City by Northport Holding, LLC or any affiliates thereof with respect to the "Current Site" shall be paid to Daniel as any portion of the Deferred Development Fee;

(iii) Except as otherwise provided to the contrary in Section 4.02(b) below, if, for any reason, the Deferred Development Fee has not been paid in full by the expiration (or earlier termination) of the Term, the City shall have no further obligation to pay to Daniel any remaining balance due of the Deferred Development Fee and the City's obligations under this Section 4.02 shall be deemed cancelled, terminated, null and void; and

(iv) As provided in Section 7.02 below, the City has the right to cancel and terminate this Agreement prior to the expiration of the Term and, except as provided in Section 4.02(b) below, upon the expiration (or earlier termination) of the Term, no further amounts of the Deferred Development Fee shall be payable to Daniel.

(b) Notwithstanding anything provided to the contrary in Section 4.02(a) above, upon the expiration (or earlier termination) of the Term, the obligations of the City to pay to Daniel any portion of the Deferred Development Fee shall continue with respect to any Building Permit Fees paid to the City by the purchaser(s) (including Daniel and its affiliates) of any Development Parcel(s) sold by the City prior to the expiration (or earlier termination) of the Term if such Building Permit Fees are paid to the City within twelve (12) months from the closing date of the sale of such Development Parcel(s) even though the Term of this Agreement has expired (or been terminated by the City).

4.03 **Brokerage Fees.**

(a) Subject to the terms and provisions of Sections 4.03(b) and 6.01(b) below, in consideration of the marketing and sales services to be provided and performed by DRS in connection with the sale of any of the Development Parcels, the City covenants and agrees to pay to DRS at each closing of the sale of any of the Development Parcels by the City to a third party a real estate sales commission equal to five percent (5%) of the Gross Sales Price paid by such third party to the City for a Development Parcel. The aforesaid sales commission shall be deemed earned by DRS only if the closing of the sale of a Development Parcel occurs and the purchase price for such Development Parcel is paid to the City by such third party purchaser. DRS agrees to execute and deliver to the City such affidavits and lien waivers as may be reasonable required by the City to evidence the payment of the sales commission required to be paid to DRS by the City pursuant to the terms and provisions of this Section 4.03(a).

(b) Subject to the terms and provisions of Section 6.01(b) below, to the extent any Outside Brokers are involved in the sale by the City of any of the Development Parcels, then (i) in lieu of the commission payable to DRS pursuant to Section 4.03(a) above, the City agrees to pay to DRS at the closing of the sale of such Development Parcel by the City to a third party purchaser a real estate sales commission equal to six percent (6%) of the Gross Sales Price paid by such third party purchaser to the City for such Development Parcel, (ii) DRS shall be required to pay from the real estate sales commission paid to it by the City any all fees which may be due and payable to such Outside Broker and (iii) DRS does hereby indemnify, agree to defend and hold the City harmless from and against all claims, demands, actions, causes of action, losses, liabilities and expenses, including reasonable attorneys' fees and expenses, suffered, paid or incurred by the City as a result of any claims made or brought by any Outside Broker against the City with respect to the payment of any real estate sales commission owing in connection with the sale of any Development Parcel by the City to any third party purchaser. The City shall have no obligation to pay any amount to any Outside Broker. DRS and any such Outside Broker shall be required to execute and deliver to the City such affidavits and lien waivers as may be originally required by the City to evidence the payments of the foregoing commissions. Notwithstanding anything provided herein to the contrary, in the event the City elects to repurchase any Development Parcel pursuant to the repurchase rights to be granted to the City in the Restrictive Covenants (as provided in Section 2.10(b) above), the City shall have no obligation to pay to Daniel or any Outside Broker any brokerage fees or commissions.

(c) Upon the expiration (or earlier termination) of the Term, the obligations of the City to pay to DRS the real estate sales commission set forth in Sections 4.03(a) and 4.03(b) above shall continue with respect to any contracts entered into by the City prior to the expiration

(or earlier termination of the Term) with any third party purchaser for the sale of any of the Development Parcels which have not closed as of the expiration (or earlier termination) of the Term.

4.04 **Other Compensation to DRS.** Except as expressly set forth in the Agreement, the City shall have no obligation to pay any other costs or expenses for services rendered by DRS pursuant to the terms and provisions of this Agreement. Furthermore, DRS shall be solely responsible for all costs and expenses of its employees and any third parties engaged by DRS with respect to Patchwork Farms.

ARTICLE V INSURANCE AND INDEMNITY

5.01 **Required Insurance.**

(a) Daniel shall maintain during throughout the Term of this Agreement, for the benefit of the City and Daniel, the insurance policies with the indicated limits set forth in Attachment "I" hereto and incorporated herein by reference (or such other insurance or such increased limits as may be mutually agreed to by Daniel and the City). Each policy of insurance (except worker's compensation) shall be endorsed to include the City as an "additional insured" on a primary and non-contributory basis.

(b) Daniel will deliver certificates of insurance to the City, which certificates shall evidence the foregoing types of insurance. Except for workers' compensation and employer's liability insurance, the certificates shall indicate that the insurance policies have been endorsed to include the City as an additional insured on a primary and non-contributory basis. The certificates shall also indicate that all policies (including worker's compensation) have been endorsed so that the insurer waives any and all rights of subrogation against the City.

(c) Each policy of insurance shall be issued by an insurance carrier(s) having an A.M. Best Company rating of A-, Class VII, or better, and shall provide that the City shall receive at least thirty (30) days prior written notice of any material change or termination of such insurance policies.

