

**Vestavia Hills
City Council Agenda
December 22, 2014
5:00 PM**

1. Call to Order
2. Roll Call
3. Invocation – Melvin Turner
4. Pledge Of Allegiance
5. Announcements and Guest Recognition
 - a. Presentation – Sara Robicheaux, Vestavia Hills Library Board
6. City Manager’s Report
7. Councilors’ Reports
8. Financial Reports – Melvin Turner III, Finance Director
9. Approval of Minutes –November 20, 2014 (Work Session), December 8, 2014 (Work Session), December 8, 2014 (Regular Meeting)

Old Business

10. Ordinance Number 2544 – Annexation – 90-Day Final – 2429 Dolly Ridge Road; A Portion of Lot 36, Rocky Ridge Estates; Lila P. Williams, Owner; Earl Gibson, Representing
11. Ordinance Number 2545 – Rezoning – 2429 Dolly Ridge Road; A Portion Of Lot 36, Rocky Ridge Estates; Rezone From Jefferson County E-2 (Residential) To Vestavia Hills R-2 (Residential) For Construction Of Two Single-Family Homes; Lila P. Williams, Owner; Earl Gibson, Representing
12. Ordinance Number 2549 – Conditional Use Approval – 2409 Acton Road; Conditional Use Approval For Operation Of A Feline Veterinary Clinic; BRC Dolly Creek Station LLC, Owner; Jackie A. Holmes, DVM, Representing
13. Ordinance Number 2550 – An Ordinance To Prohibit Distracted Driving In School Zones And Providing Penalties For The Violation Thereof

New Business

14. Resolution Number 4664 – A Resolution Appointing A Member To The Vestavia Hills Park And Recreation Board

15. Resolution Number 4665 – A Resolution Appointing A Member To The Vestavia Hills Library Board
16. Resolution Number 4668 – A Resolution Determining That Certain Personal Property Is Not Needed For Public Or Municipal Purposes And Directing The Sale/Disposal Of Said Surplus Property

New Business (Requesting Unanimous Consent)

17. Resolution Number 4666 – A Resolution Authorizing the City Manager To Execute and Deliver An Agreement With Wisener, LLC For Consulting Services For The Meadowlawn Estates Acquisition Services

First Reading (No Action Taken At This Meeting)

18. Ordinance Number 2551 – Rezoning – 4325 Dolly Ridge Road; Rezone From Vestavia Hills R-4 (Residential District) To Vestavia Hills B-1.2 (Neighborhood Mixed Use District)
19. Resolution Number 4667 – A Resolution Authorizing the City Manager To Execute and Deliver An Agreement With Volkert, Inc. For Consulting Services For The Sicard Hollow Pedestrian Tunnel Design Services
20. Resolution Number 4669 – A Resolution Forming A Health Authority And Appointing Directors To The Authority
21. Citizens Comments
22. Motion For Adjournment

CITY OF VESTAVIA HILLS
CITY COUNCIL
WORK SESSION
MINUTES
NOVEMBER 20, 2014

The City Council of Vestavia Hills met in a work session on this date at 4:00 PM following posting/publishing pursuant to Alabama law. The Mayor Pro-Tem called the work session to order and the City Clerk called the roll with the following:

MEMBERS PRESENT: Steve Ammons, Mayor Pro-Tem
John Henley
George Pierce
Jim Sharp

MEMBERS ABSENT: Mayor Alberto C. Zaragoza, Jr.

OTHER OFFICIALS PRESENT: Jeff Downes, City Manager
Rebecca Leavings, City Clerk
Dan Rary, Police Chief
Jim St. John, Fire Chief

Mr. Ammons, Mayor Pro-Tem, welcomed the persons in attendance.

Mr. Downes gave an update on the Cahaba Heights charrette which is scheduled for the first week in December. He indicated that one of the properties that the City wishes to sell was delayed at a recent Commission meeting pending the charrette.

Mr. Downes gave an update on the following:

- Sign ordinance enforcement
- Moving fleet management facilities
- Disclosures for incentive agreements

Mr. Pierce left the meeting at 6:10 PM.

Mr. Downes stated that there is a multi-jurisdictional road improvement study proposal that should be coming to City Council soon. He explained the nature of the proposal and the reason for the ordinance.

Mr. Ammons stated that the proposed distracted driving ordinance would soon be presented to the Board of Education and should make its way to Council in December.

There being no further business, the meeting adjourned at 6:30 PM.

Steve Ammons
Mayor Pro-Tem

Attested by:

Rebecca Leavings
City Clerk

CITY OF VESTAVIA HILLS

CITY COUNCIL

WORK SESSION

MINUTES

DECEMBER 8, 2014

The City Council of Vestavia Hills met in a work session on this date at 4:00 PM following posting/publishing pursuant to Alabama law. The Mayor called the work session to order and the City Clerk called the roll with the following:

MEMBERS PRESENT:

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

OTHER OFFICIALS PRESENT:

Jeff Downes, City Manager
Rebecca Leavings, City Clerk
Dan Rary, Police Chief
Christopher Brady, City Engineer
Greg Gilchrist, Fire Marshal
Lyle Larson, P&Z Chairman
Deloye Burrell, P&Z Member
Blaine House, P&Z Member
Brian Wolfe, P&Z Member

Mr. Downes stated that the City hosted a planning charrette with several professionals and staff members in order to concentrate on a section of Cahaba Heights. He stated that a town hall meeting was called and about 150 residents attended in order to determine the wants and needs of the residents of the area. He introduced Cheryl Morgan who facilitated the charrette.

Ms. Morgan thanked the residents for their participation in the meeting along with the assistance of professionals and staff members during the 2-day charrette. She presented drawings and maps depicting and summarizing the findings and recommendations from the charrette. She indicated the map shows a new "main street" moving along the upper grade which connects Cahaba Heights Road with Dolly Ridge Road and leaves the Methodist church as a "centerpiece" to connect the lower and upper villages together. She explained the coordinates of the new roadway and indicated it would take cooperation of many of the landowners of the area for it to transpire. She stated that it was recommended that the process begin at the intersection of Dolly Ridge

Road where vacant property exists and encouraged a collaboration of land owners in the area to make it possible.

The Mayor opened the floor for a public hearing.

The following individuals addressed the Council on the presentation:

- Bob Elliott, River Run area;
- Deloye Burrell, P&Z member and resident of Cahaba Heights; and
- Tony Renta, resident.

The Mayor thanked everyone who participated in the charrette and invited the residents of the area who wished to discuss the maps in detail to adjourn to the foyer so the Council can begin the regular meeting later.

There being no further business, the meeting adjourned at 4:40 PM.

Alberto C. Zaragoza, Jr.
Mayor

Attested by:

Rebecca Leavings
City Clerk

CITY OF VESTAVIA HILLS

CITY COUNCIL

MINUTES

DECEMBER 8, 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
Patrick H. Boone, City Attorney
Rebecca Leavings, City Clerk
Melvin Turner, Finance Director
George Sawaya, Deputy Treasurer
Dan Rary, Police Chief
Marvin Greene, Deputy Fire Chief
Christopher Brady, City Engineer

Invocation was given by Dave Upton, AMBUCS, followed by the Pledge of Allegiance.

ANNOUNCEMENTS, GUEST RECOGNITION, CANDIDATES

- Mr. Pierce welcomed Mr. Upton to the meeting and read from a Certificate of Recognition that was recently presented to him on behalf of the City for all of his work with special needs children in providing them with special trikes and bikes. Mr. Downes and the Mayor also commended his work and all the good things AMBUCS has done for these children.
- Mr. Pierce welcomed Martha Cook, former Chairman of the Chamber to the meeting.
- The Mayor welcomed Robert Smith, Boy Scout from Troop 83, who is working on a communications merit badge.
- Mr. Pierce stated that Holiday in the Hills continues with several new events including the tree lighting ceremony.

- Mr. Henley reminded everyone of the upcoming pancake breakfast which is part of the Holiday in the Hills celebration that'll be held Saturday morning at 7:30. He invited everyone to attend.
- Mr. Ammons stated that the Council will be interviewing applicants for the upcoming Park and Recreation Board vacancy as well as the Library Board vacancy.

CITY MANAGER REPORT

- Mr. Downes stated that the City just received a \$50,000 grant from the Community Foundation of Greater Birmingham to be used in the new Cahaba Heights park.
- Proposals for specialized field maintenance on the City's athletic fields will be opened on Thursday. Mr. Downes explained this was part of the strategy to helping to keep better maintenance of the fields.
- Dunn Construction has begun the City's paving for the year.
- A new type of wearing surface designed to help keep life within the City roadways will be applied to the roadways in the Buckhead Subdivision.
- The construction of the rear wall of the parking lot adjacent to the Library in the Forest has begun. The project was delayed with utility relocations and should be completed around February.
- The McCallum pedestrian bridge has been installed and the trail system should be completed very soon.
- Mr. Downes gave an update on the paving of Montgomery Highway and the Reclamation Project of the SHAC.

COUNCILOR REPORTS

- Mr. Ammons stated that the Park Foundation is contracting with Ed Norton to do a study on where amenities can be located within the SHAC.

APPROVAL OF MINUTES

The minutes of November 24, 2014 (Regular Meeting) were presented for approval.

MOTION Motion to dispense with the reading of the minutes of November 24, 2014 (Regular Meeting) and approve them as presented was by Mr. Pierce and second by Mr. Henley. Roll call vote as follows:

Mr. Pierce – yes

Mr. Henley – yes

Mr. Sharp – yes

Mr. Ammons – yes

Mayor Zaragoza – abstain

motion carried.

OLD BUSINESS

RESOLUTION NUMBER 4662

Resolution Number 4662 – A Resolution Authorizing The City Manager To Accept A FEMA Flood Mitigation Assistance Grant And Execute And Deliver An Agreement For Said FMA Funds

MOTION Motion to approve Resolution Number 4662 was by Mr. Henley and second was by Mr. Sharp.

Mr. Downes explained that this Resolution accepts a FEMA flood mitigation grant to help with flooding issues in Cahaba Heights.

The Mayor opened the floor for a public hearing. There being no one to address the Council concerning this request, he closed the floor and asked 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 4663

Resolution Number 4663 – A Resolution Authorizing The City Manager To Execute And Deliver An Agreement With Schoel Consulting Engineers For Consulting Services For A FMA Floodplain Management Plan

MOTION Motion to approve Resolution Number 4663 was by Mr. Pierce and second was by Mr. Ammons.

Mr. Downes explained that this Resolution authorizes him to execute an agreement with Schoel Engineering to do the consultant work required for the previously approved FEMA grant.

The Mayor opened the floor for a public hearing. There being no one to address the Council concerning this request, he closed the floor and asked 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

CITIZENS ADDRESS

**Citizens Address To City Council Regarding Patchwork Farms PUD; Jeff W. Maze,
4613 Old Looney Mill Road, On Behalf Of Residents Of The Area**

Dwight Sandlin, Signature Homes, stated that his company purchased the five residential lots adjacent to the Patchwork PUD and indicated that they were of the understanding the PUD would be developed in a manner in keeping with the community. He stated that his company is in the process of beginning to build the fifth home and that the residents found out that apartments would be constructed on the property adjacent to theirs. He addressed the Council and indicated that he doesn't feel that the property's development was represented correctly to them in order to advise his clients of the later development and asked the Council to reconsider the move to build apartments on the property.

Mr. Downes gave a brief background on a charrette that was done about a year ago regarding the Patchwork PUD. He indicated many scenarios have been drawn in regard to that property. However, the most recently adopted amendment to the PUD done well after the charrette indicated that commercial should lie along Healthy Way and that the retirement resort as well as the Northport skilled nursing facility should go onto the property that was owned by the schools. That left the smaller footprint multifamily housing on this property.