5.02 **City Indemnity.** Subject to the remaining terms and provisions of this Section 5.02, the City agrees, to the extent allowed by applicable law, to indemnify, defend and hold Daniel and DRS harmless from any claims, demands, causes of action, losses, damages, fines, penalties, liabilities, costs and expenses, including reasonable attorneys' fees and expenses, consultants' fees and expenses and court costs, sustained, incurred or asserted against Daniel or DRS caused by or arising out of (a) the breach by the City of, or the failure of the City to perform properly, the duties and obligations required of the City under this Agreement or (b) any malfeasance, negligence, gross negligence or willful misconduct of the City. Daniel and DRS shall give immediate written notice to the City in the event that any claims, action, suits or proceedings, as stated above in this Section 5.02 or filed or brought against Daniel or DRS. Notwithstanding anything provided in this Section 5.02 to the contrary, to the extent the insurance coverage maintained by Daniel pursuant to the terms and provisions of Section 5.01 above cover any claim, demand, cause of action, loss, damage, fine, penalty, liability, cost or

expense which the City has agreed to indemnify Daniel or DRS against hereunder, then the City's obligations to indemnify Daniel and DRS pursuant to this Section 5.02 shall not be applicable and the City shall have no further obligations under this Section 5.02. To the extent any insurance coverage maintained by Daniel pursuant to the terms and provisions of Section 5.01 above does not cover any claim, demand, cause of action, loss, damage, fine, penalty, liability, cost or expense which the City has agreed to indemnify Daniel or DRS against hereunder, then the City shall, at its sole cost and expense, defend any such actions, suits, claims or proceedings with counsel selected by the City and reasonably approved in writing by Daniel or DRS. The terms and provisions of this Section 5.02 shall survive the expiration (or earlier termination) of this Agreement.

5.03 **Daniel and DRS Indemnity.** Daniel and DRS, jointly and severally, hereby agree to indemnify, defend and hold the City harmless from any and all claims, demands, causes of action, losses, damages, fines, penalties, liabilities, costs and expenses, including reasonable attorneys' fees and expenses, consultants' fees and expenses and court costs, sustained, incurred or asserted against the City caused by or arising out of (a) the breach by Daniel or DRS of, or the failure of Daniel or DRS to perform properly, the duties and obligations required of Daniel or DRS under this Agreement or (b) any malfeasance, negligence, gross negligence or willful misconduct of Daniel or DRS. The City shall give immediate written notice to Daniel and DRS in the event that any claims, actions, suits or proceedings, as stated above in this Section 5.03, or filed or brought against the City. To the extent any insurance coverage maintained by Daniel pursuant to the terms and provisions of Section 5.01 above does not cover any claim, demand, cause of action, loss, damage, fine, penalty, liability, cost or expense which Daniel or DRS has agreed to indemnify the City against hereunder, then Daniel shall, as its sole cost and expense, defend any such actions, suits, claims or proceeding with counsel selected by Daniel and reasonably approved in writing by the City. The terms and provisions of this Section 5.03 shall survive the expiration (or earlier termination) of this Agreement.

ARTICLE VI RIGHT OF FIRST OFFER AND RIGHT OF FIRST REFUSAL

6.01 **Right of First Offer.**

(a) From and after the date of this Agreement and continuing for 120 days following the approval of the Plans by the City (the "ROFO Period"), the City grants to Daniel a right of first offer (the "Right of First Offer") to purchase and acquire (i) all (but not part) of the Property at a cash purchase price equal to \$6,590,183.82 (which amount equals ninety-five percent (95%) of the sum of \$6,937,035.60 (which represents the current basis of the City in the City Property and the BOE in the BOE Property)) or (ii) any of the Development Parcels at a cash price to be mutually determined in writing by both the City and Daniel. To the extent Daniel desires to exercise the Right of First Offer, then Daniel must provide written notice to the City (the "ROFO Notice") during the ROFO Period. The closing of the sale of the Property (or any Development Parcels) by the City to Daniel shall occur on or before ninety (90) days from the date the ROFO Notice is given by Daniel to the City. To the extent the Right of First Offer is exercised prior to approval of the Plans by the City, the City shall retain the sole right to approve the Plans for all of the Property (including any Development Parcels acquired by Daniel) following the exercise of the Right of First Offer and the purchase of the Property (or any

Development Parcels) by Daniel. In connection with the acquisition of the Property (or any Development Parcels) by Daniel pursuant to the exercise of the Right of First Offer, in the event the City expresses an interest to participate in the financing or ownership of the Property (or any Development Parcels purchased by Daniel), then the parties agree to negotiate in good faith for such financing or ownership position. In connection therewith, Daniel will offer to the City the opportunity to provide equity funding or financing for such opportunity on terms Daniel reasonably believes in good faith it can obtain from other equity partners or financial sources. If the City does not wish to participate (such decision to be made promptly, but in the event within no more than ten (10) days after Daniel has given the ROFO Notice) in such equity ownership or financing, Daniel may pursue other equity participants, financial partners or financing sources on substantially the same terms as those offered to the City. If the terms which Daniel desires to accept from another equity participant, financial partner or lender vary materially from those first offered to the City, Daniel will again offer to the City the opportunity to reconsider becoming an equity participant or financial partner on such revised terms before proceeding to a final agreement with its other equity participant, financial partner or lender. The City must notify Daniel of its decision to participate based on the revised terms not more than ten (10) days after Daniel has offered to the City the revised terms as an equity participant, financial partner or lender in any proposed development of the Property (or any Development Parcels) by Daniel.

(b) Notwithstanding anything provided herein to the contrary, in the event Daniel purchases the Property (or any Development Parcels) pursuant to the exercise of the Right of First Offer, then no brokerage commissions shall be payable to Daniel or any Outside Broker in connection with the sale of the Property (or any Development Parcels) by the City to Daniel.

6.02 **Right of First Refusal.** Following the expiration of the Right of First Offer Period and continuing for nine (9) months thereafter (the “Right of First Refusal Period”), if the City desires to sell any Development Parcel to a third party purchaser at a sales price which is less than ninety-five percent (95%) of the Established Land Value for such Development Parcel, then the City shall provide to Daniel a copy of such proposed sales contract, offer or letter of intent for such sale (the “Offer Notice”). Daniel shall have the right (the “Right of First Refusal”), at its option, to purchase the applicable Development Parcel at the same price and on the same terms as set forth in the Offer Notice. In order to exercise the Right of First Refusal, (i) Daniel must provide written notice to the City no later than ten (10) days after the giving of the Offer Notice by the City to Daniel and (ii) Daniel and the City shall enter into a new sales contract containing the same terms and provisions as set forth in the Offer Notice, which new sales contract shall provide that if Daniel exercises the Right of First Refusal to purchase any Development Parcel, then the City shall be obligated to pay to Daniel the brokerage commission set forth in Section 4.03 above in connection with such sale. Should Daniel fail to timely exercise the Right of First Refusal or fail to enter into a new contract with the City for the purchase of such Development Parcel with (10) days following the giving of the Offer Notice, Daniel shall be deemed to have irrevocably waived the Right of First Refusal with respect to the Development Parcel described in the Offer Notice and shall, upon request of the City, execute any and all documents reasonably required by the City to evidence the waiver of such Right of First Refusal. The Right of First Refusal shall automatically terminate, be deemed null and void and of no further force or effect upon the expiration (or earlier termination) of this Agreement.

ARTICLE VII TERM, DEFAULT AND TERMINATION

7.01 **Term.** Subject to the terms and provisions of Section 7.02 below, the term of this Agreement (“Term”) shall commence as of the date hereof and shall continue for three (3) years thereafter, at which time this Agreement shall terminate and neither party shall have any further obligations or liabilities hereunder except as otherwise set forth in Sections 4.02(b), 4.03(c) and 5.03 hereof. If, upon the termination of the Term, all of the Deferred Development Fee has not been paid to Daniel, the City shall have no further obligation to pay the unpaid balance of such Deferred Development Fee.

7.02 **Early Termination.** Notwithstanding anything provided in this Agreement to the contrary, if, by the date which is eighteen (18) months following the date on which the City has approved the Plans, the City has not closed the sale of at least one (1) Development Parcel with any purchaser (including Daniel to the extent Daniel has exercised the Right of First Offer or Right of First Refusal with respect to any Development Parcel(s)), then the City shall have the unilateral right, in its sole and absolute discretion, at any time thereafter to cancel and terminate this Agreement in which event any portion of the Deferred Development Fee which has not been paid to Daniel shall be deemed forfeited and the City shall have no further obligation or liability of any nature to pay to Daniel any such Deferred Development Fee which remains unpaid as of the date of termination of this Agreement; provided, however, that if the City elects to terminate this Agreement pursuant to the terms and provisions of this Section 7.02, then the provisions of Sections 4.02(b) and 4.03(c) above shall remain in full force and effect with respect to (a) any Development Parcels sold by the City to any purchaser (including Daniel or its affiliates) (in regard to the payment of the Deferred Development Fee as provided in Section 4.02(b) above) and (b) any pending contracts between the City and any third party purchaser (with regard to the payment of the real estate commissions set forth in Section 4.03(c) above).

7.03 **Default.** In the event of any default by either party hereto, which default is not cured within thirty (30) days following the giving of written notice of default (provided that no such notice of default shall be given in the event the City elects to exercise its early termination right set forth in Section 7.02 above), then the non-defaulting party shall have the right to exercise all rights and remedies available to such non-defaulting party at law or in equity and the non-defaulting shall be entitled to its reasonable attorneys’ fees and expenses as provided in Section 8.11 below.

ARTICLE VIII MISCELLANEOUS PROVISIONS

8.01 **Notices.** All notices required or permitted hereunder shall be in writing and shall be served on all of the parties hereto at the following addresses:

If to the City: City of Vestavia Hills, Alabama
513 Montgomery Highway
Vestavia Hills, AL 35216
Attention: Mr. Butch Zaragoza, Mayor
Fax (205) 978-0189
Email: butchzaragoze@ci.vestaviahills.al.us

And City of Vestavia Hills, Alabama
513 Montgomery Highway
Vestavia Hills, AL 35216
Attention: Mr. Jeff Downes, City Manager
Fax (205) 978-0189
Email: jdownes@vahal.org

With copies to: Stephen R. Monk
Bradley Arant Boult Cummings LLP
One Federal Place
1819 Fifth Avenue North
Birmingham, AL 35203
Fax (205) 488-6429
Email: smonk@babco.com

And Patrick H. Boone
215 Richard Arrington Jr. Blvd. N., Suite 705
Birmingham, AL 35203
Fax (205) 324-2295
Email: patrickboone@bellsouth.net

To Daniel or DRS: Daniel Corporation
3660 Grandview Parkway
Suite 100
Birmingham, Alabama 35243
Attn: Doug Neil, Vice President
Fax: (205) 443-4615
Email: dneil@danielcorp.com

With copies to: Daniel Corporation
3660 Grandview Parkway
Suite 100
Birmingham, Alabama 35243
Attn: Eric Johnson, Vice President
Fax: (205) 443-6144
Email: ejohnson@danielcorp.com

Any such notices shall be deemed to be sufficiently given or served upon any party hereto when (i) sent by personal delivery to the address set forth above, (ii) deposited in the United States mail by registered or certified mail, return receipt requested, postage prepaid and addressed as

provided above, (iii) deposited with a nationally recognized overnight delivery courier service for next business day delivery and addressed as set forth above, (iv) sent by facsimile transmission during regular business hours of any business day, in which case notice shall be deemed given upon confirmation of transmission of such facsimile notice, or (v) sent by electronic mail (email) to the email address set forth above, in which case notice shall be deemed given upon confirmation of transmission of such email notice. The above addresses may be changed by written notice to the other parties given in the manner set forth above.

8.02 **No Waiver.** No waiver by the City or Daniel of any provision of this Agreement shall be deemed to be a waiver by either party of any other provision of this Agreement. No waiver by the City of any breach by Daniel shall be deemed a waiver of any subsequent breach by Daniel of the same or any other provision. No waiver by Daniel of any breach by the City shall be deemed a waiver of any subsequent breach by the City of the same or any other provision. The failure of the City or Daniel to insist at any time upon the strict performance of any covenant or agreement or to exercise any option, right, power or remedy contained in this Agreement shall not be construed as a waiver or a relinquishment thereof for the future. The City's consent to or approval of any act by Daniel requiring the City's consent or approval shall not be deemed to render unnecessary the obtaining of the City's consent to or approval of any subsequent act of Daniel. Daniel's consent to or approval of any act by the City requiring such party's consent or approval shall not be deemed to render unnecessary the obtaining of such party's consent to or approval of any subsequent act of the City. No waiver by the City or Daniel of any provision of this Agreement shall be deemed to have been made unless such waiver is expressly stated in writing signed by the waiving party.