Doug Neil, Daniel Corporation, spoke of the completion of the Master Plan and their desire to purchase and develop the remaining property. He stated that with the wetlands on this property, the required greenspace of the PUD and provided buffering should help to insulate the adjacent residential units from impact of the multifamily housing.

Discussion ensued concerning the background of the property, other developments near multifamily housing; the development of other Daniel projects, such as Lane Park in Mountain Brook; the challenges of the land and the transition; and the target market for the proposed multifamily units.

The following individuals addressed the Council with concerns of the development of apartments adjacent to the five residential lots and requested that the move either be reconsidered or additional buffering be placed to provide security and visual screening from the development:

- Brian Southerland, 2840 Vestavia Forest Drive, a resident who has contracted to purchase and build upon one of the lots;
- Jeff Maze, 4613 Old Looney Mill Road; and
- Collins Compere, 4621 Old Looney Mill Road.

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 December 22, 2014 at 5 PM.

- Ordinance Number 2544 – Annexation – 90-Day Final – 2429 Dolly Ridge Road; A Portion of Lot 36, Rocky Ridge Estates; Lila P. Williams, Owner; Earl Gibson, Representing
- Ordinance Number 2545 – Rezoning – 2429 Dolly Ridge Road; A Portion Of Lot 36, Rocky Ridge Estates; Rezone From Jefferson County E-2 (Residential) To Vestavia Hills R-2 (Residential) For Construction Of Two Single-Family Homes; Lila P. Williams, Owner; Earl Gibson, Representing
- Ordinance Number 2549 – Conditional Use Approval – 2409 Acton Road; Conditional Use Approval For Operation Of A Feline Veterinary Clinic; BRC Dolly Creek Station LLC, Owner; Jackie A. Holmes, DVM, Representing
- Ordinance Number 2550 – An Ordinance To Prohibit Distracted Driving In School Zones And Providing Penalties For The Violation Thereof

CITIZENS COMMENTS

None.

MOTION Motion to adjourn was by Mr. Pierce and second was by Mr. Henley. Meeting adjourned at 6:10 PM.

Alberto C. Zaragoza, Jr.
Mayor

Attested by:

Rebecca Leavings
City Clerk

ORDINANCE NUMBER 2544

**ANNEXING CERTAIN TERRITORY TO THE
CORPORATE LIMITS OF THE CITY OF
VESTAVIA HILLS, ALABAMA.**

WHEREAS, on the 11th day of August, 2014, a petition was presented to the City Council of the City of Vestavia Hills, Alabama, proposing the annexation of certain property to the City of Vestavia Hills, Alabama, under the provisions of Act 32 of the Special Session on the Alabama Legislature of 1964; and

WHEREAS, the City Council of the City of Vestavia Hills, at the time and place of its regular meeting on said date, made a determination that the matters contained in the Petition were true and that it was in the public interest that said property be annexed to the City of Vestavia Hills, Alabama.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Vestavia Hills, Alabama, as follows:

1. That the following property which was described in said petition be annexed to the City of Vestavia Hills, Alabama:

2429 Dolly Ridge Road
Lila P. Williams, Owner(s)

A Portion of Lot 36, Rocky Ridge Estates as recorded in Map Book 28, Page 78, in the Office of the Judge of Probate of Jefferson County, Alabama, being more particularly described as follows:

The Point of Beginning being the SW Corner of Lot 35 in said survey; thence run North along the West line of said Lot 35 for a distance of 289.04 feet to a crimped iron found on the South ROW of Dolly Ridge Road, having a 50.0 feet ROW; thence deflect 89 degrees 52' to the left and run 48.39 feet along said ROW to a point, being the PC of a curve having a delta of 39 degrees 54' and a radius of 130.58; thence deflect 19 degrees 59' 30" to the left and run 72.19 feet along said ROW to a point, being the PT of said curve; thence deflect 19 degrees 59' 30" to the left and run 97.15 feet along said ROW to a point, said point being the PC of a

curve having a delta of 39 degrees 58' and a radius of 137.5; thence deflect 30 degrees 56' 00" to the right and run along said ROW for a distance of 9.80 feet to a capped rebar found L S 8759; thence deflect 83 degrees 35' 55" to the left and run 190.30 feet to a rebar found; thence deflect 84 degrees 17' 09" to the left and run 192.48 feet to a crimped pipe found, said point being the Point of Beginning.

2. That this Annexation shall become effective upon the adoption and approval of this Ordinance in accordance with the provisions of law, after which the heretofore described property shall become a part of the City of Vestavia Hills, Alabama.

3. That the City Clerk be and is hereby directed to publish this Ordinance in accordance with the requirements of the law and to file a copy hereof, together with a duly certified copy of the petition, with the Probate Judge of Jefferson County, Alabama.

ADOPTING and APPROVED this the 22nd day of December, 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 # 2544 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 22nd day of December, 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

ORDINANCE NUMBER 2545

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 PROPERTY FROM JEFFERSON COUNTY E-2 TO VESTAVIA HILLS R-2

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

2429 Dolly Ridge Road
Lila P. Williams, owner(s)

A Portion of Lot 36, Rocky Ridge Estates as recorded in Map Book 28, Page 78, in the Office of the Judge of Probate of Jefferson County, Alabama, being more particularly described as follows:

The Point of Beginning being the SW Corner of Lot 35 in said survey; thence run North along the West line of said Lot 35 for a distance of 289.04 feet to a crimped iron found on the South ROW of Dolly Ridge Road, having a 50.0 feet ROW; thence deflect 89 degrees 52' to the left and run 48.39 feet along said ROW to a point, being the PC of a curve having a delta of 39 degrees 54' and a radius of 130.58; thence deflect 19 degrees 59' 30" to the left and run 72.19 feet along said ROW to a point, being the PT of said curve; thence deflect 19 degrees 59' 30" to the left and run 97.15 feet along said ROW to a point, said point being the PC of a curve having a delta of 39 degrees 58' and a radius of 137.5; thence deflect 30 degrees 56' 00" to the right and run along said ROW for a distance of 9.80 feet to a capped rebar found L S 8759; thence deflect 83 degrees 35' 55" to the left and run 190.30 feet to a rebar found; thence deflect 84 degrees 17' 09" to the left and run 192.48 feet to a crimped pipe found, said point being the Point of Beginning.

APPROVED and ADOPTED this the 22nd day of December 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 # 2545 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 22nd day of December 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

ORDINANCE NUMBER 2549

AN ORDINANCE GRANTING A CONDITIONAL USE APPROVAL FOR A FELINE VETERINARY HOSPITAL

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 October 8, 2014 BRC Dolly Creek Station, on behalf of Dr. Jackie A. Holmes, DVM, submitted an application for operation of a veterinary hospital limited to felines on the property located at 2409 Acton Road currently zoned Vestavia Hills B-3; and

WHEREAS, Table 6 of the Vestavia Hills Zoning Code limits veterinary hospitals of any kind within a B-3 zoning district to be operated only with a Conditional Use Approval; and

WHEREAS, Dr. Holmes has indicated that her veterinary hospital is limited to felines only with no outdoor facilities or runs for any animal; and

WHEREAS, the Vestavia Hills Planning and Zoning Commission at its regular meeting of November 13, 2014 voted unanimously to recommend approval of Dr. Holmes' request for a veterinary hospital limited to feline care only be approved as requested; and

WHEREAS, a copy of said application dated October 8, 2014 is attached and hereby incorporated into this Ordinance Number 2549.

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 Dr. Jackie A. Holmes, DVM for a veterinary hospital limited to feline care only as described in the above-referenced application for the property located at 2409 Acton Road outlined as follows:
 - (1) “Veterinary Hospital shall be limited to the care of felines only; no veterinary care shall be rendered to any other type of animal except in cases of extreme emergency;
 - (2) No outdoor facilities shall be constructed or maintained for animals including, but not limited to outdoor runs, play areas, etc;
 - (3) All animal waste shall be disposed of in accordance with the City’s Zoning Code;
 - (4) The activity shall be carried on as veterinary hospital and shall be limited to the hours between 7:00 AM and 10:00 PM;
2. A City of Vestavia Hills Business License shall be issued upon application and payment by Dr. Holmes subject to the rules and regulations outlined in the Vestavia Hills Business License Code and shall be renewed each year that the use is operated from the location at 2409 Acton Road, Vestavia Hills, Alabama.
3. At any time should Dr. Holmes vacate the premises located at 2409 Acton Road, Vestavia Hills, Alabama, discontinue and/or relocate her veterinary hospital, this Conditional Use Approval shall continue in full force and effect with said restrictions to a new owner should the business be purchased or shall

be nullified and said Ordinance Number 2549 shall be repealed should the business close or cease to operate in excess of 365 consecutive days.

ADOPTED and APPROVED this the 22nd day of December, 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 # 2549 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 22nd day of December, 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

ORDINANCE NUMBER 2550

AN ORDINANCE TO PROHIBIT DISTRACTED DRIVING IN SCHOOL ZONES AND PROVIDING PENALTIES FOR THE VIOLATION THEREOF

WHEREAS, cellular telephones, music devices and fast food have all become a large part of today’s culture; and

WHEREAS, safety concerns have risen with talking or texting on cellular phones, using Global Positioning Devices (GPS) for navigation, listening to music while driving, grooming or even eating¹; and

WHEREAS, in 2012, The U.S. Department of Transportation’s National Highway Traffic Safety Administration (NHTSA) indicated that observational surveys show that more than 100,000 drivers are texting at any given daylight moment and more than 600,000 drivers are holding phones to their ears while driving and that there are at least 3,000 deaths annually from distraction-affected crashes in which drivers lost focus on the safe control of their vehicles due to manual, visual or cognitive distractions²; and

WHEREAS, the magnitude of distracted drivers in active school zones was studied and conducted with actual roadside observations by a Safe Kids coalition member and using the Wilson score method, calculated the confidence interval for driver distraction rate with the results showing that one in six drivers were distracted³; and

WHEREAS, the same study showed that cell phones/electronics were the leading distractor followed by eating/drinking/smoking, reaching/looking behind, grooming and reading⁴; and

WHEREAS, the safety and security of children, educators, School Resource Officers and parents are of the utmost concern for the City; and

¹ “Distracted Drivers in School Zones, A National Report; Department of Evaluation and Research Safe Kids USA”; Jurek G. Grabowski, PhD, MPH and Stephanie Goodman, MPH; p.2.

² www.-

nrd.nhtsa.dot.gov/About+NHTSA/Press+Releases/2012/U.S.=Transportation+Secretary+LaHood+Announces+Low+est+Level+Of+Annual+Traffic+Fatalities+In+More+Than+Sex+Decades.

³ “Distracted Drivers in School Zones, A National Report; Department of Evaluation and Research Safe Kids USA”; Jurek G. Grabowski, PhD, MPH and Stephanie Goodman, MPH;; pp 6&7.

⁴ Ibid; p. 7

WHEREAS, in 2012, the Alabama State Legislature recognized and acknowledged one factor of distracted driving and adopted and approved Alabama Act Number 2012-291 which relates to texting and driving on Alabama rights-of-way; and

WHEREAS, the National Center for Safe Routes to School states that “unsafe driving behaviors put pedestrians and bicyclists at risk. Research indicates that the probability and severity of a crash taking place are strongly influenced by vehicle speed and driver attention.”⁵

WHEREAS, the purpose of this Ordinance Number 2550 is to create awareness, increase safety and provide for enforcement for distracted driving in school zones.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA, that the Mayor and City Council recognize the dangers of distracted driving within school zones of the City and established this regulation to protect and improve the public health and welfare as follows:

SECTION 1. DEFINITIONS.

As used in this Chapter, the following words and terms shall have the meanings respectively ascribed.

Driver shall mean any individual in control of a motor vehicle as defined in this section.

Distracted Driving shall mean any activity that could divert a person’s attention away from the primary task of driving, including, but not limited to, talking, texting, emailing or any other use of a cellular phone, tablet/Ipad or any other electronic device; reading books, newspapers, etc., pets, loud music, food, or any other distraction that might divert a driver’s attention.

Law Enforcement Office (“LEO”) means any duly sworn officer of the Vestavia Hills Police Department or any officer, agent, or employee of the State of Alabama, any duly sworn officer of local government.

Motor Vehicle means any vehicle powered by an internal combustion or battery-powered engine, including, but not limited to, personal and commercial cars, trucks, sport utility vehicles, golf carts, all-terrain vehicles (“ATV”), utility vehicle (“UTV”), motorcycles, motorized scooters, etc.

⁵ “Getting Results: SRTS Programs that Reduce Speeding and Distracted Driving”; National Center for Safe Routes To School; www.saferoutesinfo.org; p. 1.

School Zone means in or on the grounds of a public, parochial or private school located in the City of Vestavia Hills and within a distance of 1,000 feet from the grounds of any public, parochial or private school where designated by signage indicating “school zone”.

SECTION 2. OFFENSE.

It shall be unlawful for any driver of a motor vehicle located within a school zone to drive distracted as defined in Section 1 of this Ordinance Number 2550.

SECTION 3. FINES AND PUNISHMENT.

It shall be unlawful to violate any of the terms and provisions of this ordinance. Any person, firm or corporation violating any of the said terms and provisions of this ordinance shall be guilty of a misdemeanor and upon conviction shall be punished by fines and penalties as allowed by the State of Alabama for a misdemeanor violation for each such offense. Each day any violation of this ordinance shall continue shall constitute a separate offense.

SECTION 4. SUMMONS AND COMPLAINT.

Pursuant to Section 11-45-9.1 of the Code of Alabama, 1975, as amended, which authorizes municipalities to issue Summons and Complaints in lieu of arrest warrants for violation of certain municipal ordinances:

(1) Any Law Enforcement Officer may issue a Summons and Complaint to any person charged with violation of this Ordinance Number 2550 and release such person from custody upon his or her written promise to appear in Vestavia Hills Municipal Court at the designated time and place as evidenced by his or her signature on the Summons and Complaint;

(2) The form of the approved Summons and Complaint shall be the Uniform Non-Traffic Citation and Complaint form, State of Alabama Unified Judicial System ARJA-20, 07/1994 or its successors.

SECTION 5. SEVERABILITY.

If any portion of this ordinance shall be held unconstitutional, invalid or unenforceable, such holding shall not affect the remaining portions of this chapter nor render the remaining portions of this chapter invalid, and to that end the provisions hereof are declared to be severable.

SECTION 6. EFFECTIVE DATE.

This Ordinance Number 2550 shall become effective January 1, 2015 following posting/publishing as required by Alabama law.

DONE, ORDERED, ADOPTED and APPROVED this the 22nd day of December, 2014.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

RESOLUTION NUMBER 4664

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

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

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

WHEREAS, the appointment of _____ shall be effective January 1,
2015, and shall expire December 31, 2019.

APPROVED AND ADOPTED this the 22nd day of December, 2014.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

RESOLUTION NUMBER 4665

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

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

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

WHEREAS, the said appointment of _____ shall be effective
January 1, 2015 and shall expire December 31, 2018.

APPROVED AND ADOPTED this the 22nd day of December, 2014.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

RESOLUTION NUMBER 4668

**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 in order to obtain the best resale value of said vehicles; and
2. This Resolution Number 4668 shall become effective immediately upon adoption and approval.

DONE, ORDERED, APPROVED and ADOPTED on this the 22nd day of December, 2014.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

EXHIBIT A

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

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

MEMORANDUM

TO: Jeff Downes, City Manager
FROM: Jim St. John, Fire Chief
DATE: December 16, 2014
RE: Surplus equipment

The Fire Department has placed into service a new administrative vehicle and two new station generators. I recommend that the 1998 Ford Crown Victoria, VIN 2FAFP71W6XX153243 with City of Vestavia Hills property tag #16008, Onan generator model 30ODL6-3R/25414D, serial number J850780679 property tag #16016 and Generac generator model 90A04052-S, serial number 994431, property tag #16031 be sold as surplus.

I also recommend that the City Council authorize you to sell and/or dispose of the above-referenced property in order to obtain the best resale value of said property.

RESOLUTION NUMBER 4666

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AND DELIVER AN AGREEMENT WITH WISENER, LLC FOR CONSULTING SERVICES FOR THE MEADOWLAWN ESTATES ACQUISITION SERVICES

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

1. The City Manager is hereby authorized to execute and deliver an agreement with Wisener, LLC for consulting services for Meadowlawn Estates Acquisition Services in an amount not to exceed \$36,487.00; and
2. A copy of said agreement is marked as Exhibit "A" attached and incorporated into this Resolution Number 4666 as though written fully therein; and
3. This Resolution Number 4666 shall become effective immediately upon adoption and approval.

ADOPTED and APPROVED this the 22th day of December, 2014.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

EXHIBIT A

AGREEMENT

This Agreement made this ____ day of _____, 2014, by and between Vestavia Hills, Alabama (hereinafter referred to as the "City") and Wisener, LLC (hereinafter referred to as the "Consultant") (the "Agreement").

WITNESSETH

In consideration of the mutual covenants herein, it is agreed that the Consultant, in the preparation of items pertaining to projects submitted by the City to the Consultant, will meet the requirements for conformance with the Standards adopted by the Uniform Act and State Relocation Assistant Program, and the City and will ascertain the written practices of the State and the City prior to beginning any work on any project. All work required under this Agreement will be performed in accordance with these standard practices and any special requirements hereinafter set forth. All work performed by the Consultant under this Agreement will be subject to the review, approval and acceptance of the City, State and Federal Guidelines, as necessary and applicable.

ARTICLE I - SCOPE OF WORK APPRAISAL AND APPRAISAL REVIEWS – NEGOTIATIONS – RELOCATION STUDY – RELOCATION – PROJECT MANAGEMENT

The Consultant will perform acquisition services as follows:

1. The Consultant shall comply with all applicable State and Federal guidelines as a before and after report and following the Uniform Standards of Professional Appraisal Practice (USPAP). We will be using a local appraiser who is qualified with this type report and is on the State's approved list.
2. The appraisal reviewer will follow guidelines as set out in the State and Federal guidelines as well as USPAP.
3. A Relocation Study may be required by Federal guidelines which is a study prior to right of way acquisition.
4. The relocation of 4 residences shall include all documentation required by the Uniform Act and State Relocation Assistance Program.
5. Project management will include coordination between the project and the City, assisting attorney appointed to project with tract information for closing, and coordination between project and design consultant on right of way issues.

ARTICLE II - TIME OF BEGINNING AND COMPLETION

1. The Consultant agrees to start work on the professional services outlined under Article I of this Agreement within ten days after receipt of the written notice to proceed from the City. The City will not notify the Consultant to commence work until this Agreement has been formally approved by both parties.

ARTICLE III- PAYMENT

For services performed by the Consultant under this Agreement and as full and complete compensation thereof, including all expenditures made and all expenses incurred by the Consultant in connection with this Agreement, except as otherwise provided herein, subject to and in conformity with all provisions of this Agreement, the City will pay the Consultant as follows:

1. The maximum amount payable to the Consultant for the work performed under this Agreement shall not exceed \$36,487.00.
2. The Consultant will bill the City monthly in amounts according to work completed and subject to such evidence of performance, as the City may deem necessary.
3. This Agreement shall terminate one year from the date of its authorization, or as provided in Article IV, Section 4.3. Payments to the Consultant for work performed by the Consultant and/or an independent fee appraiser under this Agreement shall not exceed a total of \$36,487.00 for said project.
4. This agreement does not include appraisal updates, second appraisals, appraisals for court, or expert witness fees. If it is determined that these services will be needed, they can be added in a supplemental agreement. If tracts are revised, added, or deleted, the proposal will be adjusted accordingly.

ARTICLE IV - MISCELLANEOUS PROVISIONS

SECTION 4.1. CHANGES OF WORK. If, during the term of this Agreement, additional services are required of the Consultant other than those specified above or major changes in the work become necessary or desirable, the City may order, in writing, the Consultant to perform such services or make such services or make such changes. If the Consultant is of the opinion that the work he has been directed to perform is beyond the scope of this Agreement and constitutes extra work, the Consultant shall, within ten days, notify the City, in writing, and receive approval from the City prior to performing such extra work. In the event, the City determines that such work does constitute extra work, additional time from date specified, according to Article II, will be given and payment for the additional work shall be negotiated and expressed by Supplemental Agreement.

SECTION 4.2. OWNERSHIP OF DOCUMENTS. Upon completion of the work and the full payment for the services covered by this Agreement, the Consultant shall make available to the City all documents and data pertaining to the work or to the project(s), which material shall become the property of the City.

SECTION 4.3. TERMINATION OR ABANDONMENT.

1. The City shall have the right to abandon this Agreement or amend its project(s) at any time, and such action shall in no event be deemed a breach of contract.

2. The City has the right to terminate this Agreement at its pleasure upon ten days' written notice and make settlement with the Consultant on an equitable basis. The value of the work performed by the Consultant prior to the termination of this Agreement shall be determined.

SECTION 4.4. CONTROVERSY. In any controversy concerning a question of fact in connection with the work covered by this Agreement, or compensation thereof, the decision of the City Engineer in the matter shall be final and conclusive for both parties.

SECTION 4.5. RESPONSIBILITY FOR CLAIMS AND LIABILITY. The Consultant specifically agrees that it shall possess the experience, knowledge and character necessary to qualify it individually for the particular duties it performs. The Consultant, without extra compensation, shall carry insurance of the kinds and in amounts set out below. All insurance shall be by companies authorized to do business in Alabama involving those types of insurance. Before beginning work, the Consultant shall file with the City a certificate, if required, from its insurer showing the amount or insurance carried and the risk covered thereby or a copy of the required insurance policies.

Liability and Property Damage Liability Insurance.....\$1,000,000

IN WITNESS WHEREOF the Parties have caused this Agreement to be executed by their duly authorized representatives this ____ day of _____, 2014.

WISENER, L.L.C.

Bradley Wisener, President

CITY OF VESTAVIA HILLS, ALABAMA

Jeff Downes, City Manager

ATTEST:

Rebecca Leavings
City Clerk

STATE OF ALABAMA)

CITY OF JEFFERSON)

I, _____, Notary Public in and for said City in said State hereby certify that Bradley Wisener, whose name as President of Wisener, LLC, is signed to the

foregoing Agreement, and who is known to me, acknowledged before me this day that, being informed of the contents of this Agreement, he, as such officer and with full authority executed the same voluntarily.

Given under my hand this _____ day of _____ 2014.

Notary Public
My Commission Expires: _____

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

copy to
Davis +
Brady

November 21, 2014

By Hand Delivery

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

In Re: Proposed Agreement Between City of Vestavia Hills, Alabama ("City")
and Wisener, LLC ("Consultant")

Dear Mr. Downes:

On October 29, 2014, City Clerk Becky Leavings provided me with a copy of a proposed Agreement by and between the City of Vestavia Hills, Alabama ("City") and Wisener, LLC ("Consultant") with a request that I review the document and provide you with my written legal opinion. The purpose of this letter is to comply with that request.