8.03 **Applicable Law.** This Agreement and the rights of the parties hereunder shall be governed by and construed and interpreted in accordance with the laws of the State of Alabama.

8.04 **Assignment; Successors and Assigns.** Neither Daniel, DRS nor the City may transfer or assign any of its respective rights, benefits, interests or obligations under this Agreement to any third party without first obtaining the prior written consent and approval of the other parties, which consent may be withheld in the sole and absolute discretion of the other parties. This Agreement shall be binding upon and shall inure to the benefit of the City, Daniel and DRS and their permitted successors and assigns. Notwithstanding the foregoing, Daniel shall have the right at any time and from time to time to transfer and assign its Right of First Offer to any entity in which Daniel is the managing member.

8.05 **Severability.** If any provision of this Agreement or the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, the application of such provisions to other persons or circumstances and the remainder of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

8.06 **Time.** Time is of the essence in this Agreement and in each and all of the provisions hereof. Whenever a period of days is specified in this Agreement, such period shall refer to calendar days unless otherwise expressly stated in this Agreement.

8.07 **Defined Terms and Marginal Headings.** The headings and titles to the articles, sections and subsections of this Agreement are not a part of this Agreement and shall have no effect upon the construction or interpretation of any part of this Agreement.

8.08 **Authority.** Daniel and DRS represent to the City as follows: that each of Daniel and DRS is duly organized and legally existing under the laws of the State of Alabama; each of Daniel and DRS has all requisite power and all governmental certificates of authority, licenses, permits, qualifications and other documentation to perform its obligations under this Agreement; and each person signing on behalf of Daniel and DRS is authorized to do so. The City represents to Daniel and DRS as follows: that the City is duly organized and legally existing under the laws of the State of Alabama; the City has all requisite power and all governmental certificates of authority, licenses, permits, qualifications and other documentation to perform its obligations under this Agreement; and each person signing on behalf of the City is authorized to do so.

8.09 **Force Majeure.** Whenever a period of time is herein prescribed for action to be taken by the City, or Daniel or DRS, the party taking the action shall not be liable or responsible for, and there shall be excluded from the computation for any such period of time, any delays due to strikes, riots, acts of God, shortages of labor or materials, war, governmental laws, regulations or restrictions or any other causes of any kind whatsoever which are beyond the control of such party (collectively, "Force Majeure"); provided, however, that, the term "Force Majeure" shall not (a) include the inability of any party hereto to obtain financing or funding to satisfy any of its obligations under this Agreement and (b) extend to or apply to the extent the City elect to terminate the Term pursuant to Section 7.02 above.

8.10 **Consents and Approvals.** Any consents or approvals required of the City under this Agreement may be given or withheld on reasonable commercial standards, unless this Agreement otherwise expressly provides. The City agrees to act promptly upon any approval requested by Daniel or DRS, such that under ordinary circumstances the City will notify Daniel or DRS of its decision within not more than ten (10) business days after receipt of any such request unless otherwise provided herein; provided, however, that any action or approval by the City shall be subject to such time periods as may be required for approval of such action by the City Council of the City.

8.11 **Attorneys' Fees.** In the event of any legal action or proceeding brought by any party against any of the other parties arising out of this Agreement, the defaulting party shall be responsible for all attorneys' fees, costs and expenses incurred by the non-defaulting parties in such action (including, without limitation, all costs of appeal), and such amount shall be included in any judgment rendered in such proceeding.

8.12 **Entire Agreement; Amendment.** Each Exhibit and Schedule attached hereto is made a part of this Agreement for all purposes. This Agreement contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Agreement and no prior agreement, understanding or representation pertaining to any such matter shall be effective for any purpose. No provision of this Agreement may be amended or added to except by an agreement in writing signed by the parties hereto.

8.13 **Dispute Resolution.** Daniel, DRS and the City covenant and agree with each other that any and all claims, disputes, controversies or disagreements between the parties with respect to the terms and provisions of this Agreement shall be subject to mediation before a mutually accepted mediator selected by Daniel or DRS and the City.

8.14 **No Partnership and No Third Party Beneficiaries.** Nothing contained in this Agreement and no action by the parties hereto will be deemed or construed to create the relationship of principal and agent, or a partnership, or a joint venture or any association between or among any of the parties hereto.

8.15 **Compliance with Laws.** Each of Daniel, DRS and the City shall perform all of their respective obligations under this Agreement in accordance with all applicable federal, state, county and local governmental laws, ordinances, statutes, code provisions, rules, regulations and requirements.

8.16 **Standard of Care.** The City acknowledges that Daniel is not licensed as an architect, engineer, attorney, land planner, accountant, general contractor or other licensed professional and that the scope of its services hereunder is not intended and does not include any portion of the scope of services generally covered by any such professionals. The standards for performance by Daniel of its services hereunder shall not extend to or include the skills, judgment and expertise required of such professionals and Daniel shall not therefore be liable hereunder for errors or omissions in the services to be or which should be provided by those professionals. In the performance of its obligations hereunder, Daniel agrees to exercise prudent, good faith efforts at all times in the performance of its services hereunder.

IN WITNESS WHEREOF, Daniel and the City have executed this Agreement as of the day and year first above written.

DANIEL CORPORATION, an Alabama corporation

By: _____
Printed Name: _____
Its: _____

CITY OF VESTAVIA HILLS, ALABAMA, an Alabama
municipal corporation

By: _____
Printed Name: _____
Its: _____

By: _____
Printed Name: _____
Its: _____

CONSENT OF DRS

DRS hereby joins in the execution of this Agreement in order to acknowledge and agree to all of the terms and provisions of this Agreement

Dated as of the _____ day of _____, 2014.