I. FACTS

Wisener, LLC, as Consultant, proposes to perform consulting services for the City regarding the Meadowlawn Estates Project. Included in the consulting services will be appraisal work and other consulting services that will comply with the standards adopted by the Uniform Act and State Relocation Assistance Program.

II. LEGAL ISSUE ONE

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

B. ANSWER TO LEGAL QUESTION ONE: It is my legal opinion that the Agreement with Wisener, LLC 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 a 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.

III. **CONCLUSION**

It is my opinion that this agreement meets the requirements of Alabama law. I recommend that the City Council approve and adopt a resolution authorizing the execution and delivery of the Agreement for and on behalf of the City of Vestavia Hills, Alabama.

November 21, 2014
Page 3

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

Sincerely,



Patrick H. Boone
Vestavia Hills City Attorney

PHB:gp

cc: City Clerk Rebecca Leavings (by hand)

ORDINANCE NUMBER 2551

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 PROPERTY FROM VESTAVIA HILLS R-4 TO VESTAVIA HILLS B-1.2

BE IT ORDAINED by the City Council of the City of Vestavia Hills, Alabama, as follows: That the Zoning Ordinance and Zoning Map of the City of Vestavia Hills, Alabama, adopted September 16, 1985, and as last amended so as to change the class of district zoning of the following described property from Vestavia Hills R-4 (residential) Vestavia Hills B 1.2 (neighborhood mixed use district):

4325 Dolly Ridge Road
City of Vestavia Hills, owner(s)

More particularly described as follows:

Commence at the NE corner of the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 22, Township 18 South, Range 2 West, Jefferson County Alabama, and run in a Westerly direction along the $\frac{1}{4}$ line for a distance of 535.38 feet to a found rebar; thence continue in a Westerly direction for a distance of 448.54 feet to a point on the Easterly right-of-way of Dolly Ridge Road; thence run in a Northeasterly direction along the right-of-way for a distance of 107.93 feet to a point; thence turn an interior angle to the left of 114 degrees 58' 21" and run in an Easterly direction for a distance of 396.86 feet to a found rebar; thence run in a Southerly direction for a distance of 93.82 feet, more or less, to the point of beginning.

APPROVED and ADOPTED this the 12th day of January 2015.

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 # 2551 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 12th day of January 2015 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 _____, 2015.

Rebecca Leavings
City Clerk



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

Date: NOVEMBER 13, 2014

- **CASE:** P-1114-55
- **REQUESTED ACTION:** Rezoning Vestavia Hills R-4 to Vestavia Hills B-1.2
- **ADDRESS/LOCATION:** 4325 Dolly Ridge Rd.
- **APPLICANT/OWNER:** City of Vestavia Hills
- **REPRESENTING AGENT:** Thorton Hyding & Sorrell Chew
- **GENERAL DISCUSSION:** Property directly adjacent to Cahaba Heights Elementary. Property is currently owned by City and is part of an overall redevelopment effort in Cahaba Heights. City and developer are requesting a B-1.2 rezoning to create a denser more urban development. New development will host a dermatology practice.
- **CAHABA HEIGHTS COMMUNITY PLAN:** The request is consistent with the results from the Cahaba Heights charrette.
- **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:** Development plan to include construction of access to neighboring properties.
 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. Wolfe made a motion to approve Rezoning of 4325 Dolly Ridge Rd. from Vestavia Hills R-4 to Vestavia Hills B-1.2 For The Purpose Of A Medical Office Building Conditioned on the site plan and rendering presented. Second was by Mr. House. Motion was carried on a roll call; vote as follows:

Mr. Goodwin – yes
Mr. Gilchrist – yes
Mr. Wolfe – yes
Mr. Larson – yes

Mr. Burrell – yes
Mr. Sharp – yes
Mr. House – yes
Motion carried.

CITY OF VESTAVIA HILLS

APPLICATION

PLANNING AND ZONING COMMISSION

I. INSTRUCTIONS AND INFORMATION:

- (1) The Vestavia Hills Planning and Zoning Commission meets regularly on the second Thursday of each month at 6:00 PM in Council Chambers at the Municipal Center.
- (2) All materials and information relating to a zoning/rezoning request or conditional use approval before the Planning and Zoning Commission must be submitted to the Office of the City Clerk no later than **25 working days prior to the scheduled meeting at which it shall be considered**. All information relating to Preliminary Map approvals must be submitted to the Office of the City Clerk no later than 20 days prior to the scheduled meeting at which it shall be considered. All information relating to Final Map approvals must be submitted to the Office of the City Clerk no later than 15 days prior to the scheduled meeting at which it is to be considered.
- (3) This application must be filled out in its entirety complete with zip codes.
- (4) All applicable fees shall accompany this application prior to its being considered complete. Fees include an application fee of \$100.00 along with applicable postage per property owner to be notified for Commission meeting. Fees may also include notification fees for City Council meeting and publication fees which will be billed to applicant at a later date. ***No permits will be issued until all fees have been paid.*
- (5) Appropriate plats and maps with proper legal description shall accompany this application. **Please refer to attached checklist.**

II. APPLICANT INFORMATION: (owner of property)

NAME: The City of Vestavia Hills

ADDRESS: 513 Montgomery Hwy Vestavia Hills, AL 35216

MAILING ADDRESS (if different from above) _____

PHONE NUMBER: Home n/a Office 978-0100

NAME OF REPRESENTING ATTORNEY OR OTHER AGENT: Thornton Wydinger
Hydinger Stewart and Chew

paying postage fee →

Commercial Properties, LLC 2801 Hwy 280 South Protective Ctr
Ste 500 Bham AL 35223

2011 OCT -9 P 1:16

4325 Dolly Ridge Rd.

Rezone from VH R-4 to B 1.2

City of Vestavia Hills

VH

R4

III. ACTION REQUESTED

Request that the above described property be zoned/rezoned

From: VH R-4

To: B1.2

For the intended purpose of: Medical Office Building

(Example: From "VH R-1" to "VH O-1" for office building)

if additional information is needed, please attached full description of request

IV. PROPERTY DESCRIPTION: (address, legal, etc.)

4325 Dolly Ridge Road Vestavia Hills, AL 35243

Tax ID# 28-00-22-2-010-012.000

Property size: _____ feet X _____ feet. Acres: _____

V. INFORMATION ATTACHED:

Attached Checklist complete with all required information.

Application fees submitted.

VI. I do hereby declare the above statements are true and that I, the owner, and/or my duly appointed representative will be at the scheduled hearing.

Mr. Jeff Dawnes
Mr. Jeff Dawnes, City Manager, Vestavia Hills, AL

Representing Agent (if any)/date

Given under my hand and seal
this 13th day of October, 2014

Kay Russon
Notary Public My Commission Expires
November 18, 2016

My commission expires _____
day of _____, 20____.

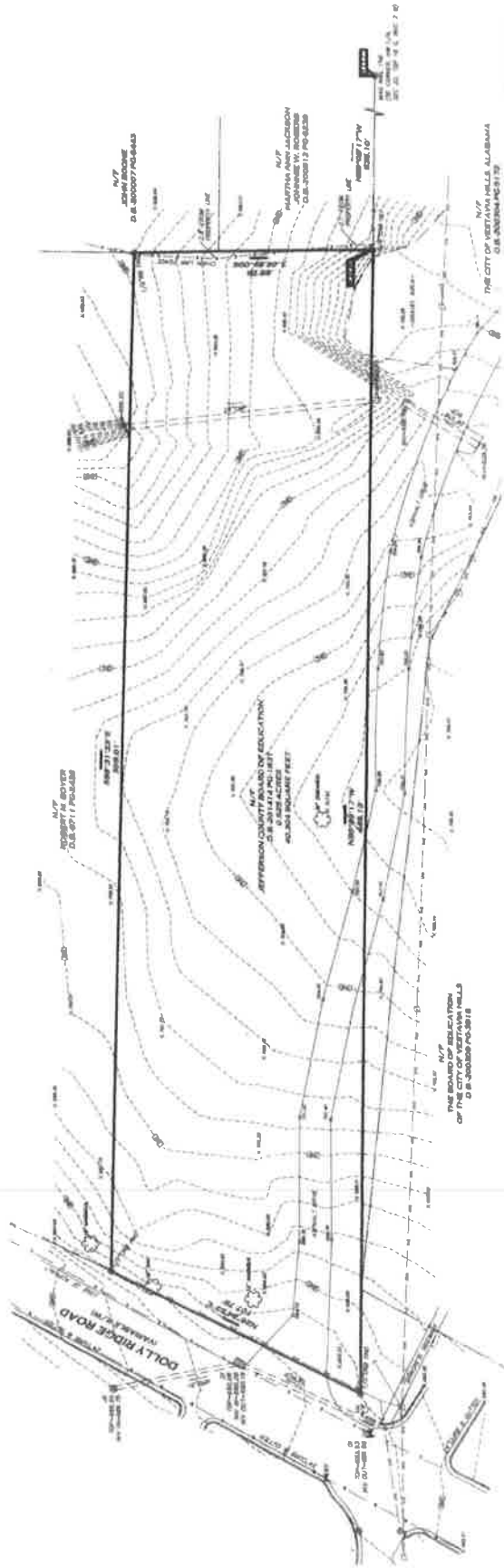






P1114-55//28-22-2-10-12
4325 Dolly Ridge Rd.
 Rezone from VH R-4 to B 1.2
 City of Vestavia Hills
 R4

VH



EXISTING SURVEY
 SCALE: 1" = 30' 0"

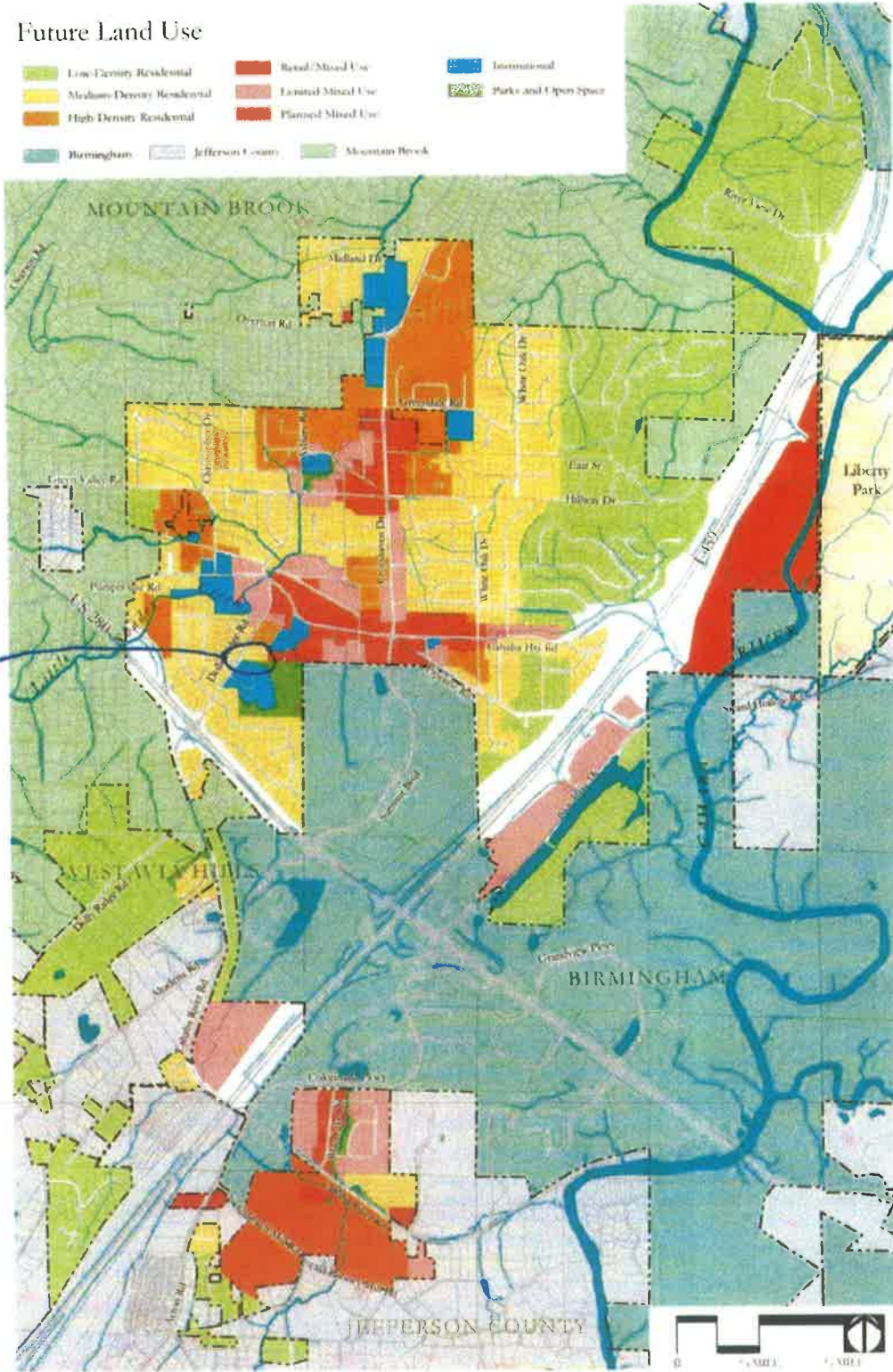
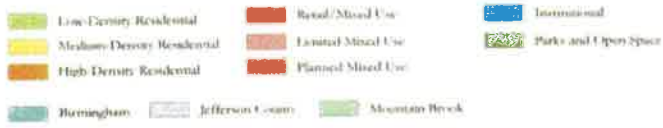


VICINITY PLAN
 SCALE: 1" = 200' 0"

PROPOSED VESTAVIA HILLS DEVELOPMENT

THE CITY OF VESTAVIA HILLS, ALABAMA
 1000 W. WOODS BLVD., SUITE 100, VESTAVIA HILLS, AL 35296
 TEL: 205.978.1100 FAX: 205.978.1101

Future Land Use



Subject Property

Figure 4: Future Land Use Map

RESOLUTION NUMBER 4667

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AND DELIVER AN AGREEMENT WITH VOLKERT, INC. FOR CONSULTING SERVICES FOR THE SICARD HOLLOW PEDESTRIAN TUNNEL DESIGN SERVICES

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

1. The City Manager is hereby authorized to execute and deliver an agreement with Volkert, Inc. for consulting services for Sicard Hollow Pedestrian Tunnel Design Services in an amount not to exceed \$74,300.00; and
2. A copy of said agreement is marked as Exhibit "A" attached and incorporated into this Resolution Number 4667 as though written fully therein; and
3. This Resolution Number 4667 shall become effective immediately upon adoption and approval.

ADOPTED and APPROVED this the 12th day of January, 2015.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

EXHIBIT A

OWNER/CONSULTANT AGREEMENT

This Agreement made and entered into this ____ day of _____, _____ by and between the _____, hereafter referred to as the OWNER, and Volkert, Inc., hereinafter referred to as the CONSULTANT; WITNESSETH THAT:

WHEREAS, the OWNER desires to retain the CONSULTANT to perform certain professional planning, programming, and engineering services as outlined in the Scope of Services;

WHEREAS, the CONSULTANT desires to perform said professional services for the Owner;

NOW, THEREFORE, for and in consideration of the mutual covenants hereinafter stipulated to be kept and performed, the parties hereto agree as follows:

ARTICLE I – SCOPE OF SERVICES

SECTION I – GENERAL SERVICES

The CONSULTANT shall perform certain professional and engineering services as requested by the OWNER for a pedestrian tunnel to connect the Liberty Park Sports Complex (LPSC) and the Sicard Hollow Athletic Complex (SHAC).

The scope of services proposed to complete this project is summarized herein below.

Design Engineering

- Conduct a project kick-off meeting to discuss project details, schedule, and confirm City's goals and objectives.
- Gather and review the following information:
 - Previous studies and grant application documents provided by the City or currently available mapping including: GIS, quad maps, aerial maps,
 - Current planning and zoning maps.
 - Meet with the City regarding any known future developments. Identify any right-of-way issues.
- Coordinate with the City and other utilities to obtain available utility mapping within the project area.
 - Coordinate with Alabama Power in regards to the transmission lines.
 - Coordinate with the Birmingham Water Works Board to relocate or protect the existing 24-inch diameter water transmission main.

- Conduct a detailed survey of the proposed site and surrounding area. This survey will be used to determine all existing grades / ground surface elevations. Volkert will also survey all existing drainage structures, existing features, existing utilities, and a complete survey of Sicard Hollow Road for a distance of 300' on either side of the proposed tunnel.
- Subsurface utilities will be potholed with non-destructive methods to confirm elevation.
- Conduct a detailed geotechnical investigation to determine subsurface condition, structural excavation, bedding and backfill requirements, and to minimize the cost of risk on the project.
- Finalize our study of viable structural alternatives and select a preferred structural alternative in accordance with the Owner's objectives.
 - Jacked box culvert to minimize impact to traffic and utilities or...
 - Cut and Cover for a box culvert with phased Maintenance of Traffic (MOT) for Sicard Hollow Road.
- Perform engineering design for selected tunnel alternative. Coordinate design with Volkert CEI to coordinate constructability and budgetary issues.
- Coordinate design with TAP requirements to ensure available funding is secured.
- Conduct phased design reviews with City and ALDOT. Each review will include an updated construction estimate.
 - Schematic Design (30%) – Vestavia Only
 - Plan in Hand (60%)
 - P.S. & E. (85%)
 - Original Submittals (100%)
 - Additional reviews conducted, if required.
- Assist the City with Bid Phase services

Construction Engineering and Inspection (CE&I)

CE&I services are not included in the General Services and shall be added by supplemental agreement to this contract as Special Services.

SECTION II – SPECIAL SERVICES

At the written request of the OWNER, the CONSULTANT shall accomplish such special services as required by the OWNER. When the CONSULTANT is requested to provide

special services, such services may be provided by CONSULTANT'S own forces or through subcontracts with other professionals. However, contracts with other professionals for special services must have the written approval of the OWNER before the work is initiated. Special services which may be requested include, but are not necessarily limited to the following:

- A. Land Surveys as necessary to establish property boundaries required for property acquisition purposes or preparation of property maps.
- B. Soils and Materials Investigations including laboratory and field testing of soils and materials required for construction quality control purposes.
- C. Engineering Surveys for construction to include topographic surveys, base line surveys, cross section surveys, aerial photography, etc., as required and approved by the OWNER.
- D. Observation of construction by project representative as approved by the OWNER. When authorized by the OWNER, the duties, responsibilities and limitations of authority shall be included in a supplemental agreement.
- E. Assistance to the OWNER as expert witness in litigation arising from development or construction of project as determined appropriate by OWNER and CONSULTANT.
- F. Accomplishment of special surveys and investigations, and the preparation of special reports and drawings as may be requested or authorized in writing by the OWNER.
- G. Preparation of pre-applications and applications for federal and/or state assistance grants for funding of projects.

ARTICLE II – GENERAL PROVISIONS

SECTION I – RESPONSIBILITIES OF THE OWNER

As a party to this Agreement, the OWNER shall:

- A. Make available for CONSULTANT'S use all record drawings, maps, soil data, etc. that are readily available to the OWNER, and the CONSULTANT shall have the right to rely upon the completeness and accuracy thereof.
- B. Designate a person to act with authority on OWNER'S behalf and respond in a timely manner to submissions by CONSULTANT providing approvals and authorizations as appropriate so that work may continue at a normal pace.

- C. Pay all costs associated with special services authorized by the OWNER, and all costs associated with obtaining bids from contractors.

SECTION II - METHOD OF PAYMENT

The CONSULTANT agrees to provide professional services for all services included in Article I – Scope of Services and the OWNER agrees to pay the CONSULTANT a LUMP SUM fee for design engineering services \$74,300.

- A. Partial payments for all services performed by the CONSULTANT under the terms of the Agreement shall be made no more often than monthly to the CONSULTANT by the OWNER upon receipt of invoices and other evidence of performance as may be deemed necessary by the OWNER. Payments shall be due and payable within thirty (30) days of the date of invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest at the rate of one and one-half percent (1 ½%) per month and OWNER shall reimburse CONSULTANT for any expenses, including legal costs, incurred in collection of outstanding amounts due from OWNER.
- B. For Projects involving a supplemental agreement, the scope of services and amount of compensation to be paid will be included therein.
- C. The OWNER will pay the CONSULTANT for special services performed by subconsultants at the actual invoice amount times a factor of 1.10 for assisting and coordinating the subconsultant's services.
- D. Reimbursable expenses are defined as follows:
 - Travel and subsistence cost, long distance telephone, printing and reproduction, computer services, application fees or deposits, and all other costs incidental to performing the assignment.
- E. The OWNER as purchaser of the services described herein shall pay any applicable sales tax in the manner and in the amount as required by law.
- F. Payment shall be made payable to Volkert, Inc. and submitted to the following address: ***Dept. #2042, Volkert, Inc., P.O. Box 11407, Birmingham, AL 35246-2042.***

SECTION III – MISCELLANEOUS

- A. Extra Work: It is mutually understood and agreed that the OWNER will compensate the CONSULTANT for services resulting from changes in the scope of a project or its design, including but not necessarily limited to, change in size, complexity, project schedules, character of construction, revisions to previously accepted studies, reports, design documents or contract documents and for

preparation of documents for separate bids, when such revisions are due to causes beyond the CONSULTANT'S control and when requested or authorized by the OWNER. Compensation for such extra work when authorized by the OWNER shall be mutually agreed upon prior to beginning work.

- B. Ownership and Reuse of Documents: All Project documents including but not necessarily limited to reports, drawings, studies, findings, correspondence, specifications, survey notes, estimates, maps, computations, calculations, computer files, Computer Assisted Design and Drafting (CADD) files (electronic and hard copy), and other data, as well as any and all other documents and other materials prepared, generated, or furnished by or for CONSULTANT and/or its Subconsultant(s) for the Project pursuant to this Agreement (hereinafter referred to in this Section B. as "Documents") are instruments of service with respect to the Project, and CONSULTANT shall retain an ownership and intellectual property interest therein regardless whether the Project is completed. OWNER may make and retain copies thereof for information and reference in connection with the use and/or occupancy of the Project by OWNERS and others. However, such Documents are not intended for reuse or future use by OWNER or others for any purpose whatsoever or on any other project. No representation is made that such Documents are or will be suitable for reuse or future use by OWNER or others for any purpose whatsoever or on any other project. Any use of such Documents by OWNER or others on any project other than the project which is the subject of this Agreement is not advised and shall be done without warranty, representation, or liability to any extent whatsoever on the part of CONSULTANT. OWNER shall defend, indemnify, save and hold harmless CONSULTANT, its officers, directors, employees, agents, successors, and assigns against any and all liability for any and all claims, demands, fines, fees, damages, actions, causes of action, lawsuits, expenses (including attorneys' fees), mediations, and arbitrations arising out of, resulting from, or relating in any way to the OWNER'S use of such Documents.
- C. Exclusivity of Remedies: To the fullest extent permitted by law, the total liability, in the aggregate, of CONSULTANT and CONSULTANT'S officers, directors, employees, agents and independent professional associates and consultants, and of any of them, to OWNER and anyone claiming by, through or under OWNER, for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to CONSULTANT'S services, the project or this agreement from any cause or causes whatsoever, including but not limited to the negligence, errors, omissions, strict liability or breach of contract by CONSULTANT or CONSULTANT'S officers, directors, employees, agents or independent professional associates or consultants, or any of them, shall be limited to and shall not exceed the total compensation received by CONSULTANT under this agreement.
- D. Indemnification: To the fullest extent permitted by law, and up to the limits of the exclusivity of remedies provision, *supra*, CONSULTANT shall indemnify

OWNER and OWNER'S officers, directors and employees for costs, losses, judgments, damages and expenses (including reasonable attorneys' fees) to the extent caused by the negligent acts, errors and omissions of CONSULTANT in the performance of its professional services hereunder. In any matters involving allegations of negligent performance of professional services by CONSULTANT, CONSULTANT'S defense duties under this indemnification provision (which are expressly disclaimed) shall include only reimbursement of reasonable defense costs to the extent incurred as a proximate result of CONSULTANT'S actual negligent performance.