Daniel Realty Services, L.L.C., an Alabama limited liability company

By: Daniel Realty Corporation, an Alabama Corporation, Its Manager

By: _____
Printed Name: _____
Its: _____

EXHIBIT A

Legal Description of BOE Property

EXHIBIT B

Legal Description of City Property

EXHIBIT C

Site Plan Reflecting "Current Site" and "New Site" for Northport Property

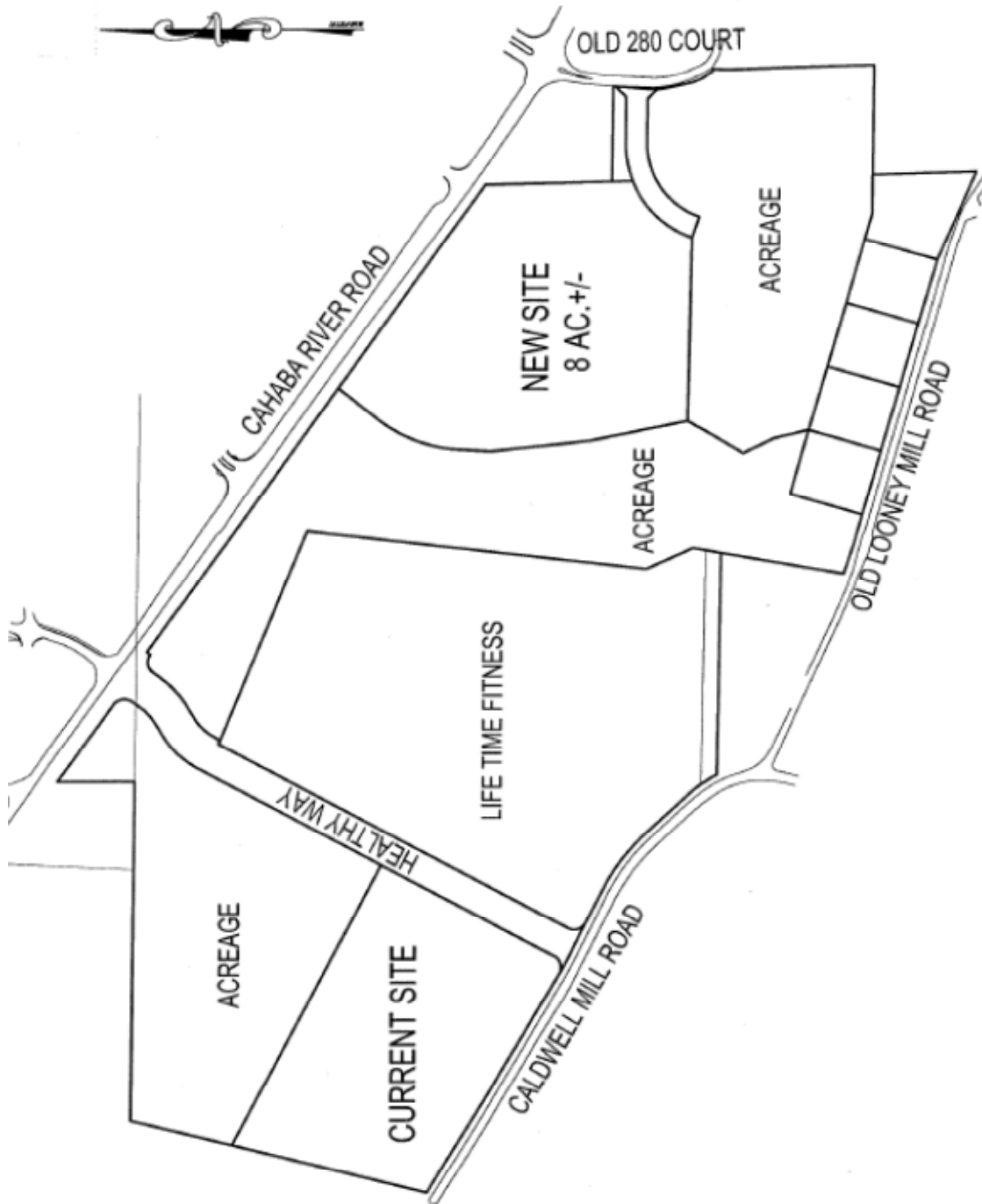


EXHIBIT D

Time Table

May 1, 2014	Execute Master Development Services & Brokerage Agreement
June 1, 2014	Initiate Development of Patchwork Farms Master Plan
October 1, 2014	Target Date for Master Plan Approval by City and Board of Education
April 1, 2015	Target Date for Final Approval of Plans by City (PUD & CC&Rs)
November 1, 2015	Initiate Development of Master Plan
April 30, 2017	Completion of Patchwork Farms Master Plan

ATTACHMENT “I”

Insurance

1. Minimum Scope of Insurance:

<u>Type of Insurance</u>	<u>Limit</u>
Worker’s Compensation	Amount required by statute.
Employer’s Liability	\$1,000,000 each accident; \$1,000,000 disease policy limit; and \$1,000,000 disease each employee.
Commercial General Liability	Not less than \$5,000,000 combined single limit per occurrence and \$10,000,000 aggregate (which may be provided via umbrella or excess liability coverage).
Comprehensive Automobile Liability including Owned, Non-owned, and Hired Car Coverages	Not less than \$2,000,000 combined single limit for both bodily injury and property damage (which may be provided via umbrella or excess liability coverage).

2. Contractor’s Insurance: Any contractor performing any work at the Property, whether under contract with the City or Daniel, shall be required to maintain such insurance coverages, in such amounts, with such coverage and requirements and with such companies as may be required or approved by the City.

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

April 22, 2014

By Hand Delivery
And Facsimile Transmission (978-0189)

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

In Re: Resolution Number 4580
Agreement By and Between City of Vestavia Hills, Alabama ("City") and Daniel Corporation ("Daniel")

Dear Mr. Downes:

On April 15, 2014, you furnished me via electronic mail with a copy of a proposed Master Development and Brokerage Services Agreement ("Agreement") between the City of Vestavia Hills, Alabama ("City") and Daniel Corporation ("Daniel") with a request that I review the same and provide you with my written legal opinion. The purpose of this letter is to comply with your request.

I. LEGAL ISSUE ONE

A. LEGAL QUESTION ONE: Is the Agreement subject to the Alabama Competitive Bid Law?

B. ANSWER TO LEGAL QUESTION ONE: It is my legal opinion that the Agreement is not subject to the Alabama Competitive Bid Law.