E. Insurance: CONSULTANT shall furnish OWNER with Certificate of Insurance confirming following forms and minimum limits of insurance:

<u>TYPE OF COVERAGE</u>	<u>LIMITS</u>
<u>I. Worker Compensation</u>	<u>State – Statutory</u>
<u>Employer Liability</u>	<u>\$500,000 per accident</u>
	<u>\$500,000 disease/each accident</u>
	<u>\$500,000 disease/policy limit</u>
<u>II. Comprehensive or Commercial</u>	<u>\$1,000,000 per person bodily injury</u>
<u>General Liability</u>	<u>\$1,000,000 per occurrence bodily injury</u>
	<u>\$1,000,000 property damage</u>
	<u>\$2,000,000 policy aggregate</u>
<u>III. Automobile Liability</u>	<u>\$1,000,000 combined single limit</u>
<u>IV. Professional Liability</u>	<u>\$2,000,000</u>

F. Termination: In the event of failure by the CONSULTANT to fulfill in timely and proper manner CONSULTANT'S obligations under this contract, or if the CONSULTANT violates any of the covenants, agreements, or stipulations of this contract, the OWNER shall thereupon have the right to terminate this contract by written notice to the CONSULTANT of such termination, specifying the effective date thereof at least five days before the effective date of such termination and make settlement with CONSULTANT upon an equitable basis for services performed up to the time of termination.

G. Contract Period: All contracts, agreements, provisions and stipulations of this Agreement shall remain in full force for a period of one (1) year from the date of the Agreement, and for such periods as the contract time may be extended by mutual written agreement between the OWNER and the CONSULTANT.

H. Successors and Assigns:

1. OWNER and CONSULTANT each is hereby bound and the partners, successors, executors, administrators and legal representatives of OWNER and CONSULTANT (and to the extent permitted by paragraph 2, the assigns of OWNER and CONSULTANT) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.
2. Neither OWNER nor CONSULTANT shall assign, sublet or transfer any rights under or interest in (including, but without limitation, monies that may become due or monies that are due) this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent CONSULTANT from employing such independent professional associates and consultants as CONSULTANT may deem appropriate to assist in performance of services hereunder.
3. Nothing under this Agreement shall be construed to give any right or benefits in this Agreement to anyone other than OWNER and CONSULTANT, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of OWNER and CONSULTANT and not for the benefit of any other party.

- I. Dispute Resolution: If a dispute arises out of or relates to this Agreement or its alleged breach, the OWNER and CONSULTANT shall direct their representatives to endeavor to settle the dispute first through direct discussions. If the dispute cannot be resolved through direct discussions, the OWNER and CONSULTANT shall participate in mediation under the Construction Industry Mediation Rules of the American Arbitration Association then in effect unless the parties mutually agree otherwise, before recourse to litigation. The OWNER'S and CONSULTANT'S representatives shall attend all mediation sessions. Engaging in mediation is a condition precedent to litigation. Should mediation fail to resolve the dispute, the parties shall engage in arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect unless the parties mutually agree otherwise, before recourse to litigation. Arbitration is a condition precedent to litigation. Only after the parties have exhausted direct discussions, mediation, AND arbitration in accordance with the foregoing shall either of them be entitled to initiate litigation. Should either party initiate litigation prior to engaging in direct discussions, good

faith mediation, and arbitration, it shall pay all attorneys' fees and expenses and other costs incurred by the other party in responding to said litigation. Any provisions herein to the contrary notwithstanding, OWNER and CONSULTANT hereby agree that any disputes between them will be tried to the Bench and not to a jury, and each of them willfully and voluntarily waives its right to trial by jury for any dispute arising out of this Agreement.

- J. Right of Entry: OWNER shall furnish right-of-way on the property for CONSULTANT to perform undisturbed the Services hereunder. CONSULTANT shall take reasonable precautions to minimize damage to the property during the course of its services. OWNER acknowledges that a certain amount of damage, wear and tear, and depreciation is likely to result from CONSULTANT'S operations on the property in furtherance of CONSULTANT'S Services under this Agreement. The cost for restoration or remediation of damaged property which may result from CONSULTANT'S operations is not included in CONSULTANT'S compensation hereunder unless explicitly stated otherwise in this Agreement. If the property is damaged during CONSULTANT'S operations and if OWNER desires CONSULTANT to restore or remediate the property to its former condition, CONSULTANT will do so for additional costs in accordance with the fee schedule referenced herein.
- K. Standard of Care: CONSULTANT shall endeavor to perform its services hereunder consistent with the professional skill and care ordinarily exercised under similar conditions by similarly situated professional consultants practicing in the same field at the same time in the same or similar locality. No warranty, express or implied, is made or intended related to the services provided herein, and CONSULTANT guarantees no particular result.
- L. Disclaimer of Third-Party Benefits: OWNER and CONSULTANT expressly disclaim third-party beneficiaries hereunder and no one not a Party to the Agreement shall be entitled to seek enforcement against OWNER and/or CONSULTANT of any provision herein, or to otherwise seek damages from either Party for the alleged breach of any provision contained herein or purported duty or standard created or conferred hereunder. It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of any part of the Agreement to create in the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a Party to the Agreement to maintain a claim, cause of action, lien or any other damages or any relief of any kind pursuant to the terms and provisions of this Agreement.
- M. Waiver of Consequential Damages: Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither OWNER nor CONSULTANT, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the Project or to this Agreement. This mutual waiver of

consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation, or any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty. Both OWNER and CONSULTANT shall require similar waivers of consequential damages protecting all of the entities and persons named herein in all contracts and subcontracts with others involved in this Project.

- N. Jurisdiction/Venue: It is expressly agreed and stipulated between the parties that this contract shall be deemed to have been executed in the State of Alabama where the principal office of Volkert, Inc. is located. This contract shall be governed by the laws of the State of Alabama. The Circuit or District Court of the Thirteenth Judicial Circuit of Alabama, Mobile County, Alabama, shall have jurisdiction over any dispute which arises under this contract, and each of the parties shall submit and hereby consents to the jurisdiction of either such court.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement in duplicate as of the day and year first above written.

ATTEST:

OWNER

Title

Title

Federal Employer
ID # (Corporation):

Social Security #
(Individual):

ATTEST:

Volkert, Inc.

Title

Title

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

October 15, 2014

By Hand Delivery

City Manager Jeffrey D. Downes
Vestavia Hills Municipal Center
513 Montgomery Highway
Vestavia Hills, Alabama 35216

In Re: Agreement By and Between the City of Vestavia Hills, Alabama ("City")
and Volkert, Inc. ("Consultant")

Dear Mr. Downes:

On October 6, 2014, Melissa Hipp furnished me via electronic mail with a copy of a proposed Agreement by and between the City of Vestavia Hills, Alabama ("Owner") and Volkert, Inc. ("Consultant") prepared and proposed by the Consultant. You have requested that I review the proposed Agreement and provide you with my written legal opinion. The purpose of this letter is to comply with your request.

I. FACTS

Volkert, Inc. has prepared and proposed the execution and delivery of an Agreement by and between the City, as "Owner", and Volkert, Inc., as "Consultant", providing for engineering design services for the construction of a pedestrian tunnel to connect Liberty Park Sports Complex (LPSC) and Sicard Hollow Athletic Complex (SHAC) for and in consideration of the sum of \$74,300.00 ("Agreement").

On October 13, 2014, the City Council of the City of Vestavia Hills, Alabama approved and adopted Resolution Number 4643 authorizing and directing you to execute and deliver an Agreement with Alabama Department of Transportation ("ALDOT") for Project Number TAPAA-TA14(931) for the construction of a pedestrian tunnel to connect LPSC and SHAC. Among other things, the agreement provides that the Federal Highway Administration will provide federal funding equal to eighty percent (80%) of the cost of the construction; provided, however, that the maximum federal money does not exceed Three Hundred Seventy-eight Thousand Nine Hundred Sixty-six Dollars (\$378,966.00). The City will be required to pay the remaining twenty percent (20%) and the cost of preparing the design plans for construction of the project.

Volkert, Inc., as Consultant, proposes to do the engineering design services for and in consideration of \$74,300.00. The Agreement prepared and proposed by Volkert, Inc. raises the legal issues set forth below.

II. LEGAL ISSUE ONE

A. LEGAL ISSUE ONE: Is the City of Vestavia Hills, Alabama liable for the payment of sales taxes?

B. LEGAL OPINION: It is my legal opinion that the answer to Legal Issue One is in the negative.

C. BASIS FOR LEGAL OPINION: Municipalities in Alabama are not legally required to pay sales taxes. Title 40-23-4(a), *Code of Alabama 1975*, reads in pertinent part as follows:

“§40-23-4. Exemptions; Certain Sales.

(a) There are exempted from the provisions of this division and from the computation of the amount of the tax levied, assessed, or payable under this division the following:

(11) The gross proceeds of sales of tangible personal property to the State of Alabama, to the counties within the state and to incorporated municipalities in the State of Alabama.

(15) The gross proceeds of the sale or sales of tangible personal property to county and city school boards, independent school boards, and all educational institutions and agencies of the State of Alabama, the counties within the state, or any incorporated municipalities of the State of Alabama.”

D. MY RECOMMENDATION: I recommend that Section II-E on page 4 be deleted.

III. LEGAL ISSUE TWO

A. LEGAL ISSUE TWO: May the City legally agree to the language of Section III-G on page 6, which reads as follows:

“Contract Period: All contracts, agreements, provisions and stipulations of this Agreement shall remain in full force for a period of one (1) year from the date of the Agreement, and for such periods as the contract time may be extended by mutual written agreement between the OWNER and the CONSULTANT.”

B. LEGAL OPINION: It is my legal opinion that the answer to Legal Issue Two is in the negative.

C. **BASIS FOR LEGAL OPINION:** I base my legal opinion upon the following:

(1) **Statute of Limitations:**

(a) **Negligence:** Title 6-2-38, *Code of Alabama, 1975*, provides that an action to recover damages for negligence must be commenced within two (2) years. Title 6-2-34(9), *Code of Alabama, 1975*, provides that an action upon a contract must be commenced with six (6) years.

(b) **Agreements, Etc. To Limit Time Void:** Title 6-2-15, *Code of Alabama, 1975*, provides in words and figures as follows:

“§6-2-15. **Agreements, etc. to limit time void.** Except as may be otherwise provided by the Uniform Commercial Code, any agreement or stipulation, verbal or written, whereby the time for the commencement of any action is limited to a time less than that prescribed by law for the commencement of such action is void.”