C. BASIS FOR LEGAL OPINION: I base my legal opinion upon the Alabama Competitive Bid Law, which states in pertinent parts as follows:

(1) The Alabama Competitive Bid Law applicable to municipalities set forth at Title 41-16-50 (a), *Code of Alabama, 1975*, provides in pertinent parts as follows:

“(a) With the exception of contracts for public works whose competitive bidding requirements are governed exclusively by Title 39, all expenditure of funds of whatever nature for labor, services, work, or for the purchase of materials, equipment, supplies, or other personal property involving fifteen thousand dollars (\$15,000) or more, and the lease of materials, equipment, supplies, or other personal property where the lessee is, or becomes legally and contractually, bound under the terms of the lease, to pay a total amount of fifteen thousand dollars (\$15,000) or more, by or on behalf of any...governing bodies of the municipalities of the state.. shall be made under contractual agreement entered into by free and open competitive bidding, on sealed bids, to the lowest responsible bidder.”

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

“§41-16-51. Exemptions—Void contracts—Criminal penalties.

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

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

II. LEGAL ISSUE TWO

A. LEGAL QUESTION TWO: May the City legally enter into the Agreement for a period of up to three (3) years?

B. ANSWER TO LEGAL QUESTION TWO: In my opinion, the answer to the Legal Question Two is in the affirmative.

C. BASIS FOR LEGAL OPINION: I base my legal opinion upon Alabama Competitive Bid Law applicable to municipalities, which provides in Title 41-16-57(f), *Code of Alabama, 1975*:

“(f) Contracts for the purchase of personal property or contractual services shall be let for periods not greater than three years. Contracts for the leasing of motor vehicles by local governing bodies shall be let for periods not greater than five years. Lease-purchase contracts for capital improvements and repairs to real property shall be let for periods not greater than 10

years and all other lease-purchase contracts shall be let for periods not greater than 10 years.”

LEGAL ISSUE THREE

A. PROPOSED AGREEMENT: The proposed Agreement reads in pertinent parts as follows:

“5.02. City Indemnity. Subject to the remaining terms and provisions of this Section 5.02, the City agrees, to the extent allowed by applicable law, to indemnify, defend and hold Daniel and DRS harmless from any claims, demands, causes of action, losses, damages, fines, penalties, liabilities, costs and expenses, including reasonable attorneys’ fees and expenses, consultants’ fees and expenses and court costs, sustained, incurred or asserted against Daniel or DRS caused by or arising out of (a) the breach by the City of, or the failure of the City to perform properly, the duties and obligations required of the City under this Agreement or (b) any malfeasance, negligence, gross negligence or willful misconduct of the City. Daniel and DRS shall give immediate written notice to the City in the event that any claims, actions, suits or proceedings, as stated above in this Section 5.02 or filed or brought against Daniel or DRS. Notwithstanding anything provided in this Section 5.02 to the contrary, to the extent the insurance coverage maintained by Daniel pursuant to the terms and provisions of Section 5.01 above cover any claim, demand, cause of action, loss, damage, fine, penalty, liability, cost or expense which the City has agreed to indemnify Daniel or DRS against hereunder, then the City’s obligations to indemnify Daniel and DRS pursuant to this Section 5.02 shall not be applicable and the City shall have no further obligations under this Section 5.02. To the extent any insurance coverage maintained by Daniel pursuant to the terms and provisions of Section 5.01 above does not cover any claim, demand, cause of action, loss, damage, fine, penalty, liability, cost or expense which the City has agreed to indemnify Daniel or DRS against hereunder, then the City shall, at its sole cost and expense, defend any such actions, suits, claims or proceedings with counsel selected by the City and reasonably approved in writing by Daniel or DRS. The terms and provisions of this Section 5.02 shall survive the expiration (or earlier termination) of this Agreement.”

B. LEGAL ISSUE THREE: Can the City legally agree to these indemnification and hold harmless provisions?

C. **LEGAL OPINION:** It is my legal opinion that the answer to Legal Issue Three is in the negative.

D. **BASIS FOR LEGAL OPINION:** Municipalities cannot spend public funds to indemnify and hold harmless third parties. I base my legal opinion upon the following legal authorities:

(1) **Constitution of Alabama of 1901:** Section 94, as amended by Amendments 112 and 558, of the *Constitution of Alabama* provides as follows:

"The Legislature shall not have power to authorize any county, city, town or other subdivision of this state to lend its credit or to grant public money or thing of value in aid of or to any individual, association or corporation whatsoever."

In my opinion, it would be a violation of Article IV, Section 94(a) of the *Constitution of Alabama* for the City to indemnify Daniel for actions, costs, expenses, damages and liabilities.

(2) **Limits of Liability of Municipalities:** Section 11-93-2, *Code of Alabama, 1975*, establishes the maximum amount of damages recoverable against governmental entities. The recovery of damages under any judgment against a city shall be limited to \$100,000.00 for bodily injury or death for one person in any single occurrence and to \$300,000.00 in the aggregate where more than two persons have claims or judgments on account of bodily injury or death arising out of any single occurrence. This statute also provides in pertinent part that recovery of damages under any judgment against a city shall be limited to \$100,000 for damage for loss of property arising out of any single occurrence. It is my opinion that if a city agreed to indemnify third parties, then in such event it would waive these limits of liability.

It is my opinion that if the City agreed to indemnify Daniel, then in such event such indemnity agreement could waive the statutory maximum limits of liability set forth in Title 11-93-2, *Code of Alabama, 1975*.

(3) **Public Officials Are Entitled To Discretionary Function Immunity:** Public officials who act within the scope of their authority in performing functions involving discretion are entitled to discretionary function immunity. *Woods v. Wilson*, 539 So.2d 224 and *Hilliard v. Huntsville*, 585 So.2d 889.

It is my opinion that if the City agreed to indemnify a third party, then in such event such indemnity agreement could waive the discretionary function immunity for its public employees.

follows: (4) **Joint Liability:** Title 11-47-191(b), *Code of Alabama, 1975*, provides as

“(b) When a judgment shall be obtained against a municipality and the other party liable as provided in subsection (a) of this section, execution shall issue against the other defendant or defendants in the ordinary form and shall not be demandable of the city or town unless the other defendants are insolvent and the same cannot be made out of their property, and the city or town shall pay only so much of the said judgment as cannot be collected from the other defendants.”