D. **MY RECOMMENDATION:** I recommend that Section III-G on page 6 be deleted.

IV. **LEGAL ISSUE THREE**

A. **LEGAL ISSUE THREE:** May the City legally agree to the language of Section III-C on page 5, which reads as follows:

“**Exclusivity Remedies:** To the fullest extent permitted by law, the total liability in the aggregate, of CONSULTANT and CONSULTANT’S officers, directors, employees, agents and independent professional associates and consultants, and of any of them, to OWNER and anyone claiming by, through or under OWNER, for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to CONSULTANT’S services, the project or this agreement from any cause or causes whatsoever, including but not limited to the negligence, errors, omissions, strict liability or breach of contract by CONSULTANT or CONSULTANT’S officers, directors, employees, agents or independent professional associates or consultants, or any of them, shall be limited to and shall not exceed the total compensation received by CONSULTANT under this agreement.”?

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

C. **BASIS FOR LEGAL OPINION:** I base my legal opinion upon the following:

(1) **Municipalities May Be Liable for the Negligent Acts of Its Employees Acting in the Line and Scope of Their Employment:** Title 11-47-190, *Code of Alabama, 1975*, reads as follows:

“No city or town shall be liable for damages for injury done to or wrong suffered by any person or corporation, unless such injury or wrong was done or suffered through the neglect, carelessness or unskillfulness of some agent, officer or employee of the municipality engaged in work therefor and while acting in the line of his or her duty, or unless the said injury or wrong was done or suffered through the neglect or carelessness or failure to remedy some defect in the streets, alleys, public ways or buildings after the same had been called to the attention of the council or other governing body or after the same had existed for such an unreasonable length of time as to raise a presumption of knowledge of such defect on the part of the council or other governing body and whenever the city or town shall be made liable for damages by reason of the unauthorized or wrongful acts or negligence, carelessness or unskillfulness of any person or corporation, then such person or corporation shall be liable to an action on the same account by the party so injured. However, no recovery may be had under any judgment or combination of judgments, whether direct or by way of indemnity under Section 11-47-24, or otherwise, arising out a single occurrence, against a municipality, and/or any officer or officers, or employee or employees, or agents thereof, in excess of a total \$100,000 per injured person up to a maximum of \$300,000 per single occurrence, the limits set out in the provisions of Section 11-93-2 notwithstanding.”

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

“(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.”

(3) **Prejudice the Rights of the City General Comprehensive Liability Insurance Carrier and Jeopardize Coverage:** Based upon Title 11-47-191(b), *Code of Alabama, 1975*, it is my legal opinion that if the City agreed to Section III-C that it would prejudice the rights of the City general comprehensive liability insurance carrier and jeopardize coverage under the policy.

(4) **Municipalities Cannot Spend Public Funds to Indemnify Third Parties:** It is my legal opinion that to agree to shorten the Statute of Limitations and limit the amount of damages would in effect constitute an indemnity agreement. It is my further legal opinion that municipalities in Alabama cannot spend public funds to indemnify third parties. I base my legal opinions upon the following legal authorities:

(a) **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 the Consultant for actions, costs, expenses, damages and liabilities (by limiting Consultant’s liability).

(b) **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.

(c) **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.

D. **MY RECOMMENDATION:** I recommend that Section III-C on page 5 be deleted.

V. **LEGAL ISSUE FOUR**

A. **LEGAL ISSUE FOUR:** Should the City agree that the Courts in Mobile County, Alabama shall have jurisdiction over any dispute, which arises under the Agreement?

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

C. **BASIS FOR LEGAL OPINION:** Title 6-3-7(a), *Code of Alabama, 1975*, provides that all civil actions against corporations may be brought in any of the following counties:

1. The county where the event or omission giving rise to the claim occurred or a substantial part of real property that is the subject of the action is situated (Jefferson County, Alabama); or

2. In the county of the corporation's principal office in this state (Volkert, Inc. is located in Mobile); or

3. In the county where the plaintiff had its principal office in this state (The City operates in Jefferson County, Alabama); or

4. If subdivisions 1, 2 or 3 do not apply, then in any county in which the corporation was doing business at the time of the accrual of the cause of action (Jefferson County, Alabama).

D. **MY RECOMMENDATION:** I recommend that Section III-N on page 9 be amended so that the dispute, if any, shall be resolved in Jefferson County, Alabama.

VI. LEGAL ISSUE FIVE

A. **LEGAL ISSUE FIVE:** Does the indemnification language in Section III-D on pages 5 and 6 adequately indemnify and hold the City and its employees and public officials harmless from the negligence, acts, errors and omissions of the Consultant?

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

C. **BASIS FOR LEGAL OPINION:** I base my legal opinion upon the fact that the indemnity is limited to and shall not exceed the total compensation received by the Consultant under the Agreement.

D. **MY RECOMMENDATION:** I recommend that Section III-D on pages 5 and 6 be amended so to read, as amended, as follows:

“D. **Indemnification:** To the fullest extent permitted by law, the CONSULTANT shall defend, indemnify and hold harmless the City of Vestavia Hills, Alabama, a municipal corporation, its elected public officials and employees, as Owner, (hereinafter collectively referred to as the “Indemnitees”) from and against all claims, damages, losses and expenses, including but not limited to attorneys’ fees, arising out of, related to, or resulting from performance of the design and engineering work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, including loss of use resulting therefrom, and is caused in whole or in part by negligent acts or omissions of the CONSULTANT or CONSULTANT’S officers, directors, employees, agents or independent professional associates or consultants, or any of them, directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether such claim, damage, loss or expense is caused in part, or is alleged but not legally established to have been caused in whole or in part by the negligence or other fault of a party indemnified hereunder. This indemnification shall extend to all claims, damages, losses and expenses for injury or damage to adjacent or neighboring property, or persons injured thereon, that arise out of, relate to, or result from performance of the said design and engineering work.”

VII. LEGAL ISSUE SIX

A. **LEGAL ISSUE SIX:** Should the City, its public officials and employees be added as additional insureds to the insurance policy of the Consultant described in Section III-E on page 6 of the Agreement?

B. **LEGAL OPINION:** It is my legal opinion that the answer to Legal Issue Six is in the affirmative.

C. BASIS FOR LEGAL OPINION: Adding the City, its public officials and employees as named insureds to the Consultant's insurance policy and coverages provide the maximum protection that is possible in my judgment.

D. MY RECOMMENDATION: I recommend that the following language be added to Section III-E on page 6 of the Agreement:

"The CONSULTANT shall cause the insurance coverages described in this Section E, subparagraphs I, II, III and IV above to include:

(a) The City of Vestavia Hills, Alabama, a municipal corporation, and its elected public officials and employees, as additional insureds for claims caused in whole or in part by the CONSULTANT'S negligent acts or omissions during the CONSULTANT'S operations; and

(b) The City of Vestavia Hills, Alabama, a municipal corporation, and its elected public officials and employees as additional insureds for claims caused in whole or in part by the CONSULTANT'S negligent acts or omissions during the CONSULTANT'S completed operations; and

(c) The insurance policy coverages shall state that these coverages shall be primary insurance for the additional insureds; and

(d) Contain no exclusions of the additional insureds relative to job accidents; and

(e) The policies must be on an "occurrence" basis."

E. OTHER: The Alabama Building Commission provides in Article 37 of ABC Form C-8 "General Conditions of the Contract" that a state agency and its public officials and employees be added as named insureds to the other party's insurance policies and coverages. I realize that municipalities in Alabama are not agencies of the state, but they should have no less protection than such state agencies.

October 15, 2014
page 9

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

Sincerely,



Patrick H. Boone
Vestavia Hills City Attorney

PHB:gp

RESOLUTION NUMBER 4669

A RESOLUTION FORMING A HEALTH CARE AUTHORITY AND APPOINTING DIRECTORS TO THE AUTHORITY

WHEREAS, a written application has been filed with the City of Vestavia Hills, Alabama (the “City”) requesting the incorporation of a health care authority (the “Authority”) under the provisions of The Health Care Authorities Act of 1982, codified as Section 22-21-310 et seq. of the *Code of Alabama 1975* (the “Enabling Law”); and

WHEREAS, the Authority is to be named “The Health Care Authority of the City of Vestavia Hills”; and

WHEREAS, the application was accompanied by a form of certificate of incorporation for the Authority; and

WHEREAS, the application is attached to this resolution as Exhibit A and the form of certificate of incorporation is attached to this resolution as Exhibit B; and

WHEREAS, the governing body of the City has reviewed the contents of the application and the accompanying form of certificate of incorporation.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA, AT A REGULAR MEETING, DULY ASSEMBLED, A QUORUM BEING PRESENT, AS FOLLOWS:

1. The City Council, the governing body of the City, does hereby declare that it is wise, expedient and necessary that the Authority be formed and does hereby:
 - a. Approve the form of the Authority’s certificate of incorporation; and
 - b. Authorize the applicants to proceed to form the Authority by filing for record of certificate of incorporation in accordance with the provisions of Section 22-21-314 of the Enabling Law.
2. The directors of the Authority shall be elected by the City Council and shall serve for such term of office as provided in the proposed form of certificate of incorporation.
3. The City Council hereby appoints the following persons to serve as the initial directors of the Authority:
 - a. Daniel Lovell, Term expires January 1, 2016
 - b. Steven Ball, Term expires January 1, 2017
 - c. Robert Cook, Term expires January 1, 2018

4. The successors to the initial directors shall be elected as provided in the form of certificate of incorporation.
5. Any person or person designated and authorized by any such office of the City to act in the name and on behalf of the City such related costs and expenses, and to execute and deliver or cause to be executed and delivered in the name and on behalf of the City such other notices, request, demands, directions, consents, approvals, orders, applications, certificates, agreements, further assurances, or other instruments or communications, under the corporate seal of the City, or otherwise, as the person or persons may deem necessary, advisable, or appropriate in order to carry into effect the intent of the provisions of this resolution.
6. That this Resolution Number 4669 shall become effective immediately upon its adoption and approval.

ADOPTED and APPROVED this the 12th day of January, 2015.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

EXHIBIT A

**APPLICATION FOR INCORPORATION
OF A HEALTH CARE AUTHORITY**

The undersigned natural persons hereby make application for permission to incorporate a health care authority pursuant to the provisions of The Health Care Authorities Act of 1982, codified as Section 22-21-310 et seq. of the Code of Alabama 1975 (the "Enabling Law").

1. The name of the municipality with the governing body of which this application is being filed is the City of Vestavia Hills, a municipal corporation organized under the laws of the State of Alabama (the "City").

2. The undersigned applicants propose to incorporate a health care authority pursuant to the provisions of the Enabling Law.

3. Each of the undersigned applicants is a duly qualified elector of the City.

4. The applicants hereby request that the City adopt a resolution (i) declaring that it is wise, expedient and necessary that the health care authority being proposed in this application be formed, (ii) approving the certificate of incorporation of the health care authority being proposed in this application, a copy of which is attached hereto as *Exhibit A*, and (iii) authorizing the applicants to proceed to form the health care authority being proposed in this application by filing for record a certificate of incorporation in accordance with the provisions of Section 22-21-314 of the Enabling Law.

IN WITNESS WHEREOF, the undersigned applicants have executed this application on this 12th day of January, 2015.

Daniel G. Lovell

Steven N. Ball

W. Robert Cook

EXHIBIT B

Form of Certificate of Incorporation

CERTIFICATE OF INCORPORATION OF THE HEALTH CARE AUTHORITY OF THE CITY OF VESTAVIA HILLS

KNOW ALL MEN BY THESE PRESENTS that the undersigned, in order to form a public corporation under and pursuant to the provisions of The Health Care Authorities Act of 1982, codified as Section 22-21-310 et seq. of the Code of Alabama 1975 (the "Enabling Law"), do hereby make, sign, execute, acknowledge and file the following certificate of incorporation:

ARTICLE ONE

The names of the persons forming this public corporation, together with the address of the residence of each of such persons, are:

Daniel G. Lovell, whose place of residence is 3528 Coventry Drive, Vestavia Hills, Alabama 35243;

Steven N. Ball, whose place of residence is 732 Comer Drive, Vestavia Hills, Alabama 35216;

W. Robert Cook, whose place of residence is 1322 Badham Drive, Vestavia Hills, Alabama 35216.

Each of the foregoing named persons is a duly qualified elector of the City of Vestavia Hills.

ARTICLE TWO

The name of the public corporation shall be "The Health Care Authority of the City of Vestavia Hills" (herein referred to as the "Authority").

ARTICLE THREE

The duration of the corporate existence of the Authority is perpetual, subject to the provisions of Section 22-21-339 of the Enabling Law.

ARTICLE FOUR

The name of the authorizing subdivision authorizing the incorporation of the Authority is the City of Vestavia Hills, Alabama, a municipal corporation organized under the laws of the State of Alabama (the "City"). On January 12, 2015, the governing body of the City adopted a resolution approving and authorizing the incorporation of the Authority in accordance with the Enabling Law. A certified copy of the approving resolution is attached hereto as *Exhibit A*.

ARTICLE FIVE

The location of the principal office of the Authority (and its post office address) shall be City of Vestavia Hills, 513 Montgomery Highway, Vestavia Hills, Alabama 35216 Attention: Chairman, The Health Care Authority of the City of Vestavia Hills.

ARTICLE SIX

The Authority is organized pursuant to the provisions of the Enabling Law.

ARTICLE SEVEN

The Authority is to have all powers granted by the Enabling Law and any other laws of the State of Alabama applicable to corporations organized under the Enabling Law.

ARTICLE EIGHT

The Authority shall have 3 directors elected by the governing body of the City. The initial directors shall serve for terms as follows:

- (1) One director shall serve for a term ending January 1, 2016.
- (2) One director shall serve for a term ending December 1, 2017.
- (3) One director shall serve for a term ending December 1, 2018.

The resolution of the governing body of the City electing the initial directors shall designate the end of the term for each of the initial directors.

The term of office for each successor director shall be 3 years, commencing upon the expiration of the term of the director being replaced or the expiration of such director's prior term, as the case may be, unless a director is elected to fill the unexpired term of a director, in which case the successor director's term shall end upon the expiration of the term being filled.

If the term of office being served by any director expires prior to the election of such director for a new term or prior to the election of his successor, such director will continue to serve until his successor is elected.

If at any time there should be a vacancy on the board of directors of the Authority, whether by death, resignation, incapacity, disqualification or otherwise, a successor director to serve for the unexpired term applicable to such vacancy shall be elected by the governing body of the City.

Each director shall be eligible for reelection upon expiration of his or her term.

A director may be removed from office in the manner and upon the grounds provided in Section 22-21-316(d) of the Enabling Law.

Successors to the initial directors of the Authority shall be elected by the governing body of the City in accordance with the nomination process set forth in Section 22-21-352 of the Enabling Law.

ARTICLE NINE

Attached hereto as *Exhibit B* is a certificate by the Secretary of State of the State of Alabama stating that the name proposed for the Authority is not identical to that of any other corporation organized under the laws of the State of Alabama or so nearly similar thereto as to lead to confusion and uncertainty.

ARTICLE TEN

Upon dissolution of the Authority, the title to all of the assets and property of the Authority at the time of such dissolution shall be transferred to the City.

IN WITNESS WHEREOF, the undersigned incorporators have signed this certificate of incorporation on this 12th day of January, 2015.

Daniel G. Lovell

Steven N. Ball

W. Robert Cook

**STATE OF ALABAMA
JEFFERSON COUNTY**

I, the undersigned, a notary public in and for said County in said State, hereby certify that Daniel G. Lovell, Steven N. Ball and W. Robert Cook, whose names are signed to the foregoing instrument and who are known to me, acknowledged before me this day that, being informed of the contents of the instrument, they executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 12th day of January, 2015.

Notary Public

My commission expires: _____

EXHIBIT A

**Certified Resolution of the Governing Body of the City
Authorizing Incorporation of the Authority**

EXHIBIT B

Certificate of Secretary of State

PATRICK H. BOONE
ATTORNEY AND COUNSELOR AT LAW
NEW SOUTH FEDERAL SAVINGS BUILDING, SUITE 705
215 RICHARD ARRINGTON, JR. BOULEVARD NORTH
BIRMINGHAM, ALABAMA 35203-3720

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

December 16, 2014

By Hand Delivery

City Manager Jeffrey D. Downes
Vestavia Hills Municipal Center
513 Montgomery Highway
Vestavia Hills, Alabama 35216

In Re: The HealthCare Authority of the City of Vestavia Hills

Dear Mr. Downes:

On December 12, 2014, you sent me via electronic mail certain documents prepared by attorney, Curt Gwathney, which include the following:

1. Letter, dated December 8, 2014, to you from Curt Gwathney.
2. Application for Incorporation for a Health Care Authority.
3. Certificate of Incorporation of The Health Care Authority of the City of Vestavia Hills.
4. Resolution to be enacted by the City Council.

You requested that I review the above material and provide you with my written legal opinion and comments. The purpose of this letter is to comply with your request.

BACKGROUND

The City of Vestavia Hills has previously approved three different but similar projects, which are briefly discussed below.

A. The City approved the creation of a Public Park and Recreation Board pursuant to the authority of Title 11-60-1, et seq., Code of Alabama, 1975. A racquetball facility located almost directly behind the bowling alley was constructed pursuant to this statute. Title 11-60-13, Code of Alabama, 1975, provides that the City was not liable for the payment of any indebtedness of that Public Park and Recreation Board.

B. A Medical Clinic Board was established pursuant to the authority of Title 11-58-1, Code of Alabama, 1975. Vestavia Pediatrics was created pursuant to this statute and to the best of my knowledge still operates in close proximity to the property located almost adjacent to the U-Haul It property on Highway 31 South. Title 11-58-7, Code of Alabama, 1975, provides that the City would never be liable for any of the indebtedness of the Medical Clinic Board.

December 16, 2014

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C. The City established the Municipal Special Health Care Facility Authority pursuant to Title 11-62-1, Code of Alabama, 1975. Mount Royal Tower was built pursuant to that statute. Title 11-62-8(e), Code of Alabama, 1975, provides that the City shall never be liable for any of the indebtedness created by that facility.

THE HEALTH CARE AUTHORITIES ACT OF 1982
TITLE 22-21-310, ET SEQ., CODE OF ALABAMA, 1975 (THE "ACT")

I have reviewed this entire Act. It too provides that the City shall never be liable for any of the indebtedness of a Health Care Authority if approved by the City Council and created pursuant to the statute. The Act contains Title 22-21-325, Code of Alabama, 1975, which reads as follows:

"Title 22-21-325. State debt not created. All agreements and obligations undertaken, and all securities issued, by an authority shall be solely and exclusively an obligation of the authority and shall not create an obligation or debt of the state, any authorizing subdivision or any other county or municipality within the meaning of any constitutional or statutory provision. The faith and credit of the state, any authorizing subdivision or any other county or municipality shall never be pledged for the payment of any securities issued by an authority; nor shall the state, any authorizing subdivision or any other county or municipality be liable in any manner for the payment of the principal of or interest on any securities of an authority or for the performance of any pledge, mortgage, obligation or agreement of any kind whatsoever that may be undertaken by an authority."

Based upon my reading of the Health Care Facilities Act of 1982, I see no legal problems for the City if it decides to approve the establishment of such an authority.

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

Very truly yours,



Patrick H. Boone
Vestavia Hills City Attorney

PHB:gp



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Memorandum

VIA E-MAIL

TO: Jeff Downes

FROM: Kathryn J. Ottensmeyer
William C. Gwathney III

DATE: December 8, 2014

RE: **Formation of Vestavia Hills Health Care Authority and Financing for Impact Family Counseling**

We serve as counsel to Compass Bank. Compass Bank and Impact Family Counseling ("Impact") are considering a loan transaction in which Compass would make a tax-exempt loan of approximately \$1 million to Impact to provide for the acquisition of office space located at 701 Montgomery Highway in the City of Vestavia Hills. Impact is an Alabama nonprofit corporation and an organization recognized under Section 501(c)(3) of the Internal Revenue Code. As a 501(c)(3) corporation, Impact qualifies for tax-exempt financing for the portion of the building it will occupy and use (the portion that will not be leased to for-profit tenants), if that portion of the loan from Compass is issued through a governmental entity such as a Health Care Authority formed under Alabama State law¹.

We have recommended that the tax-exempt portion of loan to finance Impact's building acquisition costs be issued under a financing agreement between a newly formed Health Care Authority of the City of Vestavia Hills, Impact Counseling and Compass Bank. Formation of a Health Care Authority by the City of Vestavia Hills is permitted under The Health Care Authorities Act of 1982, codified at Section 22-21-310 *et seq.* of the Code of Alabama of 1975. Formation of such an Authority would require the following:

- 1) No less than three Incorporators who are qualified electors of the City of Vestavia Hills (that is registered voters) file an application with the City to form the Authority.

¹ Impact will also be purchasing the first floor of the building, which is currently occupied by Dollar General; that portion of the building acquisition does not qualify for tax-exempt financing because of the private business use of that space; accordingly, Compass expects to make a taxable loan to Impact to finance the portion of the purchase price allocable to the private business use space. The Authority to be formed would not be involved in, nor be a party to, the taxable loan.

2) The City Council considers the application and if, willing to proceed, adopts a resolution approving the application and related certificate of incorporation, which will then be filed with the Jefferson County Judge of Probate, thereby forming the Authority. The resolution forming the Authority appoints the initial Board of Directors (no less than 3 members) for their initial terms of office (not in excess of 6 years). The certificate of incorporation would also require that future directors be appointed by the City.

Attached are drafts of (i) an application to form a Vestavia Hills Health Care Authority, which attaches a proposed certificate of incorporation and (ii) a draft Resolution of the City approving the application and formation of the Authority.

Pursuant to the Health Care Authority Act Section 22-21-325, any debt issued by the Authority cannot be a debt of the City or secured in any way by City property or promise. For the Impact financing, the debt issued by the Authority in connection with this loan from Compass Bank will be payable solely out of loan repayments received from Impact under the financing agreement and other security documents with Compass.

Bank Qualification: As you know the City of Vestavia Hills qualifies as a “small issuer” under the Internal Revenue Code in years in which it issues (or expects to issue) less than \$10 million in tax-exempt debt. The ability to issue bank qualified debt can help the City lower its borrowing costs from some lenders. Since the Authority will be subordinate to the City, debt issued by the Authority will count towards the \$10 million dollar BQ limit of the City in the calendar year in which the debt is issued. We hope to close this loan next month; accordingly, the approximately \$1 million face amount of the loan will count against the City’s BQ limit for calendar year 2015. Any future debt issued by the Authority would count against the City’s limit in the year it is issued. At this time Impact does not anticipate any further need to make future requests for borrowings. The Authority would have the power to assist other health care related nonprofit entities with their financing needs. In any such future borrowing however, the Authority would be required to request general approval for the financing (sometimes referred to as “TEFRA” approval) from the Mayor of the City or its City Council. This should provide the City with sufficient control over its small issuer status in the future.

Please contact either one of us if you have any questions concerning this project.