E. **MY RECOMMENDATION:** I recommend that the language set forth in Section 5.02 be deleted in its entirety.

IV. **LEGAL ISSUE FOUR**

A. **LEGAL QUESTION FOUR:** Are the right of first offer (Section 6.01) and right of first refusal (Section 6.02) provisions of the Agreement valid and enforceable?

B. **ANSWER TO LEGAL QUESTION FOUR:** In my opinion, the answer to the Legal Question Four is in the affirmative.

C. **BASIS FOR LEGAL OPINION:** Municipalities in Alabama have the legal authority to sell real property by virtue of Title 11-47-20, *Code of Alabama, 1975*, which reads as follows:

“§11-47-20. **Unneeded Real Property; Disposition:** The governing body of any city or town in this state may, by ordinance to be entered on its minutes, direct the disposal of any real property not needed for public or municipal purposes and direct the mayor to make title thereto, and a conveyance made by the mayor in accordance with such ordinance invests the grantee with the title to the municipality.”

In 1973, the Supreme Court of Alabama decided the case of *City of Tuskegee v. Sharp*, 292 Ala. 14, 288 So.2d 122, and held that the power granted by Title 11-47-20, *Code of Alabama, 1975* (cited above) to a city governing body to dispose of a city's real property not needed for public or municipal purposes, does not include the power to grant an option to purchase such real property.

One year later, the Supreme Court decided the case of *Johnson v. City of Sylacauga*, 293 Ala. 429, 304 So.2d 586 (1974) and held that municipalities are prohibited by law from entering into option agreements and any option entered into by a municipality is void.

An "option" is defined as a contractual obligation to keep an offer open for a specified period, so that the offeror cannot revoke the offer during that period. *Drummond Co. v. Walter Industries, Inc.*, 962 So.2d 753 (Ala.2006).

It may be a close question, but I do not consider the right of first offer and the right of first refusal to be options.

V. LEGAL ISSUE FIVE

A. LEGAL QUESTION FIVE: Are the provisions of Section 8.16 Standard of Care valid and enforceable?

B. ANSWER TO LEGAL QUESTION FIVE: It is my legal opinion that the answer to Legal Question Five is in the affirmative.

C. BASIS FOR LEGAL OPINION: The City at the outset recognizes and agrees that neither Daniel Corporation nor Daniel Realty Services, LLC will be required to perform any architectural or engineering services. If it were otherwise, then in such event the following two statutes would apply:

(1) Title 34-2-32(c), Code of Alabama, 1975: Title 34-2-32(c), *Code of Alabama, 1975*, provides as follows:

"(c) The services of a registered architect shall be required on all buildings except those hereinabove exempted and no official of this state or of any city, town, or county herein charged with the enforcement of laws, ordinances, or regulations relating to the construction or alteration of buildings, shall accept or approve any plans or specifications that are not so prepared."

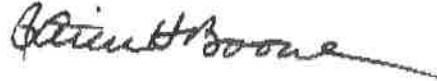
(2) Title 34-11-10, Code of Alabama, 1975: Title 34-11-10, *Code of Alabama, 1975*, provides as follows:

"It shall be unlawful for the state or any of its departments, boards of agencies or any county, municipality or political subdivision or any department, board or agency of any county, municipality or political subdivision to engage in the construction of any public work involving the practice of engineering unless the engineering drawings, plans, specifications and estimates have been prepared by and the construction executed under the direct supervision of a professional engineer; provided, that nothing in this chapter shall be held to apply to any public work wherein the expenditure for the complete project of which the work is a part does not exceed \$20,000.00."

April 22, 2014
Page 7

Please call me if you have any questions whatsoever regarding any of the matters set forth in this legal opinion.

Sincerely,



Patrick H. Boone
Vestavia Hills City Attorney

PHB:gp

cc: Stephen R. Monk, Esq. (by mail/fax 488-6429)

ORDINANCE NUMBER 2498

AN ORDINANCE ADOPTING AND ENACTING A NEW CODE OF ORDINANCES FOR THE CITY OF VESTAVIA HILLS, ALABAMA; PROVIDING FOR THE REPEAL OF CERTAIN ORDINANCES NOT INCLUDED THEREIN; PROVIDING A PENALTY FOR THE VIOLATION THEREOF; PROVIDING FOR THE MANNER OF AMENDING SUCH CODE; AND PROVIDING WHEN SUCH CODE AND THIS ORDINANCE SHALL BECOME EFFECTIVE

BE IT ORDAINED by the City Council of the City of Vestavia Hills in the State of Alabama, as follows:

Section 1. That code entitled “The Code of the City of Vestavia Hills, Alabama” consisting of Chapters 1-17, each inclusive, is adopted.

Section 2. All ordinances of a general and permanent nature enacted on or before August 26, 2013 and not included in the Code or recognized and continued in force by reference therein, are repealed.

Section 3. The repeal provided for in Section 2 hereof shall not be construed to revive any ordinance or part thereof that has been repealed by a subsequent ordinance that is repealed by this Ordinance.

Section 4. Unless another penalty is expressly provided, every person convicted of a violation of any provision of the Code or any ordinance, rules or regulation adopted or issued in pursuance thereof shall be punished by a fine of not less than \$1.00 nor more than \$500.00 or by imprisonment at hard labor for not exceeding six months or by both such fine and imprisonment. Each act or violation and each day upon which any such violation shall occur shall constitute a separate offense. The penalty provided by this section, unless another penalty is expressly provided, shall apply to the amendment of any Code section, whether or not such penalty is reenacted in the amendatory ordinances.

In addition to the penalty prescribed above, the city may pursue other remedies such as abatement of nuisances, injunctive relief and revocation of licenses or permits.

Section 5. Additions and amendments to the Code when passed in such form as to indicate the intention of the City Council to make the same a part of the Code shall be deemed to be incorporated in the Code, so that reference to the Code includes the additions and amendments.

Section 6. Ordinances adopted after August 26, 2013 that amend or refer to ordinances that have been codified in the Code shall be construed as they amend or refer to like provisions of the Code.

Section 7. If any section or provision of this Ordinance shall be held invalid, such holding shall not affect the validity of any other section or provision thereof which is not of itself invalid.

Section 8. This Ordinance Number 2498 shall become effective immediately upon adoption and posting/publication as required by Alabama law.

DONE, ORDERED and APPROVED this the 28th day of April, 2014.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

CERTIFICATION:

I, Rebecca H. Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance # 2498 is a true and correct copy of such Ordinance that was duly adopted by the City Council of the City of Vestavia Hills on the 14th day of April, 2014 as same appears in the official records of said City.

Posted at Vestavia Hills Municipal Center, Vestavia Hills Library in the Forest, Vestavia Hills New Merkle House and Vestavia Hills Recreational Center this the _____ day of _____, 2014.

Rebecca Leavings
City Clerk

RESOLUTION NUMBER 4585

**A RESOLUTION APPOINTING A MEMBER OF
THE VESTAVIA HILLS BOARD OF EDUCATION
FOR A TERM OF FIVE YEARS**

WITNESSETH THESE RECITALS:

WHEREAS, Section 11-16-3, Code of Alabama, 1975, provides that the City Council shall appoint members of the City Board of Education to serve for a term of five (5) years; and

WHEREAS, the five-year term of Jerry Dent as a member of the Vestavia Hills Board of Education expires at 6:00 PM on June 25, 2014 and

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

1. The City Council does hereby elect and appoint _____ as a member of the Vestavia Hills Board of Education for a term of five (5) years, beginning with the first regularly scheduled meeting of the Vestavia Hills Board of Education in June at 6:00 p.m. and ending at 6:00 p.m. on the date of the first regularly scheduled meeting of the Board in June of the year 2019; and

2. This Resolution shall become effective upon the approval and adoption by the City Council of the City of Vestavia Hills, Alabama.

RESOLVED, DONE, ORDERED, APPROVED and ADOPTED, on this the 28th day of April, 2014.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

RESOLUTION NUMBER 4586

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

WITNESSETH THESE RECITALS

WHEREAS, the City of Vestavia Hills, Alabama, is the owner of personal property detailed in the attached "Exhibit A"; and

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

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

1. The City Manager is hereby authorized to sell and/or dispose of the above-referenced surplus personal property; and
2. This Resolution Number 4586 shall become effective immediately upon adoption and approval.

DONE, ORDERED, APPROVED and ADOPTED on this the 28th day of April, 2014.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

04/16/14

To: Rebecca Leavings

From: Sgt. Joel Gaston

Re: Surplus City Property

Please request that the City Council deem the following property surplus at the next meeting:

- 1994 Nissan Pathfinder vin# JN8HD17SXRW213234 (VHPD case#2011-16477)
- ~~2001 Ford Crown Victoria vin# 2FAFP71W71X119884 (VHPD case# 2011-18403)~~

Please contact me with any questions or concerns.

Thanks,

Sgt. Gaston ext.#137

RESOLUTION NUMBER 4587

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AND DELIVER AN APPLICATION FOR A CWSRF LOAN FROM THE ALABAMA WATER POLLUTION CONTROL AUTHORITY

WHEREAS, the City Council of the City of Vestavia Hills, Alabama, herein called the “Applicant,” after thorough consideration of the various aspects of the problem and study of available data, has hereby determined that the construction of certain works required for the treatment of wastewater is desirable and in the public interest, and to that end it is necessary that action necessary for the construction of wastewater treatment and/or transport facilities be taken immediately; and

WHEREAS, under *Code of Alabama, 1975*, §§22-34-1 et seq., and the regulations promulgated, thereunder in ADEM Administrative Code Chapter 335-6-14, the State of Alabama has authorized the making of loans to aid in financing the cost of construction of necessary wastewater treatment and transport works to prevent the discharge of untreated or inadequately treated effluent into any waters.

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

1. That the City Manager is hereby authorized to file on behalf of the Applicant an application for a loan to be made by the Alabama Water Pollution Control Authority; and
2. That the City Manager is hereby designated as the Authorized Representative of the Applicant for the purpose of furnishing to the Alabama Department of Environmental Management (ADEM) such information, data and documents pertaining to the

application for a CWSRF loan from the Authority as may be required; and otherwise to act as Authorized Representative of the Applicant in connection with this application; and

3. That certified copies of this Resolution Number 4587 be included as a part of the application to be submitted to the Department for a loan; and
4. This Resolution Number 4587 shall become effective immediately upon adoption and approval.

ADOPTED and APPROVED this the 28th day of April, 2014.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

SEAL

RESOLUTION NUMBER 4588

A RESOLUTION AUTHORIZING THE CITY MANAGER TO MAKE APPLICATION THROUGH THE FY 2014 TRANSPORTATION ALTERNATIVES PROGRAM FOR CONSTRUCTION OF A TUNNEL TO CONNECT PEDESTRIAN ROUTES IN VESTAVIA HILLS

WHEREAS, The Alabama Department of Transportation (ALDOT) is soliciting applications for the Transportation Alternatives Program for FY 2014, which would provide 80% support of eligible projects up to \$400,000; and

WHEREAS, improved connectivity of pedestrian routes has been a continuous effort of the City and a need identified through various planning processes; and

WHEREAS, a tunnel constructed under Sicard Hollow Road would allow connectivity of pedestrian routes including two schools, park facilities, and communities; and

WHEREAS, if the proposed application is awarded by ALDOT, a 20% local cash match is required;

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

1. The Mayor and City Council express their support for the proposed application, a copy of which is marked as "Exhibit A" attached to and incorporated into this Resolution Number 4588 as though written fully therein; and
2. The Mayor and City Council will make appropriate action via Resolution regarding the required match prior to accepting the award; and
3. The City Manager is hereby authorized to submit the grant application to ALDOT; and
4. This Resolution Number 4588 shall become effective immediately upon adoption and approval.

ADOPTED and APPROVED this the 28th day of April, 2014.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

Exhibit A

To be inserted....